AN EXAMINATION OF COURT CASES INVOLVING IMMUNITY

IN THE K-12 SETTING

by

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ABSTRACT

The impetus of this research is to provide districts and their personnel with sound guidelines by which they can protect themselves and the interests of the public taxpayers, and to develop personnel knowledge appropriately as it relates to the use of immunity as a legal defense. The use of various forms of immunity as a defensible position is growing increasingly difficult in our litigious society. Administrators, superintendents, and school boards must become more cognizant of how current legal interpretations impact the liabilities they encounter. It is vital that school leaders protect their schools and personnel through professional development that provides the necessary knowledge to retain immunity. This study was conducted as a qualitative, historical, document-based study of legal cases briefed and analyzed to determine the issues, outcomes, and trends involving the various types of immunity defenses used by school personnel. The study involved cases from 1981 to 2010, to ensure validity and relevance. The conclusion of the study provided findings that were used to develop guiding principles for school personnel in their day-to-day operations. Within the study, the trend was that school personnel’s immunity defense relies on several factors: (1) school personnel were acting within the scope and authority of their position; (2) their actions were discretionary, which involves the exercise of judgment, rather than ministerial; (3) the conduct in question does not rise to the level of willful or wanton behavior; (4) their actions were not committed with malicious intent; and (5) they do not violate an established constitutional right. In view of this trend, it is paramount that school
personnel know and implement best practices in their daily work that will not abrogate their immunity defense.
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CHAPTER I
INTRODUCTION

The protected domain of schools, their ability to rule with impunity, and legislation that regulates education has come under unprecedented legal suit and complexity (McDaniel, 1979). The relief of legal liability has not transcended accordingly, based on the continuing and evolving litigation. John Robb (2009) stated, “It isn’t just student discipline. It’s employment law. It’s the Americans with Disabilities Act, the Family and Medical Leave Act, the Family Educational Rights and Privacy Act. It’s IDEA and NCLB all new in the last 30 years” (p. 17). Immunity is a defense used against suit whose beginning came from English common law. Governments have invoked sovereign immunity under the premise that one cannot sue “the king.” Sovereign immunity was first recognized by the case of The Schooner Exchange v. M‘Fadden (3 L. Ed. 287 (1812)), which related to one nation’s immunity from suit by another country’s courts (Thro, 2007). Governmental immunity is an extension of sovereign immunity in the domestic form, and does not allow government officials to be held liable within their official duties, to prevent the payment of taxpayer dollars to individuals due to torts (Thro, 2007). Federal governmental immunity is codified under the Federal Tort Claims Act (28 U.S.C.A. § 1241 [1946]). Official immunity is the interpretation of sovereign immunity as it directly applies to individuals in the judicial and executive branches of government. It holds that these individuals are immune from civil liability for their actions. School officials and personnel fall under the umbrella of qualified immunity when they can show they acted in “good faith” and
“did not know or should not have known they were violating the constitutional rights of another” (Cloud, 1999). In the present day, the states apply this immunity based on their recognition as sovereign entities.

The impetus of this research is to provide districts and their personnel with sound guidelines by which they can protect themselves and the interests of the public taxpayers, and to develop personnel knowledge appropriately. Furthermore, readers can be better prepared to avoid potential litigation by acquiring knowledge of previous trends and holdings from the courts.

**Research Problem**

School boards face ever-increasing cost in providing legal protection and guidance when a lawsuit is brought against them or their employees. The lack of understanding of current legal trends in the courts pertaining to suits brought against them often causes unnecessary cost. Immunity provided to school boards as “an arm of the state” offers protection to boards in the form of sovereign immunity and their employees in most instances as qualified immunity.

Arlinghaus (1997) stated,

> Federal courts, including the United States Supreme Court, have also displayed recent hostility towards the doctrine of sovereign immunity. However, several of the most recent Supreme Court cases involving the issue of whether sovereign immunity has been statutorily waived have resulted in decisions supporting the doctrine. (p. 41)

The intent of this research is to find out how school boards and their personnel retain immunity.
Significance of the Problem

The use of various forms of immunity as a defensible position is growing increasingly difficult in our litigious society. Administrators, superintendents, and school boards must become more cognizant of how current legal interpretations impact the liabilities they encounter. Increasing the knowledge of areas within the school, staff, and students which present liability problems is vital for today’s school leaders. The litigious society in which we live dictates a necessity for school districts to guard themselves through appropriate professional development about legal matters. As districts face economic shortfalls in the millions of dollars, the preservation of monies is vital and there is little room for litigation costs. School districts must be proactive in educating all personnel on current legal interpretations and developing policy that protects from litigation.

Statement of Purpose

The purpose of this research was to examine how the courts have treated the defense of immunity as it relates to liability for districts and its school leaders. School leaders must understand case law as it pertains to the daily operations which present possible litigation. School districts must ensure their policies provide protections from litigation as they are enforced. Furthermore, school leaders must understand what constitutes immunity for them in their daily work and what actions on their part can cause the loss of immunity. School boards and superintendents must realize the need for quality professional development in the legal arena for both themselves and those who work under their supervision. The professional development should be focused on increasing knowledge, ensuring compliance, and reducing the possibility of litigation. The approach of this study will provide knowledge about the necessary legal
protection and rights afforded to all stakeholders through the doctrine of immunity without having to spend valuable resources on lawsuits.

Research Questions

1. What are the issues in federal and state cases about immunity in the K-12 setting?
2. What are the outcomes in federal and state cases about immunity in the K-12 setting?
3. What are the trends in federal and state cases about immunity in the K-12 setting?
4. What guidelines for school administrators can be discerned from cases about immunity in the K-12 setting?

Limitations

1. The study was limited to cases described in West’s Key Number (345) Schools (k147) Duties and Liabilities.
2. The cases were limited to those held in state and federal courts.
3. The selection of cases involved immunity defenses on behalf of school districts or personnel ranging through the timeframe of 1981-2010.
4. The study was conducted by a practicing school administrator rather than an attorney, and is a qualitative, document-based study, rather than legal research.

Assumptions

1. All court cases had been resolved in accordance with local, state, and federal laws.
2. Relevant cases were reported in West’s National Reporter system.
3. West’s editors identified cases about immunity for school officials in West’s Key Number (345) Schools (k147) Duties and Liabilities.


5. The court records supplied by the Key Number serve as source documents for qualitative analysis.

6. The method of briefing cases affords a means of capturing information from the documents that can be analyzed qualitatively.

Definitions

*Absolute immunity:* Immunity from all personal liability without limits or conditions (as a requirement of good faith).

*Appeal:* “Resort to a superior court to review the decision of an inferior court or administrative agency” (Black & Nolan, 1990, p. 96).

*Appellant:* “The party who takes an appeal from one court or jurisdiction to another?” (Black & Nolan, 1990, p. 97).

*Appellate court:* “A court having jurisdiction of appeal and review; a court to which causes are removable by appeal, certiorari, error, or report” (Black & Nolan, 1990, p. 97).

*Case brief:* “A summary of essential components of an opinion” (Statsky & Wernet, 1995, p. 450).

*Case law:*

The aggregate of reported cases as forming a body of jurisprudence, or the law of a particular subject as evidenced or formed by the adjudicated cases, in distinction to statutes and other sources of law. It includes the aggregate of reported cases that interpret statutes, regulations, and constitutional provisions. (Black & Nolan, 1990, p. 220)
Cause of action: “The fact or facts which give a person a right to judicial relief. A situation or state of facts which would entitle party to sustain action and give him right to seek a judicial remedy in his behalf” (Black & Nolan, 1990, p. 220).

Citation: “Identifying information that will enable you to find a law, or material about the law, in a law library” (Statsky & Wernet, 1995, p. 24).

Defendant: “The person defending or denying; the party against whom relief or recovery is sought in an action or suit or the accused in a criminal case” (Black & Nolan, 1990, p. 419).

Disposition: “Whatever must happen in the litigation as a result of the holding which the court made in the opinion” (Statsky & Wernet, 1995, p. 128).

Fact: “Any information concerning a person, thing or occurrence that is obtained through the senses” (Statsky & Wernet, 1995, p. 452).

Federal Court: “The court of the United States (as distinguished from state, county, or city courts) as created by Article III of the United States Constitution or by Congress” (Black & Nolan, 1990, p. 610)

Governmental immunity: discretionary immunity granted to a governmental unit or its employees broadly.

Holding: “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 a dispute” (Statsky & Wernet, 1995, p. 452)

Injunction: “A prohibitive, equitable remedy issued or granted by a court at the suit of a party complainant, directed to a party defendant in an action, forbidding the latter to do some act, which he is threatening or attempting to commit” (Black & Nolan, 1990, p. 705)

Issue: “A question” (Statsky & Wernet, 1995, p. 452)
Law:

That which is laid down, ordained, or established; a rule or method according to which phenomena or actions co-exist or follow each other. Law, in its generic sense, is a body or rules of action or conduct prescribed by controlling authority, having a binding legal force. (Black & Nolan, 1990, p. 884)

Litigation: “A lawsuit; legal action, including all proceedings therein. Contest in a court of law for the purpose of enforcing a right or seeking a remedy. A judicial contest; a judicial controversy; a suit at law” (Black & Nolan, 1990, p. 934).

Opinion: “A court’s written explanation of how and why it applied rules of law (and perhaps secondary authority) to the specific facts before it to reach its decision or holding” (Statsky & Wernet, 1995, p. 3)

Plaintiff: “A person who brings an action; the party who complains or sues in a civil action and is so named on the record. A person who seeks remedial relief for an injury to rights; it designates a complainant” (Black & Nolan, 1990, p. 1150).

Precedent:

An adjudged case or decisions of a court, considering as furnishing an example or authority for an identical or similar case afterwards arising or a similar question of law. Courts attempt to decide cases based on principles established in prior cases. Prior cases, which are close in facts or legal principles to the case under consideration, are called precedents. A rule of law is established for the first time by a court for a particular type of case and thereafter referred to in deciding similar cases. (Black & Nolan, 1990, p. 1176)

Preliminary injunction: “An injunction granted at the institution of suit, to restrain the defendant from doing or continuing some act” (Black & Nolan, 1990, p. 705)

Reasoning: “The court’s explanation for reaching a particular holding for a particular issue on the opinion” (Statsky & Wernet, 1995, p. 112)
Restraining order: “An order in the nature of an injunction. An order which may issue upon filling of an application for an injunction forbidding the defendant to do the threatened act until a hearing on the application can be had” (Black & Nolan, 1990, p. 1181).

Sovereign immunity: A doctrine precluding the institution of a suit against the government without its consent.

Statutes:  
A formal written enactment of a legislative body, whether federal, state, city or county; an act of legislature declaring, commanding, or prohibiting something; a particular law enacted and established by the will of the legislative department of government; the written will of the legislature, solemnly expressed according to the forms necessary to constitute its law of the state. (Black & Nolan, 1990, p. 1410)

Temporary restraining order: “An emergency remedy of brief duration which may issue only in exceptional circumstances and only until the trial court can hear arguments or evidence, on the subject matter of the controversy and otherwise determine what relief is appropriate” (Black & Nolan, 1990, p. 1313).

Qualified immunity: defense that protects government officials from civil liability insofar as conduct does not clearly violate constitutional rights.

Organization of Study

This study was divided into five chapters. Chapter I consists of the study’s introduction, problem statement, statement of purpose, significance of problem, assumptions and limitations, definitions, research questions, and organization. Chapter II provides a review of relevant literature from multiple sources which frames the history and movement of the study’s problem. Chapter III describes the methodology; a qualitative, historical, document-based study as well as the review process for cases being analyzed. Chapter IV consists of the analysis of each of the
cases reviewed. Chapter V provides the findings of the study and guiding principles for administrators as they work within their schools.
CHAPTER II
LITERATURE REVIEW

Introduction

Over the last two decades the litigious nature of American society has risen. Public school boards and their personnel have not escaped this reality, especially in the instances of perceived liability. The daily tasks of operating a school district or school can be overwhelming at times, when leaders are faced with shrinking budgets, personnel issues, and ever-increasing demands for higher student achievement. Young and Castetter (2004) list 11 sub-functions of the human resource role, which in itself can consume administrators whose districts have set forth site-based management of their schools. The reauthorization of the IDEA to No Child Left Behind Act of 2001 so immensely changed the focus and implementation of teaching based upon rigorous standardized testing of all students that school boards and their leadership are facing unprecedented repercussions about student achievement.

In these three areas alone, school districts and their personnel face multiple claims of liability in regard to tortious acts resulting in student injury, both physical and/or emotional (Essex, 2006). Hosemann v. Oakland Unified School District set the precedent for safe schools over 20 years ago in establishing the principle that students and staffs have the right to a safe, secure, and crime-free campus. Given the nature of budget and personnel restrictions placed upon school districts, this task is increasingly difficult. The impending threat of lawsuits at every encounter, as well as over time in both physical and intellectual well-being, necessitate that
school districts and their personnel must be cognizant of their actions and the legal protections afforded them. School districts and their personnel retain varying forms of immunity such as absolute, discretionary, governmental, and qualified (Brown, D’Agostino, Roth, 2012). Historically, the courts have been favorable in upholding immunity defenses for school districts and personnel, but some cases have arisen where immunity is revoked (Jenkins, 2007). In the current society, school districts, schools, and their personnel have evolved in a way that operates in dual capacity serving both the governmental purpose and those purposes more closely aligned to a private business. Most acts performed by school personnel when working as agents of the district and performed in good faith result in a defensible position of immunity when faced with litigation (Cloud, 1999). Some state legislatures and courts have removed immunity completely in regards to liability (Thro, 2007). However, most have either left it as status quo or modified its limits. The review of literature will be divided into three areas. First, the historical perspective of school boards and their officials as they perform acts within the scope of their duty and power as defined by legislative and judicial branches of government. Second, a review of tort liability as it applies to school boards and their officials. Torts are found in two main categories, intentional and unintentional, which the review of literature will illustrate through the various sub-types (Carroll & DeMitchell, 2007). Third, an overview of the types of defense used by school boards and their officials in resolving tort claims against them will be introduced. Finally, emphasis will be given as to how the literature frames the study intended and provides evidence as to best practices.
School Boards

The movement to establish local public school boards for the governance of education came along with the realization that all people should be educated in order to grow an infant democracy during the 1800s (Alexander & Alexander, 2005). Massachusetts was the first state to establish a state board of education, which began the system structure that continues today. Local school boards are provided authority and control as set forth by state law and regulated by state boards of education through policy. Local boards of education derive their authority in their role as state agents (Alexander & Alexander, 2005). School boards are primarily considered an extension of the arm of the state and therefore have limited liability. McGilvra v. School District (1921) set forth the authority of school boards as that expressly within language according to Russo (1992). School boards are by their nature an extension of the state and are thus subject to legislation. Ultimately, they have discretionary powers in policy, delegation of powers, personnel, and operations. Most local boards are comprised of members that are elected or appointed and serve for a specified number of years. Additionally, a Superintendent of Education is employed as the chief executive officer of the local board. While the board primarily functions as oversight and policy maker, the superintendent works more with the day-to-day operations of the school system. This structure is heavily based upon the corporate world structures stemming historically from the industrial revolution. State and federal legislatures appropriate financial support to local boards that they then have discretion in dispersing.

Through this local school boards have had increasing restrictions placed on their discretion, all the while continuing to disperse funding for education purpose. The legal system has made it easier for school boards to be sued over frivolous and resource consuming cases. In today’s American school the superintendent may hear the words, “I am going to sue” at anytime
or multiple times during a day. As a school board the origination of a lawsuit may come from many fronts such as community, parents, students, activists, vendors, or employees. Many school boards have begun mitigating their odds by employing school board attorneys on retainers that make them available for meetings, visits, and calls on any issue that may arise. Wasser (2007) provided a list for minimizing litigation at the school board level:

**10 Steps for Minimizing Litigation**

1. Hire an attorney on retainer to be present at all board of education meetings and to be available for questions as they arise.
2. Encourage a united front among school board members and the superintendent.
3. Ensure board policies and procedures are in place and up-to-date.
4. Incorporate preventive measures into daily practices.
5. Familiarize staff, students, parents and community members with school district policies and practices.
6. Be clear about expectations of students and staff.
7. Be consistent in adhering to policy and procedures.
8. Treat people fairly and consistently.
9. Always maintain thorough documentation.
10. Strengthen communications among board, administration, staff, students, and the community.
District or Vicarious Liability

School boards as employers may be held liable for negligent acts performed by their employees under respondent superior theory (Essex, 2006). Specific to teachers as employees, the board may be held vicariously liable provided the teacher is within the scope of assigned duties. Additionally, boards may be liable based on the function they or their employees are involved in at the time of incident. The distinction in this type of liability is whether or not the function was governmental or proprietary.

Liability for some school districts has been imposed for certain instances by state legislative action. Most of these revolve around structure and maintenance as “safe place” laws which require the safety of occupants through proper building and maintenance (Russo, 2006). Additionally, “save harmless” statutes have required school boards to defend charges against staff at their own expense. This type of statute is used to protect employees from civil suit when acting as an agent of the school board. However, the requirements are that the action was institutional and that the “reasonably prudent person” standard is met in not violating civil rights of the plaintiff (Jenkins, 2007). Eckes (2006) provides that in Doe v. Lafayette Sch. Corp. the appellate court reversed the negligence claim against the school board, stating the board could still be liable for off campus actions, but rejected the respondeat superior claim based on the teacher’s actions being outside the scope of employment. However, in Davis v. Indep. Sch. Dist. No. 89, a school board’s challenge was denied in refuting liability for damages based on timely filing of suit by the injured party under Governmental Tort Claims Act in Oklahoma (Eckes, 2006).
Personnel Liability

Educators have the responsibility of acting with “reasonable and prudent” discretion as it relates to students whom they have relationships with by proxy of common or statutory law (Brady, 2008). The spectrum of legal duty varies based upon many factors such as the age of students, activities engaged in, and mental capacities of those being supervised. *Upton v. Clovis Mun Sch. Dist.*, according to Eckes (2006), demonstrates how personnel liability based on their actions may cause the liability of the employing board to be waived. In this instance officials did not heed the warnings of an asthmatic student’s parents in allowing her participation in exercise. Liability by an individual must stem from an act which clearly violates law and without regard for student’s constitutional rights. Courts typically apply the “fair warning” test in order to determine liability of school officials. In doing this the courts may hold liable school officials if their actions are performed with “fair warning that the alleged treatment of the plaintiffs was unconstitutional” (Hopkins, 1986). According to a survey by Association School Board Journal and Consortium of School Administrators, six of the top ten legal issues in K-12 would fall under tort liabilities (2007). Today’s school leaders are asked to do more than ever with greater accountability. Leadership has moved swiftly in the direction of distributed leadership as defined by Gronn (2002), in that sustaining leadership is performed not by a single charismatic individual, but rather through a group of skilled individuals applying their tools and structures collectively.

Foreseeability

A standard of care is legally recognized as a duty as the foreseeable act increases in risk (Alexander & Alexander, 2007). Foreseeability is the ability of an educator to anticipate a certain
activity may prove harmful to students (Essex, 2006). Educators have the standard of the societal “reasonable person” from which to derive their position of foreseeability, however, some courts have held that since educators are trained and skilled in working with students, the standard should be higher than that of a “reasonably prudent teacher” (Alexander & Alexander, 2007). Foreseeability is connected to proximate cause through the cause and effect of a resulting injury. In Bryant v. School Bd. Of Duval County (1981) foreseeability is presented as liability in that the harm occurring from the activity “in the field of human experience” is so recurring that it should be expected (Alexander & Alexander, 2005). Foreseeability is determined by each court in assigning liability based on the facts presented (Essex, 2006). In the school setting it is paramount that boards and their officials put in place policy and procedure that accounts for the safety of students and staff. When considering the safety of students leaders must account for the age, cognitive level, and behavior of students both individually and collectively. What may be appropriate in the realm of supervision for junior and senior high students would certainly not be applicable to primary grade students. The test for foreseeability is defined as follows:

The leading test for proximate cause focuses on whether the defendant should have reasonably foreseen, as a risk of her conduct, the general consequences or type of harm suffered by the plaintiff. In essence, the foreseeable harm test requires (1) a reasonably foreseeable result or type of harm, and (2) no superseding intervening force. The extent and the precise manner in which the harm occurs need not be foreseeable. [See, e.g., “Wagon Mound No. 1” (Overseas Tankship (U.K.), Ltd. v. Morts Dock & Engineering Co., Ltd., [1961] A.C. 388)]

An intervening force is a new force which joins with the defendant’s conduct to cause the plaintiff’s injury. It is considered intervening because it has occurred sequentially in time after the defendant’s conduct. If the intervening force is characterized as superseding, proximate cause is not established even though the type of harm is foreseeable. An intervening force is generally
characterized as superseding only when its occurrence appears extraordinary under the circumstances. [See, e.g., Derdiarian v. Felix Contracting Corp., 414 N.E.2d 666 (N.Y. 1980).]

According to Alexander and Alexander (2005), the court stated in McLeod v. Grant County School Dist. No. 128 (1953) the test of foreseeability in regard to the attack of a school girl in a dark room next to the gym by saying,

> Whether foreseeability is being considered from the standpoint of negligence or proximate cause, the pertinent inquiry is not whether the actual harm was of a particular kind which was expectable. Rather, the question is whether the actual harm fell within a general field of danger which should have been anticipated.

It is not reasonable to find that an educator can foresee every possible activity that may result in injury, but in relation to students every opportunity to protect and ensure a safe and conducive learning environment. Unfortunately, sound policy, well directed and followed procedures, and valuable judgment will not eliminate all injuries.

Torts

Eckes (2006) stated that, “torts are civil wrongs for which courts provide relief in the form of damages (p. 140).” Educators are liable for injury to a student caused by their tort actions (Essex, 2006). Educators face tort claims more often than any other legal situation. The four most prevalent tort cases as cited by Russo (2005) are as follows:

1. Corporal Punishment
2. Search and Seizure
3. Defamation of Character
4. Negligence

Within this list it is noteworthy that negligence is claimed more than all the other three combined. State law is the basis from which most tort action occurs based on the notion that one
must pay for the results of his or her actions (Eckes, 2006). A tort is not formed by a contract
between two parties, but rather by common law. Imber and Geel (2004) stated, “Unlike criminal
law which deals with wrongs against society in general, torts deal with harm inflicted by one
party on another whether by intentional wrongdoing, recklessness, or simple carelessness (p.
78).” “Central to the definition of tort is the standard of reasonableness in actions toward others.
An unreasonable interference with the interests of others that causes injury is a tort” (Russo, p.
246, 2005). Torts have three broad areas: intentional, unintentional or negligence, and strict
liability.

Intentional Torts

Intentional torts include those actions such as assault, battery, defamation, false
imprisonment, invasion of privacy, and mental distress where the express characterization is to
do harm to another (Brady, 2008). Intentional torts are considered, “willful or wanton
misconduct.” Russo (2004) points out that courts have found school districts liable for
intentional acts committed by personnel if it can be found that the district should have seen the
potential for misconduct. Additionally, an intentional tort typically does not apply to a third party
(e.g. school boards) absent the proof of a hostile environment (Russo, 2005). While an
intentional tort may not be the result of the intended outcome of the defendant his or her action
must have invaded the interests of another (Alexander & Alexander, 2008). Eckes (2008)
provides the example of an intentional tort in the form of calling a student by an inappropriate
name. However, as with all tort claims, there must be proof of damage or loss from such claims
not just merely that it happened. School districts and their personnel may be subject to
intentional torts by the nature of the special legal relationship among them and students, either by
action or inaction.

Assault and Battery

Assault and battery are closely related and often cited together in civil and/or criminal
liability. By definition assault is, “the threat or use of force on another that causes that person to have a reasonable apprehension of imminent harmful or offensive contact” (Garner, 1996, p. 44). Battery in close relation is, “an intentional and offensive touching of another” (Garner, 1996, p. 61). In education settings, personnel are given discretion in the use of force for maintaining order and safety, however, liability still exists based upon these actions and/or words. A prevalent area in which educators faces civil liability for assault and/or battery is in the use of corporal punishment (Russo, 2006). Historically, courts do not award damages in these cases unless the act was done with legal malice as Russo (2006) states, “the intentional doing of a wrongful act without just cause or excuse, either with an intent to injure the other party or under such circumstances that the law will imply an evil intent,” from Hinson v. Holt (1998). However, courts have upheld that minor bruises could be expected from a hit to the posterior and it not be enough to establish assault and battery (Alexander & Alexander, 2004). Moreover, courts also have held that educators acting as agents of the school board are obligated to maintain order through the use of reasonable force based on the circumstances as in Young v. St. Landry Parish School Board (La.App.1999) wherein the force is not excessive thus abrogating battery claims (Alexander & Alexander, 2004).

While assault and battery is closely related and most often cited in tort claims together it is possible to have one without the other. For instance Eckes (2006) provides the scenario where
a teacher speaking to misbehaving students threatens to slap them on the following day no assault has been committed. The absence of assault in this is two-fold; first, the threat is not immediate, and secondly, the use of just words is not actionable under common law. Eckes (2006) furthermore stated that battery may have occurred in the instance where students were struck by objects thrown by a teacher though not intended for them. Lastly, assault and battery claims can arise from sexual misconduct of employees with students.

False Imprisonment

In school settings, personnel working within the scope of their function have the right to detain students. False imprisonment is the unlawful and intentional confining of one against his or her will (Russo, 2004). Many claims involving false imprisonment arise when students are not allowed to move about as others, are placed in study carrels for long periods, or forced to remain with an adult on field trips (Cambron-McCabe, 2004). The placing of a student in a secluded room or isolation due to disruptive behavior or for discipline reasons is acceptable and confirmed by various courts across the nation. In New York, the Court of Appeals ruled in Sindle v. New York City Transit Authority (1973) that false imprisonment did not occur as the driver of a bus attempted to drive to a police station a student who had damaged the bus. Additionally, claims of false imprisonment have been rebutted when arising from school bus incidents where students were not allowed to leave the bus. In Wallace v. Bryant School District (1999) the court found no validity to the claim of false imprisonment of a student having to stay in the choir library due to the fact that the student was not physically forced into the room. Finally, courts have upheld false imprisonment claims in instances of extreme behavior by school personnel, such as chaining
students to a tree or locking in closets (Eckes, 2006). Courts typically view these extremities as being performed with malice and therefore school districts face great liability.

**Defamation**

Defamation is defined as, “the intentional, or at least negligent, unprivileged communication of a false statement to a third party that harms the reputation of the person being spoken about.” (Restatement Second of Torts § 558) Two distinctions are made of defamation; slander is spoken and libel is written. There are three protections to defamation: truth, privilege, and opinion, afforded to school boards and their officials (Eckes, 2006). Typically, if educators’ words, spoken or written, fall within the scope of their duty courts find no merit in the claim of defamation and remove liability. As tort claims based on defamation have increased it is noteworthy that the courts hold just having hurt feelings is not enough but that it must be proven that harm has been suffered. For example a principal has privilege in his/her opinion when recommending the non-renewal of a contract employee, even if the principal is overhead in informal conversation making unflattering remarks the proof must be that true harm arises from the comments (Eckes, 2005). Shaughnessy (1991) noted that educators should not gossip and when communicating meet three criteria: be specific, be behaviorally oriented, and be verifiable. “It is better to say a student has 20 absences, 10 tardies, and five disciplinary referrals to the office than it is to write, “This student is a real problem, absent all the time and always in trouble” (Shaughnessy, 1991, p. 76).
Unintentional Torts

Most often the instance of an unintentional tort arises from negligence in common law. It is the duty of school boards and their personnel to protect and provide for the safety of their students. This is framed within the context of the duty to supervise but understood in law that unforeseen, unavoidable accidents will occur.

Negligence is the most widespread of all lawsuits filed against teachers and administrators. Even though negligence is the “fault” against which administrators must constantly guard, it is also the most difficult type in which to predict an accurate judicial outcome. What one court may consider negligence, another may not. Therefore it is better to avoid being accused of negligence than to take chances on a lawsuit. (Shaughnessy, 1991, p. 78)

The liability for negligence arises from not meeting one or more of the four elements of negligence recognized in common law (Russo, 2004).

1. Duty, and the concept of foreseeability
2. Violation of duty
3. Injury
4. Causation

Duty encompasses the responsibility of educators to assist all students, both known and unknown. The legal relationship that exists between school boards and students provides that the level of supervision be adequate based on age, activity, and location of students in order to provide reasonable prevention of injury. A major area of litigation involving duty is that of supervision before and after the regular school day. Courts have gone both ways in determining liability for both school boards and personnel. For instance, the Supreme Court of Idaho upheld a trial based on a principal’s knowledge of students playing football prior to school but not supervising after directing them where to play. Opposite of that was a case by the Supreme Court of Kansas that ruled no recovery for negligence wherein a student being chased by a peer was
struck by a car after school (Russo, 2004). Additionally, the 11th Circuit Court found the school board liable in *Wyke v. Polk County School Board* (1997) in the suicide of a junior high student where the school had failed to inform the guardians of two suicide attempts at school. An additional area of duty that brings many claims of negligence is transportation. Often the belief is that schools are liable for students from the time they leave home until they return. Cambron and McCabe (2004) emphasize the need for schools to provide information to parents about drop-off and pick-up times and places as well as plan for proper supervision.

Violation of duty occurs in two ways within negligence, nonfeasance or misfeasance. Nonfeasance occurs when action should have been taken but was not. Misfeasance is when the action taken is improper within the duty to act. An additional violation of duty of malfeasance arises as an intentional tort. The courts have primarily considered violation of duty within common law’s standard of reasonableness. This also brings the reasonable person or prudent teacher standards into consideration. Most teachers question liability based on their presence when in fact the question is two-fold. First, if the presence of the teacher would have prevented the injury, then yes. Second, if it would have not made any difference, then no (Eckes, 2006). In *Smith v. Archbishop of St. Louis* (1982) the court found a violation of duty when a student was badly burned by the flame off a lit candle the teacher had left. The court stated in *Miller v. Griesel* (Ind. 1974) that a “special responsibility recognized by common law to supervise their charges,” should be the assumption of educators. As with foreseeability, the violation of duty standard correlates to the age, experience, and intellectual level of the students under care.

Causation is the final element in determining negligence. For school personnel, the liability arises if the determination is made that they are the proximate cause of the injury. This element directly ties to supervision and often is the deciding factor among student fights and/or
attacks of assault and battery. Foreseeability arises within causation as ruled by an appellate court in New York where a student was attacked by a former student. The court ruled it was not supervisory negligence on the board or personnel’s part as they had no prior knowledge or indication an attack would occur.

Immunity

Courts within the United States have upheld immunity as a defense against torts for school districts by relying on five points (Alexander & Alexander, 1984). First, school districts only have powers as granted by legislation. Second, the use of public money for payment against a tort claim is illegal. Third, the increase in cases due to abolition of immunity would place an extreme financial burden on districts. Fourth, respondent superior or master’s liability for servant acts do not apply to districts. Finally, the courts have reserved the abolishment of immunity for the legislative branch. However, courts have been very critical of immunity in more recent times. This may be in part due to the increase in litigation from all parts of society and the growing disdain for government action.

Sovereign Immunity

Sovereign immunity, or governmental immunity as it is often referred to, has its root within common law originating from the belief, “the King can do no wrong,” and interpreted now as the government may not be sued without its consent. School districts are considered an arm of the state in their function. Courts have repeatedly argued that the funds provided a school district should not be used for means other than that for which they were intended, providing education to students. In more recent times, many states have abrogated either partially or wholly
governmental immunity for school districts based upon the function they are performing (Longoria and Weaver, 2002). The basis for this has been whether the function was proprietary or governmental. The extension of immunity under common law is a creation of the judicial system and therefore has faced pressure to be abrogated by the courts. Alexander & Alexander (2005) list five general areas where immunity is conferred:

1. National and state governments unless abrogated by statute.
2. Public officials performing judicial, quasi-judicial, or discretionary functions.
3. Charitable organizations granted immunity in some states.
4. Infants under certain conditions.
5. Insane persons, in some cases. (p. 322)

While most courts have refused this some have severely criticized it. The attack on sovereign immunity as it relates to school boards originated with Molitor v. Kaneland Community Unit District No. 302 (Ill. 1959). Alexander (2003) relates the courts statement as:

The whole doctrine of governmental immunity from liability for tort rests upon a rotten foundation. It is almost incredible that in this modern age of comparative sociological enlightenment, and, in a republic the medieval absolutism supposed to be implicit in the maxim, ‘the King can do no wrong,’ should exempt the various branches of the government from liability for their torts, and that the entire burden of damage resulting from the wrongful acts of the government should be imposed on the single individual who suffers the injury, rather than distributed among the entire community constituting the government, where it could be borne without hardship upon any individual, and where it justly belongs. (p. 219)

Beyond this, absent a statute, school districts are not liable for negligent actions committed by personnel (Doughtery, 2004). Many states have joined in with California, New York, and Washington in creating statute by legislation that holds school districts liable for the negligent acts of its officials, others have retained it wholly, and many have allowed immunity based on whether the function being performed is governmental or proprietary (Alexander,
The Commonwealth of Kentucky established the Board of Claims by its General Assembly in order that it might deal with suits that would have previously been adjudicated by sovereign immunity (Harding, 2001).

**Absolute Immunity**

Absolute immunity is provided to the legislative and judicial arms of government within the scope and function of their respective positions. Beyond direct members of government, the legislative branch can enact absolute immunity for school boards and personnel by legislation that protects them while performing authorized functions. Liability is completely guarded under absolute immunity in tort claims (Dagley, 2007). This level of immunity is reserved for the official capacity of legislators and judges and does not extend to educators. However, city school system board members do qualify for absolute immunity as an extension of the State, which enjoys sovereign immunity (Art. I, Ala. Const. of 1901, § 14).

**Qualified Immunity**

The use of qualified immunity as a defense against tort claims for school officials is applicable when performing discretionary functions. *Harlow v. Fitzgerald* sets the standard currently being applied by courts in determining the use of qualified immunity as defense for civil liability (Hudelson, 2010). Although difficult to apply courts have made distinction between duties performed as “discretionary” and those that are “ministerial” in applying immunity. Therefore, public officials such as board members, superintendents, principals, and teachers are not personally liable when performing decision making duties absent willful or malicious intent. The defense protects for those actions that do not violate constitutional rights of another that a
reasonably prudent person would know. However, some courts have held that the standard for trained educators should be greater than “reasonable person” and more that of “reasonably prudent teacher” since the training provided them puts them in a more expert role. Hudelson (2010) adds that there is a two prong test that officials must pass in order to have protection from liability based on qualified immunity. First, the right of the plaintiff must be clearly established. Second, the interest of protecting officials from frivolous litigation and mitigating the cost to the public from suit must be considered. Lappan (1992) stated that the use of qualified immunity defense would be based on a good faith attempt and probable cause in a fact-finding test.

Assumption of Risk

In the school setting those events that involve contact such as athletics, cheerleaders, and other extra-curricular activities the assumption of risk is viable in defense of negligent claims. The reasonable standard of care is not relieved by students’ assumption of risk in participating in those activities which they are aware contact is an imminent part if school personnel fail to meet the appropriate level of care (Essex, 2006). Cases involving the use of assumption of risk necessitates students must have been made aware of and understand the risk they are taking when participating in an activity. Additionally, there participation must be voluntary. Finally, assumption of risk as a defense is only valid where duty of care has been met (Essex, 2006).

Contributory Negligence

“Contributory negligence involves some fault or breach or duty on the part of the injured person, or failure on his or her part to exercise the required standard of care for his or her own safety” (Alexander & Alexander, 2005, p. 315). In applying liability due to negligence the use of
contributory negligence as a defense is referred to as the “all or nothing” in that while the defendant may have violated duty and assumed liability the plaintiff is found to have violated his or her own protection by action. However, in relation to students it is more difficult for teachers to prove contributory negligence due to their age, mental abilities, and accountability for actions. In more recent times the use of contributory negligence has been moved to a higher standard in that the plaintiff must have a “substantial factor” in their injury before complete loss of recovery for damages is lost.

Comparative Negligence

In Hoffman v. Jones (1973) the court stated,

Whatever may have been the historical justification for it [contributory negligence], today it is almost universally regarded as unjust and inequitable to vest an entire accidental loss on one of the parties whose negligent conduct combined with the negligence of the other party to produce the loss. (p. 53)

Currently more than 26 states have began using comparative negligence in cases were negligence has been determined. The use of this has allowed what was once not possible in that a plaintiff may recover loss in proportion to the negligence assigned the defendant by the court. Many states have enacted legislative statute to determine levels of fault and/or recovery (Alexander & Alexander, 2005).

Summary

It is evident from the literature that school boards and their personnel face an ever increasing threat of litigation involving liability. Fortunately, as noted by the court’s summary of Wood v. Strickland, board members can only be held liable if their acts, “acted with such disregard of the student’s clearly established constitutional rights that his action cannot
reasonably be characterized as being in good faith” or that any school board member “knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the student affected, or took the action with the malicious intention to cause a deprivation of constitutional rights or other injury to the student.”

*Wood v. Strickland*, supra,--U.S. at--, 95 S.Ct. at 1001, 43 L.Ed.2d at 225. The Eleventh Amendment of the U.S. Constitution does not allow for the payment of state treasury funds to a private party for a liability judgment. However, the ruling in *Mt. Healthy v. Doyle* (1977) set precedent and caused confusion as to in what arena a school board is local and when it is state.

The Supreme Court set the criteria for determination as:

1. Whether state statutes and case law characterize the local school district as an arm of the state.
2. The source of funds to operate the schools.
3. The degree of autonomy enjoyed by the school district.
4. Whether the school district is concerned primarily with local, rather than statewide problems.
5. Whether the school district has authority to sue and be sued in its own name.
6. Whether the school district has the right to hold and use property.

Courts will apply these criteria in cases were school boards raise the Eleventh Amendment as defense (*Blake v. Kline*, 1979). School boards face the possibility of litigation from many additional fronts and in turn their employees do as well. School boards are subject to lawsuits from policy and procedure, employee disagreement, student discipline and/or student’s civil rights infringement, contractor disputes, and the way in which they conduct official business. (*Stover, 2009*) The employees of the board, mainly administrators and teachers, are
subject primarily to tort claims involving students and/or themselves, which may directly involve
the school board or be directed at the school board.

School boards are allowed various avenues of defense against suit, the most sweeping of
which is sovereign immunity. As an extension of the state, school boards are granted sovereign
immunity in most states and in some with exception. In defense of §1983 claims, qualified
immunity may be used by employees of the board rather than the board itself. School personnel
need to protect the availability of immunity as a defense identifying the following:

1. Are their actions governmental or proprietary?
2. Are their actions discretionary or ministerial?
3. Have they created or allowed unsafe, dangerous, or offensive conditions to exist?
4. Purchasing liability insurance may signal the intent to waive immunity.

Also, legislative statutes may abrogate all or part of an immunity defense for school personnel.
(Dagley 2007)

Additional defenses for suit by boards and/or their employees include assumption of risk,
contributory negligence, punitive damages, and statute of limitations.

It is imperative that school boards and their employees stay aware of the court rulings and
legal nature of their business in order to ensure sound policy and deployment of the educational
process. School boards and employees know full well the age of accountability educators’ work
in with regards to standardized testing, demands for ever increasing student achievement, and the
ever present student safety and rights issues. Within this study it is my intent to bring together
the literature, court case rulings, and legislation in a way that provides clear guiding principles to
both school boards and their employees.
CHAPTER III

METHODOLOGY

Introduction

This study constitutes qualitative, document-based, and historical research. It studies the defense of immunity as it applies to liability situations involving school districts. The study includes court cases from 1981 to 2010. This timeframe was used to provide sufficient numbers of court cases for study. Studying case law provides insight regarding principles reflected in actions in equity, common law, and from statutes. This study will provide principles for employees of school boards, so they may operate in a way that avoids or wins litigation in their day-to-day operations.

Research Questions

1. What are the issues in federal and state cases about immunity in the K-12 setting?
2. What are the outcomes in federal and state cases about immunity in the K-12 setting?
3. What are the trends in federal and state cases about immunity in the K-12 setting?
4. What guidelines for school administrators can be discerned from cases about immunity in the K-12 setting?

Research Materials

Court cases from 1981 to 2010 from both federal and state courts which relate to school district and/or personnel liability were used in this study. Court cases were selected from West
Law Digest Key numbers 345 (Schools) k147 (Duties and liabilities). Based on the summaries read, cases that were relative to liability were recorded. All cases recorded were read, and if they included liability, they were analyzed.

Methodology

The context which qualitative study occurs is not static such as quantitative studies, however, “it is complex, dynamic, and nested within larger cultural, political, and historical frameworks that must be considered” (Hatch, 2002, p. 44). The purpose of this research was to study issues, outcomes, and trends in cases involving immunity and to provide guiding principles for school districts and their personnel in liability issues. Qualitative research provides the most validity in accomplishing this through the review of narrative data …” (Gay, 1996). Case study is a type of qualitative study to conduct research about an identified topic. The researcher employed the logic of replication as suggested by Yin (2003), by utilizing the same procedures for each case. The use of historical documents, case law, allows for the inclusion of representative cases pertaining to the inquiry being asked in a way that exhausts all relevant cases. The phases used to conduct the study are holistic analysis, embedded analysis, analysis of themes, within and cross case analysis, and assertions. (Creswell, 2007)

Fraenkel and Wallen (1996) state that historical research is focused on the details of the situation through evaluation of information that allows one to describe or explain actions. The use of court cases that span a time period provides for the identification of patterns or trends that tell why something happens. Case law reviewed over a period of time that provides contextual information is an example of a qualitative case study where data collection stems from a variety of sources (Creswell, 1998).
Data Collection

The data were collected at the Mervyn H. Sterne Library at The University of Alabama Birmingham, Bounds Law Library at The University of Alabama and Smith & Smith, LLC, Attorneys at Law. Smith & Smith, LLC allowed access to WestLaw online from their office. This was beneficial in reviewing Key numbers and ensuring the boundaries of the study. Smith & Smith, LLC also granted me access to all cases within my Key number that occurred in Alabama. After identifying and printing the Alabama cases the remaining cases in the Key number were obtained by photocopy of WestLaw Education Reporter at both the Mervyn H. Sterne Library and Bounds Law Library. Additional resources were gathered using the World Wide Web where resources connected to immunity could be found electronically; WestLaw provided the index that bound the study by cases; WestLaw Reporter served as the means of locating cases as well as commentaries on some identified cases; and Lexis-Nexis provided additional information pertinent to the study. Data were collected from relevant court cases related to school districts and personnel.

The West Law Digest was chosen to assist in the collection of relevant cases. The West Law Digest is divided into numbered sections based on over 400 topics, which are categorized by the area of law it represents. The use of “Key Numbers” makes the research of topic areas more conducive. Key Number 345 (Schools) k147 (Duties and liabilities) defined the topic of this study. Examination of the full case for each one identified was done to analyze the courts decisions. The identification of cases under the West Law Education Reporter was focused on those cases where districts, schools, and employees directly utilized immunity as a defense. Cases falling under the West Law Key number 345 (Schools) k147 (Duties and liabilities) but not directly using immunity were removed from the analysis process. In determining whether to
include a case or not a brief analysis was conducted from the abstract provided in the *WestLaw Index*. Some cases required additional reading to ensure they should not be included, if a case did not address immunity as an issue, claim, or defense it was not included.

Data Production

Statsky and Wernet (1995) provided the model for briefing each case in their book *Case Analysis and Fundamentals of Legal Writing*. Each case was briefed as follows:

1. Citation--identifying the information that enables you to find a law, or material about the law, in a library.
2. Key facts--a fact essential to a courts 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 holding. (p. 41)

The briefs provided the researcher a standard way of collecting data of the issues and decisions within the cases. In the qualitative sense the brief is comparable with interviewing the judge about each decision made by the court. (Personal Communications, D. Dagley 2010)
Data Analysis

In developing this qualitative study, the researcher used a simultaneous collection of data to interpret the data in phases chronologically from 1981 to 2010. The study began with the first review of literature pertaining to liability of school districts and personnel as it relates to the immunity defense and continued throughout the analysis of all relevant court cases during the time period. This method is recommended by Creswell (1998). Merriam (1998) references the analysis technique as the way to extract themes or patterns from the documents. The case briefing method described by Statsky and Wernet (1995) allowed for the creating of categories, direct interpretation, pattern recognition, and generalization. Stake (1995) defined these allowances as follows:

- Categorical--”finding sums of coded data” (p. 169)
- Direct Interpretation--”drawing key meanings even from a coded event” (p. 78)
- Pattern recognition--”search for consistency or inconsistency in certain conditions” (p. 172)
- Generalization--”interpretation based largely on experience.” (p. 154)

The development of categories was through the construction of spreadsheets based on the model parts of the cases briefed. From this the meaning of the coded data was pulled and meaning assessed. The collection of data in a structured method allowed for recognition of consistent patterns among the courts and jurisdictions in the study. Finally, the categories, coded data, and patterns yielded generalizations based upon interpretations of the researcher. The use of pivot tables, charts, and graphs was essential to the development of outcomes from the study. Excel was utilized to construct tables based on the identified issues, claims, defenses, and barriers stopping cases. From this key words were determined and then Pivot Tables were
utilized in Excel to identifying patterns based on the finding of the key words throughout the cases. Additionally, Excel was used to create various tables and charts, by utilizing the count formulas to record instances of cases by key words, issues, claims, defenses, and states.

Qualitative research is measured by its value to the reader and applicability to future events (Creswell, 1998). School district immunity and personnel immunity are important means of halting litigation early in the proceedings. Hence, the findings and guiding principles developed from this study should provide districts with knowledge that limits litigation or loss.

Summary

School districts must be aware of how immunity provides protection against litigation that presents itself through direct or indirect liability. Immunity is afforded to school boards and personnel and as such it is prudent that districts have a keen understanding of how the courts have ruled. There are various forms and levels of immunity that apply to school districts and personnel, but diligence and knowledge are needed to ensure that immunity is not sacrificed. The researcher developed guiding principles for districts and personnel to avoid or win litigation by not doing things that destroy the ability to use the defense of immunity.
CHAPTER IV

DATA PRODUCTION AND ANALYSIS

Case Briefs

Citation: Truelove v. Wilson, 285 S.E.2d 556 (Ga.App. 1981).

Key Facts: Plaintiff-student was fatally injured when a metal soccer goal fell and struck her as she knelt to tie her shoe during a physical education class at her elementary school. The parents of plaintiff-student brought an action for the wrongful death of the plaintiff-student, and punitive damages and damages for maintenance of a nuisance were also sought. As part of their complaint, plaintiffs alleged that the defendants acted with willful, wanton, and/or reckless negligence.

The defendants consisted of the: school district, Board of Education, superintendent, assisted superintendent, associate superintendent of business, director of physical education and athletics for the school district, individual member of the Board of Education, principal of the elementary school, and physical education teacher of the elementary school. All the defendants answered the complaint and filed various defensive motions.

Following a hearing, the trial court granted summary judgment to all defendants as to the nuisance and punitive damages claims, and denied all the remaining motions to dismiss and motions for summary judgment. Defendants appeal the denial of their motions for summary judgment. The School District and the Board of Education appeal the denial of their motions to dismiss.
Issue No. 1--Was a county board of education and county school district entitled to sovereign immunity defense in an action for wrongful death of student who was fatally injured when soccer goal fell and struck her as she knelt to tie her shoe during a physical education class.

Holding No. 1--A county board of education and county school district were entitled to the defense of sovereign immunity, and the trial court’s refusal to grant summary judgment was error.

Reasoning No. 1--The County Board of Education and the County School District are entitled to the defense of sovereign immunity under the holding of Hennessy v. Webb, 245 Ga. 329, 264 S.E2d 878. The fact that the plaintiffs alleged willful and wanton negligence does not deprive these two defendants of that defense.

Issue No. 2--Can the parents of student fatally injured at school defeat the defendant’s sovereign immunity defenses by pleading willful, wanton, or reckless negligence when plaintiff’s had not plead that defendants acted intentionally or acted outside the scope of defendants’ authority.

Holding No. 2--The individual defendants who were school employees and members of county board of education were entitled to sovereign immunity for actions within the scope of their authority and done without willfulness, malice or corruption, and pleading willful, wanton or reckless negligence will not defeat this immunity.

Reasoning No. 2--All of the individual defendants in this case have pleaded the defense of sovereign immunity. The acts or omissions complained of were discretionary and were in the defendants’ official capacities. That being so, the defendants are immune so long as their acts were within the scope of their authority and were done without willfulness, malice, or corruption.
Willful and wanton conduct is conduct such as to evidence a willful intention to inflict the injury or else is so reckless or charged with indifference to the consequences as to justify the jury in finding a wantonness equivalent in spirit to actual intent. There is an element of intent, actual or imputed in willful and wanton conduct which removes such conduct from the range of conduct which may be termed negligent. Proof of willful or wanton conduct will remove the shield of sovereign immunity; proof of negligence will not.

An analysis of plaintiffs’ amended complaint reveals that the allegations concerning the conduct of the defendants describe conduct which could, at worst, be termed gross negligence. It is at any rate negligence. The allegations of the complaint that the defendants were negligent are not sufficient to withstand motions for summary judgment in support of which the defendants presented uncontradicted evidence that they acted in public capacities in discretionary roles. Therefore the trial court erred in denying the motions for summary judgment.

Plaintiffs argue that the evidence shows that the school principal acted without the scope of his authority in ordering and installing the metal soccer goal on the school grounds without first seeking and receiving the appropriate permission and approval from the school district. This applies only to equipment which was ordered by the principal through official channels or to equipment which was donated specifically for use in the school curriculum. The soccer goal involved here did not fit either of those categories. It was paid for by community groups and was intended for joint use by the school and by several community agencies. The superintendent testified that approval was not required for equipment which was procured through community agencies rather than through school district channels. The evidence requires the conclusion that defendant-principal did not act outside the scope of his authority.
Disposition: The trial court’s denial of the Board’s and District’s motion to dismiss is reversed. The trial court’s denial of summary judgment as to all individual defendants is reversed.

Citation: *Lehmen v. Wansing*, 624 S.W.2d 1 (Mo. 1981).

Key Facts: Plaintiff was a student enrolled in a vocational agriculture class, during which he was constructing hard oak lumber feed bunks. As another student was nailing strips of the oak lumber, and nail flew through the air striking the plaintiff in his left eye causing him permanent vision loss. The student and his parents filed suit for the injuries, contending that the injuries resulted from negligence in supplying lumber that was too hard for its intended use and for failing to take certain precautions in connection with that activity.

The defendants in the law suit consisted of the Board of Education; the superintendent of the school district in his individually and as the agent, servant, and employee of the Board of Education; the principal of the high school individually and as the agent, servant, and employee of the Board of Education; and the vocational agriculture teacher individually and as an agent, servant, and employee of the Board of Education. Also, the Board of Education had secured liability insurance coverage that would have covered at least part of plaintiffs’ damages. Summary judgment was granted to the defendants on the basis of sovereign immunity. Plaintiff appealed, arguing that the defendants waived the protection of sovereign immunity at least to the extent of the insurance coverage.

Issue No. 1--Does the purchase of liability insurance stop a board of education from asserting defense of sovereign immunity in negligence action to recover for injuries sustained by high school student?
Holding No. 1--The purchase of liability insurance does not stop a board of education from asserting the defense of sovereign immunity; the trial court’s ruling negating plaintiffs’ allegation of waiver is affirmed.

Reasoning No. 1--The Missouri Supreme Court’s recent pronouncement in *Spearman v. University City Public School District*, 617 S.W.2d 68 (Mo. 1981), which was decided subsequent to the trial court’s action in the instant case, has settled the issue of waiver. Purchase of liability insurance does not stop a governmental entity from asserting the defense of sovereign immunity.

Issue No. 2--Is an action to recover against board of education, on negligence theory, for injuries sustained by high school student barred by doctrine of sovereign immunity, in light of the fact that the cause of action arose prior to August 15, 1978?

Holding No. 2--Government entities such as the Board of Education would continue to be cloaked by sovereign immunity as to causes of action arising before August 15, 1978. The trial court correctly determined that plaintiffs’ action against the Board of Education arising February 27, 1976, was barred by the doctrine of sovereign immunity.

Reasoning No. 2--Spearman also reaffirmed the court’s holding that government agencies like the Board of Education would continue to be cloaked by sovereign immunity as to causes of action arising prior to August 15, 1978. Thus, the trial court correctly determined that plaintiffs’ action against the Board of Education arising February 27, 1976, was barred by the doctrine.

Issue No. 3--Is an action to recover on a negligence theory, for injuries sustained by high school student when a nail struck him in the eye as feed bunks were being constructed during vocational agriculture class, can recovering against teacher, principal, and superintendent be
precluded by sovereign immunity, when plaintiffs attempt to state cause of action against each
defendants for individual torts as well as in their official capacity?

Holding No. 3--Plaintiffs are attempting to state a cause of action against the
superintendent, principal, and teacher for alleged individual tortuous conduct, the trial court
erred in granting summary judgment to the defendants based on sovereign immunity. The
plaintiffs should be given further opportunity to state with particularity their claims against each
of these defendants.

Reasoning No. 3--Spearman held that public employees and officials are not necessarily
personally immune from suit for their wrongdoings. The plaintiffs claim that the superintendent,
principal, and teacher were acting individually. As the liability of each of these defendants will
depend on the degree of care he owes in this particular fact situation that was alleged. The
plaintiffs may be able to prove a breach of personal duty as to each defendant in the misfeasance
or nonfeasance alleged.

Disposition: The judgment granting summary judgment was affirmed as to the Board of
Education. The judgment granting summary judgment to the superintendent, principal, and
teacher was reversed and remanded back to the trial court.


Key Facts: The plaintiff brought this action against the principal of Central High School
and the other defendants as superintendent and members of the Carroll County School Board.
The complaint alleged that the principal wrongfully suspended the plaintiff from school for a
period of 3 days and that this suspension was upheld by the other defendants even though they
knew the suspension was in error. The trial court granted the defendant’s motion for summary
judgment and dismissed the complaint. The plaintiff appealed.
Issue: Is the evidence sufficient for action to proceed against principal in his official capacity for wrongfully suspended student when the evidence showed that principal’s decision was hurried and erroneous but did not show that he acted outside the scope of his authority or willfully, corruptly or maliciously.

Holding: There was no basis to proceed against the defendants in their official capacities as agents of school. It was not error to grant the motion for summary judgment in favor of defendants.

Reasoning: It is a well-established principle that a public officer who fails to perform purely ministerial duties required by law is subject to an action for damages by one who is injured by his omission. However, it is equally well established that where an officer is invested with discretion and is empowered to exercise his judgment in matters brought before him, he is sometimes called a quasi-judicial officer, and when so acting he is usually given immunity from liability to persons who may be injured as a result of an erroneous decision; provided the acts complained of are done within the scope of the officer’s authority, and without willfulness, malice, or corruption. If the act done for which recovery is sought is judicial or quasi-judicial in its nature, the officer acting is exempt from liability.

The principal established that he met the minimum requirements of a student’s due process rights related to suspension, and that he did not act without the scope of his authority or willfully, corruptly or maliciously. This eliminated all genuine issues of material fact and placed the burden on the plaintiff to come forward with proof. The plaintiff’s affidavit at most tended to show the defendant principals decision was hurried and erroneous but did not raise the elements vital to plaintiff’s claim.
Disposition: The Court of Appeals upheld the trial court’s granting of summary judgment to defendants.

Citation: Rupp v. Bryant, All So.2d 658 (Fla. 1982).

Key Facts: Glen Bryant, a student at Forrest High School, and his father brought a negligence action against Ray R. Stasco, the school’s principal; Robert E. Rupp, the faculty adviser for the Omega Club; and the School Board of Duval County. The Bryants complained that injuries severing Glen’s spinal cord, which resulted in permanent paralysis from the neck down, were caused by the defendant’s negligence. The complaint alleged that a school-sanctioned organization, the Omega Club, was reputed for conducting activities that violated school board regulations. Because of this reputation, the school board was required to closely monitor the club’s activities. The club was required to obtain Principal Stasco’s approval for extracurricular outings and was prohibited by the school’s regulations from conducting hazing at initiation ceremonies. Rupp was assigned as faculty adviser to the club, and his presence was required at all club activities. However, Rupp was not present on the date Glenn was injured.

Issue: Whether school personnel have immunity when a student is injured in an off campus extracurricular activity.

Holding: Public officials may not assert immunity based on the Florida Supreme Court ruling. Additionally, the Court ruled it unconstitutional to shield employees retroactively by legislative action. There was not cause of action stated against the defendants for wanton and willful negligence by the plaintiffs.

Reasons: The Bryants prior to the 1980 Florida amendments thus had the right to seek recovery from the defendants because neither could claim immunity. Based on the due process conditions expressed in Village of El Portal v. City of Miami Shores (362 So.2d 275 (Fla. 1978))
and McCord v. Smith (43 So.2d (Fla. 1949)), which prohibits retroactive abolition of vested
rights, the court agreed with the district court’s assertion that §768.28(9), Florida Statutes (Supp.
1980), was unconstitutional insofar as it abolished the Bryants’ right to recover from Rupp and
Stasco. As for the issue of “gross and reckless” negligence, the court said that the Bryants cannot
successfully state a cause of action for exemplary damages by merely using the descriptive
phrase “gross and in reckless regard” to label acts by the defendants, Rice v. Clement (184 So.2d
678 (Fla. 4th DCA 1966)). In this context, gross negligence must be established by facts evincing
a reckless disregard of human life or rights, which is equivalent to an intentional act or a
conscious indifference to the consequences of an act (Florida Southern Ry. v. Hirst, 30 Fla.
1,39,11 So. 506,513(1892)).

Disposition: The Supreme Court of Florida affirmed the lower court’s decision in
denying defendant’s immunity from liability and reversed the lower court’s decision that the
actions were wanton and willful.

Citation: Hunter v. Board of Education of Montgomery County, 439 A.2d 582 (Md.App.
1982).

Key Facts: Parents of 16-year-old student filed suit against county school board, principal
of student’s elementary school, a board employee who engaged in diagnostic testing of the
student while student was in second grade and student’s sixth grade teacher. Parents allege that
the school system negligently evaluated the child’s learning abilities and caused him to repeat
first grade materials while being physically placed in second grade. It is alleged that this
misplacement, which continued through grade school, caused the student to feel embarrassment,
to develop learning deficiencies and to experience a depletion of ego strength. The parents also
allege that individual educators acting intentionally and maliciously, furnished false information
to them concerning the student’s learning disability, altered school records to cover up their actions, and demeaned the child.

The Circuit Court of Montgomery sustained defendants’ demurrer without leave to amend, plaintiffs appealed. The Court of Special Appeals affirmed. The Circuit Court of Montgomery County and the Court of Special Appeals concluded that an education negligence action could not be maintained.

Issue No. 1--Whether a cause of action can successfully be asserted against a school board and individual employees of the school board for educational malpractice in improperly evaluating, placing, and teaching a student?

Holding No. 1--Judgment of the Court of Special Appeals is affirmed. Educational negligence action cannot be maintained.

Reasoning No. 1--Education malpractice claims have been unanimously rejected by those few jurisdictions considering the topic. These decisions generally hold that a cause of action seeking damages for acts of negligence in the educational process is precluded by considerations of public policy, among them being the absence of a workable rule of care against which the defendant’s conduct may be measured, the inherent uncertainty in determining the cause and nature of any damages, and the extreme burden which would be imposed on the already strained resources of the public school system or the judiciary.

An award of money damages represents a singularly inappropriate remedy for asserted errors in the education process. To allow negligence claims to proceed would position the courts as overseers of both the day-to-day operation of the educational process as well as the formulation of its governing policies. Such matters have been properly entrusted by the General Assembly to the State Department of Education and the local school boards who are invested
with authority over them. The State Board of Education has the last word on any matter concerning education policy or the administration of the system of public education.

Issue No. 2--Whether plaintiff’s complaint against an elementary school principal and teacher for intentionally and maliciously causing child to be misplaced in school stated a claim for relief?

Holding No. 2--Judgment of the Court of Special Appeals is reversed. Plaintiff can maintain action against elementary school principal and teacher for intentionally and maliciously causing child to be misplaced in school.

Reasoning No. 2--Where an individual engaged in the educational process is shown to have willfully and maliciously injured a child entrusted to his education care; such outrageous conduct greatly outweighs any public policy considerations which would otherwise preclude liability so as to authorize recovery. It may be true that a claimant will usually face a formidable burden in attempting to produce adequate evidence to establish the intent requirement of the tort, but that factor alone cannot prevent a plaintiff from instituting the action. The plaintiffs here are entitled to make such an attempt.

Disposition: The judgment of the Court of Special Appeals dismissing the negligence action of plaintiff is affirmed. The judgment of the Court of Special Appeals dismissing the intentional tort claim is reversed, and the cause remanded back to trial court.

Citation: *Paladino v. Adelphi University*, 454 N.Y.S.2d 868 (N.Y.A.D.2d 1982).

Key Facts: The student was enrolled at the nursery grade level at a private school and continued at that school through the fifth grade. His teachers throughout this time period sent evaluation reports to the student’s parents that assessed his performance in each area of his curriculum. While the student was in the fifth grade, he evidenced certain learning problems and
his parents sent him to a private testing institution for independent evaluation. The testing showed that the student was not equipped with sufficient skills for fifth grade and was several grades below fifth grade level in arithmetic, reading and writing. The school refused to promote the student to the sixth grade and his parents enrolled him in public school where he repeated the fifth grade.

The student’s father alleged in his complaint that the private school breached its agreement by failing to provide quality education, qualified and expert teachers, necessary tutorial and supportive skills, accurate and factual progress reports; and that it furnished false and misleading progress reports which reflected that the student was making satisfactory progress in his studies and promoted him each year to the next grade. The father also filed a cause of action sounding in deceit based on the allegedly inaccurate progress reports and misrepresentations concerning the quality of education.

The trial court denied the defendant’s motion for summary judgment holding that the established policy of New York courts in refusing to entertain lawsuits for education malpractice did not bar an action in contract or one based upon fraudulent misrepresentation.

Issue: Whether recovery may be had against a private elementary school for breach of contract based upon its alleged failure to provide a quality education to a student enrolled in the school.

Holding: We hold that such action in contract does not lie. Further, we conclude that, under the facts here present, related claims predicated upon fraudulent misrepresentation and deceit must similarly be dismissed.

Reasoning: The courts have uniformly refused, based on public policy considerations, to enter the classroom to determine claims based upon education malpractice. The courts should not
become engaged in determining the propriety of the course of instruction adopted by a private school. Despite the absence of a constitutional or statutory predicate, the reluctance on the part of the judicial branch to interfere with the educational policies adopted for public schools should be equally applicable to private institutions. The educational malpractice cases serve to define the function and role of the judiciary in relation to educational institutions generally. Simply put, the courts, should refrain from becoming overseers of the learning process.

Professional educators, not judges are charged with the responsibility for determining the method of learning that should be pursued for their students. When the intended results are not obtained, it is the education community and not the judiciary that must resolve the problem. For, in reality, the soundness of educational methodology is always subject to question and a court ought not in hindsight, substitute its notions as to what would have been a better course of instruction to follow for a particular pupil. These are determinations that are to be made by educators and, though they are capable of error, their integrity ought not to be subject to judicial inquiry. In this regard, we cannot perceive how the professional judgment of educators concerning the course of teaching a particular student in a private school, as opposed to a public school, becomes more amenable to attack in the courts. Public policy should similarly prevent a court from interfering with private schools when the controversy requires the examination of the efficacy of the course of instruction.

Here the essence of the contract cause of action pleaded is that the Waldorf School failed to educate Michael. The asserted breach is predicated upon the quality and adequacy of the course of instruction. The claim required the fact finder to enter the classroom and determine whether or not the judgments and conduct of professional educators were deficient. It is readily apparent that the claims entail an analysis of the educational function. The sufficiency of tutorial
services, academic assessments as to Michael’s performance and determinations relative to graduation are not matters that should be subject to judicial review. The quality of the education and qualifications of the teachers employed by the private school are concerns not for the courts, but rather for the State Education Department and its commissioner.

Disposition: The order of the trial court denying summary judgment was reversed on the law.

Citation: Weiss v. Collinsville Community Unit School District No. 10, 74 Ill.Dec.893, 456 N.E.2d 614 (Ill.App.5Dist. 1983).

Key Facts: A student brought an action against school district to recover damages for an alleged personal injury he suffered while paying softball in a physical education class conducted at his high school. Plaintiff was pitching during a softball game and went to cover first base after a hit, the batter slid into first base, moved the base and knocked plaintiff to the ground. This collision allegedly caused injury to plaintiff’s ankle and knee. The field had no holes or crevices which might have caused an injury. The physical education teacher was on the field with the students, umpiring the game. First base was a rubber mat, 12 inches square and .75 of an inch thick. The physical education teacher did not give any instructions prior to the game, but softball was part of the physical education curriculum and the students all had prior experience with softball and baseball. The jury found defendant liable for willful and wanton misconduct. The School District filed a post trial motion for a judgment as a matter of law. The trial court denied this motion and the school district appealed.

Issue No. 1--Is a school district guilty of willful and wanton misconduct for personal injuries sustained by student while playing softball during physical education class where school district maintained established curriculum regarding teaching of softball in physical education
class, student’s physical education teacher adequately supervised softball game, students in class had substantial experience playing baseball and softball and condition of field was not shown to have in any way been cause of injury?

Issue No. 2--Did the use of a rubber mat instead of a secured canvas bag as a first base in a softball game constitute willful and wanton behavior on behalf of a school?

Holding: The court held that the evidence even when viewed most favorable to the plaintiff, so overwhelmingly favored the defendant that no contrary verdict could stand, thereby reversing the trial court’s refusal to grant a judgment as a matter of law. The court acknowledged that this may be a case of simple negligence but the school district was not guilty of willful and wanton misconduct.

Reasoning: Absent proof of willful and wanton misconduct, educators are immune from tort liability for personal injuries sustained by students during school activities. To constitute willful and wanton conduct, the educator must be conscious or should have been conscious, of the risks and dangerous consequences of the act or failure to act. To impose liability upon educators, a plaintiff must allege and establish that when the educators acted, or failed to act, it was with knowledge that such conduct posed a high probability of serious physical harm to others.

The school district maintained as established curriculum regarding the teaching of softball in its physical education classes, that plaintiff’s physical education teacher adequately supervised the softball games, and that the students in plaintiff’s class had substantial experience playing baseball and softball.

The evidence also failed to show any substantial defect in the field or equipment which would warrant the imposition of liability upon the school district based upon willful and wanton
misconduct. The condition of the field was not shown to have in any way caused the plaintiff’s injury. The court held that use of the rubber mat or the failure to use a secured canvas bag amounted to willful and wanton misconduct.

Disposition: The Appellate Court for the 5th District reversed the trial court’s denial of a judgment as a matter of law; holding that no contrary verdict could stand.


Key Facts: The plaintiff, a kindergarten student, brought a negligence action against the school district, the school principal and a teacher for bodily injuries received in the classroom. The harm occurred during a regular class period when in the course of demonstrating the alphabet the kindergarten teacher used an electric deep fat fryer to make doughnuts in the shape of the letter D. One of the students suddenly stepped on the electric cord; the fryer tipped over and fell off the table. Its contents spilled onto the floor. The plaintiff was burned when he came in contact with the spilled grease. All three defendants prevailed at trial--the principal when the court sustained his demurrer to the evidence and the other two defendants, the teacher and the school district, when the jury returned a verdict in their favor. On appeal by the student, the Court of appeals reversed the judgment in favor of the school district and the teacher, directing that, upon remand of the cause, a verdict against these two defendants be rendered, as a matter of law, on the issue of liability, with a new trial to be limited to damages alone, and also reversed the judgment in favor of principal for a new trial on all the Issues. We granted certiorari and now reinstate the trial court’s judgment,

Issue: Does the undisputed use of a deep fat fryer in the classroom created such a dangerous condition that it is negligence per se, allowing plaintiff a directed verdict on liability
and predicing the plaintiff’s claim on the mere occurrence of an injury proximately caused by the use of an inherently dangerous substance?

Holding: The trial judge’s perception of the student’s lawsuit, as articulated in the challenged instruction, is hence free from fundamental vice and his refusal to direct a verdict for the student was clearing proper. Undisputed classroom exposure of a student to a plugged-in deep-fat fryer cannot be regarded as negligence per se. The student’s claim cannot be predicated on the mere occurrence of an injury proximately inflicted by the use of an inherently dangerous substance. Rather it rested on a breached duty to use ordinary care to protect one from harm through the exercise of adequate supervision.

Reasoning: Because of the dangers character of the deep-fat fryer depends on the manner in which it is used, the degree of care to be exercised in handling it tenders an issue of fact. A deep-fat fryer does not fall under the rubric of an instrumentality that is inherently “ultra-hazardous,” such as a wild animal or dynamite. Mere deployment of the latter, without any regard to fault, will give rise to liability for harm proximately resulting from it. The student’s claim cannot be predicated on the mere occurrence of an injury inflicted by the use of an inherently dangerous substance. Rather it rested on a breached duty to use ordinary care to protect one from harm through the exercise of adequate supervision.

Disposition: The Supreme Court of Oklahoma vacated the opinion of the Court of Appeals and the trial courts judgment was reinstated.

Citation: Wilson v. Duval County School Board, 436 So.2d 261 (Fla.App.1Dist. 1983).

Key Facts: The plaintiff was a 7-year-old student who was standing at the teacher’s desk, when a fellow student picked up a pair of scissors and struck the plaintiff in the eye. The plaintiff was sent to the principal’s office, where she was examined and then sent back to the classroom.
without receiving any medical treatment. The parents brought an action for personal injuries. The complaint alleged that the injuries were the direct and proximate result of the teacher’s negligence in failing to reasonably supervise and control her student by not keeping her sharp-pointed scissors out of reach of her young students. Also, both the teacher and principal were negligent in failing to give the child’s parents prompt notice of the injury and failing to promptly provide adequate medical attention which aggravated the injury. The trial court dismissed the amended complaint with prejudice because it failed to allege that the teacher and principal had acted “in bad faith or with malicious purpose on in a manner exhibiting wanton and willful disregard of human rights safety, or property as required by §68.28(9)(a) of the Florida Code.

Section 68.28(9)(a) provides the following:

No officer, employee, or agent of the state or its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injuries or damages suffered as a result of any act, event, or omission of action in the scope of his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The exclusive remedy for injury or damages suffered as a result of any act, event or omission of any officer, employee, or agent of the state, or its subdivisions or constitutional officers, shall be an action against the governmental entity, or the head of such entity in his official capacity, or constitutional officer of which the officer, employee or agent is an employee, unless such act or omission was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard for human rights, safety or property. The state or it subdivisions shall not be liable in tort for the acts or omissions of an officer, employee, or agent committed while acting outside the course and scope of his employment or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard on human rights, safety, or property.

Issue No. 1—Whether §768.28(9)(a), Florida Statutes (1980 Supp.), which grants immunity to employees of the state and its subdivisions, violates Article V, §2 of the Florida Constitution, which grants procedural rule-making power to the Florida Supreme Court by requiring that a state agency shall not be named a party defendant.
Holding No. 1--The statue as applied in this case does not unconstitutionally infringe upon the court’s Article V power.

Reasoning No. 1--This statute does not regulate the procedural aspects but instead regulates substantive aspects of the litigation. Under the statutory scheme, the substantive liabilities of the school board and its employees are mutually exclusive. Plaintiff has no cause of action against the teacher and principal for simple negligence; that right of action is exclusively against the school board, which the trial court properly recognized and sustained. The teacher or principal may be held liable for their own acts or omissions committed while acting outside the course and scope of their employment or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights safety, or property; but the school board cannot. Thus the question in this case is not at what stage of the proceedings defendants can be joined as parties defendant, but whether they can be joined at all. For this reason, the statute as applied in this case does not unconstitutionally infringe upon the court’s article V. power.

Issue No. 2--Whether §768.28(9)(a), Florida Statutes (1980 Supp.), which grants immunity to employees of the state and its subdivisions, violates Article II, §3 of the Florida Constitution, which provides for the separation of powers among the three branches of government in that it represents an improper legislative encroachment into the province of the court by attempting to limit the amount of compensation available to injured plaintiffs in legal actions.

Holding No. 2--The statute does not unconstitutionally infringe upon the court’s Article II power.
Reasoning No. 2--Because the legislature has the power to raise the degree of conduct necessary for personal liability of governmental employees and since such employees are liable without limitation for willful or wanton misconduct, the legislature has not, by amending §768.28(9)(a) placed any unconstitutional limitations on the amount that may be recovered by plaintiffs.

Issue No. 3--Whether the teacher has waived such statutory immunity by purchasing and maintaining liability insurance covering the negligent acts alleged.

Holding No. 3--Since statutory immunity for state employees if within the clear power of the legislature and any waiver of such immunity to the extent of available liability insurance coverage is solely within the power of the legislature to grant or deny.

Reasoning No. 3--Unlike parental immunity and inter-spousal immunity which are waived as a matter of law to the extent of available liability insurance coverage, the court held that the policy considerations relied upon in those cases are not applicable to waiver of the statutory immunity provisions involved in this case. Parental immunity and inter-spousal immunity are common law doctrines originating in court decisions and not the subject of express legislative enactments. Those doctrines may be changed in scope at any time by the court based on new policy considerations acceptable to it. Statutory immunity for state employees is a matter clearly within the power of the legislature. Waiver of such statutory immunity to extent of available liability insurance coverage is solely within the power of the legislature to grant or deny.

Disposition: The District Court of Appeals for the First District affirmed the dismissal with prejudice of plaintiff’s complaint.

Key Facts: The plaintiff was a student who was injured during a high school football game. He brought suit against the school district and his football coach. Plaintiff alleged that the defendants were negligent in allowing him to play in the game although plaintiff had not participated in the minimum amount of practice sessions required by Rule 5.062 of the Illinois High School Association (IHSA). Thus the plaintiff based his negligence claim on the basis of allowing plaintiff to play in violation of doctor’s order, and his ineligibility under IHSA rules. The defendants moved to dismiss the complaint on the basis of statutory immunity. The motion was granted by the trial court and the plaintiff appeals.

Issue No. 1--Are football programs and activities connected with the school program and are the football coaches and school district acting in loco parentis and thus immune from liability for mere negligence.

Issue No. 2--Does the statute conferring immunity on teachers and school districts from negligence in the supervision of activities connected with school programs inapplicable when the school district and teacher-coach allegedly violated a state high school association rule prohibiting students from playing football without adequate practice?

Holding No. 1--The defendants in the case at bar was acting in loco parentis. Football programs and activities are connected with the school program and therefore there is immunity in this situation.

Holding No. 2--The statute is applicable in this case and the defendants are not liable for mere negligence.
Reasoning No. 1--In *Kobylanski v. Chicago Board of Education* (63 Ill.2d 165, 347 N.E.2d 705 (Ill. 1976)), the Illinois Supreme Court held that paragraph 24-24 of the Illinois School Code conferred immunity on teachers and school districts from negligence in the supervision of activities connected with the school program. The Court reasoned that the statute conferred the status of loco parentis on teacher for supervision of activities. Since parents are not liable to their children for negligence, teachers are also not liable for negligence when they are acting in loco parentis. The defendants in this case were acting in loco parentis. Football programs and activities are connected with the school program and therefore there is immunity.

Reasoning No. 2--The statute speaks of supervision not discretion. Thus the plaintiff’s argument that the Athletic Association rule leaves the teacher no discretion and thus the statute granted immunity does not apply. The statute speaks of supervision which also encompasses situations in which there is no discretion. Therefore the statute is applicable here and the defendants are not liable for mere negligence.

Disposition: Since the defendants had statutory immunity, the trial court properly dismissed the complaint. Accordingly, the order of the circuit court of Rock Island County is affirmed.


Key Facts: A 16-year-old student was paralyzed resulting from injuries sustained while participating in gymnastics team practice. The student was practicing for competition in the still rings event. The wooden rings were positioned seven to eight feet above the ground. Two 1” thick rubber mats and one 4” thick landing mat were underneath the rings while the student was
performing. The student’s dismount resulted in him falling on his back, immediately suffering paralysis.

The student file suit against the Board of Education and the coach on three counts. Count one alleged that the defendants negligently failed to exercise proper supervision over the student and negligently failed to ensure the proper use of the safety equipment in the gym. Count two alleged willful and wanton conduct. Count three alleged that the Board negligently failed to supply the gym with adequate safety equipment.

The trial court granted the defendant’s motion to dismiss count one. Reasoning that the language of §24-24 of the School Code and Illinois case law precluded any action for personal injury against a school district or employee thereof on a negligence theory. The jury returned a verdict in favor of both defendants on Counts two and three. The student submitted a post-trial motion or judgment notwithstanding the verdict or in the alternative a new trial, which was denied by the trial court. The student appealed

Issue No. 1--Is coaching a gymnastics team practice session within the statutory loco parentis immunity granted teachers and other certified educational employees?

Holding No. 1--We are compelled to follow the interpretation of the High Court and rule that the language of the statute extends the loco parentis relationship to circumstances other than just disciplinary conduct. It is the opinion of this court that the coaching of a gymnastics team practice session is within the loco parentis immunity provided by §24-24.

Reasoning No. 1--There is not a reference in the statute to activities required by the program, only activities connected with the program. Extra-curricular activities, such as gymnastics, are within the mandate that School Boards shall provide for the physical education of the pupils (citations omitted), and therefore are connected with the school program.
Issue No. 2--Is there a showing that the school board negligently failed to provide adequate safety equipment.

Holding No. 2--The jury’s verdict will stand. Mindful of all of the evidence in this case, we will not substitute our judgment for that of the jury which heard the testimony and observed this witnesses; the verdict is not palpably erroneous or wholly unwarranted from the manifest weight of the evidence.

Reasoning No. 2--It should not be asked whether the gym as whole was unsafe, but whether there was adequate matting in use under the rings at the time of the injury. It would seem that more matting would have been better; however plaintiff’s witnesses did not show that more matting would have prevented the injury. Defendant’s expert in bio-mechanics, in un-refuted testimony, explained on direct examination that only three feet of non-resilient padding could have prevented the student’s injury, and as of yet no one has invented such a matting. There was evidence that the coach was using the type and thickness of matting normally used for the upcoming competition and that the only type of matting which would have prevented the injury did not, and does not exist.

Issue No. 3--Was it an abuse of discretion to show a film of college gymnasts performing moves and routines which student was performing at time of injury.

Holding No. 3--The trial court did not abuse its discretion in showing the film of college gymnasts performing moves and routines which the student was performing at the time of injury. We believe a jury is sophisticated enough to be able to understand ad follow this instruction and not be misled into believing the film was a recreation of the occurrence.

Reasoning No. 3--The admissibility of demonstrative evidence is a matter within the trial court’s discretion and a court’s ruling in this area will not be reversed in the absence of a clear
showing of abuse. In this case the file was used to show the jury what the routines looked like and how they were performed. While the movie purported to show the movements in the routine, as did the pictures, it also added a visual dimension that still pictures or oral testimony could never duplicate. Just prior to the showing the trial court admonished the jury that the film will be shown for the limited purpose of demonstrating the routine in question. We believe a jury is sophisticated enough to be able to understand and follow this instruction and not be misled into believing the film was a recreation of the occurrence.

Disposition: The Appellate Court for the Third District affirmed the rulings of the trial court and the verdict of the jury.

Citation: Holt By Holt v. Cross, 77 Ill.Dec. 149, N.E.2d 8 (Ill.App.5Dist. 1983).

Key Facts: Minor student and his mother filed suit against elementary school principal and school board over alleged excessive corporal punishment. Plaintiff filed a third amended complaint under which he sought punitive damages.

Issue: In this case of first impression is whether a student can recover punitive damages against a teacher who allegedly administered excessive corporal punishment.

Holding: The Court held that punitive damages are prohibited against a teacher alleged to have excessively punished a student.

Reasoning: Criminal prosecution and a tort action have been held under Illinois law to be proper remedies for excessive corporal punishment; however there is no authority for allowing punitive damages for such behavior. Given the important role of education in our society, we cannot allow a rule which would make potential liability for punitive damages a primary concern in teachers’ minds when they are called upon to maintain school discipline. Moreover an allegation of willful and wanton misconduct does not confer a right to punitive damages when
the minimum requirement to state a cause of action requires such conduct. Since willful and wanton conduct forms the basis for an action against a teacher for excessive corporal punishment, punitive damages cannot be sanctioned as an additional recovery.

Disposition: The Supreme Court upheld the Circuit Court’s decision to strike plaintiff’s punitive damages claim.

Citation: Vitale v. Lentine, 358 N.W.2d 2 (Mich.App. 1984).

Key Facts: Plaintiff student was a passenger in a car driven by another student in a driver’s education class that crashed into a ditch. Plaintiff-student was injured and brought suit against the defendant-school district, and the driver’s education teacher. Plaintiff-student claims that the driver’s education teacher was negligent in failing to observe the erratic driving of the driver-student, failing to properly supervise the student’s driving and failing to require plaintiff-student to fasten her seatbelt. Plaintiff claims that defendant school district is liable because its employee acted on its behalf at the time of the accident so as to impute liability to the school district for his negligence.

In granting summary judgment, the trial court noted that the school district had a statutory duty to provide a divers education program and that there was a significant state interest in providing standardized, objectively ascertainable driver education at no cost to students. Therefore the trial court concluded that the driver training program was a governmental function and that plaintiff’s claims were barred by governmental immunity. Plaintiff appeals from the order granting summary judgment in favor of defendants.

Issue: At issue was school district performing a governmental function, and thus possess governmental immunity, regarding liability for injuries sustained in an accident which occurred while driver education teacher was supervising driver training student.
Holding: The school district was performing a governmental function and was immune from suit and teacher was also immune as he was acting within the scope of his employment. The decision of the trial court is affirmed.

Reasoning: The trial court noted that the school district had a statutory duty to provide a driver’s education program and that there was a significant state interest in providing standardized, objectively ascertainable driver education at no cost to students. The trial court concluded that the driver training program was a governmental function and that plaintiff’s claims were barred by governmental immunity. While the Michigan Appellate Court recognized that the Supreme Court decisions concerned with the governmental immunity are in a state of flux where results are difficult to predict, it did not see any good reason to interfere with the trial court’s conclusion that these defendants possessed governmental immunity.

Disposition: The decision of the trial court granting summary judgment to the defendant was affirmed.


Key Facts: Defendant-teacher taught an industrial arts class in which plaintiff-student was one of four students. One day the four boys tried to pound a piece of scrap metal through a hole in an anvil. The metal had been donated by a corporation several years prior; however, the defendant-teacher did not solicit the donation or specify the kind of metal to be provided. The boys hammered on the metal for more than 10 and perhaps as much as 20 minutes.

At one point, the defendant-teacher stood six to seven feet away from the anvil while the students hammered the metal. He told them once to stop hammering, but after he went back to his office in another room they continued beating on the metal. A metal chip flew into the
plaintiff-student’s eye, causing trauma and visual impairment. The defendant-teacher had previously instructed the class on the need to use safety goggles when doing dangerous work, but he did not direct the boys to use goggles on the day of the accident.

The plaintiff-student’s complaint contained four counts. Count I alleged defendant-teacher’s negligent supervision and furnishing of unsafe equipment. Count II alleged that defendant-teacher acted willfully and wantonly in not putting an end to the hammering once he observed the dangerous activity. Count III alleged the school district’s liability for defendant-teacher’s negligence as set out in Count I and for its own negligence in providing unsafe equipment. Count IV sought to hold the school district liable for defendant-teacher’s willful and wanton conduct described in Count II. The trial court granted summary judgment as to all counts except for Count III.

Issue No. 1--Did the trial court err in dismissing a claim against an industrial arts teacher for ordinary negligence in failing to supervise students and to provide safe equipment, when that teacher received donated equipment that he neither solicited nor specified and that equipment proved to be unsafe.

Holding No. 1--The dismissal of plaintiff-student’s ordinary negligence claim was correct because a teacher is immune from liability for ordinary negligence, even if he furnishes equipment to students. This court affirmed the trial court’s judgment as to count I of plaintiff-student’s complaint.

Reasoning No. 1--Teachers are not liable for ordinary negligence in the performance of their supervisory duties. The School Code confers upon a teacher the status of a parent or guardian with regard to all activities connected with the school program. The status in loco parentis shields a teacher from liability in both non-disciplinary and disciplinary matters.
School districts have authority to purchase and supply equipment to students, and teachers have no such authority. To hold school districts to the duty of ordinary care in such matters would not be unduly burdensome. On the other hand, providing immunity to teachers is intended to encourage them to use their broad discretion in managing the teacher-student relationship which would be seriously jeopardized by ordinary negligence actions for accidents occurring in the course of the exercise of such authority.

In *Thomas v. Chicago Board of Education* (77 Ill.2d 165, 32 Ill.Dec. 308, 395 N.E.2d 538 (Ill. 1979)), the Illinois Supreme Court refused to extend negligence liability to individual teachers and coaches, and make them liable for failure to exercise ordinary care in the course of furnishing equipment to students. The court found that absent willful and wanton conduct in the course of their supervisory authority, which encompasses inspecting and supplying the students with equipment, teachers and coaches are immune under the School Code. We see no reason to reduce the protection for the teacher-student relationship and the teacher’s discretion simply because the equipment came directly into the teacher’s hands as a donation rather than as a purchase by the school board.

Issue No. 2--Did plaintiff-student state a cause of action for willful and wanton misconduct against an industrial arts teacher, and school district, in that the teacher did not put an end to students’ attempt to pound a piece of scrap metal through hole in anvil once he observed the dangerous activity.

Holding No. 2--Plaintiff-student stated a cause of action for willful and wanton misconduct against an industrial arts teacher, and school district, since teacher did not put an end to students’ attempt to pound a piece of scrap metal through hole in anvil once he observed the dangerous activity. The dismissal of Counts II and IV was error.
Reasoning No. 2--To impose liability on a teacher the plaintiff must show that his injury resulted from the defendant’s willful and wanton misconduct. *Kobylanski v. Chicago Board of Education*, 63 Ill.2d 165, 347 N.E.2d 705 (Ill. 1976). A willful or wanton injury must have been intentional or the act must have been committed under circumstances exhibiting a reckless disregard for the safety of others, such as a failure, after knowledge of impending danger, to exercise ordinary care to prevent it or a failure to discover the danger through recklessness, or carelessness when it could have been discovered by ordinary care (*Schneiderman v. Interstate Transit Lines*, Inc., 394 Ill. 569, 583, 69 N.E.2d 293, 300 (Ill. 1946)).

The question of whether certain acts amount to willful and wanton misconduct is normally a question of fact to be determined by a jury. The summary judgment proceeding is not an appropriate forum for trying a factual issue such as willful and wanton misconduct, but is intended only to determine whether there is an issue of fact to be tried. If the facts permit more than one conclusion, including on unfavorable to the moving party, a summary judgment should be denied.

In the present case, Count II, incorporates facts stated in Count I alleging that the defendant-teacher was present and observed the students’ hammering of the metal, that he knew or should have known hammered metal could splinter and that he failed to direct the students to wear goggles. It is alleged that his failure to act in the face of a dangerous situation constitutes willful and wanton misconduct for which defendant-teacher could be liable. This court found that Count II sufficiently stated a cause of action against Alexander. From the facts presented, a jury could have inferred a reckless disregard for the safety of others after knowledge of impending danger. The granting of summary judgment was improper where there was an issue suitable for jury determination.
Disposition: The trial court’s judgments to Count I is affirmed, and its judgment as to Counts II and IV are reversed. The cause is remanded for trial on the Issues stated in Counts II, III, and IV.

Citation: Izard v. Hickory City Schools Board of Education, 315 S.E.2d 756 (N.C.App. 1984).

Key Facts: Plaintiff-student was a 14-year-old student assigned to the shop class of defendant-teacher, an industrial arts and occupational education instructor at the school. While cutting a piece of wood with a power saw in class plaintiff-student severed several fingers from his left hand. Plaintiff-student had previously attended another school, where he had learned to use an electric saw similar to the one that injured him. Also, plaintiff-student had received instruction from defendant-teacher in the use of the power saw and had, in fact, been supervised in the correct operation of the saw without incident on other occasions. Plaintiff-student instituted this action to recover damages as a result of that injury.

The defendant-teacher had given plaintiff-student and his classmates a 20-minute review session about the proper use and operation of the power saw in question, including specific precautions. The plaintiff-student was required to view the instruction despite his protests that he was already familiar with the proper use of the saw as a result of his experience at another school. Also, the defendant-teacher used the plaintiff-student’s wood to demonstrate how to measure, cut, and glue the wood properly. Defendant teacher also told the class that if any student did not wish to use the machinery, then defendant-teacher would make the necessary cuts himself.

Plaintiff-student contends that defendant-teacher was negligent in failing to properly instruct and warn the plaintiff-student about the use of the saw. The defendant-teacher answered,
denying negligence and pleading plaintiff-student’s contributory negligence in causing his own injury. The defendant-teacher moved for summary judgment and this motion was granted by the trial court. From this order the plaintiff appeals.

Issue No. 1--Under the facts of this case, did the industrial arts instructor violate the standard of care required of him by law, in regard to a student’s subsequent improper use of the saw causing injury to student’s hand, when the instructor gave a 20-minute review session about proper use and operation of a power saw, including specific instructions as to all necessary precautions, who required a 14-year-old student to review the instruction despite his protest that he was already familiar with proper use of the saw, who spent another 20 minutes using the student’s wood to demonstrate how to measure, cut and glue the wood properly, and who then told the class that he would make necessary cuts for any students not wishing to use the machinery.

Holding No. 1--The court held that the evidence established that the defendant teacher did not violate the standard of care required of him by law.

Issue No. 2--Was the presumption of that the 14-year-old student had the capacity, discretion, and experience ordinarily possessed by a boy of that age, justified under the facts of this action for contributory negligence to apply to injuries sustained when student severed fingers on his hand while cutting a piece of wood with a power saw in his industrial arts class where the student had learned to use an electric saw similar to the one use in his class at a previous school he had attended and prior to student’s use of the saw, teacher had met standard of care required of him by law in warning student of dangers of using the saw and of procedures which he was to follow in use of the saw.
Holding No. 2--The court held that the evidence presented to the trial court showed that the plaintiff-student’s injury was the result of his own contributory negligence.

Reasoning No. 1--In order to recover for negligence, plaintiff must establish (1) a legal duty, (2) a breach thereof, and (3) proximate cause of the injury. In addition, North Carolina case law has stated that a teacher has a duty to abide by that standard of care which a person of ordinary prudence charged with his duties, would exercise under the same circumstances. The duty generally amounts to an obligation to warn a student of known hazards, particularly those dangers which he may not appreciate because of inexperience.

Defendant-teacher gave the plaintiff-student and his classmates a 20-minute review session about the proper use and operation of the power saw in question, including specific precautions. The plaintiff-student was required to view the instruction despite his protests that he was already familiar with the proper use of the saw as a result of his experience at another school. Moreover, defendant-teacher spent another 20 minutes using plaintiff-student’s wood to demonstrate how to measure, cut, and glue the wood properly. In accordance with regular procedure, defendant-teacher then told the class that if any student did not wish to use the machinery he would make the necessary cuts himself.

Reasoning No. 2--A 14-year-old boy is presumed capable on contributory negligence to same extent as an adult in the absence of evidence that he lacked the capacity, discretion and experience which would ordinarily be possessed by a boy of that age. All the evidence indicates that, at the time of the accident, plaintiff-student was a normal 14-year-old boy of ordinary capacity, discretion and experience. He was therefore capable of contributory negligence.

In the case at bar, the evidence presented to the trial court appears uncontradicted that, despite being fully instructed and warned about the proper use of the power saw, plaintiff-student
carelessly moved his hand into the path of the blade, thereby injuring himself. This evidence clearly establishes that plaintiff-student’s injury was the result of his own contributory negligence. Furthermore, the meticulous instruction by defendant-teacher about the proper use of the power saw met the standard of care required of him by law, thereby absolving him of liability.

Disposition: The order of the trial court awarding defendant’s motion for summary judgment is, therefore affirmed.


Key Facts: Plaintiff-student was a high school senior who was attending her regularly scheduled physical education class. The class was supervised by the defendant-teacher. During class, while attempting a straddle jump using a springboard and vaulting horse, the plaintiff-student seriously injured her right knee. Thereafter, plaintiff-student filed a personal injury suit against the school district and physical education teacher, seeking to recover damages for the injuries she suffered to her right knee.

The plaintiff-student alleged that the district and the teacher were negligent in failing to adequately instruct and supervise gymnastic students as to the safe and proper method of using inherently dangerous equipment and failing to adequately warn her of the dangers posed by the use of such equipment. The district and the teacher raised the affirmative defense of governmental and official immunity and moved for summary judgment. The common pleas court granted the defendants’ motion for summary judgment and dismissed the plaintiff-student’s complaint. The student appeals the decision of the trial court.
Issue No. 1--At issue was a springboard and vaulting horse that was used in a high school gym class, which was not permanently placed at the school, real property, so as to be an exemption from sovereign immunity for the care, custody, and control of real property?

Holding No. 1--The common pleas court correctly dismissed the plaintiff-student’s complaint as to the defendant-school district. The springboard and vaulting horse are items of movable equipment, not fixtures, as they are not permanently placed at the school or essential for its operation. That equipment is not considered a part of real property. The care, custody, or control of real property exception to governmental immunity does not apply.

Reasoning No. 1--Section 8542(b)(3) of the Judicial Code imposes liability upon local agencies, such as school districts, for injuries resulting from the agency’s care, custody or control of real property. While the plaintiff-student was injured within the school grounds, there is no allegation that the condition of the building or ground caused her injuries. It was admitted that it was the plaintiff-student’s use of the springboard and vaulting horse that resulted in her injuries. The spring board and vaulting horse are items of moveable equipment, not fixtures, as they are not permanently placed at the school or essential for its operation. Accordingly, that equipment is not considered a part of real property. Therefore, the care, custody or control of real property exception to governmental immunity does not apply.

Issue No. 2--At issue was the activity of a school teacher who was instructing a high school physical education class in gymnastics with the scope of his official duties at the time of injury to a student who was injured through the use of a springboard and vaulting horse, thus entitling him to official immunity under statute.

Holding No. 2--Court held that the defendant-teacher was acting within the scope of his official duties at the time of the incident and was entitled to official immunity.
Reasoning No. 2--Section 8545 of the Judicial Code (42 Pa.C.S. § 8545) grants to employees of local agencies the same immunity enjoyed by the agency for injuries resulting from acts of the employee which are within the scope of the employee’s office or duties. The defendant-teacher was teaching a physical education class at the time of the incident which resulted in plaintiff-student’s injuries. That activity was well within the scope of his official duties as a physical education class teacher with the defendant-school district. The activity of the class, gymnastics, is an activity normally associated with an indoor physical education program.

Issue No. 3--At issue do the statutory provisions granting governmental immunity to a school district and official immunity to a teacher, violate provisions of the Pennsylvania State Constitution on access to the courts or limits on damages; or offend the Fourteenth Amendment to the United States Constitution.

Holding No. 3--The statutory provisions granting governmental immunity to the district and official immunity to the teacher are constitutional and act as a bar to plaintiff-student’s action.

Reasoning No. 3--In *Carroll v. County of York*, 496 Pa. 363, 437 A.2d 394 (Pa. 1981), the Pennsylvania Supreme Court upheld the constitutionality of governmental tort immunity. In *Mayle v. Pennsylvania Department of Highways*, 479 Pa. 384, 388 A.2d 709, 716 (Pa. 1978), the Pennsylvania Supreme Court held that the Pennsylvania Constitution is expressly neutral on the issue of sovereign immunity—it neither requires nor prohibits it. The plaintiff-student’s constitutional claim must fail in light of the long history of recognition of the doctrine of sovereign immunity by the federal courts. Thus, the statutory provisions granting governmental immunity to the defendant-school district and official immunity to the defendant-teacher are constitutional and act as a bar to plaintiff-student’s action.
Disposition: Having found that the defendant-school district and defendant-teacher are properly entitled to immunity under the provisions of the Judicial Code, and that those provisions are constitutional, the court affirmed the common plea court’s order which granted summary judgment to the defendants and dismissed plaintiff-student’s complaint.

Citation: Belcher v. Jefferson County Board of Education, 474 So.2d 1063 (Ala. 1985).

Key Facts: The Supreme Court of Alabama consolidated two teacher cases both alleging breach of contract, violation of due process and negligent evaluation that were appealed after being dismissed in the Circuit Court of Jefferson County. The resolution to both cases hinged on the answer to the same question; does a non-tenured teacher have a cause of action when an employer does not follow its own policy? Graham was employed as a non-tenured teacher for two years by Jefferson County Board of Education. Graham claims the principal delegated the evaluation process to the head football coach, he was not informed of his dismissal prior to the recommendation, and he was not evaluated in the spring based on fall assessments. Belcher in like manner claims that the board failed to comply with its own policy No. 533.6 and that even though an observation form was completed on her it was not shown to her promptly, nor was she evaluated in the spring based on fall assessments.

Issue: Whether a non-tenured teacher has a cause of action against the school board if it is immune from such suit.

Holding: The Supreme Court of Alabama held that relief could be granted on the breach of contract claim, the board is not automatically immune, and the allegations of negligence fall within discretionary functions.

Reasons: The Constitution of the State of Alabama (1901) states clearly that the state shall never be a defendant in a court of law. Hutt v. Etowah County Board of Education (454
So.2d 973 (Ala. 1984)) established the position that boards of education are extensions of the state and not local government therefore they are immune from suit. However, school boards may be sued in relation to contracts they enter in based on fact that if a board may sue or enter into contract it implicates the right to be sued. In regards to the dismissal of non-tenured teachers the Alabama Legislature created two classes of teachers by enacting the Teacher Tenure Law. Tenured or those who have continuing service status and non-tenured or probationary teachers with the difference being the ability of the board to summarily dismiss non-tenured teachers.


Key Facts: Plaintiff-student was injured while attempting to move a piano with a fellow student on the premises of defendant-school district. Defendant-teacher was in the room at the time of the accident and was acting within the scope of her employment and on behalf of her employer. Plaintiff-student and her parents brought suit against the defendant-school district and defendant-teacher. The trial court granted summary judgment for defendants.

Plaintiffs allege that the presence of the piano, allegedly in a dangerous and hazardous condition in and upon the defendant-school district’s real property made the building itself a danger to students. Plaintiffs cite the waiver of immunity for the negligent care of real property provision of §8542(b)(3) of the Political Subdivision Tort Claims Act. The plaintiffs argue that the negligence of defendants in the care of their real property subjected them to liability.

Issue: Does the presence of a piano in a school, which allegedly is in a dangerous and hazardous condition, create a hazardous condition upon the school’s real property as to make the building itself a danger to students and thus subject school to liability for negligence in the care of their real property?
Holding: The order of the Court of Common Pleas granting the motion for summary judgment for the defendants is affirmed. A piano, regardless of its condition, is not real property. The piano was not converted to a part of the real property by its dangerous condition.

Reasoning: Under §8541 of the Political Subdivision Tort Claims Act (“Act”), a local agency is immune from damages on account of any injury to a person or property caused by an act of the local agency or any employee thereof. A school district is a local agency as defined in the Act. Therefore, the defendants in this case are immune from liability under the provisions of the Act unless one of the Act’s exceptions applies. Plaintiff-student’s reliance on the waiver of immunity from liability for the negligent care of real property found in §8542(b)(3) is misplaced.

A piano regardless of its condition is not real property. Chattels used in connection with real property which are manifestly furniture, as distinguished from improvements, and are not peculiarly fitted to the property with which they are used always remain personality. A piano is personality. The piano was not converted to a part of the real property by its dangerous condition.

Additionally, it cannot be argued that the building itself was negligently cared for because personality within the real property was in a hazardous condition. Such interpretation would be a distortion of the Act. For the limited waiver of immunity of §8542(b)(3) to apply, there must be negligence which makes the real property itself unsafe for the activities for which it is used.

Disposition: The order of the Court of Common Pleas granting defendant’s motion for summary judgment was affirmed.

Citation: Rollins v. Concordia Parish School Board, 465 So.2d 213 (La.App. 3 Cir. 1985).
Key Facts: Plaintiff-student was a 9-year-old fourth grade student who was injured during physical education class. She was riding a merry-go-round with several other girls during physical education class. The merry-go-round was a used piece of playground equipment that had been disassembled and moved from another school. When it was reassembled on the school ground it was placed lower to the ground because of its intended use by small children.

On the day of the accident a substitute teacher was responsible for supervision of two physical education classes containing approximately 40 fourth grade students. The school’s procedure was to combine two school classes for physical education, which allows one teacher to have a free period. The substitute teacher gave permission for the boys to play basketball and the girls to play on the playground equipment. The basketball court is approximately 15 to 20 feet away from the playground equipment, so the substitute teacher walked back and forth to supervise both groups.

The substitute teacher noticed that the plaintiff-student and the other girls were going too fast on the merry-go-round and she instructed them to slow down and get off. Just after she told the girls to slow down, she heard the boys arguing over a basketball on the basketball court. She turned away to walk over to the boys to see what was happening. She had walked about 20 feet in 30 to 60 seconds, when she heard one of the girls yell that plaintiff-student was hurt, and she returned to the merry-go-round to discover that plaintiff-student was lying next to it. Plaintiff-student later testified that she fell on the inside of the merry-go-round, but that one of the girls helped her up and moved her to the outside of the merry-go-round.

The substitute teacher carried the plaintiff-student to the principal’s office where he took charge of the situation. School Board policy mandated that in the event of injury to a student that the principal make every effort to contract the child’s parents. The principal called the home of
the plaintiff-student and no one answered. The principal sent for plaintiff-student’s brother who was in the seventh grade of the school, and the brother informed the principal that the parents were at a doctor’s office but he was unable to remember the doctor’s name. The principal then called plaintiff-student’s aunt but received no answer. The principal then called plaintiff-student’s grandparents who arrived 1 hour later to take her to the hospital.

The plaintiff-student was admitted to the hospital, and the treating physician concluded that she had a broken leg. Physician was unable to immediately place plaintiff-student’s leg in a cast due to the fact that her leg was swollen. As a result, plaintiff-student was forced to stay in the hospital for 5 days to allow the swelling to subside so that a long leg case could be applied.

The plaintiff-student’s mother filed suit seeking to recover damages and medical expenses as a result of the child falling off a merry-go-round on the school ground during a physical education class. Plaintiff named as defendant the principal of the school where the accident occurred, and the School Board, and its insurer. Plaintiff contends that the defendant-School Board was strictly liable as the custodian of a defective thing (the merry-go-round) and negligent for their failure to provide adequate supervision of the physical education class. Plaintiff further claimed that plaintiff-student’s injuries were aggravated by the lack of immediate medical attention.

Plaintiff claims that the merry-go-round was defective in that it was old and dilapidated; that the ring which was the handrail encircling the merry go round and which acts as a handrail for the children to hold on to was whopsided and that the normal horizontal plane of the merry go round can be lowered within two to four inches of the ground when an adult exerts pressure on one side of the merry-go-round. Plaintiff argues that these physical conditions are defects which created an unreasonable risk of harm which caused Lisa’s injuries. Defendant’s expert
stated that the handrail which the children grip while the merry-go-round is in motion was not symmetrical. However, he stated that the ring was securely fastened to the merry go round and that it was very functional in that the children were still able to grip the bar while the merry go round spun around. He also testified that the seat of the merry go round would go down approximately two inches when he stepped on it but that it would not swing down far enough to hit the ground. He stated that he observed children ride the merry go round during a school recess and noticed that the merry go round seat did not get close to the ground. Plaintiff’s expert was a carpenter and he testified that the seat dipped down as low as five to six inches from the ground or three or four inches when he stepped on it. He admitted that he did not measure the distance or observe the merry go round’s operation while children played on it.

The trial judge found that the merry-go-round was defective only to the point that it was sitting too close to the ground but refused to apply strict liability. The trial court found the School Board was negligent in not properly supervising the playground activities, that Lisa’s injury was aggravated by the lack of immediate medical attention and that Lisa was guilty of contributory negligence. The trial judge found that Lisa was contributorily negligent in riding on the inside of the merry go round and apparently trying to get off of the merry go round while the machine was in motion. He found her 50% at fault and reduced her recovery of damages accordingly.

Issue No. 1--In action for injuries suffered by school child on merry-go-round, is a merry-go-round defective, thus causing defendant to be strictly liable in tort for injuries of student when the handrail for the children to hold onto was asymmetrical and the horizontal place of the merry go round could be lowered within two for four inches of the ground when an adult exerts pressure on one side of the merry go-round?
Holding No. 1--The trial judge was correct in not applying strict liability, but trial judge committed error in ruling that the merry-go-round was defective. For this reason, we reverse he trial judge’s finding that the merry-go-round was defective only to the point it was sitting too close to the ground and find that plaintiff has failed to meet her burden of proof that the merry-go-round was defective or that any defects in the merry go round caused the child’s injuries.

Reasoning No. 1--Under Civil Code article 2317, the custodian of a defective thing is strictly liable for injuries caused by the defect. A thing is defective only if it creates an unreasonable risk of harm. Thus, plaintiff has the burden of proving that the merry-go-round contained a defect that created an unreasonable risk of injury and that the defect caused the injury. The plaintiff had the burden of proving defects in the merry-go-round, and that these defects caused plaintiff-student’s injuries. There is no evidence in the record that would indicate that the height of the merry-go-round from the ground was a defect, or that any other alleged defects of the merry go round caused plaintiff-student’s fall. This court reverses the trial judge’s finding that the merry go round was defective only to the point that it was sitting too close to the ground and find that plaintiff has failed to meet her burden of proof that the merry-go-round was defective or that any defects in the merry go round caused the child’s injuries.

Issue No. 2--In an action against a school board for injuries suffered by student on a merry-go-round, during physical education class, was evidence that supervising teacher had observed that children were going too fast on merry-go-round and had told them to slow down and get off, but then abandoned situation to investigate an argument over basketball, immediate prior to injury, was sufficient to support finding that supervision was inadequate, especially in light of fact that another teacher was available, but not used, to help supervise?
Holding No. 2—Under the facts of this case, the trial court was not manifestly erroneous in finding that the supervision was inadequate; especially in light of the fact that another teacher was available but not used to help supervise the class.

Reasoning No. 2—School teachers charged with the duty of superintending children in the school must exercise reasonable supervision over them, commensurate with the age of the children and the attendant circumstances. A greater degree of care must be exercised if the student is required to use or to come in contact with an inherently dangerous object, or to engage in an activity where it is reasonably foreseeable that an accident or injury may occur. The teacher is not liable in damages unless it is shown that he or she, by exercising the degree of supervision required by the circumstances, might have prevented the act which caused the damage, and did not do so. It also is essential to recovery that there by proof of negligence in failing to provide the required supervision and proof of a causal connection between that lack of supervision and the accident (*Prier v. Horace Mann Ins. Co.*, 351 So.2d 265, 268 (La.App. 3rd Cir. 1977)).

In the present case, the evidence shows that two regular classes were combined to allow one teacher a free period. Another teacher was available and could have been present to help supervise the class. The substitute teacher saw that the young girls were going too fast on the merry-go-round and obviously feared that someone might get hurt. Instead of making sure the children heeded her warnings, she abandoned what she had already observed to be a perilous situation to deal with another situation that was not urgent or dangerous. The rapid speed of the merry go round and the substitute teacher ordering these 9-year-old children off the merry-go-round, but without making sure the children stopped and got off, was an activity where it was reasonably foreseeable that an accident or injury could occur. In these circumstances the substitute teacher failed to exercise a greater degree of care by which she might have prevented
the act which caused the injuries. Under these facts, we cannot say that the trial court was manifestly erroneous in finding that the supervision was inadequate, especially in light of the fact that another teacher was available but not used to help supervise the class.

Issue No. 3--In an action against school board following injuries to student on merry-go-round during physical education class, was the testimony of victim at trial that she had been facing inward on the merry go round, and that she broke her leg while trying to get off the merry go round while it was still in motion sufficient to support finding that child was contributorily negligent and supported reduction of damages by 50%?

Holding No. 3--The evidence is supportive of the trial judge’s decision, the trial judge was not clearly wrong by finding that plaintiff-student contributorily negligent and reducing the damages by fifty percent.

Reasoning No. 3--A determination of contributory negligence is a factual question which can only be altered on appeal by a finding that the conclusions of the trial judge were clearly wrong. Plaintiff-student admitted at trial that she had been facing inward on the merry go round and that she broke her leg when she tried to obey the instructions of the substitute teacher and turn facing outward to get off the merry go round. The principal testified that all the children were warned not to ride the merry go round facing inward and he believed that plaintiff-student was aware of these warnings.

Issue No. 4--Under the facts of this case, was the student’s injury during physical education class aggravated by lack of medical attention when injury occurred at 9:30 a.m. and she was not admitted into the hospital until 12:30 p.m., and plaintiff alleges that had student been taken to the hospital immediately her leg could have been put in a cast on the day of injury and not 5 days later?
Holding No. 4--The trial court’s finding that a lack of immediate medical attention aggravated plaintiff-student’s injuries is reversed.

Reasoning No. 4--The treating physician testified that the swelling took place within 30 to 60 minutes after the injury. It took plaintiff-student’s grandparents approximately one hour to drive from the school to the hospital. Thus even if school personnel had immediately driven plaintiff-student to the hospital after the principal was unable to reach her parents, the swelling would have still manifested itself before plaintiff-student arrived at the hospital.

Disposition: The trial judge’s finding that merry-go-round was defective was reversed. The trial judge’s finding that the Defendant-School Board was negligent for inadequate supervision was affirmed. The trial judge’s finding that plaintiff-student was contributorily negligent and reduces her damages by 50% was affirmed. The trial court’s finding that a lack of immediate medical attention aggravated plaintiff-student’s injuries is reversed.

Citation: Guyton by Guyton v. Roundy, 87 Ill.Dec. 738, 477 N.E.2d 1266 (Ill.App. 1 Dist. 1985).

Key Facts: A teacher instructed a 9-year-old elementary student to move a desk from her classroom to another classroom. While moving the desk the plaintiff-student fell, and was injured. According to the teacher’s affidavit, she stated that her own classroom had too many desks and another classroom across the hallway was in need of more desks. She asserted that the desks involved were small student desks, and that the top of the desks measured 14 inches by 22 inches. She stood in her classroom doorway so she could observe both the classroom and the students moving the desks to 20 or 30 paces across the hallway to the other classroom. She saw plaintiff fall. She saw nothing on the hallway floor to trip plaintiff, nor was he shoved or pushed anyone else. She further contended that she had in the past requested students to move similar
desks, all without incident, and that plaintiff was having no difficulty moving the desk until he tripped and fell. The student brought action against the teacher and school board to recover for injuries sustained while moving a desk from one classroom to another.

The plaintiff contended at trial that the Board of Education, through its agent, the teacher was guilty of one or more of the following acts of negligence: (a) negligently and carelessly ordered the plaintiff to carry a large desk beyond his capacity or skill to handle; (b) Negligently and carelessly failed to provide adequate supervision of the plaintiff so as not bring harm to him and other; and (c) Negligently and carelessly operated and controlled the activities of the students in a manner which would not prevent harm to plaintiff and others; (d) Negligently and carelessly failed to keep a proper lookout during the activities of her students so as not to prevent harm to plaintiff and others.

The plaintiff also alleged that the defendant was guilty of willful and wanton conduct in that they: (a) willfully and wantonly ordered plaintiff to carry a large desk outside the classroom knowing that this activity could cause him injury since the desk was too large for him to carry; (b) willfully and wantonly ordered plaintiff to engage in a dangerous activity, to wit, moving heavy furniture; (c) willfully and wantonly ordered plaintiff to perform an activity, such as moving heavy furniture, which was beyond the scope of their duty and obligation in providing an education for plaintiff.

The trial court granted defendants’ motions for summary judgment, finding, that teachers are not liable for ordinary negligence in matters within the teacher-student relationship; and, that the complaint did not allege facts demonstrating willful and wanton conduct by defendants. The Plaintiff appeals from an order of the circuit court of Cook County granting summary judgment to both defendants.

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Plaintiff asserts that the statutory immunity applies only to matters relating to the discipline and conduct of the schools and school children, and that the activity here in issue, moving desks, falls outside the protective scope. Plaintiff argues that the question of whether the teacher’s conduct amounted to willful and wanton was for a jury to decide, and that therefore the trial court erred in granting summary judgment. Plaintiff also contends that there existed Issues of material fact which should have defeated the motion for summary judgment, pointing to plaintiffs statements that he was having difficulty moving the desk.

Issue No. 1--Were the teacher and school board immune from liability for any negligent conduct with respect to asking a student to move a single student’s desk from one room to another?

Holding No. 1--The moving of a single student’s desk by a student is not beyond or totally outside the ambit of a teacher’s supervisory functions and does fall within the parameters of a supervisory activity which is connected with the school program. Under these facts defendants were immune from liability for negligent conduct. The trial court properly entered summary judgment for defendants.

Reasoning No. 1--The relevant provision of the School Code (Ill.Rev.Stat.1981, ch. 124, par. 34-84a) provides, in pertinent part,

Teacher and other certificated educational employees shall maintain discipline in the schools. . . . In all matters relating to the discipline in and conduct of the schools and school children; they stand in the relation of parents and guardians to the pupils. This relationship shall extend to all activities connected with the school program and may be exercised at any time for the safety and supervision of the pupils in the absence of their parents and guardians.

In the case of Kobylanski v. Chicago Board of Education (63 Ill.2d 165, 347 N.E.2d 705 (Ill. 1976) the Illinois Supreme Court held that this statute confers upon teachers and other certificated educational employees immunity from suits for negligence arising out of matters
relating to the discipline in and conduct of the schools and the school children. In order to impose liability against such educators, a plaintiff must prove willful and wanton conduct. In *Hadley v. Wit Unit School District 66* (123 Ill.App.3d 19, 2021, 78 Ill.Dec. 758, 462 N.E.2d 877 (Ill. 1984)), the Illinois Supreme Court stated,

> One matter is very clear; teachers are not liable for ordinary negligence in the performance of their supervisory duties. The School Code confers upon a teacher the status of a parent or guardian with regard to all activities connected with the school program. The status of in loco parentis shields a teacher from liability in both non-disciplinary and disciplinary matters.

There is no single test for determining the scope of the duties encompassed by the statute; courts have stated that teachers are immune from negligence in activities which are connected with the school program and activities which involve the teacher-student relationship in matters relating to the teacher’s personal supervision and control of the conduct or physical movement of a student.

Issue No. 2--Whether unsupported allegations that a teacher acted willfully and wantonly when ordering 9-year-old student to carry a desk from one classroom to another, state a cause of action for willful and wanton conduct so as to permit teacher to be held liable

Holding No. 2--The conduct complained of here, the teacher’s alleged failure to properly supervise plaintiff-student’s activity, did not constitute willful and wanton misconduct. The trial court did not err when it determined that plaintiff’s complaint ailed to allege facts which constituted willful and wanton conduct, and thus granted defendants’ summary judgment.

Reasoning No. 2--In a cause of action for willful and wanton conduct, the plaintiff must allege facts from which the law would raise a duty and which would show that the intentional breach of that duty resulted in injury. The mere conclusory allegation of willful and wanton conduct is not sufficient. Summary judgment will be granted when there are no Issues of material
fact and the movant is entitled to judgment as a matter of law. Illinois courts have repeatedly
held that a teacher’s failure to supervise student activities during which a student was injured
does not in itself constitute willful and wanton conduct.

Disposition: The trial court’s granting of summary judgment to defendants is affirmed.

Citation: Merrit v. Board of Education of the School District of Philadelphia, 513 A.2d

Key Facts: A mentally retarded, minor student at a high school was raped in the school
ladies room by a trespasser who followed the student to school that day and entered the building
as she exited the ladies room, dragged her back into the ladies room and committed the rape.

The student and her parents filed suit against the Board of Education and the school’s
principal. Appellant’s complaint alleged that West Philadelphia High School officials knew of
Mr. Corbin’s presence in the neighborhood and had even made attempts to prevent him from
entering into and loitering around the school prior to the rape. They contend that their failure to
properly supervise the unlocked entranceways and school hallways constituted both negligence
and willful misconduct and resulted in the rape and a series of accompanying psychological and
physical problems of Miss Merritt.

The County Court of Common Pleas granted a motion on the pleadings filed by the
defendants. The order dismissed the plaintiffs’ claims on the ground that the complaint did not
fall within any of the enumerated exceptions to the general legislative grant of immunity.

Issue: Was the school district and principal’s failure to prevent the trespasser from
entering the school and perpetrating the act negligence in the care, control and custody of the
school ground and willful misconduct.
Holding: We affirm. We believe that this section must be construed as a narrow exception to the general legislative grant of immunity.

Reasoning: This exception in immunity imposes liability only for negligence which makes government-owned property unsafe for the activities for which it is regularly used, for which it is intended to be used, or for which it may be reasonably used. Consistent with prior Pennsylvania precedent, this court found that this violent act was not a reasonably foreseeable use of school property. Also there was no pleading of intentional acts by the principal or the school district thus making willful conduct exception inapplicable.

Disposition: The trial court’s granting of a motion on the pleadings from the school district and the principal was affirmed.

Citation: Litomisky v. St. Charles High School, 482 So.2d 30 (La.App. 5 Cir. 1986).

Key Facts: Plaintiff was acting as a referee in a jamboree football game being played at a high school stadium when a man approached him from behind and punched him in the face, resulting in a broken jaw and other injuries. Plaintiff brought suit against the high school and its principal to recover for his injuries.

Plaintiff alleged that the High School was negligent in failing to properly and adequately investigate the lessors of its football stadium and allowing alcoholic beverages to be served on its premises and allowing alcoholic beverages to be served on its premises without adequate crowd control personnel, procedure, and facilities. Plaintiff alleged that defendant-principal was negligent in failing to properly investigate the background and experience of the lessors of the football stadium facility, failing to prove and or arrange for security and or crowd control personnel and failing to properly supervise and or oversee and or monitor the activities of the
lessor of the football stadium. The 40th judicial District Court, Parish of St. John the Baptist, Division A, dismissed for failure to state a cause of action.

Issue: At issue does a high school and its principal, by leasing its football stadium to a lessee, have a duty to investigate the lessees of its football field, to provide security at lessee’s event, and to oversee the ball game that was organized, promoted, and sponsored by lessee so that the high school and principal are liable for injuries sustained by a football referee, who was assaulted by a game spectator at lessee’s event.

Holding: The trial court correctly concluded that plaintiff’s allegations here fail to state a cause of action as to the high school or principal. Plaintiff has made no factual allegations to connect the alleged negligent acts of the high school and principal with the harm plaintiff suffered.

Reasoning: The trial judge is this case concluded that because the game was promoted, sponsored, organized by and in control of a lessee, the defendants’ duty did not encompass the risk that a spectator would assault a referee. Under these circumstances, the judge stated the lessor has no duty to supervise and monitor the activities of the lessee. The trial court also held that merely allowing alcoholic beverages to be served does not create cause of action against the High School and its principal The question of liability did not involve a defect in the premises.

Disposition: The judgment of the trial court dismissing plaintiff’s claim was affirmed.

Citation: Levine v. Live Oak Masonic Housing, Inc., 491 So.2d 489 (La.App. 3 Cir. 1986).

Key Facts: An apartment complex was destroyed by a fire that killed a woman and her infant child. The origin of the fire was a defective electrical cord on a window air conditioner that had been purchased at a vocational technical school. Student No. 1 and Student No. 2 were
students at the vocational technical school, enrolled in a course referred to as air-conditioning, refrigerators and home appliance repair.

It was a common, accepted practice for students to bring air conditioning units, and other appliances, to school for the purpose of being repaired, thus giving students practical experience in repair work. It was also a common practice for the students to sell these repaired air conditioners. The vocational technical school had a policy against selling appliances at the school. This policy was made known to the students. If they wanted to sell some repaired item they could take it home and sell it from there, but not from the school.

The instructor of the course gave instruction to never splice an electrical cord and both student No. 1 and No. 2 were aware of this instruction. Nonetheless, the air conditioning unit that started the apartment fire was brought to the school by Student No. 1, belonged to him, was worked on by him, and Student No. 2, and sold by Student No. 1 at the vocational school and it is in fact had a defective spliced electric cord. Air conditioner was installed into the apartment by Student No. 1.

As a result of the fire the deceased woman’s husband and daughter filed suit against the owner of the apartments, its insurance, and the state through the vocational technical school. The apartment owners and its insurance company brought suit against the vocational technical school, claiming that is had a subrogated property damage claim. In plaintiffs trial the vocational school was found to be without liability and were dismissed. Plaintiffs appeal.

Issue: Whether under the provisions of Civil Code 2320, the vocational technical school is liable to the apartment complex and its insurer for the spliced electrical cord which was attached to the air conditioning unit sold and installed by one of its student when student
deliberately violated warning against have spliced cord on appliance, and school policy by
selling appliance on campus, especially where both were done without instructor’s knowledge.

Holding: There was no clear error in the trial court’s determination that there was no
liability on the part of the vocational technical school.

Reasoning: Article 2320 of the Louisiana Civil Code provides that teachers and artisans
are answerable for the damage caused by their scholars or apprentices while under their
superintendence. Responsibility only attaches when the master or employers, teachers, and
artisans, might have prevented the act which caused the damage and have not done it. In order
for an instructor, and hence the school, to be liable under the provisions of Article 2320 it must
be established that the instructor, with the exercise of the degree of supervision required under a
given set of circumstances, might have prevented the act which caused the damage; that he failed
to do so, and that there was a causal connection between the lack of supervision and the accident.
It was firmly established that the instructor in this case had repeatedly instructed his students to
never splice the electrical cord on an appliance, nor to allow one to remain on an appliance.

At the time of the repair of the air conditioner Students No. 1 and No. 2 had been students
at the Vocational Technical School for several months. They were both mature young men. They
should have been able to follow the instructions given them by the instructor without direct
supervision. There is no evidence in the record to support a finding of inadequate supervision on
the part of the instructor at the school.

The instructor’s repeated instructions to the students were explicit, “do not use spliced
electrical cords on appliances”. The instructor or the vocational technical school cannot be held
responsible when a student deliberately violates a warning against having a spliced cord on an
appliance on the campus, both of which were done without the instructor’s knowledge. The unit
was taken off campus during a period of time, the lunch hour, when the students were not
required to be on campus. Clearly, the instructor was free of negligence. This court finds no clear
error in the trial courts determination that there is no liability on the part of the vocational
technical school resulting from the instructor’s conduct.

Disposition: The trial court’s finding of no liability on the part of the vocational technical
school was affirmed.

Citation: Torsiello v. Oakland Unified School Dist., 242 Cal.Rptr. 747 (Cal.App. 1 Dist.
1987).

Key Facts: The appellant in this case was a student, age 10, at Chalbot Elementary. After
school he walked to Ms. Attebary to inform her that he would not be attending after school care.
He stated he was going to the movies with some friends. Approximately, 30 to 45 minutes later,
Ms. Attebary observed the boy with a group of others standing near a bus stop. The student’s
teacher, Mr. Greene, upon leaving school between 4:30 and 5:30 encountered the group of boys
near the bus stop. His curiosity being raised Mr. Greene stopped and inquired as to what the boys
were doing and if they needed assistance. During his stop one of the boys ask Mr. Greene if he
wanted to buy candy to which he said “No” and then proceeded to leave. The appellant had
stepped onto the rear of Mr. Greene’s mini-motor van and rode for a short distance falling off
and injuring his head. This was done without knowledge by Mr. Greene as he had left after
determining the boys were not in need of help.

Issue: Whether the teacher is immune from claim of liability in regards to duty of care
while students are going to and from school.

Holdings: The court of appeal held that the teacher did not owe a duty of care to the
student nor that liability was on the teacher or school. Reasons: Respondent superior theory
applies to schools or systems in vicarious liability for acts and omissions committed by employees during the scope of duties in which personal liability would apply. (Gov. Code, § 815.2, subd. (a)). In any claim of negligence leading to liability the cause of action will be determined by the scope of duties. The claim stated that Mr. Greene was acting under Education Code sections 44807 and 44808 at all times, but the court notes that is the threshold determination as a question of law. In referencing Kerwin v. County of San Mateo, the court states that §44807 imposes on teachers the duty to hold students accountable for their actions to and from school. In relation to §44808 the court determined that Mr. Greene’s curiosity and actions did not rise to a “specific assumption of liability.” The court did agree that immunity provided for 44808 was not appropriate; however the need for it was mute in light of the facts of this case. Finally, in answering the immunity of the school system the court notes the holding from Hoyem v. Manhattan Beach City School Dist., where when a system fails to provide reasonable care immunity is removed. However, Hoyem does not answer the question before the court as to the “reasonable of care” and duty relationship.

Dispositions: The court found that Mr. Greene did not owe the appellant a duty of care as provided under sections 44807 and 44808.

Citation: Barbin on Behalf of Barbin v. State, 506 So.2d 888 (La.App. 1 Cir. 1987).

Key Facts: Defendant-school was the state school for the deaf, and it maintained a saw that had a malfunctioning safety guard. Use of the saw with the malfunctioning safety guard in placed exposed the operator to the potential danger that the safety guard might come into contact with the blade and forcefully push the item being sawed back at the operator. Defendant-teacher was not authorized to procure a new safety guard and he was unable to repair the defective one. He orally notified the appropriate school authority that the safety guard malfunctioned. No action
was taken by the school authorities to repair or procure a new safety guard nor did the school authorities act in any manner to prevent use of the saw without the safety guard by defendant-teacher or any of his students.

Plaintiff-student was a 12-year-old, deaf student. School rules prohibited use of the saw by seventh and eighth graders and prior to plaintiff-student’s accident the school officials were unaware that seventh and eighth graders used the saw. Use of the saw without the safety guard in place was in contravention of the safety procedures recommended by the manufacturer. It was also a violation of the posted shop rules. At the time of the accident, plaintiff-student received permission from defendant-teacher to operate the saw. Both plaintiff-student and defendant-teacher were aware that the saw was to be operated without the safety guard in place. The defendant-teacher was positioned immediately in front of the saw facing plaintiff-student in order to supervise operation of the saw. Another student approached and tapped defendant teacher on the shoulder, and he turned his head. This movement distracted plaintiff-student, who instinctively looked up and while looking up cut his finger on the blade.

A lawsuit was filed by plaintiff-student and his father. The defendants included the woodworking instructor, the school, the state department of education, and the state board of elementary and secondary education. The state instituted a third party action against the manufacturer of the saw, alleging that the blade guard or safety guard were poorly designed. Manufacturer filed a motion for summary judgment which was granted by the trial court and affirmed by the Court of Appeals First Circuit. The state instituted a third party action against Horace Mann Insurance Company, defendant-teacher’s insurer, for indemnity or contribution should the state be held liable to plaintiff. Insurer instituted a third party action against the state seeking indemnity or contribution under statute should they be held liable to plaintiff-student.
After a trial on the merits judgment was rendered in favor of plaintiff-student’s father personally in the sum of $5,752.10 and on behalf of student against defendant-teacher and the state in the sum of $185,000. The state’s third party demand for indemnity against insurer was granted up to the policy limit of $500,000. From this judgment, insurer and defendant-teacher appeal alleging several assignments of error.

Issue No. 1--Was a woodworking class instructor negligent in allowing the use of a table-saw by a 12-year-old student without a safety guard in place, when the instructor was aware of the potential danger of using saw without guard?

Holding No. 1--The trial court correctly determined that the defendant-teacher was negligent.

Reasoning No. 1--A teacher has the duty to conduct his classes so as not to expose his students to an unreasonable risk of injury. The use of the saw by a 12-year-old student without the safety guard in place is inherently dangerous and created an unreasonable risk of injury to the student. The type of injury which plaintiff-student suffered is within the scope of the risk which the duty is designed to prevent. Defendant-teacher was aware of the potential dangers of using the saw without the guard and allowed plaintiff-student to use it anyway.

Issue No. 2--Did the trial court err in its holding that a 12-year-old student was not contributorily negligent in using table saw without safety guard?

Holding No. 2--The record supports the trial court’s determination that the 12-year-old student was not contributorily negligent for his injuries.

Reasoning No. 2--The actions of a 12-year-old child must be judged by his maturity and capacity to evaluate circumstances in each particular case, and he must exercise only the care expected of his age intelligence and experience. Plaintiff-student was 12 years old at the time of
the accident. He was aware that the appropriate method to operate the saw was with the safety guard in place, but defendant-teacher was his instructor. Plaintiff-student was working on a class project. The saw was regularly used in the classroom without the safety guard, with the permission of and under the supervision of defendant-teacher. A 12-year-old, no matter how precocious, can hardly be expected to demand of his instructor that the saw be used only with the guard in place. Additionally, it is uncontested that plaintiff-student proceeded to use the saw in an appropriate manner. His accident was caused by momentary inattention when he glanced up at this instructor after having observed with his peripheral vision a sudden movement of the instructor’s heard.

Issue No. 3--Is the State, as owner of a table saw without a safety guard strictly liable when the operation of saw without a safety guard created unreasonable risk of injury to use?

Holding No. 3--The State is liable for maintaining custody of a saw defective in the manner used because it created an unreasonable risk of injury to the use.

Reasoning No. 3--For purposes of strict liability the owner or custodian of a thing (the state) is strictly liable if the plaintiff proves that under the circumstances the thing presented an unreasonable risk of injury which resulted in the damage. The testimony is consistent that operation of this saw without the guard created an unreasonable risk of injury to the user. The distinction between analyzing liability based on negligence and liability based on maintaining custody of a defective thing is that in the latter instance it is not necessary to prove knowledge of the dangerous condition. Consequently, the state is liable for maintaining custody of a saw defective in the manner used because it created an unreasonable risk of injury to the user.
Issue No. 4--For comparative negligence purposes, is the state’s fault based on strict liability comparable to the fault of defendant-teacher based on negligence, and if so, the percentages attributable to each?

Holding No. 4--Comparative fault principles apply to strict liability. Thus, in keeping with the legislative mandate of comparative fault and comparative contribution the fault of a strictly liable defendant should be compared with the fault of a negligent defendant, regardless of the fault, if any of plaintiff. The court apportioned 80% of the fault to defendant-teacher and 20% to the state.

Reasoning No. 4--The state is strictly liable as the custodian of he saw which was stored and used in a classroom by students. Defendant-teacher was aware of the dangerous propensity of the saw when used without the safety guard, that its operation was in violation of the safety rules promulgated for his department; and that the manufacturer warned against using the saw in this manner. Although the state had not fulfilled its duty to the students by repairing the safety guard of purchasing a new one defendant-teacher knowingly authorized his students to use the saw in this dangerous manner.

Disposition: The trial court correctly determined that defendant-teacher was negligent. The trial court’s finding that plaintiff-student was not contributorily negligent was affirmed. The State is liable for maintaining custody of a saw defective in the manner used because it created an unreasonable risk of injury to the use. Comparative fault principles apply to strict liability. Thus, in keeping with the legislative mandate of comparative fault and comparative contribution the fault of a strictly liable defendant should be compared with the fault of a negligent defendant, regardless of the fault, if any of plaintiff. The court apportioned 80% of the fault to defendant-teacher and 20% to the state.

Key Facts: Student was injured in a gymnasium when he fell against an unprotected concrete riser which was located in the front row of bleachers and was in close proximity to gym participants. The parents of the student brought action against school district based on negligence.

Issue: Do provisions in the School Code vesting teachers with parental status in discipline and conduct of schools and limiting liability of teachers absent willful and wanton misconduct apply in suit by parents of student injured in fall against concrete riser during supervised school activity in gymnasium; when the theory in the complaint was on landowners’ premises liability, which involved an entirely different function than matters involved in school code section?

Holding: The theory in the complaint was one of landowners’ premises liability, which involved an entirely different function than matters involved in school code section and it was not inconsistent with the intended purpose of §24-24 of the School Code to hold school districts to the duty of ordinary care in a separate function.

Reasoning: The factual allegations in plaintiff’s complaint fall outside the scope of §24-24 of the School Code. The counts of plaintiff’s complaint are based on the theory of landowners’ premises liability which quite simply involves an entirely different function than the matters involved in the provisions of §24-24 of the School Code.

Disposition: The order of the trial court dismissing the counts in plaintiff’s complaint is reversed, and this cause is remanded to that court for further proceedings not inconsistent with the views expressed herein.
Citation: *Albers v. Community Consolidated No. 204 School*, 108 Ill.Dec. 675, 508 N.E.2d 1252 (Ill.App.5 Dist. 1987).

Key Facts: The plaintiff was a fourth grader who was with his class in the gymnasium practicing for the school Christmas program. After the plaintiff was dismissed from practice, his teacher told her students to get a drink, go the restroom, and then go sit down in the classroom. The teacher stood in an area between her classroom and the restroom so that she could best watch the children in both locations. While standing there the teacher was informed by another student that the plaintiff was injured. A period of 5 to 10 minutes transpired between the dismissal of the practice and the time of the injury. Plaintiff stated that he was hit by another student in an unprovoked attack.

Issue: Did the evidence support the jury’s finding that neither the fourth grade teacher nor school was guilty of willful and wanton misconduct in connection with eye injury sustained by fourth grader during 5 to 10 minutes when teacher was outside classroom attempting to watch, as best she could, both children in classroom itself and those getting water and using bathrooms; teacher was merely following her normal course of conduct and evidence?

Holding: While plaintiff’s injury is unfortunate, we too see no evidence of willful and wanton misconduct on the part of the defendants in this instance.

Reasoning: Absent proof of willful and wanton misconduct, teachers, school officials and school districts are immune from tort liability for personal injuries sustained by students during school activities. Willful and wanton misconduct is that act intentionally done or that act taken, under the circumstances known, in reckless or conscious disregard of probable injurious consequences. To impose liability upon defendants plaintiff must show, therefore, that when
defendants acted or failed to act it was with knowledge that such conduct posed a high probability of serious physical harm to others. Plaintiff did not meet this burden.

The teacher could not be in both places at once. The teacher testified that she had often left the class unattended to pick up supplies or to take a sick child to the office or to do other such necessary duties and previously had found no fighting or problems in the classroom upon returning. She was following her normal course of conduct and no one else was available to supervise the class while she was out.

A teacher cannot supervise each and every child at all times while in school or while engaged in a school-related activity. The general potential for danger with groups of children is not sufficient standing alone to sustain a claim for willful and wanton misconduct. Assuming that plaintiff was injured as he testified, schools and teachers cannot be charged with the duty of anticipating and guarding against the willful and wanton misconduct by other children who suddenly and apparently without provocation attack other students.

Disposition: The Appellate Court of Illinois for the 5th District affirmed the judgment of the circuit court of Perry County in favor of the defendants.


Key Facts: High School’s senior class decided to build a float for the school’s homecoming parade, based on the theme of Snoopy and the Red Baron. A dog house and biplane were constructed, and in an attempt to make it appear that the dog house was flying through the air, it was placed on top of a metal saucer-shaped sled so that it could roll back and forth. Plaintiff-student was chosen to wear a Snoopy costume and sit inside the dog house. The float was built at the home of the parents of another student. It was built on a trailer and was pulled by
a truck. The floats were part of a competition between the student classes, and the policy was
that only the students were to participate in their design and construction.

On the day of the parade, it was windy and slightly stormy. Plaintiff-student rode on the
float, in the dog house, from the house to the parade route. As the truck turned a corner the dog
house was blown off. Plaintiff student was still in the dog house, fell to the ground and died from
injuries to her head that she sustained during the fall. Plaintiff-student’s parents, on student’s
behalf and on their own behalf, filed suit against several defendants including defendant-school
district and defendant-principal. A motion for summary judgment was filed by defendants on the
basis of governmental immunity. The trial court granted summary disposition to the school
district and school principal. Plaintiffs appeal the judgment of the trial court.

Issue No. 1--To determine immunity from liability for the death of a student; does a
school district’s act of sponsoring a high school homecoming parade in which the student classes
receive little supervision constitute a non-governmental function?

Holding No. 1--The trial courts grant of summary disposition on this issue was proper.
The school district was impliedly authorized to sponsor a homecoming program which included
a homecoming parade. It follows that the school district’s decision regarding the type of
supervision it would exercise over the float competition was made within the exercise of a
governmental function. Accordingly, the school district is immune from liability for all
negligence claims arising out of the exercise of that function.

Reasoning No. 1--Under the rules set out in Ross v. Consumers Power Company, 420
Mich. 567, 363 N.W.2d 641 (Mich. 1984), governmental agencies, such as the defendant-school
district are immune from tort liability when they are engaged in the exercise or discharge of a
governmental function. A governmental function is any activity which is expressly or impliedly
mandated or authorized by constitution, statute, or other law. Although nothing in the statutes that constitutes the Michigan School Code expressly authorizes a school district to conduct a homecoming program or parade, such activity in impliedly authorized.

Provisions of the School Code stated that the board of a school district shall establish and administer the grades, school, and departments it deems necessary or desirable for the maintenance and improvement of the schools. The School Code also permits the board of a school district to join an organization, associated, or league which has as its object the promotion and regulation of sport and athletic, oratorical, musical, dramatic, creative arts, or other contests between students. The sponsorship of a homecoming program which included a homecoming parade was an activity deemed desirable by defendant school district for the maintenance and improvement of the schools. Moreover, the establishment of a competition between student classes constituted a contest, the object of which apparently was to promote the creative arts and to foster school spirit.

Since the school district was impliedly authorized to sponsor a homecoming program which included a homecoming parade, it follows that the school district’s decision regarding the type of supervision it would exercise over the float competition was made within the exercise of a governmental function. Accordingly, the school district is immune from liability for all negligence claims arising out of the exercise of that function.

Issue No. 2--Is a high school principal, as the highest executive official of school, entitled to absolute immunity from tort liability?

Holding No. 2--High school principal is not entitled to absolute immunity from tort liability on the theory that he is the highest executive official of school.
Reasoning No. 2--As stated in the case, *Ross v. Consumers Power Company*, 420 Mich. 567, 592, 363 N.W.2d 641 (Mich. 1984), judges, legislators, and the highest executive officials of all levels of government are absolutely immune from all tort liability whenever they are acting within their respective judicial, legislative, and executive authority. Although a principal may be the highest ranking executive official in his or her school, a high school principal is not the highest executive official in the level of government in which he or she is employed. A high school principal does not enjoy broad-based jurisdiction or wield extensive authority similar to that of a judge, a legislator, or even an official such as the superintendent of a school system. If the defendant-principal is immune from tort liability in connection with the death of plaintiff-student, he must obtain that protection as a lower-level official.

Issue No. 3--Is the decision of a principal in establishing a program of little or no supervision over the construction of homecoming parade floats, and his appointment of supervisor of float project, a discretionary act or ministerial act, in order to determine principal’s liability for negligence in the death of a student who fell off float en route to parade.

Holding No. 3--High school principal’s decision to establish program of little or no supervision over the construction of floats and his appointment of supervisor of float project were both discretionary acts and principal is immune from liability for negligence in death of student who fell off float en route to parade.

Reasoning No. 3--Lower-level officials, employees, and agents are immune from tort liability only when they are (1) acting during the course of employment and acting within the scope of their authority; (2) acting in good faith; and (3) performing discretionary, as opposed to ministerial acts (*Ross v. Consumers Power Company*, 420 Mich. 567, 633-4, 363 N.W.2d 641 (Mich. 1984)). There was no dispute that defendant-principal was acting in the course of his
employment, within the scope of his authority, or in good faith. The dispute centers on whether the defendant-principal’s actions were discretionary. The distinction between discretionary act for which immunity is available and ministerial acts for which liability exists is that the former involves significant decision-making, while the latter involves the execution of a decision and might entail some minor decision-making (Ross v. Consumers Power Company, 420 Mich. 567, 635, 363 N.W.2d 641 (Mich. 1984)).

The defendant-principal established a program which provided little or no supervision over the construction of the homecoming floats by student classes, and this decision apparently reflected his assessment regarding the best method of realizing the fulfillment of the purposes underlying the float-making portion of the homecoming program. It involved decision-making and not the mere execution of a decision. Defendant-principal’s appointment of the supervisor of the float project in the permissible hiring of personnel and constitutes a discretionary act. The defendant-teacher is a lower-level governmental employee, and is immune from all negligence claims.

Disposition: The trial courts grant of summary disposition for the defendant-school district on plaintiff’s negligence claims was affirmed. Defendant-principal was not entitled to defense of absolute immunity from tort liability. The trial court’s grant of summary disposition to the defendant-principal for plaintiff’s negligence claim was affirmed.

Citation: Hopwood v. Elmwood Community High School District 322, 121 Ill.Dec. 441, 525 N.E.2d 247 (Ill.App.3Dist. 1988).

Key Facts: A group of girls did not want to participate in a game during physical education class. The physical education teacher threatened the students with discipline if they did not participate in the activity. Plaintiff was part of this group and participated in the game.
Plaintiff never relayed to her physical education teacher that her prior knee injury was bothering her or preventing her from participating in the activity. The student’s knee did not hurt her prior to her injury. The student never complied with the physical education teacher’s request for a doctor’s not explaining what the student could and could not do due to the prior knee injury.

The plaintiff claimed that she informed her physical education teacher of her previous injury in addition to bringing a doctor’s excuse from her doctor a year earlier that was given to the teacher’s predecessor. The physical education teacher and the principal claimed that they did not receive the doctor’s excuse a year prior.

The student’s father sought recovery against the physical education teacher and the school district for medical bills under the Family Expense Act. The plaintiffs allege that that the physical education teacher acted recklessly in disregarding the student’s safety by requiring her to participate in physical education while aware of the student’s physical limitations. The plaintiffs also allege that the school district was administratively negligent due to certain administrative acts and policies. Specifically the plaintiffs allege that certain non-teaching personnel failed to properly forward the doctor’s excuse that the student obtained and submitted.

The trial court granted summary judgment to the physical education teacher and dismissed the complaint against the school district. The plaintiffs appealed.

Issue No. 1--Whether the administrative acts and record keeping function performed by administrative personnel are protected by immunity conferred upon school personnel from claims of ordinary negligence.

Holding No. 1--The Court held that the personnel and the tasks they perform are covered by the applicable immunity for ordinary negligence.
Issue No. 2--Whether a physical education instructor’s conduct in attempting to control a group of complaining students, and to see that they participated in prescribed physical education activity, was not willful and wanton misconduct as required to avoid immunity from liability for injury sustained by student in physical education class.

Holding No. 2--The physical education teacher’s conduct in attempting to control a group of complaining teenage girls, and to see to it that they participated in prescribed physical activity, was not willful and wanton misconduct as a matter of law.

Reasoning No. 1--The principal and superintendent are responsible for the administration of the school. Principals and superintendents are certified personnel under §24-24 of the Code and their action should be deemed immune from suit. Since they are immune from suit their immediate inferiors should be likewise immune under the same policy.

Reasoning No. 2--The physical education teacher did not recklessly fail to discover the danger of the student’s knee condition, nor did she have knowledge of any impending danger to the student. The student participated in the activity without communicating to the teacher that her knee bothered her. The student played the game earlier and did not think that it would endanger her knee. The student never brought the teacher any notes or excuses from the student’s physician. The student never relayed to the teacher that the activity caused her pain.

Disposition: The appellate court upheld the lower courts granting of summary judgment to the physical education teacher for willful and wanton misconduct. The Appellate court also upheld the dismissal with prejudice the claims against the school district for administrative negligence.

Citation: Eccleston v. Third Judicial District Court, 783 P.2d 363 (Mont. 1989).
Key Facts: Plaintiff fell down the alley stairs leading down to the gymnasium on a high school campus. The gym was owned by the defendant-school district. Plaintiff filed a complaint against the School District and the Districts Chairman of the board of trustees. The complaint alleged that defendants were negligent in failing to properly light and remove ice and snow from the stairway.

Defendants pled the affirmative defense of immunity from plaintiff’s claims pursuant to §2-9-111 MCA. Plaintiff’s then moved for leave of court to amend their complaint to name the school janitors and the school principal to the suit. The original two defendants filed a motion for summary judgment based on their immunity defense. The trial court dismissed the chairman but not the School District. Later, all remaining defendants moved to dismiss based on immunity and statute of limitations claims. The trial court granted the motion as to the school district but not the individual employees. The remaining defendants filed an application for writ of supervisory control. The individual employees seek relief via supervisory control from the District Court’s order granting plaintiffs leave to belatedly amend their complaint to name them as defendant in the action below.

Issue: Whether sections 2-9-111(2) and (3), MCA, grants immunity from tort liability to a school district and its employees for conduct by the latter admittedly within the course and scope of their employment and not involving the use of a motor vehicle, aircraft, or other means of transportation?

Holding: The recent case law interpreting §2-9-111 M.C.A. clearly renders both the school district and its individual employees in this case immune from suit.

Reasoning: Section 2-9-111 states that (2) a governmental entity is immune from suit for an act or omission of its legislative body or a member, officer, or agent thereof; (3) a member,
officer, or agent of a legislative body is immune from suit for damages arising from the lawful
discharge of an official duty associated with the introduction or consideration of legislation or
action by the legislative body; and (4) the immunity provided for in this section does not extend
to any tort committed by the use of a motor vehicle, aircraft, or other means of transportation.

While the statute is entitled Immunity from suit for legislative acts and omissions, the plain
meaning of the statute’s actual language is much broader in that action by the legislative body
need not be legislative in nature to afford immunity (Bieber v. Broadwater County, 759 P.2d
145, 147, 45 St.Rep. 1218 (Mont.1988); Peterson v. Great Falls School District No. 1 and A, 773
P.2d 316, 318, 46 St.Rep. 880 (Mont.1989)).

Clearly the individual employees in this case are agents of the school board. An agent
includes one who performs only manual labor as a servant. Under §20-3-324 MCA, the board of
trustees for each school district had the power to employ and dismiss custodians and
maintenance personnel. Thus, the school board is the governing body--the legislative body--of
the governmental entity, the school district. The janitors cannot be said to be agents of either the
board or district to the exclusion of the other. Rather, they are agents of the district as manifested
by their agency with the district’s governing school board. It simply does not make sense to say
that the defendants are agents of the district but not the board responsible for hiring them and
governing the district and the district employees. Furthermore, the phrase in subsection (3) of 2-
9-111, MCA, with the introduction and consideration of legislation or action by the legislative
body to be disjunctive. Thus subsection (3) grants immunity to member, officer, or agents of a
legislative body for the lawful discharge of an official duty associated with the introduction or
consideration of legislation or action by the legislative body.
Here, the omission by relators arose from the lawful discharge of an official duty associated with alleged omissions by the legislative body. A failure to take legislative action, a legislative omission, will give rise to the immunity afforded by the statute.

Any alleged failure by the school district to provide sufficient funding for maintenance of the stairs and employment of additional custodians are omissions by its legislative body, the school board. The omissions of the relators occurred during the lawful discharge of duties associated with these omissions by the board. Thus, the defendants are immune under subsection (3) of the statute.

Subsection (2) of the statute clearly affords immunity to a governmental entity for an act or omission of its legislative body or a member, officer, or agent thereof. In the case at bar, the act complained of was an omission by agents of the school board, failure by the janitors to remove snow and failure by the principal to supervise the janitors. Under the plain language of subsection (2) the school district is clearly immune for an omission by an agent of the school board. The District Court did not err in granting summary judgment to the school district on its immunity defense.

Disposition: The statute grants immunity to both the school district and the individual employees in this case. The school district already being dismissed on summary judgment, the District Court is instructed to dismiss the individual employees based on the immunity granted by 2-9-111.

Citation: *Bowers v. Du Page County Regional Board of School Trustees District No. 4*, 131 Ill.Dec. 893, 539 N.E.2d 246 (Ill.App. 2 Dist. 1989).

Key Facts: Plaintiff student was injured when she slipped and fell from a rope ladder she was required to climb during gym class. Plaintiff-student’s mother filed suit on her behalf and on
issue no. 1--does a complaint which alleged that school district failed to provide safe and adequate matting underneath rope ladder which student was climbing and failed to provide adequate equipment for the student to use during physical education class allege negligent supplying of equipment by the board of education which is actionable?

holding no. 1--the complaint sufficiently alleges the negligent supplying of equipment by the board of education. consequently, the board of education cannot claim immunity from the school code as the count relates to the supplying of equipment.

reasoning no. 1--in Gerrity v. Beatty (71 Ill.2d 47, 15 Ill.Dec. 639, 373 N.E.2d 1323 (Ill. 1978)), the Illinois supreme court held that a school board was subject to liability for negligence arising out of the furnishing of equipment to student. the court noted that the cases which held teachers and school districts immune from suits for ordinary negligence were each concerned with a direct teacher-student relationship involving the exercise of a teacher’s personal supervision over the conduct or physical movement of a student. If the teacher in charge of plaintiff-student’s class set up inadequate mats under the rope ladder even though adequate mats were made available by the Board, the cause of student’s injury would be due to the supervisory function of the teacher. however, if the Board of Education failed to furnish adequate mats to be
used with the rope ladder, the cause of plaintiff’s injury would be due to the equipment-furnishing function of the Board, and liability could be imposed, if such conduct were negligent.

Issue No. 2--For purposes of municipal immunity under the Tort Immunity Act for matters relating to determination of policy and exercise of discretion, is the provision of equipment for physical education classes a discretionary act as to which the school board enjoys immunity under the Tort Immunity Act.

Holding No. 2--Immunity is available to the Board of Education under the Tort Immunity Act. Consequently, count was properly dismissed because it did not allege facts which demonstrate willful and wanton conduct.

Reasoning No. 2--Section 2-109 of the Tort Immunity Act provides that a local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable. Section 2-201 of the Tort Immunity Act provides that except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretions even though abused. Discretionary acts are those which are unique to the particular public office and not merely ministerial in nature. Ministerial acts on the other hand, are those which are performed on a given state of facts in a prescribed manner, in obedience to the mandate of legal authority.

Section 10-20.8 of the School Code provides that the Board of Education has the duty to direct what branches of study shall be taught and what textbooks and what apparatus shall be used. While the School Code provides that it is the duty of the Board to direct what apparatus to be used, it does not direct that the Board is to use or supply particular equipment. Therefore the provision of equipment is a discretionary act under §2-201 of the Tort Immunity Act. In
accordance with the foregoing analysis, immunity is available to the Board of Education under the Tort Immunity Act.

Issue No. 3--Does a complaint which alleges that the board of education knowingly and intentionally, or with reckless disregard, provided inadequate supervision, unsafe and inadequate matting under the rope ladder which student was climbing, inadequate equipment and inadequate instruction and safety precautions state a cause of action against school for willful and wanton misconduct.

Holding No. 3--The complaint alleged that the actions which caused plaintiff-student’s injuries were done intentionally or with reckless disregard. Such allegations are sufficient to state a claim for willful and wanton misconduct. The willful and wanton claim against the Board of Education should not have been dismissed.

Reasoning No. 3--In order to be willful and wanton, an act must be done intentionally or committed under circumstances exhibiting a reckless disregard for the safety of others. To sufficiently plead willful and wanton misconduct, a plaintiff must allege facts demonstrating the existence of a duty owed by the defendant to the plaintiff, a breach of that duty, and an injury proximately resulting from the breach . . . a plaintiff must allege facts that are sufficient to bring his claim within the scope of the legally recognized cause of action (Tijerina v. Evans, 150 Ill.App.3d 288, 291, 103 Ill.Dec. 678, 501 N.E.2d 995 (Ill.App.2Dist. 1986)). The same actions may be done negligently or with willful and wanton disregard. Thus, allegations for willful and wanton misconduct will not fail simply because they mirror allegations for negligence and merely change the state of mind.

In the instant case, it was alleged that the Board of Education maintained a rope ladder which was 20 to 25 feet high; plaintiff-student was required to climb the rope ladder for gym
class by an employee of the Board; and the Board knowingly and intentionally or with reckless
disregard provided inadequate supervision, provided unsafe and inadequate matting under the
rope ladder, provided inadequate equipment, failed to instruct students in the proper manner to
perform required tasks such as rope ladder climbing, and failed to ensure other students did not
hinder or endanger plaintiff-student while she was climbing the rope ladder. Thus, the complaint
alleged that the actions which caused plaintiff-student’s injuries were done intentionally or with
reckless disregard. This court found such allegations to be sufficient to state a claim for willful
and wanton misconduct.

Disposition: The trial court’s judgment dismissing the Board of Education on plaintiff’s
negligence claim is affirmed. The trial court’s judgment dismissing the willful and wanton claim
is reversed and cause remanded back to trial court.

Citation: Templar v. Decatur Public School District #61, 131 Ill.Dec. 7, 538 N.E.2d 195
(Ill.App. 4 Dist. 1989).

Key Facts: Plaintiff-student was a 9-year-old girl who with her sisters rode a bus to
school. A boy who went to the school next to plaintiff-student’s began using the bus stop near
the plaintiff-student and began throwing rocks, hitting her, hair pulling, and calling the plaintiff-
student names. These same acts were committed by the boy at the bus discharge area.

Plaintiff-student’s father complained to several school officials by telephone concerning
the harassment of his daughter. The plaintiff-student’s father informed the principals of both his
daughter’s school and the boy’s school, and the employee in charge of the bus pickup points. The
father repeated the calls when the harassment did not stop. Eventually the boy was called into his
principal’s office to discuss the problem. Also his bus stop was changed so that he would not
wait for the bus with plaintiff-student. Additionally, the bus driver was instructed to keep the boy off the bus if he was not at his proper stop.

As plaintiff-student waited in front of her school for the doors to open, the boy hit her in the right eye with his fist with sufficient force that it knocked her to the ground. The boy stated that he hit the plaintiff-student because she caused the change in his bus pickup point. As a result of her injury, plaintiff-student lost partial vision in her right eye and this condition was permanent and could have been caused by the hit from the boy.

Plaintiff filed suit for willful and wanton conduct on behalf of the school district. At the close of plaintiff’s evidence defendant presented a motion for a directed verdict, claiming plaintiff failed to present any facts which could show the defendant school district was guilty of willful and wanton misconduct. The circuit court granted defendant’s motion for directed verdict on the question of willful and wanton misconduct at the close of plaintiff’s case.

Issue: Does a school district’s knowledge of prior misconduct by a student make it liable for willful and wanton conduct for failing to supervise student, when student assaults and injures another student, after injured student’s father complained to district regarding misconduct and district made an effort, though unsuccessful, to alleviate problem.

Holding: No, school district’s prior knowledge of offending student’s misconduct did not raise plaintiff’s failure to supervise claim to willful and wanton conduct when school made an effort to alleviate problem. Plaintiff did not present evidence that school district had actual or constructive knowledge of a high probability of serious physical harm occurring. The trial court’s finding that there was no willful and wanton misconduct was correct.

Reasoning: There is no evidence of willful and wanton misconduct by defendant which could support a verdict for plaintiff. In Holsapple v. Casey Community Unit School District C-1
(157 Ill.App.3d 391, 109 Ill.Dec 631, 510 N.E.2d 499 (Ill.App. 4 Dist. 1987)), this court concluded that allegations of a failure to supervise student activities are not sufficient to state a cause of action for willful and wanton misconduct. A showing of actual or constructive notice of a high probability of serious harm occurring is necessary to state a cause of action for willful and wanton misconduct. The school district did not ignore the complaints. From the time of the father’s first telephone call, to the school district, the district did take action. The boy was called into the office concerning the problem and his pickup point was changed in an effort to resolve the difficulty.

Disposition: The circuit court’s order granting defendant’s direct verdict is affirmed.

Citation: Atkinson v. DeBraber, 446 N.w.2d 637 (Mich.App. 1989).

Key Facts: Plaintiff-student was seated around a table with three other students around a table in defendant-teacher’s classroom. While another student had gotten up from the table, the plaintiff-student hid her purse. The defendant-teacher came over to the table and told the plaintiff-student to leave the student’s purse alone. Shortly thereafter, the defendant-teacher turned around and saw plaintiff-student reaching across the table into the same student’s purse once again. Defendant-teacher grabbed the chair in which the plaintiff-student was sitting and pulled it back. The defendant-teacher slid the chair back to keep the plaintiff-student from reaching into the purse. As the defendant-teacher pulled the chair back, the seat pivoted from the rest of the chair, and the plaintiff-student fell to the floor. After the incident, it was discovered that three of the four fasteners holding the chair seat to the frame were missing. Neither the defendant teacher nor the plaintiff-student knew the chair was broken before the incident occurred.
The plaintiff-students father, individually and as next friend of his son, filed a complaint alleging negligence on the part of both the defendant-teacher and the school district. The trial court granted the school district’s motion for summary disposition on the basis of governmental immunity. A jury trial was held and at the close of proofs, the court gave instructions to the jury, part of which related to the gross abuse standard regarding the use of physical force by a teacher against a student. After the instructions were given, plaintiff’s attorney placed on the record his objection to the trial court’s refusal to instruct the jury on negligence, and to the court’s instructions regarding the aforementioned standard. The jury returned verdict of no cause of action. Plaintiff's appealed, specifically asserting that the trial court committed error requiring reversal when it refused to give the standard jury instructions on negligence.

The trial court’s jury charge stated: “we have a law in the state which reads in part as follows: A teacher or superintendent shall not be liable in a civil action for the use of physical force on the person of a pupil for the purposes prescribed in this section, except in case of gross abuse and disregard for the health and safety of the pupil. The term gross abuse and disregard for the health and safety of the pupil means conduct on the part of the teacher that is intentional, willful or in reckless disregard for the health and safety of the pupil. Whether the defendant teacher’s conduct is viewed as gross abuse and in disregard for the health and safety of the pupil is a question of fact for you, the jury to decide.

Issue No. 1--Was an issue of fact as to whether teacher was disciplining student raised in suit against teacher by the student’s subjective belief that teacher intended to harm him because they did not get along, so that jury should have been instructed as to alternative theory of negligence in addition to gross abuse standard so as to support common-law negligence claim in
addition to claim based on statute requiring proof of gross abuse in exercise of discipline in order to hold teacher liable.

Holding No. 1--There was no error or inadequacy in the trial court’s charge to the jury of the gross abused standard while refusing to charge the jury on simple negligence.

Reasoning No. 1--Statutory law provides that a teacher may use reasonable physical force on the person of a pupil necessary for the purpose of maintaining proper discipline over pupils and a teacher shall not be liable in a civil action for the use of physical force on a pupil except in case of gross abuse and disregard for the health and safety of the pupil. First, there is no basis for plaintiff’s contention that there existed a question of fact on whether the defendant-teacher was disciplining when the incident occurred. The undisputed testimony showed that the defendant-teacher’s actions followed his verbal admonishment to plaintiff-student to keep his hands off the female student’s purse, and the plaintiff-student’s blatant disregard of that admonishment. The plaintiff-student’s subjective belief that the defendant-teacher intended to harm him because they did not get along does not alone create an issue of fact. Moreover, even had plaintiff been able to present proof that the defendant-teacher had intended to harm him such proof would not support a negligence claim. Rather, it would be evidence of an intentional tort for which the jury could have found the teacher liable, but did not, under the instructions actually given by the trial court.

Issue No. 2--Is a common-law cause of action against teacher for negligence in disciplining student abrogated by statute imposing liability upon educator only where their conduct meets or exceeds level of gross abuse and disregard for health and safety of the pupil?

Holding No. 2--Cause of Action for simple negligence is precluded by statute rendering educators liable in civil action for use of physical force on students for purpose of maintaining proper discipline only in cases of grass abuse and disregard for health and safety of pupil.
Reasoning No. 2--The language of the statute plainly evidences a legislative intent to protect educators from civil liability except where their conduct meets or exceeds the level of gross abuse and disregard for the health and safety of the pupil. A claim of simple negligence certainly falls well below that threshold.

Disposition: Judgment of trial court affirmed.

Citation: Koch v. Avon Board of Education, 580 N.E.2d 809 (Ohio App. 9 Dist. 1989).

Key Facts: Plaintiff-student was a 15-year-old high school freshman who injured his left knee during vaulting exercises in his physical education class while performing a squat vault over a vaulting horse. The Board of Education authorized the physical education class which contained the gymnastic program as part of the required physical education curriculum. The gymnastic activities began with a lecture to the entire class concerning the use of the equipment. The teacher then demonstrated how to perform the vaulting exercise. The plaintiff-student performed approximately five vaults on the day before he injured his knee. He also performed two vaults which were advanced variations of the squat vault.

The plaintiff-student’s mother brought action on behalf of student for her personal injuries against the Board of Education and two physical education teachers. Plaintiff-student’s parents also sued for deprivation of affection and services of their son. Betty Koch, Frank’s mother brought this action on behalf of Frank for his personal injuries. Frank’s parents also sued for deprivation of affection and services of their son. The trial court granted summary judgment in favor of the defendants holding that the defendants were immune from liability pursuant to R.C. 2744.03. The student-plaintiff appealed.

Issue No. 1--Was a city board of education immune from liability for high school student’s injury while he performed squat vault over vaulting horse during gymnastic program
that was part of physical education class, under statute providing immunity for political
subdivision if injury results from exercise of judgment or discretion in determining how to use
equipment, where board relied on instructor’s expertise in evaluating whether to repair or replace
equipment and in determining how equipment would be used.

Holding No. 1--Because the policy of the board to defer to the expertise of a certified
physical education instructor was a decision resulting from the exercise of the board’s judgment,
this is the type of act that R.C. 2744.03(A)(5) intended to shield from liability. The trial court
also properly determined that there was no evidence presented to support the allegation that the
board acted maliciously, recklessly, or in bad faith in exercising its judgment. As a result, the
board is immune from suit pursuant to R.C. 2744.03(A)(5).

Reasoning No. 1--Under the revised code section2744.02(A)(1), a political subdivision is
generally not liable for an injury caused by an act or omission of the political subdivision or its
employees in connection with a government or proprietary function. However, it is liable for
such injury if it is caused by the negligence of their employees that occurs within or on the
grounds of buildings that are used in connection with a governmental function (R.C.
2744.02(B)(4)).

Revise Code §2744.03(A) provides in pertinent part: In a civil action brought against a
political subdivision or an employee of a political subdivision to recover damages for injury,
death, or loss to persons or property allegedly caused by any act or omission in connection with a
governmental or proprietary function, the following defense or immunities may be asserted to
establish non-liability: The political subdivision is immune from liability in the injury, death, or
loss to persons or property resulted from the exercise of judgment or discretion in determining
whether to acquire, or how to use, equipment, supplies, materials, personnel, facilities, and other
resources, unless the judgment or discretion was exercised with malicious purpose, in bad faith, or in a wanton or reckless manner.

In this instance, the record reflects that the board relied on the instructor’s expertise in evaluating whether to repair or replace the physical education equipment at Avon High School. Moreover, whether a piece of equipment would be used or how the equipment was used was also left to the discretion of each instructor.

Issue No. 2--Were teachers instructing physical education class in which high school student was injured while performing squat vault over vaulting horse during gymnastic program in physical education class immune from liability under statute providing immunity for public employee unless his acts or omissions were manifestly outside scope of his employment or official responsibilities or his acts or omissions were malicious.

Holding No. 2--The trial court properly granted summary judgment in favor of the physical education teacher.

Reasoning No. 2--Revised Code §2744.03(A) provides in pertinent part: (6) In addition to any immunity or defense referred to in division (A)(7) of this section and in circumstances not covered by that division, the employee is immune from liability unless one of the following applies: (a) His acts or omissions were manifestly outside the scope of his employment or official responsibilities; (b) His Acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner; (c) Liability is expressly imposed upon the employee by a section of the Revised Code.

The plaintiff-student presented no evidence that physical education teachers acted outside the scope of their employment. Second the trial court properly held that there was no evidence
presented that the instructors exercised their judgment not to replace the Rheuther board maliciously, recklessly, or in bad faith.

Before the students performed any vaulting or other gymnastic skills, the entire class received a lecture on the use of the equipment and the applicable safety precautions. The teacher testified that he began the gymnastics portion of the class under the assumption that the boys had no prior gymnastic training. The teacher also testified that he always kept the horse at its lowest level and that the Rheuther board was designed to be movable because it should be moved backward or forward depending on the height or weight of an individual. The teacher also testified that he believed that the Rheuther board worked better with the heavy horsehair mat underneath it. As a result, he did not ask to have the board repaired or replaced when the rubber on the bottom of the board became unglued. The teacher also testified that the decision to have spotters, to prevent the participants from losing their balance, was a judgment call based on each participant’s ability. The teacher also demonstrated the vaults for the students and told the students to jump on the Rheuther board one time to get the feel of the board.

The plaintiff-student testified that he performed the squat vault approximately five times and a more complicated vault two times before he was injured. He also testified that he had no knowledge that physical education teachers deliberately wanted to injury him. Finally, plaintiff-student asserts no other code section that would expressly impose liability on an employee under these circumstances.

Disposition: The judgment of the trial court granting summary judgment to the defendant is affirmed.

Key Facts: Student was injured on the playground of school during activity known as “queer smear.” The object of this game was for a group of boys to single out, chase, tackle and jump on one boy. Student suffered nearly-fatal injuries and permanent damage, including diminished mental capacity and motor ability, because of this activity. This student also suffered less severe injuries as a victim of the same activity approximately a year earlier. Student’s parents filed suit against the School District, superintendent, and the school principal.

Plaintiffs allege negligence and respondeat superior against the School District for failing to maintain a safe playground for children, to provide a sufficient number of trained personnel to supervise playground activities, and to prohibit all violent playground activities known to them which could result in injury to children. Plaintiffs also alleged negligence against the superintendent and principal for failing to take appropriate action to stop “queer smear” or to monitor the performance of the playground supervisor.

Defendants moved for summary disposition of the basis of governmental immunity and individual immunity. The Superintendent asserted that, as the highest executive official of the School District, he was entitled to absolute immunity from tort liability. Both the Superintendent and Principal assert that they were entitled to limited immunity from tort because their action in determining how to supervise students on the playground was discretionary. The trial court granted summary disposition in favor of the school district, but denied it as to the Superintendent and Principal. Superintendent and Principal appeal the trial court’s order denying their motion for summary disposition.

Issue No. 1--Is a school superintendent entitled to absolute immunity from tort liability as the highest executive official in the school system?
Holding No. 1--School superintendent is not entitled to absolute immunity as the highest executive office of a school system.

Reasoning No. 1--Absolute immunity from tort liability is awarded to select employees with policymaking powers. Judges, legislators and the highest executive officials of all levels of government are absolutely immune from all tort liability whenever they are acting within their judicial, legislative or executive authority. The defendant-superintendent was not the type of official who could claim absolute immunity from tort liability.

To be afforded the protection intended for high executive officials, the official must enjoy broad-based jurisdiction or wield extensive authority similar to that of a judge or administrator. A school superintendent does not make policy decisions similar to those made by a judge, legislator, or mayor. For this reason, this court held that absolute immunity is not to be extended to officials such as defendant-superintendent, and that the trial court properly denied his motion for summary disposition on that basis.

Issue No. 2--Were school superintendent and school principal entitled to limited governmental immunity for liability for injuries sustained by student on playground, on the ground that their action in setting policy concerning supervision of students on playground was discretionary?

Holding No. 2--School superintendent and school principal were entitled to limited governmental immunity on ground that their actions in setting policy concerning supervision of students on playground was discretionary.

Reasoning No. 2--Lower-level public employees are entitled to limited immunity where they are: (1) acting during the course of their employment and acting or reasonably believe they are acting within the scope of their authority; (2) acting in good faith; and (3) performing
discretionary, as opposed to ministerial acts (*Ross v. Consumers Power Co.*, 420 Mich. 567, 63-4, 363 N.W.2d 641(Mich. 1984)). It is not disputed that defendants were acting within the scope of their authority and exercising good faith. Discretionary acts are those that require personal decision-making. Employees should feel that they are able to exercise this discretion without fearing tort liability. Conversely, ministerial act are those that require minimal decision-making.

The supervision of students in the classroom or during other school activities by a teacher or other school employee is a ministerial act and is not entitled to immunity. The distinction between a discretionary or ministerial activity is that the former involves significant decision-making, and the latter involves the execution of a decision and might entail some minor decision-making. This court has held that a school administrator’s setting of a policy concerning how to supervise students during school activities is a discretionary act entitled to individual immunity (*Eichhorn v. Lamphere School District*, 166 Mich.App. 527, 540, 421 N.W.2d 230 (Mich.App. 1980)).

Plaintiffs’ complaint alleged liability against these defendants for failure to set a policy regarding supervision of playground activities which would prohibit dangerous games such as queer smear. This is a function that involves significant decision-making and is therefore discretionary. Accordingly, defendants in this case were entitled to limited immunity, and the trial court erred by denying their motion for summary disposition.

Disposition: The trial court erred by denying defendants motion for summary disposition. The matter was reversed, with the trial court being directed to enter summary disposition in favor of the Superintendent and School Principal.

Key Facts: Plaintiff-student was injured on the school playground when she fell from a set of monkey bars. The accident occurred during recess while the playground was supervised by two adults. The playground supervisors were not teachers or other certificated educational employees.

Plaintiff sued school district. Count I of plaintiff’s complaint alleges that defendant breached its duty to the plaintiff in that it (a) failed to supervise recess activities, (b) provided dangerous climbing apparatus, (c) failed to provide a safe and proper place for recess, (d) dangerously constructed climbing apparatus on a hard surface, and (e) failed to have a responsible adult on the playground. The trial court granted summary judgment in favor of defendant upon a finding that the immune provisions of the School Code apply. Plaintiff appealed.

Issue No. 1--At issue was a school district entitled to immunity under the School Code for student’s allegations that the district was negligent in providing dangerous climbing apparatus, failing to provide safe and proper place for recess, and dangerously constructing climbing apparatus on hard surface.

Holding No. 1--School District falls outside the limited protection of the School Code Immunity provisions for student’s allegations that the district was negligent in providing dangerous climbing apparatus, failing to provide safe and proper place for recess, and dangerously constructing climbing apparatus on hard surface.

Reasoning No. 1--The immunity provisions of the School Code provide that: Teachers and other certificated educational employees shall maintain discipline in the schools, including school ground which are owned or leased by the board and used for school purposes and activities. In all matters relating to the discipline in and conduct of the schools and the school
children, they stand in the relation of parents and guardians to the pupils. This relationship shall extend to all activities connected with the school program, including all athletic and extracurricular programs, and may be exercised at any time for the safety and supervision of the pupils in the absence of their parents or guardians (Ill.Rev.Stat.1987, ch. 124, pars. 24-24, 34-84a).

These statutes confer upon educators the status of parent or guardian to the students. A parent is not liable for injuries to his child absent willful and wanton misconduct. By operation of the statute, therefore, educators are granted immunity from suits for ordinary negligence arising out of matters relating to the discipline in and conduct of the schools and the school children (Kobylanski v. Chicago Board of Education, 63 Ill.2d 165, 170-173, 347 N.E.2d 705 (Ill. 1976)).

In Gerrity v. Beatty (71 Ill.2d 47, 15 Ill.Dec. 639, 373 N.E.2d 1323 (Ill. 1978)), the Illinois Supreme Court determined that School Code immunity applied to allegations of negligence arising out of the teacher-student relationship in matter relating to the teachers’ personal supervision and control of the conduct or physical movement of a student but not to allegations of negligence in connection with the separate function of furnishing equipment. The immunity does not apply to allegations of negligence in maintaining the school premises either (Ramos v. Waukegan Community Unit School District No. 60,188 Ill.App.3d 1031, 1035, 136 Ill.Dec. 527, 544 N.E.2d 1302(Ill.App. 3 Dist. 1989)).

The plaintiff’s complaint alleged that the defendant was negligent in providing dangerous climbing apparatus, failing to provide a safe and proper place for recess, and dangerously constructing a climbing apparatus on a hard surface. These allegations do not implicate the direct
teacher-student relationship; instead, they concern the supplying of equipment and the condition of the premises.

Issue No. 2--At issue was a school district entitled to immunity under the School Code for student’s allegations that district was negligent in failing to supervise and failing to have responsible adult on playground.

Holding No. 2--School District is not immunized for ordinary negligence arising out of the conduct of a non-immunized employee who was supervising playground activities at time of injury to student injured during recess.

Reasoning No. 2--In Gerrity v. Beatty (71 Ill.2d 47, 15 Ill.Dec. 639, 373 N.E.2d 1323 (Ill. 1978)), the Illinois Supreme Court stated that the immunity provisions of the School code reflect a legislative determination that the orderly conduct of the schools and the maintenance of a sound learning atmosphere require that there be a personal relationship between teacher and student in which the teacher has disciplinary and supervisory authority similar to that which exists between parent and child. The immunity conferred by the School Code should not be available to the school district if there is no reason to provide such immunity as a guarantee that the teacher-student relationship will not be jeopardized (Griffs v. Board of Education, 72 Ill.App.3d 784, 789, 29 Ill.Dec. 188391 N.E.2d 451 (Ill.App. 3 Dist. 1979)). The teacher-student relationship is not directly implicated in this case, and the school district is not immunized for ordinary negligence arising out of the conduct of a non-immunized employee.

Issue No. 3--Is a school district immune from liability under the Local Governmental and Governmental Employees Tort Immunity Act if the district carries liability insurance at the time of an accident in which student was injured on playground during recess.
Holding No. 3--School District is not granted immunity by operation of the Local Governmental and Governmental Employees Tort Immunity Act if the district maintained liability insurance at the time of an accident that injured student on playground during recess.

Reasoning No. 3--Section 3-108 of the Tort Immunity Act provides 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. This provision would immunize the school for the negligent conduct of non-certificated employees; however, under another provision of the Tort Immunity Act which was in effect at the time of plaintiff’s injury, when a public entity carried liability insurance covering liability for which the Act had created a defense, the insurance company could not assert, the public entity’s immunity or other defenses as a means of avoiding payment under its policy.

Under the law as it existed when plaintiff was injured, the immunities were effectively waived where the public entity carried for the type of risk at issue. In this case, plaintiff has alleged that defendant carried liability insurance; defendant has not contested that allegation. There, the immunity provisions of the Tort Immunity Act have been waived here.

Disposition: The judgment of the circuit court of Lake County is reversed, and the cause remanded for further proceedings. Reversed and remanded.

Citation: Payne v. Department of Human Resources, 382 S.E.2d 449 (N.C.App. 1989).

Key Facts: Plaintiff-student was a 16-year-old senior at the state school for the deaf. Plaintiff-student was a student in defendant-teacher small-engine repair class. Adjacent to the small-engine repair shop is a grease shop area inside of which is hydraulic lifts used to raise automobiles. One of these lifts had been leaking hydraulic fluid. Defendant-teacher’s brother, the school’s maintenance person, was replacing a cylinder seal to stop the leakage. Defendant-
teacher assisted with the repairs, while plaintiff-student was given another assignment elsewhere in the shop. At one point, the defendant-teacher left the area to answer a ringing telephone. The school maintenance man was seated on the floor of the lift area facing away from the lift itself. The defendant-teacher could not see the small-engine repair shop or the grease shop from his location at the phone.

Plaintiff-student, in the meantime, noticed two buckets of hydraulic fluid that had been brought into the lift area. He presumed upon seeing the buckets that the fluid was to be added to the lift. Having once watched a fellow student assist defendant-teacher in adding that fluid, and having discussed the procedure with another student, plaintiff-student assumed he knew how to put in the fluid. Plaintiff-student went over to the lift, turned a wrench and loosened a plug. When the plug was loosened, the air pressure in the lift shot the plug out of its hole with explosive force. The plug hit the plaintiff-student in the forehead, and oil and dirt blew into his eyes. Plaintiff-student subsequently required treatment for the injury to his right eye, his vision was also affected.

Issue No. 1--At issue did teacher owe deaf student greater duty of care due to student’s deafness.

Holding No. 1--Teacher did not owe deaf student greater duty of care due to student’s deafness. Standard of care remained that of exercise of ordinary prudence given particular circumstances of situation including student’s handicap.

Reasoning No. 1--To establish actionable negligence, a plaintiff must show (1) that there has been a failure to exercise proper care in the performance of some legal duty which defendant owed plaintiff under the circumstances in which they were placed and (2) that such negligent breach of duty proximately caused plaintiff’s injury. In North Carolina, a teacher is held to the
same standard of care which a person of ordinary prudence, charged with the teacher’s duties would exercise in the same circumstances (Kiser v. Snyder, 21 N.C.App. 708, 710, 205 S.E.2d 619, 621 (1974)). A shop teacher, moreover, is held to the same standard as is any other teacher.

The duty generally amount to an obligation to warn a student of known hazards, particularly those dangers which he may not appreciate because of inexperience. Schools must supervise their pupils adequately, and although a school does not act as an insurer of student safety, it is liable for foreseeable injuries that result from a lack of teacher supervision. The teacher must act with ordinary prudence and employ the level of care or vigilance commensurate with the degree of danger inherent in a particular situation.

That duty, however, does not extend so far as to require the teacher to anticipate the myriad of unexpected acts that occur daily in and about schools and school premises. It is true that the amount of care due a student increases with the student’s immaturity, inexperience and relevant physical limitations. The standard however, remains that of the exercise of ordinary prudence given the particular circumstances of the situation. Plaintiff’s characteristics are relevant, along with other conditions present in the situation, in determining whether defendant-teacher exercised ordinary prudence in that situation.

Issue No. 2--At issue was student’s injuries the result of defendant-teacher’s negligence in failing to supervise deaf student and failing to instruct and warn him about any risks posed by a hydraulic lift in classroom.

Holding No. 2--Defendant-teacher was not negligent for leaving plaintiff-student unsupervised prior to the injury or to warn plaintiff-student about any potential dangers that might result from the hydraulic lift.
Reasoning No. 2--The record supports the finding that plaintiff-student was of sufficient experience and maturity to be left unsupervised while defendant-teacher spoke on the telephone. The record also indicated that the plaintiff-student, at the time of his injury, had completed two trimesters in automotive study and was into his third; knew the basics about machinery from having worked with machinery with his father; and knew that a person needed to be careful while working around machines.

At the time defendant-teacher went to answer the call, the plaintiff-student was occupied with a task at his worktable in an area away from the lift. To hold that the defendant-teacher should have foreseen that plaintiff-student would leave his assignment and attempt to add oil to the lift would be to impose a burden on the teacher beyond that of reasonable foreseeability. Though plaintiff-student was a curious and helpful student, it is not enough to require the defendant-teacher to have foreseen that plaintiff-student would attempt to perform repairs on the lift.

As part of plaintiff-students automotive instruction, the defendant-teacher had given him instruction on how the hydraulic lift operated; however, this instruction did not pertain to repair work or the adding of oil to the lift. The plaintiff-student was never requested to assist in the repair of the lift. Instruction about the operation of a hydraulic lift need not encompass warnings about what might result from efforts to repair it. Again, to hold otherwise is to require the instructor to issue warnings about every imaginable circumstance and is far outside the standard of reasonable foreseeability.

One of the golden rules Issued to the students of plaintiff-student’s class is “if it don’t pertain to you don’t bother it, leave it alone.” Plaintiff-student testified that he was familiar with this rule and understood that it applied to his shop class. This warning was adequate to embrace
the situation that existed at the time of the accident. The lift did not pertain to plaintiff-student and he had been instructed in such circumstances to leave it alone.

Disposition: The findings of fact are supported by the evidence in this case, and that the findings support the conclusions of law. The decision in favor of defendant is therefore affirmed.

Citation: Beasley By and Through Beasley v. Morton, 564 So.2d 45 (Ala. 1990)

Key Facts: A student was injured by falling glass after a ball hit a light fixture causing the light bulb to break and the glass to fall, thus injuring student in the eye. The county school board was responsible for the design and maintenance of the light fixtures in the gym. The student’s father brought a suit on his behalf against the school’s principal and the physical education teacher. The trial entered a summary judgment for the defendant principal and teacher.

Issue: Did the trial court err in granting summary judgment to elementary school principal and physical education teacher for injuries to student resulting from falling glass from light fixture when neither had any responsibility or control for the light fixtures in question.

Holding: The Supreme Court of Alabama held that these defendants cannot be held liable for any alleged negligence concerning things over which they had no responsibility or control. The Court upheld the trial court’s granting of summary judgment for defendants

Reasoning: The County School Board was the party responsible for the fixtures and the bulbs. The defendants had no responsibility for the design or maintenance of the light fixtures or the light bulbs in the gym. Of course these defendants cannot be held liable for any alleged negligence concerning things over which they had no responsibility or control.

Disposition: Trial court’s granting of the defendant’s summary judgment motion was affirmed.
Citation: *Gara by Gara v. Lomonaco*, 145 Ill.Dec 713, 557 N.E.2d 483 (Ill.App.1Dist. 1990).

Key Facts: The plaintiff-student was injured while jazz dancing on wrestling mats in physical education class. The wrestling mats were placed on the floor end to end but were not taped down. During the dance, the plaintiff-student caught her foot between two mats that overlapped and she fell. The student asked her physical education teacher for permission to see the school nurse but the teacher refused. In her next two classes, the plaintiff-student requested permission from the teachers to see the nurse, and both teachers also refused her request. Subsequently, the plaintiff-student learned that her ankle was fractured. The student and her mother brought action against the teachers and school district for negligence and willful and wanton misconduct, based upon the plaintiff-student’s injuries.

In their first court, the plaintiff alleged that the defendants were negligent for refusing to allow the plaintiff-student permission to see the nurse, failing to examine the plaintiff-student to determine whether she needed medical attention, and failing to inform the plaintiff-student’s parents that she had been injured so that they could seek medical care. In count two, the plaintiffs alleged that defendants were liable for willful and wanton misconduct because defendants knew or should have known that wrestling mats which were not taped down would create a dangerous condition, failed to stop the jazz dancing when the mats, overlapped, and recklessly failed to discover the dangerous condition of the overlapped mats. In Count III, the plaintiffs alleged that defendant School Board was negligent in failing to provide appropriate mats for jazz dancing and failed to properly use the wrestling mats by not taping the ends together.

The Circuit Court, Cook County, dismissed action for failure to state cause of action and plaintiffs appealed.
Issue No. 1--Was the alleged conduct of teachers in refusing to give student permission to see school nurse after she was allegedly injured in physical education class, failing to examine student to determine whether she needed medical attention, and failing to inform her parents that she had been injured, within teachers’ supervisory authority, entitling them to immunity in resulting negligence action?

Holding No. 1--The alleged conduct of teachers in refusing to give student permission to see school nurse, failing to examine student to determine whether she needed medical attention, and failing to inform her parents that she had been injured, was within teachers’ supervisory authority, entitling them to immunity.

Reasoning No. 1--Section 24-24 of the School Code provides that

in all matters relating to the discipline in and conduct of the schools and the school children, they stand in the relation of parents and guardians to the pupils. Their relationship shall extend to all activities connected with the school program and may be exercised at any time for the safety and supervision of the pupils in the absence of their parents or guardians  (Ill.Rev.Stat.1987, ch. 124, par. 24-24)

The Illinois Supreme Court found that §24-24 confers immunity to teachers and other certificated educational employees from negligence actions involving activities related to school in non-disciplinary and disciplinary matters. Therefore, teachers cannot be liable for a student’s injuries in such cases unless their conduct was willful and wanton.

In Kobylanski v. Chicago Board of Education (63 Ill.2d 165, 347 N.E.2d 705 (Ill. 1976)), the Illinois Supreme Court reviewed two cases where students brought negligence actions against their teachers and school districts for injuries sustained during physical education class. Both complaints alleged defendants failed to properly supervise the activity in class. The court rejected plaintiffs’ arguments that the statute only conferred immunity in disciplinary matters and found §24-24 granted immunity to defendants for the activities alleged in plaintiffs’ complaints.
Under the situations presented, plaintiffs would have to prove that defendants’ conduct was willful and wanton.

The teachers in this case were faced with determining whether it was necessary to allow the plaintiff-student to see the school nurse. On the facts alleged in plaintiffs’ complaint, the defendants’ conduct falls within a teacher’s supervisory authority and therefore, under *Kobylanski*, §24-24 provides immunity for such a negligence action.

Issue No. 2--Whether teacher’s conduct in permitting students to jazz dance in physical education class on mats which were not taped down and overlapped exhibited deliberate intention to harm or utter indifference or conscious disregard for student’s safety that could support action for willful and wanton misconduct after student allegedly injured her ankle in fall on mats?

Holding No. 2--Teacher’s conduct in permitting student to jazz dance in physical education class on mats which were not taped down and overlapped did not exhibit deliberate intention to harm or utter indifference or conscious disregard for student’s safety that could support action for willful and wanton misconduct.

Reasoning No. 2--A complaint for willful and wanton misconduct must allege facts to support either a deliberate intention to harm or an utter indifference or conscious disregard for plaintiff’s welfare. The plaintiff alleged that the physical education teacher directed the plaintiff-student to jazz dance on wrestling mats which were not taped down, that the mats overlapped during the dance, and that Lomonaco did not discover the overlapped mats or stop the activity. The plaintiffs did not allege that the physical education teacher deliberately intended to harm the plaintiff-student. The facts alleged do not support a finding that the physical education teacher’s conduct exhibited an utter indifference or conscious disregard for the plaintiff-student’s safety.
The allegations arguably state a cause of action for negligence for which defendants would be immune; however, defendants’ conduct did not rise to the level of willful and wanton misconduct.

Issue No. 3--At issue is whether School District could be held liable for failing to furnish appropriate equipment after student was injured in fall while jazz dancing on wrestling mats, absent showing as to how wrestling mats were inappropriate for such activity?

Holding No. 3--School District could not be held liable for failing to furnish appropriate equipment after student was injured in fall while jazz dancing on wrestling mats, absent showing as to how wrestling mats were inappropriate for such activity?

Reasoning No. 3--The Illinois Supreme Court in Gerrity v. Beatty, 71 Ill.2d 47, 15 Ill.Dec. 639, 373 N.E.2d 1323. (Ill. 1978), held that the alleged negligent conduct of a school district in furnishing equipment was a separate function which did not affect the teacher-student relationship. Therefore, the court found plaintiff’s complaint stated a cause of action for negligence in furnishing equipment alleged to be inadequate, ill fitting and defective and was known, or which in the exercise of ordinary care should have been known, to be liable to cause injury to the plaintiff (Gerrity, 71 Ill.2d at 52, 15 Ill.Dec. at 642, 373 N.E.2d at 1326). Plaintiffs in this case alleged that the school district failed to provide appropriate mats for jazz dancing but did not allege how the wrestling mats were inappropriate. In this case, plaintiffs merely concluded the mats were inappropriate without any supporting facts. Plaintiffs also alleged that the school district failed to appropriately use the wrestling mats by not taping them down. However, teachers have the authority to supervise their students’ use of equipment. In this case, the school district’s liability would, therefore, be dependent on the physical education teacher’s
conduct as its agent and under §24-24, the school district would be immune from a negligence action involving the use of the mats.

Disposition: The trial court’s dismissal of all plaintiffs’ counts was proper. Judgment of the trial court was affirmed.

Citation: Gasper v. Freidel, 450 N.W.2d 226 (S.D. 1990).

Key Facts: Plaintiff was a minor that was participant in a summer conditioning program which included weight training under the supervision of two high school coaches. The conditioning program was held in the wrestling room of the high school. Both coaches were fully certified as teachers and athletic coaches by the state and under contract to the school district for the school year. The coaches’ contract contained clauses which required them to perform pre-school term and post-term duties. Both coaches were paid on a 12-month basis.

The affidavit of the executive secretary of the state high school activities association established that the school’s conditioning program complied with all associated out-of-season conditioning rules. Additionally, the uncontroverted affidavit of an expert in physical education established that the weight-lifting facility maintained was reasonable and proper facility for the weight-lifting and conditioning program. All equipment required only minimal supervision by the coaches. The equipment, weights, and mats provided were proper and appropriate.

Prior to starting the conditioning program one of the defendant-coaches asked the superintendent whether a summer weight-conditioning program could be run at the school, and the superintendent authorized the program. Previously, the Board had delegated all executive and supervisory authority to its employees and in particular, delegated the direct authority to administer the school system to the superintendent. The superintendent knew the coaches had
training and experience with weight-lifting. The Board was fully aware that the conditioning program was taking place during the summers on school property.

In preparation for the weightlifting activity the coaches held an in-depth clinic for the students. During this session, the students were shown how to safely use the weightlifting equipment and trained in the necessity of using spotters when free weights were being used. The plaintiff-student attended the clinic. He had been trained to properly warm up, to lift correctly, and to use spotters whenever he was using the squat rack. The squat rack is a heavy metal stand that supports a bar, collars, and free weights. A lifter moves under the bar and supports the bar and weights upon his shoulders before stepping outside the support of the squat rack. Once the lifter steps back from the squat rack, he is supporting a considerable amount of weight with his legs, back and shoulder; thus the need for spotters.

The coaches were seated on two rolled-up wrestling mats in the vicinity of the squat rack, talking to each other. They assisted with spotting other students who were lifting weights. As another lifter was leaving the squat rack, the plaintiff-student came under the bar and into the rack. The other student told the plaintiff-student to wait until a weight lifting belt that fit properly could be found. Instead, without requesting any assistance, he moved into the rack, lifting 335 pounds upon his shoulders. Plaintiff-student admitted that he had not warmed up properly and knew he was to have spotters when lifting this amount of weight. Without spotters to stop him, plaintiff-student lost his balance and stepped backwards out of the rack, falling to the floor in a jackknife position with the weights on his shoulders. When asked why he tried to lift 335 pounds without spotters and proper warm-up, the plaintiff-student replied “because I could.”

Plaintiff-student’s parents, as guardian ad litem, filed suit against superintendent, Board and coaches, alleging that defendants’ permitted an unauthorized and unlawful conditioning
program without proper supervision on the school’s facilities which proximately caused the injury to plaintiff-student. The trial court granted motions of summary judgment in favor of all defendants on the grounds of sovereign immunity.

Issue No. 1--Whether sovereign immunity applies to shield the Board from liability when a student is injured in a summer weight-conditioning program, when plaintiff alleges that there was no official approval by the school for the use of the facilities; therefore, they are not protected?

Holding No. 1--The trial court did not err in granting summary judgment in favor of the Board.

Reasoning No. 1--School board member are immune from suit, either as board members or individuals, if they did not act in excess of their lawful authority or commit intentional torts. Every member of Board was duly elected for the school district at the time of the injury to plaintiff-student. Thus they are school district officers entitled to the shield of sovereign immunity if authorizing the summer condition program was a lawful action and they committed no intentional tort to take them outside their scope of employment.

First, Board acted within its lawful authority in authorizing the summer conditioning program. Under SDCL 13-8-39, Board had the right to direct and manage school programs and property. Second, pursuant to Board’s policy and procedural manual, it retained full legislative and judicial authority over the schools, but delegated all executive, supervisory, and instructional authority to its employees. Superintended was delegated the direct authority to administer the school system. In executing Board policy to make maximum use of school facilities, Superintendent made a decision to authorize a summer weight-lifting program conducted by the coaches. Board was aware of this program. Though Board could have taken formal action to
acknowledge the program, none was required since it had delegated the executive and
supervisory authority to the superintendent. Having delegated the authority to execute and
administer the policy, Board had no remaining duty to authorize or to supervise the weight-
lifting program.

Third, the summer conditioning authorized by the superintendent was lawful. The
affidavit of the executive secretary of the state high school activities association established that
the conditioning program complied with the association’s out of season rules. These rules were
set out in Board’s athletic policy. Contrary to plaintiff-student’s assertion, this is no factual basis
to claim the program was in violation of state law. Fourth, Board committed no intentional torts
that would take their acts outside the scope of employment. Having properly delegated the
authority to supervise school activities to the superintendent, Board had no further duty to
supervise the weightlifting program. The superintendent selected fully trained teachers to run the
program. It is uncontested that the facilities and equipment were proper and appropriate.
Plaintiff-student’s complaint alleges that Board permitted a program without proper supervision
or facilities. Even viewing his complaint in the most favorable light, this alleges nothing more
than a negligent omission that would not take Board outside the scope of employment.

Issue No. 2—Whether a superintendent was acting within the scope of his employment
and whether he was performing discretionary acts in approving summer conditioning program at
school in order shield superintendent from when a student is injured in the summer weight-
conditioning program.

Holding No. 2—The trial court did not err in finding that the superintendent was protected
by sovereign immunity and granting summary judgment in his favor.
Reasoning No. 2--The state’s sovereign immunity does not extend to a state employee unless . . . (2) the employee is engaged in the performance of a discretionary function. In *Nation Bank of South Dakota v. Leir* (325 N.W.2d 845, 848 (S.D. 1982)), this court looked to the test to determine what is a discretionary function: (1) the nature and importance of the function that the officer is performing, (2) the extent to which passing judgment on the exercise of discretion by the officer will amount necessarily to passing judgment by the court on the conduct of a coordinate branch of government, (3) the extent to which the imposition of liability would impair the free exercise of his discretion by the officer, (4) the extent to which the ultimate financial responsibility will fall on the officer, (5) the likelihood that harm will result to members of the public if the action is taken, (6) the nature and seriousness of the type of harm that may be produced, and (7) the availability to the injured party of other remedies and other forms of relief.

Using those criteria, the superintendent’s actions were discretionary. Superintendent was performing the important function of administering the school system on behalf of the board. In exercising his discretion, he sought to carry out the Board’s desire to have school facilities fully used by authorizing a summer conditioning program. As part of that responsibility, he secured two fully licensed and certified coaches to supervise the conditioning program. For the court to second guess his judgment and that of the Board in delegating to him this responsibility would be passing judgment on a coordinate branch of government. If we were to interfere in this type of judgment, it would severely hamper school administrators. Superintendent had no information that he had secured coaches who were not competent to supervise or that there was a problem in supervising the weight-lifting program. This is the type of decision that normally will not be harmful to the public. Finally, Gasper would always have a cause of action if the coaches’ conduct was outside the scope of employment or nondiscretionary acts of commission.
Considering all of these factors, the trial court did not err in finding that Carda was protected by sovereign immunity and granting summary judgment.

Issue No. 3--Whether a summer conditioning program was a school activity and coaches were within the scope of their employment in participating in a summer conditioning program in which plaintiff-student was injured and thus shielded from liability by sovereign immunity?

Holding No. 3--The trial court did not err in granting summary judgment in favor of the coaches.

Reasoning No. 3--In order for the plaintiff to have a cause of action against the coaches, he would have to show that the coaches’ conduct was outside the scope of their employment or a nondiscretionary act of commission. There are three questions that must be answered with respect to the coaches’ actions: (1) were they acting within the scope of their employment? (2) Were they grossly negligent in causing the injury to plaintiff-student? (3) Were they performing a discretionary function? The coaches were conducting a program as part of their 12-month contractual duties that called for pre-school term duties. The program was approved by the superintendent and met all the rules of the state high school activities association for an out-of-season conditioning program. There is not disputed question of fact whether the coaches were acting as agents of the school district.

Thus the only factual allegations that remains contested is that the coaches failed to provide adequate and proper supervision. Even assuming this to be true, this is an act of omission not an intentional tort. Plaintiff-student had been thorough a class on the proper use of the weights and safety equipment. Taking plaintiff-student’s fact under the best light, they allege nothing more than omissions on the coaches’ part. Here, there was no active misconduct that
produced the injuries. As such, there was no gross negligence to take the coaches outside their scope of employment.

The coaches were carrying out the important function of conditioning student athletes for all sports. For the court to second guess coaches’ judgment on how to supervise and train athletes would infringe on the executive branch of government. Most importantly, imposition of liability would impair the free exercise of discretion. No person will want to be a coach if his or her judgment in supervising athletic training is continually open to lawsuits. No matter how well a coach trains an athlete, there are always unexpected events which may produce an injury. This court does not want to position itself to continually decide whether a string of athletic injuries that occur every year are the result of coaching negligence.

Further the coaches’ actions are distinguishable from this court has defined as ministerial. Ministerial act merely require the employee to carry out standards that are already established. The coaches here designed the summer conditioning program and they personally implemented and supervised the program. It was their decision on how to implement their standards. This court has also deemed the following factors as determinative of ministerial actions (1) the unimportance of the function (2) imposing liability would not affect job discretion (3) likelihood of harm depended on defendant, not on department and (4) imposing liability would make defendant more careful and not impact employer. We have previously discussed the importance of the coaches’ jobs and the effect on their discretion. What we find critical is the impact liability will have on the school districts. If by way of just one example a coach can be held personally liable because a player is told to leap high for passes and is hit in mid-air and injured, we believe school districts will find it nearly impossible to hire people to coach athletic programs. Also, the coaches weighed the policy of how to best supervise and train people for the conditioning
program. The coaches chose the option of one intensive class that taught techniques and safety. The program he developed allowed other students to act as spotters and required minimal on-hands supervision by the coaches. This court will not be one to second guess this discretionary policy decision.

Disposition: The judgment of the trial court, granting summary judgment to all defendants is affirmed.


Key Facts: Plaintiff-student was completing her senior year, when she opted to take a psychology class during her second semester in order to fulfill a graduation requirement. Defendant-teacher was her psychology teacher. Plaintiff-student failed her psychology claims which resulted in her inability to graduate with the rest of her class.

During the semester, the defendant-teacher had only recorded three grades prior to the last day of classes, upon which he gave a final examination and three quizzes during the final 25 minutes of the class period. Also, the defendant-teacher had not notified the plaintiff-student or her parents that she was having problems and could potentially fail the court. Plaintiff-student claimed that if the defendant-teacher had not been derelict in his duties, plaintiff-student would have had notice of her insufficient performance in psychology and could have avoided failing the class.

Plaintiff-student and her parents filed a complaint against defendant-teacher seeking damages for reckless breach of duty. According to plaintiff-student, the defendant-teacher ignored guideline and rules promulgated by the local school district board of education. Specifically the rules required the defendant-teacher to assign and grade at least five assignments
per quarter. The defendant-teacher filed a motion for summary judgment, which the trial court granted. The plaintiff-student appealed from the judgment below.

Issue No. 1--At issue is a teacher immune under sovereign immunity statutes in education malpractice suit, for failing to follow guideline and requirements of school board, where student failed to establish that the teacher acted with a malicious purpose, bad faith, or in a wanton or reckless manner?

Holding No. 1--Yes, a teacher is immune under sovereign immunity states in education malpractice suit, alleging a failure to follow guidelines and requirements of school board. Student failed to establish that teacher acted with a malicious purpose, in bad faith, or in a wanton or reckless manner. Judgment of the trial court granting summary judgment is affirmed.

Reasoning No. 1--Ohio statute §2744.03(A)(6)(b) provides: (A) In a civil action brought against a political subdivision or an employee of a political subdivision to recover damages for injury, death, or loss to persons or property allegedly caused by an act or omission in connection with a governmental or propriety function, the following defenses or immunities may be asserted to establish non-liability . . . (6) In addition to any immunity or defense referred to in division (A)(7) of this section and in circumstances not covered by that division, the employee is immune from liability unless one of the following applies: . . . (b) His acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner.

Under this statute, the defendant-teacher is immune unless plaintiff-student can establish he acted with malicious purpose, in bad faith, or in a wanton or reckless manner. In R.C. 2744.03(A)(6)(b), the word reckless is associated with the words malicious purpose, bad faith, and wanton all of which suggest conduct more egregious than simple carelessness.
Looking at the use of the word reckless in this context, this court agreed with the trial court that the defendant-teacher must have perversely disregarded a known risk in order to lose his immunity. We believe plaintiff-student failed to establish that defendant-teacher’s conduct was reckless.

Issue No. 2--Whether under the facts of this case; was the alleged actions of the defendant-teacher the proximate cause of harm to the plaintiff?

Holding No. 2--Judgment of the trial court affirmed. The plaintiff failed to show that the alleged actions of the teacher were the proximate cause of harm to plaintiff.

Reasoning No. 2--Even if the plaintiff-student had sufficiently alleged recklessness, it's doubtful whether proximate cause could have been established. There is difficulty in establishing that but for the action of the errant teacher the student would not have failed. Factors such as the student’s attitude, motivation, temperament, past experience and home environment may all play an essential and immeasurable role in learning.

In the instant action, the plaintiff-student’s deposition reveals that she did not ask the defendant-teacher about her performance on several tests given that quarter, a significant omission since the previous quarter she had turned in only one of four homework assignments and had missed the final exam, which she make up several weeks later. The trial court correctly found that although the defendant-teacher’s omissions--for which the school superintendent had issued a reprimand--were a cause of the plaintiff-student’s problems in psychology class, evidence was lacking that the teacher’s conduct was the proximate cause of her failing the cause.

Issue No. 3--Whether public policy precludes a cause of action for educational malpractice?
Holding No. 3--Judgment of the trial court affirmed. Public policy does preclude a cause of action for educational malpractice.

Reasoning No. 3--Finally, even if the plaintiff-student was able to establish that the defendant-teacher was reckless and that his conduct had proximately caused her to fail the course; the plaintiff-student may not prevail as a matter of public policy. The professional judgment of educators in determining appropriate methods of teacher should not be disturbed.

Disposition: The appellate court agreed with the trial court that no genuine issue of material fact existed and that the defendant-teacher was entitled to prevail as a matter of law. Judgment of the trial court granting summary judgment was affirmed.

Citation: Sapp v. Effingham County Board of Education, 409 S.E.2d 89.

Key Facts: John Darien Sapp appealed the court’s summary judgment for the school board. The events brought in suit stemmed from an altercation between Sapp and Matthew Kessler in which Sapp was cut during school hours and then again later in the parking lot cut again resulting in serious injury. The suit against the school board and assistant principal Helmly states that Helmly was negligent in not identifying Kessler from the first event and removing him from campus, thereby resulting in the later injury.

Issue: At issue is whether the injuries sustained are the proximate cause of negligence by the assistant principal.

Holding: The appellant court determined that the trial court correctly granted summary judgment in favor of Helmly and Effingham Board of Education.

Reasons: The fact that Helmly was unable to determine the identity of Kessler within 3 hours does not reflect a lack of appropriate training. Because Sapp went to and found the other student in question and was not helpful to Helmly in determining Kessler’s identity he brought
incident upon himself. *Taylor v. Bloodworth* (198 Ga.App 186) provides that the evidence given does not show a breach of duty to protect in the school parking lot.

Disposition: The assistant principal and Board of Education were not liable for injuries sustained because their actions were not the proximate cause of injury being sued. The appellant court further noted that sovereign immunity was not needed as the evidence didn’t warrant it.


Key Facts: Plaintiff-student filed a lawsuit against his wrestling coach. In count I, the plaintiff-student alleged that while participating in a wrestling practice at his high school he suffered a leg injury. Plaintiff-student further alleged that defendant-coach undertook a medical assessment and treatment of his injured leg and then had the plaintiff-student wrestle against a champion college wrestler. Plaintiff-student claims that by negligently treating plaintiff-student’s original injury, failing to have him get proper medical treatment for the injury, and allowing him to wrestle with the college wrestler afterward caused plaintiff-student to suffer further injury to the leg.

The trial court dismissed plaintiff-student’s original complaint on statute of limitations basis. Plaintiff-student then filed a motion to reconsider, or in the alternative for leave to file an amended complaint. In the proposed amended complaint, plaintiff-student added a count which alleged willful and wanton misconduct on the part of defendant-coach. This count contained the factual allegations that were present in count I of the original complaint, along with some additional allegations.

In count II of the amended complaint, the plaintiff-student alleged that he injured one of his knees. After he injured the knee, defendant-coach pulled his leg and manipulated the knee. Defendant-coach then had plaintiff-student wrestle against the champion college wrestler.
Because of defendant-coach’s actions, plaintiff-student suffered further injury to the knee and was forced to undergo surgery for meniscus and ligament damage.

Plaintiff-student’s high school had a written statement of athletic department policies. Defendant-coach allegedly violated these policies on the date in question in the following ways: (1) by making and acting upon medical judgment, (2) failing to contact plaintiff-student’s parents, (3) failing to contact the town rescue squad, and (4) failing to report the injury to the school nurse. Plaintiff-student also alleged in count II that defendant-coach violated school and the state high school association policies concerning participant eligibility by allowing a college student to wrestle with him.

Plaintiff appeals from the dismissal of his complaint against defendant and the trial court’s denial of leave to file an amended complaint. The issue is whether defendant is immune from liability under the school code.

Issue No. 1--Is a high school coach who provided medical treatment to wrestler who injured knee during practice immune from any liability to student for injuries he sustained as a result of coach’s ordinary negligence?

Holding No. 1--Under the facts that were alleged in this case, the immunity provided by §24-24 of the School Code, from liability for ordinary negligence, is applicable.

Reasoning No. 1--The defendant coach is alleged to have treated an injury suffered by the plaintiff-student in a school activity, and he allegedly treated the plaintiff-student after the injury occurred. Every athletic and physical education department has its supplies and equipment necessary for administering first aid. Every coach and physical education teacher is called upon to treat minor injuries and ailments. In doing so they are within the protection of the statute granting them immunity for acts of ordinary negligence.
Because of the unavailability of doctors at the scene of many school athletic injuries, school coaches and trainers are expected to provide initial first aid for both minor and serious injuries. This might include wrapping a sprained ankle in an ace bandage or splinting and applying ice to a fracture. Due to the frequency of athletic injuries, providing initial treatment for such injuries is an inherent part of a school athletic or physical education program, and it is one that must often be performed by coaches. Under the facts alleged in this case, the immunity provided by §24-24 of the School Code from liability for ordinary negligence is applicable.

Issue No. 2--Did a high school wrestler’s complaint state a cause of action against high school coach for willful and wanton disregard of wrestler’s rights within meaning of statutory exception to coach’s governmental immunity, when coach with no medical training had attempted to pull or otherwise manipulate wrestler’s leg following knee injury, had subsequently allowed wrestler to practice with far more skilled and experienced collegiate wrestler, and had failed to call local rescue squad or wrestler’s parents after wrestler sustained additional injury?

Holding No. 2--Plaintiff-student’s complaint does state a cause of action for willful and wanton conduct. The trial court abused its discretion by failing to permit plaintiff-student to file an amended complaint containing the allegations in count II, and it shall do so upon remand.

Reasoning No. 2--To plead a cause of action for willful and wanton conduct, a plaintiff must allege that the defendant either intentionally injured plaintiff or acted in reckless disregard for his or her safety. The mere conclusional allegation that defendant’s actions were willful and wanton is not sufficient; it must supported by factual allegations. The proposed amended complaint contains no allegations that the defendant-coach intentionally tried to injure the plaintiff-student. It must then be decided whether defendant-coach acted in reckless disregard for plaintiff-student’s safety.
Plaintiff-student alleged that defendant-coach failed to contact his parents or the rescue squad after the initial injury so that he could receive proper medical treatment. Defendant-coach also performed other acts which resulted in further injury to the knee. These acts included pulling on plaintiff-student’s leg and manipulating his knee in an attempt to treat the injury. Because of the substantial risks of the injury involved, it can be reckless for an individual with no medical training to pull on the leg of a person with a knee injury and attempt to manipulate the knee assuming no exigency exists which necessitates such treatment. These actions go well beyond the provision of routine first aid which would be within the realm of an experienced coach’s expertise.

The amended complaint not only alleges such conduct; it further alleges that defendant-coach then directed plaintiff-student to wrestle against a far more skilled and experienced wrestler who was a collegiate champion, exposing him to a risk of further injury. After plaintiff-student did suffer additionally injury, defendant-coach still failed to secure proper medical treatment for him by calling the local rescue squad or Halper’s parents. The above-alleged actions, if true and not mitigated by other circumstances, would constitute a reckless course of conduct which needlessly exposed plaintiff-student to the risk of further injury and according to count II did result in further injury. Count II states a cause of action for willful and wanton conduct.

Disposition: The trial court abused its discretion by failing to permit plaintiff-student to file an amended complaint containing the allegations of willful and wanton misconduct, and it shall do so upon remand. The trial court correctly refused to permit plaintiff-student to file a negligence count since the defendant-coach is immune from liability for ordinary negligence.

Citation: Oast v. Lafayette Parish School Board, 591 So.2d 1257 (La.App.3Cir. 1991).
Key Facts: Plaintiff was attending a wrestling match at a high school gymnasium. The plaintiff and her male companion took up positions at the end of the gym next to a support column. Shortly thereafter, a member of a high school wrestling team, who had just lost a close match exited the roped off competition area and started past plaintiff. Upon encountering a folding chair, the wrestler who was frustrated at losing his match, suddenly pushed, kicked or threw the chair to the side. The chair struck plaintiff in the left thigh-hip area causing the injuries complained of in this action. According, to the wrestling coach, the wrestler had always been known to be even tempered. The wrestler’s coach added that the wrestler had never had a temper tantrum, but had always turned his anger inward in he didn’t perform up to his own expectations.

Plaintiff filed suit against the School Board and the wrestling coach alleging that the wrestling match was sponsored by the School Board and the contestants were under the care, custody and control of employees of the School Board. Plaintiff also alleged that the employees of the School Board failed to do what they should have done and/or did what they should not have done for the protection and security of spectators at the wrestling match. The trial judge granted defendants’ motion summary judgment.

The 15th Judicial District Court, Parish of Lafayette, granted defendants’ motion for summary judgment. The trial judge concluded that the School Board’s failure to supervise the wrestling match was a policy-making decision, and since he plaintiff did not allege that this failure to act was done for a criminal, fraudulent, malicious, intentional, willful, outrageous, reckless or flagrant purpose, the defendants would be immune from liability. Plaintiff appealed.

Issue: At issue is one episode of pushing and shoving during student’s entire high school career sufficient to form any pattern for violence or enough to place faculty or school board on
notice of student’s propensity to act inappropriately, as bearing on liability of school board and coach for injury to spectator when student threw chair after competing in wrestling match?

Holding: One episode of pushing and shoving during student’s entire high school career was insufficient to form any pattern for violence or enough to place faculty or school board on notice of student’s propensity to act inappropriately, as bearing on liability of school board and coach for injury to spectator when student threw chair after competing in wrestling match. The Court of Appeals questioned the trial court’s conclusion that La. R.S. 9:2798.1 (dealing with educator’s immunity) is applicable under the circumstances of the instant case. However, the Court affirmed the trial court’s decision concluding that the record clearly supports a determination that there exists no genuine issue of fact material to the conclusion that plaintiff’s injury did not occur by reason of any fault on the part of defendants.

Reasoning: Defendant’s liability, if any, is governed by La.C.C. art. 2320, which reads in pertinent part: Masters and employees are answerable for the damage occasioned by their servants and overseers, in the exercise of the function in which they are employed. Teachers and artisans are answerable for the damage caused by their scholars or apprentices, while under their superintendence. In the above cases, responsibility only attaches, when the masters or employers, teachers and artisans, might have prevented the act which caused the damage, and have not done it. It is well settled that a school board and its employees are not obligated to maintain constant surveillance of students. A teacher and his/her employing school board are responsible for delicts committed by students under their care only upon proof that the teacher, by exercising the degree of supervision required under the circumstances, could have prevented the act which caused the damage and did not do so.
All the depositions submitted into evidence agree that the wrestler’s actions were sudden, spontaneous and completely unanticipated. The assistant principal at the wrestler’s high school characterized the wrestler as a normal kid, very respectful and much reserved on campus. The assistant principal stated that in the wrestler’s entire high school career only three incidents appear in his disciplinary record. Two of those were for tardiness and the third, although, labeled a fight, was more likely an incident involving shoving, pushing and/or loud words. The assistant principal stated unequivocally that no punches could have been thrown in the incident since such would automatically call for suspension from school and Todd had never been suspended.

The record before us contains no evidence which might have indicated to the wrestling coach or to the Board that the wrestler had any tendency toward violence or violent displays of temper. Additionally, there is no dispute of fact concerning the spontaneity of the wrestler’s conduct which resulted in plaintiff’s injury. There is clearly no issue of fact material to a finding that lack of teacher supervision was not a cause in fact of plaintiff’s injury.

Disposition: The judgment of the trial court is affirmed.

Citation: Robinson v. Roberts, 423 S.E.2d 17 (Ga.App. 1992).

Key Facts: The student’s mother filed suit individually and as next friend of her minor child brought suit against the principal and the teacher. The plaintiff alleged that the teacher was responsible for supervising and directing a school sponsored performing arts group and that the teacher sexually molested the child while the group was on off-campus field trips. The plaintiff alleged that the principal was negligent in performing his duty, failing to investigate reports that the teacher had sexually molested other students at the school and allowing the teacher to arrange off-campus performances of the group in violation of school policy and procedure.
The case was tried and the evidence revealed that the teacher sexually molested the 13-year-old student while serving as a teacher at the school and supervising the performing arts group off-campus field trips. It was also revealed that the principal received reports that the teacher had sexually molested other students before the plaintiff was molested and that he was aware that the teacher was transporting the group on field trips in his personal vehicle in violation of school policy and procedure. The jury returned a verdict against the teacher for $8,580 and returned a verdict in favor of the principal.

The plaintiff appealed the judgment rendered in favor of the principal. The plaintiff contends the trial court erred in failing to give the following request to charge:

I charge you that a child under fourteen (14) years of age is legally incapable of consenting to sexual intercourse. If the act of having sexual intercourse is committed by an adult with a child who is under fourteen (14) years of age, the law conclusively presumes the child was incapable of consenting. Likewise, it would be immaterial that the adult did or did not use force.

The plaintiff argues that the above charge is relevant to rebut the principal’s claims of contributory negligence and assumption or risk. More specifically, the plaintiff reasons that a child’s inability to consent to sexual intercourse is relevant to his ability to appreciate the dangers of associating with the defendant teacher.

Issue: At issue in a negligence claim against principal of school where child was sexually molested by teacher, was it error for the trial court to refuse to give plaintiff’s requested charge on the inability of a child under 14 years of age to consent to sexual intercourse, when the charge might be relevant to child’s ability to appreciate dangers of her environment and to avoid consequences associated with exposure to such dangers?
Holding: The trial court did not err in failing to give plaintiff’s requested charge. The court did not agree that a child’s inability to consent to sexual intercourse is relevant to her ability to appreciate the dangers of associated with the teacher that molested her.

Reasoning: A request to charge the jury must be legal, apt, and precisely adjusted to some principle involved in the case, and be authorized by the evidence. Under such circumstances, the matter of a child’s ability to appreciate dangers of the environment is “ordinarily left as a question of fact for the jury rather than as a matter of law for the court. A charge on the inability of a child under 14 years of age to consent to sexual intercourse may be relevant in cases involving a child’s ability to consent to criminal acts, but it is not relevant in cases involving a 13-year-old child’s ability to appreciate dangers of her environment and to avoid consequences associated with exposure to such dangers.

Disposition: The trial court’s decision to refuse plaintiff’s requested jury charge was not error and the judgment of the trial court was affirmed.

Citation: Rinehart v. Board of Education, Western Local School District, 621 N.E.2d 1365 (Ohio App. 4 Dist. 1993).

Key Facts: Plaintiff-student was given a disciplinary paddling after he referred to a teacher as a “dickhead”. Plaintiff-student and his father commenced a lawsuit in the court of common pleas, against board of education, a teacher at plaintiff-student’s elementary school, and the principal of plaintiff-student’s elementary school. The complaint alleges that the 12-year-old plaintiff student was a student at the elementary school and was administered a spanking by the defendant-teacher. The complaint states that the spanking was not justified and that it resulted in severe bruises and caused the plaintiff-student pain and emotional distress and caused plaintiff-father to incur medical expenses for student’s treatment.
Defendant filed a motion for summary judgment. In that motion, the defendant-teacher argued that he should be granted summary judgment on the ground that he was immune from liability under state statute. The principal argued that he should be granted summary judgment because he neither witnessed nor played a part in the spanking. His only connection to the incident is that he was principal of the school when the spanking occurred. The court summarily granted defendants’ motion for summary judgment. This appeal follows.

Plaintiffs’ assert that summary judgment was improperly granted to the defendant-teacher because the paddling was against the Board’s corporal punishment rule. Specifically, plaintiffs assert that the paddling was administered before other methods of discipline had failed and that it was a willful act motivated by anger. Plaintiffs reason that if the paddling was administered contrary to the Board’s policy, the teacher’s acts were outside the scope of his employment and he would be excluded from immunity. If the paddling was motivated by actual malice, then the teacher would also be excluded from immunity.

Issue: Is a teacher immune from liability for injury sustained by student as a result of paddling, administered by teacher, against student for referring to teacher by derogatory name, where the paddling was administered in accordance with school policy and after other methods of discipline had failed and no evidence was presented that teacher acted with malicious purpose or in wanton or reckless manner?

Holding: The court below did not err in granting summary judgment to defendants. Plaintiffs failed to set forth any specific facts showing there was a genuine issue for trial.

Reasoning: Chapter 2744 of the Revised Code provides a three-tiered scheme which outlines when a political subdivision and its employees may be liable. First, in R.C. 2744.02(A)(1), the general rule of immunity is stated. Secondly, R.C. 2744.02(B) sets forth
specific exceptions to the grant of immunity provided in R.C. 2744(A)(1). Finally, R.C. 2744.03 delineates defenses or immunities of subdivisions and employees from the liability imposed in R.C. 2744.02(B).

R.C. 2744.03 reads as follows: . . . (A) In a civil action brought against a political subdivision or an employee of a political subdivision to recover damages for injury, death, or loss to persons or property allegedly caused by an act or omission in connection with a governmental or propriety function, the following defenses or immunities may be asserted to establish non-liability: . . . (6) In addition to any immunity or defense referred to in division (A)(7) of this section and in circumstances not covered by that division, the employee is immune from liability unless one of the following applies (a) His acts or omissions were manifestly outside the scope of his employment or official responsibilities (b) His act or omissions were with malicious purpose, in bad faith or in a wanton or reckless manner.

The use of corporal punishment on pupils is provided for in R.C. 3319.41, which reads in part, as follows: (A) Except as otherwise provided by rule of the board of education adopted pursuant to §3313.20 of the Revised Code or of the governing body of the private school, a person employed or engaged as a teacher, principal, or administrator in a school, whether public or private, may inflict or cause to be inflected, reasonable corporal punishment upon a pupil attending such school whenever such punishment is reasonably necessary in order to preserve discipline while such pupil is subject to school authority.

Pursuant to R.C. 3313.20, the Board adopted the following rule pertaining to corporal punishment: Corporal punishment where other methods have failed may be administered by a teacher or by the Principal if not actuated by malice or anger, expressed or implied, and if there is no danger of physical injury to the student. The only acceptable corporal punishment is by the
use of a properly designed paddle. Such corporal punishment shall be administered only in the presence of at least one witness who shall be a teacher, a staff member, a principal, or a parent. An exception to this corporal punishment rule may be made in cases of emergency when a student becomes an immediate threat to the safety, health or life of others and his/her removal must be made by physical force. Such removals shall be reported as soon as possible to the Principal. Also it is strongly recommended that the witness be of the same sex as the student.

The defendant-teacher followed the Board policy on corporal punishment to the letter. The teacher went to the office to see if there was a note on file from the student’s father which requested that student not be paddled. There was no such note on file. Teacher had student bend over, touch his ankles. He held onto his belt loop to steady him and he paddled him. He gave him one swat, allowed him to gain composure, to let him know if anything was wrong. Student said nothing and teacher administered the other two swats. Teacher used a paddle. He had two witnesses that knew the reason for the paddling. He also asked if there was any reason why he shouldn’t paddle student.

Plaintiff-student admitted that he had been out of line and talking earlier that same day. It is apparent from plaintiff-student’s continuing course of misbehavior that other methods of discipline were ineffective and had failed. None of the evidentiary material creates a genuine issue of fact as to whether defendant-teacher’s actions were conducted with a malicious purpose or in a wanton or reckless manner. Thus, the trial court was correct in determining that teacher was immune from liability and in granting summary judgment to the teacher.

Disposition: Plaintiffs’ sole assignment of error is overruled and the judgment is affirmed.

Key Facts: Plaintiff-student was an 8-year-old student who attended physical education class at his school. The students participated in a game of flag football on the field behind the school. The field’s boundaries were marked with a permanent marking substance. At the same time, students at the middle school for seventh and eighth grade students were playing football on the field behind the school which also had permanently marked boundaries. The two fields 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 plaintiff-student was sitting on the ground near the end zone of the field watching the flag football game, a student from the middle school ran through the end zone of the field in an effort to catch a pass. The middle school student ran into plaintiff, fracturing plaintiff’s skull, causing serious and permanent injury.

Plaintiff sued the school district and the school he attended for injuries he suffered on defendants’ premises during a physical education class. In count I, plaintiff alleged that defendant negligently caused injury, and in count II he alleged that defendants caused his injuries through willful and wanton misconduct. The trial court dismissed the complaint on its finding that defendants owed plaintiff no duty of care under the allegations in the complaint. The appellate court affirmed the dismissal of the complaint because it found that §24-24 of the School Code immunized defendants from suit for the alleged negligence. The appellate court also held that the complaint failed to state facts which could support a finding of willful and wanton misconduct. The state supreme court held that the School Code does not protect a school district when the plaintiff alleges negligence of a school district as a property owner independent of negligent acts of a teacher.
Issue No. 1--Do the factual allegations of the complaint, if proven, show that defendants should have realized that the location of the fields involved an unreasonable risk of harm, and that defendants should have expected the students to fail to protect themselves against the danger and that defendants breached their duties as landowners by locating the two playing fields almost immediately adjacent to each other.

Holding No. 1--The plaintiff has stated facts which could support a finding that the arrangement of the fields created an unreasonable risk of harm. Plaintiff has adequately alleged facts which can support a finding that defendants should have expected the students to fail to protect themselves against the dangers of instructions by players on the adjacent field. Thus plaintiff has alleged facts which could support the findings required for landowner liability under §343 of the Restatement (Second) of Torts. Plaintiff’s complaint sufficiently states a cause of action in negligence against defendants.

Reasoning No. 1--The defendants together owned and managed the two playing fields involved in this case, and plaintiff, as a student of the school, was an invitee on defendant’s land. A landowner has a duty to protect its invitees from physical harm caused by a condition on the land if, but only if, he (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and (b) should expect that they will not discovery or realize the danger, or will fail to protect themselves against it (Restatement (Second) of Torts § 343 (1965)).

To determine whether the risk of harm due to the proximity of the fields was unreasonable, it must be taken into account the likelihood of injury, the gravity of the threatened injury, the burden of guarding against the injury, and the consequences of placing that burden on defendant. According to the complaint, the fields were so close together that when both fields
were in use, participants in one game were likely to run into persons on or near the adjacent field. Most of the injuries from the resulting collisions would probably be minor, but some could be severe. The school district could have guarded against the injury by shortening or repositioning the fields by coordinating schedules so that classes were not simultaneously using both fields or by erecting a soft barrier between the fields. From the facts alleged in the complaint, the defendants would not suffer any extreme untoward consequences if the burden of making the fields safe was placed on defendants. Therefore, plaintiff has stated facts which could support a finding that the arrangement of the fields created an unreasonable risk of harm.

The complaint includes factual allegations that defendants knew that students would not pay attention to the danger of players from the other field running into them. Since the school required the students to participate in games on the fields, the students could not protect themselves against the danger in the most obvious manner, by simply not playing on the fields. Plaintiff had adequately alleged facts which can support a finding that defendants should have expected the students to fail to protect themselves against the danger of intrusions by players on the adjacent field. Thus, plaintiff has alleged facts which could support the findings required for landowner liability under §343 of the Restatement (Second) of Torts. Plaintiff’s complaint sufficiently states a cause of action in negligence against defendants.

Issue No. 2--Does the evidence establish that the school district, school and school board engaged in willful and wanton misconduct in designing athletic fields close together, which allegedly resulted in injury to student when he was run into by football player from adjacent field?
Holding No. 2--The distinction between negligence and willful misconduct is largely a matter of degree, and the alleged misconduct is not of the degree necessary to state a cause of action for willful and wanton misconduct.

Reasoning No. 2--A willful and wanton injury must have been intentional or the act must have been committed under circumstances exhibiting a reckless disregard for the safety of others, such as a failure, after knowledge of impending danger, to exercise ordinary care to prevent it or a failure to discover the danger through recklessness, or carelessness when it could have been discovered by ordinary care. . . [i]n view of the fact that it is a matter of degree a hard and thin line definition should not be attempted (O’Brien v. Township High School District 214 (1980) 83 Ill.2d 462, 469, 47 Ill.Dec. 702, 415 N.E.2d 1015).

The misconduct alleged in this case is similar to that alleged in Kirby v. Macon Public School District No. 5 (1988), 169 Ill.App.3d 416, 119 Ill.Dec. 887, 523 N.E.2d 643, and Gara v. Lomonaco (1990) 199 Ill.App.3d 633, 145 Ill.Dec. 713, 557 N.E.2d 483. In all three cases, the plaintiffs alleged that defendant school districts maintained as part of school facilities unreasonably dangerous equipment for physical education. In Kirby and Gara, while the courts agreed with the plaintiffs that the equipment could be considered unreasonably dangerous, the courts found that the alleged misconduct in failing to protect against the dangers did not rise to the level needed for willful and wanton misconduct. Here, the defendants did not expose children to a very high risk of injury, although the risk could be found unreasonable in light of the possibly slight burden of prevention. While the distinction between negligence and willful misconduct is largely a matter of degree, the alleged misconduct is not of the degree necessary to state a cause of action for willful and wanton misconduct.
Disposition: Affirmed in part, reversed in part, and remanded. The trial court’s decision to dismiss count II of the complaint, alleging willful and wanton conduct is affirmed, the trial court’s dismissal of count I alleging negligence is reversed and the remanded back to trial court.

Citation: *Coyle v. Harper*, 622 So.2d 302 (Ala. 1993).

Key Facts: A middle school student was injured by another student in a classroom while the teacher was monitoring the halls during or immediately after change of classes. The student and her mother filed suit against the teacher for negligent supervision. The Circuit Court entered summary judgment for teacher, and the student appealed.

Issue: At issue was a teacher immune from liability for negligent supervision in action by middle school student who was injured by another student in a classroom while the teacher was monitoring halls during or immediately after change of classes?

Holding: The Supreme Court held that teacher who was monitoring halls during or immediately after change of classes was performing discretionary function was thus immune from liability.

Reasoning: The teacher was performing a discretionary function and is therefore immune from liability.

Disposition: The trial courts granting of summary judgment for the defendant was affirmed.

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

Key Facts: A second grade student was injured by another student or students on school playground during recess. Student and her father brought suit against the teachers who were supervising the students during recess. The circuit court granted summary judgment for the teachers. Plaintiffs appealed.
Issue: Were school teachers who were supervising students during recess performing discretionary function and thus, immune from liability in connection with injuries suffered by student who was injured by another student or students on school playground during recess.

Holding: The Supreme Court of Alabama held that in supervising students during recess, teachers were performing discretionary function and thus were immune from liability.

Reasoning: In supervising the students during recess, the defendant teachers were performing a discretionary function and therefore immune from liability.

Disposition: The trial court’s granting of summary judgment for the defendants is affirmed.

Citation: Laiche v. Kohen, 621 So.2d 1162 (La.App. 1 Cir. 1993).

Key Facts: The plaintiff-student was a 110-pound eighth grader that played on his elementary school’s football team. After being tackled, a 270 pound player, who was also in the eighth grade, fell across the plaintiff-student’s leg causing a fracture of the leg. The plaintiff-student’s parents, individually and on behalf of the minor son, filed suit against coaches, the School Board and the professional liability insurer.

The plaintiffs alleged that the coaches were liable for the plaintiff-student’s injuries due to their allowing and/or requiring smaller elementary school students to scrimmage with disproportionately larger elementary school students without regard to consideration of height and weight differences among the players and for failing to protect smaller players from injuries caused by much larger players. Also, plaintiffs alleged that the School Board was liable for plaintiff-student’s injuries due its failing to adopt and/or implement a system or procedure to prevent extremely large elementary school players from practicing and/or otherwise participating in scrimmage with relatively smaller players and by failing to develop, adopt, and implement a
system of procedure to require that participants in football scrimmages be selected on the basis of similar height and weights.

The defendants filed an answer setting for the affirmative defense of a lack of duty upon the coaches, as elementary school football coaches, to protect against the risk encountered by the plaintiff-student. Later the coaches and their insurer moved for summary judgment alleging that the coaches had no duty to prevent and eighth grade football player from getting hurt in a regular, supervised, refereed interschool football game when the tackle which hurt him was neither unexpected nor unsportsmanlike and is an inherent part of the game well known to the student and his parents, and that the two coaches had not authority to develop, adopt and/or implement a system or procedure to prohibit larger players from playing against relatively smaller players.

The 23rd Judicial District Court, Parish of Ascension, granted defendants’ motion for summary judgment. Plaintiff’s suit against the Ascension Parish School Board was not disturbed by the district court. Appeals were taken.

Issue: At issue is whether elementary school football coaches owe a duty to protect players against risk of injury from playing football with players of different weights.

Holding: The Court of Appeals held that it was unable to find a basis for imposing upon the coaches herein a duty to their players to protect against the risk of injury from playing a football game with players of different weights. We do not base our decision today upon any subjective awareness of the risk on the part of the student. Rather, the court based its decision on the fact that the coaches herein did not act unreasonably vis-à-vis the student or injure the student through the instrumentality of an unreasonably dangerous thing in their custody. The Court of
Appeal held that elementary school football coaches owed no duty to player to protect against risk of injury from playing game with player of different weights.

Reasoning: A duty has been defined as an obligation to which the law will give recognition and effect, to conform to a particular standard of conduct toward another. The imposition of a legal duty depends on a case-by-case analysis. In the case of *Murray v. Ramada Inns, Inc.* (521 So.2d 1123 (La. 1988)), the Louisiana Supreme Court abolished the doctrine of assumption of the risk. The Louisiana Supreme Court held that it would no longer bar plaintiffs from recovery on the ground that the plaintiff knew of the unreasonable risk created by the defendant’s conduct and voluntarily chose to encounter that risk. The Court further added that it did not mean to say that a duty is owed or breached in all situations that involve injury . . . however, the key to a finding of no liability in such cases is not the plaintiff’s subjective awareness of the risk, but the determination that the defendant did not act unreasonably vis-à-vis the plaintiff, or injure the plaintiff through the instrumentality of an unreasonably dangerous thing in his custody (*Id.* at 1136).

Disposition: The district court’s granting defendants summary judgment was correct; and will not be disturbed.

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

Key Facts: Between the first and second class periods at high school, plaintiff-student and another student were involved in a verbal altercation that escalated into a physical confrontation. A teacher, who was on hall duty outside of a classroom, went to the scene of the fight and separated the two girls. After breaking up the exchange, the teacher took the other student by the arm and escorted her to the office of the assistant principal, who was in charge of discipline. As she was being taken to the office the other student initially tried to pull away and made verbal
threats toward the other student, but she gradually calmed down. Once the teacher had the other student at the vice-principal’s office he stopped to assess her emotional state. He ascertained that she had gained her composure, and he placed the student inside the vice-principal’s office and closed a blind-covered door. The teacher did not realize that the vice principal was off campus at a seminar. The teacher told the secretary that he intended to return to assist another faculty member in procuring the plaintiff-student.

A coach that was assisting with disciplinary matter during the first class period had been summoned to the altercation. Informed briefly of the situation, he found plaintiff-student in a second period class and asked her to follow him to the vice-principal’s office. Aware of the need to separate the girls, the coach requested that plaintiff-student take a seat in one of two available rows of chairs in the outer reception area. Observing nothing unusual, he informed the secretary that the student had been involved in an altercation and that a teacher with second period administrative duties would be down shortly to handle matters. The coach then proceeded upstairs to the classroom. At that location, the coach could assume his teaching responsibilities.

Soon the coach’s departure, the student placed in the vice-principal’s office apparently looked through the Venetian blinds, observed the plaintiff-student in the reception area, and mouthed a silent gesture about resuming the conflict. After a short pause and possibly a reciprocation of the taunt, she loudly charged out of the inner room and physically assaulted the plaintiff-student. The secretary, then assisting several students checking in and out of school would later indicate that she never expected a fight to re-erupt in the office area and that the ensuing brawl took her completely by surprise. The secretary immediately jumped from her desk, yelled for the girls to stop, and then sought assistance. Almost simultaneously, the teacher assisting with second period administrative duties and another teacher arrived on the scene and
separated the two girls. As a result of the attack, plaintiff-student collided with a glass-panel door and sustained injuries that included a serious laceration to her right shoulder.

Plaintiff-student’s mother, on plaintiff-student’s behalf, filed suit against the School Board. Following trial, the district court decided in favor of plaintiff after deeming the coach negligent in supervising and separating the two combatants. The trial judge did not find any other school employee negligent in their duties or the school board of improper training of its personnel. Fixing medical expenses at $8,785 and general damages at $75,000, the judge reduced the award by fifty percent. The defendant-school board and its insurer appeal the damage award stemming from a fight between two high school students and a finding that one of the teachers provided negligent supervision.

Issue No. 1--Is a school board, acting through its agents and teachers, liable for negligence for injuries sustained by student when altercation between that student and another student, which had initially been broken up, and was resumed while both students were in administrative area awaiting meetings with administrator?

Holding No. 1--The trial court erred in finding that coach negligently provided supervision. That decision was revered and judgment was rendered in favor of defendant-school board.

Reasoning No. 1--It is well established that a school board, through its agents and teachers, is responsible for reasonable supervision over students. However, this duty to supervise does not make the board the insurer of the safety of school children. Furthermore, constant supervision of all students is not possible or required for educators to discharge their duty to provide adequate supervision. Before liability can be imposed upon a school board, there must be proof of negligence in providing supervision and, also, proof of a causal connection between the
lack of supervision and the accident. Further, the risk of unreasonable injury must be foreseeable, constructively or actually known and preventable if the requisite degree of supervision had been exercised. Said differently, educators are required to exercise only that supervision and discipline expected of a reasonably prudent person under the circumstances at hand.

The record reveals that the coach’s assistance in bringing the students to the office in question, the site designated for handling disciplinary matters, followed school policy. Second, by placing plaintiff-student in the reception area, he physically set the two girls apart by means of a blind-covered closed door and separate rooms. Third, with the situation apparently under control, he reasoned that the secretary’s adult presence and the administrative atmosphere would act as a deterrent to further misbehavior. Finally, with a classroom of students waiting, he elected to discharge one of his primary duties as an instructor and in the process, avoided leaving thirty pupils unattended while the other teacher responsible for administrative duties reported for disciplinary responsibilities. In the opinion of an expert witness, the coach could not reasonably foresee the subsequent events and nothing alerted him to undertake matters differently. Nor did the expert consider the leaving of the secretary in charge, as occurred here to be inappropriate. Thus the record does not support the finding below that the second eruption could be foreseen, or that the coach acted unreasonably in discharging his duty of supervision. In these respects, the trial court erred.

Neither did the secretary, briefly left in charge of the office, act unreasonably under the circumstances. Her duties included a certain involvement when processing administrative matters at her desk. Considering the unforeseeability of the second incident, she could not be expected to watch constantly the two girls in question. Never having a fight re-erupt in the office during her long tenure at the school, she did not anticipate such an occurrence in the short time
needed for the teacher with administrative duties to arrive. Hence, the trial judge correctly found her free from fault.

The teacher that broke up the fight testified that his duties as an instructor required that he stop any fight, bring the students to the assistant principal’s office to allow administrative handling, and then promptly return to the classroom, his primary responsibility. Upon observing the altercation in the hallway, he immediately intruded and escorted the apparent aggressor to the appropriate department. Despite student’s initial verbal threats and attempts to pull away, the teacher detected a subsequent calming of her emotions after their arrival at the office. Eventually, tears appeared on her face and she lowered her head. After seating her in the inner office and assuring himself that tensions had dissipated, the teacher closed the door, having instructed young girl to wait for someone in authority to talk with her. He also informed the secretary that the detainee had been involved in a fight and that he would return upstairs to assist the coach. The teacher discerned nothing indicating that student still felt angry. Instead, his observations and conversation with the student led him to believe that she realized the seriousness of the matter and understood the matter to be over with. Nor did the teacher commit any misjudgment in returning to his classroom, after apprising the coach of the situation and satisfying himself that no assistance would be needed. The teacher understood the secretary to be a part of the staff and capable of controlling the matter at hand. His testimony indicated that he would not have left student alone if no adult had been present. The trial court concluded that he acted reasonably, and the record adequately supports that determination.

The assistant principal’s attendance at an off-campus seminar precluded his involvement with the two students following their altercation. Moreover, the record shows no dereliction of duty in allowing the teachers with administrative duties, to address disciplinary problems in his
absence, or in instructing his teachers about policies concerning student fights. Consequently, on this point the district court did not err in its finding.

Issue No. 2--Should a school board be held vicariously liable for tortuous action of student, who resumed altercations with another student after they had initially separated and placed in separate rooms in administrative area awaiting discussions with administrators. Plaintiff theorizes that LSA-CC Art. 2320 makes teachers vicariously liable for the misdeeds of students under their care.

Holding No. 2--Public policy strongly militates against assessing a school board with vicarious liability for the delictual acts of its students.

Reasoning No. 2--Under the Civil Code Article 2320, a teacher’s responsibility does not attach for damages caused by their scholars, unless a teacher might have prevented the act which caused the damage and failed to do so. The court found no case, and plaintiff cited none, maintaining an educator or school board vicariously liable for the torts of a student. Instead, the jurisprudence required a dereliction of duty by the instructors or administration, leading in turn, to injury or damage occasioned by their charges.

On several occasions, this court has indicated that a school board is not the insurer of the safety of its students. To levy liability, as sought by plaintiff, would effectively place the teacher in the same position as the student as a parent occupies toward his child. Considering the many social problems confronting modern education, and imposition of liability without fault, based upon the delictual conduct of students, would further handicap present-day school systems. If threatened with almost unlimited liability academic institutions would be forced to divert additional attention from their fundamental role as center of learning.
Disposition: For the foregoing reasons, the trial court erred in finding that the coach negligently provided supervision. Accordingly, this court reversed that ruling and rendered judgment in favor of the School Board.

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

Key Facts: Plaintiff-student was a 15-year-old high school baseball player who sustained a head injury when he was struck by a baseball during batting practice. A batter had begun hitting practice, and plaintiff-student stepped from behind a protective screen to pick up a baseball when a line drive ball struck him in the head. The defendant-coach had rules, procedures, and routine for orderly batting practice that was designed to allow him reasonable supervision and to provide for the reasonable safety of his players. His players knew these rules and procedures.

The balls were pitched to the batter by a pitching machine that was fed by the coach at the pitcher’s mound. Each player first underwent bunting practice followed by hitting practice. On each player’s first bunting practice ball the coach would yell out “bunting”. On each player’s first hitting practice ball the coach would yell out “hitting”. Before inserting a ball in the pitching machine defendant-coach would hold the ball with his arm extended and over the machine for all players to see. After a short pause in this position, coach then in one direct motion would lower his arm and feed the ball into the machine to accomplish the pitch.

Players on the field were instructed and required to listen to the coach and to keep an eye on or watch the ball at all times and to be in a ready defensive posture on every pitch. Infielders were required to be behind the infield grass during hitting practice. Balls that were not fielded were shagged or picked up by the players only after each batter completed bunting practice and after that batter completed hitting practice. The shagged balls were returned to a bucket, one in
the outfield, another behind the coach at the pitcher’s mound. The players were not otherwise allowed to shag balls when a batter was at the plate. One player stood behind the coach to take balls from the buckets and give them to the coach who fed the machine. A screen protected the coach and those players who happened to be behind the coach, assisting him or returning shagged balls to the bucket. Expert witnesses testified that coach’s rules for batting practice met standard customarily used by coaches of high school baseball players.

The plaintiff-student and his father sued School Board. The trial court rejected their demands. Plaintiffs appeal.

Issue No. 1--What is the appropriate standard of care to be applied to defendant-coach in negligence action for injury suffered by baseball player who was injured while defendant-coach was conducting batting practice and feeding balls into a pitching machine when plaintiff-student was injured?

Holding No. 1--A coach has the duty to those under his or her charge to recognize and exercise his or her specific responsibilities under the circumstances to protect them from foreseeable harm from the conduct of things or persons under that coach’s supervision. Trial court’s judgment was affirmed.

Reasoning No. 1--A coach or teacher has the duty to those under his or her charge to recognize and exercise his or her specific responsibilities under the circumstances to protect them from foreseeable harm from the conduct of things or persons under coach’s or teacher’s supervision. A teacher or coach, however, is not the insurer of the safety of students in all circumstances and is not held to the impossible standard of exercising constant supervision over each student involved in group activity.
Issue No. 2--Did defendant-coach’s rules and procedures violate appropriate standard of care of a reasonable coach supervising high school baseball players when player was struck by hard hit ball during batting practice in which the coach was feeding balls into a pitching machine?

Holding No. 2--Coach’s rules and procedures did not breach the appropriate standard of care. This conclusion was supported by the record. Trial court’s judgment was affirmed.

Reasoning No. 2--The trial court found that the defendant-coach’s rules and procedures met the prudent practice procedures used by coaches of young baseball players. The court found that defendant-coach did not violate or breach those rules and procedures when plaintiff-student was struck by the hard hit ball.

Plaintiff-student did not heed the coach’s warning that the batter was hitting. He did not keep his eye on the ball or watch either the batter or the coach as the coach began the pitch motion with the ball that struck plaintiff-student. Plaintiff-student did not assume a defensive posture when leaving the safe area behind the screen, but instead focused upon and attempted to pick up or shag a ball that was in the path when the batter had not completed hitting practice.

Disposition: Finding that the record supported the trial court’s factual findings and that the court applied a correct legal standard of care under the circumstances this court affirmed.

Citation: Doria v. Stulting, 888 S.W.2d 563 (Tex.App.-Corpus Christi 1994).

Key Facts: The plaintiff-student threw a piece of fruit at a student in the defendant-teacher’s class; the other student threw the fruit and accidentally hit the plaintiff-student’s girlfriend. The plaintiff-student began cursing at the student who had thrown the fruit. The defendant-teacher overheard the plaintiff-student using profane language and instructed him to stop using that type of language in his classroom. The defendant-teacher warned the plaintiff-
student to stop using profane language, but the plaintiff-student continued to use profane language. The defendant-teacher then told the plaintiff-student, twice, to go to the vice-principal’s office, but the plaintiff-student refused.

The defendant-teacher instructed the plaintiff-student that if he did not leave the classroom voluntarily, then the defendant-teacher would be forced to remove him from the classroom. The plaintiff-student responded that he was going to leave, the defendant-teacher would have to physically remove him from the classroom. The defendant-teacher repeated his instructions to go to the vice-principal’s office but the plaintiff-student refused to go. The defendant-teacher then attempted to remove the plaintiff-student from the classroom by holding onto his hair and his arm with his hands. In this position, the defendant-teacher took the plaintiff-student to the vice principal’s office. The vice principal investigated the matter and place the plaintiff-student in the Opportunity Center for Students for the remainder of the semester.

The student’s parents, individually and as parents and natural guardians of the student, brought suit against the teacher for damages the student allegedly suffered when the teacher removed the student from the classroom after the student refused to go to the vice-principal’s office. The trial court entered summary judgment in favor of the teacher based on the teacher’s affirmative defense that he was immune from liability due to the education code provision. The plaintiffs argue that the teacher failed to prove as an element of his affirmative defense, that he was disciplining student thus removing immunity from liability.

Issue: At issue is a teacher disciplining a student, when the teacher forcibly removes a student from the classroom and escorts the student to the vice-principal’s office; thus affecting the teacher’s immunity defense afforded a professional employee of a Texas school district pursuant to Texas Education Code §21.912(b).
Holding: The court concluded that as a matter of law discipline was not imposed by the teacher upon the student; the vice-principal imposed the discipline-punishment and not the teacher. The teacher has established as a matter of law that forcibly removing a student from the classroom and escorting the student to the vice-principal’s office does not constitute discipline.

Reasoning: The Texas Education Code, §21.12(b) that no professional employee of any school district shall be personally liable for any act incident to or within the scope of the duties of his position of employment and which act involves the exercise of judgment of discretion on the part of the employee, except in circumstances where professional employees use excessive force in the discipline of student or negligence resulting in bodily injury to students.

The Supreme Court in Hopkins v. Spring Independent School District (736 S.W.2d 617, 618 (Tex. 1987)), held that a professional school employee is not personally liable or acts done within the scope of employment and which involve the exercise of judgment and discretion, except when discipling a student the employee used excessive force or negligence which results in bodily injury to the student. “Discipline” in the school context ordinarily describes some form of punishment (Hopkins 736 S.W.2d at 619).

The teacher in this case acted only to protect the school learning process from disruption by a wrongdoer by physically removing the wrongdoer from the classroom and thereafter escorting the wrongdoer to the public office designated by rule, regulation or law to impose the necessary and proper discipline-punishment, the vice-principal. The court reasoned that the teacher no more imposed “discipline-punishment” on the wrongdoer than does the police officer who acts to protect the banking process from disruption by a wrongdoer by physically removing the wrongdoer from the banking floor and thereafter escorting the wrongdoer to the public
official designated by rule, regulation or law to impose the necessary and proper discipline-punishment the judge.

Disposition: The trial court properly granted the teacher’s motion for summary judgment because the teacher established as a matter of law that his actions did not constitute discipline. Therefore, there are no material fact issues in the case which are unresolved. The judgment of the trial court was affirmed.

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

Key Facts: The plaintiff-student sustained a broken jaw as a result of an assault by a classmate during a vocational education class at a high school. The student’s father sued the school’s principal and the vocational teacher that was in charge of the class at the time of the assault. The plaintiff sued the principal and teacher in negligence claiming that they were responsible for the safety of students, that they knew or should have know that the student that assaulted plaintiff was a delinquent minor with a known propensity for violence and assaultive behavior, and that their failure to discipline the student that committed the assault was the proximate cause of the plaintiff-student’s injuries.

The teacher and principal moved for severance and for summary judgment; and the motion were granted and a take-nothing judgment was rendered in their favor by the trial court on the ground that the principal and teacher as professional employees of the school district and were immune from liability under the provisions of the Texas Education Code §21.912. The plaintiff appealed.

Issue: At issue are a high school principal and a teacher immune from liability under the provisions of §21.912 of the Texas Education Code for injuries inflicted on one student by
another student while both were attending class in a public school; when the liability is based on
omissions on the part of professional school employees.

Holding: Because the plaintiff has asserted no cause of action other than based upon the
negligent omissions of teacher and principal; the trial court’s grant of summary judgment was
proper since the teacher and principal were immune from liability as a matter of law under

Reasoning: Section 21.912 of the Texas Education Code provides, in relevant part: (b)
No professional employee of any school district within the state shall be personally liable for any
act incident to or within the scope of the duties of his position of employment, and which act
involves that exercise the judgment or discretion on the part of the employee, except in
circumstances where professional employees use excessive force in the discipline or students or
negligence resulting in bodily injury to students.

The Texas Supreme Court in Barr v. Bernhard (562 S.W.2d 844, 848-9 (Tex. 1978)),
which after finding the language in the last clause to be ambiguous, interpreted §21.912(b) to
mean that a professional school employee is not personally liable for acts done within the scope
of employment, and which involve the exercise of judgment or discretion, except in
circumstances where disciplining a student, the employee used excessive force of his negligence
results in bodily injury to the student. In Barr, as in the instant case, the plaintiff based his suit
against the school district and certain employees upon errors of omission rather than errors of
commission. The court, noting that there was no claim by Bernhard that his injuries resulted
from punishment, found the claim barred by §21.912, reversed the judgment of the Court of Civil
Appeals and affirmed the court’ grant of summary judgment.
Other cases have consistently held that the immunity granted to school district employees for their negligent acts and omissions is waived only respect to disciplinary acts involving excessive force. The plaintiff argues that §21.912(b), by its own language, only provides immunity for any act and not for an omission of a professional school employee. This argument was specifically addressed in Barr where it was determined the word negligence encompasses both acts and omissions.

Disposition: The trial court’s judgment granting a take-nothing verdict for principal and teacher is affirmed.

Citation: Zerr v. Johnson, 894 F.Supp. 372 (D.Colo., 1995).

Key Facts: An elementary school teacher brought a defamation action against a principal after she did not get a job after taking a leave of absence. The teacher had been employed at Thornton Elementary School for 22 years when she requested a 5-year leave of absence to move to Anchorage, Alaska, with her husband. The principal had worked with the teacher for 5 years before her departure and had written her a letter of recommendation before the teacher’s departure. The teacher was unable to secure a job in the Anchorage School District after her move. The teacher later learned the principal had given her a poor recommendation when contacted by the Anchorage School District. The teacher sued for compensatory damages for lost wages and emotional distress claiming that the principal had willfully and wantonly defamed her.

Issue: Whether the statements made by the principal were privileged and thus entitled to immunity under the Colorado Governmental Immunity Act after a principal gave a teacher a poor recommendation.
Holding: The District Court for the District of Colorado held that the teacher failed to present facts that showed that the principal acted in a willful or wanton manner when giving comments to the school district.

Reasoning: The Colorado Governmental Immunity Act provides that actions cannot be taken against public employees while the employees are working in their official capacities and are within the scope of their duties, as long as the actions are not willful and wanton. The teacher admitted that the principal was a governmental employee and was acting within the scope of her job when she made the alleged defamatory comments. However, the teacher made no attempts to plead factual information that the principal acted willfully and wantonly. The teacher said that because the principal had first given her a positive written recommendation and then an adverse oral rating was in essence a lie and thus defamatory. The principal stated that the oral rating was based on truth and was her opinion and she was working within the scope of her employment. The teacher conceded that the information given to the district was mostly true. The court noted that even though the oral rating was not stellar, it did not contradict her written recommendation. Even if it had, it could not necessarily be inferred that malice or bad faith was the reason.

Disposition: The District Court for the District of Colorado found that the teacher did not meet her burden of proving the principal was not immune from suit in her defamation claim against the principal and granted the principal summary judgment.

Citation: Boyett v. Tomberlin, 678 So.2d 124 (Ala.Civ.App. 1995).

Key Facts: Jerry Boyett, a student at Luverne High, sought compensatory and punitive damages for being disciplined for leaving class without permission. He also alleged a violation of his Fourteenth Amendment Rights under the United States constitution. The allegation was brought in suit against Lalar Tomberlin (teacher), Jim Head (principal), and Sammy Carr
(superintendent) as well as the county board of education stating the teacher denied his request to leave as he was suffering from diarrhea. On September 13, 1993, Tomberlin noted that Boyett was in 6th period class and could have left for the restroom at any time, left to change classes and passed by the restroom, returned to Tomberlin’s 7th period class arriving 3 minutes early only to engage in conversation with another student. After this and the beginning of 7th period Boyett loudly and disruptively announced, “I have got to go to the bathroom; this tea has got to come out.” The teacher denied the request as it was made and upon Boyett leaving the class he was assigned 10 days detention by the principal which was upheld by the superintendent.

Issue: Whether the teacher is immune from state tort law claims while engaged in official capacity as a teacher.

Holding: The Alabama Court of Civil Appeals affirmed the qualified immunity of the defendants as granted by the summary judgment of the trial court.

Reasoning: The Supreme Court of Alabama brought forth the principle that county boards partake in the immunity afforded the State of Alabama and individuals engaging in discretionary acts may also be entitled to qualified immunity in Byrd v. Sullivan (657 So.2d 830 (Ala. 1995)). The teacher was entitled to qualified immunity when she refused the request to leave using her discretionary authority as to whether Boyett needed to use the restroom or was seeking to get out of class for other reasons. The due process claim alleging a deprivation of constitutional right relying on Bonwell v. Bobo (659 So.2d 102), is far removed. The Fourteenth Amendment does not guarantee a right to be excused from class, nor does the action of the teacher or principal appear in bad faith or indifference. On the claim for injunctive relief, there is no merit as the principal stated the discipline is not mentioned on the student’s permanent record.

Disposition: The Alabama Court of Civil Appeals upheld the trial court’s decision.
Citation: Louviere v. Mobile County Bd. Of Educ., 670 S.2d 873 (Ala. 1995).

Key Facts: Anga Louviere, a student at Alba Elementary in Mobile, stepped into a hole on the way to class resulting in her feet and ankles being burned by steam. Anga and her mother Theresa Hughes brought suit against the Mobile County Board of Education, Superintendent Douglas McGann, and Principal Barbara Doherty. The complaint was amended to include Ossie McDougle the janitor and Roy Humphrey the head of plumbing and heating.

Upon on being told of steam coming from the ground Ossie McDougle covered the hole with plywood and informed the principal of his action. Shortly after this is when Anga reported being burned by the steam coming from the hole in conjunction with the boiler system. The original complaint alleged that the defendants had negligently failed to practice proper safety precautions and monitoring. The amended added that with notice of the condition the janitor and supervisor had failed to take the necessary steps to ensure Anga’s safety.

Issue: At issue is whether the Mobile County Board of Education can be sued for tort liability.

Holding: The appeal court held that the lower court’s granting of summary judgment for the board and its members based on sovereign immunity were correct.

Reasoning: The Mobile County Board of Education was the first school board in the State of Alabama set up under its own enabling statute Act No. 242 Acts 1876 and amended as Act No. 480, Ala. Acts 1969. It was regulated under this Act until the adoption of Act No. 87-260. The significance of this is under Act No. 480 the language existed such that the Mobile County Board of Education “may sue and be sued,” but Act No. 480 changed that to, “may sue and contract.” Gov. Guy Hunt signed Act No. 87-260 into law effectively repealing Act No. 480.
Therefore the Mobile County Board of Education enjoys the right of sovereign immunity as an extension of the state.

Disposition: The case against the Mobile County Board of Education was affirmed by the appeal court in upholding the summary judgment granted.

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

Key Facts: L.S.B. and her parents’ brought suit against the school principal alleging failure to supervise either negligently, wantonly or in bad faith. The allegation stems from a claim of rape during a physical education class while the student was in middle school. L.S.B. was enrolled in the “E.C.” class being taught by Cheryl Colvin and her assistant Eulen Couch. According to the suit the students (L.S.B. and boyfriend) broke into a field house located next to the practice field where they were joined by 3 other males. The accused was another male who made the rest leave.

Issue: Whether principal has qualified immunity while performing a discretionary function.

Holding: The court held that Howard is entitled to immunity and that the lower court correctly granted summary judgment.

Reasoning: Supervision is a discretionary function by the nature that is continuous in judgment and decision making by the person fulfilling the position (Coyle v. Harper, 622 So.2d. 302 (Ala.1993)). In this case L.S.B. provides no evidence of negligent or wanton supervision and that Howard took corrective action against Couch after learning of the incident. Within her position in the Birmingham City Schools as principal she does not have the authority to hire or dismiss teachers or teacher aides.
Disposition: The appeal court affirmed the ruling and provided clearly that the principal was entitled to qualified immunity as an extension of the state’s sovereign immunity while performing supervisory acts.

Citation: Teston v. Collins, 459 S.E.2d 452 (Ga 1995).

Key Facts: Joseph Teston and his father brought suit alleging Dwayne Collins (teacher) and Billy Faircloth (principal) where liable for injures Joseph sustained from a visitor. Jason Allen, a former student, entered the shop class Joseph was in and after a conversation struck him with a rubber mallet twice. Joseph had trouble breathing and was taking to Faircloth’s office at which point his mother was called. She took him to the doctor where he was ultimately admitted to the hospital for an overnight stay. The suit was brought against the defendants only in their official capacities and did not allege willful or wanton conduct.

Issue: Whether the teacher and/or principal are liable for the injuries Joseph sustained from a classroom visitor.

Holding: The appeal court held that all defendants were protected by official immunity and the school board was immune under the doctrine of sovereignty.

Reasoning: The court stated that the plaintiffs did not bring forth evidence to prove a willful or wanton act of negligence in regards to the injuries. The plaintiffs further argued that the act of the defendants was ministerial and not discretionary based on OGCA 20-2-1180 and the Bleckley Board’s adoption of the code, but the court disagreed stating the supervision of the classroom was discretionary as evidenced by Doe v. Howell (212 Ga.App. 305) since there was no allegation of intent or malice placed on the defendants. The court further found no error in judgment by the lower court in dismissing the suit against the individuals as the claim was brought against them in their official capacity.
Disposition: The appeal court affirmed the decision of the lower court in dismissing the lawsuit against all plaintiffs.

Citation: *Holbrook v. Executive Con. Center, Inc.*, 464 S.E.2d 398, 1995.

Key Facts: A 13-year-old student was found face down in the deep end of a swimming pool while participating in a school band trip. His parents and he brought suit against the Executive Conference Center and the Ohio defendants, which consisted of the Dayton Public Schools, the Dayton School Board, and Leroi M. Hall. The student entered the shallow end of a swimming pool that was in violation of applicable Fulton County Health Department code. The pool was absent a life line breaking the shallow end from the deep end. Executive asserted it had adequately instructed the student of alleged risk in using the pool. Additionally, Hall was supervising and acting as an agent of the state although the suit stated him to be negligent in failing to exercise reasonable care for the minor. Furthermore, the suit points out there was no lifeguard and that the student had basic swimming skills but does not know how he came to be floating in the deep end face down.

Issue: At issue is whether the Ohio defendants have sovereign immunity as a defense against the tort claim.

Holding: The Ohio defendants are immune from personal liability and the trial court erred in denying summary judgment to Executive.

Citation: *Hackathorn v. Preisse*, 663 N.E.2d 384 (Ohio App. 9 Dist. 1995).

Key Facts: The students in a vocational construction class cut a hole in the floor of the homeowner’s dining room as part of a class project. A bookcase table and two chairs were placed by the two exposed sides of the hole. The vocational teacher warned the homeowner about the hole and informed her that the insulation paper that covered the hole would not support
any weight. Despite the precautions taken, the homeowner fell through the hole. She was found in the basement with two chairs and the insulating paper that had been placed over the hole. The homeowner died later that night.

The homeowner’s daughter sued the teacher and the Board of Education for wrongful death and conscious pain and suffering stemming from the death of her mother. In a separate action the claims against the Board of Education were dismissed in its favor. The teacher moved for summary judgment, claiming that he was immune from suit because he was a political subdivision employee. The trial court granted the teacher’s motion. The plaintiff appealed arguing that the trial court committed error in granting summary judgment for the teacher on the basis of immunity when a genuine issue of material fact existed as to whether the teacher engaged in reckless or wanton misconduct.

Issue: At issue does the fact that a vocational teacher failed to comply with applicable building codes mean that he acted recklessly, wantonly, or in bad faith, such that he would not be entitled to immunity under statute granting such immunity to employees of political subdivisions, with regard to death of homeowner who fell through hole in her floor which was cut by members of the teacher’s class as part of a class project?

Holding: The trial court did not err by granting summary judgment to the teacher because no genuine issue of material fact existed and judgment for the teacher was warranted as a matter of law. While the teacher failed to comply with applicable building codes, this failure, especially in light of the other precautions taken by the teacher did not rise to the level of recklessness, wantonness, or bad faith.

Reasoning: An employee of a political subdivision is immune from liability in connection with a governmental or proprietary function unless one of three exceptions applies. The relevant
exception in this case states that the employee is not immune if his acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner. Malice refers to the willful and intentional design to do injury. Bad faith connotes a dishonest purpose, moral obliquity, and conscious wrongdoing, breach of a known duty through some ulterior motive or ill will partaking of the nature of fraud. Reckless conduct refers to an act done with knowledge or reason to know of facts that would lead a reasonable person to believe that the conduct creates an unnecessary risk of physical harm and that this risk is greater than that necessary to make the conduct negligent.

The evidence showed that the teacher moved furniture to serve as a barrier between the exposed sides of the hole and the rest of the dining room. He warned the homeowner about the hole and told her that the insulation that covered the hole would not support any weight. His actions showed that he did not intend to cause harm to decedent, did not breach a known duty though an ulterior motive or ill will, did not have a dishonest purpose, and did not create an unnecessary risk of physical harm greater than that necessary to establish negligence. While the teacher in his deposition revealed that he failed to comply with applicable building codes, however, this failure especially in light of the other precautions taken by the teacher did not rise to the level of recklessness, wantonness, or bad faith.

Disposition: The judgment of the trial court granting summary judgment to the teacher was affirmed.

Citation: Bolon v. Rolla Public Schools, 917 F. Supp 1423 (E.D. Mo 1996).

Key Facts: A district court denied summary judgment as it relates to the superintendent and principal and granted summary judgment to the board member in a negligence claim. The student brought suit against the defendants based on sexual contact initiated by the teacher. The
complaint was filed under Title IX alleging failure to provide a reasonably safe environment. The complaint alleges loss of privacy in violation of Ninth and Fourteenth Amendments. Furthermore, the plaintiff alleged the defendants failed to monitor, supervise, and investigate the allegations.

Issue: At issue is whether a board member, superintendent, and principal are afforded official immunity against state negligence claims.

Holding: The District Court held that the board member was entitled to official immunity on state-law negligence claim, but that the superintendent and principal were not immune under official immunity doctrine.

Reasoning: The plaintiff supported claim of official immunity not applying to the superintendent or principal through Jackson v. Roberts, 774 S. W. 2d 860 (Mo.Ct.App.1989). The Missouri Supreme Court is bound by that holding; however Missouri law is unclear with board members due to qualification as public official. Rustic v. Wiedemeyer, 673 S.W.2d 762, 768-69 (Mo.1984) entitles qualified immunity if the conduct is “discretionary” rather than “ministerial”. The board member action is not bound by law to have authority in procedures of hiring or investigating backgrounds for maintenance of reasonably safe environment. All three defendants are subject to “failure to train” theory as determined in City of Canton v. Harris, 489 U.S. 378.

Disposition: The District Court entered summary judgment that school districts are strictly liable under Title IX, the principal and superintendent was not immune, but a school board member was entitled to immunity.

Key Facts: On October 7, 1994, a student enrolled at George Washington Junior High School was found to be in possession of what appeared to be marijuana after being reported to his teacher. The teacher alerted the school assigned deputy who contacted the principal. After the student was removed from the room the classroom teacher conducted a search that resulted in the findings of the marijuana, rolling papers, and a rolled cigarette where he had been seated. After the student was questioned and refused to give a statement, he requested his parents be contacted at which time his father came and removed him from school. Later in the same day, the principal notified the parent in writing the child would be suspended for 10 days with the possibility of expulsion. On October 20, 1994, the initial hearing was held and was continued several times ending with the superintendent’s recommendation or expulsion which the school board approved. The student by and through his parents filed suit alleging a violation of his fourteenth amendment rights and due process rights as a §1983 complaint and slander. The defendants filed motion for summary judgment under official immunity.

Issue: Whether the principal and other defendants were immune from civil liability after the student was expelled for possession of illegal drugs on school campus.

Holding: The district court held that the principal was entitled to qualified immunity as the acts were discretionary in nature.

Reasons: Within the allegations brought forth the evidence must prove the defendant committed the acts under state law and that such acts deprive the rights of the individual guaranteed by the constitution. The plaintiff stated in the suit a violation of his Fourth, Fifth, and Fourteenth amendment rights. The claim relating to the Fourteenth amendment failed due to a lack of evidence. In applying the Zieger test the court determined the principal was entitled to qualified immunity and the plaintiff provided no evidence to the contrary. Within this the
principal was performing discretionary acts and was not speaking in a slanderous manner due to
his conversations not being done with malice.

Disposition: The motion for summary judgment was granted by the district court in
noting that the actions by the principal were discretionary in nature.

Citation: Landreneau v. Fruge, 676 So.2d 701 (La.App. 3 Cir. 1996).

Key Facts: Plaintiff-student had a history of extreme emotional problems, including a
suicide attempt, sexual dysfunction, and alcohol and drug abuse. Her mother separated from her
father when she was an infant. Plaintiff-student has had very limited contact with her father, and
her relationship with her mother was a poor one. Plaintiff-student began to drink beer at the age
of 10 and by age 13 drank to the point of intoxication. At the age of 12, she smoked marijuana on
a daily basis. She admitted to alcohol and drug abuse in the seventh and eighth grades. She
tested that for a 4-month period while at school in the seventh grade she daily ingested
downers, cocaine, and valium. She was treated at a mental facility at which time suicidal
tendencies were suggested.

Plaintiff-student began a relationship a female teacher/coach when she entered the tenth
grade. Defendant-coach and plaintiff-student engaged in kissing, petting and letter writing. The
trial judge found the letters evidenced something more involved than a platonic or
teacher/student relationship. Defendant-coach testified that all acts of physical intimacy occurred
off campus, after school hours, and not in connection with her duties as a teacher/coach.
Plaintiff-student does not dispute this account, except for one incident of kissing which she
alleges occurred in defendant-coach’s office. Both plaintiff-student and defendant-coach testified
that their relationship ended in January of 1986.
In October 1986, the defendant-coach hosted a party at her home where a female school bus driver was a guest. Plaintiff-student was not invited to the party, but she went anyway and she was drunk when she arrived. Plaintiff-student testified that alcohol and marijuana were present at the party. Plaintiff-student and the female school bus driver engaged in sexual contact, after which plaintiff-student passed out. Although, defendant-coach was not involved and did not observe the encounter between plaintiff-student and the school bus driver, sometime during the evening she set up a bed for the two.

The following morning, plaintiff-student’s mother appeared at the defendant-coach’s home looking for the plaintiff-student. After relating her homosexual activities to her mother, plaintiff-student ran away from home. She was subsequently placed in a hospital for alcohol and drug abuse. While at the hospital she related continuing difficulty with her mother.

Plaintiff-student and her mother filed suit against defendant-coach, the school bus driver, and the school principal. Plaintiffs allege that the school principal and the school board were negligent in employing the defendant-coach and defendant school bus driver. The trial judge ruled that there was no cause of action and dismissed claims. Plaintiffs appealed the judgment of the trial court.

Issue: Are the school principal and the school board liable for the acts of defendant-teacher?

Holding: The trial judge’s finding of no fault on the part of the school principal and the school board is affirmed. The conduct of defendant-teacher was not within the course and scope of her employment with the school board.

Reasoning: The trial judge found no fault on the part of the principal and the school board, stating that he could not find from the evidence that these defendants did something they
should not have done or failed to do something they should have done that would have prevented the development of the relationship between defendant-coach and the plaintiff-student. This finding may not be set aside by this court in the absence of manifest error and where there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review.

The principal hired defendant-coach on the recommendation of the school’s football coach, and after obtaining a favorable report from her previous employer. The coach made his recommendation upon observation and from interviewing defendant-coach and after speaking with her former immediate supervisor. Neither of these individuals received any information about defendant-coach which would have caused them to know or to have reason to know of her homosexual tendencies or the fact that she might engage in sexual activities with a student. Furthermore, defendant-coach had been employed at the high school for approximately five years prior to the time she became involved with plaintiff-student. During those five years, neither the principal nor the football coach received any information or observed any behavior which would have led them to question defendant-coach’s character. Furthermore, plaintiff-student never revealed her relationship with Fruge to school officials.

The School Board may be at fault for the acts of its employees under the doctrine of respondeat superior. Louisiana Civil Code article 2320 provides that an employer is answerable for the damage occasioned by its servant in the exercise of the functions in which the servant is employed. Applying that article, an employer’s vicarious liability for conduct not his own extends only to the employee’s conduct which is within the course and scope of his employment. Generally speaking, an employee’s conduct is within the course and scope of employment if the conduct is of the type that he is employed to perform, occurs substantially within the authorized
limits of time and space and is motivated at least in part by a purpose to serve the employer. The defendant-coach’s conduct at issue is that which occurred at her home on the night of the party. This conduct occurred away from her employment, occurred after employment hours, and the conduct was not the kind which she was employed to perform.

Disposition: There was no error in the trial judge’s finding of no fault on the part of the principal or the school board.


Key Facts: A member of the varsity basketball team was poked in the left eye by the finger of another player during a practice session. H sustained substantial eye injury and eventually lost all vision in that eye. The injured player had stated that during an earlier practice he had worn a borrowed pair of goggle from another player; when after 5 or 10 minutes the coach ordered him to take the goggles off before he hurt another player. After this incident, the player presumed that his coach would not allow him to wear protective eye gear.

The injured and his mother filed suit in circuit court against the high school district alleging that the school district breached its duty to warn students of the dangers of basketball and its duty to allow students to wear protective gear, such as eye wear, during athletic activities such as basketball. Following a trial, the jury returned a verdict for the school distinct. The appellate court reversed judgment for the district and remanded the matter for a new trial. The appellate court reasoned that certain jury instructions given by the trial court failed to adequately instruct the jury regarding the school district’s duty to warn students about wearing protective gear, and the district’s duty to allow students to furnish the own protective safety equipment.
Issue: At issue does the school district have a duty to warn students regarding equipment that they should or could wear during athletic activities; or a separate duty to allow students to wear safety equipment that the students themselves have provided when that duty would conflict with the duty to provide adequate safety equipment in the first instance?

Holding: The student in not entitled to recover from the school district for the eye injury he sustained. A school district does not have a duty to warn students that they should purchase and wear safety equipment that is necessary to protect them from foreseeable serious bodily injury. A school district has a duty to furnish reasonably necessary safety equipment to protect student from reasonably foreseeable serious injury; the school district cannot discharge this duty by simply warning the student to purchase such equipment themselves. Also, a school district cannot merely permit students to use their own safety equipment; the school district has an affirmative obligation to provide such safety equipment for the student’s use and benefit.

Reasoning: A duty to warn students of the advisability of wearing such equipment and a duty to allow students to wear such equipment if purchased at their own expense, would be in conflict with a school district’s duty to provide such safety equipment in the first instance. A school district should not be permitted to avoid its obligation to provide appropriate safety equipment by the expedient of advising students that they should purchase such equipment at their own expense. A student’s ability to engage in a school athletic activity while wearing the appropriate safety equipment should not be dependent upon the student’s financial ability to obtain such equipment.

Disposition: The appellate court’s decision to reverse the judgment of the trial court for the defendants is reversed and the circuit court’s judgment was affirmed.

Citation: Hemak v. Houston County School District, 469 S.E.2d 679 (Ga.App. 1996).
Key Facts: The plaintiff was injured while she was leaving a school concert on school property. The plaintiff fell into a storm drain gate in a roadway and injured her ankle. The grate has allegedly been damaged by a disposal company that dropped a trash dumpster on the grate. Prior to this injury, the principal had noticed the damaged grate as he was walking on the school grounds. He personally met with a maintenance department employee and asked the maintenance employee to report the damaged grate by radio. A maintenance department supervisor came to the school and inspected the grate as soon as he received the radio call. The maintenance supervisor determined that the grate could be temporarily repaired, but ultimately would require a replacement when one could be obtained. A temporary repair was made the next day, but failed at some later time because the weld did not hold. The gate was not repaired again or replaced until after plaintiff’s accident.

The plaintiff and her husband brought suit against the disposal company, the school district, the Board of Education, the principal and another employee with the unofficial title of safety director. The plaintiffs contend that the principal was negligent in failing to follow up his call to maintenance to ensure that the grate was properly repaired in accordance with his instruction and in failing to ensure that the warnings were placed or a temporary repair made. They also argue that the safety director was negligent in failing to find the broken grate during one of his prior safety inspections. The trial court granted summary judgment on the basis of official immunity in favor of the principal and the safety director. The plaintiffs appealed.

Issue: At issue do the acts of inspecting school property for hazards, deciding what constitutes a hazard, selecting appropriate methods for correction, and follow up or review or repairs made by maintenance department all involve exercise of discretion, and not ministerial
acts, thus providing principal and teacher official immunity in action for personal injuries sustained when pedestrian fell into damaged storm drain grate as she was leaving school concert?

Holding: The principal and teacher were immune from individual liability because their duties and acts were discretionary and not ministerial. Inspecting school property for hazards, deciding what constitutes a hazard, selecting appropriate methods for correction, and creating priorities and a schedule for correction, all necessarily involve the exercise of discretion whether on the part of the principal or the teacher. Because the duties involved in this incident were discretionary, the trial court correctly granted summary judgment to Beck and Rewis on the basis of their official immunity.

Reasoning: Official immunity is applicable to governmental officials and employees sued in their individual capacities. While official immunity does not apply to purely ministerial duties required by law, public officials are immune from individual liability for discretionary acts undertaken in the course of their duties and without willfulness, malice, or corruption.

A ministerial act is commonly one that is simple, absolute, and definite, arising under conditions admitted or proved to exist, and requiring merely the execution of a specific duty. A discretionary act, calls for the exercise of personal deliberation and judgment which in turn entails examining the facts, reaching reasoned conclusions, and acting on them in a way not specifically directed. Inspecting school property for hazards, deciding what constitutes a hazard, selecting appropriate methods for correction, and creating priorities and a schedule for correction, all necessarily involve the exercise of discretion. Here a school official exercised his discretion and reported the damaged grate to the appropriate department for repair, the grate was in fact repaired, and the repair failed. The follow-up or review of repairs made by a maintenance
department, involving as it does the evaluation of the quality of those repairs, is the essence of
discretionary function.

Disposition: The trial court’s granting of summary judgment for the principal and the
teacher was affirmed.

Citation: Stiff v. Eastern Illinois Area of Special Education, 216 Ill.Dec. 893, 666 N.E.2
343 (Ill.App. 4 Dist. 1996).

Key Facts: A 7-year-old epileptic student was enrolled in a special education program at
a treatment and learning center, which was operated by the defendant. The student’s teachers
took student and her classmates on a field trip to a state park. While hiking on a trail, the group
came upon a bridge which had a fallen tree laying the handrails. The tree was between 2.5 and 3
feet from the floor of the bridge. Beyond the tree there was a step, which dropped down six to
eight inches to the next level of the bridge. The teachers tried unsuccessfully to left or move the
tree. The teachers conferred and decided that it was safe to proceed under the tree to cross the
bridge. As the student was crossing the bridge, she took a step, and her leg buckled under her and
she slipped off f the bridge under the handrail. The student fell four to six feet into a creek bed
and fractured her femur.

The student’s parents brought suit alleging negligence and willful and wanton conduct.
At the close of the plaintiff’s evidence, defendants moved for a directed verdict as to all counts
of the complaint. The court granted the motion as to the willful and wanton counts, but denied
the motion as to the negligence counts. Defendants renewed the motion as to the negligence
counts at the close of all evidence, but the court again denied it.

Issue No. 1--At issue was a Special education organization, and its teachers, educators
entitled to parental immunity from negligence suit for its action in allowing 7-year-old epileptic
student to cross bridge with tree leaning against handrail after which student fell and broke her leg; when the teachers’ decision to continue hike was inherent to in loco parentis, parent-child relationship and represented parent’s discretion and decision-making in supervising child.

Holding No. 1--The conduct involved in this case (1) is related to the conduct of the students during an extracurricular program, and (2) constitutes conduct inherent to the parent child relationship, such that the teachers--standing in loco parentis--are immune from claims of negligence.

Reasoning No. 1--In the face of a physical obstacle, the student’s teachers conferred, considered various possibilities and decided that the student, with the teachers in close proximity, could maneuver under the fallen tree and across the bridge. This conduct represents a parent’s discretion and decision-making in supervising her child. Especially when working with a student with a disability a teacher just like a parent must exercise such discretion in deciding just how far he can push the student toward independence from her disability. The conduct involved in this case falls within the limited areas of conduct which require the skills, knowledge, intuition, affection, wisdom, faith, humor, perspective, background experience, and culture which only a parent can bring to the situation.

Issue No. 2--At issue did the teachers for special education organization show utter indifference to student’s safety in their action in allowing a 7-year-old epileptic student to cross bridge with tree leaning against handrail on field trip after which student fell and broke her leg as would bring conduct outside school code provision granting teachers’ immunity for their actions performed in loco parentis; when the record showed that teachers evinced concern for students, cautioned them how to conduct themselves on hike and considered various options before deciding to cross bridge and that teachers were watching student closely when she fell.
Holding No. 2--The teachers’ actions could not possibly constitute willful and wanton conduct. The record shows absolutely no evidence that defendants displayed either an utter indifference toward or conscious disregard for the student’s safety while crossing the bridge. Because the evidence when viewed in the light most favorable to plaintiffs, so overwhelmingly favors defendants, we hold that the trial court did not err by granting defendants’ motion for directed verdict on the willful and wanton courts of plaintiff’s amended complaint.

Reasoning No. 2--Illinois statutory law defines willful and wanton conduct as “a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional shows an utter indifference to or conscious disregard for the safety of others” (Ill.Rev.Stat. 1989, ch 85, par. 1-210). The record shows absolutely no evidence that defendants displayed an utter indifference toward or conscious disregard for the student’s safety while crossing the bridge. Instead, the record shows that defendants evinced concern for their students, including the injured student. Defendants cautioned the students about how to conduct themselves on the trail and considered the various options before making a decision to cross over the bridge. Also, the teachers tried to the best of their ability to assist student across bridge.

Disposition: The trial court’s granting of directed verdict for the defendants on the willful and wanton court is affirmed. The trial court’s denial of a directed verdict for the defendant’s on the negligence court is reversed and remanded back to the trial court with directions.

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

Key Facts: Plaintiff-student was a student in a junior high school, at which there was to be a faculty-student basketball game. A coach and the vice-principal of the school were assigned
to supervise the game. The plaintiff-student took it upon himself to collect admission fees at the
door of the gymnasium, despite being instructed not to.

A high school student refused to pay the admission to the game and grabbed the plaintiff-
student by the shirt and pushed him against the wall, speaking to him in an aggressive and
insulting way. Some students notified the coach, who immediately went to the entrance and
found the plaintiff-student and the high school student holding each other’s forearms as though
bracing for a fight. He separated them and escorted Oliver all the way off of the campus. As he
was leaving Oliver called back in the direction of Briggs and another student named Brooks, “I’ll
be back.”

The coach separated them and escorted the high school student all the way off of the
campus. As he was leaving, the high school student called back in the direction of the plaintiff-
student, “I’ll be back.” This type of threat was extremely common with students and such
incidents happened at numerous times during each day of school and after school. Usually, they
did not result in any serious problem and they had never resulted in a shooting before.

The high school student went to his home a block of so away from the school campus and
obtained his aunt’s pistol. He returned to the campus encountering plaintiff-student and another
student as they left the gymnasium. The plaintiff-student and the other student moved towards
the high school student and exchanged words. The high school student fired his gun which
caused which struck no one. The high school fired the gun a third time and hit the plaintiff-
student. The plaintiff-student died from his gunshot wound.

The mother of plaintiff-student, on her own behalf and as next of kin, filed action against
the city school board, principal, and coach who organized the basketball game. The circuit court
entered judgment for defendants. Plaintiffs appeal.
Issue No. 1--At issue is whether the trial court committed error in ruling that the defendant principal and coach exercised reasonable care under that circumstances and that the plaintiff failed to carry the burden of proving that any act of failure to act by Defendants was the proximate cause of the plaintiff-student’s death.

Holding No. 1--The Court of Appeals held that the evidence supported the trial court’s finding that the shooting of the plaintiff-student was not foreseeable and thus the trial court did not err in ruling that the Defendants were not guilty of any common-law negligence which proximately caused plaintiff-student’s death.

Reasoning No. 1--In order to establish proximate causation and, ultimately, negligence, the plaintiff must show that the harm giving rise to the action reasonably could have been foreseen or anticipated (Cox v. State, 844 S.W.2d 173, 177 (Tenn.App. 1992)). Forseeability is a question of fact, and, thus, the trial court’s findings with regard to forseeability are entitled to a presumption of correctness (Id. at 178).

The trial court found that the incident at the entrance to the gymnasium was not such as to place the defendant on notice that the high school student would engage in such a serious act of violence. There was no evidence that would place the defendants on notice that a shooting or similar incident would be the result of the minor scuffle which took place. According to the trial court these verbal and lightly physical disputes, no matter how reprehensible were commonplace at the time of the plaintiff-student’s death and had not resulted in death or serious injury before.

The evidence at trial supported the trial court’s findings. Specifically, the coach and principal both testified that incidents involving students grabbing, pushing, and threatening other students occurred quite often at the school. The coach testified that he constantly heard students make threats similar to the threat made by the high school student in this case, but, in the coach’s
experience this was the first time a student actually had carried out such a threat. Further, the coach had never known the high school student to have a weapon or to cause any problems around the school. The principal corroborated the coach’s testimony stating that based on his knowledge of the high school student as a former student, the principal would not have expected him to carry out his threat.

Issue No. 2--At issue is whether the trial court committed error in ruling that the defendant principal and coach were not negligent per se because of their failure to report the initial altercation between the plaintiff-student and the high school student pursuant to the provisions of Tennessee Code Annotated §49-6-4301.

Holding No. 2--The Defendants were not negligent per se since they did not violate statute requiring reporting to police criminal acts by students because under Tennessee Code Annotated §49-6-4301, the Defendants were not required to report the incident to the police department.

Reasoning No. 2--The Tennessee Code Annotated §49-6-4301 requires “every teacher observing or otherwise having knowledge of an assault and battery or vandalism endangering life, health or safety committed by a student on school property shall report such action immediately to the principal of such school.” The section also requires that “every principal having direct knowledge of an assault and battery or vandalism endangering life, health or safety committed by a student on school property or receiving a report of such action shall report such action immediately to the municipal or metropolitan police department or sheriff’s department having jurisdiction.” “Any fight not involving the use of a weapon, or any fight not resulting in serous personal injury to the parties involved, shall be reported only to the school administrator.”
Although the high school student’s actions during the initial altercation may have constituted an assault and battery, the trial court found that the assault and battery did not endanger the life, health or safety of the plaintiff-student and the appellate court concluded that the evidence did not preponderate against such a finding. The statute further provides that any fight not involving the use of a weapon, or any fight not resulting in serious personal injury, need not be reported to the police. In this case, it is undisputed that the initial altercation between the plaintiff-student and the high school student neither involved the use of a weapon nor resulted in serious personal injury. Accordingly, Defendants were not required to report the incident to the police department. The legislature’s insertion of the “fight” exception into the statute appears designed to give school teachers and administrators the discretion not to report minor incidents to local law enforcement authorities, based not on the nature of the altercation, but on the degree of harm actually threatened or inflicted during the altercation.

Disposition: The trial court’s judgment entered in favor of Defendants is affirmed.

Citation: Spacek v. Charles, 928 S.W.2d 88 (Tex.App.-Houston [14th Dist.] 1996)

Key Facts: Defendant coaches called a 14-year-old junior high student into their office during school hours to talk to the student about improving his grades so that he could participate in sports when he entered high school. One of the coaches allegedly threatened to hang plaintiff-student if he did not improve his grades, and reached for a white extension cord, told student to look at the ceiling and attempted to grab him. The other coach allegedly retrieved what the student to believe to be a handgun, placed the student in a headlock, put the weapon against the student’s head, and threatened to kill him if his grades did not improve.

The superintendent spoke with the coaches soon after he became aware of the incident. The superintendent said that one of the coaches admitted to reaching for the extension cord, but
claimed that he was just playing around with the student and attempting to establish a rapport with him. Coach stated that he and student were laughing it up while the student was in his office. While testifying before the school board, the coach said that he playfully responded to student’s dare that he couldn’t catch him by picking up the extension cord and saying, “yes, I will catch you and I will tie you up and we will whip you.” The other coach admitted that he produced and displayed a starter pistol in the office at the time of the alleged incident.

Plaintiff’s mother, as next friend, brought suit against the coaches and the school district alleging both federal and state claims. Both the School district and the coaches filed motions and supplemental motions for summary judgment. The trial court granted the school district’s motions for summary judgment, but denied the coaches’ motions for summary judgment, from which they now appeal. Defendant-coaches raise points of error alleging the trial court erred in failing to grant their motion for summary judgment because their defense of qualified immunity defeats plaintiff-student’s federal and state claims as a matter of law.

Issue No. 1--Do the acts of threatening student and pointing a gun at him constitute a Fourth Amendment or Eighth Amendment Constitutional violation?

Holding No. 1--Plaintiff-student failed to assert constitutional claims under the Fourth and Eighth Amendments, therefore defendant coaches are protected from liability by the defense of qualified immunity.

Reasoning No. 1--The defense of qualified immunity shields government officials performing discretionary functions from civil damages liability as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated (Anderson v. Creighton, 483 U.S. 635, 638, 107 S.Ct. 3034, 3038, 97 L.Ed.2d 523 (1987)). Whether an official has immunity for an allegedly unlawful office action generally turns on the
objective legal reasonableness of the action as assessed in light of the legal rules clearly established at the time of the action (Id. at 639, 107 S.Ct. at 3038-39). The constitutional right the official allegedly violated must be clearly established to the extent that a reasonable official would understand that what he was doing violates that right (Id. at 640, 107 S.Ct. at 3039). Section 1983 imposes liability for violations of rights protected by the United States Constitution, not for violations of duties of care arising under tort law. Therefore, the threshold inquiry in any §1983 claim is whether the plaintiff has been deprived of a right secured by the Constitution.

Defendant-coaches correctly assert that the Eighth Amendment’s prohibition on cruel and unusual punishment is inapplicable to disciplinary proceedings in the public school. Likewise, administering corporal punishment in the public school context does not constitute a Fourth Amendment search or seizure. Corporal punishment is but one form of discipline that the common law sanctions, provided that teachers impose reasonable, but not excessive force in disciplining a child. Because plaintiff-student failed to assert constitutional claims under the Fourth and Eighth Amendments, defendant-coaches successfully defeated the threshold issue in asserting qualified immunity defense. Therefore, defendant-coaches in their individual and supervisory capacities are protected from liability by the defense of qualified immunity.

Issue No. 2--Did the trial court commit error in denying defendant-coaches motion for summary judgment as to plaintiff-student’s state tort claims, when they claim that they had established as a matter of law the defense of qualified immunity under §21.912 of the Texas Education Code?

Holding No. 2--The trial court did not err in denying summary judgment to defendant-coaches on the basis of their §29.912 immunity defense.
Reasoning No. 2--Section 21.912 states in pertinent part: No professional employee of any school district within this state shall be personally liable for any act incident to or within the scope of the duties of his position of employment, and which act involves the exercise of judgment or discretion on the part of the employee, except in circumstances where professional employees use excessive force in the discipline of students or negligence resulting in bodily injury to students.

In other words, a professional school employee is not personally liable for acts performed within the scope of his employment which involve the exercise of judgment or discretion, unless in disciplining a student he uses excessive force or his negligence results in bodily injury to the student. The exception to immunity exists only where school officials engage in disciplining a student. Discipline, in the school context generally involves some form of punishment. Section 21.912 suggests two type of discipline, namely force such as corporal punishment, which involves physically striking or touching a student, and negligence which requires some action on the part of the student such as running laps.

Although the legislature did not define excessive force in the context of §21.912, the legislature has authorized the use of force by an educator if he is entrusted with the care, supervision, or administration of the person for a special purpose, and when and to the degree the educator reasonably believes force is necessary to further the special purpose or to maintain discipline in a group (Texas Penal Code § 9.62). Section 9.62 is generally expressive of the common law majority rule that public school teachers standing in loco parentis may use reasonable force to discipline their charges.

The Restatement of Torts, Second Edition, articulates the rule in more detail. It provides the following: In determining whether force or confinement is reasonable for the control,
training, or education of a child, the following facts are to be considered: (a) whether the actor is a parent; (b) the age, sex, and physical and mental condition of the child; (c) the nature of his offense and his motive; (d) the influence of his example upon other children of the same family or group; (e) whether the force of confinement is reasonably necessary and appropriate to compel obedience to a proper command; (f) whether it is disproportionate to the offense, unnecessarily degrading, or is likely to cause serious or permanent harm. Force applied for any purpose other than the proper training or education of the child or for the preservation of discipline, as judged by the above standards, is not privileged (Restatement (Second) of Torts §§ 150, 151 (1965)).

Consistent with the public policy of Texas to give teachers the necessary support to enable them to efficiently discharge their responsibilities teachers may use reasonable force not only to punish wrongful behavior but also to enforce compliance with instruction (Hogenson v. Williams, 542 S.W.2d 456 460 (Tex.Civ.App.-Texarkana 1976)). However, a teacher may not use physical violence against a child merely because the child is unable or fails to perform, either academically or athletically, at a desired level of ability, even though the teacher considers such violence to be instruction and encouragement.

Although the facts of this case do not involve paddling or spanking or other physical force typically associated with corporal punishment, allegations that a teacher restrained a child in a headlock and placed a weapon against his head, and that another teacher attempted to grab the student to hang him with an extension cord, undoubtedly raise a question of excessive force. Because a fact question exists as to whether defendant-coaches used excessive force in disciplining student for his poor grades, defendant-coaches fail to show they are entitled to the defense of qualified immunity under the Texas Education Code as a matter of law.
Disposition: The court affirm the portion of the judgment of the court below denying defendant-coaches’ motion for summary judgment based on qualified immunity under the Texas Education Code. Plaintiff-student failed to assert constitutional claims under the Fourth and Eighth Amendments, therefore defendant coaches are protected from liability by the defense of qualified immunity.

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

Key Facts: A ninth grade student stayed home from school, obtained a loaded gun from her parents’ basement, and fatally shot herself in the chest. The student had first expressed suicidal thoughts to her school guidance counselor 5 months earlier. The guidance counselor informed the student’s parents that the student had expressed suicidal thoughts and recommended professional counseling. The parents obtained professional counseling for the student. A psychologist diagnosed the student as suffering from clinical depression. The psychologist told the parents that progress was being made but warned that the student was not out of danger of suicide. This information was not provided to the school district or the guidance counselor.

The student wrote an essay for her English class about a teenage girl committing suicide by shooting herself in the chest. The student’s English teacher questioned her about the essay and reported it to the guidance counselor. This information was not provided to the student’s parents.

Another guidance counselor received a telephone call from a friend of the student. The friend told her that she had received a letter from the student that said she intended to get a gun from the basement of her home and kill herself. The next morning the counselor contacted the guidance counselor about the telephone call. Late in the afternoon of the following day, the
guidance counselor spoke to the student about her suicidal statements. The student told the
counselor that she only considered suicide when she was fighting with a parent and that she was
not thinking about it now. The student also told the guidance counselor that she was in
counseling. The guidance counselor spent about 15 minutes with the student and told her he
wanted to see her the following week. The guidance counselor did not contact the student’s
parents about the letter or the conversation.

With her parent’s knowledge, the student stayed home from school on the following
Monday and Tuesday. On Tuesday the student fatally shot herself with a loaded gun kept in the
basement of her home. The school district had no policy on student suicide prevention. The
district maintained a student manual and a faculty manual that discussed issues relating to
student dress, behavior, and discipline, but neither manual specifically addressed suicidal
students.

Issue No. 1--Is the school district entitled to discretionary function immunity from claims
alleging failure to develop and implement a suicide prevention policy?

Holding No. 1--A school district is entitled to discretionary function immunity in an
action alleging negligence for failure to develop and implement a suicide prevention policy.

Reasoning No. 1--Discretionary function immunity protects a government entity from
tort liability from a claim based on the performance or the failure to exercise or perform a
discretionary function or duty. The purpose of discretionary function immunity is to preserve the
separation of powers by protecting executive and legislative policy decisions from judicial
review through tort actions.

The critical question in determining whether discretionary function immunity applies is
whether the specific conduct involves the balancing of policy objectives. A protected, planning
level decision involves a question of public policy and the balancing of competing social, political, or economic considerations. Operational decisions, unlike planning level decisions, involve the day-to-day workings of a governmental unit, and these implementation decisions are not protected.

A school district’s policymaking is a protected discretionary function. The decision whether to create a policy on student suicide would require the district to carefully weigh considerations about the role and function of guidance staff, the financial resources available for training, privacy of students, intimacy of student-teacher relationships, district involvement with mental health-care providers, educational methods, public attitudes and the efficacy of particular approaches. Because development of a suicide prevention policy involves questions of public policy and the balancing of competing interests, the development of a suicide prevention policy is a protected discretionary function.

The district did not develop a suicide prevention policy. Discretionary function immunity protects both the development and the nondevelopment of a policy. Discretionary function immunity protects the school district’s failure to adopt a suicide prevention policy.

Issue No. 2--Is the guidance counselor entitled to official immunity for decisions on when to notify parents of a student’s expressed suicidal thoughts?

Holding No. 2--A school guidance counselor is entitled to official immunity for his decisions on when to notify a student’s parents that the student has expressed suicidal thoughts.

Reasoning No. 2--A public official charged by law with duties that call for the exercise of judgment or discretion is not personally liable to an individual for damages unless the official’s actions are willful and malicious. This common law official immunity protects an individual’s acts that call for the exercise of judgment and discretion. Acts that are nondiscretionary,
imperative, or prescribed by policy are not protected. The trustee has made no allegation that the guidance counselor committed a willful or malicious wrong, and no evidence exists that even suggests that the counselor’s actions were willful or malicious.

The counselor’s responses to the student’s statements were necessarily based on an exercise of his professional judgment, taking into consideration his knowledge about the student’s problems, his observations of her, his education and training, and his experience dealing with troubled teenagers. The facts demonstrate the many factors that affect such a decision, and the issue is not whether, in hindsight, a different decision might have averted the tragedy. The question is whether the alleged failure to act is discretionary, to which official immunity applies, or ministerial, to which immunity does not apply.

This is a situation requiring the exercise of significant, independent judgment and discretion. Official immunity protects the guidance counselor’s decision on whether or not to immediately inform the student’s parents about her statements.

Disposition: Because the school district and the guidance counselor are entitled to immunity, the district court’s summary judgment is affirmed.

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

Key Facts: Plaintiff-student was a sixth grade student and the defendant-teacher was the child’s teacher. Another student and her friends threatened Teresa, and the plaintiff-student reported the threats to the defendant-teacher. The defendant-teacher attempted to settle differences between the plaintiff-student and one of the girls who were threatening her. The defendant-teacher thought the discussion helped matter, but the plaintiff-student thought conditions worsened. The plaintiff-student argued that the defendant-teacher refused her requests to speak to the school’s principal about the threats. The plaintiff-student was again threatened,
and she related the events to the defendant-teacher in a daily journal entry but he defendant-teacher took no action.

After school, the plaintiff-student was attacked. A teacher intervened and took Teresa to the principal. The principal stated that she was not aware of any conflict between the girls before that afternoon. The principal also stated that she observed no signs of major physical injury to the plaintiff-student. However, plaintiff-student allegedly spent 10 days in the hospital and underwent several surgeries. The principal suspended the girls that attached plaintiff-student and the plaintiff-student withdrew from school.

The School District’s Discipline Management Plan provides that teachers have the responsibility to develop and maintain a Discipline Management Plan for their classrooms and to make all students aware of the plan, posting the rules. The defendant did not create or post a classroom discipline plan. The plaintiff-student’s mother sued the defendant-teacher, the School Board and others to recover for the plaintiff-student’s injuries and alleged constitutional violations.

The 364th Judicial District Court, Lubbock County, granted summary judgment motions of all defendants and student appealed. The Amarillo Court of Appeals reversed as to the teacher. The Court of Appeals held that the School District’s Discipline Management Plan obligated teachers to create and post such a plan, and these requirements are ministerial. Because the defendant-teacher did not create or post a classroom discipline plan, the Court of Appeals held that she did not have immunity.

Issue: Did teacher enjoy qualified immunity, in student’s suit to recover damages for personal injuries sustained in assaults by another student or students, from personal liability for her actions in maintaining classroom discipline, despite teacher’s failure to comply with school
Holding: Because qualified immunity protects all of the defendants in this case, the Court affirmed the court of appeals in part and reverse the court of appeals in part, and render judgment for the defendant-teacher. Maintaining classroom discipline requires the exercise of judgment or discretion. Therefore, defendant-teacher has immunity in this case.

Reasoning: The Texas Education Code provides that a professional employee of a school district is not personally liable for any act that is incident to or within the scope of the duties of the employee’s position of employment and that involves the exercise of judgment or discretion on the part of the employee, except in circumstances in which a professional employee uses excessive force in the discipline of students or negligence resulting in bodily injury to students.

Ministerial acts are those where the law prescribes and defines the duties to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment. Ministerial actions require obedience to orders or the performance of a duty to which the actor has no choice. Ministerial actions require obedience to orders or the performance of a duty to which the actor has no choice (City of Lancaster v. Chambers, 83 S.W.2d 650, 654 (Tex. 1994)).

Maintaining classroom discipline involves personal deliberation, decision and judgment. The School District’s policy does not define teachers’ responsibilities with such precision to leave nothing to the exercise of a teacher’s judgment or discretion. The plan provided no guidelines about: (1) the contents and substance of the discipline management plan she was to develop and maintain for her classroom, (2) what types of disciplinary techniques to use, (3) what forms of student misconduct should result in disciplinary sanctions, (4) when or where to discipline her students, (5) which students should be referred to the principal’s office for
discipline, (6) how to develop such a discipline management plan for her classroom, or (7) how
to maintain such a plan. Each of these decisions, which Texas school routinely leaves to its
teachers, requires the use of professional judgment and discretion.

The court of appeals’ analysis of whether the defendant-teacher’s actions required
discretion or judgment was too narrow. The court of appeals focused solely on whether the
defendant-teacher created and posted a written classroom discipline plan. However, the focus
should remain on whether maintaining classroom discipline is a discretionary function. To
separate the actions of creating a posting a classroom discipline plan from the broad
responsibility of maintaining classroom discipline undermines the effect of the qualified
immunity the Legislature meant to provide.

Disposition: The Supreme Court held that teacher enjoyed qualified immunity from
personal liability for her actions in maintaining classroom discipline. And granting the
defendant-teacher’s application for writ of error and denied plaintiff-student’ application for writ
of error. The decision of the court of appeals is reversed in part and judgment rendered for
defendant-teacher.

Citation: Doe A v. Coffee County Board of Education, 925 S.W.2d 534 (Tenn.App.
1996).

Key Facts: Defendant-teacher was a teacher and head basketball coach of the high school.
The defendant-teacher requested and received a keyed slide-bolt lock which was placed on the
interior side of the exit door of his office leading to the boy’s basketball locker room. A keyed
slide bolt lock was also placed on the interior side of a storage room which was adjacent to the
boy’s basketball locker room. There was disputed testimony regarding whether a keyed slide-
bolt lock was also placed on the interior of the entrance door to defendant-teacher’s office. The
entrance door led to a hallway connected to the school gym. The keyed slide-bolt locks worked such that if the bolt was in place, no one could enter or exit the office without a key.

The school’s procedure for changing a lock required that a request be made to the athletic director who would then forward the request to the assistant principal. This policy was followed when defendant-teacher requested the lock changing which was ultimately approved by the school’s principal. School policy also required that a duplicate of all keys to all doors in the school be kept in the school vault in the school’s main office. The parties dispute whether this policy was followed with respect to defendant-teacher’s front door lock. In addition, the plaintiffs allege that no duplicate keys were maintained in the school office vault for the slide-bolt lock on the interior of defendant-teacher’s office exit door on the alleged keyed slide-bolt lock on the interior of defendant-teacher’s office entrance door.

Plaintiff Jane Doe A attended high school during her sophomore and junior years. Jane Doe A testified that early in the school year, defendant-teacher came to her driver’s education class and requested that she come to his office to make posters for a basketball tournament. The plaintiff stated that while she was in defendant-teacher’s office making posters, he locked the door and began to massage her shoulders. Plaintiff further testified that he ran his hands down her blouse and touched her breasts and that she then pushed his hands away. The defendant-teacher then allegedly put his hands down her shirt again. She stated: “At the time I was really scared. I didn’t know what to do, so I jumped up and pushed his hands off of me. I told him that-I went trying to go towards the door, and he jumped in front of me. And he told me that I better not tell anybody. I couldn’t get out of the door, and I just asked him to please let me out or I was going to scream.” She also noted: “I threatened to scream if he didn’t let me out. And at the time
he took his keys and took the key above--there was a lock above the knob. And he turned the key and opened the door for me to go out. And at that time I entered the hallway and I just took off.”

Plaintiff Jane Doe C began her sophomore year at the high school. She testified that she went to defendant-teacher’s office sometime in the first semester of her sophomore year to take a makeup test. Jane Doe C stated that while she was taking the test, the defendant-teacher began to make sexually explicit remarks to her. She testified that after the remarks were made, she attempted to leave the office, but could not because the door was locked from the inside. When Jane Doe C demanded that defendant-teacher let her out of the room he allegedly grabbed her and told her to walk for him. She stated: “and at that time I just turned around and pushed at him and said let me out of here. And I was screaming and then I remember he took the key and he unlocked two locks. There was a lock above the door handle and he unlocked it and then he stuck it in the bottom lock and he unlocked it. And then I went out of there and I went straight to the cafeteria.”

The defendant eventually resigned from the high school. The students and their parents brought action against board of education, school superintendent, principal and counselor alleging negligent supervision, negligent hiring, failure to report assaults and false imprisonment, arising out of teacher’s alleged sexual assaults.

The Circuit Court, Coffee County, entered judgment for defendants. The trial court found that the defendants were not negligent in allowing defendant-teacher to change the lock to his office entrance door and add the slide-bolt locks to the office exit door and storage closet because school policy allowed coaches to change locks in order to protect the athletic equipment which was assigned to them. The court ruled that even if the defendants failed to maintain a duplicate key to the front door, the plaintiffs’ suit would still fail, because the defendant-
teacher’s alleged misconduct was not a result of the defendants’ failure to maintain a duplicate key, and in any event, defendant-teacher’s office was accessible from the boy’s basketball locker room. The court concluded that no conduct on the part of these defendants was a substantial factor in bringing about the harm being complained of.

The plaintiffs appealed, asserting that Tennessee Code Annotated §49-6-4203(a)(b), the defendants had a duty to provide a safe school environment and protect the plaintiffs from harm while under their care and custody. The appellants argue that the defendants breached this duty by allowing the defendant-teacher to change the lock to his office door without ensuring that a duplicate key to the lock was maintained in the school vault. The plaintiffs also argue that the defendants breached their duty to provide a safe school environment by allowing defendant-teacher to install locks which locked the office doors from the interior thereby preventing anyone from entering the office or exiting the office without a key when the deadbolts were in place. They contend that these actions and inactions of the defendants violated the school’s policies of maintaining a duplicate key to all doors and ensuring free egress from all rooms in the school which were frequently used by students. The plaintiffs contend that the failure of the defendants to follow these school safety policies caused the plaintiffs harm, and that the harm which was produced as a result of these actions and inactions was foreseeable by a reasonable person; therefore the defendants’ action/inactions were the proximate cause of the plaintiffs’ injuries.

Issue: At issue did a board of education, school superintendent, principal and counselor violate duty to provide safe school environment and protect students from harm while under their care and custody by allowing teacher to change lock to his office door without maintaining duplicate key or that this alleged failure was proximate cause of student’s injuries occurring
when teacher allegedly sexually assaulted students and would not let them out of office until they threatened to scream as would support negligence claim?

Holding: The Court of Appeals held that students failed to show that defendants violated duty to provide safe school environment and protect students from harm while under their care and custody by allowing teacher to change lock to his office door without maintaining duplicate key or that this alleged failure was proximate cause of student’s injuries.

Reasoning: In *McClenahan v. Cooley* (806 SW.2d 767 (Tenn. 1991)), the Tennessee Supreme Court established a three-pronged test for determining the existence of proximate causation: (1) the tortfeasor’s conduct must have been a substantial factor in bringing about the harm complained of; (2) there is no rule or policy that should relieve the wrongdoer from liability because of the manner in which the negligence has resulted in the harm; and (3) the harm giving rise to the actions could have been reasonably foreseen or anticipated by a person or ordinary intelligence and prudence (*Id.* at 775).

The trial court found that the plaintiffs’ failed in their burden of proving that the defendants did not maintain a duplicate key to the entrance door to defendant-teacher’s office. The trial court apparently found the testimony of the defendants’ witnesses to be more persuasive on the issue of whether a duplicate key was maintained in the school vault. Moreover, even if the defendants did in fact fail to maintain a duplicate key to the entrance door lock of defendant-teacher’s office, such a finding would avail the plaintiffs nothing, because the failure to maintain the key was not a substantial factor and therefore not a proximate cause of the plaintiffs injuries.

The plaintiffs assert that by allowing defendant-teacher to place the keyed locks on the inside of his office doors, the defendants violated school policy which required that free egress from any area frequently used by students not be impeded. The court could not find a school
policy which prevented coaches’ offices from being locked from the inside, whether with a key or otherwise. There were no general restrictions on the type of locks which could be used within a school, but state fire regulations required that areas where children are could not be locked from the inside. Areas where children are generally do not include coaches’ offices. The testimony in the record only indicates that classrooms and other common areas cannot be locked from the inside; the testimony fails to establish the existence of a school policy requiring that coaches’ offices not be locked from the inside, whether with a key or otherwise.

Even if the plaintiffs sufficiently proved the existence of a school policy which prohibits the placement of interior locking locks in coaches/teachers offices, the plaintiff’s suit still fails, because the placement of the locks was not a substantial factor in producing the plaintiffs’ injuries. The Court did not think the locks played such a significant part in the plaintiffs’ injuries as to rise to the level of a substantial factor.

Disposition: The evidence does not preponderate against the trial court’s finding that no conduct on the part of defendants was a substantial factor in bringing about the harm complained of. Accordingly, the judgment of the trial court is affirmed.

Citation: Purzycki v. Town of Fairfield, 689 A.2d 504 (Conn.App 1997).

Key Facts: Jason Purzycki, an 8-year-old student, was injured while running down a hallway and being tripped by another student causing him to fall through a wire glass door. Students in this elementary school were supervised in their travels to and from classrooms, to the lunchroom, and from recess. However, students were dismissed by tables from the lunchroom to go to recess where they used a hallway unsupervised. The suit was filed alleging negligence and nuisance to which the defendants claimed qualified governmental immunity as a shield. The jury
in the trial found in favor of the plaintiffs, but the trial court granted the defendant’s motion to set aside the verdict based on plaintiff’s failure to prove the imminent harm exception.

Issue: Whether the trial court correctly set aside the jury verdict based on qualified governmental immunity.

Holding: The Connecticut Appeals Court found the trial court correctly set aside the jury verdict by majority, with one dissent.

Reasons: The trial court may set aside the jury verdict if it is against law or evidence (Caciopoli v. Acampora, 30 Conn.App 327, 331, 620 A.2d 191 (1993)). Given that, the qualified governmental immunity stems from municipal immunity extended to employees when performing discretionary acts (Evon v. Andrews, 211 Conn. 501 (1989)). This court identified the person-imminent harm exception as relevant were it expressly defines classes of foreseeable victims (Burns v. Board of Education, 228 Conn. 640, (1994)). The majority contends that the imminent harm exception was not proven due to the nature of events that caused injury. The injuries were a result of a series of events; lack of direct supervision, Jason running, and another student’s actions, but in the 22-year existence of the school the procedure had been used without injury. While the principal might know that an elementary child is likely run or horseplay in the absence of the teacher the risk did not create imminence.

Disposition: The Connecticut Court of Appeals affirmed the trial court’s decision.

Citation: Does 1,2,3,4 v. Covington County School Bd., 969 F.Supp. 1264 (M.D.Ala.N.Div., 1997).

Key Facts: A claim was filed on behalf of several male students who had been sexually molested by a teacher against the superintendent, school board member, and principal. Citing Title IX violations the plaintiff parents claimed a sexually hostile environment as well as failure
to comply with state law. There were four parts to the state law claims: sexual assault, sexual abuse, sexual harassment, and negligence.

Issue: Whether the principal is immune for claims of sexual abuse and harassment, negligence, sexual assault, fraud and bad faith after a teacher sexually molested students at school based on Title IX.

Holding: The United States District Court for the Middle District of Alabama, Northern Division, denied summary judgment to the principal on quid pro hostile environmental claim for two of the students; denied summary judgment on the teacher student hostile environment claim; dismissed the Title IX claim; granted summary judgment on the state law claims for sexual abuse and harassment, negligence, and sexual assault; and denied the principal’s request for summary judgment in the fraud and bad faith claim.

Reasons: The court held that two of the students established that sexual activity had taken place and put the principal on notice when the parents of one of the students met with the principal and voiced their concerns. The parents also gave information to the principal that one of the students’ grades went from very good to very bad after the teacher was removed from the classroom. The court noted that quid pro quo harassment was taking place in that the student was receiving good grades, despite not having to complete assignments or doing well on tests. The student scored very poorly and fell way behind when another teacher took over. The student eventually had to repeat the next grade for the lack of instruction during the time with the accused teacher. The court noted that the plaintiffs met all requirements of the Title IX claim. As for the state law claims of sexual abuse and harassment, negligence, and sexual assault, the court noted that the principal was entitled to discretionary immunity. However, in the fraud and bad faith claim, the court noted that one of the student’s parents met with the principal and the
principal assured them that he would keep the student away from the teacher. This gave the parents the notion to rely on the principal to keep any other incidences of abuse from happening. The plaintiffs were able to show that this statement proved to be false.

Disposition: The United States District Court for the Middle District of Alabama, Northern Division, granted judgment to the students in the Title IX claim and the state law claim for fraud and bad faith and granted judgment to the principal in the state law claims for sexual abuse and harassment, negligence, and sexual assault.

Citation: Grant v. Board of Trustees Valley View School District No. 365-U, 221 Ill.Dec. 902, 676 N.E.2d 705 (Ill.App. 3 Dist. 1997).

Key Facts: Plaintiff-student was a high school senior who wrote suicide notes and told other students that he was going to kill himself. Several students reported plaintiff-students intentions to a school counselor. The school counselor questioned the plaintiff-student but took no other action other than calling his motion and advising her that she should take the plaintiff-student to a hospital for drug overdose treatment. The school counselor did not discuss the suicide threats with plaintiff-student’s mother. Later that day the plaintiff-student jumped off a highway overpass and killed himself.

The mother of the plaintiff-student brought action against the school district and school counselor, alleging that the district had failed to inform her of plaintiff-student’s suicide threats or implement a suicide prevention program. In count I of her complaint, Mother alleged that the defendant owed plaintiff-student a special duty to exercise reasonable care for his safety which they breached by failing to call an ambulance or other medical personnel, for failing to inform Motion of plaintiff-student’s intentions and for failing to implement a suicide prevention program. In count II of her complaint, Mother alleges a breach of the ordinary negligence
standard. In count III of her complaint, Mother alleges that the defendants knew or should have
known that great caution should be used in dealing with teenagers with suicidal tendencies and
that their failure to take reasonable precautions or to notify Mother was intentional and
constituted willful and wanton conduct.

The defendants responded with a motion to dismiss, arguing that they were immune from
liability and further that the complaint failed to state a cause of action for willful and wanton
conduct. The trial court agreed with the defendants and dismissed the complaint with prejudice.
Plaintiff appealed.

Issue No. 1--At issue does count I of Mother’s complaint state a cause of action for
breach of a special duty?

Holding No. 1--Mother’s complaint does not state a cause of action for a breach of a
special duty. The special duty doctrine does not apply under the facts of this case.

Reasoning No. 1--The special duty doctrine was established as an exception to the
common law principle that municipalities are generally not liable in tort to members of the
general public for failure to enforce local ordinances or for their negligent exercise of municipal
authority, such as in providing police and fire protection. The special duty doctrine has been
extended by Illinois courts as an exception also, to the immunities provided under the Local
Government and Governmental Employees Tort Immunity Act.

The Tort Immunity Act is inapplicable to the allegations of the complaint. The special
duty theory advanced by plaintiff in count I would fail for two additional reasons. First, plaintiff
has cited no Illinois case which would extend the special duty exception to schools or school
employees. In addition, in order for the special duty exception to apply it must be established that
the injury occurred while the plaintiff was under the direct and immediate control of employees
or agent of the municipality. The instant complaint alleges that deceased student left school with his mother. At the time of his death, he was no longer under the direct and immediate control of the defendants. Therefore, the special duty doctrine would not apply.

While §10-22.39 of the Illinois School Code empowers school boards to establish in-service training programs for teachers and specifies that such programs shall include a topic on suicide intervention, that section does not mandate exercise of that power, and the failure of a school district to develop such teacher training or to develop an adequate training program does not give rise to a cause of action against the district.

Issue No. 2--At issue what standard of care did the defendants owe the deceased student and what is the nature and extent of any immunity from liability for ordinary negligence for which the defendants are entitled.

Holding No. 2--The defendants are immune from liability for ordinary negligence under the doctrine of in loco parentis. The trial court properly dismissed count II of Mother’s complaint.

Reasoning No. 2--Section 24-24 of the Illinois School Code extends in loco parentis status to teachers and other certified educational employees for matter relating to the conduct of the schools and school children. This status confers immunity from liability for negligence arising out of such matters and requires the plaintiff to prove willful and wanton misconduct to recover. Kobylanski v. Chicago Board of Education (63 Ill.2d 165, 347 N.E.2d 705 (Ill. 1976)). Plaintiff’s argument that defendant’s negligence was not connected with the school program and thus not immune has no bearing. Plaintiff’s complaint alleged that the defendants were negligent for failing to take action to prevent the deceased student’s suicide based on his statements and his
conduct while at school during regular school activities. All of these allegations clearly related to the official conduct of the school program.

Issue No. 3--At issue was did the defendants know or should they have known that great caution should be used in dealing with teenagers with suicidal tendencies and that their failure to take reasonable precautions or to notify Mother was intentional and constituted willful and wanton conduct.

Holding No. 3--The trial court’s dismissal of count III of the complaint with prejudice was appropriate. There appear to be no set of facts on the basis of the record that could be proven which would entitle the plaintiff to relief.

Reasoning No. 3--Willful and wanton conduct is conduct which is either intentional or done with a conscious disregard or indifference for the consequences when the known safety of other persons is involved. The plaintiff has the burden to demonstrate that the defendant has actual or constructive knowledge that such conduct posed a high probability of serious physical harm to others. School counselors and other school personnel should take every suicide threat seriously and take every precaution to protect the child.

If defendant school counselor had failed to take any action upon learning of the deceased student’s statements, her inaction could constitute willful and wanton conduct. However, the complaint admits that the school counselor contacted deceased student’s mother and advised her to take him to the hospital, albeit for a drug overdose. While the nondisclosure of the deceased student’s suicide threats, in proven, could well constitute negligence, the plaintiff has failed to allege sufficient facts that would support a finding that either the school counselor or any other school official acted with conscious disregard or indifference for the deceased student’s safety or
had knowledge that their conduct posed a high probability of serious physical harm to the deceased student.

Disposition: The judgment of the trial court granting summary judgment is affirmed.

Citation: Johnson v. Calhoun County Independent School District et al., 943 S.E.2d 496 (Tex.App.-Corpus Christi 1997).

Key Facts: The plaintiff was the estate of a student who was fatally stabbed at her high school. The student and another female student were romantic rivals for the affections of a male student at their school. The two female students had several altercations over the week of spring break. When classes resumed the other girl’s custodian went to the school and told two principals about the conflict between the two girls. The vice principal had separate conversations with the girls and then returned the girls to class.

Between classes, the girls had a verbal confrontation that was broken up by the school security guard. During the alteration the other girl threatened to kill the deceased student. The other female student told the male student that she had a knife in her purse. No teacher recalled hearing the comment regarding the knife. At lunch time, the two girls again confronted each other, and this time the other girl used the knife she had in her purse to stab the plaintiff.

The estate of the deceased student filed claim against two of the high school principals and the public school district. Plaintiff made claims for wrongful death and deprivation of civil right under 42 U.S.C. §1983 and the Fourth Amendment. The principals and the school district moved for summary judgment due to statutory personal immunity for the principals for all acts not involving the active infliction of discipline; and the absence of the requirement under §1983 that there be a special relationship between the state and the plaintiff. The summary judgment was granted as to all defendants. Plaintiff appeals the entry of the summary judgment order.
Issue No. 1--Is a negligent failure to discipline a student, which results in the death of another student within the negligent discipline exception to immunity, provided by statute to professional employees of school districts for discretionary acts?

Holding No. 1--Consistent with precedent set by the Texas Supreme Court, the negligent failure to discipline is not actionable to the same degree as negligent discipline.

Reasoning No. 1--The Texas legislature, through the Texas Education Code, has recognized the immunity of public school teacher and principals. The Code only excepts from a school employee’s immunity the use of excessive force of for the negligent acts of discipline which cause injury to a child. The case *Diggs v. Bales*, 667 S.W.2d 916, 918 (Tex.App-Dallas 1984), defined negligent discipline as “punishment which involves no force, but rather requires some action on the part of the student as a result of which the student suffers bodily injury, as in ordering a student to run laps.” In *Hopkins v. Spring Independent School District* (736 S.W.2d 617, 619 (Tex. 1987)), the Texas Supreme Court held that school employees who failed to act when a student was injured at the hands of another student was not guilty of negligent discipline. The statutory immunity does not deal with common law negligence but rather with a specific and narrow exception to immunity. Although there is a duty on principals and teacher to keep order in the schools, it is only when they are disciplining a student that they lose their immunity from suit.

Issue No. 2--Does a special relationship exists between a student and public school district that would allow a cause of action for civil rights violations under 42 U.S.C. § 1983 and the Fourteenth Amendment’s Due Process Clause for failing to protect student from another student?
Holding No. 2--No special relationship exists between a student and a public school district that would allow for a cause of action under §1983.

Reasoning No. 2--The state does not generally owe a duty to protect citizens from private violence under the Due Process Clause. A narrow exception is drawn where a special relationship has arisen between the state and one under the state’s care. However, the state’s duty to protect from private actors will only arise when the state by affirmative exercise of its police power so restrains an individual’s liberty that it render him unable to care for himself. In Walton v. Alexander (44 F.3d 1247, 1303-04 (5th Cir. 1995)), the Fifth Circuit Court of Appeals overruled prior Fifth Circuit precedent that implied that compulsory school attendance creates a special relationship. In Walton, the Court held that compulsory school attendance is neither a type of restraint on personal liberty nor the type of affirmative act of the state that creates a special relationship.

Disposition: The trial court’s granting of summary judgment as to all defendants was upheld.

Citation: Turner v. D’Amico, 701 So.2d 236 (La.App. 1 Cir. 1997).

Key Facts: An 11-year-old student and his cousin were suspended from elementary school for fighting. A teacher with assistant principal duties at the time drove the two boys home because she knew it would be difficult to contact the student’s mother and she thought she was helping out the parents by taking the boys home right behind the bus, which they had missed. The student sat by the passenger door. The teacher put on her seat belt and instructed the boys to put on their seat belts also. Neither child fastened his seat belt. The teacher then locked the doors, using the power lock button on her side of the truck, and proceeded to drive the boys home. She was only a short distance from the school when the student yelled at her, threw his sweatshirt,
and jumped out of the truck. The teacher was driving less than 25 miles per hour when the student jumped out of the truck. The teacher stopped the truck and proceeded to care for the student until medical help arrived. The student sustained multiple contusions to the left shoulder, elbow, hip, knee and ankle and strains to the low back and neck.

The mother sued the teacher and the School Board. After trial on the merits, the trial court ruled in favor of the plaintiffs, and against the defendants solitarily in the amount of $10,000, less $2,443.05, previously paid on behalf of the plaintiffs for medical expenses. The teacher appealed.

Issue: At issue did the trial court make a manifest error of fact, or was clearly wrong on a finding of fact when it found liability of teacher and school board for injuries to student when student jumps from moving vehicle driven by teacher who was taking him home after being suspended for fighting, when it was not foreseeable that student would jump from moving vehicle?

Holding: A review of the record in this case convinces us that the trial court was manifestly erroneous and clearly wrong in finding liability on the part of the teacher and the school board

Reasoning: Where the court of appeal finds that a reversible error of law or manifest error of material fact was made in the trial court, it is required to re-determine the facts de novo from the entire record and render a judgment on the merits.

The teacher had transported students home from the school on occasion before, and other teachers had done so also. The teacher testified that she asked the boys to put on their seat belts, and then she locked the doors of the truck when they failed to do so. The teacher stated that by the time she put the boys in her truck to take them home, they had calmed down from their
earlier fight. The teacher’s decision to take the boys home, under the circumstances of this case, was a reasonable one. It was simply not foreseeable that the student would jump out of a moving vehicle.

Disposition: The trial court’s judgment holding the teacher and the school board liable was reversed.


Key Facts: A group of girls did not want to participate in a game during physical education class. The physical education teacher threatened the students with discipline if they did not participate in the activity. Plaintiff was part of this group and participated in the game. Plaintiff never relayed to her physical education teacher that her prior knee injury was bothering her or preventing her from participating in the activity. The student’s knee did not hurt her prior to her injury. The student never complied with the physical education teacher’s request for a doctor’s not explaining what the student could and could not do due to the prior knee injury.

The plaintiff claimed that she informed her physical education teacher of her previous injury in addition to bringing a doctor’s excuse from her doctor a year earlier that was given to the teacher’s predecessor. The physical education teacher and the principal claimed that they did not receive the doctor’s excuse a year prior.

The student’s father sought recovery against the physical education teacher and the school district for medical bills under the Family Expense Act. The plaintiffs allege that that the physical education teacher acted recklessly in disregarding the student’s safety by requiring her to participate in physical education while aware of the student’s physical limitations. The plaintiffs also allege that the school district was administratively negligent due to certain
administrative acts and policies. Specifically the plaintiffs allege that certain non-teaching personnel failed to properly forward the doctor’s excuse that the student obtained and submitted.

The trial court granted summary judgment to the physical education teacher and dismissed the complaint against the school district. The plaintiffs appealed.

Issue No. 1--Whether the administrative acts and record keeping function performed by administrative personnel are protected by immunity conferred upon school personnel from claims of ordinary negligence.

Holding No. 1--The Court held that the personnel and the tasks they perform are covered by the applicable immunity for ordinary negligence.

Reasoning No. 1--The principal and superintendent are responsible for the administration of the school. Principals and superintendents are certified personnel under §24-24 of the Code and their action should be deemed immune from suit. Since they are immune from suit their immediate inferiors should be likewise immune under the same policy.

Issue No. 2--Whether a physical education instructor’s conduct in attempting to control a group of complaining students, and to see that they participated in prescribed physical education activity, was not willful and wanton misconduct as required to avoid immunity from liability for injury sustained by student in physical education class.

Holding No. 2--The physical education teacher’s conduct in attempting to control a group of complaining teenage girls and to see to it that they participated in prescribed physical activity, was not willful and wanton misconduct as a matter of law.

Reasoning No. 2--The physical education teacher did not recklessly fail to discover the danger of the student’s knee condition, nor did she have knowledge of any impending danger to the student. The student participated in the activity without communicating to the teacher that her
knee bothered her. The student played the game earlier and did not think that it would endanger her knee. The student never brought the teacher any notes or excuses from the student’s physician. The student never relayed to the teacher that the activity caused her pain.

Disposition: The appellate court upheld the lower courts granting of summary judgment to the physical education teacher for willful and wanton misconduct. The Appellate court also upheld the dismissal with prejudice the claims against the school district for administrative negligence.


Key Facts: Leger, a member of the wrestling team, was assaulted by a non-student in an unsupervised restroom while changing for practice. The allegations brought against the school principal, wrestling coach, and districts were that the student had a right to a safe and secure campus, that the employees owed a duty of care, and that officials were liable for injuries sustained. The trial court stated demurrer for the principal, coach, and district. The argument for safe and secure schools being self-executing come from Article I, §26 of the California constitution where in it states, “The provisions are mandatory and prohibitory, unless by express words they are declared otherwise.” The duty of care allegation was brought by the plaintiff based on ordinary principles of tort law. The third allegation of liability was brought forth as a violation of rights in the first two parts for actionable compensation.

Issue: At issue is whether the school district, principal, and coach are immune from liability.
Holdings: The California Appeals Court held that §28(c) is not self-executing, that the employees and district are liable under sections 820 and 815.2 respectively, and the trial court erred when it sustained demurrer.

Reasons: The court stated the claim for negligence to properly supervise and protect was with cause. Cal. Const., art. I § 28, subd. (c).) provides for the inalienable right to attend a safe school. However, the court notes that §28(c) is not self-executing via (Older v. Superior Court, supra, 157 Cal. at p. 780, 109 P. 478). The appeal court agreed with plaintiff on ordinary tort law imposing a duty of care for protection. By definition, Rest.2d Torts (1965) §315, provides for a special relation between students and school officials which implies the duty of care. The responsibility for teachers in charge of students is greater than that of police in relation to the general public for protection purposes due to the relationship that exist. Finally the court ruled on liability based on California law in that had the event occurred in the private sector liability would be certain. Therefore, liability for the employees was established under §820 and the District under §815.2, barring any other statute granting immunity.

Disposition: The California Court of Appeals reversed the judgment.

Citation: Davison v. Santa Barbara High School Dist., 48 F.Supp.2d 1245 (C.D. Cal.1998).

Key Facts: Cheron Davis, an African America student, alleged racial discrimination against several classmates. The allegation stated a drawing of an African-American hanging from a tree was placed on her desk with her name spelled, “Sharoon.” After the incident her locker was broken into and she stated she had long felt unsafe as students wore confederate flags on their clothing. The defendants were charged within their job role and individually for allowing the hostile environment by lack of action even to the point of encouragement and
acceptance. Davis asserted five claims: unlawful racial discrimination, violation of §1983, 
violation of California Unruh Act, intentional infliction of emotional distress, and negligent 
infliction of emotional distress.

Issue: At issue is whether school officials have immunity against claims involving peer-
to-peer racial discrimination.

Holding: The court held that the first two claims did not fall under governmental 
immunity while claims three, four, and five where well within the scope.

Reasons: The first allegation stems from Title VI, where an individual is to be free of 
discrimination based upon their race. The court notes the plaintiff correctly responds to the claim 
for immunity in this claim as being wrong given the express language of the Civil Rights Act of 
1964. Furthermore, the acceptance of federal funds for programs and activities applies 
regulations of Title VI to the extent of prohibiting racial harassment. In Meritor the court 
explains the adoption of the EEOC’s position on sexual harassment from employee-employee 
and its application to student-to-student is articulated in Davis v. Monroe County Board of 
Education, 74 F.3d 1186, 1193 (11th Cir.).

The allegations in claims three, four, and five fall well within the bounds of immunity in 
regards to the discretionary nature of public employees specifically those of the administrator. 
The difference noted by the court is that of intentional as explained in Nicole M. where the 
notion that inaction on the part of the school district rises to the level of discrimination resulting 
in the loss of school privileges. Furthermore, the court notes the availability of public funds for 
expenditure setting the bar at malicious intent as in Oyster River, 992 F.Supp at 483.

Disposition: The Court denied the motion to dismiss the first two claims and granted 
motion to dismiss claims three, four, and five citing governmental immunity.
Key Facts: Plaintiff-student was a 13-year-old, middle school student. Plaintiff-student was using a table saw during shop class when the board he was cutting flipped and the saw black cut the fingers on his left hand. Plaintiff brought suit against the Defendant-school district seeking recovery for personal injuries, on theories of negligence and willful and wanton misconduct.

Plaintiff-student alleged that the defendant-school district was negligent in providing defective and unsafe equipment. Specifically the defendant-school district negligently failed to provide a shield or guard for the saw and failed to properly maintain the saw. Plaintiff-student also alleged that the school district was guilty for willful and wanton conduct in that the defendant-school district failed to provide adequate supervision and failed to warn plaintiff-student despite the defendant-school district’s prior knowledge of the unsafe condition of the saw.

The circuit court dismissed the count alleging willful and wanton conduct, and subsequently granted summary judgment to the defendant-school district on the negligence count on the basis of the Local Government and Governmental Employee Immunity Act. The trial court granted the summary judgment as to the negligence count on the basis of §2-201 of the Tort Immunity Act, in that the conduct of the defendant-school district involved a discretionary action, which was immune under the Act. The plaintiff-student appeals from the granting of the summary judgment as to the negligence claim.

Issue: At issue for the purpose of summary judgment was a question of material fact presented, as to whether a shop teacher’s failure to provide guard or other safety device on table
saw being used by students was the result of a discretionary policy determination or a ministerial act, in order to determine whether school district was liable for negligence.

Holding: The school district was not entitled to summary judgment, because it had not established that the failure to provide the saw guard was a discretionary act. The trial court judgment was reversed and the case remanded.

Reasoning: Under the common law, a municipality could be held liable for its ministerial duties; however, it could not be liable for negligence in its discretionary duties. Under §2-201 of the Illinois State Code, if a particular action is determined to be discretionary, the public employee taking the action will be immune from liability. Not every discretionary action taken by a public employee is immunized by §2-201 of the Tort Immunity Act. Only act or omissions in determining policy are immunized.

The local public entity employing the public employee will also be immune from liability, under §2-109 of the Tort Immunity Act, if the only basis for its liability is vicarious liability. Where the act is ministerial the local public entity may be liable, but the public employee will not be, absent willful and wanton conduct. Discretionary acts are defined as unique to a particular public office, while ministerial act are those that a person performs on a given state of facts in a prescribed manner, in obedience to the mandate of legal authority, and without reference to the official’s discretion as to the propriety of the act.

It is possible there was an exercise of discretion here. The saw operating manual directs that guards and other safety devices be used for all operations where they can be used. The shop teacher may have decided that the saw guard should not be used for the particular operation conducted by the student-plaintiff. A shop teacher who chooses to cut a board while the board is being held by a student could hardly be said to determining policy. A shop teacher, who instructs
his class not to use the saw guard for a certain operation, but to use some other safety device, may be deciding policy. The failure to assemble or reassemble a saw in some cases could be more than a failure to supervise.

The deposition of the shop teacher had not been taken in this case. The school district, which has the burden of proof on its motion for summary judgment, has not established that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. The motion for summary judgment should have been denied.

Disposition: The trial court’s granting of summary judgment is reversed and the case remanded back to trial court.


Key Facts: Plaintiff-student was a 13-year-old student who was given corporal punishment while in physical education class for the use of the word ass. Plaintiff-student was repeating the word he heard from another student, and was using the word in a non-threatening manner. The corporal punishment was administered by the girl’s physical education teacher. The teacher directed the plaintiff-student to hold onto the top of a chair. The teacher uses a paddle and administered three strokes, which was the maximum number of blows that could be administered. The force of the third blow was sufficiently strong to cause the chair that plaintiff-student was grasping to slide several inches across the stage.

The board of education adopted a policy concerning corporal punishment which stated: “reasonable corporal punishment may be administered after consultation with the principal, and only in the presence of another professional staff member. Reasonable corporal punishment shall be administered only as a last resort in the most unusual circumstances and after reasonable corrective measures have been used without success.”
After receiving the blows, plaintiff-student was in such pain that he was unable to sit through his remaining classes. On the next day, a Saturday, he lay on his stomach and there is testimony that he could not engage in normal activities. When his aunt examined his buttocks she was so shocked by the deep, eggplant sized black bruises he had received. He was taken to an emergency room for medical treatment, and plaintiff-student’s aunt completed a child abuse incident report. Even on the next day of school, which was 4 days after the punishment, plaintiff-student was still in pain, and his father wrote a note to his teacher asking that they excuse him from being seated in class.

Student through his father sued teacher alleging assault and battery. The trial court found for student and awarded him $5,000 plus court cost. Teacher appealed.

Issues: Was the evidence sufficient for trial court to hold that teacher acted with legal malice in the use of corporal punishment on student and thus allowing teacher to be liable for assault and battery, when teacher’s use of corporal punishment was in violation of board’s policy on the use of corporal punishment and resulted in injury to student.

Holding: The trial court’s judgment in favor of student is neither clearly erroneous or against the great weight of the evidence.

Reasoning: The Alabama Supreme Court has recognized a qualified privilege for an educator’s discipline of a student. “A schoolmaster is regarded as standing in loco parentis and has the authority to administer moderate correction to pupils under his care. To be guilty of an assault and battery, the teacher must not only inflict on the child immoderate chastisement, but he must do so with legal malice or wicked motives or he must inflict some permanent injury. In determining the reasonableness of the punishment or the extent of malice, proper matters for consideration are the instrument used and the nature of the offense committed by the child the
age and physical condition of the child, and the other attendant circumstances” (Suits v. Glover, 260 Ala. 449, 450, 71 So.2d 49, 50 (Ala. 1954)).

Showings of legal malice on the part of an educator with respect to the infliction of corporal punishment will not only defeat the privilege enunciated in Suits--it will also overcome any substantive immunity arising from the performance of a discretionary function. Legal malice may be defined as the intentional doing of a wrongful act without just cause or excuse, either with intent to injure the other party or under such circumstances that the law will imply an evil intent.

There was sufficient evidence from which the trial court could have concluded that defendant-teacher acted maliciously in corporally punishing plaintiff-student. First, according to the policy of the board of education corporal punishment is not to be administered except as a last resort in the most unusual circumstances and after reasonable corrective measures have been used without success. In this case, plaintiff-student was immediately subjected to the maximum corporal punishment for uttering the word ass on the fifth day of school. There is no evidence that plaintiff-student had a previous record of such offenses; further, defendant-teacher made no attempt to consult with the principal before inflicting the punishment, and she made no other attempt to correct plaintiff-student before resorting to corporal punishment. Thus the trial court could have concluded from the evidence that defendant-teacher’s infliction of corporal punishment was in direct contravention of the policy of the board of education.

Also, in determining the reasonableness of the punishment and the extent of malice, the trier of fact may consider the nature of the offense committed by the student, the age and physical condition of the student and other attendant circumstances. Here, the evidence reveals that a physical education instructor inflicted three blows to the buttocks of a 13-year-old for
using the word ass. Taken together, the blows defendant-teacher inflicted were so severe that
plaintiff-student developed large, shocking bruises on his buttocks and was unable to sit down in
class for the remainder of that school day or the next school day, 4 days later. In particular, the
third of the blows inflicted by defendant-teacher was so severe that the chair plaintiff-teacher
was holding was sent several inches across the stage.

The court concluded that the evidence in this case was sufficient to support the trial
court’s finding that defendant-teacher acted with legal malice in punishing plaintiff-student.
Under Suits, such malice will support a finding of liability with respect to an assault and battery
claim against a state-employed educator.

Disposition: The trial court’s judgment in favor of plaintiff-student was affirmed.

Citation: Mullis v. Sechrest 495 S.E.2d 721 (N.C. 1998).

Key Facts: Plaintiff-student and his father filed an action against defendant-teacher and
Board of Education for an injury sustained when student’s fingers were severed by a saw located
in his industrial arts class. Plaintiffs alleged that the defendant-Board provided, permitted and
directed the operation of an unsafe in its industrial arts class. Plaintiff further alleged that
defendant-teacher negligently failed to give adequate instructions regarding the proper use of the
table saw and failed to adequately warn of the inherent dangers of its use.

Defendants filed an answer denying any negligence on the part of defendants; moving to
dismiss the complaint and asserting contributory negligence as a defense. Defendants later filed a
motion to amend their answer to allege that both defendants were entitled to governmental
immunity because the Board had not purchased liability insurance for claims of the kind and
level asserted here. The trial court allowed this motion.
Subsequently, defendants submitted a motion for judgment on the pleadings or, in the alternative partial summary judgment. Plaintiffs then filed a motion to amend their initial complaint seeking to add an allegation that defendant-Board had waived any immunity that might cover it and defendant-teacher by purchasing liability insurance. After a hearing, the trial court entered an order allowing plaintiffs’ motion to amend their complaint and denying defendants’ motion for judgment on the pleadings. The order also granted partial summary judgment on the basis of governmental immunity for defendant Board for all claims determined to be one million dollars or less, and granted summary judgment for defendant-teacher on the ground that he is a public officer immune from suit by the plaintiffs.

Plaintiffs then appealed to the Court of Appeals, which held (1) that the trial court did not abuse its discretion in allowing defendants to amend their answer to assert the defense of governmental immunity, (2) that the trial court did not err in determining that the Board was entitled to sovereign immunity for all claims of one million or less and (3) that the trial court erred in holding that defendant-teacher was entitled to summary judgment because he is a public officer immune from suit by the plaintiffs. Defendant-teacher subsequently filed a notice of appeal to this Court.

Issue: At issue for purposes of determining immunity, is it appropriate for a court to consider the course of the proceedings and the allegations contained in the pleading to determine whether plaintiff-student is suing defendant-teacher in his official capacity, his individual capacity, or both?

Holding: It is appropriate to consider the course of proceedings and the allegations contained in the pleadings to determine the capacity in which defendant-teacher is being sued.
Defendant-teacher was sued in his official capacity only, and is thus immune from liability. Judgment of the Court of Appeals is reversed.

Reasoning: The crucial question for determining whether a defendant is sued in an individual or official capacity is the nature of the relief sought, not the nature of the act of omission alleged. If money damages are sought, the court must ascertain whether the complaint indicates that the damages are sought from the government or from the pocket of the individual defendant. If the former, it is an official-capacity claim; and if it is both, then the claims proceed in both capacities (Meyer v. Wall, 347 N.C. 97, 110, 489 S.E.2d 880, 887 (1997)). It is true that it is often not clear in which capacity the plaintiff seeks to sue the defendant. In such cases it is appropriate for the court to either look to the allegations contained in the complaint to determine plaintiff’s intentions or assume that the plaintiff meant to bring the action against the defendant in his or her official capacity.

Here, plaintiffs are seeking to recover monetary damages for pain and suffering, future medical expense, and permanent disability. If money damages are sought the court must ascertain whether the complaint indicates that the damages are sought from the governmental entity or from the pocket of the individual. Accordingly, it is appropriate to consider the course of the proceedings and allegations contained in the pleading to determine the capacity in which defendant is being sued.

In the present case, a review of the course of proceedings and the allegations contained in the complaint leads us to conclude that this suit was brought against defendant-teacher solely in his official capacity. Plaintiffs failed to specify whether they were suing defendant-teacher in his individual or official capacity. Additionally, in the section of the complaint identifying parties, capacity, jurisdiction and venue, plaintiffs allege that defendant-teacher is an adult citizen and
resident of Mecklenburg County, North Carolina, and is employed by the Charlotte-Mecklenburg Board of Education as a teacher. This allegation establishes that defendant-teacher is an agent of defendant Board. The fact that there is only one clam for relief is also indicative of plaintiffs’ intention to sue defendant-teacher in his official capacity, as an agent of defendant Board.

Disposition: The opinion of the Court of Appeals is reversed. Defendant-teacher is entitled to summary judgment.

Citation: Prejean v. East Baton Rouge Parish School Board, 729 So.2d 686 (La.App.1Cir. 1999).

Key Facts: The plaintiff was a fifth grade student who suffered a severe fracture to his leg while participating in a basketball scrimmage on school premises after school hours. During a basketball scrimmage the plaintiff was dribbling the ball down the court while the coach and another student were at half court waiting to trap the plaintiff. The plaintiff unexpectedly lost the ball and he, the other student and the coach all went for the ball while doing this, the coach bumped the other student who fell onto the plaintiff resulting in a leg fracture.

The plaintiff’s mother filed suit on behalf of the plaintiff and individually against the school board and the basketball team’s volunteer coaches. The trial court ruled in favor of plaintiff and awarded damages totaling $50,682.00. The school board appealed contending that neither the School Board nor the coaches breached a legally imposed duty of care in to the injured student.

Issue: At issue did a coach breach his duty to students by participating in a basketball scrimmage and while attempting to retrieve loose ball injures a student participating in the scrimmage when the evidence does not establish that the coach’s conduct presented any greater
risk of injury to injured student or other players than risk of injury generally involved in playing basketball?

Holding: There was no liability because the coach did not breach the duty owed to the student players. The coach did not place injured student at risk of harm by participating in the scrimmage and attempting to retrieve loose ball. It was not foreseeable that such a serious injury would result.

Reasoning: The coach had a duty to act reasonably while supervising the basketball practice and to exercise his coaching duties is such a manner as to protect the student players from foreseeable harm. A coach’s physical participation in a game is not substandard conduct because physical demonstration of techniques by a coach is essential to learning in athletics. The question was whether the coach’s attempt to retrieve the loose ball constituted substandard conduct. The record failed to establish that the coach’s attempt to recover the loose ball presented any greater risk of injury to the players than the risk of injury generally involved in playing basketball. Virtually all team sports involve the risk of physical contact and, thus the risk of injury. A review of the record indicates that this was an unfortunate accident, and given the fact that the coach merely bumped the student that fell into the plaintiff, it was not foreseeable such a serious injury would result.

Disposition: The judgment of trial court for plaintiff and against the school board and the coach was reversed.

Citation: Schmidt v. Breeden, 517 S.E.2d 171 (N.C.App. 1999).

Key Facts: Plaintiff-student was a 6-year-old student enrolled in a voluntary after school enrichment program at his elementary school that was operated and controlled by defendant board of education. The program was not included within the regular school curriculum, but
rather was conducted between 2:00 and 6:00 pm each weekday. It provided recreation for children, a nutritious snack, homework time, tutoring in areas that they may have needed help, and hands-on types of learning, science activities and music activities, language arts and all kinds of different activities by way of play. Plaintiff-student’s mother paid the $35 per week enrollment fee for her son’s participation in the program.

Plaintiff-student suffered a head injury while participating in the program and in the care of program staff members. At home, plaintiff-student subsequently developed a headache, became nauseated and began to vomit. According to plaintiff-student’s mother, she did not realize the medical significance of these symptoms because no one from the program had disclosed student’s injury. As a consequence appropriate medical treatment was delayed, exacerbating plaintiff-student’s condition which ultimately included permanent brain and vision impairment.

Plaintiff-student’s mother filed the instant suit claiming student’s injuries were caused by the negligence of defendants. The latter answered, generally denying plaintiff’s allegations, and moved for partial summary judgment. Plaintiff concluded that the Board was not entitled to governmental immunity because the operation of the program constituted a proprietary function. The trial court denied defendants’ motion and the latter timely appealed.

Issue No. 1--Is the operation and control of an after school enrichment program by the school board a governmental function entitling the school board to governmental immunity.

Holding No. 1--The after school program was within a class of activities regarded s traditional government functions. The Board is entitled to governmental immunity to the extent it has not been waived by the purchase of liability insurance.
Reasoning No. 1--The liability of a county for torts of its officers and employees is dependent upon whether the activity in which the latter are involved is properly designated governmental or propriety in nature. A county is immune from torts committed by an employee carrying out a governmental function and liable for torts committed by an employee while engaged in a propriety function. If the undertaking of the municipality is one in which only a governmental agency could engage, it is governmental in nature. It is propriety and private when any corporation, individual, or group of individuals could do the same thing. Since, in either event the undertaking must be for a public purpose any propriety enterprise must, of necessity, at least incidentally promote or protect the general health, safety, security, or general welfare of the residents of the municipality (Britt v. Wilmington, 236 N.C. 446, 450-51, 73 S.E.2d 289, 293 (N.C. 1952)).

In the case of Kiddie Korner v. Board of Education (55 N.C.App. 134, 285 S.E.2d 110 (N.C.App. 1981)), this court viewed an after-school program as a supplemental educational experience and as an operation within the defendant school board’s legislatively granted power and authority (Id. at 140, 285 S.E.2d at 114). In Kiddie Korner, the Charlotte-Mecklenburg Board of Education had established a committee to operate an after-school program at Dilworth Elementary School (Id at 135-36, 285 S.E.2d at 112). The Dilworth program was designed to alleviate the problem of the latch key child a child left without supervision between the time school closes and the time the child’s parents come home from work. Instead of leaving school at the end of the regular school day, the students enrolled in the Dilworth program remained at school where under the supervision of program staff, they did homework or study, and engaged in athletic of artistic activities. The program was self-sufficient, the operating costs being covered by the $15.00 per week tuition charged to the participants.
Careful comparison leads to the conclusion that the Program at issue here is indistinguishable from that reviewed in Kiddie Korner. Under Kiddie Korner and the test enunciated in Britt, therefore, the Program is properly characterized as an undertaking traditionally provided by the local governmental units, and correctly classified as a supplemental educational experience.

Issue No. 2--Are staff members of the county board of education’s after-school enrichment program who were sued in their individual capacities public officers or public employees in order to determine immunity from liability for negligence?

Holding No. 2--After school program staff member are properly designated public employees and not public officials. Accordingly, they may be held personally liable for negligent acts in the performance of their duties and the trial court did not err in denying defendant’s motion as it pertained to plaintiff’s claims against staff member in their individual capacities.

Reasoning No. 2--An essential difference between a public office and mere employment is the fact that the duties of the incumbent of an office shall involve the exercise of some portion of sovereign power. A public officer is shielded from liability unless he engaged in discretionary actions which were allegedly (1) corrupt (2) malicious (3) outside of and beyond the scope of his duties (4) in bad faith or (5) willful and deliberate.

A public employee on the other hand is personally liable for negligence in the performance of his or her duties proximately causing an injury. In light of the foregoing authorities, we believe the staff members are properly designated public employees and not public officials. Their duties as staff members of the Program when the alleged negligence occurred cannot be considered in the eyes of the law to involve the exercise of the sovereign power. To the contrary, a schoolteacher is an employee and not an officer and is therefore not
entitled to governmental immunity as his or her duties are purely ministerial. Accordingly, defendant staff members may be held personally liable for negligent acts in the performance of their duties, and the trial court did not err in denying defendants’ motion as it pertained to plaintiffs’ claims against staff member in their individual capacities.

Disposition: The trial court’s denial of defendants’ motion as to the Board and to staff member in their official capacities is reversed and this matter remanded for entry of partial summary judgment in favor of said defendants on plaintiff’s claims. The trial court’s denial of defendant’s motion as it pertained to the claims of plaintiff against staff members in their individual capacities is affirmed.

Citation: Doe v. Park Center High School, 592 N.W.2d 131 (Minn.App. 1999).

Key Facts: Plaintiff-student brought this action against the defendant-school district. The case resulted from the plaintiff-students allegations that she had a sexual relationship with one of her teachers while she was a student in the teacher’s physical education class. Evidence was submitted to the trial court that alleged that the defendant-school district had notice that the teacher had previously engaged in alleged sexual activity with other students. The student sued the school district for negligence.

A few years prior, the principal of plaintiff-student school received an anonymous phone call from a parent who explained that the accused teacher was having a sexual relationship with a then current student. The caller explained that her information came from her son, who had been told by his girlfriend, who had been told by yet another unnamed person, that the accused teacher was having an affair with a student.

The school principal notified the personnel director of the school district, and other school administrators in order to resolve the allegations against the accused school teacher. The
administrators discussed the Data Practices Act and what level of investigation to conduct considering the questionable multiple hearsay rumors as to the accused teacher’s involvement with a student.

The principal conducted an investigation and met with the accused teacher to inform him of the accusation against him. At this meeting, the accused teacher denied that he was involved with any sexual activity with students, but he did tell the principal that he was counseling a student who was having parental problems. At this meeting, the principal warned the accused teacher regarding the allegations and advised him on school procedures regarding meeting alone with female students.

The district court dismissed the plaintiff-student’s claims against the defendant-school district on a motion for summary judgment, on the ground that the defendant-school district was statutorily immune from suit. The plaintiff-student appealed the district court’s ruling on the ground of discretionary immunity.

Issue: Was the decision of a school district as to the method, manner, and extent of an investigation of an anonymous tip alleging that a teacher was engaging in inappropriate sexual acting with students, a policy decision, justifying discretionary immunity from negligence claim?

Holding: The trial court did not err in granting summary judgment in favor of the defendant-school board based on discretionary immunity. The school district, through the actions of the school principal engaged in policymaking and planning decision, in its investigation of an anonymous tip alleging that a teacher was engaging in inappropriate sexual acting with students and is thus immune from the liability claims in this case.

Reasoning: The Municipal Tort Liability Act imposes liability on every municipality for its torts. A school district is defined as a municipality. But the Act also provides immunity from
liability for discretionary acts, exempting any claim based upon the performance or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused.

This court has recognized that the purpose of such immunity is to preserve the separation of powers by protecting executive and legislative policy decisions from judicial review through tort action. To further that end, operational decisions are distinguished from planning decisions with only the latter immune from tort actions. Planning-level action requires the evaluation of such factors as the financial, political, economic, and social effects of the decision. In contrast, operational-level decisions are those actions involving ordinary, day-to-day operations of the government.

The Minnesota Supreme Court’s decision, S.W. v. Spring Lake Park School District No. 16, 5 (80 N.W.2d 19 (Minn. 1998)) provides guidance. In S.W., the court denied immunity to a school district because the district failed to establish a policy to deal with school security issues. The extent that the failure to develop a policy, by itself, regarding an issue which naturally demands the consideration of policy issues does not provide discretionary immunity. As a result, entities entitled to discretionary immunity are not allowed to avoid difficult decisions but must demonstrate policymaking at some level to claim discretionary immunity successfully.

The school principal considered policy issues in responding to the allegations against the teacher. The school principal was faced with carefully weighing considerations involving the reliability or unreliability of the information received the evidence of wrongdoing, the safety of students and faculty, and the legal ramifications involved and procedural aspects of the investigation itself. The decisions could ultimately have repercussions for the school, present and future teachers, students and the principal as well. Further the supervision and retention of the accused teacher following the allegations are no less discretionary than the immediate
investigation employed by the school principal. Both were made on the planning level of conduct. The response and resulting decisions cannot reasonably be characterized as ministerial; they are based on a multitude of policy considerations which are precisely the type of discretionary actions subject to discretionary immunity.

A professional judgment by the principal would include decision making that impacts the normal day-to-day routine of a school. However, responding to allegations that a teacher has engaged in inappropriate sexual activity with a student is far from routine and is seemingly outside the scope of the principal’s profession.

The principal had to consider such factors as the Data Practices Acts and the threat of an exhaustive investigation on the accused teacher’s professional career versus the level of threat to the general student body. Such balancing is neither operational nor a part of the principal’s professional routine. Whether the principal’s analysis and investigation were flawed is irrelevant; immunity protects respondent even for incorrect or imprudent discretionary decisions. The court stated that it was unwilling to question policy. The single concern of the court is to consider whether a governmental entity has demonstrated the balancing and evaluations of policymaking factors and effects of a given plan. The Act does not provide for second guessing decisions determined to be discretionary.

Disposition: The district court’s granting of defendant’s summary judgment motion based on discretionary immunity was affirmed.

Citation: Jackson v. Roberts, 774 S.W.2d 860 (Mo.App. 1999).

Key Facts: Plaintiff—student was a 7-year-old student who was injured while crossing the street to reach her father’s car. After leaving school at the end of the school day, she walked
between two parked school buses, lost her balance, fell into the street and was struck by an automobile.

Plaintiff-student and her father sued her teacher and assistant principal with negligence. The specific allegations are that defendants failed to properly escort plaintiff-student to her waiting transportation, properly supervise her as she was walking to her transportation, and warn her of the dangers of walking between school buses and into the roadway.

Defendants filed a motion to dismiss alleging that the defendants were immune from suit by reason and application of the doctrine of official immunity. The trial court sustained the defendant’s motion to dismiss plaintiffs’ petition. Plaintiff appeal, alleging that the trial court erred in sustaining defendants’ motions to dismiss based on the doctrine of official immunity.

Issue: Are a school teacher and an assistant principal, public officer, and therefore entitled to protection under the doctrine of official immunity?

Holding: This court held that defendants are not immune from suit by reason of the doctrine of official immunity.

Reasoning: The doctrine of official immunity had long been recognized in Missouri. Through application of official immunity, public officers acting within the scope of their authority are not liable for injuries arising from their discretionary acts or omissions, but they may be held liable for torts committed when acting in a ministerial capacity. There are no Missouri cases deciding whether public school teachers or principals are public officers. There is, however, a substantial line of authority in other jurisdictions denying the status of public officers to teachers. Although Missouri courts have not ruled whether teachers are public officers, it is clear that teachers are not immune from liability for their negligent acts or omissions.
Disposition: The trial court’s judgment is reversed and the cause remanded.

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

Key Facts: Plaintiff-student was a 15-year-old, ninth grade student. Plaintiff-student was told during a lunch period that another student was to fight plaintiff-student. Plaintiff-student replied that he did not want to fight the other student. Plaintiff-student again heard the other student threaten to beat him up. Following the threat, plaintiff-student asked the teacher for permission to go to the principal’s office. Plaintiff-student went directly to defendant-assistant principal’s office.

Plaintiff-student told the assistant principal that the other student had threatened to beat him up and that he was scared. The assistant principal called the other student to the office, and this student admitted that he had threatened the plaintiff-student. The assistant principal warned the other student that he would not tolerate any fighting in school and that they would be punished if they did fight at school. The assistant principal also told the boy that he would telephone the Sheriff’s department if they carried out the threat. After the assistant principal explained to the boy the punishment for fighting, the other student assured the assistant principal that he would not fight the plaintiff-student. The assistant principal then sent the other student back to class. The assistant principal told the plaintiff-student not to worry and to tell him if anything else happened. The plaintiff-student appeared comfortable with the resolution of the situation, and he was sent back to class. The assistant principal did not inform any teacher about the situation.

At the end of the plaintiff-student sixth period class, he was walking to a patio break area at the school, and he was ambushed by the other student who was hiding behind a door. The other student punched the plaintiff-student in the face, knocking him to the ground, and he
repeatedly kicked the plaintiff-student about the face and head. Plaintiff-student suffered severe injuries as a result of the other student’s assault and battery, including a broken nose, a cracked jaw, and a shattered nasal passage. After the attack, the other student was taken to the assistant principal’s office. The assistant principal notified the sheriff’s department and the other student was suspended from school.

Plaintiff-student acting through his mother filed this action against the assistant principal and the school board alleging negligence and wantonness. The defendant moved jointly for a summary judgment on all claims. Plaintiff appealed.

Issue No. 1--Whether defendant-assistant principal is entitled to discretionary-function immunity on plaintiff-student’s claims of negligent or wanton supervision when it was alleged that defendant-assistant principal failed to properly supervise the situation by having teachers on the lookout and properly stationed in areas to prevent aggressor-student’s assault and battery on plaintiff-student?

Holding No. 1--We conclude that defendant-assistant principal was performing a discretionary function when he evaluated the situation and was exercising his judgment in handling aggressor-student’s threats against plaintiff-student.

Reasoning No. 1--It is well established that the supervision of students is a discretionary function. The assistant principal stated that he was not guided by any board of education policy in determining what disciplinary measures to take under the particular circumstances; instead he said disciplinary matters were left to his judgment and discretion. In making his judgment that the aggressor-student would not attack plaintiff-student and that no further action was needed, he relied on his many years of education, on his training and experience as an educator and administrator, on his investigation of the incident and his questioning and observing the students
involved, on his knowledge of their past disciplinary records, and on the student’s assurance to him that he would not attack plaintiff-student. The assistant principal also testified in his deposition that the aggressor-student and plaintiff-student had no more classes together that day and that during class changes and breaks teachers are stationed in the hallways and break areas to supervise the students. Several teachers were stationed in the patio area where the fight occurred. The assistant principal was performing a discretionary function when he evaluated the situation and was exercising his judgment in handling the threats against plaintiff-student.

Issue No. 2--Whether defendant-assistant principal is entitled to discretionary-function immunity because under Alabama Code §16-1-24.1(b), he was required to notify law-enforcement officials and to suspend aggressor-student when he learned that aggressor-student had threatened plaintiff-student, thus making defendant-assistant principal’s actions ministerial?

Holding No. 2--Assistant principal was performing a discretionary function in determining whether the aggressor-student had violated Board policy, and in deciding the appropriate disciplinary action to take under the circumstances.

Reasoning No. 2--Ministerial act are those involving less in the way of personal decision or judgment or in which the matter for which judgment is required has little bearing of importance upon the validity of the act. Ministerial acts are those done by officers and employees who are required to carry out the orders of others or to administer the law with little choice as to when, where, how, or under what circumstances their act are to be done. Discretionary acts are those acts as to which there is no hard and fast rule as to course of conduct that one must or must not take and if there is a clearly defined rule, such would eliminate discretion. One which requires exercise in judgment and choice and involves what is just and proper under the circumstances.
Section 16-2-24.1(b) of the Alabama Code provides: (b) the principal shall notify appropriate law enforcement officials when any person violates local board of education policies concerning drugs, alcohol, weapons, physical harm to a person or threatened harm to a person . . . If that person is a student enrolled in any public school in the State of Alabama, the local school system shall immediately suspend that person from attending regular classes and schedule a hearing at the earliest possible date, which shall not be later than 5 school days.

 Implicit in the §16-1-24.1(b) requirement that the principal notify law-enforcement officials is the requirement that the student first be found to have violated one of the specified policies of the local board of education. In determining whether a student has violated one of the local board of education’s policies specified in §16-1-24.1(b), the principal is engaged in the performance of a discretionary function, because making that determination requires the principal to use his personal judgment. No evidence in the record indicates that the aggressor-student was found to have violated board policy. The assistant principal testified that in his judgment the threat to plaintiff-student did not violate Board policy or the high school’s code of student conduct.

Issue No. 3--Whether defendant-assistant principal was entitled to discretionary-function immunity under the facts of this case, when it is alleged that he acted in bad faith and beyond his authority?

Holding No. 3--No evidence in the record supports the claim that assistant principal acted in bad faith or beyond his authority.

Reasoning No. 3--Discretionary-function immunity protects an employee of a county board of education employee from liability not only for negligent conduct but also for wanton conduct; however, it does not protect school officials sued in their individual capacities based on
acts committed in bad faith, or school officials sued in their official capacities based on acts committed beyond their authority.

No evidence in the record supports the argument that the assistant principal acted in bad faith or beyond his authority. The assistant principal promptly investigated plaintiff-student’s complaint. Likewise, no evidence suggests that assistant principal willfully or maliciously caused plaintiff-student’s injuries. The assistant principal testified that he believed the situation had been defused and that the other student would not attack the plaintiff-student. In handling the situation and deciding what disciplinary action was appropriate under the circumstances, the assistant principal was acting within his authority as assistant principal.

Disposition: The trial court’s granting of summary judgment for defendant is affirmed.

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

Key Facts: The minor plaintiff was a 14-year-old student at a middle school in the school district. One morning plaintiff-student was threatened by another student while in music class. Plaintiff-student told a nearby teacher about the threat and the teacher did nothing in response.

That afternoon both students were in after-school detention. During this time the other student again threatened the plaintiff-student in front of the detention teacher. As they left detention, the aggressor-student followed plaintiff-student across the school’s baseball field. At this point, words were exchanged, and the other student attacked plaintiff student struck him in the face and ordered him to perform oral sex. The plaintiff-student refused and the other student continued to beat him and forced him to perform the act. The incident was witnessed by one student and later reported to a coach. Plaintiff-student was then taken by his mother to the hospital.
Plaintiff-student’s mother, individually and as next friend of her son brought suit in Circuit Court against the school district and unknown teachers. Plaintiff-student alleges that the school was negligent in failing to properly monitor its grounds; in failing to properly supervise its students; in failing to have a route of safe departure for detention students; and for other acts of negligence.

The school district filed a motion to dismiss on ground that the Mississippi Sovereign Immunity Act immunized them from the suit. Plaintiff-student responded to the motion to dismiss by denying the absolute immunity of the School, and alternatively, by claiming the district’s purchase of liability insurance waived any immunity.

The Circuit Judge granted the district’s motion to dismiss. He stated that the statute immunizes the district for administrative action or inaction and for failure to perform a discretionary act.

Issue No. 1--Do the allegations contained in plaintiff-student’s complaint involve discretionary or ministerial conduct?

Holding No. 1--This court find that plaintiff-student’s allegations do in fact involve discretionary conduct rather than ministerial.

Reasoning No. 1--A duty is discretionary if it requires the official to use her own judgment and discretion in the performance thereof. An act is ministerial if the duty is one which has been positively imposed by law and its performance required at a time and in a manner or upon conditions which are specifically designated, the duty to perform under the conditions specified not being dependent upon the officer’s judgment or discretion. The duty to hire and supervise employees is necessarily and an logically dependant on discretion. The allegations
involve discretionary conduct rather than ministerial, because providing supervision, monitoring, and a safe environment are discretionary rather than ministerial.

Issue No. 2--Does sovereign immunity of a public school employee act as an absolute bar to a claim or ordinary negligence, in which allegations that employee failed to exercise ordinary care?

Holding No. 2--Sovereign immunity is inapplicable as an absolute bar to the plaintiff-student’s allegations in this case.

Reasoning No. 2--Mississippi Code Annotated §11-46-9 requires a minimum standard of ordinary care be exercised by the government actor in order to raise the statutory shield. Under this statute, as long as ordinary care is used while performing a statutory duty, immunity exists. But when the state actor fails to use ordinary care in executing or performing or failing to execute or perform an act mandated by statute, there is no shield of immunity.

Mississippi Code Annotated §37-9-69 mandates that school personnel maintain appropriate control and discipline of students while the children are in their care. Furthermore, the State of Mississippi mandates compulsory school attendance for all children upon penalty of law. Since the state requires all children to be enrolled in school, it only seems logical that the state should then require school personnel to use ordinary care in administering our public schools.

The teachers and administrators here are then protected by sovereign immunity if and only if they used ordinary care in controlling and disciplining their students. The issue of ordinary care is a fact question. The trial court confronted with all the relevant facts should then under our law, decide whether or not those responsible used ordinary care as required by the statute. If the trial judge concludes that they failed, neither they nor the school are immune from
liability. The statutorily imposed obligation to hold the pupils to strict account for disorderly conduct at school, a ministerial dictate, trumps the discretionary exception, regardless of the amount of discretion school personnel may exercise in carrying out this statutory obligation.

Issue No. 3--Are sovereign immunity protections waived when a governmental entity purchases liability insurance in excess of the statutory limitations on tort actions against public entities?

Holding No. 3--The purchase of insurance does not affect potential defenses under Mississippi statutory law.

Reasoning No. 3--Sovereign would be unlikely to purchase insurance if it had the effect of waiving all of their defenses under the MTCA—an undesirable and unintended result in this Court’s view.

Disposition: Case was reversed and remanded for proceedings consistent with this opinion.

Citation: Williams v. Chatman, 17 S.W.3d 694 (Tex.App.-Amarillo 1999).

Key Facts: Plaintiff-student was a junior high student that drowned during a school-sponsored party at a university’s aquatic center. Several teachers and other school employees also attended the party. At the urging of other students, plaintiff-student got onto the diving board. Although he told the other students he was unable to swim, they refused to let him climb down from the diving board, insisting that he jump into the water. Shortly after he jumped from the board, some of the school employees noticed that did not resurface and called that to the attention of a lifeguard. Plaintiff-student was revived using CPR. He was taken by ambulance to a local hospital but died the following day of cardiac arrest.
Plaintiff-student’s parents, individually and as representatives of his estate, brought suit against the university, the lifeguards, their supervisors, the school district, and several school employees present at the event. Each of the school employees moved for summary judgment asserting that they were entitled to immunity under §22.051 of the Texas Education Code. The plaintiffs now appeal from a summary judgment in favor of the school employees based on the statutory immunity provided by §22.051 of the Texas Education Code.

Issue No. 1--For purposes of the statutory immunity provided by §22.051(a) of the Texas Education Code, were school employees acting incident to or within the scope of their duties when the employees were not required to attend and they were not paid for attending the party.

Holding No. 1--We find appellees’ summary judgment evidence established, as a matter of law that they were acting within the scope of their duties as defined in §22.051(a) of the Texas Education Code.

Reasoning No. 1--The relevant issue is whether the conduct of the school employees attending the party was in the scope of their employment, not whether every teacher was required to be present. The affidavits of each of the employees are couched in terms of their obligation to supervise the students at the party. The affidavits of each of the other defendants stated that the principal requested them to attend and discussed their obligation to supervise students. Taking evidence that the principal merely requested the school employees to attend, it is clear that the purpose of their attendance was to supervise the students, an obligation they would not have but for their employment with the school district. The affidavit of the school superintendent which specifically addresses that issue states the employees are expected to attend school sponsored activities, including field trips, at the direction or request of their principal. Failure to comply with this request, without prior approval from the principal, could result in discipline of the
employee. The record contains a copy of each of the defendants’ employment contracts for the school year. Those contracts specifically provide the employees were to be paid an annual salary and not an hourly wage. The contracts provided that the salary was in consideration of any additional duties, responsibilities, tasks, and transfers, and that the employee could be assigned other or additional duties during the term of the contract. The fact that the school did not provide extra pay for attending the party is irrelevant.

Issue No. 2--For purposes of the statutory immunity provided by §22.051 were the defendant school employees involved in actions that called for the exercise of judgment or discretion?

Holding No. 2--We find that under our supreme court’s opinion in Downing appellee’s duty to supervise involved the exercise of judgment or discretion within the meaning of 22.051.

Reasoning No. 2--It is undisputed that the school employees had a mandatory duty to supervise the students. Appellees presented evidence that the school district had no policies directing teachers how to supervise students as well and the superintendent’s affidavit that he did not tell teachers how to supervise the students. We are convinced that the holding in Downing v. Brown (935 S.W.2d 112 (Tex. 1996)), establishes that appellees’ duty to supervise involved the exercise of judgment or discretion. In Downing, the Texas Supreme Court overruled a lower appellate court decision that held that a school district policy requiring teachers to develop and post a discipline management plan left the teacher no discretion as to whether she developed and posted a plan, distinguishing those mandatory duties from her discretion in determining the plan’s content. The Texas Supreme Court viewed all aspects of the broad responsibility of maintaining classroom discipline as discretionary. The court’s reference to the teacher’s responsibility in Downing implied a duty to maintain discipline. The existence of this duty did
not prevent the court from holding it was a duty which involved the exercise of judgment or
discretion. Accepting as true the claim of a mandatory duty to supervise the students, they offer
no distinction between this duty and the duty to maintain discipline in Downing. We find that
under our Supreme Court’s opinion in Downing appellees’ duty to supervise involved the
exercise of judgment or discretion within the meaning of §22.051.

Issue No. 3--Does the immunity provided by §22.051 of the Texas Education Code apply
to claims of gross negligence?

Holding No. 3--We hold that the trial court did not err in applying the immunity of
§22.051 to the plaintiffs’ claims of gross negligence.

Reasoning No. 3--Words excluded from a statute must be presumed to have been
excluded for a purpose. Sections 22.052 and 22.053, which also address the immunity of school
employees and volunteers, expressly state the immunity granted does not apply to liability for
gross negligence. The legislature’s omission of this limitation from §22.051 supports the
conclusion that the immunity it provides is applicable to claims of gross negligence.

Disposition: The trial court’s granting of summary judgment for defendants is affirmed.

Citation: *King v. McKillop*, 112 F.Supp.2d 1214 (D.Colo. 2000).

Key Facts: This case arises out of a forest fire in the Pike National Forest near Buffalo
Creek in Jefferson County Colorado. The fire destroyed the property, buildings, and dwellings
owned and occupied by plaintiffs. Plaintiffs allege that the forest fire started as a result of a
campfire built by several adolescents student at a charter school. Defendant, a teacher and
student advisor at the charter school took sixteen students on a camping trip in the Pike National
Forest to a site used by him and his wife. Some of the students stayed in a cabin located on the
land while others pitched tents near the cabin and at a site some distance from the cabin. At the
more distant campsite, several students built a fire pit for campfires. An ember from one of the campfires apparently started the forest fire. Defendant filed a Motion in Limine to seek a ruling that the damages limitations set forth in the Colorado Governmental Immunity Act applies to him even if his actions were found to be willful and wanton.

   Issue No. 1--Defendants seeks a ruling that the damages limitations set forth in the CGIA apply even if a public employee’s negligent conduct is found to be willful and wanton.

   Holding No. 1--A reading of §24-10-118, CRS in its entirety dictates that damages limitations contained in §24-10-114 CRS applies even in circumstances of willful and wanton conduct by a public employee.

   Reasoning No. 1--§24-10-114 CRS, provides in part: (1) The maximum amount that may be recovered under this article in any single occurrence, whether from one or more public entities and public employees, shall be: (a) For any injury to one person in any single occurrence, the sum of one hundred fifty thousand dollars; (b) For an injury to two or more persons in any single occurrence, the sum of six hundred thousand dollars; except that, in such instance, no person may recover in excess of one hundred fifty thousand dollars.

   The legislature delineated the specific circumstances under which willful and wanton conduct was effect CGIA protections for public employees. Comparison of the language set forth in subparagraphs (a), (b), and (c) of §24-10-118(1) CRS makes clear that the legislature intended that the damages limitations apply even if the employee’s conduct was willful and wanton.

   As set forth above, both subsections (a) and (c) of §24-10-118(1), CRS include language limiting the applicability of those specific sections in circumstances involving willful and wanton conduct. Subsection (a) states that notice of claim requirements must be met even if allegations of willful and wanton conduct are made. Subsection (c) states that a public employee is not liable
for punitive or exemplary damages unless such act or omission was willful and wanton. Conversely, subsection (b), applying damages limitations to actions against public employees, provides no such limiting language. Furthermore, the plain language of §24-10-118(1)(b), CRS does not exclude willful and wanton conduct from the damages limitations applicable to public employees.

Because this specific language was included in subsection (a) and (c) but omitted from subsection (b), it can be inferred that the intent of the Colorado General Assembly was to include willful and wanton conduct within the damages limitations set forth in §24-10-114 CRS. This conclusion is buttressed by the text of §24-10-114 CRS titled Limitations on judgments that contains the monetary cap on judgment against public entities and public employees, but does not contain the willful and wanton language. Had the General Assembly intended to exclude the damages limitations in circumstances of willful and wanton conduct §24-10-114 CRS and §24-10-118(b) CRS, it would have so stated.

Issue No. 2--If defendant-teacher is found to be willful and wanton, was he acting outside the course and scope of his employment and therefore, not really acting as a public employee and thus the damages limitations do not apply?

Holding No. 2--The allegations against the defendant-teacher relate directly to his position as a public school teacher, thereby bringing him within the course and scope of his employment. His alleged failure to supervise adequately does not take him outside the course and scope. As such, he remains entitled to the protection of the CGIUA including the damages limitations set forth in sections 24-10-14 and 118(1).

Reasoning No. 2--The CGIA contemplates that a public employee may remain within the course and scope of his employment and yet be found willful and wanton. Section 24-10-
118(2)(a) CRS provides that a public employee shall be immune from liability in any claim for injury which lies in tort or which could lie in tort and which arises out of an act or omission occurring during the performance of his duties and within the scope of his employment unless the act or omission was willful and wanton. Thus an employee may be within the scope of his or her employment and still be found willful and wanton. Moreover, the failure of a public employee to perform his duties adequately does not render the employee’s conduct outside the course and scope of his employment.

The allegations are that defendant-teacher negligently supervised a group of students while on a school camping trip. These allegations relate directly to his position as a public school teacher, thereby bringing him within the course and scope of his employment. His alleged failure to supervise adequately does not take him outside the course and scope. As such, he remains entitled to the protection of the CGIA including the damages limitations set forth in sections 24-10-14 and 118(1).

Disposition: Defendant-teacher remains entitled to the protection of the CGIA including the damages limitations set forth in sections 24-10-14 and 118(1).


Key Facts: Plaintiffs are 15-year-old twins and their father. The twins attended a high school that was part of defendant-school district. Both twins were diagnosed in elementary school with disabilities, including perceptual-communication disability and attention deficit hyperactivity disorder. Individual education plans were developed for each child pursuant to the Individuals with Disabilities Education Act. Along with defendant-school district, plaintiffs
named as defendants the school principal, the vice-principal and the director of intervention services. All individual defendants were part of the twin’s IEP team.

Plaintiffs allege that defendants have harassed and discriminated against the twins as a result of the twins’ disabilities. They alleged false and pretextual criminal actions, misuse of IEP meetings, hyper-vigilant scrutiny by school officials, and unwarranted suspension, detention, segregation and expulsion. They also allege an incident of assault on one of the twins by defendant-principal.

Plaintiffs’ claim for assault and battery alleges that at a noon detention; defendant-principal became angry when one of the twins dropped a plastic object and then ordered the twin out into the hallway. In the hallway, defendant-principal physically assaulted the twin without provocation by slamming him into a locker causing him physical and psychological pain. They further allege that the twin was very scared of being further assaulted and tried to get away from defendant-principal. Defendant-principal then grabbed the twin forcefully by the arm but he managed to pull away. Defendant-principal then angrily threw the twin’s hat at him hitting a female student sitting in the hallway.

Plaintiffs allege that these defendants suspended the twin for defendant-principal’s assault against him knowing or in reckless disregard of the truth that the twin was not the aggressor. They allege that these defendants used the suspension process to justify defendant-principals assault. Plaintiffs’ claim for civil conspiracy against the individual defendants alleges that the defendants reached an agreement to deprive plaintiffs of their statutory and legal rights, to retaliate against plaintiffs for seeking administrative remedies, discriminated against plaintiffs, abused various processes and interfered with the twins’ ability to receive an education.

Defendants filed a motion to dismiss.
Issue No. 1--Must the plaintiffs’ claim for assault and battery against the defendant-principal be dismissed because it is barred by the Colorado Governmental Immunity Act?

Holding No. 1--The plaintiffs have stated a claim for assault and battery as it applies to defendant-principal sufficient to overcome the Colorado Governmental Immunity Act.

Reasoning No. 1--The Colorado Governmental Immunity Act covers all the circumstances under which the state, any of its political subdivisions, or the public employees of such public entities may be liable in actions which lie in tort. A public employee may only be liable for willful and wanton conduct. Colorado Governmental Immunity Act § 1182(2)(a) states that: (a) public employee shall be immune from liability in any claim for injury . . . which lies in tort or could lie in tort regardless of whether that may be the type of action of the form of relief chosen by a claimant and which arises out of an act or omission of such employee occurring during the performance of his duties and within the scope of his employment unless the acts or omission causing injury was willful and wanton. Colorado courts have defined willful and wanton conduct as conduct purposefully committed which the actor must have realized as dangerous, done needlessly and recklessly, without regard to the consequences, or the rights and safety of others particularly the plaintiffs. Here, the allegations that defendant-principal slammed a child into a locker and grabbed him forcefully by the arm indicate actions which the actor must have realized as dangerous, done heedlessly and recklessly without regard to the consequences or the rights and safety of others.

Issue No. 2--Must the plaintiffs’ claim for abuse of process by dismissed because it is barred by the Colorado Governmental Immunity Act?

Holding No. 2--These allegations fail to withstand the CGIA.
Reasoning No. 2--There is no indication that the actions were willful and wanton or actions that the defendants must have realized as dangerous done heedlessly and recklessly without regard to the consequences or the rights and safety of others.

Issue No. 3--Must the plaintiffs’ claim for intentional interference against all defendants be dismissed because it is barred by the Colorado Governmental Immunity Act?

Holding No. 3--These allegations fail to withstand the CGIA.

Reasoning No. 3--Plaintiffs do not show how these allegations show willful and wanton conduct. There is no allegation that the actions were willful and wanton, or actions that the Defendants must have realized as dangerous, done heedlessly and recklessly without regard to the consequences or the rights and safety of others.

Issue No. 4--Must the plaintiffs’ claim for civil conspiracy be dismissed because it is barred by the Colorado Governmental Immunity Act?

Holding No. 4--These allegations are not enough to withstand the CGIA.

Reasoning No. 4--The CGIA bars all tort claims against public entities, except for certain enumerated exceptions. Plaintiffs do not argue that the school board is not a public entity, that their claim for civil conspiracy is not a tort claim, or that the claim falls into any of the enumerated exceptions. Here all the requirements for immunity for the School Board are met. Willful and wanton behavior does not exempt a public entity from immunity. Plaintiffs do not demonstrate how the allegations against the individual defendants for civil conspiracy show willful and wanton conduct. These allegations are not enough to withstand the CGIA because there is no indication that the actions were willful and wanton or actions that the Defendants must have realize as dangerous done heedlessly and recklessly without regard to the consequences or the rights and safety of others.
Disposition: Defendants’ motion to dismiss plaintiffs claim for assault and battery is denied. Defendants’ motion to dismiss claim for abuse of process is granted. Defendants’ motion to dismiss plaintiff’s claim for intentional interference is granted. Defendants’ motion to dismiss plaintiff’s claim for civil conspiracy is granted.

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

Key Facts: Plaintiff-student was a 5-year-old kindergarten student at a public elementary school. Defendant-teacher was his teacher. Defendant-teacher brought an electric frying pan to school to make donuts in class. During the exercise, plaintiff-student stepped on the frying pan’s cord, which caused the pan to topple and splatter hot grease on his face, neck and back. The resulting burns suffered by the youth required medical attention.

Defendant-teacher stated that she brought the frying pan to school with the intention of using it as part of her daily lesson. That is, the students were studying the letter d and, given that the word donut began with a d, she decided to cook some for the children. So, after reading a book about donuts, defendant-teacher began frying several donuts and it was at this time that plaintiff-student stepped on the cord and burned himself.

Plaintiff-student’s parents sued defendant-teacher for negligence. Defendant-teacher responded by invoking §22.051 and 22.055 of the Texas Education Code and filing a motion for summary judgment claiming she was immune from suit. After the trial court entertained the respective arguments of the parties and summary judgment evidence, it agreed with defendant-teacher, granted the motion, and entered summary judgment declaring that the plaintiffs take nothing. From this summary judgment, the plaintiffs appealed.

Issue No. 1--Whether defendant-teacher’s conduct fell within the scope of her employment?
Holding No. 1--The uncontradicted evidence of record established, as a matter of law that defendant-teacher acted within the scope of her employment when the incident in question occurred.

Reasoning No. 1--Section 22.051(a) of the Texas Education Code provides that a: ‘professional employee of a school district is not personally liable for any act that is incident to or within the scope of the duties of the employee’s position of employment and that involves the exercise of judgment or discretion on the part of the employee.” To come within the shield of Texas Education Code § 22.051(a), one must satisfy several criteria. For instance, it must be shown that the person claiming immunity was, at the time of the accident, a professional employee of a school district performing a discretionary task incident to or within the scope of his duties. Whether one is acting within the scope of his employment depends upon whether the general act from which injury arose was in furtherance of the employer's business and for the accomplishment of the object for which the employee was employed. Should this test be satisfied, then neither 1) the failure of the employer to expressly authorize the act, no 2) the fact that it was performed negligently, strip the act of is protective shield.

As disclosed by the summary judgment evidence proffered by defendant-teacher, the acts alleged to have been negligent occurred in an instructional setting. Defendant-teacher attested that she was using the frying pan during school hours as part of a lesson intended to teach the children about the letter d. This coupled with the truism that school districts hire teachers for the purpose of instructing students, established that defendant-teacher was acting within the scope of her employment when plaintiff-student was burned.

Issue No. 2--Whether the defendant-teacher was performing a ministerial or discretionary task when the incident occurred?
Holding No. 2--In short, the responsibility of teaching is inherently discretionary, and it being discretionary, there was no error in the trial court so holding as a matter of law.

Reasoning No. 2--Whether an act is ministerial or discretionary depends upon the ability of the actor to exercise discretion when performing it. In other words, if an edict prescribes the duties to be performed with such precision and certainty so as to leave nothing to the exercise of the actor’s judgment, then the act is ministerial (Downing v. Brown, 935 S.W.2d 112, 114 (Tex. 1996)). However, if the actor is entitled to personally deliberate about the manner of means of performance and invoke her own judgment, then it is discretionary. Additionally, and at least in the school setting, the focus is on the broad category of responsibility involved as opposed to some particular aspects of the responsibility.

Here, the particular act allegedly resulting in injury concerned the use of a potentially dangerous frying pan in a classroom. Yet, it was being utilized as a teaching aid to help students learn about the letter d. So, the broad category of responsibility, which defendant-teacher pursued when the accident occurred, involved her duty to teach or instruct students. The responsibility to instruct is rife with judgment and personal deliberation. What to teach, how to teach it, and when to teach it are just some of the topics which must be addressed by school administration and teachers in performing this task.

Disposition: The summary judgment of the trial court in favor of the defendants was affirmed.

Citation: Addis v. Howell, 738 N.E.2d 37 (Ohio App.2 Dist. 2000).

Key Facts: Plaintiff-student was an 8-year-old student that was struck by a car on a state highway as he was walking home from a public elementary school where he was a second grade student. Plaintiff-student was walking from school to his home on the day he was struck instead
of riding an available school bus because he had mistakenly believed that his mother intended to pick him up. When she failed to appear, he set out for home on foot, the school bus having since departed. After plaintiff-student failed to arrive at home by bus, his mother drove to the school to pick him up, passing him in the opposite direction as he walked on the highway. When his mother saw him and stopped to turn around, plaintiff-student darted across the road toward her vehicle and was struck by an auto.

Plaintiff-student’s parents commenced this action on his behalf against the school board and the school’s principal and assistant principal. The plaintiffs’ claims for relief against the board and its two employees allege that they failed to provide plaintiff-student supervision that would have prevented his injuries. They allege that defendants-principals, the board’s employees, were wanton and reckless in that same respect.

The defendants denied liability on the claims for relief presented. They also claimed immunity from liability pursuant to R.C. Chapter 2744. Motions for summary judgment were filed by the plaintiffs and the defendants. The court awarded summary judgment for the plaintiffs on their claims that the defendants had breached the duty of care they owed plaintiff-student when they failed to supervise his movements. The court denied the plaintiffs’ motion as to their claim that the defendant’s breach proximately resulted in the accident from which plaintiff-student’s injuries and the plaintiff’s claims for damages flow, finding that genuine Issues of material fact remain for determination of those matters.

The court granted the defendants’ motion for summary judgment on their immunity defense, finding their liability on plaintiffs’ claims for relief are barred by R.C. 2744(A)(5) and (6). Specifically the court held that the board and its two employees are immune pursuant to
those sections because the acts and omissions of the employees were neither reckless nor wanton. Plaintiffs filed a timely notice of appeal from the summary judgments.

Issue No. 1--Do the statutes that grant immunity from tort liability to political subdivisions and their employees violate open courts provision of the state constitution?

Holding No. 1--The first assignment of error is overruled.

Reasoning No. 1--In *Fahnbulleh v. Strahan*, 73 Ohio St.3d 666, 653 N.E.2d 1186 (Ohio 1995), the Ohio Supreme Court rejected a challenge to R.C. 2744 on the basis of the open courts provision of the state constitution. Specifically, the court stated: “[i]t may well be argued that any grant of immunity necessarily impairs some individual’s right to seek redress in a court of law, and thus treats some persons harshly. All too frequently, decision-making requires difficult balancing of competing interests and equities. The Ohio Constitution specifies that suits may be brought against the stated as provided by law. This language can only mean that the legislature may enact statutes to limit suits if it does so in a rational manner calculated to advance a legitimate state interest. The view that the second sentence of §16, Article 1, providing that suits may be brought against the state as may be provided by law, authorizes legislation giving effect to sovereign immunity defenses was a view that this court adopted in *Phipps v. Dayton* (57 Ohio.App.3d 11, 566 N.E.2d 181 (Ohio.App. 2 Dist. 1988)).

Issue No. 2--Were the acts or omissions of defendants in failing to supervise plaintiff-student’s movements wanton or reckless.

Holding No. 2--The trial court was correct in granting summary judgment to board employees on plaintiff’s claims for relief against them.

Reasoning No. 2--R.C. 2744.03(A)(6)(b) states: In a civil action brought against a political subdivision or an employee of a political subdivision to recover damages for injury,
death, or loss to person or property allegedly caused by any act or omission in connection with a governmental or proprietary function, the following defenses or immunities may be asserted to establish non-liability . . . (6) In addition to any immunity or defense referred to in division (A)(7) of this section and in circumstances not covered by that division or sections 314.07 and 3746.24 of the Revised Code, the employee is immune from liability unless one of the following applies: . . . (b) The employee’s acts or omissions were with malicious purpose, in bad faith or in a wanton or reckless manner. Wanton misconduct implies the failure to exercise any care for the safety of those to whom a duty of care is owing when the wrongdoer has knowledge of the great probability of harm to such persons which the exercise of care might avert, and exhibits a reckless disregard of consequences. The trial court found that reasonable minds could only conclude that the board’s employee were not reckless or wanton in failing to supervise plaintiff-student’s movements. We agree. Their conduct is such that they could be found to have exercised no care for plaintiff-student’s safety. However, there is no evidence that board’s employees knew or were aware of any great probability of harm to Cory as a result.

Issue No. 3--Whether the board’s conduct, in the form of its employees’ acts or omission, an exercise of judgment or discretion in determining whether to acquire, or how to use equipment, supplies, materials, personnel facilities and other resources per R.C. 2744.03(A)(5).

Holding No. 3--The act or omissions involved are not an exercise of discretion covered by R.C. 2744.03(A)(5). Therefore the board is not immune per that section from liability for the negligence which the trial court found.

Reasoning No. 3--R.C. 2744.03(A)(5) provides that a “political subdivision is immune from liability if the injury, death, or loss to persons or property resulted from the exercise of judgment or discretion in determining whether to acquire, or how to use, equipment, supplies,
materials, personnel facilities and other resources unless the judgment or discretion was
exercised with malicious purpose, in bad faith, or in a wanton or reckless manner. Routine
decisions requiring little judgment or discretion are not covered by the section. Nor are those
decisions which involve inadvertence, inattention, or inobservance. Some positive exercise of
judgment that portrays a considered adoption of a particular course of conduct in relation to an
object to be achieved is required in order to demonstrate an exercise of discretions for which
R.C. 2744.03(A)(5) confers immunity from liability on a political subdivision. The trial court
granted summary judgment for the plaintiffs on the issue of the alleged breach by the board of
the duty of care it owed plaintiff-student. The breach resulted from the failure of the board’s
employees to supervise plaintiff-student’s movements. Plaintiff-student and other children who
did not ride a school bus were simply permitted to fend for themselves, absent any plan or
program to produce that result.

Disposition: The second assignment of error is sustained as to the summary judgment
rendered for the defendant board. It is overruled as to the summary judgments in favor of
defendants Dalton and Bozango. The judgment from which the appeal is taken is reversed in part
and the case is remanded for further proceedings in plaintiff’s claims for relief against the board.

Citation: Doe v. S & S Consolidated I.S.D., 149 F.Supp.2d 274 (E.D.Tex. 2001).

Key Facts: Plaintiff-student was an emotionally troubled first-grade student who
exhibited episodes of raging. These episodes included her writing on furniture, making paper
messes in the classroom and not cleaning them up, cutting her tongue with scissors, defying the
teacher, shouting curse words at her teacher, exposing herself to her teacher and fellow students,
refusing to do school work and accosting other students. Fearing that student would hurt herself
or other student, the school principal allowed student to be wrapped on blankets so that she would
calm down. Some of the wrapping was to a cot with the blankets secured by pins. Mother of student filed suit against the school district, superintendent and principal alleging that wrapping of student in blankets to prevent her from harming herself or others while raging violated Fourth and Fourteenth Amendments and Texas state law. Defendants filed for a motion to dismiss.

Issue No. 1--Whether principal is entitled to qualified immunity on plaintiff’s section 1983 claim for alleged violation of the Fourth Amendment?

Holding No. 1--Plaintiff has not alleged a clearly established constitutional right under the Fourth Amendment of the U.S. Constitution and defendant-principal has qualified immunity based on that claim.

Reasoning No. 1--Persons are shielded from liability for civil damages if as a government official performing discretionary functions, their conduct oese not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Once a defendant pleads qualified immunity, on summary judgment, a court may appropriately determine not only the currently applicable law, but whether the law was clearly established at the time the action occurred. A necessary concomitant to the determination of whether the constitutional right asserted by a plaintiff was clearly established at the time a defendant acted is the determination of whether the plaintiff has asserted a violation of a constitutional right at all. Accordingly, courts must first determine whether the plaintiff has alleged the violation of a clearly established constitutional right under currently applicable constitutional standards. The court’s second step is to determine whether asserted constitutional rights were clearly established at the time of the alleged violations. Additionally, courts must consider whether conduct was objectively reasonable I light of the legal rules clearly established at such time.
Plaintiff has not alleged the violation of a clearly established constitutional right under the Fourth Amendment. The court does not believe that plaintiff’s Fourth Amendment rights are implicated here. The Amendment does not readily capture school officials restraining a raging child or placing her in a timeout room. There is no Fourth Amendment case law that suggests that it applies to this circumstance. Plaintiff has not shown that defendant-principal’s conduct violated clearly established law, whether as of the present or as of the time the conduct occurred.

Issue No. 2--Whether principal is entitled to qualified immunity on plaintiff’s §1983 claims for alleged violation of substantive due process of the Fourteenth Amendment?

Holding No. 2--The Court finds that defendant-principal is qualifiedly immune, because plaintiff has failed to allege a violation of a clearly established constitutional right under the substantive due process component of the Fourteenth Amendment.

Reasoning No. 2--Plaintiff’s substantive due process rights do not provide her, an emotionally disturbed child known to be so to school officials shortly before a series of outburst, the right to be free from restraints used to control her outbursts so as to prevent harm to herself and those charged with the responsibility of educating her. A substantive due process violation of a person’s bodily integrity requires arbitrariness or a lack of reasonable justification. Such factors are not present in this case. The severity of plaintiff-student’s condition clearly imposed itself on the school district in a trying manners and the fact that the officials acted the way they did should not have been entirely unexpected. As a result, the Court does not believe that plaintiff has alleged a constitutional violation here under the Fourteenth Amendment.

In addition the court concludes that plaintiff has not asserted a violation of a clearly established right based on deliberate indifference. In executive action cases such as this only the most egregious official conduct can be said to be arbitrary in the constitutional sense. Executive
abuse of power must shock the conscience. Whether behavior is conscience shocking depends on the state’s or state actor’s alleged degree of fault. Conduct intended to injure in some way unjustifiable by any government interest is most-likely to rise to the conscience-shocking level. The Court does not find the defendant-principal’s actions to be conscience-shocking. The fluid and rapid circumstances the defendant-principal and the school district found themselves in simply do not lend themselves to finding conscience-shocking. Here, the record is that over a relatively short period, school officials faced a volatile situation about which they deliberated. The defendants were not indifferent to plaintiff-student’s liberty interests.

Issue No. 3--Whether a fact issue exists as to the defendant-principals wrapping of student to calm her down exhibiting negligence in disciplining student thus abrogating his state immunity?

Holding No. 3--There was not real fact issue regarding punishment and no negligent discipline in this case.

Reasoning No. 3--The elements that a defendant must established for state immunity under the Texas Education Code are that 1) The defendant was a professional employee of a school district; 2) The defendant’s challenged conduct was within or incident to the scope of his duties; 3) The defendant’s duties involved the exercise of discretion or judgment; 4) The defendant’s acts did not cause the plaintiff injury as a result of the use of excessive force in disciplining the plaintiff or negligence in disciplining the plaintiff. Discipline in the school context describes some form of punishment and that negligent discipline is punishment which involves no force, but rather requires some action that the part of the student as a result of which the student suffers bodily injury, as in ordering a student to run laps. There is no real fact issue about punishment in this case.
Issue No. 4--Whether the school district is entitled to governmental immunity to plaintiff’s claims?

Holding No. 4--School district was entitled to governmental immunity against plaintiff’s tort claims.

Reasoning No. 4--Under the doctrine of sovereign immunity, Texas governmental units, including school districts are generally not liable in tort actions. There are exceptions however; they do not apply to school districts. Texas courts hold that the waiver of governmental immunity is restricted to actions arising from the use of motor vehicles involving school districts. Plaintiff’s claims do not stem from the use of motor vehicles. The school district has established governmental immunity against the plaintiff’s tort claims.

Disposition: Plaintiff’s claims were dismissed with prejudice.

Citation: Ex Parte Nall, 879 So.2d 541 (Ala. 2001).

Key Facts: Plaintiff-student was a member of the junior varsity baseball team. Plaintiff-student participated in a base-running drill in which a runner would stand at third base while a coach would hit a baseball from home plate. The purpose of the drill was to teach the players how to lead off the base, how to read the ball off the bat of the hitter and how to react when the ball was hit. One coach stood at third base instructing the runner. The remaining players on the team, including plaintiff-student stood in the foul area behind the third-base line watching the drill and awaiting their turn as runners. The coaches had instructed the players to pay attention to the drill and to stand near the fence, away from the field. While the base runner wore a batting helmet, the players awaiting their turn near the fence were not wearing helmets.

In order to replicate what would actually occur during a game, a player would pitch a baseball to the coach hitting from the pitcher’s mound. The head coach instructed the hitting
coach to take full cuts or full swings at the bas so the balls could reach the outfield as they would in a real game. The plaintiff-student was hit in the head by a baseball when the coach who was hitting the baseballs hit one of the balls foul and hit plaintiff-student who was standing in the area near third base.

Plaintiff-student, by and through his father, filed suit, alleging that the coaches had been negligent and wanton in conducting the practice and in supervising the players. The coaches moved for summary judgment on the basis of state-agent immunity. The trial court denied the motion. The coaches filed for a writ of mandamus directing the trial court to grant their motion for summary judgment.

Issue No. 1--Are the coaches’ actions in formulating and conducting baseball practice an exercise in judgment in educating student, thus entitling coaches to state-agent immunity?

Holding No. 1--The defendant-coaches are entitled to state-agent immunity because they were exercising their judgment in conduction baseball practice and were discharging their duties in education students.

Reasoning No. 1--A state agent shall be immune from civil liability in his or her personal capacity when the conduct made the basis of the claim against the agent is based upon the agent’s . . . (5) exercising judgment in the discharge of duties imposed by statute, rule or regulation in . . . educating students (Ex. Parte Cranman, 792 So.2d 392, 405 (Ala. 2000)). Generally, state agents are afforded immunity from civil liability when the conduct made the basis of the claim is based on the exercise of judgment in supervising and educating students.

The board of education in this case has not formulated any rules or policies specifying how baseball practices are to be held; instead, the coaches were left to exercise broad judgment in planning the safe conduct of the session and in deciding whether any safety hazards existed.
Therefore; unless one of the exceptions to state-agent immunity exists, the coaches are entitled to state-agent immunity because they were exercising their judgment in discharging their duties in educating students, and this court will not second-guess their decisions.

Issue No. 2--Does the fact that coach hitting the baseballs, who in response to teasing from the players began hitting the balls harder create a tortious act on the part of the coach and thus remove immunity from the coach.

Holding No. 2--Under the facts of this case the defendant-coach’s actions do not fall under any exception to state-agent immunity.

Reasoning No. 2--There is no exception to state-agent immunity unless the state agent acts willfully, maliciously, fraudulently, in bad faith, beyond his authority, or under a mistaken interpretation of the law. Willfulness is the conscious doing of some act or omission of some duty under knowledge of existing conditions accompanied with a design or purpose to inflict injury. Similarly, malice is defined as the intent, without justification or excuse to commit a wrongful act.

The plaintiffs have presented no evidence indicating that the coach acted with an intent, purpose, or design to inflict injury. While there is evidence that, if true, would indicate that at some point during the practice the coach was hitting the ball hard, there is no evidence indicating that doing so was outside the intended scope or nature of the practice drill.

Disposition: Both coaches were entitled to state-agent immunity. Therefore, the petition was granted and the trial court was directed to enter a summary judgment in their favor.

Citation: Butler v. McNeal, 555 S.E2d 525 (Ga.App. 2001).

Key Facts: Plaintiff-student was a middle school student with a history of behavioral problems. Plaintiff-student’s homeroom class was adjacent to the class taught by the defendant-
teacher. Plaintiff-student’s class was under the supervision of a substitute teacher, and the class became noisy and disruptive. Defendant-teacher entered through a connecting door to help the substitute teacher control the classroom. Plaintiff-student was seated at a table near the door.

Plaintiff-student stated that defendant-teacher came to his chair and told him to be quiet and that she could hear him talking. Plaintiff-student responded that he was not talking, and then defendant-teacher told the plaintiff-student to get up and go into her classroom. He reached forward to get his notebook and pushed his chair backward approximately two feet, and the next thing he knew, he was on the floor. Although he testified that it felt like she just snatched the chair and that she could not have been looking into her classroom when the incident occurred, he acknowledged that he was not looking at defendant-teacher at the time and that he did not know if she pulled the chair on purpose or if the incident was an accident.

The trial court granted summary judgment to the defendant-teacher on the basis of official immunity since no evidence of actual malice was present.

Issue: Under the facts of this case, whether the trial court was correct in granting summary judgment to defendant-teacher on the basis of official immunity.

Holding: The trial court correctly granted summary judgment to defendant-teacher based on the doctrine of official immunity. Judgment affirmed

Reasoning: Public officials are protected from personal liability for discretionary actions taken within the scope of their professional authority, if those actions are not accomplished by actual malice or actual malice or actual intent to cause injury. And the general task imposed on teachers to monitor, supervise, and control students has also been held to be a discretionary action which is protected by the doctrine of official immunity.
Here, defendant was simply exercising her discretionary authority to monitor, control, and supervise the children in her school, after hearing the disruption in the neighboring class. Liability could therefore attach only if her actions were undertaken with actual malice, which requires a deliberate intention to do wrong. Furthermore, malice in this context cannot be implied. Actual malice requires more that harboring bad feelings about another. The record does not show that the defendant acted with actual malice or that she intended to injure Butler.

Disposition: The judgment of the trial court granting summary judgment to the defendant-teacher was affirmed.


Key Facts: Plaintiff-student was a ninth grade student at defendant-high school. The head football coach offered plaintiff-student a position as the student manager for the football team. Plaintiff-student accepted the position in the fall of her sophomore year. Plaintiff-student alleges that from August to October of her sophomore years she was sexually harassed by an assistant football coach. As a result of her harassment and treatment by school officials, plaintiff-student was embarrassed and afraid to return to school, eventually left school and finally relapsed into bulimia, for which she had successfully received treatment several years earlier.

Plaintiff-student also alleges that, although she repeatedly informed various high school employees about the assistant coach’s conduct, no one attempted to prevent it. Plaintiff-student alleged that she along with another student the head football coach that the assistant coach had rubbed her leg. They told the head football coach and the football team’s trainer, that he had slid his hand down her shirt and patted her buttocks. She told a teacher at the high school that the assistant coach had brushed his hand against her breast and followed her into the ladies room.
She discussed the incident with the head football coach during a meeting with him and her parents. She also discussed the incidents with the high school principal, the assistant principal and the guidance counselor who all accused plaintiff-student of provoking the assistant coach and instructed her not to discuss the meeting with anyone, not even her parents.

Plaintiff-student brought suit against the assistant coach and other individual school employees pursuant to 42 U.S.C. § 1983, and she brought several state law tort claims against the assistant coach and the other defendants. The defendant-assistant coach filed a motion to dismiss. A second motion to dismiss was filed by the defendant school district, high school, and the individual school district employees.

Issue No. 1--Does the defendant-assistant coach enjoy qualified immunity for plaintiff’s 1983 claims against him?

Holding No. 1--Based on the allegations of the Complaint, the defendant-assistant coach does not enjoy qualified immunity for his actions.

Reasoning No. 1--42 U.S.C. § 1983 states that any person acting under color of state law that deprives someone of a federal constitutional or statutory right shall be liable to the injured party. Plaintiff-student alleged a violation of her substantive due process right to bodily integrity. Such a right clearly exists. With regard to §1983 actions, public officials generally enjoy qualified immunity for their actions unless those actions violate clearly established constitutional rights of which a reasonable person would know. Any reasonable person would have known that acting in the alleged manner would violate plaintiff-student’s well established rights to bodily integrity. No reasonable official could consider such conduct lawful or proper. Based on the allegations of the Complaint, the defendant-assistant coach does not enjoy qualified immunity for his actions.
Issue No. 2--Does the defendant-assistant coach enjoy official immunity for plaintiff’s state law tort claims against him?

Holding No. 2--Based on the allegations of the Complaint, the defendant-assistant coach does not enjoy official immunity for his actions.

Reasoning No. 2--The Commonwealth of Pennsylvania’s Political Subdivision Tort Claims Act sets forth the immunity of agencies and their employees. That statute states that except as otherwise provided in this subchapter, no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person. With regard to an official’s immunity, the statute provides that employees are liable to the same extent as his employing local agency. Local officials typically enjoy expansive state law immunity from actions taken by them in the course of their official duties. Official immunity of agency employees does not, however, extend to any behavior that constitutes a crime, actual fraud, actual malice or willful misconduct. Willful misconduct generally means misconduct which the perpetrator recognized as misconduct and which was carried out with the intention of achieving exactly that wrongful purpose, or in other words intentional torts. The defendant-assistant coach’s alleged conduct exceeds all bounds of decency and the facts alleged give rise to a reasonable inference that the defendant-assistant coach acted intentionally, recklessly and with malice. Thus, the defendant-assistant coach is not entitled to official immunity.

Issue No. 3--Does the school district enjoy immunity for plaintiff’s state law tort claims?

Holding No. 3--The school district and the high school enjoy sovereign immunity from plaintiff’s state law tort claims.
Reasoning No. 3--Pennsylvania law provides that with a few exceptions, no local agency shall be liable for any damages on account of any injury to a person or property caused by an act of the local agency or an employee thereof or any other persons. Thus, the school district and the high school would appear to enjoy immunity. Plaintiff-student offered no case law in support of finding these two agency defendants liable on her state law claims. Thus, to the extent that plaintiff’s state law claims seek monetary relief, the school district and the high school are immune from suit.

Issue No. 4--Are the individual school district employees immune from plaintiff’s state law claims against them in their official and individual capacities.

Holding No. 4--None of the individual employee defendants are entitled to immunity for his or her actions. Each is therefore subject to suit for all of the causes of action contained in plaintiff’s complaint.

Reasoning No. 4--An agency’s employees enjoy similar immunity, unless their actions constitute a crime, actual fraud, actual malice or willful misconduct. While willful misconduct generally refers to intentional torts, it can also mean, except in police abuse cases, misconduct whereby the actor desired to bring about the result that followed or at least was aware that it was substantially certain to follow, so that desire can be implied. Based on the allegations of the complaint the school district defendant employees do not enjoy qualified immunity for their inaction. Plaintiff-student alleged facts sufficient to give rise to the reasonable inference that these defendants were on notice about the harassment and knew or should have known that their nonfeasance would allow the harassment to continue or worsen. Because these defendants were aware that the continued harassment of plaintiff-student was substantially certain to follow if they did not act, their desire that it continue can be implied. Accordingly, based solely on the
allegations of the complaint, these defendants do not enjoy qualified immunity or plaintiff-
student’s state law claims against them.

Disposition: All state law claims brought against the school district and high school are
dismissed to the extent that they seek monetary relief. All other claims against the defendants
remain intact.

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

Key Facts: Plaintiff-student was a third grade student at an elementary school who
sustained injuries when he fell from a snow pile onto a piece of ice during recess on the school
playground. Plaintiff-student does not know how he fell from the snow pile, but he landed on a
piece of ice about four inches square by two inches high. Other pieces of ice were in the area.
Plaintiff-student got up, spoke with his teacher, and then went to see the school nurse. The
students were not told to stay off of the snow pile, although they were not supposed to jump from
high places. Plaintiff-student claims there were two or three adult supervisors around, but he
does not recall who they were. The playground was the only open space that could accommodate
the large amount of snow plowed from the parking lot. The school district claimed that placing
the snow on the playground minimized damage to school property, accommodated traffic and
safety concerns, and was within the district’s limited snow removal budget.

Plaintiff-student and his mother sued the school, the school district, the school principal,
individual school district employees that supervised the playground, and the snow removal
contractor for failure to exercise ordinary and reasonable care. The claim stated that defendants
were negligent in performing their duties to the student, which resulted in his injury. Defendants
moved for summary judgment claiming statutory, recreational, official, and vicarious official
immunity. The district court denied the motion for summary judgment on all ground except as to recreational immunity on which the court concluded there was a material issue of fact.

On appeal, defendants argue they are entitled to statutory immunity on the snow placement issue and for the school district’s hiring, supervision and training decisions. Appellants also contend that plaintiffs’ claims are barred by recreational immunity under statute. Finally, they contend that the district employees are entitled to official immunity and that the school district is entitled to vicarious official immunity from the claim of negligent supervision.

Issue No. 1--Did the district court err in denying statutory immunity to the school and the school district, when it was argued that the school district’s decision to place the snow on the playground was a planning level decision which was protected by statutory immunity?

Holding No. 1--There was insufficient evidence to support the assertion that placement of the snow on the playground was based on a planning-level decision protected by statutory immunity.

Reasoning No. 1--Under the Minnesota Tort Claims Act, a municipality can be held liable for the torts of its officers, agents, and employees. There are specific exceptions to municipal tort liability, including discretionary and recreational immunity. Discretionary immunity, sometimes referred to as statutory immunity, protects the government from claims arising from performing or failing to perform a discretionary act, regardless of whether it abused its discretion. If a governmental decision involves the type of political, social and economic considerations that lie at the center of discretionary action, including consideration of safety issues, financial burdens, and possible legal consequences, it is not the role of the courts to second-guess such a policy decision. Although nearly any governmental act requires some
measure of discretion, the immunity protects only those discretionary acts that involve the balancing of policy objectives such as economic, social, and political factors.

Statutory immunity however does not protect all acts of judgment by government agents. In defining what a discretionary act is, the Supreme Court has made a general distinction between operational and planning decisions. While planning decisions involve questions of public policy and are protected as discretionary decisions, operational decisions related to the day-to-day government operation and are not protected as discretionary decisions. The critical inquiry is whether the conduct involved a balancing of policy objectives.

The affidavits in this case do not provide specific facts in support of the assertion that placement of the snow was based on a planning-level decision. The school district failed to establish that there was a definite policy decision made regarding snow placement. The school district did not provide specific evidence of any budgetary restrictions and considerations. There was insufficient evidence to support the assertion that placement of the snow on the playground was based on a planning-level decision protected by statutory immunity.

Issue No 2--Did the district court err in denying statutory immunity to the school and the school district for the school district’s hiring, supervision, and training decisions?

Holding No. 2--The school district is protected by statutory immunity for the school district’s hiring, supervision and training decisions.

Reasoning No. 2--Hiring, supervising, training and retaining municipal employees are policy-level activities that are protected by statutory immunity. The principal’s affidavit supports the claims that the hiring, training, and supervision of school employees are policy-level activities. Case law also holds that analogous municipal organizations are entitled to statutory
immunity for the hiring, training, and supervision of their employees. Therefore, the school district is protected by statutory immunity on this issue and thus the trial court is reversed.

Issue No. 3--Are plaintiff’s claims against school district barred by recreational immunity under the general trespasser standard or the child trespasser standard?

Holding No. 3--Section 339 (child trespasser standard) is more appropriate and shall be applied at trial. Whether the school district is entitled to recreational immunity under §339 is a question of material fact to be determined at trial.

Reasoning No. 3--Minn.Stat. §466.03 subdivision 6e states that a school district is immune from tort liability if the claims based upon the construction, operation, or maintenance of any property owned or leased by the municipality that is intended or permitted to be used as a park, as an open area for recreational purpose or for the provision of recreational services and the claim arises from a loss incurred by a user of a park and recreation property or services. Nothing in this subdivision limits the liability of the municipality for conduct that would entitle a trespasser to damages against a private person. Therefore, recreational immunity does not wholly absolve state agencies from liability; rather it enables them to treat visitors, in the tort context, as trespassers rather than licensees or invitees. A public entity is liable only it if violated the standard of care that a private landowner owes to a trespasser. The question becomes whether to apply the general trespasser standard or the child trespasser standard.

Restatement (Second) of Torts § 339, states: A possessor of land is subject to liability for physical harm to children trespassing thereon caused by an artificial condition upon the land if (a) the place where the condition exists is one upon which the possessor knows or has reason to know that children are likely to trespass, and (b) the condition is one of which the possessor knows or has reason to know and which he realizes or should realize will involve an
unreasonable risk of death or serious bodily harm to such children, and (c) the children because of their youth do not discover the condition or realize the risk involved in intermeddling with it or in coming within the area made dangerous by it, and (d) the utility to the possessor of maintaining the condition and the burden of eliminating the danger are slight as compared with the risk to children involved, and (e) the possessor fails to exercise reasonable care to eliminate the danger or otherwise to protect the children.

Here, the children were allowed to play on the snow piles during recess with school district employees present, and therefore the children arguably would not have realized the risk of injury involved. We have children playing during recess on a playground that has snow piles that attract their attention, and they are not prohibited from playing on them. We conclude that §339 is more appropriate and shall be applied at trial. Also, whether the school district is entitled to recreational immunity under §339 is a question of material fact to be determined at trial.

Issue No. 4--Do the school district employees who supervised the playground activities and the principal of the elementary school protected under the doctrine of official immunity; as well as the school district under the doctrine of vicarious liability in regard to the children playing on the snow piles.

Holding No. 4--Because there is insufficient evidence that the employees made discretionary decisions on these matters, they are not granted official immunity as a matter of law. Because the employees are not protected by official immunity, the school district is not protected by vicarious official immunity.

Reasoning No. 4--The official immunity doctrine ensures that a public official charged by law with duties which call for the exercise of his judgment or discretion is not personally liable to an individual for damages. Official immunity requires the discretion to be exercised on at least
an operational level and is something more than the performance of merely ministerial duties. Official duty is ministerial when it is absolute, certain and imperative, involving merely the execution of a specific duty arising from fixed and designated facts. Operational level decisions on the other hand, involve decisions relating to the ordinary day-to-day operations of the government. A discretionary act requires the exercise of individual judgment in carrying out the official’s duties. An act involving some discretion may nonetheless still be a ministerial task.

The decisions made during playground supervision are separate and distinct from the planning-level decisions involved in hiring, training, and supervising district employees. The principal is responsible for the general safety and welfare of students. There is no evidence that he participated in the general supervision of the teachers regarding supervising the children at recess or that he made a planning-level decision regarding the snow piles on the playground. The school district failed to show that the principal did not abdicate his ultimate responsibility for the safety and welfare of student to the teachers. Nowhere in his affidavit did he address the potential danger of children playing on the snow piles, and he did not establish the existence of a school policy on the point. Therefore the principal is not entitled to official immunity.

The other school district employees were in charge of supervising the students when plaintiff-student was injured. While they exercised some discretion in deciding what the students would be permitted to do, that does not automatically guarantee immunity. The crucial focus is on the nature of the act. There was no evidence provided to the court by the employees to show that they actually made any decisions regarding recess and children playing on the snow piles. Because there is insufficient evidence that the employees made discretionary decisions on these matters, we conclude that they are not granted official immunity as a matter of law.
If a public official is entitled to immunity for a discretionary act, the employing entity is generally entitled to vicarious official immunity as well. Because we conclude that the employees are not protected by official immunity, the school district is not protected by vicarious official immunity.

Disposition: The trial court’s refusal to grant summary judgment to defendant school for district for immunity for the school district’s hiring, supervision and training decisions is reversed. All other motions are affirmed. Section 339 is shall be applied at trial. Whether the school district is entitled to recreational immunity under §339 is a question of material fact to be determined at trial.

Citation: Ex Parte Spivey, 846 So. 322 (Ala. 2002).

Key Facts: Plaintiff-student and his parents sued vocational teacher and the career and technical director at the county vocational center for negligence and wantonness for injuries plaintiff-student sustained while operating a stationary spindle wood shaper in a building construction class. Defendant-teachers moved for a summary judgment, arguing among other things that they were entitled to state-agent immunity. The trial court denied their summary-judgment motions. Defendant-teachers petitioned the state supreme court for a writ of mandamus directing the trial court to enter summary judgment for them on the basis that they were entitled to state-agent immunity.

At the time of the accident, plaintiff-student was making raised panel doors as part of a class project. The students were to use a spindle wood shaper. The shaper had in-feed and out-feed fences that positioned lengthwise on the right and left sides of the blade, respectively, from the perspective of the operator. The fences assist the operator in the guiding the wood into the blade. Prior to class, the defendant.teacher set up the shaper for the students’ use. Defendant-
teacher removed the out-feed fence, but left the in-feed fence in place, and he had the students use a starting pin. Defendant-teacher believed that this setup was more or less in line with a photograph in a textbook that depicted the operation of the shaper when making irregularly shaped cuts without using the fences. Defendant-teacher did not believe that there was any way to make the shaper safer than it was at the time of the accident. Plaintiff-student was injured when he was halfway finished with his cut. Plaintiff-student severed one finger and part of his thumb, and severely cut another finger on his right hand.

The shaper that injured the plaintiff-student had been used at another high school in the county by another vocational teacher before it was transferred to the vocational center. The defendant-teacher stated that he knew of no point of operation guard that could be ordered to fit the shaper. The defendant-director stated that he was unaware of any additional safety guards that could have been placed on the shaper. The defendant-teacher did make inquiries about the availability of additional guards.

The owner’s manual for the shaper states “keep guards in place and in working order” and “Never perform shaping operation with safety guard removed”. Under the heading, “Shaping When Using the Fence as a Guide”, the owner’s manual states “shaping with the fence is the safest and most satisfactory method of working and this method should always be used when the work permits. A label affixed to the shaper with the heading safety rules also stated in part, “carefully read instruction manual before operating machine” and “do not operate without all guards and covers in position”.

The textbook that defendant-teacher used included a discussion of spindle shapers similar to the one that injured the plaintiff-student. In a chapter titled Health and Safety, the textbook states: Point of Operation (PO) guards protect your hands or body from the cutting tool. The also
protect the operator from flying ships. PO guards are made of metal or high impact plastic. Clear plastic allows you to observe your work safely. Often PO guarding is moved for tool setup or adjustments and must be reinstalled. A majority of accidents occur when PO guards have not been positioned correctly. New machinery is required to have PO guards. Retrofit older equipment with PO guards.

Defendant-teacher had written the course of study for building construction technology, carpentry and cabinetmaking in *Alabama Course of Study: Trade & Industrial Education*, a manual published by the state department of education. The Course of study lists types and sources of safety rules including regulations promulgated by OSHA. Although the regulations were not binding under law, the defendant-teacher believed that the use of the standards was a good practice. The following regulations promulgated by OSHA were in effect at the time of the accident: § 1910.212 General requirements for all machines (a) Machine Guarding--(1) Types of guarding. One or more methods of machine guarding shall be provided to protect the operator and other employees from the machine area from hazards such as those created by point of operation . . . (3) Point of operation guarding (i) Point of operation is the area on a machine where work is actually performed upon the material being processed. (ii) The point of operation in machines, whose operation exposes an employee to injury, shall be guarded. The guarding device shall be in conformity with any appropriate standard therefore, or in the absence of applicable specific standards, shall be so designed and constructed as to prevent the operator from having any part of his body in the danger zone during the operating cycle.

Defendant’s responsibilities are derived from the Course of study, his job description, and the faculty handbook. Defendant-teacher’s job description stated that he was responsible to insure safety by regular instruction in job safety and related safety practices relative to the job
tasks. The faculty handbook states that “safety should complement the instruction program to the extent that all instructors should check their laboratories each day before the class session begins to ascertain that conditions are safe for the instruction program. All hazards should be removed or reported to the director immediately.”

Defendant-director was the defendant-teacher’s supervisor. The defendant’s job description states that he is responsible for implementing safety instruction and practices as an integral part of all vocational programs; specifically, he was required to check all programs to determine if safety is being taught in the course of study and to ensure that teachers practice safety. The defendant-director also had the responsibility to ensure that teachers teach students the proper and safe cutting techniques on the shaper and that he would not approve of any machine or technique he deemed to be unsafe.

Issue No. 1--Are defendant-teacher and defendant-director entitled to state-agent immunity when it was argued that the decisions they made were made in educating students and supervising personnel?

Holding No. 1--The actions against defendant-teacher and defendant-director arise from decision they made in educating students, and in defendant-director’s supervision of the defendant-teacher, categories specifically included within the rule governing state-agent immunity.

Reasoning No. 1--A state agent shall be immune from civil liability in his or her personal capacity when the conduct made the basis of the claim against the agent is based upon the agent’s (5) exercising judgment in the discharge of duties imposed by statute, rule or regulation in . . .educating students. A state agent is also immune from civil liability for exercising judgment in supervising personnel. The plaintiffs’ actions against the defendants arise from
decisions they made in educating students; and in the case of the defendant-director, his supervision of the defendant-teacher, categories specifically included within the rule governing state-agent immunity.

Issue No. 2--Whether the textbook passages, warning labels, and owner’s manual for the wood shaper constitute duties imposed by statutes, rules, or regulations that educators are required to strictly follow or risk abrogating state-agent immunity, thus creating ministerial acts that defendant-teacher and defendant-director disobeyed, thus removing their actions from being considered discretionary judgments and thus immune?

Holding No. 2--The textbook passages, warning labels, and owners manual for the wood shaper are not the type of detailed rules or regulations that would remove a state-agent judgment in the performance of required acts.

Reasoning No. 2--First, the textbook passages, warning label, and owners manual do not constitute duties imposed by statutes, rules, or regulations that educators are required to strictly follow at the risk of abrogating their state-agent immunity and subjecting themselves to civil liability if they fail to do so. There is no evidence indicating that the textbook, or, for that matter, the warning label or owner’s manual, was approved or even reviewed by any governmental agency. The defendant-teacher may have not acted wisely in his decision concerning the removal of the fences to accommodate the students’ objectives; however, he is immune from liability predicated upon the exercise of his judgment in educating students, and the court will not second-guess his decision.

The safety provision in each defendant’s job descriptions imposed upon them a general responsibility to ensure the safety in the classroom. These general statements do not remove the defendants’ judgment in determining the safe operations of the tools or when a safety hazard
exists. These are not the type of detailed rules or regulations that would remove a state-agent’s judgment in the performance of required acts. Similarly, the general requirement imposed by defendant-director’s job description that he implements safety instruction and practices does not remove his judgment in determining whether the defendant-teacher was properly teaching and practicing safe operation of the shaper.

Regarding the OSHA regulations, it is undisputed that no spindle guard or ring guard was included with the shaper when it was transferred to the school. It is also undisputed that the defendant-teacher inquired about guards for the shaper, but was unable to locate such guards. Defendant-teacher, a shop teacher with over 20 years’ experience, acted within his judgment whether retrofitting equipment for the shaper was not available and that it was reasonably safe to use the shaper under close personal supervision without any additional guards on the shaper.

Issue No. 3--Whether the defendant-teacher is not entitled to state-agent immunity because he acted willfully in removing the out-feed fence and in failing to retrofit the shaper with additional guards, and in permitting the machine to be used without those devices.

Holding No. 3--The plaintiffs have not satisfied their burden to establish that defendant-teacher acted willfully.

Reasoning No. 3--Even when a state agent is otherwise entitled to state-agent immunity, the state agent is nevertheless, not entitled to immunity for his willful conduct. The burden in on the plaintiff to establish that the state-agent defendant acted willfully. Once a defendant demonstrates that a plaintiff’s claims arise from the performance of a discretionary function, the burden then shifts to the plaintiff to establish that the defendant acted in bad faith or with malice or willfulness in order to deny the defendant state-agent immunity from suit.
It is undisputed that the defendant-teacher sought additional guards for the shaper, but he was unable to locate such guards. The defendant-teacher exercised his judgment in removing the out-feed fence from the shaper, but there is no evidence indicating that he removed any safety guard from the shaper. There is no evidence that defendant-teacher had any knowledge that injury would likely or probably result from the use of the shaper without the guards and the out-feed fence. Defendant-teacher believed that the shaper was safe, and his actions were not willful. Thus, the plaintiffs have not satisfied their burden to establish that defendant-teacher acted willfully.

Disposition: The trial court was ordered to vacate its order denying summary judgments for defendants and to enter summary judgment in their favor.

Citation: Hackett v. Fulton County School District, 238 F.Supp.2d 1330 (N.D.Ga. 2002).

Key Facts: This case involves improper conduct by a high school teacher towards the plaintiff-student, a former student. Plaintiff-student was a graduate of a high school that part of the defendant-school district. When plaintiff-student was in the eleventh grade, defendant-teacher arranged for plaintiff and other students to come to his home on several occasions under the pretense of a bogus scholarship program. One evening when plaintiff-student was at teacher’s home, the plaintiff was told he would be taking part in an experiment that required him to disrobe, put on a blindfold, and allow himself to be touched by an unknown person.

During the spring of plaintiff’s senior year at high school, a different student reported having problems with the teacher to one of the school’s counselors. This student told the counselor, the assistant principal, and the principal of the high school about the bogus scholarship program and the inappropriate touching done by the teacher. Upon learning of these allegations the defendant-principal called the school district’s central office and spoke with the
executive director of personnel. The director told the principal to get the teacher out of his class and have him wait for him to arrive at the school. The director arrived at the school within 30 minutes, spoke to the teacher and reassigned him to his home pending further investigation into the allegations against him.

The school district began an investigation into the allegations against the teacher, but within 10 days, the teacher submitted his letter of resignation. The school district continued its investigation and made a report to the state professional standards commission the body that oversees teacher certification. At some point the police became involved. The police investigation resulted in criminal charges being filed against the teacher. The teacher pled guilty to three of the six charges filed against him and is served out his sentence at a state prison.

Teacher applied for employment with defendant-school district and was hired to be a science teacher at plaintiff-student’s high school. When he applied for employment he submitted a packet of information including an application three references, his college and graduate school transcripts, his Louisiana and Georgia teaching certificates, his test scores, and an explanation of two incidents that he believed would appear on any criminal investigation report for filing a false insurance claim. The teacher’s application was reviewed and he was interviewed for a position at high school. After a hire recommendation was received from the principal, his application was reviewed again; the school district obtained additional references, confirmed his teaching certifications, and ran a criminal background check.

Although the school district’s background check did not reveal any previous charges or allegations against the teacher for misconduct involving students, the teacher failed to provide a complete and accurate picture of his employment history on his employment application with the school district and that he failed to disclose that he had been asked to resign from teaching.
positions at several schools in both Louisiana and Georgia because of allegations of improper conduct with minor students. At the time the teacher was hired to teach at the high school, the school district was not aware that teacher had been accused of improper conduct toward students in the past.

The plaintiff contends however, that the defendants failed to conduct a more thorough investigation of teacher’s background, and that had they done so, their investigation might have revealed that teacher had failed to disclose an accurate picture of his employment history and had failed to disclose that he had been accused of misconduct toward students in the past.

Plaintiff filed the Complaint in this action asserting claim under Title 9 of the Education Amendments of 1972, §1983 and state law claims of negligence, negligent hiring, retention, and supervision, assault and battery, intentional infliction of emotional distress and false imprisonment against school district, the high school principal in his individual and official capacity. Plaintiff claimed that the principal and the school district were aware of the teacher’s improper conduct towards students but acted with deliberate indifference to the plaintiff’s rights in failing to prevent the teacher’s conduct toward the plaintiff.

Issue No. 1--Whether the school district is entitled to sovereign and official immunity on plaintiff’s state law tort claims?

Holding No. 1--Defendant-school district’s motion for summary judgment is granted with respect to all of plaintiff’s state law tort claims. Also, the plaintiff’s claims against the principal in his official capacity is a claim against the school district, thus the principal is also entitled to the defense of sovereign immunity with respect to the state law tort claims made against him in his official capacity.
Reasoning No. 1--The doctrine of sovereign (or governmental) immunity is found in Article I, §II, Paragraph IX of the Georgia Constitution of 1983, as amended in 1991. Pursuant to this constitutional provision, counties and other political subdivisions of the State of Georgia are absolutely immune from suit for tort liability unless that immunity has been specifically waived pursuant to an act of the General Assembly which specifically provides that sovereign immunity is waived and the extent of such waiver. Sovereign immunity applies equally to county-wide public school districts in Georgia, unless such immunity is waived.

The Georgia Tort Claims Act provides for a limited waiver of the state’s sovereign immunity for the torts of its officials and employees, but the Act expressly excludes counties and school districts from the waiver. Therefore, the Georgia Tort Claims Act does not divest the school district of its sovereign immunity. Because sovereign immunity can only be waived by a legislative act that specifically states that sovereign immunity is waived, and the plaintiff has failed to identify any legislative act that waives the immunity of the school district in this action, the school district is immune from suit on plaintiff’s state law claims.

Plaintiff-student has also asserted his state law claims against the principal in both his individual and official capacity as principal of the high school. The plaintiff’s claims against the principal in his official capacity are in essence claims against the school district; thus, defendant-principal is also entitled to the defense of sovereign immunity with respect to the claims against him in his official capacity.

Issue No. 2--Whether the defendant-principal entitled to official immunity with respect to plaintiff’s state law tort claims.
Holding No. 2--Defendant-principal’s motion for summary judgment is granted with respect to all of plaintiff’s state law tort claims against defendant-principal in both his individual and official capacities.

Reasoning No. 2--Whereas sovereign immunity applies to bar tort claims against counties and their employees acting in their official capacities, official immunity, as recognized under Georgia law, offers limited protection to public officials and employees from tort claims against them in their individual capacities. County employees are protected from suits against them in their individual capacities for discretionary acts performed within the scope of their public duties, as long as those discretionary acts were performed without malice. The Georgia Constitution provides that no official immunity is provided for ministerial acts negligently performed or for ministerial or discretionary acts performed with malice or intent to injure.

Thus, in order to determine whether the defendant-principal is protected by official immunity, the Court must first determine whether the acts involved are discretionary or merely ministerial. Discretionary acts are defined as those acts that require the exercise of personal deliberation, judgment or discretion in the performance of an official duty. Ministerial acts, on the other hand, are acts that are simple, absolute, and definite, arising under conditions admitted or proved to exist, and requiring the execution of a specific duty.

The Court finds that all the acts complained of by plaintiff-student, including all acts involving personnel decisions are inherently discretionary acts. Thus, in order for plaintiff to establish that defendant-principal is not entitled to official immunity plaintiff-student must show that he performed his official duties in hiring, supervising, and retaining teacher with actual malice. The term actual malice when used in the context of the official immunity doctrine
requires a deliberate intention to do wrong. The term does not include implied malice or acts involving reckless disregard for the safety of others.

Plaintiff has presented no evidence that would allow a reasonable jury to conclude that defendant-principal acted with actual malice, or intent to harm plaintiff. Indeed, the plaintiff has failed even to respond to defendants’ arguments that they are entitled to sovereign and official immunity on plaintiff’s state law claims. Thus, defendant principal is entitled to official immunity on plaintiff’s state law claims.

Disposition: Defendants’ motion for summary judgment is granted with respect to all of plaintiff’s state law claims against the school district. Also, the plaintiff’s claims against the principal in his official capacity is a claim against the school district, thus the principal is also entitled to the defense of sovereign immunity with respect to the claims against him in his official capacity. Defendants’ motions for summary judgment are granted with respect to all of plaintiff’s state law claims against defendant-principal in both his individual and official capacities.

Citation: *Ex Parte Turner*, 840 So.2d 132 (Ala. 2002).

Key Facts: Defendant-assistant principal states that while patrolling the halls of middle school he stopped plaintiff-student who was 12 years old at the time, and asked her to present her hall pass. Assistant principal asserts that he did not know the student or know whether she was enrolled as a student at the junior high school. Plaintiff-student refused to produce a pass; she loudly resisted his efforts to stop her for questioning; and she tried to force her way past the assistant principal. When the assistant principal grabbed the plaintiff-student’s arm to stop her, both he and the plaintiff-student fell to the floor. Plaintiff-student hit her head on a locker and
suffered a bruise, but there were no lacerations or broken bones. Plaintiff-student, who it turns out, was a student at the junior high was expelled from school.

Plaintiff-student’s mother sued the assistant principal in his individual capacity and in his official capacity as assistant principal of the junior high school. She also named the county board of education and the state board of education. In her complaint she alleges assault and battery, civil rights violations, negligence, and intentional infliction of emotional distress and claimed damages for loss of services of a child. The assistant principal filed a motion for summary judgment asserting that he was immune from civil liability on the basis of state-agent immunity and he enjoyed qualified immunity from the civil rights claims. In his petition, the assistant principal says that trial court dismissed the other defendants, but denied his motion for a summary judgment. Assistant principal filed this petition for a writ of mandamus directing trial judge to dismiss all claims against him based on qualified or state-agent immunity.

Issues No. 1--Whether a writ of mandamus should be directed to the trial court to enter a summary judgment in defendant-assistant principal’s favor on the ground that he is protected against plaintiff’s state law tort claim by the doctrine of state-agent immunity?

Holding No. 1--Defendant-assistant principal is protected under the doctrine of state-agent immunity because his actions occurred while he was discharging his duties in educating students.

Reasoning No. 1--A state agent shall be immune from civil liability in his or her personal capacity when the conduct made the basis of the claims against the agent is based upon the agent’s . . . exercising judgment in the discharge of duties imposed by statute, rule, or regulation in releasing prisoners, counseling or releasing persons of unsound mine, or educating students. Notwithstanding anything to the contrary in the foregoing statement of the rule, a state agent
shall not be immune from civil liability in his or her personal capacity . . . when the state agent acts willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law (Ex Parte Cranman, 792 So.2d 392, 405 (Ala. 2000)).

The evidence indicates that the defendant-assistant principal’s decision to detain and question the plaintiff-student was made while he was acting in his official capacity. The affidavit filed by the assistant principal described the educational duty that he was discharging, provides the rule that imposed that duty, and demonstrates that he was exercising his judgment in discharging that duty. The assistant principal also established his good faith, his lack of malice, his authority, and the absence of a mistake of law in the affidavit. Therefore, the assistant principal’s un-refuted affidavit established state-agent immunity as to the state law causes of action. There is insufficient evidence indicating that the assistant principal acted willfully, maliciously, fraudulently, in bad faith in exercising his judgment when he confronted the plaintiff-student. State-agent immunity protects educators, as agents of the state, in their exercise of judgment in educating students. The trial court erred in denying defendant-assistant principal’s motion for summary judgment as to the state-law causes of action.

Issue No. 2--Should the trial court enter a summary judgment in defendant-assistant principals’ favor with regard to plaintiff’s § 1983 claim on the ground that his actions were protected by qualified immunity?

Holding No. 2--The trial court erred in denying the defendant-assistant-principal’s motion for summary judgment on the ground of qualified immunity from the § 1983 claim.

Reasoning No. 2--To state a claim under § 1983, the plaintiff must allege facts constituting a deprivation of a constitutional right, under color of state law. Furthermore, in order to recover against a teacher or a school administrator under § 1983, a student must establish not
only that he or she was deprived of a constitutional right, but also that the person who deprived him or her of that right did so in bad faith or with deliberate indifference to his or her rights. School officials are entitled to qualified immunity from § 1983 liability for good faith, non-malicious action taken to fulfill their official duties.

The defendant-assistant principal’s affidavit provides uncontroverted sworn statements that sufficiently establish qualified immunity from the § 1983 action. No evidence was presented indicating that the assistant principal acted in bad faith or maliciously in handling the incident. Nothing before us indicates that assistant principal deprived plaintiff-student of her rights under the United States Constitution. The trial court erred in denying the assistant principal’s motion for summary judgment on the ground of qualified immunity from the § 1983 claim.

Disposition: Defendant-assistant principal has shown that he has a clear legal right to the relief sought. The trial court is directed to enter a summary judgment in favor of assistant principal.

Citation: Casterson v. Superior Court, 123 Cal.Rptr.2d 637 (Cal.App.6Dist. 2002).

Key Facts: Plaintiff-student was a fourth grade special education student. Plaintiff-student was injured during a school field trip. Defendant-teacher and other school district employees and volunteers were in charge of the 90 student field trip, which included an overnight stay at a hotel. Prior to the trip, plaintiff-student’s sister advised defendant-teacher that plaintiff-student could not swim. Defendant allowed plaintiff-student to enter the pool at the hotel and to be pushed by other students into the deep end where plaintiff-student sank to the bottom and nearly drowned. Defendant-teacher who was plaintiff-student’s chaperone allegedly did not stay at the pool with the plaintiff-student and the other children under her care. As a
consequence of the near drowning, plaintiff-student allegedly suffered various physical and mental injuries.

The defendant-teacher petitioned for a writ of mandamus directing the trial court to vacate its order overruling her demurrer and to enter an order sustaining the demurrer without leave to amend. Defendant-teacher contends that plaintiff-student’s claims are barred by the school field trip immunity set forth in the California Education Code §35330. Defendant-teacher acknowledges that §35330 subdivision (b) expressly includes only school districts and the State of California in its immunity provision. However, defendant-teacher argues that under the principles of statutory interpretation the statute should be construed to include the employees of school districts. Otherwise the Legislature’s intent to provide absolute immunity to school districts for personal injury claims arising from field trips would be undermined by the school district’s vicarious liability under for injuries caused by an employee in the course and scope of employment.

Issues: Whether a school district employee is protected by the field trip immunity of §35330 where it is alleged that a student was injured during a school-sponsored field trip as a result of the employee’s negligence in the course and scope of employment, in light of the fact that §35330 expressly immunizes only school districts and the State of California from personal injury claims arising from school field trips?

Holding: In accordance with the legislative history, a statutory interpretation of §35330 that includes school district employees within the scope of the field trip immunity is correct. Including school district employees is necessary to avoid the absurd consequences of the de facto elimination of the field trip immunity for school districts which the Legislature intended to provide when it enacted former §1081.5 and §35330.
Reasoning: Section 35330 provides authority to school districts or a county superintendent of schools to conduct field trips. The provision for field trip immunity subdivision (d), “All persons making the field trip or excursion shall be deemed to have waived all claims against the district or the State of California for injury, accident, illness, or death occurring during or by reason of the field trip or excursion. Field trip is defined as a visit made by students and usually a teacher for purposes of first hand observation (as to a factory, farm, clinic, and museum). Excursion means a journey chiefly for recreation, a usual brief pleasure trip, departure from a direct or proper course or deviation from a definite path.

Section 35330 has a latent ambiguity. While the statute expressly includes school districts within the scope of field trip immunity, it omits school district employees. The exclusion of employees leads to ambiguity because a school district is vicariously liable for the negligence of employees in the course and scope of their employment, pursuant to Government Code §815.2. Public employee liability based on torts committed within the scope of employment generally does not result in personal loss to the employee. The public entity employer, even when not joined as a defendant, has a statutory duty to indemnify the employee in such cases, at least in the absence of actual fraud, malice, or corruption, or the failure of the employee to cooperate in the defense of the action.

Plaintiff alleges that defendant was acting in the course and scope of her school district employment when she negligently supervised students during a field trip and caused plaintiffs near drowning. Therefore, if defendant were to be held liable, school district would be obligated to pay any judgment against her. Plaintiff will have circumvented school district’s field trip immunity by indirectly obtaining recovery from school district. Thus our concern is that the field trip immunity of §35330 will be severely limited in scope if plaintiffs can recover indirectly for
field trip injuries by suing a negligent school district employee, since a school district necessarily acts through its employees in conducting students on school-sponsored field trips. It is consistent with legislative intent to construe §35330 as extending field trip immunity to school district employees in order to protect a school district from vicarious liability for an employee’s alleged negligence in the course and scope of employment during a field trip.

Because the allegations o the complaint state that defendant-teacher, while in the course and scope of her school district employment, negligently caused plaintiff-student’s injuries during a school field trip, the face of the complaint shows that plaintiff’s personal injury claims against her is barred by the affirmative defense of the §35330 field trip immunity.

Disposition: A peremptory writ of mandate was issued directing the trial court to vacate its order overruling the demurrer of defendant-teacher, and to enter a new order sustaining the demurrer without leave to amend.

Citation: Gamble v. Ware County Board of Education, 561 S.E.2d 837 (Ga.App. 2002).

Key Facts: Proceeding pro se, plaintiff presented to the superior court clerk 11 lawsuits naming the county board of education and various school officials and employees as defendants. Pursuant to state statute the court clerk submitted the complaints to the trial court for review before filing them, since plaintiff stated that he could not afford to pay the filing fee. Concluding that the complaints contained no justifiable issue of law or fact, the trial court refused to permit their filing. Plaintiff now appeals.

Five complaints arise out of a November 1999 school bus incident involving the plaintiff’s son. It was alleged that the county bus monitor prepared a conduct form stating that plaintiff’s son engaged in sexual misconduct on the bus. According to the plaintiff these defendant were social enemies of his family and fabricated the misconduct charges against his
son. The conduct form was signed by defendant-bus driver 1, the transportation director and the assistant principal. The plaintiff’s son was suspended from riding the bus for 3 days. Plaintiff immediately contacted the school to arrange a conference, and a meeting between assistant principal, bus driver and bus monitor. At the meeting, the plaintiff questioned the bus employees about the incident. Ten days later, the plaintiff submitted to the assistant principal an affidavit executed by the plaintiff’s son denying the misconduct. The following year, the plaintiff requested that the superintendent delete the reference to sexual misconduct from the plaintiff’s son’s school record. The superintendent refused, but school officials permitted the plaintiff to place a rebuttal statement relating to the incident in the son’s record. Plaintiff also alleges in regard to this incident that the board of education, the superintendent, the assistant principal, and the county transportation director violated his son’s due process rights and engaged in tortious conduct that injured his family.

Another five complaints involved a separate alleged of school bus misconduct by plaintiff’s son the following year. In these complaints it was alleged that defendant-bus driver 2 prepared a conduct form stating that the plaintiff’s son was acting up on the bus and was doing ugly things with his body and was sexually harassing a young girl on the bus. Defendant bus driver 2, the transportation director and the assistant principal signed the conduct form, which indicated that the plaintiff’s son would be suspended from the bus for 10 days. A school official brought the conduct form to plaintiff’s home on the first day of the suspension.

Four days later, the plaintiff met with school officials, and raised concerns about the sexual harassment allegation and arranged a subsequent meeting with the defendant-bus driver 2. At this meeting the school’s principal determined that plaintiff’s son had not sexually harassed a female student. The principal amended the conduct form to state that plaintiff’s son had made a
sexual gesture toward a girl but did not touch the girl, and he deleted the reference to sexual harassment. The plaintiff protested that his son had made a sexual gesture on the bus. The plaintiff met with the superintendent and asked that the conduct form be removed from his son’s record. The superintendent refused.

Plaintiff also alleges that these defendants committed various torts against his family, including intentional infliction of emotional distress, negligence, and libel. He contends that the school board, superintendent, principal, assistant principal and transportation unlawfully failed to expunge the misconduct charge from the son’s record, neglected to promptly notify the son and his parents about the misconduct, and altered the bus conduct form to reference a sexual gesture even though the son denied making the gesture. In addition, Gamble asserts that the school board, superintendent, and principal are vicariously liable for the torts of their employee.

Issue No. 1--Is the defendant-school board vicariously liable for the actions of its employee, such as would allow plaintiff to file claims against it for the actions of its employees?

Holding No. 1--The trial court properly refused to file plaintiff’s tort claims against the county board of education since the board enjoys sovereign immunity barring plaintiff’s claims against it.

Reasoning No. 1--The county board of education falls within the 1991 constitutional amendment extending sovereign immunity to the state and all of its departments and agencies. Sovereign immunity can be waived only through legislation specifically providing that the immunity is thereby waived and the extent of the waiver. We have not found-and Gamble has not cited-any legislation specifically waiving the school board’s immunity from liability in this type of case, which involves allegations that school employee’s tortiously and unlawfully
disciplined a student. And the State’s limited waiver of sovereign immunity for the torts of state officer and employees does not apply to school districts or other local authorities.

Issue No. 2--Are the superintendent, assistant principal, and the transportation director immune from plaintiff’s state law tort claims on the basis of official immunity?

Holding No. 2--Plaintiff’s tort allegations against the superintendent, assistant principal and transportation director revolve around their participation in the disciplinary action against the son. Based on the official immunity doctrine those allegations cannot survive.

Reasoning No. 2--The doctrine of official immunity protects individual public agents from personal liability for discretionary actions taken within the scope of their official authority and done without willfulness, malice, or corruption. A discretionary act requires personal deliberation and judgment which entails examining the facts, reaching reasoned conclusions and action on them in a way not specifically directed. Supervising and disciplining school children constitute discretionary acts. Furthermore, under OCGA § 20-2-1000(b), no educator shall be liable for any civil damages for, or arising out of, any act or omission concerning, relating to, or resulting from the discipline of any student or the reporting of any student for misconduct, except for acts or omission of willful or wanton misconduct.

The plaintiff complains that these individuals signed a bus conduct form, did not timely notify him about the suspension, refused to overturn the charges, and upheld the finding of their subordinates. None of these alleged facts shows malicious, willful, or wanton conduct. Plaintiff’s claims against the superintendent, assistant principal, or transportation director are barred. Furthermore, even if school authorities should have notified the son and his parents sooner about the misconduct allegations, but failed to do so, these facts do not show the type of willful and malicious conduct needed to avoid the official immunity doctrine. Similarly, the fact that school
authorities refused to completely reject Defendant-bus driver 2’s misconduct report does not
evidence malice or willfulness. In fact, the complaints reveal that authorities reduced the original
charge from sexual harassment to making a sexual gesture, indicating a lack of malice.

Issue No. 3--Are the bus driver defendants and the bus monitor immune from plaintiff’s
state law tort claims on the basis of official immunity?

Holding No. 3--The tort allegations against the bus drivers and bus monitor state a claim
for relief under which plaintiff may, theoretically, be able to recover.

Reasoning No. 3--The plaintiff asserts that the bus monitor fabricated the sexual
misconduct charges against his son as a social enemy of the family; she sought to damage and
injure the son’s honor, integrity, reputation, and character. The plaintiff similarly alleges that
defendant-bus driver 1, who is the bus monitor’s brother-in-law and another social enemy of the
plaintiff’s family, colluded with the bus monitor to provide misleading false facts relating to the
incident. If the defendant-bus driver 1 and bus monitor intentionally made up the misconduct
charges to injure the son’s reputation and character as part of an ongoing feud, recovery might be
available. Given the plaintiff’s specific allegations of intentional and arguably malicious conduct
by defendant-bus driver 1 and bus monitor, the court could not conclude from the pleadings that
these complaints would by barred by official immunity. Plaintiff contends that defendant-bus
driver 2 conspired with defendant-bus driver 1 and the bus monitor to fabricate the 2000
misconduct charge in order to substantiate the November 1999 incident. Like the claims against
defendant-bus driver 1 and the bus monitor, this conspiracy allegation, if true could lead to
recovery.

Disposition: The trial court’s refusal to file the claims against the board of education,
principal, assistant principal, superintendent, and transportation director is affirmed. The trial
court’s decision not to file claims against bus driver – one, bus driver-two, and the bus monitor is reversed.

Citation: *M.W. v. Madison County Board of Education*, 262 F.Supp.2d 737 (E.D.Ky. 2003).

Key Facts: Plaintiff-student was a 15-year-old ninth grade student who was a member of her school’s ROTC program. She also suffered from low IQ and had emotional problems. On the day in question, she was participating in the physical education component of the ROTC program. Plaintiff was in violation of the school’s dress code. Upon observation of plaintiff’s attire, the instructor for the physical education component of ROTC advised plaintiff that she was in violation of the school’s dress code and that she should report to the principal’s office. Plaintiff left the gym willingly, and the instructor escorted her to the principal’s office. At some time during the walk to the administrative offices, the plaintiff asserts that she became upset.

The defendant-principal came upon the scene, at which time the ROTC instructor returned to the gymnasium; however, the defendant-principal did not as the ROTC instructor the plaintiff-student’s name or whether she was a student in his class. After the ROTC instructor left the office, the principal asked the plaintiff-student on multiple occasions to identify herself. The plaintiff failed to state her name or respond to questioning, and was not wearing a student I.D. tag at the time she was escorted to the office.

The defendant-principal was due for a meeting at another school, and failed to make any other attempt to identify the plaintiff-student. The defendant-principal requested a city police officer, assigned to regular duty at the school, to take steps to determine the plaintiff-student’s identity. Principal indicated to the officer that the plaintiff would not identify herself and that he was uncertain whether she was in fact a student at the school due to the absence of her ID tag.
The principal did not ask the officer to remove plaintiff from the building or to otherwise take any specific steps to determine her identification.

The police officer proceeded to ask the plaintiff-student her identity, and when she remained silent, he escorted her from the building and took her to the police station, placing her in a secured detention room until her parents arrived. The school district did not have any further interaction with plaintiff until she was returned to the school by her parents later in the day. Plaintiff alleges that after she was removed from detention, her parents went to the school, to speak with the principal who responded in a rude and abrasive manner. The plaintiff claims that as a result of being forcibly removed from school, she has suffered emotional harm, including severe depression, and had no effective choice but to leave her school and enroll in another high school in the district.

The action was originally filed in state circuit court, but was removed to federal court. The plaintiff asserts the following causes of action: 42 U.S.C. § 1983 claims for violation of her rights under the Fourth and Fourteenth Amendments; violation of statute for discrimination by a public accommodation based on sex or disability; violation of Article 2 of the Kentucky Constitution; wrongful expulsion; false imprisonment; and intentional infliction of emotional distress. The defendants filed a motion for summary judgment.

Issue No. 1--Does municipal immunity shield the school board and the individual district defendants from official capacity liability?

Holding No. 1--The board, superintendent, and principal, in official capacities, are entitled to immunity based upon the absence of a genuine issue of material fact concerning whether the alleged unconstitutional actions were taken pursuant to an official policy or custom of the Board.
Reasoning No. 1--The plaintiff-student must establish that the allegedly unconstitutional acts were the official policy or custom of the defendant-Board. Allegations based upon respondeat superior are insufficient as a matter of law to support a cause of action under §1983. In the alternative to liability based on official policy, an act performed pursuant to a custom that has not been formally approved by an appropriate decision maker may fairly subject a municipality to liability on the theory that the relevant practice is so widespread as to have the force of law.

The plaintiff-student has failed to identify any evidence that the defendant-board or defendant-superintendent were aware of the defendant actions on the day in question. Consequently, plaintiff is unable to show that principal’s actions were taken pursuant to official Board policy. The plaintiff may not rely on subjective beliefs to show a genuine dispute. The only evidence of a custom cited by plaintiff is that the police officer routinely removed children from the school for many reasons. However, the portion of the officer’s testimony identified by plaintiff does not speak to the involvement of superintendent or principal. Likewise, the officer’s testimony merely states in conclusory fashion that he has removed children from the school without regard to the specific circumstances of such removal.

Issue No. 2--Whether superintendent and principal can raise qualified immunity as a defense to the federal law claims brought against them in their individual capacities.

Holding No. 2--The principal and superintendent are entitled to qualified immunity based upon the objective reasonableness of their actions.

Reasoning No. 2--Qualified immunity is an affirmative defense that shields government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.
Therefore in order to withstand a motion for summary judgment based on the defense of qualified immunity, the plaintiff must first show from the facts alleged that the government official violated clearly established statutory or constitutional right.

A court in the Sixth Circuit undertaking a qualified immunity analysis must first determine whether the plaintiff has shown a violation of a constitutionally protected right; if so, the court must examine whether the right was clearly established. To overcome qualified immunity, the right allegedly violated must be so clear that any reasonable public official in the defendant’s position would understand that his conduct violated the right. If the plaintiff is unable to show the violation of a constitutionally protected right, then obviously it is unnecessary for the Court to proceed to the second step of the qualified immunity analysis.

The reasonableness element of the Fourth Amendment analysis in the school context must take into consideration the broad disciplinary powers of school officials and the limited liberty rights of student while in the school. The plaintiff’s allegations fail to establish that the principal’s conduct was unreasonable. It is undisputed that the principal was unaware of plaintiff’s identity and that plaintiff was unwilling or unable to provide her identity. Likewise, it is undisputed that the principal merely turned the plaintiff over to the police officer in order for the officer to ascertain her identity. There is no allegation that the principal directed or even intended for the officer to take the plaintiff to the police station. It is also undisputed that the principal contemplated the possibility that plaintiff was not a student and was merely brought to his office as a trespasser on the school grounds. The Court is unable to find that the actions of the principal in briefly detaining plaintiff in this case in order to ascertain her identity violate the Fourth Amendment. Likewise, nor did the principal violate the Fourth Amendment by his
decision to request the assistance of the officer when his efforts to determine plaintiff’s identity failed.

As for the equal protection claim, it is clear that plaintiff has no evidence of a nefarious purpose to discriminate against her based on her membership in a definable class. Even if plaintiff’s handicap were at issue in this case, pursuant to the Fourth Amendment balancing identified above, the equal protect claim must be dismissed based upon rational basis review.

Issue No. 3--Do the allegations against defendant-principal involve discretionary functions and thereby entitling him to qualified good faith immunity for plaintiff’s state law tort claims brought against him?

Holding No. 3--The allegations all involve an inherently discretionary function, and the defendant-principal is entitled to qualified good faith immunity.

Reasoning No. 3--The Kentucky Supreme Court has recently defined discretionary function as those involving the exercise of discretion and judgment, or personal deliberation, decision, and judgment as opposed to ministerial acts requiring obedience in the order of others. The defendant-principal is alleged to have requested the assistance of the police officer to ascertain the identity of the plaintiff-student. The plaintiff alleges that the basis for this action was plaintiff’s refusal to respond to principal’s requests to state her name, and/or plaintiff’s violations of the dress code. Regardless, the defendant-principal possessed the ultimate executive function at the school of enforcing the student discipline code and maintaining the safety of other students by ensuring that only authorized students were present on campus. There are no facts to support a claim that the principal was acting in bad faith towards the plaintiff; in fact, it is undisputed that the principal was unaware of plaintiff’s identity.
Disposition: The defendants’ motion for summary judgment is granted. Plaintiff’s claims against the county board of education, superintendent, and principal are dismissed with prejudice.

Citation: *Kobza v. Kutac*, 109 S.W.3d 89 (Tex.App-Austin 2003).

Key Facts: Plaintiff-student was participating in a stock show in Houston where he met a teenage girl who was also a participant. He became infatuated with the girl. The girl’s father saw plaintiff-student looking at her and asked plaintiff-student to keep his eyes off his daughter. The event was eventually retold to defendant-teacher. When defendant-teacher saw plaintiff student a few days later, she told him that she heard what happened in Houston. When he asked her how she heard, she jokingly replied that she saw it on the news. For the next couple of weeks when defendant-teacher saw plaintiff-student she would jokingly call him a stalker and he would laugh.

Subsequently, defendant-teacher and another teacher discussed the possibility of creating a gag newspaper article. The other teacher created the newspaper article and defendant-teacher told another student they were playing a joke on plaintiff-student and asked the student to take the article to plaintiff-student. The gag article stated that plaintiff-student was caught stalking other participants at the show and that he was asked to stop following and harassing the young ladies and that a formal investigation and charges were pending.

The student gave the article to plaintiff-student and said “here you made the paper.” Plaintiff-student believed the article was authentic and became upset. He showed the article to his mother, who contacted the police to determine if the contents of the article were true. She then took the matter up with defendant-teacher who informed her that the article was just a joke.
In response, plaintiff-student’s mother filed suit as mother and next friend, claiming negligent infliction of emotional distress, intentional infliction of emotional distress, slander, slander per se, negligence, negligence per se and libel. In the suit, defendant-teacher filed a motion for summary judgment based on official immunity under §22.051 of the education code. Her motion was denied. She now appeals by one issue, claiming that the trial court erred in denying her motion because she is entitled to immunity under this statute.

To support her defense under §22.051, defendant-teacher submitted an affidavit in which she assert that one of the things teacher do to improve the learning environment at a school is attempt to make the school experience positive for the students by establishing rapport with and attempting to enhance the student’s self-esteem by doing things that let the students know that the teacher has an interest in him or her as an individual. The intention of creating the gag article and giving it to plaintiff-student was to make him laugh, build rapport with him, and make him feel good about himself and his school experience by sharing an inside joke with two of the school faculty members. “This is what I thought the joking and the kidding with plaintiff-student would accomplish, and this is what I thought was being accomplished prior to learning that the article had upset him.”

Issue No. 1--Was the defendant-teacher’s act outside the scope of her employment for purposes of applying the immunity provision of the education code?

Holding No. 1--Defendant-teacher was acting within the scope of her employment.

Reasoning No. 1--Section 22.051 provides that a professional employee of a school district is not personally liable for any act that is incident to or within the scope of the duties of the employee’s position of employment and that involves the exercise of judgment or discretion on the part of the employee, except in circumstances in which a professional employee uses
excessive force in the discipline of students or negligence resulting in bodily injury to students. Whether one is acting within the scope of her employment depends on whether the general act from which the injury arose was in furtherance of the employer’s business and the objective for which the employee was employed. If the test is satisfied, neither the failure of the employer to expressly authorize the act nor the fact that it was performed negligently will strip the act of its protective shield.

It is common knowledge that teachers interact with students on a continual basis to improve the learning environment by establishing rapport with the students. Often those interactions are on a personal level. Although those interactions are usually in a serious vein, they can include teasing and joking. It is not the interest of school or students that teachers perform solely as detached teaching instruments, abstaining from all social interaction with students.

Section 22.051 provides immunity for an act that is incident to or within the scope of the employee’s duties. It cannot be said that establishing rapport with students and engaging in banter with them is outside the scope of a teacher’s duties. Clearly, establishing rapport with students enhances the learning environment, one of the objectives for which a teacher is employed. Although, defendant-teacher may have exercised poor judgment in this instance, we cannot say that she was acting outside the scope of her duties.

Issue No. 2--Was the defendant-teacher’s act ministerial and not discretionary for purposes of applying the immunity provision of the education code, when it is alleged that the defendant-teacher violated department policies by her actions?

Holding No. 2--Defendant-teacher was involved in a discretionary act.
Reasoning No. 2—Ministerial acts are those where the law prescribes and defines the duties to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment. Ministerial actions require obedience to orders or the performance of a duty as to which the actor has no choice. On the other hand if an action involves personal deliberation, decision and judgment, it is discretionary. In other words, if the actor is entitled to personally deliberate about the manner or means of performance and invoke her own judgment then the act is discretionary.

Defendant-teacher claims that the acts complained of in this case were an attempt to further the school’s learning environment by creating rapport with a student by sharing an inside joke with two of the school’s faculty members. Clearly, defendant-teacher used poor judgment and the joke backfired. However, there is not a prescription or definition of exactly what a teacher must do to establish rapport with a student. It is left to the individual teacher’s discretion. The fact that she violated several ethical policies is not dispositive. The policies involved do not contain any language specific to the act complained of here. There are certain rules prohibiting certain type of conduct with students, such as those concerning the administration of corporal punishment or involvement in sexual relations. However, defendant-teacher has not been accused of crossing the bright line clearly prohibited conduct. She has been accused of creating a fake article and causing a student distress because he did not immediately recognize or understand it was a joke. There is no specific rule that proscribes this conduct.

Disposition: The trial court was reversed and a judgment in favor of defendant-teacher was rendered on the basis that she was immune from liability for the claims alleged by the plaintiff-student.

Citation: Giambrone v. Douglas, 874 So.2d 1046 (Ala. 2003).
Key Facts: Plaintiff-student was a 15-year-old freshman at a high school and recently become a member of the school’s wrestling team. Defendant was a certified teacher and the head wrestling coach. At a practice plaintiff and defendant were kidding around and poking fun about whether plaintiff could win a wrestling match against defendant. Defendant weighed about 200 pound and the plaintiff weighed approximately 130 pounds. Defendant testified that plaintiff challenged him to wrestle at practice and that he accepted the challenge because he believed it would be motivational for his wrestling team.

Plaintiff-student and defendant-coach began to wrestle in a full-speed challenge match. Defendant attempted a “cement job”, an offensive move that involved defendant wrapping his arm underneath plaintiff’s arm in an effort to roll plaintiff over and bring him down to the mat. As the defendant-coach was performing the move, he heard a pop and released plaintiff. Plaintiff suffered a severe spinal cord injury and became quadriplegic. At the time the incident occurred, defendant was in his first year as head wrestling coach. Although defendant had previously coached football and baseball, he had no experience coaching wrestling.

Defendant did not attend a wrestling clinic before he began coach the wrestling team. Plaintiff claimed that the AHSAA guidelines mandated that the athletic director send defendant-coach to a wrestling clinic at which potentially dangerous and illegal holds would have been discussed. Defendant-coach did not attend the wrestling clinic, and the athletic director testified that he had merely assumed the defendant had attended the clinic because he did not receive a notice from the AHSAA indicating that he did not attend.

The school principal testified that her supervision of the athletic program at the high school was indirect and that she had deferred coaching recommendations to the athletic director. The athletic director testified that he had recommended defendant-coach to the city board of
education because of defendant’s superior coaching abilities and his good relationship with the students. He testified that the only criteria for selecting a coach were that the coaches have a teaching certificate. Based upon the athletic director’s recommendations, the board hired defendant as the head wrestling coach at the high school.

Plaintiff-student’s mother, individually, and as next friend of plaintiff-student brought action. Plaintiffs alleged that defendant-coach was negligent and wanton in wrestling with plaintiff without having proper qualifications or training. Plaintiff also claim that the principal and the athletic director were negligent and wanton in failing to provide qualified coach for the wrestling team. Plaintiff asserts that the decisions and actions of the faculty members that resulted in plaintiff-student’s injury did not involve the exercise of judgment. The defendant faculty members filed a motion for summary judgment. The faculty members argued among other things that they were entitled to state-agent immunity. The trial court entered summary judgment in favor of the faculty members based on state-agent immunity.

Issue No. 1--Whether defendant coach is entitled to state-agent immunity when it is alleged that he (1) he failed to attend a wrestling clinic hosted by the Alabama High School Athletic Association which all wrestling coaches were required to attend and at which potentially dangerous and illegal holds would have been discussed (2) he violated the competition guidelines as promulgated by the National Federation of Wrestling and (3) he engaged in inequitable competition with plaintiff in violation of the code of conduct contained in the Alabama High School Athletic Directors and Coaches Association Directories.

Holding No. 1--The defendant-coach is not entitled to state-agent immunity at this stage of the proceedings because a trier of facts could determine that defendant-coach performed an
illegal move during an inequitable challenge match, thereby failing to discharge his duties pursuant to detailed rule or regulation.

Reasoning No. 1--State agents are entitled to immunity for actions taken in the exercise of their judgment in educating students when they are discharging duties imposed by statute, rule, or regulation. A state agent acts beyond authority and is therefore not immune when he or she fails to discharge duties pursuant to detailed rules or regulations such as those stated on a checklist. In this case, the athletic director who in a supervisory position furnished the defendant-coach with the guidelines and rules of the AHSAA, the NFW, and the Athletic Directories, and it must be determined whether the athletic director’s furnishing of those guidelines and rules imposed a duty upon the defendant-coach to regulate his conduct during the practices of the wrestling team.

It is clear from the record that the board gave the athletic director broad authority to supervise the coaches employed at the high school and to impose on them any duties he believed were necessary to perform their jobs. The athletic director testified that he was responsible for administering the athletics program and that he reported directly to the superintendent of the city school system. He also testified that he conducted an annual meeting of the coaches of the high school in which he instructed the coaches to (1) to follow the guideline of the AHSAS, which according to the athletic director answer questions concerning the do’s and don’ts of each sport; (2) to complete their applications for the Athletic Directories and to follow the guidelines in the Athletic Directories; and (3) to complete their paperwork regarding administrative issues such as transportations and purchase orders. The athletic director testified that he provided defendant coach with a book containing the rules promulgated by the NFW in order to make sure that defendant knew the rules for conducting wrestling matches. Although the athletic director was
not directed by the board to impose on the coaches at the high school the guidelines and rules of
the AHSAS and the NFW and the Athletic Directories, it was within the exercise of his judgment
in insist that the coaches comply with those guidelines and rules.

Therefore defendant-coach’s broad authority to exercise judgment in the safe conduct of
his wrestling team practices was limited by the guidelines and rules furnished and imposed by
the athletic director. The challenge match between defendant and plaintiff violated the code of
conduct for coaches contained in the Athletic Directories which defendant, as mandated by the
athletic director was required to follow. Furthermore, the AHSAA and the NFW provide rules
addressing potentially dangers wrestling holds and illegal headlocks. Such guidelines and rules
do not have to be adopted by the board before they can create a duty on defendant’s part.

The guidelines and rules removed defendant’s judgment in determining whether he
should participate in a full speed challenge match with a student who was less experienced,
much younger, and smaller that defendant. The guidelines and rules restricted the type of moves
that are permissible in the sport of wrestling. Because a trier of fact could determine that
Defendant-coach performed an illegal move during an inequitable challenge match, thereby
failing to discharge his duties pursuant to detailed rules or regulations, we cannot determine at
this state in the proceedings that defendant is entitled to state-agent immunity.

Issue No. 2--Are defendant principal and athletic director entitled to state-agent immunity
when it is alleged that they failed to follow the rules governing their positions and their failure to
exercise of due care by the athletic director’s decision to recommend defendant to the Board as
the head wrestling coach and the principal’s decision to defer such recommendations regarding
athletic personnel to the athletic director.
Holding No. 2--The decisions of the principal and athletic director involved the exercise of judgment in educating students or in supervising personnel; categories that are within the state-agent immunity.

Reasoning No. 2--A state agent shall be immune from civil liability in his or her personal capacity when the conduct made the basis of the claim against the agent is based upon the agent’s (2) exercising his or her judgment in the administration of a department or agency of government, including, but not limited, examples such as: (d) . . . supervising personnel; or (5) exercising judgment in the discharge of duties imposed by statute, rule or regulation (Ex parte Cranman, 792 So.2d 392, 405 (Ala. 2000)).

Both the decisions of the athletic director and the principal involved the exercise of judgment in educating students or in supervising personnel, categories within the restatement of state-agent immunity. However unlike the duties the athletic director imposed upon defendant coach by his acceptance of the AHSAA guidelines and the NWF rules, no guidelines or rules were imposed upon the athletic director and the principal specifying how the athletic director chose a coach for the wrestling program and how involved the principal should have been in the hiring process for athletic personnel.

Because the Board had not adopted any guidelines or rules addressing those issues, the principal and the athletic director were left to exercise broad judgment in making their respective decisions regarding the appropriate level at which to supervise personnel, the qualifications required in a wrestling coach and the safety measures that were to be provided as each wrestling practice.
Issue No. 3--Is defendant-athletic-director’s state-agent immunity abrogated by his alleged failure to follow the mandate of the Alabama High School Athletic Association by failing to send defendant-coach to a mandatory wrestling clinic?

Holding No. 3--The athletic director is entitled to immunity from liability because in supervising the defendant-coach he was exercising his judgment.

Reasoning No. 3--The athletic director was not required by the Board or any other entity or person in a supervisory position to follow the AHSAA mandates. While the athletic director had the authority to require subordinates to comply with those rules, his failure to submit himself voluntarily to those rules does not make his conduct a violation of duties imposed on a department or agency by statute, rule, or regulation. The athletic director exercised his own judgment in determining the extent to which he should follow the AHSAA mandates and in determining the level of training required for new coaches.

Disposition: The summary judgment in favor the defendant-coach is reversed. The summary judgment in favor of the principal and the athletic director is affirmed. The case was remanded for proceedings consistent with this opinion.

Citation: Aliffi v. Liberty County School District, 578 S.E.2d 146 (Ga.App. 2003).

Key Facts: Plaintiff-student was a 10-year-old student at an elementary school within defendant-school district. A teacher was assisting the plaintiff and other students in making posters. The teacher sent plaintiff with another fourth grade student to get some paper from a large roll in the school storage garage. The teacher told the girls to get the paper and hurry back. Plaintiff and the other students went to the garage and tried to get the paper off a large, heavy, eight-foot high roll of paper which was standing upright in the storage garage. In the process, the heavy roll fell onto plaintiff and killed her.
Plaintiff-student’s parents filed suit over their daughter’s death. The parents sued the county school district, the school board and the teacher who sent plaintiff to get the paper in both her official and individual capacity. The plaintiffs alleged that the teacher violated written school board policy by sending plaintiff, unsupervised to the garage. The plaintiffs claimed that defendants should have known that the storage garage was an extremely hazardous and dangerous place and that the roll of paper constituted a dangerous condition. The plaintiffs further claimed that the defendants acted maliciously and with reckless disregard and that plaintiff died because of their negligent and intentional acts. Also, the plaintiffs alleged that defendants failed to perform ministerial duties and therefore were not entitled to governmental or official immunity.

The defendants filed a motion for summary judgment, claiming they were immune from liability and that there had been no evidence of actual malice to remove this immunity. The state court granted the motion, and the plaintiffs appeal. The state court granted summary judgment finding that defendant-teacher’s actions were discretionary and that she was protected by sovereign and official immunity.

Issue: Did the trial court properly grant summary judgment to the defendant-teacher in her individual capacity?

Holding: The trail court properly granted summary judgment for the defendant-teacher in her individual capacity on the basis of official immunity.

Reasoning: The doctrine of official immunity protects individual public agents from personal liability for discretionary actions taken within the scope of their official authority, and done without willfulness, malice, or corruption. A discretionary act requires personal deliberation and judgment, which entails examining the facts, reaching reasoned conclusions,
and acting on them in a way not specifically directed. Supervising and disciplining school children constitute discretionary acts protected by official immunity.

Applying these principles to the instant case, the defendant-teacher was simply exercising her discretionary authority to monitor, control, and supervise the children in her classroom when she sent the plaintiff-student to the garage to get the paper. Regardless of defendant-teacher’s knowledge of and compliance with school and school board rules and procedures, liability could attach only if her actions were undertaken with actual malice or with the actual intent to cause injury. There was no evidence in the case that defendant teacher acted with actual malice, nor was there any evidence that she had acted with actual intent to injury plaintiff-student.

Disposition: Accordingly, the trial court’s grant of summary judgment on the claims against defendant-teacher in her individual capacity on the basis of official immunity was proper.

Citation: Frazier v. Badger, 603 S.E.2d 587 (S.C. 2004).

Key Facts: Plaintiff-teacher was employed to supervise the in-school suspension lab at a middle school. Defendant was assistant principal of the school and plaintiff’s direct supervisor. Around the beginning of the school year, defendant began visiting plaintiff’s classroom and making explicit, sexual advances towards her. When plaintiff refused defendant’s propositions, he told her that eventually he was going to break her. As the school year progressed, defendant’s visits became more frequent, and his advances became physical. Plaintiff testified that the defendant would grab her legs and breasts and that she had to fight him off of her on several occasions. Defendant had been the plaintiff’s basketball coach 15 years prior, and plaintiff alleged that defendant began making sexual advances toward her when he was her high school basketball coach.
As a result of defendant’s behavior, plaintiff suffered emotionally and physically. She became severely depressed. Her weight plummeted below 100 pounds and she began having anxiety attacks and losing her hair. Her physician referred her to a psychiatrist who prescribed him medication for depression and insomnia. Plaintiff also testified that her fiancé left her because of her emotional condition.

As part of the defendant’s duties as assistant principal he received requests for building repairs. Plaintiff repeatedly asked defendant to send someone to repair the heating and air conditioning in her classroom. Despite defendant’s promises, the heating and air conditioning was never repaired. At the end of the school year, defendant told plaintiff that if she came back to work in the fall, he would move her class into a portion of the basement known as the dungeon.

At the beginning of the next school year, plaintiff’s class was relocated to the basement, and she was told that her old classroom would be used for a computer lab, but it was never transformed into a computer lab. Plaintiff was also told that until her downstairs classroom was ready for use, her classroom would be located on the cafeteria stage. This temporary location made plaintiff’s job increasingly difficult. Though the stage curtains were drawn, plaintiff had a hard time keeping the students in class. It was only after plaintiff filed a complaint with the Department of Human Affairs that plaintiff was given a regular classroom.

Plaintiff-teacher sued defendant-assistant principal for the tort of outrage. The jury found for plaintiff-teacher and awarded her actual and punitive damages. The jury found that defendant’s sexual advances towards plaintiff combined with his retaliatory conduct, met the elements for the tort of outrage. The Court of Appeals affirmed.
Issues: Whether defendant was immune from tort action stemming from his conduct because he was acting within the scope of his official duties pursuant to state law?

Holding: The evidence did not support defendant’s defense of governmental immunity.

Reasoning: South Carolina Code Annotated § 15-78-70 specifically provides that government employees may be liable in tort actions: (a) this chapter constitutes the exclusive remedy for any tort committed by an employee of a governmental entity. An employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefore except as expressly provided for in subsection b. (b) Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee’s conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

This court has held that the term scope of employment as used in an insurance policy is broader than the term scope of official duties as used in the Tort Claims Act. If the scope of employment is a broader term than scope of official duties-the term used in the governmental immunity statute-if follows that acts not within the scope of employment are not within the scope of official duties. Prior South Carolina cases have held that sexual harassment by a governmental employee is not within the employee’s scope of employment. Therefore in the present case, the defendant’s sexual advances toward plaintiff were outside the scope of his official duties or employment.

The more difficult question is whether defendant’s retaliatory conduct was within the scope of his official duties or employment. Under the particular circumstances of this case, there is no evidence that any of defendant’s retaliatory conduct was done in the furtherance of his employer’s business. The defendant’s moving plaintiff’s class to the school’s stage and basement
furthered none of the school’s legitimate interests because plaintiff’s old classroom was left unused. In addition, none of the school’s legitimate interests were further by defendant’s failure to repair plaintiff’s air and heating unit or defendant’s repeated threats to plaintiff.

The defendant’s retaliatory conduct was a continuation of his improper sexual advances toward plaintiff and was a product of personal, not occupational motives. The principle of governmental immunity is not intended to protect a defendant such as this defendant who has used his authority for nothing more than to personally retaliate against an employee. In addition, §15-78-70(b) denies governmental immunity for defendants whose actions involve actual malice and an intent to harm. The defendant’s retaliatory conduct involved actual malice and an intention to harm plaintiff.

Disposition: The ruling of the Court of Appeals was upheld.

Citation: Bushong v. Williamson, 790 N.E.2d 467 (Ind. 2003).

Key Facts: Plaintiff-student was a student in defendant-teacher’s fifth grade physical education class. While playing kickball with the class, defendant-teacher tagged plaintiff-student out. In response, plaintiff-student kicked defendant-teacher in the buttocks. After being told not to do so again, plaintiff-student attempted to kick defendant-teacher again. At that point, defendant-teacher caught plaintiff-student’s ankle in mid-air, lifted him from the ground and stuck him on the back legs and buttocks with his hand. Plaintiff-student sustained bruises as a result.

Plaintiff-student’s parents filed on student’s behalf a tort claims notice with the school district and the district’s risk management commission. Defendant-teacher filed a motion for summary judgment. The trial court granted the motion due to its finding that defendant-teacher was acting within the scope of employment and could not be sued individually. The Court of
Appeals reversed the decision of the trial court because it held that there was a genuine issue of fact as to whether defendant-teacher was acting within the scope of his employment. Plaintiffs insist that the trial court erred in granting summary judgment because their complaint specifically alleged that defendant committed battery on plaintiff-student which was a criminal act. Thus according to the plaintiffs, defendant-teacher was acting outside the scope of his employment.

**Issue:** For the purpose of establishing immunity from liability under the Tort Claims Acts, did teacher establish that he was acting within the scope of employment, when it was alleged that he committed a criminal act and was thus not entitled to immunity under the Act.

**Holding:** Because there is no genuine issue of material fact concerning whether defendant-teacher complained of conduct was committed within the scope of employment, summary judgment in his favor was correct.

**Reasoning:** It is correct to say that a government employee may be sued personally where the complaint alleges the act or omission causing the loss is criminal. However the fact of criminal conduct standing alone is not dispositive of whether the employee was acting outside the scope of employment. Conduct of the same general nature as that authorized, or incidental to the conduct authorized is within the employee’s scope of employment. An act is incidental to authorized conduct when it is subordinate to or pertinent to an act which the servant is employed to perform, or when it is done to an appreciable extent to further his employer’s business. Even criminal acts may be considered as being within the scope of employment if the criminal acts originated in activities so closely associated with the employment relationship as to fall within its scope.
In this case, the trial court determined that the discovery materials conclusively demonstrated that defendant-teacher was acting in the scope of employment as a matter of law. We also conclude that the trial court was correct in granting summary judgment. Defendant-teacher carried his initial burden of demonstrating that he was acting within the scope of employment, a fact that is dispositive of plaintiff’s claim for relief. Because the plaintiffs failed to designate evidentiary materials showing a factual dispute on this dispositive issue, the trial court properly granted summary judgment in defendant-teacher’s favor.

Disposition: The judgment of the trial court was affirmed.

Citation: Cooper v. Paulding County School District, 595 S.E.2d 671 (Ga.App. 2004).

Key Facts: Plaintiff drove to a county high school one afternoon to pick up her daughter. After picking up her daughter, plaintiff drove toward the main exit, here her car collided with the school entrance gate. The gate came through the windshield and struck plaintiff, causing her to lose consciousness and lose control of the car. The car then went off the roadway and crashed into a tree causing further injuries to plaintiff and injuring her four children.

In the morning on the day of the accident, the principal asked school custodians to clean up debris in the roadway at the school entrance that had been left from another vehicle that apparently had hit the gate over the weekend. Also in the morning on the day of the accident, the district’s director of maintenance received a call to repair the weekend damage that had been done to the gate. The director and his maintenance crew arrived at the school that same morning to repair the gate. The crew realigned the hinges on the damaged gate, and when their work was completed they opened and secured the gate. There is no evidence that anyone else touched the gate prior to the accident after the director and the maintenance crew finished their work.
Plaintiffs sued the school district, the school principal and the former school superintendent, following the car accident that occurred on school property, which caused injuries to plaintiff and her children. Plaintiff sued on her individual behalf and on behalf of her children. The defendants moved for summary judgment, which motion was granted as to all of them. Plaintiff appeals the trial court’s entry of summary judgment in favor of the principal on the basis that he was shielded from liability in his individual capacity by official immunity.

Issue: Whether the trial court erred in granting summary judgment to the principal in his individual capacity based on official immunity in connection with plaintiff’s car accident when it was alleged that the principal’s handling of the broken gate was a ministerial, rather than discretionary function.

Holding: This is a situation where the school principal exercised his discretion in the maintenance of school facilities and is therefore immune from suit for alleged negligence.

Reasoning: As a county employee, the principal is entitled to official immunity when he is sued for negligence when engaging in a discretionary as opposed to ministerial act in connection with his official functions. It is a well-established principle that a public official who fails to perform purely ministerial duties required by law is subject to an action for damages by one who is injured by his omission. Where an officer is invested with discretion and is empowered to exercise his judgment in matter brought before him, he is sometimes called a quasi-judicial officer, and when so acting he is usually given immunity from liability to persons who may be injured as a result of an erroneous decision; provided the acts complained of are done within the scope of the officer’s authority, and without willfulness, malice, or corruption.

The evidence reveals that the principal as the principal of the school at the time of the accident had to exercise judgment as to how the school should handle the broken gate.
In effect was the plaintiffs are alleging that the defendant, acting as principal, failed to exercise sound judgment or discretion in allowing what they alleged to be a hazardous condition to exist. Therefore, the act or failure to act is not ministerial in nature, but is, rather discretionary. This is a situation where the school principal exercised his discretion in the maintenance of school facilities and is therefore immune from suit for alleged negligence.

Disposition: The judgment of the trial court granting summary judgment to defendant-principal was affirmed.

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

Key Facts: Plaintiff student was injured in an accident when he was ripping one and half inch strips of wood on a circular table saw for his woods II class project. Plaintiff student was a somewhat experienced woodworker, as he had taken the Woods I course and had worked with various power tools outside of the classroom under the direction and supervision of his father. Plaintiff student’s teacher had directed the plaintiff to rip wood strips with the blade guard disengaged, and to instead use a push stick which is a device that allows the operator of the table saw to push pieces of wood through the saw while maintaining a safe distance between the operator’s hands and the blade. Defendant teacher watched plaintiff student cut four or five of the strips and then moved to another part of the classroom while plaintiff student continued to cut. After the defendant teacher walked away, plaintiff student completed pushing a piece of wood through the saw with a push stick. However, a waste piece of wood, now resting on the other side of the blade began to move on the saw table. Plaintiff student reached over the blade with his left hand to move the wood scrap, and as he reached over the blade his left index finger hit the blade amputating the finger at the knuckle.
The Department leader for the Technology Education Department at then high school, stated that the department staff determined the best practice in making rip cuts on wood with a width of four inches or less would be to proceed with the blade guard up and therefore disengaged, while simultaneously using a push stick to guide the wood through the saw. The staff determined this to be the best policy and procedure, rather than leaving the blade guard down and engaged because, in the staff’s view, a push stick cannot be used when the guard is down and it is possible for a student’s fingers to come within four inches of the blade.

According to the district’s Technology Education Facilitator and Assessment Facilitator described the protocol as an unwritten policy in the technical arts department at the high school whereby persons using the table saw and ripping strips of wood four inches or less must use a push stick and occasionally have the guard up so that the push stick may be used by the operator and the operator can see the piece of wood being cut; this is an accepted safety practice adopted by the faculty at the high school and is consistent with district practice for technical arts curriculum.

Defendant stated that he was aware of the protocol at the time of the accident. The decision to operate the saw with the guard up was a decision on the part of the school. It was the way it was done throughout the district. Defendant teacher stated that the original decision regarding blade guards was made years ago and the he was aware of the protocol because it was discussed in staff meetings regarding safety policies at the beginning of the school year and throughout the year.

Plaintiff-student’s father individually and in his capacity as guardian for his son, sued defendant teacher and school district because of injuries student incurred from the accident. The district court denied the defendant district and defendant teacher’s summary judgment motions
based on claims of statutory, official and vicarious official immunity and was affirmed by the Court of Appeals. The trial court denied summary judgment to the district on the basis that the decision not to use the blade guard did not involve social, political or economic policy. The Court of Appeals affirmed and agreed with the district court that statutory immunity is inapplicable because the conduct at issue did not involve the exercise of policy-level discretion. The court also held that the defendant-teacher was not entitled to common law official immunity because his decisions involving the use of a circular table saw with a blade guard did not concern policy decisions with broad implications and consequently held the district was not entitled to vicarious official immunity.

Issue No. 1--Was teacher entitled to common law official immunity when the claim against the teacher is that he followed a school protocol that was established through the exercise of discretionar y professional judgment?

Holding No. 1--A teacher does not forfeit official immunity because his or her conduct was ministerial if that ministerial conduct was required by a protocol established through the exercise of discretionary judgment that would itself be protected by official immunity.

Reasoning No. 1--The doctrine of common law official immunity provides that a public official charged by law with duties which call for the exercise of his judgment or discretion is not personally liable to an individual for damages unless he is guilty of a willful or malicious wrong. Common law official immunity does not protect officials when they are charged with the execution of ministerial, rather than discretionary functions that is where independent action is neither required nor desired. A ministerial duty as one that is absolute certain and imperative, involving merely the execution of a specific duty arising from fixed and designated fact. The record establishes that the decision whether to instruct the plaintiff student to make rip cuts with
the blade guard disengaged was dictated by an established protocol that made the decision ministerial from defendant-teacher’s perspective.

The record establishes that there was a protocol in place that required teachers at the high school to instruct students to disengage the blade guard and use a push stick when making rip cuts on wood less than four inches wide. This protocol governed defendant-teachers actions at issue in this case and established a duty that was absolute certain and imperative, involving merely execution of a specific duty arising from fixed and designated. Given the protocol, defendant-teacher’s decision to instruct the plaintiff-student to complete the rip cuts with the blade guard disengaged because the wood strip was less than four inches wide was ministerial in nature.

The record in this case amply establishes that both the defendant-teacher and his superiors considered his conduct governed by the departmental protocol, and it therefore created a ministerial duty. The conclusion that defendant-teacher’s conduct was ministerial rather than discretionary does not end the inquiry in these circumstances. Plaintiff’s claim is that defendant-teacher was negligent in allowing plaintiff-student to make the rip cuts without the blade guard in place. Therefore, the ministerial duty that plaintiff contends should deprive defendant-teacher of common law official immunity—that is to require the blade guard to remain in place for the rip cuts—is directly contrary to the ministerial duty that in fact existed in the form of the departmental protocol. The act that plaintiff alleges was negligent was actually defendant-teacher’s compliance with the departmental protocol.

In cases involving statutory immunity we concluded that a challenge to officials conduct in complying with established policy is a challenge to the policy itself. In other words, the court held that where a decision was made at the policy-level and was therefore protected by statutory
immunity, that immunity would not be vitiated by imposing liability alleged to arise from conduct that merely followed the policy. We see no reason for a different result when common law official immunity is at issue. To hold otherwise would deter teachers from complying with school protocols, forcing them to second guess such decisions. Moreover, if the adoption of a mandatory protocol had the effect of stripping employees who follow it of common law official immunity because their conduct was therefore ministerial, schools and school districts might be dissuaded from utilizing collective expertise and professional judgment to make discretionary operational decisions in favor of ad hoc decision-making by individual teachers in all circumstances. Importantly, this holding preserves existing case law that denies common law official immunity when the liability is alleged to arise from the failure to perform or from the negligent performance of ministerial duty. Accordingly, that the conduct at issue is ministerial is not necessarily enough to deny official immunity. The ministerial-conduct bar to official immunity arises when the allegation is that a ministerial duty was either not performed or was performed negligently.

Because plaintiff’s claim is essentially that defendant-teacher is liable because he followed the departmental protocol, the claim is in reality a challenge to the protocol itself. The question then is whether the adoption of the protocol was discretionary in the sense necessary to give rise to common law official immunity. Both the decision to establish a protocol and the decision regarding the substance of the protocol—that is to require rip cuts on boards less that four inches in width to be performed with a push stick and the guard disengaged—involved the exercise of the staff’s professional judgment as educators and woodworkers. Therefore professional judgment was required to decide which procedures require the guard and which do
not in the first instance. We are not prepared to say that the exercise of that judgment is so ministerial that common law official immunity should not apply.

Issue No. 2--Whether instructing plaintiff-student to perform the rip cuts with the blade guard disengaged was a willful or malicious wrong because it was in violation of an Occupational Safety and Health Act (OSHA) regulation that requires use of a blade guard on a ripsaw?

Holding No. 2--Defendant teacher’s conduct was not a willful or malicious wrong.

Reasoning No. 2--Because adoption of the protocol was a discretionary decision entitled to common law official immunity and because defendant-teacher’s liability is claimed to arise from is compliance with the protocol, he is entitled to official immunity unless his action was a willful or malicious wrong. In this context, malice means nothing more than the intentional doing of a wrongful act without legal justification or excuse, or, otherwise stated, the willful violation of a known right. We have established a high standard for a finding of willful or malicious wrong in the context of common law official immunity, by requiring the defendant to have reason to know that the challenged conduct is prohibited.

Under Minnesota law a public official commits a willful or malicious wrong by intentionally committing an act that he or she then has reason to believe is prohibited. In this context, we first note that defendant teacher was acting in compliance with an established school protocol. Moreover, there was no clearly established law in Minnesota that put defendant-teacher on notice that state OSHA regulations were applicable beyond the employer-employee relationship. We cannot conclude that defendant-teacher intentionally committed an act that he had reason to believe was prohibited by instructing plaintiff student to make the rip cuts without
the blade guard no clearly established law or regulation prohibited his conduct in doing so. Consequently, his conduct was not a willful or malicious wrong.

Issue No. 3--Whether school district is entitled to vicarious official immunity when its employee is protected by common law official immunity for conduct in compliance with a school protocol that involved the exercise of professional discretion?

Holding No. 3--Policy considerations support the conclusion that the school district is entitled to vicarious official immunity, and the court of appeals erred in its determination that the district was not entitled to vicarious official immunity.

Reasoning No. 3--Generally, if a public official is found to be immune from suit on a particular issue, his or her government employer will be vicariously immune from a suit arising from the employee’s conduct and claims against the employer are dismissed without explanation. The court applies vicarious official immunity when failure to grant it would focus stifling attention on an official’s performance to the serious detriment of that performance. This standard grants vicarious official immunity in situations where official’s performance would be hindered as a result of the officials second-guessing themselves when making decisions, in anticipation that their government employer would also sustain liability as a result of their actions.

In this case, instead of leaving the discretionary decision about use of the blade guard to each teacher in each situation, the Technology Education Department adopted a protocol based on the collective knowledge and experience of the staff. Consequently, the district should be entitled to vicarious official immunity because to rule otherwise would create a disincentive to use collective wisdom to create such protocols and policies. In turn, this would also appear to cause the type of stifling attention to the actions of the Technology Education Department that
would deter them from making such protocol determinations which would in turn place stifling attention on the work of the teacher.

Disposition: The court of appeals is reversed and the trial court’s order denying summary judgment to the defendants is reversed.


Key Facts: Plaintiff-student was a fifth grade female student. Plaintiff-student claimed that defendant-teacher repeatedly harassed, abused, and sexually abused plaintiff-student. Defendant-teacher allegedly conducted an unwanted ringworm examination of plaintiff-student. During this examination, defendant-teacher purportedly pulled down the plaintiff-student’s pants to expose her lower abdomen and touched plaintiff-student’s abdomen. Defendant-teacher then proceeded to teach a lesson on ringworm and stated that a student in the class had ringworm.

On multiple occasions, when plaintiff-student asked to go to the bathroom, defendant-teacher allegedly pressed plaintiff-student’s abdomen in an attempt to force her to urinate and asked plaintiff-student how it felt. In front of the class, defendant-teacher asked plaintiff-student is she has piddled on the floor and stated that plaintiff-student smelled like urine and vinegar and bathed once a week. In addition, defendant-teacher purportedly coerced and manipulated plaintiff-student to kiss, hug, and sit on her lap. Defendant-teacher insisted on rolling a lint brush over plaintiff-student’s chest. Defendant-teacher rubbed plaintiff-student’s hands and had plaintiff-student jump on her back to erase the board. In front of other students, defendant-teacher remarked that plaintiff-student’s private parts were visible, that plaintiff-student’s underwear and undershirt were not matching, and that plaintiff-student was wearing an undershirt not a bra.
Using another student’s e-mail account, defendant-teacher allegedly sent plaintiff-student an e-mail stating: Heyya sexxa wanna date. Defendant-teacher called plaintiff student “Pip”, “Little Prince” and “Slick Chick”. Defendant-teacher brought plaintiff-student’s crying to the class’s attention, gave plaintiff-student “good day” certificates for not crying and used plaintiff-student as an exhibit in lessons concerning science, health, and hygiene.

Plaintiff’s counsel wrote the superintendent a letter stating that plaintiff-student would not be returning to defendant-teacher’s classroom and called for an immediate investigation into defendant-teacher’s behavior. In response, the superintendent met with the principal and defendant-teacher. Plaintiff’s counsel sent the superintendent a second letter which explained in greater detail plaintiff’s allegations concerning defendant-teacher’s conduct. In response to this letter, the superintendent met with the defendant-teacher and the principal and arranged for the school’s counsel to conduct an investigation. After reviewing the results of the investigation, the superintendent determined the allegations were unsubstantiated and told defendant-teacher not to get too friendly with students or their families in the future.

Plaintiff’s claim that plaintiff-student found defendant-teacher’s alleged conduct to be emotionally abusive. Defendant-teacher’s acts made plaintiff-student fell uncomfortable, weird, sick to her stomach, and caused her to cry. Plaintiff’s also assert that plaintiff-student did not learn anything in defendant-teacher’s class. And as a result of defendant-teacher’s alleged abuse, plaintiff-student’s treating psychologist diagnosed her with post-traumatic stress disorder.

Plaintiff’s student’s parents brought this action on their own behalf and on behalf of their minor daughter. Plaintiff’s alleged that defendant-teacher, plaintiff-student’s teacher sexually, physically, and emotionally abused plaintiff-student at her school. Plaintiff’s assert claims under 42 U.S.C. §1983 along with various state law claims. Plaintiff’s have also filed suit against the
teacher’s aide assigned to defendant-teacher’s fifth grade class; the principal of the school; the superintendent of the school district; the members of the city school committee; the school committee and the town. Plaintiffs advance §1983 claims and state law claims against these defendants. The defendants moved for summary judgment. Plaintiffs oppose the motions for summary judgment.

Issue No. 1--Are defendant’s entitled to immunity for plaintiff’s state law negligence claims.

Holding No. 1--Defendant’s motion for summary judgment on plaintiffs’ state law negligence claims is affirmed on the basis of immunity provided by the Massachusetts Tort Claims Act.

Reasoning No. 1--Under the Massachusetts Tort Claims Act, public employees are immune from personal liability for negligence, wrongful acts or omissions while acting within the scope of their employment. The scope of employment requirement is not to be construed restrictively. A court should consider whether the conduct in question is of the kind the employee is hired to perform whether it occurs within authorized time and space limits, and whether it is motivated, at least in part by a purpose to serve the employer.

The teacher’s aide’s alleged negligent omission of failing to protect the plaintiff-student from the defendant-teacher’s abuse is immunized by the Massachusetts Tort Claims Act. Taking steps to ensure a student’s safety from abuse is within the teacher’s aide’s scope of employment, and any act by the teacher’s aide to ensure the plaintiff-student’s safety would have been motivated, in part, to serve her employer.

The alleged acts of negligently hiring, investigating, and supervising defendant-teacher by the school committee, the members of the school committee, the superintendent and the
principal are also within the scope of their employment and immunized by the Massachusetts Tort Claims Act. Furthermore, any negligent omissions by these supervisory officials to protect the plaintiff-student fall within the purview of the Act.

**Issue No. 2--** Plaintiff maintain that the school committee is liable for the negligent actions of the defendant-teacher, teacher’ aide, principal and the members of the school committee.

**Holding No. 2--** This court holds that these claims are barred by §10(j) because they are based on the failure to prevent or mitigate a harm, rather than participation in the initial injury-causing circumstance.

**Reasoning No. 2--** Under §10(j) of the Massachusetts Tort Claims Act, public employers cannot be held liable for any claim based on an act or failure to act to prevent or diminish the harmful consequences of a condition or situation, including violent or tortious conduct of a third person, which is not originally caused by the public employer or any other person acting on behalf of the public employer. Here, plaintiff’s negligence claims against the school committee, for the most part, are based on the school official’s failure to supervise defendant-teacher or properly investigate prior complaints. This court holds that these claims are barred by §10(j) because they are based on the failure to prevent or mitigate a harm, rather than participation in the initial injury-causing circumstance.

**Disposition:** Defendant’s motion for summary judgment on plaintiff’s state law negligence claims is granted.

**Citation:** *Lamb v. Holmes*, 162 S.W.3d 902 (Ky. 2005).

**Key Facts:** The plaintiffs in this case brought five separate counts against the teachers and administrators of a high school. Among these were a claim under 42 U.S.C. §1983 for violation
of their right to be free from unreasonable searches under the Fourth Amendment of the United States Constitution, a claim under §2 of the Kentucky Constitution for deprivation of due process and three tort claims for intentional infliction of emotional distress, invasion of privacy and negligence. Plaintiffs filed a complaint against the board, teachers, assistant principal and administrative intern alleging their wrongful acts caused the students to suffer extreme indignation and humiliation as they had been held up to ridicule before their peers.

During a physical education class at a middle school, a student reported missing a pair of shorts. The classroom teachers told the students they would be given 5 minutes to return the missing shorts. When the shorts were not returned, teacher went to the principal’s office and returned with an administrative intern who gave the students an additional 5 minutes to return the shorts. After 5 minutes passed, the intern left the class and returned with a security guard and an assistant principal at the school. They informed the students that they would be searched in an effort to find the shorts. The students were taken in pairs to a locker room and searched.

The plaintiff-students allege the girls were required to pull their shorts down beneath their knees and to raise their shirts above their breasts, exposing their underwear to those around them. The school board had in effect a policy regarding student searches which provided: in no instance shall a school official strip search any student. Strip search was not defined anywhere within the board’s policies. The trial court granted summary judgment ruling that the student’s rights had not been violated. Plaintiffs appealed. The Court of Appeals vacated and remanded.

Issue No. 1--Whether the teachers were entitled to qualified official immunity in their individual capacity for the searches?

Holding No. 1--The teachers and administrators were entitled to qualified immunity with respect to the plaintiff-student’s § 1983 claims against them in their individual capacities.
Reasoning No. 1--Officials who are sued for monetary relief under § 1983 may assert either an absolute immunity or qualified immunity defense. The Supreme Court has generally limited absolute immunity to officials who perform judicial, prosecutorial and legislative functions, but has allowed qualified immunity to be asserted by school officials. Qualified immunity protects state and local officials who carry out executive and administrative functions from personal liability so long as their actions do not violate clearly established statutory or constitutional rights of which a reasonable person would have known. The objective reasonableness standard is intended to provide government official with the ability to reasonably anticipate when their conduct may give rise to liability for damages. The objective reasonableness standard requires a determination as to whether the defendant official had fair warning that this or her conduct violated federal. The law in effect when the searches occurred did not give fair warning to the school teachers/administrators that their actions would be in clear violation of a federal statutory or constitutional right. The available case law could hardly be described as clearly establishing the student’s rights as to warn the teachers/administrators herein their actions would be in violation of the Fourth Amendment of the United States Constitution.

Issue No. 2--Whether the actions of the teachers/administrators were in the performance of a ministerial duty or to have been clearly violative of a board policy.

Holding No. 2--The board’s policy did not apply to searches alleged in this case, as the term strip search used within the policy contemplated nothing less that a nude search of the type described in prior cases or common language of the day. Also the acts of the teachers and administrators were made in good faith, were discretionary in nature and within the scope of their authority, and thus they are also entitled to qualified immunity against the state tort claims.
Reasoning No. 2--Official immunity is immunity from tort liability afforded to public officers and employees for acts performed in the exercise of their discretionary functions. When public officers and employees are sued in their individual capacities, they enjoy only qualified official immunity. Qualified official immunity applies to the negligent performance by a public officer or employee of: (1) discretionary acts or functions, i.e., those involving the exercise of discretion and judgment or personal deliberation, decision, and judgment; (2) in good faith; and (3) within the scope of the employee’s authority. The actions of the teachers/administrators were made in good faith, were discretionary in nature and were within the scope of their authority because the Board policy did not clearly apply to the searches conducted on these female students. The term strip search was not defined anywhere within the school’s policies. This would imply the term should be given its ordinary meaning that which a reasonable person would interpret the term to mean. The majority of cases using the term strip search have defined it as requiring the removal of clothing. If the facts are as the students allege in this case, the searches do not involve removal of the girls’ clothing, but rather lifting their shirts above their bras and lowering their shorts to their knees. Their underwear was never touched or altered in any way, nor was their clothing fully removed from their bodies. The cases in existence prior to this incident define strip search as a nude search or search far more invasive that those endured by the female students in this case.

Disposition: The decision of the court of appeals is hereby reversed and the judgment of the trial court is reinstated.

Citation: Tun v. Whitticker, 398 F.3d 899 (7th Cir. 2005).

Key Facts: Plaintiff-student was a high school student and a member of the wrestling team, who was taking a shower in the boy’s locker room of his high school, when a fellow
student took pictures of him and three other wrestlers. After the photos were taken, plaintiff was sitting on the bleachers in the gym, looking at the negatives when he was spotted by an assistant wrestling coach who was also the photography teacher. When plaintiff-student saw the coach he tossed the negatives aside and the coach confiscated them. The assistant coach took the negatives to the head wrestling coach and then to an administrator at the school. The negatives were developed and an investigation was launched.

Statements were taken from all of the students involved. The results of the investigation were reported to the principal who ordered that plaintiff and the other boys be suspended for public indecency pending further investigation. After meeting with the parents, the principal began expulsion proceedings against the boys, alleging violation of two rules of the district’s behavior code. One rule prohibited participating in inappropriate sexual behavior including public indecency on school property. The other rule prohibits possession and/or distribution of pornographic material. The hearing officer convened an expulsion hearing and plaintiff-student was expelled, because he allowed another student to take photographs of him nude in the locker room with taking any steps to stop the pictures or reporting the incident. He was also expelled for possessing the negatives. Plaintiff-student was expelled from school for 6 weeks.

Plaintiff-student appealed the expulsion pursuant to the school district’s administrative review process, and the hearing officer’s decision was reversed. Plaintiff-student was allowed to return to school and his disciplinary record was cleared so it did not reflect the expulsion. Plaintiff-student by his parents sued the school district, two wrestling coaches, the high school principal and a hearing officer who presided of his expulsion hearing and upheld the principal’s recommendation for expulsion. Plaintiff filed §1983 action, alleging that his substantive due
process rights were violated. The principal and the hearing officer filed summary judgment motions on the basis of qualified immunity; the trial court denied the defendants’ motions.

Issue: Did the principal that recommended expulsion and the hearing officer that upheld the expulsion of plaintiff-student enjoy qualified immunity for plaintiff-student’s substantive due process claims when it was alleged that the school officials should have know that it was clearly established that they could not discipline plaintiff-student when there was no evidence of wrongdoing.

Holding: The defendants were entitled to qualified immunity because their actions did not violate the due process clause of the United States Constitution.

Reasoning: Qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Analysis of whether qualified immunity applies requires a two-step inquiry. First, it must be determine whether the official violated a constitutional right. In so, then it must be determined whether the right was clearly established at the time of the violation. The essence of due process is that protection of the individual against arbitrary action of government. Substantive due process involves the exercise of governmental power without reasonable justification. It is most often described as an abuse of governmental power which shocks the conscience.

It is not the role of the federal courts to set aside decisions of school administrators which the court may view as lacking in a basis in wisdom or compassion. Section 1983 does not extend the right to relitigate in federal court evidentiary questions arising in school disciplinary proceedings or the proper construction of school regulations. The system of public education that has evolved in this Nation relies necessarily upon the discretion and judgment of school
administrators and school board members and §1983 was not intended to be a vehicle for federal court corrections of errors in the exercise of that discretion which do not rise to the level of violations of specific constitutional guidelines.

This was a matter of a school district interpreting its own rules. The district’s interpretation of the rules controlled. While it seems that the professionals in this case exercised questionable judgment. They did not violate the due process clauses of the United States Constitution.

Disposition: The trial court’s denial of defendant’s summary judgment was reversed.

Citation: Harden v. Clarke County Board of Education, 631 S.E.2d 741 (Ga.App. 2006).

Key Facts: Plaintiff-teacher filed suit against the principal of the high school at which he taught, the superintendent of the county school system, the school system, and the board of education. Plaintiff claims that he was not paid for additional duties assigned to him, and plaintiff sought damages for breach of contract and punitive damages. The defendants answered and moved for summary judgment. The trial court granted summary judgment in favor of all defendants on all of plaintiff’s claims. Plaintiff appeals the trial court’s order granting summary judgment on his quantum merit claim.

Issue No. 1--Did the trial court correctly grant summary judgment in favor of the county board of education and the county school system?

Holding No. 1--The trial court correctly granted summary judgment in favor of the county board of education and the county school system.

Reasoning No. 1--O.C.G.A. § 36-10-1 provides that all contracts entered into by the county governing authority with other person on behalf of the county shall be in writing and entered on its minutes. To be enforceable therefore, a contract with a county or subdivision of a
county must comply with those requirements. As a result, quantum merit is not available when a county is the defendant. Quantum meruit is another name for an implied contract which is statutorily prohibited when a county or its subdivision is the defendant. Sovereign immunity bars plaintiff’s claim in quantum meruit against a political subdivision of the state, including counties, county boards of education and county school districts.

Issue No. 2--Are the claims for quantum meruit against the school principal and superintendent statutorily prohibited in their official capacity?

Holding No. 2--A claim in quantum meruit is statutorily prohibited against the principal and superintendent in their official capacity.

Reasoning No. 2--The claims against the principal and the school superintendent in their official capacities are essentially claims against the county and these defendants may raise any defense available to the county. A claim in quantum meruit is therefore statutorily prohibited against the principal and superintendent in their official capacity.

Issue No. 3--Are the principal and the superintendent immune from suit for plaintiff’s claims against them in their individual capacities?

Holding No. 3--Plaintiff’s claims against the principal and superintendent in their individual capacities are precluded by official immunity.

Reasoning No. 3--Georgia case law provides that while a public officer or employee may be personally liable for his negligent ministerial acts, he may not be held liable for his discretionary acts unless such acts are willful, wanton, or outside the scope of his authority. The Georgia Constitution permits potential liability for state officers or employees’ official functions only if they act with actual malice or with actual intent to cause injury. Plaintiff has made no such allegations of negligence, malice or intent with respect to his claims for quantum meruit.
Georgia Constitution of 1983, Article I, §II, Paragraph IX (d) further provides that, other than this limited liability, officers and employees of the state or its department and agencies shall not be subject to suit or liability, and no judgment shall be entered against them, for the performance or nonperformance of their official function. The alleged conduct of the principal and superintendent is entirely related to the performance of their official functions. Any quantum meruit action against them individually is therefore barred.

Disposition: The trial court’s granting of summary judgment for defendant on all of plaintiff’s claims is affirmed.

Citation: Pigford v. Jackson Public School District, 910 So.2d 575 (Miss.App. 2005).

Key Facts: Plaintiff-student is an autistic child who cannot verbally communicate. Plaintiff-student was subject to unpredictable outbursts triggered by a variety of things, including sudden noises, unfamiliar surroundings and unfamiliar persons. Occasionally, plaintiff-student would twirl, spin around, run uncontrollably flaring her arms, hit other students, or drop to the floor and refuse to respond to instructions from his parents or teacher. On most mornings, plaintiff-student’s primary teacher would escort plaintiff-student and other exceptional education students to their respective classrooms. On the day of the incident that gave rise to this lawsuit, plaintiff-student’s teacher was in a meeting with another student’s parents and could not escort plaintiff-student, and a teacher’s aide was escorting plaintiff-student to his classroom.

As was common the ringing bell and rush of student caused plaintiff-student to have an anxiety attack. The teacher’s aide attempted to control the plaintiff-student by grabbing him and holding plaintiff student’s arms in an effort to prevent plaintiff-student from hurting himself or the other students. Plaintiff-student resisted the teacher’s aide’s attempts to restrain him and control his movements. Later in the evening, as his parents were giving plaintiff-student a bath,
they noticed bruises on his arms. Plaintiff-student was taken to the doctor but not treatment or medication was warranted or prescribed. Plaintiff-student was never treated by a psychiatrist or psychologist for the incident.

Plaintiff-student’s father sued the school district, teacher and teacher’s aide on plaintiff-student’s behalf, alleging that the teacher’s aide used excessive force to restrain and control the plaintiff-student. The Circuit court held that the defendants acted reasonably to counteract plaintiff-student’s behavior and that the plaintiffs failed to meet the liability threshold to recover from defendants. The circuit held that the plaintiffs would have to show a willful, wanton and reckless disregard for plaintiff-student’s safety in order for plaintiffs to prevail. The court concluded that the teacher’s aide’s attempt to retrain plaintiff-student was unintended. Thus, the circuit court judge concluded that there was no willful, wanton, reckless, or grossly negligent conduct.

Issue: Plaintiffs argue that the circuit court applied the incorrect standard in concluding that the defendants were not liable. Did trial court apply correct standard that required plaintiffs to show willful and wanton misconduct in order for plaintiffs to recover and that plaintiffs failed to show willful and wanton conduct?

Holding: The circuit judge did not err in requiring a showing of wanton and willful conduct for plaintiff to recover.

Reasoning: This case involves teachers maintaining control and discipline over a student. No teacher, assistant teacher, principal or assistant principal so acting shall be held liable in a suit for civil damages alleged to have been suffered by a student as a result of the administration of corporal punishment, or the taking of action to maintain control and discipline of a student, unless the court determines that the teacher, assistant teacher, principal or assistant principal
acted in bad faith or with malicious purpose or in a manner exhibiting a wanton and willful
disregard of human rights or safety (Miss.Code Ann. § 37-11-57(2)).

The teacher’s aide’s restraint of plaintiff-student constitutes control and discipline. The
legislature specifically directs state courts to apply code §11-46-9(1)(x) when a school official
controls and disciplines a student under code §37-11-57. Section 11-46-9(1)(x) states: [a]
governmental entity and its employees acting within the course and scope of their employment or
duty will not be liable of any claim: (x) arising out of the administration of corporal punishment
or the taking of an action to maintain control and discipline of students, as defined in § 37-11-57,
by a teacher, assistant teacher, principal or assistant principal of a public school district in the
state unless the teacher, assistant teacher, principal or assistant principal acted in bad faith or
with a malicious purpose or in a manner exhibiting a wanton or willful disregard of human rights
or safety. The circuit judge did not err in applying Mississippi Code § 11-46-9(1)(x) which
requires a showing of wanton and willful conduct for plaintiff to recover.

The Mississippi Supreme Court has defined the wanton and willful standard in this way:
The usual meaning assigned to do terms is that the actor has intentionally done an act of
unreasonable character and reckless disregard of the risks known to him, or so obvious that he
must be taken to have been aware of it, and so great as to make it highly probable that harm
would follow. It usually is accompanied by a conscious indifference to consequences, amounting
almost to a willingness that harm would follow. The Mississippi Supreme Court has also stated
that wantonness is a failure or refusal to exercise any care, while negligence is a failure to
exercise due care. The actions of the school district, teacher and teacher’s aide did not rise to the
level required for the plaintiffs to recover. The evidence shows that any injury to plaintiff-student
was unintended.
Disposition: The judgment of the circuit court for defendants was affirmed.


Key Facts: Plaintiff-student was a 15-year-old special education student at a middle school. Plaintiff-student had daily special education classes with another student. The other student had been teasing the plaintiff-student all day and ultimately struck plaintiff-student in the eye for no apparent reason. Plaintiff-student allegedly asked his teacher if he could go to the office, but the teacher told him that he would be okay. Plaintiff-student also asked to call his mother, which received no response. Plaintiff-student’s mother states that the defendants failed to provide plaintiff-student counseling regarding the incident.

Plaintiff-student’s mother filed suit against the county board of education, the county school system and individual system employees on various federal and state claims. The defendants moved for summary judgment on all claims. Plaintiff argued that the Board, superintendent and principal negligently trained their subordinates, and that had the teacher been properly trained she would have forwarded to her superiors mother’s request to remove plaintiff-student from what she contends was an abused environment.

Issues: The defendants have claimed discretionary function of state-agent immunity as to the claims against them in their individual capacities. They contend that all of the challenged actions in this case involved the exercise of discretion and judgment.

Holding: Under the facts of the case, the court concludes that the defendants have adequately demonstrated that they were performing acts using discretion and judgment and therefore summary judgment is due to be granted as to the negligent training and supervision claims on the basis of discretionary function or state agent immunity.
Reasoning: The Alabama Supreme Court has established a burden-shifting process when a party raises the defense of discretionary function, or state-agent immunity. In order to claim this immunity, a defendant bears the burden of demonstrating that a plaintiff’s claims arise from a function that would entitle him or her to immunity. If a defendant makes such a showing, the burden then shift to the plaintiff to established that the defendant acted willfully, maliciously, fraudulently, in bad faith, or beyond his or her authority. A defendant acts beyond authority and is therefore not immune when he or she fails to discharge duties pursuant to detailed rules or regulations, such as those stated on a checklist. The Alabama Supreme Court also has explained that state agents are entitled to immunity for actions taken in the exercise of their judgment in educating students when they are discharging duties imposed by statute, rule, or regulation. This immunity applies both to actions taken in educating students and in supervising personnel.

The immunity afforded state agents who exercise their judgment in the education of students and the supervision of personnel is not abrogated for negligent and wanton behavior; instead, immunity is withheld only upon a showing that the state agent acted willfully, maliciously, fraudulently, in bad faith, or beyond his or her authority. Plaintiff merely states that the board, superintendent and principal were liable for negligently training their subordinates. She does not argue that the defendants acted willfully, maliciously, fraudulently, in bad faith, or beyond their authority. The evidence is not sufficient to create a question of facts as to whether the defendants acted willfully, maliciously fraudulently, in bad faith, or beyond their authority.

Disposition: Motion for summary judgment granted to defendants.

Citation: Gilliam v. USD #244 School District, 397 F.Supp.2d 1282 (D.Kan. 2005).

Key Facts: Plaintiff-student was a high school student when she was subjected to inappropriate conduct by her English teacher. During plaintiff-student’s junior year, she
complained to a teacher that she felt a male teacher was staring at her, inappropriately putting his arm around her, and improperly touching her by leaning over her desk. The teacher reported plaintiff-student’s complaint to the school principal, but not discipline was imposed on or recommended for defendant-teacher as a result of the his actions.

During plaintiff-student’s senior year, defendant-teacher’s actions continued. He made repeated comments to plaintiff-student that she was beautiful and more mature that the other students. He gave plaintiff-student more attention that the other students, extended privileges to her, and gave her chocolate candy bars and heart-shaped candies. One day, plaintiff-student was in the school administrative offices making copies and defendant-teacher approached her from behind, leaned into her pressing his torso into her back, and whispered in her ear that she made his heart sing.

On another occasion, defendant-teacher provided plaintiff with a packet of research materials for her senior paper, yet he did not provide any other students with research materials for their senior papers. Included in the materials that defendant-teacher provided to the plaintiff-student was a four-page advertisement for the male erection enhancement drug, Cialis. This advertisement did not relate to plaintiff-student’s research project in any way.

Defendant-teacher also handed plaintiff-student three typewritten poems folded up with a handwritten note clipped to the outside of the poems. This handwritten card was labeled to the plaintiff-student on one side and said that these poems were inspired by plaintiff-student. He also wrote do not be frightened by them. Many things inspire me you are one of them.

Based on these allegations, plaintiff asserted five claims: (1) violation of Title IX against the school district; (2) violation of § 1983 against the individual defendants (3) negligent infliction of emotional distress against all defendants; (4-5) negligent hiring, supervision, and
retention against the school district and against the defendant principals and superintendent; and

(7) violation of the Kansas Tort Claims Act against the school district.

The individual defendants ask the court to dismiss plaintiff’s § 1983 individual capacity claims against them on the grounds of qualified immunity and her official capacity claims on the grounds that they are redundant of her claim against the school district. The defendants further contend that, because they are entitled to qualified immunity on plaintiff’s § 1983 claim, they are also entitled to what they refer to as adoptive immunity under state statute on plaintiff’s state law tort claims.

Issue No. 1--Is defendant-teacher entitled to qualified immunity on plaintiff-student’s § 1983 individual capacity claim.

Holding No. 1--Defendant-teacher is entitled to qualified immunity and plaintiffs § 1983 individual capacity claim against him is dismissed on that basis.

Reasoning No. 1--The court must undertake a two-part analysis to determine whether those government officials are entitled to the protections afforded by qualified immunity. In evaluating a defendant’s motion to dismiss on the grounds of qualified immunity, the court must first determine whether the facts, as pled by the plaintiff, set forth a constitutional violation. Second, if the plaintiff has alleged a constitutional violation, the court must determine whether that constitutional violation was clearly established at the time of the defendant’s conduct. Failure to satisfy either of these inquiries will result in dismissal in favor of the defendant.

Thus, the court will first examine whether the facts alleged by plaintiff set forth a constitutional violation of plaintiff’s substantive due process rights. The Due Process Clause provides that the government cannot deprive any person of life, liberty or property without due process of law. A substantive due process claim is founded upon deeply rooted notions of
The concept of substantive due process is not fixed or final, but generally is accorded to matters relating to marriage, family, procreation, and the right to bodily integrity. The standard for judging a substantive due process claim is whether the challenged government action would shock the conscience of federal judges. To satisfy this standard a plaintiff must do more than show that he government actor intentionally recklessly caused injury to the plaintiff by abusing or misusing government power. Instead, a plaintiff must demonstrate a degree of outrageousness and a magnitude of potential or actual harm that is truly conscience shocking. A substantive due process violation must be something more than an ordinary tort to be actionable under § 1983.

In this case, the plaintiff-student has failed to allege conduct which rises above and beyond that of an ordinary tort claim such that it meets the heightened shocks the conscience standard applicable to substantive due process claims. The right to be free from sexual abuse is grounded in a student’s right to bodily integrity. Conduct falling shy of sexual molestation or assault does not give rise to an actionable § 1983 due process claim. Here plaintiff does not allege any such sexual molestation or assault. The only physical contact alleged in her complaint is that defendant-teacher inappropriately put his arm around her, improperly touched her by leaning over her desk, and rubbed p against her one time when he pressed his torso into her back while she was making copies in the administrative office. While certainly unacceptable, this conduct does not rise to the level of shocking the conscience so as to violate her constitutional right to bodily integrity.

Issue No. 2--Are defendant principal and superintendent entitled to qualified immunity on plaintiff-student’s §1983 individual capacity claim.
Holding No. 2--Plaintiff’s §1983 individual capacity claims against principal and superintendent are also dismissed on the grounds of qualified immunity.

Reasoning No. 2--Those cases in which school administrators have been subject to liability under §1983 for a teacher’s sexual harassment of a student are likewise limited to cases which involved at a bare minimum the teacher’s sexual molestation or assault of the student. Thus, plaintiff has not set forth a constitutional substantive due process violation with respect to defendants principal and superintendent. As such, they are also entitled to qualified immunity on plaintiff’s §1983 claim.

Issue No. 3--Defendants also contend that they are entitled to dismissal of plaintiff’s state common law claims on the ground of adoptive immunity under state statute in which they are provides that where a defendant is entitled to qualified immunity on a §1983 claim, that defendant is entitled to qualified immunity on factually related state law claims.

Holding No. 3--Defendants’ motions are denied insofar as they contend that they are entitled to qualified immunity on plaintiff’s state law claims on the basis that they are entitled to qualified immunity on plaintiff’s §1983 claims.

Reasoning No. 3--The Kansas Tort Claims Act makes each governmental entity liable for damages caused by the negligent or wrongful act or omission of any of its employees while acting within the scope of their employment under circumstances where the governmental entity, if a private person would be liable under the laws of this state. The Kansas Tort Claims Act makes governmental liability the rule and immunity the exception. The burden is upon the defendant to establish immunity under one or more of the immunity exceptions. The immunity provision invoked by the defendants states: A governmental entity or an employee acting within the scope of the employee’s employment shall not be liable for damages resulting from . . . any
claim which is limited or barred by any other law or which is for injuries or property damage against an officer, employee or agent where the individual is immune from suit or damages.

This provision of the KTCA provides immunity for any claim which is limited or barred by any other law or which is for injuries or property damage against an officer, employee or agent where the individual is immune from suit or damages. Under the plain language of this immunity provision defendants are not entitled to immunity unless these particular state law claims are limited or barred by some other law or unless they are immune from suit or damages on these claims. Categorically extending defendants’ immunity from plaintiff’s § 1983 constitutional claims would do nothing to further the purposes of the KTCA. The general principal of the KTCA is to impose on governmental entities the same degree of liability for their employees’ negligence as the law imposes on private employers. A state common law cause of action is an entirely separate and distinct claim from the § 1983 constitutional claim that is at issue in this case. The standard of liability for plaintiff’s constitutional claim is much higher than that for plaintiff’s asserted tort claims. To categorically extend immunity under these circumstances would have the broad reaching effect of immunizing governmental entities from liability for all viable state law claims and time the facts falls short of the often heightened standards of liability applicable to constitutional claims. Such a result would be inconsistent with the well settled principle under the KTCA that governmental liability is the rule and immunity he exception.

Disposition: Defendants motions to dismiss plaintiff’s § 1983 claims is granted. Defendant’s motion to dismiss state law claims was denied.

Citation: McQueen v. Beecher Community Schools, 43 F.3d 460 (6th Cir. 2006).
Key Facts: First-grade student brought a gun to elementary school and fatally shot plaintiff-student in class. Defendant-principal was the principal of the elementary school, and the school district was also named as a defendant. Plaintiff alleges that during school year, in the months leading up to the shooting, the shooting student was involved in several incidents where he attacked other students, sometimes beating them up and other times stabbing them with a pencil. The school district had a policy of expelling students possessing dangerous weapons on school ground, and a pencil could be consider a dangerous weapon under district policy. Shooting student was never expelled for using a pencil in the attack.

On the morning of the shooting, shooting-student brought to school a gun that he had obtained from his home. About midmorning, the teacher lined up her students in the hallway and led them to a computer class. Teacher left the shooting-student, plaintiff student and four other students behind for not doing their work. During this time, student took the gun out of his desk, inserted a magazine of bullets, threatened a student who had just entered the room, and finally shot plaintiff-student who was sitting at her desk. At the moment of the shooting, teacher was standing about twenty-seven feet down the hall from the classroom.

Plaintiff-student’s mother brought suit under 42 U.S.C. §1983, asserting that her daughter’s substantive due process rights were violated. Plaintiff alleged claims against the teacher under a theory of state-created danger, against the principal under supervisory liability and against the school district under municipal liability. Plaintiff moved for default judgment. The district court referred the motion to the magistrate judge who denied the motion and a subsequent motion for reconsideration. The defendants moved for summary judgment which the district court granted. The district court held that principal is protected by qualified immunity. The plaintiff appealed.
Issue: Whether defendant-principal is liable under §1983, on a supervisory liability
to theory for her failures to expel student, to train teachers to deal with violent students, to adopt
policies protecting students from violent assaults and to prevent teachers from leaving children
unattended in classrooms?

Holding: Because plaintiff also has not pointed to unconstitutional conduct by any other
employee supervised by the principal, it necessarily follows that the supervisory liability claims
against the principal must fail.

Reasoning: Respondeat superior is not a proper basis for liability under § 1983. Nor can
the liability of supervisors be based solely on the right to control employees, or simple awareness
of employees’ misconduct. Furthermore, a supervisory official’s failure to supervise, control or
train the offending individual is not actionable unless the supervisor either encouraged the
specific incident of misconduct or in some other way directly participated in it. At a minimum a
plaintiff must show that the supervisor at least implicitly authorized, approved, or knowingly
acquiesced in the unconstitutional conduct of the offending officers.

These principles make clear that a prerequisite of supervisory liability under §1983 is
unconstitutional conduct by a subordinate of the supervisor. There is no such underlying
unconstitutional conduct by subordinates here. Plaintiff has not produced sufficient evidence to
raise a genuine issue of material facts that the teacher violated plaintiff-student’s substantive due
process rights. Because plaintiff also has not pointed to unconstitutional conduct by any other
employee supervised by the principal, it necessarily follows that the supervisory liability claims
against the principal must fail.

Disposition: The trial court’s granting of summary judgment for defendant was affirmed.

Citation: Sanford v. Stiles, 456 F.3d 298 (3rd Cir. 2006).
Key Facts: Plaintiff-student was a 16-year-old high school student. He gave another student a note that contained a sentence stating that he wanted to kill himself. The student gave the note to a guidance counselor who in turn gave the note to defendant-counselor. Defendant-counselor immediately called the plaintiff-student into her office and told him that some of his friends were worried about him, and that she was worried about him. Defendant-counselor asked plaintiff-student if he was upset about some sort of situation with a girl and he replied that that happened months ago and that he was not upset about the girl now. Additionally defendant-counselor asked plaintiff-student if he ever had plans to hurt himself or if he would do such a thing. He answered definitely not. Defendant-counselor asked plaintiff-student forward thinking questions and she was satisfied that he had future plans. Finally, defendant-counselor asked plaintiffs-student if anything else was upsetting him. Plaintiff-student responded that he was fine. Defendant-counselor spoke with the plaintiff-student for about 10 to 15 minutes.

Defendant-counselor was convinced that the feelings expressed in the note dated several months back. She concluded that plaintiff-student did not present any signs that were of a nature that he was thinking about harming himself. Therefore, because she believed that plaintiff-student was not at risk, she did not contact the school psychologist or plaintiff-student’s mother. Defendant-counselor gave the note back to the other counselor and told her that she had seen the plaintiff-student and that he did not display any suicidal ideation to her in what he verbalized. Defendant-counselor followed school protocol in making her assessment of plaintiff-student. The protocol requires that in cases of suicide ideation, the assigned counselor will assess he situation and the counselor will determine if and when a referral should be made to the school psychologist. Plaintiff-student committed suicide a couple of weeks after meeting with the defendant-counselor.
Plaintiff-student’s mother filed action against the defendant-counselor and the school district in federal court. Plaintiff alleged that defendant-counselor was individually liable for negligence under state law. The defendants filed a motion for summary judgment, which the court granted. The court rejected the state law negligence claim against defendant-counselor because plaintiff could not prove causation under tort law and because defendant-counselor was entitled to immunity under Pennsylvania law.

Issues: Is defendant-counselor entitled to immunity under the Pennsylvania Political Subdivision Tort Claims Act on plaintiff’s state law tort claims for negligence?

Holding: Defendant-counselor is entitled to immunity under Pennsylvania state law.

Reasoning: Under the Pennsylvania Political Subdivision Tort Claims Act, local agencies such as school districts are given broad tort immunity. The Act provides that no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person. There are eight acts excepted from the immunity granted under the Act; however, none apply to this case. Municipal employees, including school district employees, are generally immune from liability to the same extent as their employing agency, so long as the act committed was within the scope of the employee’s employment. However, there is an exception to this general rule: Employees are not immune from liability under the Act where their conduct amount to actual malice or willful misconduct.

There are no allegations of actual malice here. Willful misconduct had been defined as conduct whereby the actor desired to bring about the result that followed or at least was aware that it was substantially certain to follow, so that such desire can be implied. Otherwise stated, the term willful misconduct is synonymous with the term intentional torts. We do not believe that
a reasonable jury could conclude that defendant-counselor engaged in willful misconduct. Therefore, she is entitled to immunity under Pennsylvania law.

Disposition: The trial court’s grant of summary judgment for defendant was affirmed.

Citation: Nguon v. Wolf, 517 F.Supp.2d 1177 (C.D.Cal. 2007).

Key Facts: Plaintiff-student as a female high school student who developed a relationship with another female student at her high school. Plaintiff was disciplined with suspension from school due to repeated instances of inappropriate public displays of affection with the other female student. Plaintiff-student claims that her constitutional, statutory, and common-law rights were violated in the process. Plaintiff also asserts that defendant-principal violated plaintiff-student’s right to privacy under California law by making certain disclosures to her mother.

Defendant-principal met with plaintiff-student’s mother to explain the basis for plaintiff-student’s first suspension. He believes that he may have told the mother that plaintiff-student was kissing a girl. The court found that by telling the mother that plaintiff-student had been kissing another girl, defendant-principal conveyed plaintiff-student’s sexual orientation to her mother, which plaintiff-student had attempted to conceal. Plaintiff-student contends that defendant-principal’s disclosure of her sexual orientation to her mother violated her right under California law.

In ruling on the school defendants’ motion for summary judgment, the court determined that defendant-principal was entitled to discretionary immunity under the California Civil Code for state claims with the exception of plaintiff-student’s privacy claim under the California Constitution. The court questioned whether defendant-principal’s actions subsequent to the suspensions, including his discussions with plaintiff-student’s mother regarding the suspensions were discretionary. Defendants have suggested that defendant-principal was required by the
Education Code to explain the reasons for plaintiff-student’s suspension. This suggests that those actions were in fact ministerial rather than discretionary.

Issues: Under the facts of this case was the defendant-principal entitled to discretionary immunity under state law?

Holding: Assuming defendant-principal violated the plaintiff-students’ privacy rights under state law, he is entitled to immunity.

Reasoning: Section 48911 of the California Education Code imposed a duty on a principal who has suspended a student to notify the parent or guardian of the school’s action. Section 48914 requires that each school district is authorized to establish a policy that permits school officials to conduct a meeting with the parent or guardian of a suspended pupil to discuss the causes, the duration, the school policy involved, and other matter pertinent to the suspensions. Here the school district adopted a suspension policy but the policy was silent on what the principal may convey beyond the fact of suspension. The district’s superintendent testified that principals are told to explain the basis for a suspension, but the amount of information that a principal provides with respect to the facts surrounding the reason are within the discretion of the principal and their communication style.

The Court finds that the scope of defendant-principal’s communications was not ministerial, but a matter of discretion. This in consistent with §48914 of the Education Code which authorizes policies covering suspension communications including the causes, the duration, the school policy involved, and other matters pertinent to the suspension. Determining what is pertinent requires the exercise of discretion and so does the individualization of the discipline process mandated by the district’s suspension policy.
Disposition: Defendant-principal was entitled to discretionary immunity under state law for plaintiff-students privacy claims.

Citation: *Murphy v. Bajani*, 647 S.E.2d 54 (Ga. 2007).

Key Facts: Plaintiff-student was assaulted by a fellow student while both were attending high school, and as a result suffered severe injuries as a result. Acting individually and on behalf of plaintiff-student, plaintiff-student’s parents filed a lawsuit against the school district, the county board of education and the individual member thereof, the superintendent of the county school system, school principal, assistant principal, and clinic nurse of high school. The trial court granted defendants’ motion for judgment on the pleadings after finding they were entitled to official immunity.

On appeal, the Court of Appeals reversed the judgment after making three determinations: (1) with regard to the allegation of negligent performance of the statutory duty to create a school safety plan that addressed security issues; the court ruled that the absence from the record of a school safety plan precluded the grant of judgment on the pleadings (2) a claim of negligence per se for failing to report immediately to the district attorney and the police the name of the student believe to have committed an aggravated battery on school property was viable because plaintiff-student was a member of the class the statute was intended to protect and the harm he suffered-the aggravation of his injuries resulting from the delay in medical care the recipients of the report would have summoned-was the harm the statute was intended to guard against; and (3) the claim that school personnel failed to obtain immediate medical care for plaintiff-student was viable because school personnel had a ministerial duty to provide the student with adequate medical attention and even if the duty were discretionary rather than
ministerial, the allegations of willfulness, corruption and malice were circumstances which could abrogate immunity defenses.

Issue No. 1--Whether superintendent and board members were entitled to official or qualified immunity from personal liability plaintiffs seek to impose on them with regard to the creation of a school safety plan pursuant to state statute?

Holding No. 1--Defendants were entitled to official immunity since the state statute mandating a school safety plan is a discretionary act.

Reasoning No. 1--Georgia Constitution, Article I, §II, Paragraph IX (d), provides: Except as specifically provided by the General Assembly in a State Tort Claims Act, all officers and employees of the state or its departments and agencies may by subject to suit and may be liable for injuries and damages caused by the negligent performance of, or negligent failure to perform, their ministerial functions and may be liable for injuries and damages if they act with actual malice or with actual intent to cause injury in the performance of their official functions. Under this constitutional provision, qualified immunity protects individual public agents from personal liability for discretionary actions taken within the scope of their official authority, and done without willfulness, malice, or corruption. Under Georgia law, a public officer or employee may be personally liable only for ministerial acts negligently perform or act performed with malice or intent to injure.

A ministerial act is commonly one that is simple, absolute, and definite, arising under conditions admitted or proved to exist, and requiring merely the execution of a specific duty. A discretionary act, however, calls for the exercise of personal deliberation and judgment, which in turn entails examining the facts, reaching reasoned conclusions, and acing on them in a way not specifically directed. A statutorily-mandated action is not the equivalent of a ministerial act that
deprives the actor of official immunity if done negligently. The statute that creates the duty to develop a school safety plan is a perfect example of the difference between statutorily-mandated action and a ministerial act, as it clearly requires that action be taken and sets forth parameters for the action to be taken, but the action required is not simple, absolute, and definite, arising under conditions admitted or proved to exist, and requiring merely the execution of a specific duty that is the hallmark of a ministerial duty.

The statutory mandate that a school safety plan be created calls from the plan’s creator to exercise a discretionary duty—the exercise of personal deliberation and judgment, which in turn entails examining the facts, reaching reasoned conclusions, and acting on them in a way not specifically directed—since the statute requires the creation of a school safety plan that has three goals. One that addresses preparedness for five specified threats to school safety, as well as security issues in school safety zones and is prepared with input from a variety of persons. The mandated action set forth in this statute is a discretionary duty rather than a ministerial duty.

Issue No. 2—Whether public school employees owe a ministerial duty to provide medical care to children attending public school?

Holding No. 2—The court concluded that neither the Eighth Amendment nor the Due Process Clause of the Fourteenth Amendment can serve as the basis for a ministerial duty on the part of school employees to provide medical care to students. Also there is no express state statutory duty that imposes on school employees to provide medical care to students.

Reasoning No. 2—There is no state statute that imposes on public school employees a duty to provide medical aid to students, ad the constitutional right to medical care enjoyed by a jail inmate is not shared by a student in a public school. The United States Supreme Court has ruled that the U.S. Constitution imposes upon the State affirmative duties of care and protection,
including medical care, with respect to particular individuals when the State by the affirmative exercise of its power so restrains an individual’s liberty that it renders him unable to care for himself. The Eighth Amendment requires the State to provide adequate medical care to prisoners and the substantive component of the Due Process Clause of the Fourteenth Amendment requires the State to provide adequate medical care to involuntarily-committed mental patients and to suspects in police custody who were injured while being apprehended. However, the Court has stated it does not suggest the public schools as a general matter have such a degree of control over children attending school under compulsory education laws as to give rise to a constitutional duty to protect.

The U.S. Court of Appeals for the Eleventh Circuit expressly rejected the argument that compulsory school attendance laws gave rise to a constitutional duty to provide care and to protect students because by mandating school attendance, the state simply does not restrict a student’s liberty in the same sense that it does when it incarcerates prisoners or when it commits mental patients involuntarily.

Issue No. 3--Whether plaintiff’s complaint contained allegations of malice sufficient to draw into question the applicability of official immunity to the discretionary acts of the defendants, when the complaint alleges that the defendants acted with willfulness, corruption and malice?

Holding No. 3--Plaintiffs’ allegations do not allege actual malice necessary to overcome official immunity for discretionary acts.

Reasoning No. 3--A public agent’s acts do not have official immunity if they are discretionary acts committed with actual malice or with intent to cause injury. Actual malice as that term is used in the constitutional provision, denotes express malice or a deliberate intention
to do wrong, and does not include implied malice or the reckless disregard for the rights or safety of others. A deliberate intention to do wrong such as to constitute the actual malice necessary to overcome official immunity must be the intent to cause the harm suffered by the plaintiffs. Plaintiff’s allegations of malice in this case are of deliberate acts of wrongdoing done with reckless disregard for the safety of others. As such, they do not allege the actual malice necessary to overcome official immunity for discretionary acts.

Disposition: The judgment of the Court of Appeals is reversed. The denial of defendants’ judgment of the pleadings was reversed.

Citation: Ex Parte Trottman, 965 So.2d 780 (Ala. 2007).

Key Facts: Plaintiff-student was an 11-year-old elementary student, who one day informed her teacher that she was sick and wanted to go home. Plaintiff-student’s teacher was later informed that the plaintiff-student needed to come to the office to check out of school. An instructional assistant was assisting in the office that day, and at the principal’s direction, was checking students in and out of the school. An 18-year-old former student entered the office and spoke with plaintiff-student. The former student informed the instructional assistant that he needed to check his sister out of school. Instructional assistant checked the plaintiff-student out of school to leave with the former student. It was soon discovered that the former student was not the plaintiff-student’s brother. The other student took plaintiff-student to a vacant lot and attempted to sexually assault her.

Plaintiff-student’s mother filed suit against the county board of education the instructional assistant, the school secretary, the school principal and the former student alleging claims of assault and battery, negligence and wantonness, and negligent or wanton supervision or training. Defendant school employees moved for summary judgment arguing that they were
entitled to state-agent immunity. The trial court granted summary judgment for the board and the school secretary but not for the principal or the instructional assistant. The principal and the instructional assistant petitioned for a writ of mandamus directing the circuit court to enter a summary-judgment for them on the basis of state-agent immunity.

Issue No. 1--Are the principal and the instructional assistant entitled to state-agent immunity?

Holding No. 1--Principal and the instructional assistant are entitled to the protection of state-agent immunity.

Reasoning No. 1--Alabama law provides state-agent immunity for individuals who are exercising judgment in the discharge of duties imposed by statute, rule, or regulations in education students. Educating students includes not only classroom teaching, but also supervising and educating students in all aspects of the educational process. The principal in his official capacity designated the instructional assistant to check students in and out of school on the day the other student left with plaintiff-student. Allowing students to leave with an older sibling was a standard checkout procedure at this school. As a consequence the instructional assistant permitted the plaintiff-student to leave the school round with the student who represented to the instructional assistant that he was plaintiff-student’s brother. Therefore, the principal and the instructional assistant’s actions occurred while they were discharging their official duties in education students.

Issue No. 2--Did the principal and the instructional assistant act willfully, maliciously, fraudulently, in bad faith or beyond their authority when it was alleged by plaintiff that they acted beyond their authority because they did not follow the established protocol for allowing a student to check out of school?
Holding No. 2--Plaintiff has not established that a specific checkout policy existed at the school at the time of the incident; thus, she has not established that a genuine issue of material fact exists as to whether principal and instructional assistant exceeded the scope of their discretion.

Reasoning No. 2--Defendants presented evidence indicating that there was not an official checkout policy in place at the school. The superintendent’s affidavit established that was not a district policy regarding checking students out of school. Additionally, defendants presented evidence that there was no school handbook in effect or any school policy for checking out students. In light of the foregoing, plaintiff has not established that a specific checkout policy existed at the school at the time of the incident; thus, she has not established that a genuine issue of material facts exists as to whether the principal or the instructional assistant exceeded the scope of their discretion by permitting plaintiff-student to leave the school grounds.

Issue No. 3--Is principal entitled to state-agent immunity for his alleged negligence in supervising personnel and failing to formulate and enforce proper checkout procedures at the school.

Holding No. 3--Defendant principal is entitled to state-agent immunity for these claims.

Reasoning No. 3--Alabama law provides that an agent of the state is protected from liability for decisions made while exercising his or her judgment in the administration of a department or agency of the State when assigning or supervising personnel. The exceptions to immunity are if the state-agent acts willfully, maliciously, fraudulently, in bad faith beyond his authority, or under a mistaken interpretation of the law. The principal exercised discretion within his authority when he assigned the instructional assistant to check students in and out of school. Plaintiffs did not present any evidence to establish that at the time the principal assigned the
instructional assistant, under his supervision, to check students in and out of school that he acted willfully, maliciously, fraudulently, in bad faith or beyond his authority.

Alabama law also specifically provides that a state agent is entitled to immunity when formulating policies. The development of a checkout policy at the school was within the principal’s discretion in making decisions as principal for the school. Plaintiff did not present any evidence indicating that in formulating the checkout policy the principal acted willfully, maliciously, fraudulently in bad faith, or beyond his authority. Therefore the principal is entitled to state-agent immunity.

Disposition: Writ of Mandamus issued.

Citation: Peterson v. Baker, 504 F.3d 1331 (11th Cir. 2007).

Key Facts: Defendant-teacher was in her first year of teaching, and taught remedial reading at a middle school. Plaintiff-student was a 14-year-old student assigned to her class. Plaintiff-student and another student were talking in class, and the defendant-teacher told the other student to leave the class. Plaintiff-student thought that the defendant-teacher told him to leave the class as well, and he proceeded to leave the classroom. When plaintiff-student attempted to leave the room the defendant-teacher told him to sit back down, but student refused, stating that he wanted to leave. As plaintiff-student moved toward the classroom door, the teacher then placed her left arm across the doorframe against instructing the plaintiff-student to sit down. The plaintiff-student refused against and as he reached for the doorknob, he teacher grabbed his neck. Plaintiff-student claimed that defendant-teacher squeezed his neck to where he could not breathe.

After leaving the building for a while, plaintiff-student went to the school administrative office to report the incident. Plaintiff-student later stated that he was not suffering any pain when
he arrived at the office. Red marks were visible on plaintiff-student’s neck. On the same day, plaintiff-student’s mother reported the incident to the police department who took photographs of plaintiff-student and observed blue and red bruises as well as a scratch on his neck.

Plaintiff-student’s mother, acting on behalf of plaintiff-student, filed suit against the teacher for §1983 violations and state law tort claims. The district court determined that the teacher was entitled to official immunity under Georgia law because she did not act with malice toward the student or otherwise intend to cause the student harm in performing her discretionary duty to maintain discipline in the classroom. Plaintiff appealed.

Issues: Our inquiry is limited to the question of whether the teacher acted with actual malice or with intent to cause injury. Plaintiff contends that a genuine issue of fact exists about the teacher’s state of mind and that the teacher’s state of mind ought to be resolved by the jury. Plaintiff specifically point to disputed facts about whether or not the teacher acted in self-defense. Plaintiff also relies on testimony recounting earlier incidents in which the teacher made disparaging or humiliating remarks to the student.

Holding: We conclude that the teacher is entitled to official immunity under Georgia law and we affirm the district court’s grant of summary judgment to all defendants.

Reasoning: Georgia law provides that state officers and employees are subject to suit only when they negligently perform or fail to perform their ministerial functions or when they act with actual malice or intent to cause injury in the performance of their official functions. In the context of official immunity actual malice requires a deliberate intention to do wrong and denotes express malice or malice in fact. That actual malice requires more than harboring bad feelings about another is well established. While ill will may be an element of actual malice in
many factual situations its presence alone cannot pierce official immunity; rather, ill will must also be combined with the intent to do something wrongful or illegal.

That the defendant-teacher previously made derogatory comments to the student or otherwise harbored ill will toward the student is not enough to evidence either actual malice or intent to injure. Nor is plaintiff’s allegation, which we accept that the teacher sought to punish the student, rather than act out of self-defense, evidence of a deliberate intent to do something wrong or to cause injury. At the very least, the teacher’s act evinces an intention to regain control of a student who not only refused to follow her directions, but who also deliberately used force against her to leave the classroom. Because the teacher’s response to the student’s defiant misconduct was not entirely unreasonable in the light of plaintiff’s own factual allegations, we cannot infer without more that the teacher intended to do something wrong or to cause the student significant injury.

Disposition: The district court’s granting of summary judgment to defendant was affirmed.

Analysis of Cases

The purpose of this research was to examine the immunity defense for school personnel in the various lawsuits brought against them in delivering education in the K-12 setting. The data were retrieved by analyzing court cases from 1981 through 2010, beginning with Truelove v. Wilson (1981), and ending with Peterson v. Baker (2007). The analysis of cases focused on key facts and court reasoning to identify categories, patterns, and trends. The 30 years of cases revealed many categories and subcategories based on the claims and issues presented.
The research determined the existence of 124 cases from West Law Key Number 345k147 that included the immunity defense. Within these 124 cases there were 220 issues decided by the courts. Within these 220 issues there were 191 appeals of the trial court decisions and seven issues were appealed against the appellate court decision. Plaintiffs in the cases appealed 146 of the lower court rulings, while defendants appealed the remaining 45 outcomes. On appeal, 124 of the decisions were affirmed, 43 of the rulings were reversed, 7 were dismissed, 6 appeal court rulings were reversed, 4 rulings were vacated, 4 rulings were upheld, and 3 writ of mandamus were issued. There were 29 issues that were not appealed, at the conclusion of the study (see Appendix).

In analyzing the case briefs for patterns established by court rulings, there were several barriers that arose as to why a case was stopped. From the 220 issues, the largest categories of barriers were as follows: 83 issues were stopped by statutes, 62 were stopped by case law precedent, and 21 issues were decided because no genuine issue of material fact existed. The remaining issues were stopped due to sundry things such as: the view of court, educational matter, not applicable to position, strict liability, lack of evidence, and other.

The courts addressed the entitlement of sovereign immunity in 16 cases. Most of these issues dealt with the school board or district and its immunity by the doctrine of sovereign immunity. Twelve of these cases resulted in sovereign immunity being granted to the school board or district. Three cases addressed whether sovereign immunity was extended to the principal, and in all three cases the extension of sovereign immunity was granted. This grant was based on state statutes or express language in the state constitution with respect to Ohio and Georgia. One case was stopped because the issue presented did not warrant the defense of sovereign immunity.
In eight cases the defense claim was governmental immunity. Governmental immunity appears most often to be an extension of sovereign immunity provided school boards. Six of the claims centered on allegations against the school board in connection with its employees, prompting the school board to file the defense of governmental immunity. Schmidt v. Breeden (1999) illustrates one area of consideration for determining the school board’s right to claim governmental immunity, whether their actions are governmental or proprietary. Another use of governmental immunity by boards was to remove liability for the actions of their employees, or vicarious liability (Doe v. S & S Consolidated I.S.D., 2001).

Official immunity was addressed in the cases 22 times, most often as an extension of sovereign immunity to public officials or public employees. The issues arose where school personnel as defendants claimed immunity as their defense against allegations presented. School personnel were successful in claiming official immunity 19 times. Successful claims of official immunity were based on state statute providing official immunity to school personnel as an extension of the school district’s enjoyment of sovereign immunity and a finding that certain conditions were met. These conditions included the determination of acts being discretionary, the absence of malicious intent, not willful and wanton misconduct, and having not violated a clearly established constitutional right at the time of the act (Butler v. McNeal, 2001). Three cases represented how school personnel may not be granted official immunity. Two of these cases, both in Missouri, did not grant official immunity to school personnel stemming from the definition of public official and the holding in Jackson v. Roberts (1989), school personnel such as superintendent, principal, or teacher do not rise to the level of public official. The other case where official immunity was denied was based on lack of proof in showing that the actions of
school personnel rose to the planning level, making their actions discretionary, rather than ministerial (Fear v. Independent School District 911, 2001).

Qualified immunity was claimed by school personnel in 18 cases found in this research. School personnel were granted qualified immunity in 16 of these cases. The holdings in these cases based the grant of qualified immunity on the actions of the school personnel. Their actions had to be discretionary, rather than ministerial (L.Q.A. v. Eberhart, 1996). The alleged act could not violate a clearly established constitutional right at the time it occurred (Doe v. S & S Consolidated I.S.D., 2001). School personnel had to be acting within the scope and authority of their position (Kobza v. Kutac, 2007). Another condition the courts consistently held in granting qualified immunity to school personnel was that their actions could not be with malicious intent (Ex. Parte Turner, 2002). In two of the cases, school personnel were denied qualified immunity. The basis for this holding from the courts was that the actions of the school personnel rose to the level of willful and wanton misconduct, without regard for the consequences of their actions (Scacek v. Charles, 1996).

In 11 cases, the courts were asked to render a decision as to whether school personnel had state-agent immunity. The conditions by which the courts determined state-agent immunity were based on state statute, and in light of policies, rules, and regulations guiding the actions of school personnel (Ex. Parte Trottman, 2007). School personnel were granted state-agent immunity in nine of these cases and it was removed in the other two cases. Cases were school personnel had state-agent immunity removed stated facts proving the teacher acted willfully or failed to follow established policies, rules and regulations (Giambrone v. Douglas, 2003).

In addition to defense claims of sovereign immunity, official immunity, qualified immunity, discretionary immunity, and state-agent immunity school personnel claimed absolute
immunity in two cases. Absolute immunity is retained by public officials generally serving in executive, judicial, or legislative public official positions, thus so, school personnel do not qualify under absolute immunity. Superintendents and principals stated this claim on being the highest executive at their level, but the interpretation by the courts does not substantiate the school personnel as being afforded absolute immunity (Kirschner v. Carney-Nadeau, 1989).

The various immunities afforded school personnel have varying applications based upon the position held. Sovereign immunity is retained by school boards as an extension of the State (Louviere v. Mobile County BOE, 1995). The courts consistently apply sovereign immunity to school boards to afford them protection against mere negligence and the acts committed by those they employ. Official immunity has most often been applied to board members, superintendents, and principals working within their official capacity (Bolon v. Rolla Public Schools, 1996). In claiming official immunity school personnel have been successful provided their actions were within their authority and were discretionary in nature. School board members retain official immunity in their individual capacity because of the extension of sovereign immunity collectively afforded as a school board (Adams v. Caddo Parish School District, 1994). Official immunity and qualified immunity have in some cases and states been blurred. One distinction is the absence of school board members under qualified immunity. By its definition, qualified immunity is available to protect government officials in their work. This demonstrates the effective availability of qualified immunity for superintendents, principals, and teachers within their duties to act as directed by statute, regulation, or policy (L.Q.A. v. Eberhart, 1996). State-agent immunity was cited in Alabama based upon the Alabama Supreme Court rulings from Ex Parte Crannum (2000) stating,

A State agent shall be immune from civil liability in his or her personal capacity when the conduct made the basis of the claim against the agent is based upon the agent’s
(1) formulating plans, policies, or designs; or
(2) exercising his or her judgment in the administration of a department or agency of government, including, but not limited to, examples such as:
   (a) making administrative adjudications;
   (b) allocating resources;
   (c) negotiating contracts;
   (d) hiring, firing, transferring, assigning, or supervising personnel; or
(3) discharging duties imposed on a department or agency by statute, rule, or regulation, insofar as the statute, rule, or regulation prescribes the manner for performing the duties and the State agent performs the duties in that manner; or
(4) exercising judgment in the enforcement of the criminal laws of the State, including, but not limited to, law-enforcement officers’ arresting or attempting to arrest persons; or
(5) exercising judgment in the discharge of duties imposed by statute, rule, or regulation in releasing prisoners, counseling or releasing persons of unsound mind, or educating students.

In order to be afforded state-agent immunity school personnel must meet the guidelines set forth and be working for the state or its extension, such as a school board.

Throughout the cases examined the clarity of how school personnel may lose an immunity defense provided points of weakness through plaintiffs successful claims. The key area many plaintiffs stated in issue was whether the act performed was discretionary or ministerial. By definition, these two differ based on the exercise of judgment and decision-making involved in the action. A purely ministerial act is one that should be done without judgment and that no real decision-making is required. Slaught v. Hammet (1999) illustrates how plaintiffs ask the court to determine whether actions were ministerial or discretionary. While administrators are required by law to report violent acts that are against board policy, a ministerial act, deciding whether the act committed does violate board policy is discretionary. Thus in the view of the court in Slaught v. Hammett (1999), the assistant principal was acting in a discretionary way rather than ministerial. However, in Schmidt v. Breeden (1999), the court ruled that teachers are not government officials and their actions are purely ministerial. Finally, in Anderson v. Anoka Hennipen ISD (2004), the court distinctly noted that teachers do not forfeit immunity in
performing ministerial acts if those acts are required by protocol established from a discretionary act.

Many statutes exist in states specifically addressing the various immunities provided to school districts, school boards, members of school boards, and their personnel. The following state statutes were encountered during the research of this study: Code of Alabama, Colorado Governmental Immunity Act, Georgia Tort Claims Act, Florida Tort Claims Act, Massachusetts Tort Claims Act, Minnesota Tort Claims Act, Mississippi Sovereign Immunity Act, §8545 of the Judicial Code of Pennsylvania, and Texas Education Code. The courts in these states have based their rulings on the interpretations and implications of these acts as written by the legislative branch of government for each state.

The study provided numerous categories under which school personnel face legal issues. The 220 issues identified by this study included student safety, student injury, breach of duty, student death, adult injury, discipline, academic, sexual assault, student negligence, and other. The other includes those cases which did not fit into the identified categories. Subcategories were developed based on the claims brought before the courts. These include negligence, breach of duty, negligent supervision, assault/battery, privacy, defamation, willful or wanton behavior, sovereign immunity, official immunity, qualified immunity, state-agent immunity, governmental immunity, absolute immunity, Fourteenth Amendment, Eighth Amendment, Fourth Amendment, and First Amendment claims.

There were 45 cases from 1981 to 1991 brought before the courts where school personnel utilized immunity as their defense. These 45 cases presented 98 issues for the court to rule on. Twenty-two of the issues were granted summary judgment. Forty-three of these issues were affirmed on appeal in favor of the defendant and seven cases were reversed on appeal.
From 1991 to 2001 there were 53 cases involving school personnel who claimed immunity. These cases presented 108 issues for the courts to review. School personnel were granted summary judgment on 22 of the issues. There were 15 instances where the plaintiff was successful in overcoming the immunity defense which represented an increase from the first 10 years. Forty-three of the issues were affirmed by the appeal court, while 8 decisions were reversed. There were 12 issues presented where the immunity defense was denied and no appeal was made. Finally, 8 issues were reversed upon appeal.

The final 10 years within this study produced 26 cases upon which courts had to rule. From these 26 cases there were 55 issues brought in allegations before the courts. This timeframe shows a drop in the number of cases being filed in claims for negligence or liability stemming from actions of school personnel. Of the 55 issues during this time-span, 40 of them sought a ruling as to the availability of immunity to school personnel. Of these 40 issues, only 3 resulted in school personnel not being entitled to a form of immunity.
In analyzing the 124 cases, there were 6 iterations of rulings based on immunity that the trial courts and/or appellant courts provided. First, the trial court granted summary judgment based on immunity and no appeal was made. Second, the trial court granted summary judgment and the appellant court affirmed the ruling. Third, the trial court granted summary judgment and
the appellant court reversed the ruling. Fourth, the trial court denied summary judgment and no appeal was made. Fifth, the trial court denied summary judgment and the appellant court affirmed the ruling. Sixth, the trial court denied summary judgment and the appellant court reversed the ruling.

![Figure 4. Iterations of court rulings.](image)

The next phase of the analysis brought forth the themes from the categories of student safety, student injury, breach of duty, student death, adult injury, discipline, academic, sexual assault, student negligence, and other. The themes centered on the retention of the immunity defense as determined by analysis of the courts’ dispositions. Trends were developed under each subcategory which stemmed from the issue presented to the court.
Student Injury and School Safety

Of the 124 cases, 54 dealt with school safety issues. This represents almost half of the cases where immunity was used as the defense by school personnel. The courts granted summary judgment in 46 of the 54 cases. Summary judgment was granted based on governmental, sovereign, statutory, or qualified immunity. Students or parents on their child’s behalf were successful in eight cases.

Figure 5. School safety defenses.

In Eccleston v. Third Judicial District Court, the district court was directed to grant immunity to the individual employees of the school district just as it had for the district. In stating this, the court made it clear that the interpretation of §2-9-111 MCA expressly includes employees working within the scope and authority of their position. Again, the courts granted summary judgment to the school district under sovereign immunity in Kirschner v. Carney-Nadeau Public Schools but denied absolute immunity to the superintendent and principal as the
highest executive officers. The court noted, that in order for officials to be granted absolute immunity they must have broad reaching powers such as those to make policy. However, the court did grant limited governmental immunity to the superintendent and principal based on the fact that the superintendent and principal were acting within the scope of their duties, in good faith, and performing discretionary acts.

_Suspension_

Only 1 case of the 124 dealt directly with student suspension. In _Dillard v. Fussell_, the trial court granted the motion for summary judgment in favor of all plaintiffs. An appeal was made against the decision on the principal for wrongful suspension in his official capacity even though the superintendent and board upheld his erroneous decision. The appeal court noted that while error may have been made and that the plaintiff stated the decision was made in haste and error. The principal’s decision was discretionary in nature and didn’t rise to the level of willful and wanton. Therefore the appeal court affirmed the dismissal by summary judgment.

_Student Death_

School officials were named in litigation 9 times from the result of a student death. These cases represented 17 issues that the courts had to decide on. The range of issues presented included: discretionary acts, immunity (absolute, official, sovereign), negligence, gross negligence, scope of authority and duty, trial court error, special relationships, willful conduct, and wanton behavior.
The district court dealt with two issues in Killen v. Independent School District No. 706: first whether discretionary immunity was appropriate in whether or not a policy was developed and second, whether school personnel were entitled to official immunity in decision making. The case revolved around the suicide of a female student. The student had written a questionable essay in English class that the teacher discussed with the student and then turned over to the school guidance counselor. The school guidance counselor in turn spoke with the student, made arrangements to meet with her the next week, and noted she was also seeing an outside counselor. The following week the student shot herself with a gun from home in her basement. The district court ruled that the absence of a suicide prevention policy was a discretionary policy level decision therefore the school district and employees had discretionary immunity. The second issue of official immunity arose from the counselor’s decision not to notify the parents or the letter or the conference held with the student. The court noted that this exercise took
significant judgment and discretion as to when the parents should be notified in granting official immunity to the counselor.

Another case involving a student death was *Eichhorn v. Lamphere School District* in which a student was killed during a homecoming parade after falling from the float. The float was constructed off school property at another student’s home and not supervised by school personnel. A motion for summary judgment was granted for the school district and school principal by the trial court and appealed by the plaintiffs. The appellant court cited *Ross v. Consumers Power Company*, 420 Mich. 567, 363 N.W.2d 641 (Mich. 1984) as a proper interpretation for the grant of summary judgment. Within this ruling it was determined that the school system was engaged in a governmental function and therefore immune.

In regard to the school principal the appellant court reviewed the issue of absolute immunity. The principal sought absolute immunity under the guise of being the highest executive officer of the school. The court noted that while the principal is a high ranking official they are not the highest in their governmental capacity, nor do they possess the broad-based jurisdiction of a judge, legislator, or even superintendent. Therefore the appellant court ruled that if the principal was to be immune for the death it would not be by absolute immunity but as a lower-level official.

The third issue brought on appeal was whether the principal’s actions were discretionary or ministerial. The court again cited, *Ross v. Consumers Power Company* (420 Mich. 567, 363 N.W.2d 641 (Mich. 1984)), using three points of determination for liability in a tort claim: (1) acting during the course of employment and acting within the scope of their authority; (2) acting in good faith; and (3) performing discretionary, as opposed to ministerial acts. The appellant
court affirmed the lower court ruling that the principal was immune as lower-level government official being that his actions fell within the three points.

Sexual Assault

School personnel were involved in 10 suits claiming sexual assault by a teacher, fellow student, or community member. The defendants in the cases sought for summary judgment by reason of sovereign immunity, qualified immunity, or official immunity. Of the 14 issues brought forth in the cases defendants were successful in claiming immunity nine times and the plaintiffs were successful in five issues.

![Figure 7. Sexual assault.](image)

Principal and school district officials, including the school board, generally have immunity against the actions of their employees provided they are not aware of the actions and those acts are not within the scope and duty of the employee. *Landreneau v. Fruge* outlines this
by the trial court’s grant of no cause of action in response to the issues presented by student-plaintiff’s mother. The case outlines the involvement of the defendant-coach and student-plaintiff as being evidenced to be more than platonic or caring mentor, however, the suit arose from the action of defendant-coach sometime after the relationship ended. The defendant-coach held a party to which the plaintiff-student was not invited but came anyway where she engaged with a school bus driver in sexual contact.

The appellant court noted that Louisiana Civil Code Article 2320 provides that an employer is answerable for the damage occasioned by its servant in the exercise of the functions in which the servant is employed. It was clear to the court that the actions of the defendant-coach were not within the scope and duty of her employment as it related to the authority of the school principal or school board. Therefore, vicarious liability does not apply since the actions occurred outside her assigned duties, outside the normal working hours, and off school grounds.

In *Bollon v. Rolla Public Schools* (1996), the district court entered summary judgment in favor of the school board member, but denied it to the superintendent and principal in a negligence claim filed under Title IX. The student brought the suit alleging violations of Ninth and Fourteenth Amendments alleging sexual contact initiated by the teacher. The allegations against the superintendent and principal included failure to provide a reasonably safe environment, lack of supervision, and failure to investigate the allegations.

The appellant court affirmed the ruling of summary judgment for the board member and upheld the denial of summary judgment for the superintendent and principal. In stating the ruling the court noted the plaintiffs use of *Jackson v. Roberts* (774 S. W. 2d 860 (Mo.Ct.App.1989)) in not applying official immunity to the superintendent and principal. Through application of official immunity, public officers acting within the scope of their authority are not liable for
injuries arising from their discretionary acts or omissions, but they may be held liable for torts committed when acting in a ministerial capacity. There are no Missouri cases deciding whether public school teachers or principals are public officers. There is, however, a substantial line of authority in other jurisdictions denying the status of public officers to teachers.

Another case, Merrit v. Board of Education of the School District of Philadelphia (1986), demonstrates application of legislative grant of immunity. The parent of a mentally retarded student filed suit after her daughter was followed into school by a neighborhood person and upon her exit from the ladies restroom was drug back in and raped. In the allegation the parent stated the school principal was aware of the presence of the neighborhood person and had attempted to keep him from loitering contending that the principal was negligent in having unlocked doors and hallways.

The court affirmed the grant of legislative immunity and stated it fell within consistent interpretations of Pennsylvania precedent that the violent act was not a foreseeable use of school property.

**Discipline and Corporal Punishment**

Within discipline of students a concern for teachers and all school personnel is liability that results in punitive damages. The case Holt by Holt v. Cross (1983) was brought before the Illinois Supreme Court on appeal and directly addressed the ability of the plaintiff to recover punitive damages in regards to alleged excessive corporal punishment. Illinois law has clearly allowed criminal prosecution and tort action as remedies for excessive corporal punishment, but not punitive damages. The court stated in striking the plaintiff’s claim that to allow punitive
damages would jeopardize school personnel in their ability to maintain discipline with monetary loss as a primary concern.

In *Spacek v. Charles* (1996), the use of excessive force is examined along with claims of violation of Fourth and Eighth Amendment constitutional rights. The plaintiff alleged that two coaches threatened to tie him up and whip him with an extension cord as well as pointed a starter pistol at his head and told him they were going to kill him if his grades didn’t improve. The trial court granted summary judgment to the school district but not the coaches and they appealed. From the appeal the coaches were granted summary judgment on the constitutional rights allegations because the plaintiff failed to assert the claim and they were protected by qualified immunity. However, on the claims of excessive force the appeal court upheld the trial court’s denial of summary judgment. In its reasoning the court stated §21.912 under Texas Education Code states in pertinent part: No professional employee of any school district within this state shall be personally liable for any act incident to or within the scope of the duties of his position of employment, and which act involves the exercise of judgment or discretion on the part of the employee, except in circumstances where professional employees use excessive force in the discipline of students or negligence resulting in bodily injury to students (*Spacek v. Charles*, 1996). Furthermore the court used the articulation from the Restatement of Torts, Second Edition, “In determining whether force or confinement is reasonable for the control, training, or education of a child, the following facts are to be considered: (a) whether the actor is a parent; (b) the age, sex, and physical and mental condition of the child; (c) the nature of his offense and his motive; (d) the influence of his example upon other children of the same family or group; (e) whether the force of confinement is reasonably necessary and appropriate to compel obedience to a proper command; and (f) whether it is disproportionate to the offense, unnecessarily
degrading, or is likely to cause serious or permanent harm. Force applied for any purpose other than the proper training or education of the child or for the preservation of discipline, as judged by the above standards, is not privileged” (Restatement (Second) of Torts §§ 150, 151 (1965)).

In *Hinson v. Holt* (1998), a student-plaintiff brought suit alleging legal malice in administering corporal punishment excessively and in conflict with the district policy on the use of corporal punishment. The incident occurred on the fifth day of school after the student was heard uttering the word “ass” in a non-threatening way of repeating what another student had said. The trial court ruled in favor of the student and denied qualified immunity to the teacher given the weight of the evidence. In Alabama the precedent from the Supreme Court arises from *Suits v. Glover* (260 Ala. 449, 450, 71 So.2d 49, 50 (Ala. 1954)), where it stated,

A schoolmaster is regarded as standing in loco parentis and has the authority to administer moderate correction to pupils under his care. To be guilty of an assault and battery, the teacher must not only inflict on the child immoderate chastisement, but he must do so with legal malice or wicked motives or he must inflict some permanent injury. In determining the reasonableness of the punishment or the extent of malice, proper matters for consideration are the instrument used and the nature of the offense committed by the child the age and physical condition of the child, and the other attendant circumstances.

The facts presented in *Hinson v. Holt* (1998) represent that the teacher did not follow board policy in using corporal punishment as a last resort, did not account for lack of previous discipline, may have not ascertained the physical ability of the student, or accounted for age. The court concluded that the evidence in this case was sufficient to support the trial court’s finding that defendant-teacher acted with legal malice in punishing plaintiff-student. Under *Suits*, such malice will support a finding of liability with respect to an assault and battery claim against a state-employed educator.
There were four cases where school personnel dealt with academic claims. In these cases, 3 or 4 were granted immunity. One case was split in its grant of immunity based on the two issues presented. *Hunter v. Board of Education of Montgomery County* (1982) was an appealed case brought on behalf of a minor child against the school board, elementary principal, and a board employee engaged in diagnostic testing. The suit alleged that the school officials wrongly placed the student in second grade, but made him repeat first grade material. This continued throughout his elementary years causing him to feel embarrassment, to develop learning deficiencies and to experience a depletion of ego strength. The parents also allege that individual educators acting intentionally and maliciously, furnished false information to them concerning the student’s learning disability, altered school records to cover up their actions, and demeaned the child.

The first issue presented in the case before the court was to determine if education malpractice could be asserted for improperly evaluating, placing, and teaching the student. This issue resulted in summary judgment for the defendant school district and employees, because absence of a workable rule of care against which the defendant’s conduct may be measured, the inherent uncertainty in determining the cause and nature of any damages, and the extreme burden which would be imposed on the already strained resources of the public school system or the judiciary.

The second issue before the court was whether action could be maintained for maliciously and intentionally causing the child to be misplaced. The court ruled in favor of the plaintiff stating that if an education official has endangered a child entrusted to their educational care, the plaintiff has a right to seek action against them. Although, the claim for action may be
actionable, the court noted it is formidable in nature to provide the necessary evidence to establish the intent requirement, but the plaintiff is entitled to the attempt.

Contract

There were three cases in which school personnel brought suit against the board, superintendent, or principal involving contract issues. In *Harden v. Clarke County Board of Education* (2006), a teacher brought claims alleging failure to pay for extra assigned duties. The plaintiff sought breach of contract as well as punitive damages. The trial court granted summary judgment to all defendants. The plaintiff was not due quantum meruit since the suit was against a county. O.C.G.A. § 36-10-1 provides that all contracts entered into by the county governing authority with other person on behalf of the county shall be in writing and entered on its minutes. To be enforceable therefore, a contract with a county or subdivision of a county must comply with those requirements. Additionally, the superintendent and principal were immune from claim in their official capacities by statute since they are in effect part of the county. Finally, the claim against the superintendent and principal individually is precluded by official immunity. Georgia case law clearly relates liability for government level employees only in the performance of ministerial acts. Liability for discretionary acts may be applied only if the acts were committed maliciously or with intent to cause injury. The plaintiff made no such allegation of willful or malicious intent in regards to quantum meruit.
CHAPTER V
SUMMARY, CONCLUSION, AND RECOMMENDATIONS

Introduction

The intent of this research was to analyze how the courts have dealt with the immunity defense in the K-12 school setting. The time period of 1981 to 2010 was used to ensure an adequate representation of cases in order to compare issues, outcomes, and trends. This chapter provides a summary of the research, conclusions, and recommendations.

Summary

The data collection and analysis were guided by the following research questions:

1. What are the issues in federal and state cases about immunity in the K-12 setting?

The research conducted in this study identified the issues addressed by the courts as student safety, student injury, breach of duty, student death, adult injury, discipline, academic, sexual assault, and student negligence. The claims brought forth from these issues were negligence, breach of duty, negligent supervision, assault/battery, privacy, defamation, willful or wanton behavior, and constitutional violations. This study has identified by court decisions 24 guidelines for school personnel to assist them in retaining immunity based on the issues in the study. This study includes 124 cases, of which 108 resulted in summary judgment being granted to the school personnel. Almost half the cases in this study dealt with student injury issues.
2. What are the outcomes in federal and state cases about immunity in the K-12 setting? The courts have maintained their opinions on immunity in the K-12 setting from *Truelove v. Wilson* (1981). Over the last 30 years, school personnel have been involved in 124 cases where immunity was the primary defense. In these cases, the courts have granted summary judgment 108 times. In the 124 cases, there were 220 issues ruled on by the courts, of these rulings 203 were in favor of school personnel. The courts have consistently applied immunity to school personnel in four ways. First, sovereign immunity, which is primarily reserved for school boards and state agencies, is the initial basis. Second, governmental immunity, as an extension of sovereign immunity, is provided to public officials and employees. Third, qualified immunity or state-agent immunity is applied to school personnel in the performance of their job provided their actions are discretionary and do not rise to the level of willful or wanton behavior. Finally, statutory immunity is provided in many states by legislative act.
When viewed across states and jurisdictions the various types of immunity that arose in the study have areas of overlap. Sovereign immunity was the most clearly applied of the immunities in that it was reserved for school boards as an arm of the state. This application was clearly provided to school boards to protect the interest of the State in taxpayer monies being allocated for education, rather than subject to lawsuit. Official immunity and qualified immunity had overlap in their applications. By definition, official immunity is that which is provided to judicial and executive branches of government to which some courts granted to superintendents and principals. In relation, qualified immunity is extended to school officials including superintendents, principals, and teachers under the umbrella of being employees of a sovereign entity (Cloud, 1999). A few jurisdictions noted this type immunity as discretionary immunity (Nguon v. Wolf, 1997), with the application being similar to qualified immunity. The appearance from this research is that the broadest form of immunity extended to school personnel is qualified immunity and the availability of it based on meeting certain conditions was consistent among states and jurisdictions (Nance v. Matthews, 1993). In Alabama, state-agent immunity was recognized by the standard set forth in Ex Parte Crannum (2000). This immunity applies primarily to individuals working within their capacity as a state employee who meet the standards and after the parties have had the opportunity for discovery. This research indicates that the various immunities afforded have their foundation in sovereign immunity, but differ in how and to whom they apply across States and jurisdictions based upon position held, actions in question, and standards being met.

The cases in this study dealt with school personnel actions primarily and thus the courts relied heavily on qualified immunity in granting or denying summary judgment. The outcomes of the cases indicated that the retention of qualified immunity depends on establishing if the
actions were discretionary or ministerial, not in violation of an established constitutional right, were not willful or wanton behavior, and do not fall under the nuisance doctrine. In making the determination of whether immunity still exists many plaintiffs raised the question of actions being ministerial. The courts viewed the ministerial act question before deciding other factors that could have abrogated immunity. The burden of proof rose in regards to malicious intent, willful and wanton behavior, and violation of constitutional rights compared to asking the court to determine if an act was ministerial. The lower the rank and file of a state employee the more ministerial their acts appear to be, thus many claims of actions being ministerial originate against teachers and coaches. From this study, whether an act is ministerial or discretionary appeared to be the weakest point in the immunity defense.

![Figure 9. Outcomes in cases.](image)
3. What are the trends in federal and state cases about immunity in the K-12 setting?

One of the trends from this study was that summary judgment was granted to school personnel in 108 of the 124 cases; however, 84 of the cases were appealed from the trial court level. On appeal only 9 of the 84 cases were reversed in favor of plaintiff against school personnel. From the review of litigation within this study it is apparent that school personnel are protected most often by defense claims of immunity. The courts have ruled in favor of school personnel utilizing immunity under the terms qualified, state-agent, governmental, and discretionary. Based on issues brought before the court, the trend developed by which immunity has been decided relies on several factors: (1) school personnel were acting within the scope and authority of their position; (2) their actions were discretionary, which involves the exercise of judgment, rather than ministerial; (3) the conduct in question does not rise to the level of willful or wanton behavior; (4) their actions were not committed with malicious intent; and (5) they do not violate an established constitutional right. In view of this trend, it is paramount that school
personnel know and implement best practices in their daily work that will not abrogate their immunity defense.

From *Truelove v. Wilson* (1981) to *Oast v. Lafayette Parish School Board* (1991), there were 45 cases of which 38 resulted in summary judgment. The issues brought before the courts in this timeframe were primarily centered on student injury. The range included issues like, wanton behavior, negligence, breach of duty, willful conduct, and whether immunity applied. There were also 4 of the 47 cases that dealt with breach of duty, or failure to perform in the existence of a special relationship.

The next 10 years of cases, beginning with *Robinson v. Roberts* (1992) and going through *Doe v. S & S Consolidated I.S.D.* (2001), resulted in an increase in cases involving immunity with 53 cases. Of these 53 cases, 46 resulted in summary judgments. One development during this time period was the increase in courts having to determine whether defendants were actually immune to claims and did their actions warrant loss of the immunity defense. Courts were not quick to rule against school personnel in their decisions that involve judgment and discretion, but closely analyzed duty to care and the determination of ministerial acts. During this timeframe there were three cases that addressed the purchase of liability insurance and whether that removes the immunity defense.

From *Hackett v. Fulton County School Board* (2002) through *Nguon v. Wolf* (2007), there was a significant decrease in cases involving the immunity defense, with the courts trying 26 cases. However, with the drop in cases, 24 of the cases ended with summary judgments for school personnel, which was an increase. The cases during these years focused more on the type of immunity school personnel may or may not have mainly arising from negligence claims. A
A final trend that appeared from the study was the decline in litigation over the time period. There are contributing factors from all three branches of government in this development. The judicial branch has been consistent in upholding immunity as a defense available to school personnel, especially in areas where there has been a clear exercise in judgment. The courts have held that it is not their place to second guess the judgment decisions made by trained educators in carrying out and for the education of students under their care. The legislative branch has developed statutes and updated them throughout the time period studied to provide protections primarily of public money that is designated for the education of all, so that it is not spent on any one individual as the result of an accident or mere negligence. Finally, the executive branch of government as an extension to superintendents and administrators has become more cognizant of the need for clear policy, regulations, and procedures that both direct and protect the state-agents whom carry on the daily activities of education. These branches working together have strengthened immunity as a defense in that practicing attorneys for both school personnel and plaintiffs understand the likelihood of winning or losing litigation. From an advantage standpoint, monetary gain is a factual part of the process and with its absence of availability the trend of less litigation is likely to continue.

4. What guidelines for school administrators can be discerned from cases about immunity in the K-12 setting?

School personnel must be aware of their actions and decisions and how it affects the immunity defense provided them as state-agents. Ideally school personnel should be proactive in avoiding litigation, but in the event they are sued it is paramount that they understand the
protections afforded them. This study has identified 24 guiding principles for school personnel as they strive to provide learning environments that are safe and conducive to student achievement.

Guiding Principles

1. School personnel are entitled to qualified immunity in how to discipline a student due to the discretionary decision-making process (Boyett by Boyett v. Tomberlin, 1995). Therefore, school leaders should ensure qualified immunity by following board policies, school rules, and regulations that require an exercise in judgment in student discipline.

2. A school counselor may be immune in reporting student issues to parents provided they are following school board policy and their decisions are discretionary in nature (Grant v. Board of Trustees Valley View School District No. 365-U, 1997; Killen v. Independent School District No. 706, 1996). Therefore, school counselors need to exercise proper judgment in determining what should be reported to parents or authorities in relation to the student and applicable board policies.

3. Members of a county school board and their employees acting within the scope and authority of their position may maintain sovereign or qualified immunity provided their negligent actions are not done with malice or willful intent (Truelove v. Wilson, 1981). Therefore, school leaders should act in good faith and only within their authority and scope.

County School Board, 1983). Therefore, school leaders need to be aware of how their State courts interpret the purchase of liability insurance and its effect on immunity.

5. Superintendents and principals are not vicariously liable for the negligent discretionary acts of their subordinates (Casterson v. Superior Court, 2002; Landreneau v. Fruge, 1996). Therefore, school leaders need to be diligent in training personnel and developing policy that ensures that they do not become vicariously liable.

6. Student supervision is a discretionary act (Addis v. Howell, 2000; L.S.B. v. Howard, 1995); therefore, school personnel should supervise students in good faith, within their authority and scope, and in measure with the age and physical stature of the student.

7. School personnel are protected by official immunity when a student is attacked on campus by a visitor (Teston v. Collins, 1995). Therefore, school leaders should develop policy and procedures for handling visitors on campus and adhere to those actions.

8. School personnel give up immunity when they fail to discharge the duties imposed on them by statute, regulation, or rule (Giambrone v. Douglas, 2003). Therefore, school personnel need to possess knowledge of all statutes, regulations, and rules required of them so that they may properly discharge them.


10. Statements made by a supervisor are protected by governmental immunity provided the statements are not given in a willful or wanton manner to reflect poorly (Zerr v. Johnson,
Therefore, school leaders should ensure the statements they give in personnel matters are factual, evidenced by review, or based on professional expertise.

11. Teachers have discretion in allowing students to leave class and in not doing so are not violating students’ Fourteenth Amendment rights (Boyett v. Tomberlin, 1995). Therefore, teachers should know and understand the rights provided students by the Fourteenth Amendment and what actions they commit that violate those established rights.

12. Superintendents and principals can be liable for their negligent acts in the hiring process (Bolon v. Rolla Public Schools, 1996). Therefore, school leaders should be diligent in following established hiring protocols, fair labor laws, and documenting their process.

13. Official immunity may be removed by the designation of not being a public officer (Jackson v. Roberts, 1999). Therefore, school leaders should be aware as to the how the courts interpret the designation of public officer in their respective state.

14. School personnel have a duty to supervise students in transportation but are protected in their discretionary decisions as to how the supervision is carried out (Addis v. Howell, 2000; Jackson v. Roberts, 1999). Therefore, school leaders should exercise judgment in relation to the age and physical maturity of the student.

15. Sovereign immunity is provided to school boards as extensions of the State (Doe v. S & S Consolidated I.S.D, 2001; Hackett v. Fulton County School District, 2002). Therefore, school leaders should be aware of any policy or action they have that would nullify sovereign immunity as it is provided.

16. School administrators have discretion in how they assess, plan, and conduct facilities maintenance in repairs on their school campuses, which provides them immunity in tort liability (Hemak v. Houston County School District, 1996; Louviere v. Mobile County Board of
Therefore, school administrators should establish how they assess, plan, and conduct facilities maintenance based on their exercise of judgment.

17. Principals and athletic directors have state-agent immunity when involved in the exercise of judgment as to how to educate students or supervise personnel (Giambrone v. Douglas, 2003). Therefore, school leaders should ensure they consistently educate and inform both students and personnel on issues involving athletics.

18. School personnel acting within the scope and authority of their position, absent malice and willful intent, are provided official immunity in disciplining, monitoring, and supervising students (Alifii v. Liberty County School District, 2003; Killen v. Independent School District No. 706, 1996). Therefore, school leaders should always act within the scope and authority of their position, in good faith, and not willfully or wanton in relation to students.

19. A principal’s discretion in how to discipline a situation in which students then later engage in a physical confrontation that results in injury does not rise to willful and wanton conduct (Carroll Ex. Rel Slaught v. Hammett, 1999; Templar v. Decatur Public School District, 1989). Therefore, school leaders should exercise judgment and care in determining the level of a situation that may later result in student violence.

20. Superintendents and principals are not vicariously liable for the actions of their subordinates in sexual assaults against students provided they did not know or should not have known of the act or propensity for it to occur through lack of supervision in hiring or evaluation of staff (Doe A. v Coffee County Board of Education, 1996; Doe v. Park Center High School, 1999; Hackett v. Fulton County Board of Education, 2002; Landreneua v. Fruge, 1996). Therefore, school leaders should be diligent in reviewing backgrounds during the hiring process and making proper investigations of any alleged activity.
21. School personnel may not have immunity when students are attacked in unsupervised areas \((\textit{Leger v. Stockton}, 1988)\). Therefore, school leaders should exercise judgment in determining the level to which areas should be supervised, and monitoring known dangerous areas.

22. Athletic coaches retain immunity in their discretionary act to participate in practices or scrimmages that result in student injury provided the act does not increase the ordinary risk imposed by athletic participation \((\textit{Ex. Parte Nall}, 2001; \textit{Prejean v. East Baton Rouge Parish School Board}, 1999)\). Therefore, athletic coaches should exercise caution in participating with students, taking account for their age and level of physical maturity in order to not raise the risk of injury.


24. School personnel may retain immunity in situations involving physical contact with students in an effort to maintain discipline and control provided their actions are not committed in a willful or wanton manner \((\textit{Doe v. S & S Consolidated I.S.D.}, 2001; \textit{O’Hayre v. Board of Education for Jefferson County School District R-1}, 2000)\). Therefore, school leaders need to ensure their actions are only performed in an effort to maintain control of a situation or to alleviate harm coming to a student.

These principles are based on how the courts have decided issues involving school personnel’s ability to use immunity as a defense. Most often school personnel retain immunity, provided they meet certain requirements. These requirements depend upon the level of the school
personnel within the organization’s structure and their direct contact with the issue before the court. Plaintiffs typically suing a teacher or principal for a claim also bring suit against the superintendent and/or the school board or district. This action presents differences the court must identify and compare to statutes or case law in making decisions.

When school districts are named in litigation the primary immunity defense they possess is sovereign immunity. Most states recognize school boards and their members as extensions of the state, which are entitled to sovereign immunity as outlined in the Eleventh Amendment. Sovereign immunity, while noted in defense sometimes, does not apply to school personnel such as superintendents, principals, and teachers.

Qualified immunity is the most common defense for superintendents and principals. Depending on the state or district court, qualified immunity might be noted as state-agent immunity or discretionary immunity as well. The courts are fairly consistent in determining the ability to maintain qualified immunity. First, the actions of the school personnel must not rise to the level of willful or wanton, be within the scope and authority of their position, and be discretionary in nature, which represents an exercise in judgment. Second, the courts must determine whether the facts of the case represent that the actions violated a clearly established “constitutional right” and, if so, was that constitutional right clearly established at the time the actions occurred. Typically, courts have ruled to the higher level of prudence in determining the clearly established aspect with school personnel by asking would a, “reasonably prudent teacher known?” This level of determination is deemed necessary given the inherit relationship between school personnel and students under their charge.

The courts are constantly facing issues with the immunity defense given the tort liability claims brought before them. One issue with this is whether they establish immunity first or
address the facts of the case to determine violation of a constitutional right. This is an important aspect to school personnel; thus far it appears immunity is established as a means of gaining summary judgment to dismiss claims against school personnel. However, the courts may have to begin addressing the violation of constitutional rights before establishing immunity’s availability.

This knowledge provides a means by which school boards need assurance from their superintendent and administrative personnel that proper training and development are given to employees. Superintendents needs to be well-versed in the forms of immunity and how each is maintained by the actions of the school board in policy making, the actions of administrators in designing rules and regulations at the school level, and how personnel operate within their daily duties. It is no longer plausible to rely on actions simply being performed in good faith; rather a greater awareness is needed of how the law interacts with the daily actions of school personnel. *Hinson v. Holt* (1998) clearly shows what a lack of training and understanding of policy will do in the face of litigation. The judgment of school personnel is often viewed as discretionary, but cannot be in contrast to established policy, statutes, and regulations. School personnel need to receive professional development that is effective and ongoing in regard to how their role exists in being good stewards of the public dollar, protectors of students’ rights, and serving their personal best interest both financially and career wise.

Conclusions

School personnel are faced with ever changing issues within the education environment. From day-to-day operations to student supervision to instructional rigor to extracurricular activities and many areas in between the potential for legal issues is ever present. Additionally, at
each level the volume of problems that arise increases exponentially, for principals it includes students, teachers, and support personnel; for superintendents it includes district-level supervisors, support personnel, principals, teachers, and students.

The purpose of this research was to examine how the courts have treated immunity defense as it relates to liability for districts and its school leaders. School leaders must understand case law as it pertains to the daily operations that present possible litigation. School districts must ensure their policies provide protections from litigation as they are enforced. The cases in this study represented many issues that school personnel must deal with on a daily basis (Figure 11).

Figure 11. Issues by category.
While school personnel make every effort to avoid litigation, inevitably certain actions will lead to lawsuits that end up before the courts. Predominantly, due to immunity school personnel have seen the issues raised result in favorable outcomes for them (Figure 12).

\[\text{Figure 12. Prevailing party.}\]

Unfortunately, many of the cases that are tried in court also end up in an appeal (Figure 13). While the outcome for school personnel continues to be favorable upon appeal, there is an obvious increase in expenditure at each level. This expenditure is made up of many aspects, one of which includes time away from the primary function of education, which is to instruct students.
Figure 13. Outcomes by issues.

The study also revealed the trends of cases by states (Figure 14) and over the time period from 1981 through 2011 in 10-year increments (Figure 15).

Figure 14. Cases by state and district.
In researching these cases it was interesting to note the frequency at which the courts decide in favor of school personnel. But those protections are based on school personnel ensuring their actions meet the requirements for immunity and, given the multiple daily interactions of students, teachers, other personnel, and parents the ability to abrogate immunity is very present. School districts and boards still enjoy the privileges of sovereign immunity for the majority, but their personnel do not share in that protection and must be trained and knowledgeable of the necessary actions to retain qualified, discretionary, or state-agent immunity.

School boards must evaluate their policies and procedures to ensure that they are delinating appropriately to their personnel those actions which are discretionary and those considered ministerial. Superintendents need to ensure that school leaders are aware of their actions, understand what qualified immunity entails, and that they consistently perform their duties in a manner that retains immunity. Principals need to be vigilant in developing school
level policies and procedures that provide the procedural safeguards necessary for teachers and support personnel to perform their primary functions while maintaining their immunity defense.

Even with the knowledge and training of best practices it is impossible for school personnel to anticipate every possible litigious situation. Fortunately, many states have statutes in place that specifically address the immunities provided school personnel and the courts attempt to favor the decisions of educators when performed in regard for the best of all students. School personnel must be vigilant in maintaining the original intent of education funding, to educate the population, by eliminating opportunities for litigation when at all possible.

Recommendations for Further Study

The findings and conclusions of this study provide the basis for the following recommendations:

1. Additional key indicators should be included to ensure that all possible types of cases are examined.

2. Research should be conducted on cases since 2010 to analyze the impact of court rulings on immunity in the K-12 setting.

3. A study should be conducted to determine the relationship between board policy and waiver of immunity statements concerning transportation, extracurricular activities, and field trips.

4. A study should be conducted to determine the impact of purchasing liability insurance as a school district, school, or school employee.

5. A study should be conducted to determine the extent of immunity granted by state statute and how it compares from state to state.
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*Tun v. Whitticker*, 398 F.3d 899 (7th Cir. 2005).

*Turner v. D’Amico*, 701 So.2d 236 (La.App. 1 Cir. 1997).


APPENDIX

CODING OF CASE BRIEFS
<table>
<thead>
<tr>
<th>Year</th>
<th>Case</th>
<th>#</th>
<th>Issue Statement</th>
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<th>Reason</th>
<th>Disposition</th>
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<td><em>Dillard v. Fussell</em></td>
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<td>action to proceed again principal in OC</td>
<td>no basis--yes trial court correct</td>
<td>empowered to exercise judgment quasi-judicial</td>
<td>affirmed</td>
<td>not out of scope/authority</td>
<td>P-ruling of trial court</td>
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<td><em>Lehmen v. Wansing</em></td>
<td>1</td>
<td>purchase of insurance stop asserting SI</td>
<td>does not waiver assertion of SI</td>
<td>Spearman v. Uni City PSD</td>
<td>affirmed</td>
<td>MO Sup Court ruling</td>
<td>P-ruling of trial court</td>
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<td>yes-trial court correct</td>
<td>Spearman cloaks prior to 1978</td>
<td>affirmed</td>
<td>MO Sup Court ruling</td>
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<td>recovery precluded by SI for individuals</td>
<td>no-trial court error</td>
<td>Spearman held public employees may not be personally immune</td>
<td>reversed/remanded</td>
<td>degree of care owed</td>
<td>P-ruling of trial court</td>
</tr>
<tr>
<td>1981</td>
<td><em>Truelove v. Wilson</em></td>
<td>1</td>
<td>BOE entitled to sovereign immunity</td>
<td>entitled</td>
<td>holding of Hennessy v. Webb</td>
<td>reversed</td>
<td>w&amp;w DNA</td>
<td>D-denial of motion to dismiss</td>
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<td>2</td>
<td>defeat SI by pleading w&amp;w negligence</td>
<td>entitled within scope/authority</td>
<td>discretionary act</td>
<td>reversed</td>
<td>proof of w&amp;w</td>
<td>D-denial of summary judgment</td>
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<td>1982</td>
<td><em>Hunter v. Bd Of Ed Montgomery</em></td>
<td>1</td>
<td>cause of action for education malpractice</td>
<td>no-education negligence cannot be maintained</td>
<td>precluded by consideration of public policy</td>
<td>affirmed</td>
<td>ordinary negligence</td>
<td>P-ruling of trial court</td>
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<td>2</td>
<td>claim for relief for intentional misplacement of child</td>
<td>Yes-for intentional and malicious misplacement</td>
<td>proof of intent and malicious placement would outweigh public policy consideration</td>
<td>reversed</td>
<td>w&amp;w might be proven</td>
<td>P-ruling of trial court</td>
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<td>1982</td>
<td><em>Paladino v. Adelphi</em></td>
<td>1</td>
<td>breach of contract</td>
<td>facts presented do not support claim of education malpractice</td>
<td>precluded by consideration of public policy</td>
<td>reversed</td>
<td>educational matter</td>
<td>D-denial of summary judgment</td>
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<td>1982</td>
<td><em>Rupp v. Bryant,</em></td>
<td>1</td>
<td>whether immunity applies</td>
<td>No based on Fla Supr Ct ruling</td>
<td>event happened prior to Florida Statutes 1980</td>
<td>affirmed</td>
<td>timeframe of accident</td>
<td>D-ruling of trial court</td>
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<td>1983</td>
<td><em>Holt v. Cross</em></td>
<td>1</td>
<td>recovery of punitive damages for alleged excessive corporal punishment</td>
<td>punitive damages are prohibited</td>
<td>criminal prosecution and tort action are remedies, but recovery of punitive damages is not</td>
<td>upheld</td>
<td>punitive is not additional recovery</td>
<td>P-ruling of circuit court</td>
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<td>1983</td>
<td><em>Kain v. Rockridge Unit School</em></td>
<td>1</td>
<td>does school program constitute loco parentis for staff and confer immunity</td>
<td>yes they are acting in loco parentis</td>
<td>Illinois Supr Ct held in Kobylanski v. Chicago BOE that 24-24 of Illinois School Code conferred immunity</td>
<td>affirmed</td>
<td>statutory immunity</td>
<td>P-ruling of trial court</td>
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<td>1983</td>
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<td>2</td>
<td>is statute conferring immunity inapplicable if rules not followed</td>
<td>the statute is applicable in mere negligence</td>
<td>statute speaks of supervision not discretion</td>
<td>affirmed</td>
<td>statutory immunity</td>
<td>P-ruling of trial court</td>
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<td>1983</td>
<td><em>Montag v. Bd of Ed School Dist</em></td>
<td>1</td>
<td>does statute grant loco parentis in coaching a team</td>
<td>yes §24-24 extends beyond just disciplinary conduct</td>
<td>reference in statute to activities included within mandates for physical education</td>
<td>affirmed</td>
<td>statutory immunity</td>
<td>P-ruling of trial court</td>
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<td>2</td>
<td>negligently failed to provide proper equipment</td>
<td>jury verdict will stand</td>
<td>plaintiff witness didn’t show more matting would have prevented injury</td>
<td>affirmed</td>
<td>jury verdict</td>
<td>P-ruling of trial court</td>
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<td>3</td>
<td>abuse of discretion to show film of college students performing</td>
<td>trial court didn’t abuse its discretion in allowing film</td>
<td>absent clear showing of abuse the trial court decision will not be reversed</td>
<td>affirmed</td>
<td>discretion of court</td>
<td>P-ruling of trial court</td>
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<td>1983</td>
<td>Weiss v. Collinsville Comm Unit</td>
<td>1 guilty of w&amp;w misconduct</td>
<td>reversal by matter of law</td>
<td>absent proof</td>
<td>reversed</td>
<td>matter of law</td>
<td>D-denial summary judgment</td>
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<td></td>
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<td>2 did use of rubber mat constitute w&amp;w</td>
<td>simple negligence</td>
<td>must constitute w&amp;w misconduct</td>
<td>reversed</td>
<td>lack of proof</td>
<td>D-denial summary judgment</td>
<td></td>
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<td>1983</td>
<td>Wetsel v. Independent School Dist</td>
<td>1 negligence per se allowing directed verdict on liability</td>
<td>cannot be regarded as negligence per se</td>
<td>duty to protect rested on breach to use ordinary care, not mere occurrence of injury</td>
<td>vacated</td>
<td>opinion of trial court was correct</td>
<td>D-decision of appeal court</td>
<td></td>
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<td></td>
<td>Wilson v. Duval County School Bd</td>
<td>1 Florida statute violates constitution</td>
<td>No it does not infringe</td>
<td>does not regulate procedural aspects</td>
<td>affirmed</td>
<td>opinion of trial court was correct</td>
<td>P-ruling of trial court</td>
<td></td>
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<td>2 Florida statute encroaches by limiting amount of compensation</td>
<td>No it does not infringe</td>
<td>legislature has power to raise the degree of conduct and w&amp;w is without limit</td>
<td>affirmed</td>
<td>opinion of trial court was correct</td>
<td>P-ruling of trial court</td>
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<td>3 waiver of statutory immunity by purchasing liability insurance</td>
<td>No it does not waive immunity</td>
<td>clear power of legislature to grant or deny</td>
<td>affirmed</td>
<td>opinion of trial court was correct</td>
<td>P-ruling of trial court</td>
<td></td>
</tr>
<tr>
<td>1984</td>
<td>Brown v. Quaker</td>
<td>1 exemption of sovereign immunity by real property claim</td>
<td>equipment was not considered real property therefore exception DNA; correct dismiss</td>
<td>injury occurred within school grounds but not due to condition of building or grounds</td>
<td>affirmed</td>
<td>opinion of trial court was correct</td>
<td>P-ruling of trial court</td>
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<td>Hadley v. Witt Unit School</td>
<td>1</td>
<td>trial court err in dismissing claim for ordinary negligence</td>
<td>no dismissal was correct because teacher is immune for ordinary negligence</td>
<td>school code confers loco parentis which shields from liability</td>
<td>affirmed</td>
<td>opinion of trial court was correct</td>
<td>P-ruling of trial court</td>
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<td>1984</td>
<td>Izard v. Hickory City</td>
<td>2</td>
<td>did plaintiff state cause of action for w&amp;w</td>
<td>yes plaintiff-student did state a cause</td>
<td>after knowledge of impending danger teacher failed to exercise ordinary care</td>
<td>reversed</td>
<td>remanded for trial</td>
<td>P-ruling of trial court</td>
</tr>
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<td>2</td>
<td>entitled to official immunity within scope/authority</td>
<td>yes defendant was entitled and was acting within scope/authority</td>
<td>Section 8545 of the Judicial Code grants immunity to employees within scope of official duties</td>
<td>affirmed</td>
<td>opinion of trial court was correct</td>
<td>P-ruling of trial court</td>
<td></td>
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<td>3</td>
<td>does the statute granting governmental and official immunity violate PA Constitution</td>
<td>no it is constitutional and act as a bar to plaintiff claim</td>
<td>PA Supr Ct upheld governmental immunity in Carroll v. County of York; PA Supr Ct held that PA Constitution is neutral on sovereign immunity</td>
<td>affirmed</td>
<td>opinion of trial court was correct</td>
<td>P-ruling of trial court</td>
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<td>1984</td>
<td>Izard v. Hickory City</td>
<td>1</td>
<td>did instructor violate standard of care required by law</td>
<td>evidence held that instructor did not violate standard of care</td>
<td>NC case law states duty to abide by standard of care which teacher did through warnings and instruction</td>
<td>affirmed</td>
<td>case law duty of care</td>
<td>P-ruling of trial court</td>
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<td>1984</td>
<td>Vitale v. Lentine</td>
<td>1</td>
<td>was school district performing governmental function</td>
<td>Yes school district was performing governmental function</td>
<td>statutory duty to provide drivers ed and no state interest in providing it free</td>
<td>affirmed</td>
<td>opinion of trial court was correct</td>
<td>P-ruling of trial court</td>
</tr>
<tr>
<td>1984</td>
<td>Vitale v. Lentine</td>
<td>2</td>
<td>presumption of capacity apply for contributory negligence</td>
<td>evidence held that injury was result of contributory negligence</td>
<td>a 14 yr old is presumed capable absent evidence he lacked capacity, discretion, and experience of ordinary boy that age</td>
<td>affirmed</td>
<td>contributory negligence</td>
<td>P-ruling of trial court</td>
</tr>
<tr>
<td>1985</td>
<td>Belcher v. Jefferson County Bd of Education</td>
<td>1</td>
<td>whether non-tenure teacher has cause of action if school board is immune</td>
<td>AL Supr Ct held relief could be granted, not automatic immunity</td>
<td>boards are immune from suit except for where it implicates the right to be sued by entering into contracts</td>
<td>denial of summary judgment</td>
<td>legislative act</td>
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<td>1985</td>
<td>Guyton v. Roundy</td>
<td>2</td>
<td>alleging w&amp;w conduct permit teacher to be liable</td>
<td>the conduct complained of does not constitute w&amp;w misconduct</td>
<td>facts must be presented which the law would raise duty then intentional breach that resulted in injury</td>
<td>affirmed</td>
<td>opinion of trial court was correct</td>
<td>P-ruling of trial court</td>
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<td>1985</td>
<td>Rollins v. Concordia</td>
<td>1</td>
<td>strict liability for injuries sustained on merry-go-round if defective</td>
<td>trial court was correct in not applying strict liability; but wrong in</td>
<td>plaintiff provided no evidence indicating the defective nature of the merry go round nor if defect would have caused fall</td>
<td>reversed</td>
<td>Civil Code 2317</td>
<td>P-ruling of trial court</td>
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<td>Parish</td>
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<td>ruling the merry-go-round defective</td>
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<td>2</td>
<td>action against school board for inadequate supervision</td>
<td></td>
<td>yes supervision was inadequate</td>
<td>trial court was not manifestly erroneous in finding supervision inadequate provided 2 teachers were available</td>
<td>affirmed</td>
<td>duty of care</td>
<td></td>
<td>P-ruling of trial court</td>
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<td>3</td>
<td>was testimony of student enough to support contributory negligence</td>
<td></td>
<td>yes the trial court judge was not clearly wrong by finding contributory negligence and reducing claim</td>
<td>contributed negligence is a factual claim and can only be overturned on appeal when the judge is clearly wrong</td>
<td>affirmed</td>
<td>matter of law</td>
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<td>P-ruling of trial court</td>
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<td>4</td>
<td>under facts was child’s injury aggravated by lack of immediate medical attention</td>
<td></td>
<td>no the trial court was in error in finding the lack of medical care aggravated the injury</td>
<td>medical doctor testimony and distance to hospital prevent this claim</td>
<td>reversed</td>
<td>expert testimony</td>
<td></td>
<td>P-ruling of trial court</td>
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<td>1985</td>
<td>Vince v. Ringgold</td>
<td></td>
<td>subject to negligence in care of real property</td>
<td>piano is not real property; motion for summary judgment</td>
<td>affirmed</td>
<td>negligence DNA under §8541</td>
<td></td>
<td>P-ruling of trial court</td>
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<td>1986</td>
<td>Levine v. Live Oak Masonic</td>
<td>1</td>
<td>under civil code 2320 is vocational school liable for when bought from student who deliberately violated spliced cord warning</td>
<td>no clear error in trial court decision stating no liability</td>
<td>article 2320 states teachers and artisans are liable for actions of apprentices while under their superintendence</td>
<td>affirmed</td>
<td>civil code 2320</td>
<td>P-ruling of trial court</td>
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<td>1986</td>
<td>Litomisky v. St Charles High School</td>
<td>1</td>
<td>does principal have duty to investigate, provide security, and oversee game promoted and sponsored by a lessee</td>
<td>trial court correctly concluded no factual evidence existed to state cause of action against principal</td>
<td>the question of liability doesn’t involve a defect in the premises and principal owed no duty</td>
<td>affirmed</td>
<td>failure to state cause of action</td>
<td>P-ruling of trial court</td>
</tr>
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<td>1986</td>
<td>Merritt v. Bd of Ed Philadelphia</td>
<td>1</td>
<td>school district and principal willful misconduct by failure to prevent passerby from entering and committing act</td>
<td>the claim did not fall within exceptions to general legislative grant of immunity</td>
<td>prior PA court precedents as to the proper use of school facilities and no pleading of intentional acts by the principal make willful conduct inapplicable</td>
<td>affirmed</td>
<td>legislative act</td>
<td>P-ruling of trial court</td>
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<td>1987</td>
<td>Albers v. Community Consol</td>
<td>1</td>
<td>did evidence support jury finding of no w&amp;w on part of defendants</td>
<td>no evidence indicates w&amp;w on part of defendants</td>
<td>plaintiff did not meet burden to provide proof of w&amp;w</td>
<td>affirmed</td>
<td>matter of law</td>
<td>P-ruling of trial court</td>
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<tr>
<td>1987</td>
<td>Barbin v. State</td>
<td>1</td>
<td>instructor negligent in allowing use</td>
<td>yes instructor was negligent</td>
<td>the use of the table saw by 12 yr old was inherently dangerous and created unreasonable risk</td>
<td>affirmed</td>
<td>inherent danger</td>
<td>D-ruling of trial court</td>
</tr>
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<td>2</td>
<td>did trial court err in ruling 12 yr old was not contributory negligent</td>
<td>no the record supports the determination</td>
<td>a 12 yr old cannot demand his teacher that the guard be in place at all times</td>
<td>affirmed</td>
<td>age of student</td>
<td>D-ruling of trial court</td>
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<td>3</td>
<td>is the state strictly liable for operation of saw without proper safety guard</td>
<td>yes the state is liable for maintaining custody</td>
<td>testimony created that operation of the saw without the guard created an unreasonable risk</td>
<td>affirmed</td>
<td>strict liability for maintenance of property</td>
<td>D-ruling of trial court</td>
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<td>4</td>
<td>comparative negligence; is the state’s part comparable to the teacher’s negligence</td>
<td>yes comparative negligence applies with strict liability; 80% teacher and 20% state</td>
<td>state is strictly liable for not repairing the saw while the teacher knowingly approved its use in an unsafe condition</td>
<td>affirmed</td>
<td>legislative act</td>
<td>D-ruling of trial court</td>
</tr>
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<td>1987</td>
<td>Torsiello v. Oakland Unified District</td>
<td>1</td>
<td>teacher able to claim immunity while students go to and from school</td>
<td>teacher did not owe a duty of care</td>
<td>under 44807 teacher’s actions didn’t rise to specific assumption of liability</td>
<td>affirmed</td>
<td>legislative act</td>
<td>P-ruling of trial court</td>
</tr>
<tr>
<td>1988</td>
<td>Eichhorn v. Lamphere</td>
<td>1</td>
<td>does little supervision of homecoming parade constitute a non-governmental function for liability</td>
<td>grant of summary judgment was proper by trial court</td>
<td>MI school code doesn’t specifically authorize a homecoming parade but such activity is implied; Ross v. Consumers Power Company</td>
<td>affirmed</td>
<td>case law Ross v. Consumers Power Company</td>
<td>P-ruling of trial court</td>
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<td>1988</td>
<td>Hopwood v. Elmwood Community High</td>
<td>1</td>
<td>administrative act of record keeping confers immunity from claims of ordinary negligence</td>
<td>yes it is applicable</td>
<td>School code §24-24 provides immunity for principals as they discipline and control school and likewise applies to immediate inferiors</td>
<td>affirmed</td>
<td>legislative act</td>
<td>P-ruling of trial court</td>
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<tr>
<td>1988</td>
<td></td>
<td>2</td>
<td>was PE teachers action w&amp;w in injury of student as she attempted to control students</td>
<td>was not w&amp;w as a matter of law</td>
<td>teacher did not recklessly fail to discover danger; was not provided doctor notes nor did student complain</td>
<td>affirmed</td>
<td>matter of law</td>
<td>P-ruling of trial court</td>
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<td>2</td>
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<td>3</td>
<td>is determination of supervision level a discretionary or ministerial act by principal</td>
<td>discretionary act</td>
<td>Ross v. Consumers Power Company ruling provides for immunity from discretionary acts</td>
<td>affirmed</td>
<td>case law Ross v. Consumers Power Company</td>
<td>P-ruling of trial court</td>
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<td>2</td>
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<td>1</td>
<td>is HS principal entitled to absolute immunity</td>
<td>no not entitled from tort liability</td>
<td>Ross v. Consumers Power Company case provided precedent for highest officials working in judicial, legislative, or executive level; HS principal is not considered this</td>
<td>affirmed</td>
<td>case law Ross v. Consumers Power Company</td>
<td>P-ruling of trial court</td>
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<td>1988</td>
<td>Leger v. Stockton unified School Dist,</td>
<td>1</td>
<td>are school district, principal, and coach immune from liability</td>
<td>Cal Ct of App held that §28© is not self-executing and employees and district are liable under sections 820 and 815.2</td>
<td>the responsibility of teacher to students is greater than that of police to the general public due to special relationship</td>
<td>reversed</td>
<td>statute</td>
<td>P-ruling of trial court</td>
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<td>1989</td>
<td>Atkinson v. DeBraber</td>
<td>1</td>
<td>was an issue of fact such that jury should have been instructed to alternative theory of negligence in addition to gross abuse</td>
<td>no error or inadequacy in trial court charge to the jury</td>
<td>statutory law provides that a teacher may use reasonable physical force to maintain discipline</td>
<td>affirmed</td>
<td>legislative act</td>
<td>P-ruling of trial court</td>
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<td>2</td>
<td>common law for negligence abrogated by statute imposing liability for gross abuse conduct</td>
<td>simple negligence is precluded by statute and renders liability only in gross abuse</td>
<td>statute is clear on negligence and threshold falls well below</td>
<td>affirmed</td>
<td>legislative act</td>
<td>P-ruling of trial court</td>
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<td>1989</td>
<td>Bowers v. Du Page County Bd</td>
<td>1</td>
<td>alleging negligent supplying of equipment by board is actionable</td>
<td>the claim sufficiently alleges negligence by the board</td>
<td>Gerrity v. Beatty; Illinois Supr Ct held liability for negligence arising from furnishings</td>
<td>affirmed</td>
<td>case law</td>
<td>P-ruling of trial court</td>
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<td>2</td>
<td>is municipal immunity under Tort Immunity Act available to school board in the provision of PE equipment</td>
<td>yes immunity is available and count was dismissed absent facts of w&amp;w</td>
<td>Section 2-109 of TIA provides statute for immunity in discretionary acts</td>
<td>affirmed</td>
<td>legislative act</td>
<td>P-ruling of trial court</td>
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<td>1989</td>
<td>Eccleston v. Montana</td>
<td>1</td>
<td>does MCA sections 2-9-111(2) and (3) grant immunity from tort liability within course of duty</td>
<td>recent case law clearly renders immunity to school district and employees</td>
<td>Section 2-9-111 provides immunity by legislative act; Peterson v. Great Falls SD 1989</td>
<td>district granted summary judgment; district court instructed to dismiss employees</td>
<td>legislative act</td>
<td>D-ruling of trial court</td>
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<td>1989</td>
<td>Jastram v. Lake Villa School</td>
<td>1</td>
<td>was school district entitled to immunity under School code for allegations of negligence</td>
<td>school district falls outside the limited protection of the School Code</td>
<td>Gerrity v. Beatty; Illinois Supr Ct held liability for negligence arising from furnishings</td>
<td>reversed</td>
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<td>2</td>
<td>was school district entitled to immunity under School code for failing to supervise playground</td>
<td>school district is not immunized for ordinary negligence for actions of non-immunized employee</td>
<td>Griffis v. BOE provides that no such implication of the teacher-student relationship provides immunity to the district for a non-immunized employee</td>
<td>reversed</td>
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<td>3</td>
<td>was school district immune under Tort Immunity Act if it carried liability insurance</td>
<td>no it could not claim immunity</td>
<td>under provision of the Tort Immunity Act the insurance company could not assert immunity as a defense to avoid payment</td>
<td>reversed</td>
<td>legislative act</td>
<td>P-ruling of trial court</td>
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<td>1989</td>
<td>Kirschner v. Carney-Nadeau</td>
<td>1</td>
<td>is superintendent entitled to absolute immunity as highest executive in system</td>
<td>no superintendent is not entitled to absolute immunity</td>
<td>defendant superintendent was not type of public officials who could claim absolute immunity</td>
<td>affirmed</td>
<td>not applicable to position held</td>
<td>P-ruling of trial court</td>
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<td>2</td>
<td>are superintendent and principal entitled to limited governmental immunity</td>
<td>yes on ground that their actions in setting policy concerning supervision were discretionary</td>
<td>Ross v. Consumers Power Co. decision held lower level public employees are immune if acting within scope, in good faith, and performing discretionary acts</td>
<td>reversed</td>
<td>case law precedent Ross v. Consumers</td>
<td>P-ruling of trial court</td>
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<td>1989</td>
<td>Koch v. Avon</td>
<td>1</td>
<td>city board immunity from liability for student injury in PE class</td>
<td>deferring to expertise of PE teacher was discretionary act by board thus entitled to immunity</td>
<td>Revised code §2744.02(A)(1) confers immunity for political subdivision in connection with government or proprietary functions</td>
<td>affirmed</td>
<td>legislative act</td>
<td>P-ruling of trial court</td>
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<td>were teachers instructing PE class immune from liability under statute</td>
<td>yes summary judgment for discretionary acts</td>
<td>Revised code §2744.03(a) applies immunity unless actions outside scope, were malicious, or liability is imposed by a section.</td>
<td>affirmed</td>
<td>legislative act</td>
<td>P-ruling of trial court</td>
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<td>1989</td>
<td>Payne v. NC Dept of Human Resources</td>
<td>1</td>
<td>did teacher owe deaf student a greater duty of care</td>
<td>no teacher did not owe greater duty of care</td>
<td>in NC a teacher is held to same standard of care a person of ordinary prudence would exercise</td>
<td>affirmed</td>
<td>matter of law</td>
<td>P-ruling of trial court</td>
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<td>2</td>
<td>was student’s injuries result of teacher’s negligence</td>
<td>teacher wasn’t negligent for leaving student unsupervised</td>
<td>plaintiff was of sufficient experience and maturity</td>
<td>affirmed</td>
<td>matter of law</td>
<td>P-ruling of trial court</td>
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<td>1989</td>
<td>Prest v. Sparta</td>
<td>1</td>
<td>school code provision limiting liability apply when theory is involved in different function</td>
<td>no school districts are held to duty of care in a separate function</td>
<td>factual allegations fall outside school code §24-24</td>
<td>reversed</td>
<td>legislative act</td>
<td>P-ruling of trial court</td>
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<tr>
<td></td>
<td>Templar v. Decatur</td>
<td>1</td>
<td>does school district’s prior knowledge of student misconduct make it liable by w&amp;w for failure to supervise</td>
<td>no, plaintiff didn’t provide evidence that district held constructive knowledge or high probability of physical harm</td>
<td>Holsapple v. Casey Comm SD held that allegations of failure to supervise student activities are not sufficient to state cause of action for w&amp;k</td>
<td>affirmed</td>
<td>case law</td>
<td>P-ruling of trial court</td>
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<td>1990</td>
<td><em>Beasley v. Morton</em></td>
<td>1</td>
<td>did trial court err in granting summary judgment</td>
<td>AL Supr Ct held that defendants cannot be liable for negligence concerning things for which they had no control over</td>
<td>the county school board was partly responsible for fixtures and bulbs</td>
<td>affirmed</td>
<td>matter of law</td>
<td>P-ruling of trial court</td>
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<tr>
<td>1990</td>
<td><em>Gara v. Lomonaco</em></td>
<td>1</td>
<td>was teachers actions within supervisory authority entitlement to immunity</td>
<td>yes the actions were within duty</td>
<td>Section 24-24 provides in all matters teachers in discipline and conduct will be in loco parentis and immune from negligent acts</td>
<td>affirmed</td>
<td>statutory immunity</td>
<td>P-ruling of trial court</td>
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<td>2</td>
<td>allowing student to dance on mats not taped down was w&amp;w misconduct</td>
<td>no teacher allowing dance did not act with indifference or conscious disregard</td>
<td>a complaint of w&amp;w must allege deliberate intention to harm or utter indifference to well being</td>
<td>affirmed</td>
<td>matter of law</td>
<td>P-ruling of trial court</td>
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<td>3</td>
<td>can school district be liable for failing to furnish appropriate equipment</td>
<td>absent showing how wrestling mats were inappropriate for dance district cannot be held liable</td>
<td>Gerrity v. Beatty; Illinois Supr Ct held liability for negligence arising from furnishings but in this case plaintiff failed to allege how the wrestling mats were unsafe</td>
<td>affirmed</td>
<td>matter of law</td>
<td>P-ruling of trial court</td>
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<td>1990</td>
<td><em>Gasper v. Freidel</em></td>
<td>1</td>
<td>does sovereign immunity shield the board from liability</td>
<td>trial court was correct in granting summary judgment</td>
<td>Under SDCL 13-8-39 the school board has authority to direct school programs and delegate supervision which in this case presents no additional duty</td>
<td>affirmed</td>
<td>statutory immunity</td>
<td>P-ruling of trial court</td>
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<td>2</td>
<td>was superintendent acting within scope of his employment in discretionary acts</td>
<td>trial court was correct in granting summary judgment of protection by sovereign immunity</td>
<td>state’s sovereign immunity doesn’t extend to a state employee unless engaged in the performance of a discretionary function</td>
<td>affirmed</td>
<td>statutory immunity</td>
<td>P-ruling of trial court</td>
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<td>3</td>
<td>were coaches acting within scope of his employment in discretionary acts</td>
<td>trial court was correct in granting summary judgment of protection by sovereign immunity</td>
<td>no disputed fact the coaches were acting as agents of the school district and were performing a discretionary function</td>
<td>affirmed</td>
<td>statutory immunity</td>
<td>P-ruling of trial court</td>
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<td>1991</td>
<td><em>Halper v. Vayo</em></td>
<td>1</td>
<td>is coach immune from liability for injury sustained for ordinary negligence</td>
<td>Section 24-24 provides immunity under the facts alleged</td>
<td>in providing medical attention in the absence of doctors the coach is immune under §24-24 loco parentis</td>
<td>affirmed</td>
<td>statutory immunity</td>
<td>P-ruling of trial court</td>
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<td>1991</td>
<td>Oast v. Lafayette Parish School Bd</td>
<td>1</td>
<td>is one episode of violence enough to form pattern as bearing for liability to board and coach for actions of player</td>
<td>appeal court question trial court on applying educators immunity citing no issue of material fact</td>
<td>there is no material fact indicating the action of the student was not due to lack of supervision by teacher</td>
<td>affirmed</td>
<td>issue of material fact</td>
<td>P-ruling of trial court</td>
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<td>1991</td>
<td>Sapp v. Effingham</td>
<td>1</td>
<td>are injuries sustained proximate cause of negligence by assistant principal</td>
<td>no trial court was correct in granting summary judgment</td>
<td>Taylor v. Bloodworth provides evidence given doesn’t show a breach of duty</td>
<td>affirmed</td>
<td>evidence didn’t warrant need of sovereign immunity</td>
<td>P-ruling of trial court</td>
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<td>1992</td>
<td>Robinson v. Roberts</td>
<td>1</td>
<td>in a negligence claim was it error for trial court to refuse charge on inability of 14 yr old</td>
<td>trial court didn’t err in ruling by not agreeing to the ability to consent</td>
<td>question of fact for the jury rather than matter of law</td>
<td>affirmed</td>
<td>question of fact</td>
<td>P-ruling of trial court</td>
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<td>1993</td>
<td>Coyle v. Harper</td>
<td>1</td>
<td>is teacher immune from liability for injuries sustained by another student from negligent supervision</td>
<td>Al Supr Ct held teacher was performing discretionary duties and was thus immune</td>
<td>performance of a discretionary act is immune</td>
<td>affirmed</td>
<td>statutory immunity</td>
<td>P-ruling of trial court</td>
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<td>1993</td>
<td>Kroger V. Davis</td>
<td>1</td>
<td>school teachers supervising students on playground performing discretionary function and thus immune</td>
<td>Al Supr Ct held teachers were performing discretionary duties and was thus immune</td>
<td>performance of a discretionary act is immune</td>
<td>affirmed</td>
<td>statutory immunity</td>
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<td>1993</td>
<td>Laiche v. Kohen</td>
<td>1</td>
<td>elementary school football coaches owe duty to protect players against risk from playing with players of more weight</td>
<td>court held no duty to protect based on fact coaches did not act unreasonably</td>
<td>imposition of legal duty depends on case-by-case analysis</td>
<td>affirmed</td>
<td>case law</td>
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<td>1993</td>
<td>Rinehart v. W. Local Bd of Ed</td>
<td>1</td>
<td>is teacher immune from liability for injuries sustained from paddling</td>
<td>trial court did not err in granting summary judgment; plaintiff failed to show genuine issue for trial</td>
<td>Revised code 2477 provides a general rule of immunity unless actions were outside scope of his employment or were malicious, in bad faith, or w&amp;w.</td>
<td>affirmed</td>
<td>no issue of material fact</td>
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<td>Ward v. Community Unit School Dist</td>
<td>1</td>
<td>if proven do the factual allegations of the case show defendants breach of duty</td>
<td>plaintiff complaint sufficiently states a cause of action</td>
<td>Restatement of Tort 343 (1965) owner should exercise reasonable care and invitee will not discover or realize danger</td>
<td>reversed and remanded</td>
<td>statute</td>
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<td>Adams v. Caddo Parish School</td>
<td>1</td>
<td>is school board liable for negligence through its agents and teacher</td>
<td>trial court erred in finding the coach negligently provided supervision</td>
<td>educators are required only to provide supervision and discipline expected of a reasonably prudent person</td>
<td>reversed</td>
<td>matter of law</td>
<td>D-ruling of trial court</td>
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<td>Doria v. Stulting</td>
<td>2</td>
<td>should school board be held vicariously liable for actions of student</td>
<td>public policy strongly militates against assessing vicarious liability for actions of students</td>
<td>Civil Code Article 2320 provides teachers are not responsible for acts of their scholars unless it can be proven they could have prevented act and failed to do so</td>
<td>reversed</td>
<td>statute</td>
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<td>Herring v. Bossier Parish School</td>
<td>1</td>
<td>a teacher forcibly removing a student in the course of discipline entitled to immunity under TEC 21.912(b)</td>
<td>as matter of law discipline was not imposed by teacher</td>
<td>TEC provides that no teacher will be liable for any act within the scope of his employment</td>
<td>affirmed</td>
<td>no issue of material fact</td>
<td>D-ruling of trial court</td>
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<td>1</td>
<td>what is appropriate standard of care to be applied in negligence action</td>
<td>coach has a duty to those under his charge to protect from foreseeable harm</td>
<td>coach or teacher has duty to protect but not the impossible standard of constant supervision over each student involved in group activity</td>
<td>affirmed</td>
<td>material fact</td>
<td>P-ruling of trial court</td>
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<td>1994</td>
<td>Pulido v. Dennis</td>
<td>1</td>
<td>are HS teacher and principal immune under TEC §21.912 for injuries from one student to another</td>
<td>no cause of action other than negligent omissions by teacher and principal; trial court was correct in granting summary judgment</td>
<td>TEC provides that no teacher will be liable for any act within the scope of his employment</td>
<td>affirmed</td>
<td>take nothing verdict</td>
<td>P-ruling of trial court</td>
</tr>
<tr>
<td>1995</td>
<td>Hackathorn v. Preisse</td>
<td>1</td>
<td>does fact that teacher failed to comply with building codes mean he acted recklessly, wantonly, or in bad faith thus removing immunity</td>
<td>trial court did not err in granting summary judgment; no genuine issue of material fact existed</td>
<td>an employee of a political subdivision is immune from liability unless their actions are malicious, in bad faith, or w&amp;w.</td>
<td>affirmed</td>
<td>no issue of material fact</td>
<td>P-ruling of trial court</td>
</tr>
<tr>
<td>1995</td>
<td>Holbrook v. Executive Conference Center</td>
<td>1</td>
<td>due Ohio defendants have sovereign immunity as defense against tort claim</td>
<td>yes they have personal immunity the trial court erred in denying summary judgment to Executive</td>
<td>school boards and their employees have the extension of sovereign immunity in discretionary acts</td>
<td>reversed</td>
<td>statute</td>
<td>D-ruling of trial court</td>
</tr>
<tr>
<td>1995</td>
<td>L.S.B. v. Howard</td>
<td>1</td>
<td>does principal have qualified immunity while performing discretionary function</td>
<td>yes principal is entitled to qualified immunity</td>
<td>supervision is a discretionary function Coyle v. Harper</td>
<td>affirmed</td>
<td>extension of sovereign immunity</td>
<td>P-ruling of trial court</td>
</tr>
<tr>
<td>Year</td>
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<td>Issue Statement</td>
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<tr>
<td>1995</td>
<td><em>Louviere v. Mobile County BOE</em></td>
<td>1</td>
<td>can Mobile BOE be sued for tort liability</td>
<td>grant of summary judgment was proper by trial court in regards to sovereign immunity</td>
<td>Act No. 480 changed language for Mobile BOE to “may sue and contract”</td>
<td>affirmed</td>
<td>statute</td>
<td>P-ruling of trial court</td>
</tr>
<tr>
<td>1995</td>
<td><em>Teston v. Collins</em></td>
<td>1</td>
<td>are teacher and principal liable for injuries sustained by a visitor</td>
<td>no they are protected by official immunity</td>
<td>supervision of the classroom is discretionary as evidenced by Doe v. Howell</td>
<td>affirmed</td>
<td>case law</td>
<td>P-ruling of trial court</td>
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<tr>
<td>1995</td>
<td><em>Zerr v. Johnson,</em></td>
<td>1</td>
<td>statements made by principal are privileged and thus entitled to immunity under Colorado GI Act</td>
<td>teacher failed to present facts showing principal acted w&amp;w</td>
<td>the CGIA provides action cannot be taken against public employees acting within scope of employment</td>
<td>grant of summary judgment</td>
<td>burden of proof not met</td>
<td>P-ruling of trial court</td>
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<tr>
<td>1996</td>
<td><em>Bollon v. Rolla Public Schools</em></td>
<td>1</td>
<td>whether board member, superintendent and principal are entitled to official immunity against negligence claims</td>
<td>board member is, but not superintendent and principal</td>
<td>claim of official immunity not applying to superintendent and principal is bound by Jackson v. Roberts holding 1989</td>
<td>summary judgment for strict liability and superintendent principal not immune</td>
<td>case law</td>
<td>P-ruling of trial court</td>
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<tr>
<td>1996</td>
<td><em>Boyett v. Tomberlin</em></td>
<td>1</td>
<td>is teacher immune from state tort law claim while engaged in official capacity</td>
<td>Al Court of Civil appeals affirmed qualified immunity as granted by summary judgment</td>
<td>Byrd v. Sullivan the Al Supr Ct held that county boards enjoy immunity afforded the state and individuals engaging in discretionary acts have qualified immunity</td>
<td>upheld</td>
<td>case law</td>
<td>P-ruling of trial court</td>
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<td>1996</td>
<td>Doe A. v. Coffee County Bd of Ed</td>
<td>1</td>
<td>did board of education, superintendent, principal and counselor violate duty to care while student was assaulted by teacher who had changed the locks</td>
<td>court of appeals held that student failed to show violation of duty to care or that this alleged failure was proximate cause</td>
<td>McClenahan v. Cooley established a 3 prong test for determining proximate cause: 1) must be substantial factor 2) no policy for relief 3) reasonably foreseen harm</td>
<td>affirmed</td>
<td>lack of proof</td>
<td>P-ruling of trial court</td>
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<td>1996</td>
<td>Downing v. Brown</td>
<td>1</td>
<td>does teacher have qualified immunity</td>
<td>maintaining classroom discipline requires the exercise of judgment therefore it is protected by qualified immunity</td>
<td>The TEC provides that an employee acting within the scope of his employment is not personally liable in exercise of judgment</td>
<td>reversed court of appeals</td>
<td>upheld trial court ruling</td>
<td>statute</td>
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<td>1996</td>
<td>Hemak v. Houston County School Dist</td>
<td>1</td>
<td>do principal and teacher have official immunity in injury to pedestrian after concert based on discretionary acts involving maintenance</td>
<td>principal and teacher were immune because their acts were discretionary</td>
<td>public officials are immune from individual liability for discretionary acts within the scope of their employment</td>
<td>affirmed</td>
<td>statute</td>
<td>P-ruling of trial court</td>
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<tr>
<td>1996</td>
<td>Killen v. Independent School Dist</td>
<td>1</td>
<td>is school district entitled to discretionary function immunity</td>
<td>yes for allegation of negligence for failure to develop and implement a suicide plan</td>
<td>Discretionary function immunity protects a government entity from a claim based on failure to exercise or perform a discretionary function or duty</td>
<td>affirmed</td>
<td>statute</td>
<td>P-ruling of trial court</td>
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<td>2</td>
<td>is guidance counselor entitled to official immunity</td>
<td>yes on his decisions as to when to contact a parent</td>
<td>a public official is not liable for duties that call for exercise in judgment or discretion</td>
<td>affirmed</td>
<td>statute</td>
<td>P-ruling of trial court</td>
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<td>1996</td>
<td><em>Kindred v. Memphis City</em></td>
<td>1</td>
<td>did trial court err in ruling defendant coach exercised reasonable care</td>
<td>evidence supported trial court’s decision that shooting was not foreseeable</td>
<td>in order to establish proximate cause plaintiff must show harm giving rise could have been foreseeable. Cox v. State</td>
<td>affirmed</td>
<td>case law</td>
<td>P-ruling of trial court</td>
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<td>2</td>
<td>did trial court err in ruling that principal or coach were not negligent per se in failing to report initial altercation</td>
<td>defendants were not required to report incident to police under Tenn Code 49-6-4301</td>
<td>legislature insertion of the “fight” exception appears to give discretion to report based on degree of harm actually threatened</td>
<td>affirmed</td>
<td>statute</td>
<td>P-ruling of trial court</td>
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<td>1996</td>
<td><em>L.Q.A. v. Eberhart</em></td>
<td>1</td>
<td>are principal and other defendants immune from civil liability after student is expelled for possession</td>
<td>entitled to qualified immunity as acts were discretionary</td>
<td>allegations must prove acts were committed under state law and such acts deprive a constitutional right using Zeiger test</td>
<td>sum. judg. granted</td>
<td>Zeiger test</td>
<td>P-ruling of trial court</td>
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<td>1996</td>
<td>Landreneau v. Fruge</td>
<td>1</td>
<td>are school board and principal liable for acts of defendant-teacher</td>
<td>trial judge found no fault with principal or school board</td>
<td>judge noted from evidence he could not find where they failed to do something they should or should have known anything that would have prevented the relationship</td>
<td>affirmed</td>
<td>civil code provides no liability for employee acting outside scope of employment</td>
<td>P-ruling of trial court</td>
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<tr>
<td>1996</td>
<td>Palmer v. Mount Vernon Tp High School</td>
<td>1</td>
<td>does a school district have duty to warn regarding equipment that should be warn during athletic activities</td>
<td>student is not entitled to recovery; school district does not have duty to warn</td>
<td>a student’s ability to engage in athletic activities wearing appropriate safety equipment shouldn’t depend on their financial ability to obtain it</td>
<td>appeal reversed</td>
<td>matter of law</td>
<td>P-ruling of trial court</td>
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<td>1990</td>
<td>Poe v. Hamilton</td>
<td>1</td>
<td>is teacher immune under sovereign immunity</td>
<td>yes teacher is immune in education malpractice suit</td>
<td>OH statute §2744.03 provides sovereign immunity provided acts were not malicious, in bad faith, or w&amp;w</td>
<td>affirmed</td>
<td>no issue of material fact</td>
<td>P-ruling of trial court</td>
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<td>2</td>
<td>were the alleged actions of teacher the proximate cause of harm</td>
<td>plaintiff failed to show proximate cause</td>
<td>factors such as student attitude, motivation, temperament, past experience and home life have immeasurable impact on learning.</td>
<td>affirmed</td>
<td>no issue of material fact</td>
<td>P-ruling of trial court</td>
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<td>3</td>
<td>public policy preclude cause of action</td>
<td>yes for educational malpractice</td>
<td>the professional judgment of educators in determining appropriate methods of teaching should not be disturbed</td>
<td>affirmed</td>
<td>no issue of material fact</td>
<td>P-ruling of trial court</td>
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<tr>
<td>1996</td>
<td>Spacek v. Charles</td>
<td>1</td>
<td>do threatening a student and pointing a starter gun at him constitute 4th or 8th constitutional violation</td>
<td>plaintiff failed to assert constitutional claim therefore coaches are protected by qualified immunity</td>
<td>qualified immunity shields public officials against civil liability in performing discretionary acts</td>
<td>failure to assert claim</td>
<td>no issue of material fact</td>
<td>P-ruling of trial court</td>
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<td>2</td>
<td>did trial court err in denying summary judgment on state tort claims</td>
<td>no trial court didn’t err in denying summary judgment from §29.912</td>
<td>a teacher may not use physical violence against a child for failure to perform at a desired level, defendants fail to show they are entitled to qualified immunity</td>
<td>affirmed</td>
<td>TEC statute</td>
<td>P-ruling of trial court</td>
</tr>
<tr>
<td>1996</td>
<td>Stiff v. Eastern Illinois Sp Ed</td>
<td>1</td>
<td>was teacher and special ed organization entitled to parental immunity after student injury in continuing hike</td>
<td>teachers standing in loco parentis are immune from suit</td>
<td>the conduct represents parent’s discretion and decision making in supervision of their child</td>
<td>reversed and remanded</td>
<td>statute</td>
<td>P-ruling of trial court</td>
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<td>2</td>
<td>did teacher show utter indifference</td>
<td>teachers actions could not possibly constitute w&amp;w misconduct</td>
<td>Illinois statutory law defines w&amp;w conduct and the evidence shows no record of utter indifference</td>
<td>affirmed</td>
<td>statute</td>
<td>P-ruling of trial court</td>
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<td>1997</td>
<td><em>Does 1, 2, 3, 4 v. Covington County School Bd.</em>,</td>
<td>1</td>
<td>was principal immune for claims of sexual abuse after teacher sexually molested</td>
<td>denied summary judgment to the principal on quid pro hostile environmental claim for two students</td>
<td>the court held that two students established that sexual activity had taken place and put principal on notice when the parents of one of the students voiced concern</td>
<td>granted judgment to principal in state law claims for negligence</td>
<td>case law</td>
<td></td>
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<tr>
<td>1997</td>
<td><em>Grant v. Trustees of Valley View</em></td>
<td>1</td>
<td>does mother’s complaint state a cause of action for breach of duty</td>
<td>no mother’s complaint does not state claim; special duty doctrine does not apply</td>
<td>special duty doctrine was established as an exception to the common law principle for municipal failure to enforce ordinances or negligent exercise</td>
<td>affirmed</td>
<td>statute</td>
<td>P-ruling of trial court</td>
</tr>
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<td>2</td>
<td>what standard of care was owed deceased and what immunity from liability for ordinary negligence exist</td>
<td>defendants are immune under doctrine of loco parentis</td>
<td>Section 24-24 Illinois SC extends loco parentis for matters relating to the conduct of school children</td>
<td>affirmed</td>
<td>Illinois School code</td>
<td>P-ruling of trial court</td>
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<td>3</td>
<td>did defendants act w&amp;w misconduct by not notifying mother of suicidal tendencies</td>
<td>no appearance of facts on record that would entitle to relief</td>
<td>w&amp;w misconduct must rise to level of malicious, in bad faith, or intent to harm</td>
<td>affirmed</td>
<td>matter of law</td>
<td>P-ruling of trial court</td>
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<tr>
<td>1997</td>
<td><em>Johnson v. Calhoun County</em></td>
<td>1</td>
<td>is negligent failure to discipline a student which results in death of another student a discretionary act that is immune</td>
<td>Texas Supr Ct held that negligent failure to discipline is not actionable to same degree as negligent discipline</td>
<td>Texas legislature has recognized immunity except for use of excessive force in discipline of students</td>
<td>upheld</td>
<td>statute</td>
<td>P-ruling of trial court</td>
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<td>2003</td>
<td>does a special relationship exist that would allow a cause of action for civil rights under §1983 and 4th amendment claims</td>
<td>2</td>
<td>No special relationship exists between a student and public school under §1983</td>
<td>state does not typically owe a duty to protect from private violence under the due process clause</td>
<td>upheld</td>
<td>matter of law</td>
<td>P-ruling of trial court</td>
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<tr>
<td>1997</td>
<td>Purzycki v. Town of Fairfield,</td>
<td>1</td>
<td>did trial court correctly set aside the jury verdict based on qualified governmental immunity</td>
<td>appeal court found trial court correctly set aside the jury verdict</td>
<td>Evon v. Andrews extends governmental immunity stems from municipal immunity extended to employees when performing discretionary acts</td>
<td>affirmed</td>
<td>case law</td>
<td>P-ruling of trial court</td>
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<tr>
<td>1997</td>
<td>Turner v. D’Amico</td>
<td>1</td>
<td>did trial court make a manifest error of fact in finding liability against teacher taking student home after being suspended</td>
<td>by review of record the trial court was manifestly erroneous in finding liability</td>
<td>where court of appeal finds a reversible error of law it is required to render a judgment based on merits from the entire record</td>
<td>reversed</td>
<td>manifest error</td>
<td>D-ruling of trial court</td>
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<td>1998</td>
<td>Courson v. Danville School Dist</td>
<td>1</td>
<td>was a question of material fact presented</td>
<td>school district was not entitled to summary judgment because it failed to show that providing saw guard was a discretionary act</td>
<td>not every discretionary action taken by a public employee is immunized by §2-201 of the Tort Immunity Act; only acts omissions in determining policy are immunized</td>
<td>reversed and remanded</td>
<td>statute</td>
<td>P-ruling of trial court</td>
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<td>1998</td>
<td>Davison v. Santa Barbara High</td>
<td>do school officials have immunity against claim of peer-to-peer racial discrimination</td>
<td>court held that first 2 claims were not immune but claims 3, 4, 5 were will within the scope</td>
<td>first allegation stems from Title IX and Title VI in the right to be free from discrimination; the remaining claims are bound by immunity in regards to discretionary acts</td>
<td>denied motion to dismiss 1,2 and granted dismissal of 3,4,5</td>
<td>case law</td>
<td>D-ruling of trial court</td>
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<tr>
<td>1998</td>
<td>Hinson v. Holt</td>
<td>was evidence sufficient for trial court to hold that teacher acted with legal malice</td>
<td>trial court judgment in favor of student was not erroneous</td>
<td>Al Supr Ct recognizes qualified immunity in the act of disciplining students absent showing of legal Malice as indicated by Suits v. Glover</td>
<td>affirmed</td>
<td>case law</td>
<td>D-ruling of trial court</td>
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<tr>
<td>1998</td>
<td>Mullis v. Sechrest</td>
<td>for determining immunity is it proper for court to determine if suit is against official capacity, individual, or both?</td>
<td>yes it is appropriate and teacher was sued only in official capacity and is thus immune</td>
<td>crucial question in determining whether sued in official or individual capacity is type of relief sought</td>
<td>court of appeals-- reversed trial court- upheld</td>
<td>statute</td>
<td>D-ruling of trial court</td>
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<tr>
<td>1999</td>
<td>Carroll Ex. Rel. Slaught v. Hammett</td>
<td>is principal entitled to discretionary function immunity</td>
<td>principal was performing a discretionary act and thus immune</td>
<td>it well established that student discipline is a discretionary function</td>
<td>affirmed</td>
<td>matter of law</td>
<td>P-ruling of trial court</td>
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<td>1999</td>
<td>Doe v. Park Center High School</td>
<td>1</td>
<td>was decision on investigating allegation from anonymous tip of sexual act with student a policy decision</td>
<td>yes, the school board is entitled to discretionary immunity</td>
<td>Municipal Tort Liability Act imposes liability but provides immunity in discretionary acts</td>
<td>affirmed</td>
<td>statute</td>
<td>P-ruling of trial court</td>
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<tr>
<td>1999</td>
<td>Jackson v. Roberts</td>
<td>1</td>
<td>are teacher and principal immune under doctrine of official immunity</td>
<td>no, the court held they are not immune by official immunity</td>
<td>no MO cases deciding whether school teachers or principals are public officers; however substantial line denying status exist from other jurisdictions</td>
<td>reversed and remanded</td>
<td>case law</td>
<td>P-ruling of trial court</td>
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</tbody>
</table>

1 is decision on investigating allegation from anonymous tip of sexual act with student a policy decision

2 is assistant principal entitled to discretionary function immunity because under Al Code 16-1-24.1(b) he was required to notify law enforcement

3 is assistant principal entitled to discretionary function immunity under the facts in case when alleged he acted in bad faith and beyond scope

Assistant principal was performing a discretionary function in determining whether aggressor had violated board policy

Ministerial acts are those involving less personal decision as opposed to discretionary which involve a higher degree of judgment

No evidence supports claim

In handling the situation assistant principal was acting within his authority

Affirmed statute

Affirmed issue of material fact

Affirmed statute

Reversed and remanded case law
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<th>Year</th>
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<tr>
<td>1999</td>
<td>L.W. v.</td>
<td>1</td>
<td>do allegations contained in complaint involve discretionary or ministerial conduct</td>
<td>allegations in fact involve discretionary acts</td>
<td>because providing supervision, monitoring, and a safe environment are discretionary</td>
<td>reversed and remanded</td>
<td>issue of material fact</td>
<td>P-ruling of trial court</td>
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<td>McComb Separate School Municipal District</td>
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<td>1999</td>
<td>Prejean v. East Baton Rouge Parish School Board</td>
<td>2</td>
<td>does sovereign immunity act as an absolute bar to claim of ordinary negligence</td>
<td>sovereign immunity doesn’t apply as bar to allegations</td>
<td>MS code 11-46-9 requires a minimum standard of care in order to raise the statutory shield</td>
<td>reversed and remanded</td>
<td>statute</td>
<td>P-ruling of trial court</td>
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<td>1999</td>
<td>Schmidt v. Breeden</td>
<td>1</td>
<td>are sovereign immunity protections waived when a governmental entity purchases liability insurance</td>
<td>purchase of insurance doesn’t affect potential defenses under statutory law</td>
<td>sovereign would be unlikely to buy insurance if it waived all defenses under MTCA</td>
<td>reversed and remanded</td>
<td>court view</td>
<td>P-ruling of trial court</td>
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<td>1999</td>
<td>Prejean v. East Baton Rouge Parish School Board</td>
<td>3</td>
<td>did coach breach his duty of care by participating in scrimmage</td>
<td>no the duty owed was not breached by coach’s actions</td>
<td>record failed to establish coach’s attempt to recover ball presented any greater risk than generally involved</td>
<td>reversed</td>
<td>issue of material fact</td>
<td>P-ruling of trial court</td>
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<td>Schmidt v. Breeden</td>
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<td>2</td>
<td>are employees sued in their individual capacity public officials or public employees in order to determine immunity</td>
<td>after school program staff are appropriately public employees and thus may be liable for negligent acts in performance of duties</td>
<td>school teachers are employees not an officer and therefore not entitled to governmental immunity as their duties are purely ministerial</td>
<td>affirmed</td>
<td>statute</td>
<td>P-ruling of trial court</td>
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<td>1999</td>
<td>Williams v. Chatman</td>
<td>1</td>
<td>for statutory immunity provided by §22.051 were employees acting within scope of their duties</td>
<td>summary judgment evidence is established, they were within scope</td>
<td>the affidavit of the superintendent specifically addresses the expectation to attend additional activities and pay is irrelevant</td>
<td>affirmed</td>
<td>issue of material fact</td>
<td>P-ruling of trial court</td>
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<td>2</td>
<td>for statutory immunity provided by §22.051 were employees acting in exercise of judgment</td>
<td>yes duty to supervise involves exercise of judgment</td>
<td>Downing v. Brown by TX Supr Ct held that duty to supervise was discretionary</td>
<td>affirmed</td>
<td>case law</td>
<td>P-ruling of trial court</td>
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<td>3</td>
<td>does immunity in §22.051 apply to claims of gross negligence</td>
<td>yes it does apply</td>
<td>words included in §22.051 imply immunity is provided against claims of gross negligence</td>
<td>affirmed</td>
<td>statute</td>
<td>P-ruling of trial court</td>
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<td>2000</td>
<td>Addis v. Howell</td>
<td>1</td>
<td>do statutes that provide immunity violate open courts provision of state constitution</td>
<td>first assignment of error is overruled</td>
<td>the OH Supr Ct rejected a challenge to R.C. 2744 on basis of open courts provision</td>
<td>reversed</td>
<td>case law</td>
<td>P-ruling of trial court</td>
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<td>2000</td>
<td>Chesshir v. Sharp</td>
<td>1</td>
<td>did defendant teacher conduct fall within scope of employment</td>
<td>as a matter of law the teacher’s actions were within scope</td>
<td>affirmed</td>
<td>statute</td>
<td>P-ruling of trial court</td>
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<tr>
<td>2000</td>
<td>King v. McKillop</td>
<td>1</td>
<td>does damage limitations in CGIA apply even if negligent conduct is found to be w&amp;w</td>
<td>yes, §24-10-118 dictates that limitations apply</td>
<td>the plain language of §24-10-118(b) CRS does not exclude w&amp;w conduct from damages limitations</td>
<td>statute</td>
<td></td>
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<td>3</td>
<td>was board’s conduct in form of its employees an act of discretion</td>
<td></td>
<td>board is not immune per §R.C. 2744.03(A)(5) for negligence found by trial court</td>
<td>trial court granted summary for plaintiffs on breach of duty of care by board which doesn’t fall under discretion, the students were to fend for themselves absent a plan</td>
<td>reversed and remanded</td>
<td>statute</td>
<td>P-ruling of trial court</td>
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<td>2</td>
<td>was act performed by teacher discretionary or ministerial</td>
<td></td>
<td>it is inherently discretionary and that being there was no error as matter of law</td>
<td>Downing v. Brown by TX Supr Ct held that duty to supervise was discretionary</td>
<td>affirmed</td>
<td>case law</td>
<td>P-ruling of trial court</td>
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<td>2</td>
<td>if teacher is found to be w&amp;w, was he acting outside his scope of employment</td>
<td>allegations against teacher relate directly to his position as a public teacher</td>
<td>The CGIA contemplates that a teacher may be w&amp;w and retain course and scope of employment</td>
<td>grant of summary judgment</td>
<td>statute</td>
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<tr>
<td>2001</td>
<td>Butler v. McNeal</td>
<td>1</td>
<td>was trial court correct in granting summary judgment on basis of official immunity</td>
<td>trial court was correct</td>
<td>public officials are immune from individual liability for discretionary acts within the scope of their employment</td>
<td>affirmed</td>
<td>statute</td>
<td>P-ruling of trial court</td>
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<tr>
<td>2001</td>
<td>DiSalvo v. Lower Merion High School District</td>
<td>1</td>
<td>does defendant assistant coach enjoy qualified immunity for 1983 claims</td>
<td>no qualified immunity does not exist</td>
<td>since allegation clearly states violation of substantive due process to bodily integrity and a reasonable official wouldn’t consider conduct proper</td>
<td>affirmed</td>
<td>matter of law</td>
<td>D-ruling of trial court</td>
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<td>2</td>
<td>does defendant assistant coach enjoy qualified immunity for state tort claims</td>
<td>no qualified immunity does not exist</td>
<td>the defendant coach’s alleged conduct exceeds all bounds of decency, give rise to inference that actions were intentional, reckless, and with malice therefore removing immunity</td>
<td>affirmed</td>
<td>matter of law</td>
<td>D-ruling of trial court</td>
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<td>2001</td>
<td>Fear v. Independent School District 911</td>
<td>1</td>
<td>did trial court err in denying summary judgment on state tort claims</td>
<td>there was insufficient evidence to support assertion that placement of snow was planning level decision</td>
<td>MN Tort claims act a municipality can be held liable with exceptions; the facts presented do not support statutory immunity being applied by discretionary decision making</td>
<td>affirmed</td>
<td>matter of law</td>
<td>D-ruling of trial court</td>
</tr>
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<td>2001</td>
<td>Fear v. Independent School District 911</td>
<td>2</td>
<td>did trial court err in denying summary judgment on hiring, supervision, and training decisions</td>
<td>school district is protected by statutory immunity</td>
<td>principal’s affidavit supports the hiring, supervision, and training of employees as a policy-level decision</td>
<td>reversed</td>
<td>statute</td>
<td>D-ruling of trial court</td>
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<td>3</td>
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<td>does school district enjoy immunity for state tort law claims</td>
<td>yes school district and high school have sovereign immunity</td>
<td>PA law provides no local agency will be liable for the acts of an employee with few exceptions, plaintiff offers no case law to the contrary</td>
<td>affirmed</td>
<td>statute</td>
<td>D-ruling of trial court</td>
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<td>4</td>
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<td>are individual school district employees immune in their official and individual capacities</td>
<td>none are entitled to immunity and are subject to suit on all claims</td>
<td>plaintiff alleged facts give rise to reasonable inference that defendants were on notice of harassment and should have known</td>
<td>affirmed</td>
<td>matter of law</td>
<td>D-ruling of trial court</td>
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<td>2002</td>
<td><em>Casterson v. Superior Court</em></td>
<td>1</td>
<td>is school district protected by the field trip immunity of §35330</td>
<td>statutory interpretation of §35330 includes school district employees within scope of field trip immunity</td>
<td>the ambiguity of §35330 omits employees but this would create vicarious liability of the district which would obligate the district to pay any judgment against employee</td>
<td>writ of mandate sustaining the demurrer</td>
<td>statute</td>
<td>D-ruling of trial court</td>
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<tr>
<td>2002</td>
<td><em>Ex Parte Turner</em></td>
<td>1</td>
<td>whether assistant principal is protected against state tort claim by state-agent immunity</td>
<td>assistant principal was performing a discretionary function in discharging his duties</td>
<td>Ex Parte Cranman; state agents are afforded immunity from civil liability when conduct is in exercise of judgment</td>
<td>trial court directed to enter summary judgment</td>
<td>case law</td>
<td>D-ruling of trial court</td>
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<td>2</td>
<td>should trial court enter summary judgment in §1983 claim against assistant principal on qualified immunity</td>
<td>trial court erred in denying summary judgment</td>
<td>school officials are entitled to qualified immunity from 1983 claims for good faith non-malicious actions taken to fulfill duty</td>
<td>trial court directed to enter summary judgment</td>
<td>statute</td>
<td>D-ruling of trial court</td>
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<td>2002</td>
<td><em>Gamble v. Ware County Board of Education</em></td>
<td>1</td>
<td>is defendant district vicarious liable for actions of employees</td>
<td>board enjoys sovereign immunity barring the claim</td>
<td>county board of education falls within 1991 constitutional amendment extending sovereign immunity</td>
<td>refusal to file claim affirmed</td>
<td>statute</td>
<td>P-ruling of trial court</td>
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<td>2</td>
<td>superintendent, assistant principal, and transportation director immune from state tort claims by official immunity</td>
<td>based on official immunity doctrine the actions of the defendants revolve around discipline and they are immune</td>
<td>doctrine of official immunity protects public agents from personal liability for discretionary acts within scope of employment</td>
<td>refusal to file claim affirmed</td>
<td>statute</td>
<td>P-ruling of trial court</td>
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<td>3</td>
<td>are bus drivers and monitor immune from state tort claims by official immunity</td>
<td>tort allegations against drivers and monitor state claim that plaintiff may be able to recover from</td>
<td>given the specific allegations if proven the claim of conspiracy could be intentional and arguably malicious conduct</td>
<td>reversed</td>
<td>issue of material fact</td>
<td>P-ruling of trial court</td>
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<td>2002</td>
<td><em>Hackett v. Fulton County School District</em></td>
<td>1</td>
<td>whether school district is entitled to sovereign and official immunity on plaintiff’s state law tort claims</td>
<td>summary judgment is granted all parties and principal is entitled to defense of sovereign immunity</td>
<td>doctrine of sovereign immunity is found in Article I, §II, Para IX of Georgia Constitution of 1983. The GTCA provides for limited waiver of immunity, but excludes school districts though.</td>
<td>grant of summary judgment</td>
<td>statute</td>
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<td>2000</td>
<td>O’Hayre v. Board of Education Jefferson School District</td>
<td>1</td>
<td>must claim for assault and battery be dismissed because its barred by Colorado Governmental Immunity Act</td>
<td>stated claim is sufficient to overcome the CGIA</td>
<td>the allegations sufficiently express w&amp;l w in the slamming of a student into a locker without regard to consequences</td>
<td>denied motion to dismiss</td>
<td>case law</td>
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<td>2</td>
<td>must claim for abuse of process be dismissed because of CGIA</td>
<td>allegations fail to withstand CGIA</td>
<td>plaintiff fails to show w&amp;l in this allegation</td>
<td>grant motion to dismiss</td>
<td>statute</td>
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<td>3</td>
<td>must claim for intentional interference of process be dismissed because of CGIA</td>
<td>allegations fail to withstand CGIA</td>
<td>plaintiff fails to show w&amp;l in this allegation</td>
<td>grant motion to dismiss</td>
<td>statute</td>
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<td>4</td>
<td>must claim for civil conspiracy be dismissed because its barred by CGIA</td>
<td>allegations fail to withstand CGIA</td>
<td>the school board meets all requirements for immunity and no enumerated exceptions apply</td>
<td>grant motion to dismiss</td>
<td>statute</td>
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<tbody>
<tr>
<td>2001</td>
<td>Doe v. S &amp; S Consolidated I.S.D.</td>
<td>1</td>
<td>is principal entitled to qualified immunity on §1983 claim for alleged violation of 4th amendment</td>
<td>principal has qualified immunity and plaintiff has not alleged a clearly established constitutional right</td>
<td>government persons are shielded from liability in civil damages when performing discretionary acts</td>
<td>dismissed</td>
<td>statute</td>
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<td>2</td>
<td>is principal entitled to qualified immunity on §1983 claim for alleged violation of substantive due process 4th amendment</td>
<td>principal has qualified immunity and plaintiff has not alleged a clearly established constitutional right</td>
<td>substantive due process rights do not provide student, a known emotionally disturbed child right to be free from restraints to control her outburst</td>
<td>dismissed</td>
<td>statute</td>
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<td>3</td>
<td>whether fact issue exist as to principals wrapping of student to calm her down exhibits negligence to abrogate immunity</td>
<td>not a real fact issue</td>
<td>under TEC defendant is within scope in disciplining a child in effort to maintain control of school</td>
<td>dismissed</td>
<td>issue of material fact</td>
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<td>4</td>
<td>is school district entitled to governmental immunity</td>
<td>school district was entitled to governmental immunity</td>
<td>under doctrine of sovereign immunity</td>
<td>dismissed</td>
<td>statute</td>
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<td>2001</td>
<td>Ex Parte Nall</td>
<td>1</td>
<td>are coach’s actions exercise in judgment thus entitling state-agent immunity</td>
<td>yes, the coaches are entitled to state-agent immunity because they were exercising judgment</td>
<td>Ex Parte Cranman; state agents are afforded immunity from civil liability when conduct is in exercise of judgment</td>
<td>petition granted trial court directed to enter summary judgment</td>
<td>case law</td>
<td>D-ruling of trial court</td>
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<td>2002</td>
<td>Ex Parte Spivey</td>
<td>1</td>
<td>are teacher and director entitled to state-agent immunity when decisions made were argued to be educational</td>
<td>yes, within supervision of teacher and teacher within decision made in educating are entitled to state-agent immunity</td>
<td>statute granting state-agent immunity for acts committed in the exercise of judgment of duties imposed by the state</td>
<td>vacated</td>
<td>statute</td>
<td>D-ruling of trial court</td>
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<td>2</td>
<td>failure to follow passages, warning labels, and manuals imposed by statutes, rules and regulations abrogate claim for immunity</td>
<td>these items are not the type of detailed rules that would remove state-agent immunity</td>
<td>the action was not wise in his decision concerning the removal of the guard but does not remove immunity and the court will not second-guess his decision</td>
<td>vacated</td>
<td>statute</td>
<td>D-ruling of trial court</td>
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<td>3</td>
<td>teacher is not entitled to state-agent immunity because he acted willfully</td>
<td>plaintiff have not satisfied burden to establish teacher acted willfully</td>
<td>burden is on plaintiff to establish willful behavior and if so state-agent would lose immunity</td>
<td>vacated</td>
<td>issue of material fact</td>
<td>D-ruling of trial court</td>
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<td>2003</td>
<td><em>M.W. v. Madison County BOE</em></td>
<td>1</td>
<td>does municipal immunity shield school board and individual district defendants</td>
<td>yes they are all entitled to immunity absent issue of material fact</td>
<td>allegations based on respondent superior are insufficient as a matter of law under §1983</td>
<td>grant of summary judgment</td>
<td>statute</td>
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<td>2</td>
<td>can superintendent and principal raise qualified immunity</td>
<td>yes based on the objective reasonableness of their actions</td>
<td>qualified immunity shields public officials against civil liability in performing discretionary acts that doesn’t clearly violate constitutional rights</td>
<td>grant of summary judgment</td>
<td>statute</td>
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<td>3</td>
<td>does principal enjoy qualified immunity against state law tort claims</td>
<td>yes principal is entitled to qualified immunity</td>
<td>the inherent actions of the principal were discretionary in nature as defined by the KY Supr Ct</td>
<td>grant of summary judgment</td>
<td>statute</td>
<td></td>
</tr>
<tr>
<td>2003</td>
<td><em>Kobza v. Kutac</em></td>
<td>1</td>
<td>was teacher act outside scope of employment for purpose of applying immunity</td>
<td>defendant teacher was acting within scope of employment</td>
<td>Section 22.051(a) of TEC provides that school personnel are not liable for acts within scope of employment</td>
<td>reversed</td>
<td>statute</td>
<td>D-ruling of trial court</td>
</tr>
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<td>2</td>
<td>was teacher act ministerial rather than discretionary</td>
<td>defendant teacher was involved in discretionary act</td>
<td>if an action involves personal deliberation, decision and judgment it is discretionary</td>
<td>reversed</td>
<td>matter of law</td>
<td>D-ruling of trial court</td>
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<td>2003</td>
<td>Giambrone v. Douglas</td>
<td>1</td>
<td>is coach entitled to state-agent immunity if he failed to attend required meeting, violated competition rules, and engaged in inequitable competition</td>
<td>defendant coach is not entitled to state-agent immunity</td>
<td>state-agent is immune within the discharge of duties imposed by statute, rule or regulation; state-agent acts beyond authority when they fail to discharge pursuant to rule or regulation</td>
<td>reversed</td>
<td>matter of law</td>
<td>P-ruling of trial court</td>
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<td></td>
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<td>2</td>
<td>are principal and athletic director entitled to state-agent immunity</td>
<td>yes their actions involved the exercise of judgment</td>
<td>Ex Parte Cranman; state agents are afforded immunity from civil liability when conduct is in exercise of judgment</td>
<td>affirmed</td>
<td>case law</td>
<td>P-ruling of trial court</td>
</tr>
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<td>3</td>
<td>is athletic director immunity abrogated by failing to send coach to mandatory wrestling clinic</td>
<td>athletic director is entitled to state-agent immunity</td>
<td>the athletic director was not required to follow AHSAA mandates and used judgment as to extent new coaches needed training</td>
<td>affirmed</td>
<td>matter of law</td>
<td>P-ruling of trial court</td>
</tr>
<tr>
<td>2003</td>
<td>Aliffi v. Liberty County School District</td>
<td>1</td>
<td>did trial court properly grant summary judgment to teacher in her individual capacity</td>
<td>yes on the basis of official immunity</td>
<td>doctrine of official immunity protects public agents from personal liability for discretionary acts within scope of employment</td>
<td>affirmed</td>
<td>statute</td>
<td>P-ruling of trial court</td>
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<td>2004</td>
<td>Frazier v. Badger</td>
<td>1</td>
<td>whether defendant is immune from tort action because he was acting within scope of employment</td>
<td>evidence does not support defense of governmental immunity</td>
<td>SC Code Annotated 15-78-70 specifically provides government employees may be liable in tort actions; sexual harassment by prior cases is not within scope of employment</td>
<td>affirmed</td>
<td>case law</td>
<td>D-ruling of trial court</td>
</tr>
<tr>
<td>2003</td>
<td>Bushong v. Williamson</td>
<td>1</td>
<td>did teacher establish he was acting within scope of employment for purpose of immunity</td>
<td>summary judgment in favor was correct due to no issue of material fact</td>
<td>acts committed within scope of employment are immune from suit</td>
<td>affirmed</td>
<td>statute</td>
<td>P-ruling of trial court</td>
</tr>
<tr>
<td>2004</td>
<td>Cooper v. Paulding County School District</td>
<td>1</td>
<td>did trial court err in granting summary judgment based on official immunity</td>
<td>situation is where principal exercised his discretion in the maintenance and is immune</td>
<td>as a county employee, official immunity applies when engaging in discretionary acts</td>
<td>affirmed</td>
<td>statute</td>
<td>P-ruling of trial court</td>
</tr>
<tr>
<td>2004</td>
<td>Anderson v. Anoka Hennepin ISD</td>
<td>1</td>
<td>teacher entitled to common law official immunity</td>
<td>teacher doesn’t forfeit immunity in a ministerial act if that act was required by a protocol established by discretionary judgment</td>
<td>the record establishes the decision to instruct to make cuts with guard disengaged was dictated by a discretionary protocol</td>
<td>court of appeals-- reversed and trial court reversed</td>
<td>statute</td>
<td>D-ruling of trial court</td>
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<td>2</td>
<td>was instruction w&amp;w</td>
<td>defendants instruction wasn’t w&amp;w</td>
<td>in this context, the higher standard of w&amp;w applies by requiring defendant to have reason to know conduct is prohibited</td>
<td>court of appeals--reversed and trial court reversed</td>
<td>matter of law</td>
<td>D-ruling of trial court</td>
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<td>3</td>
<td>is school district entitled to vicarious official immunity</td>
<td>yes the policy considerations support vicarious official immunity</td>
<td>generally if an employee is found to be immune the agency will be vicariously immune</td>
<td>court of appeals--reversed and trial court reversed</td>
<td>statute</td>
<td>D-ruling of trial court</td>
</tr>
<tr>
<td>2005</td>
<td>Doe v. D’Agostino</td>
<td>1</td>
<td>are defendants entitled to immunity</td>
<td>yes on basis by Massachusetts Tort Claims Act</td>
<td>MTCA provides immunity for torts when employees are acting within scope of employment</td>
<td>grant of summary judgment</td>
<td>statute</td>
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<td>2</td>
<td>school committee is liable for actions of teacher, aide, principal and the members</td>
<td>claims are barred by §10(j)</td>
<td>MTCA §10(j) provides public employers cannot be held liable for third party acts</td>
<td>grant of summary judgment</td>
<td>statute</td>
<td></td>
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<tr>
<td>2005</td>
<td>Lamb v. Holmes</td>
<td>1</td>
<td>are teachers entitled to qualified immunity</td>
<td>yes they were in 1983 claims in their individual capacities</td>
<td>Officials sued for monetary relief under §1983 may assert absolute or official immunity</td>
<td>court of appeals--reversed trial court--upheld</td>
<td>statute</td>
<td>D-ruling of trial court</td>
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<td>2005</td>
<td>Tun v. Whitticker</td>
<td>1</td>
<td>did principal and hearing officer enjoy qualified immunity for substantive due process claims</td>
<td>yes defendant was entitled and did not violate the due process clause</td>
<td>qualified immunity protects public officials and employees provided their acts were discretionary and did not violate a constitutional right</td>
<td>reversed</td>
<td>matter of law</td>
<td>D-ruling of trial court</td>
</tr>
<tr>
<td>2006</td>
<td>Harden v. Clarke County BOE</td>
<td>1</td>
<td>did trial court correctly grant summary judgment</td>
<td>yes the trial court was correct</td>
<td>OCGA provides all contracts entered into by county shall be in writing and entered on minutes. Quantum merit is not available</td>
<td>affirmed</td>
<td>statute</td>
<td>P-ruling of trial court</td>
</tr>
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<td>2</td>
<td>are claims for quantum merit prohibited against principal and superintendent in their official capacity</td>
<td>yes they are prohibited</td>
<td>claims are barred by statute since they would in effect be against the county</td>
<td>affirmed</td>
<td>statute</td>
<td>P-ruling of trial court</td>
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<td>3</td>
<td>are principal and superintendent immune from suit in their individual capacities</td>
<td>they are precluded by official immunity</td>
<td>GA case law prohibits liability for discretionary acts absent w&amp;w and within scope of authority</td>
<td>affirmed</td>
<td>case law</td>
<td>P-ruling of trial court</td>
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<td>2005</td>
<td>Pigford v. Jackson Public School District</td>
<td>did trial court apply correct standard in requiring plaintiff to show w&amp;w</td>
<td>no the judge did not err in the standard</td>
<td>Miss. Code Ann. §37-11-57(2) that in maintenance of discipline and control over a student official are not liable</td>
<td>affirmed</td>
<td>statute</td>
<td>P-ruling of trial court</td>
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<td>2005</td>
<td>Walton Ex. Rel. R.W. v. Montgomery County BOE</td>
<td>defendants have claimed state-agent immunity in relation to discretionary acts</td>
<td>under facts of case the actions of the defendants due not fall under any exceptions to state-agent immunity</td>
<td>Al Supr Ct has established a burden-shifting process when a party raises the defense of discretionary function</td>
<td>grant of summary judgment</td>
<td>matter of law</td>
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<tr>
<td>2005</td>
<td>Gilliam v. USD #244 School District</td>
<td>is defendant teacher entitled to qualified immunity on §1983 claims</td>
<td>yes and all claims dismissed on that basis</td>
<td>the courts must undertake a 2 part analysis; 1) was a constitutional right violated 2) was it clearly established at time of conduct</td>
<td>grant of summary judgment</td>
<td>matter of law</td>
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<td>are principal and superintendent entitled to qualified immunity</td>
<td>yes under §1983 they are entitled</td>
<td>plaintiff has not set forth a substantive due process violation with respect to principal and superintendent</td>
<td>grant of summary judgment</td>
<td>matter of law</td>
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<td>2006</td>
<td>McQueen v. Beecher Community Schools</td>
<td>1</td>
<td>is principal liable under §1983 supervisory liability theory</td>
<td>no principal is not liable</td>
<td>Respondent Superior is not a proper basis for liability under §1983.</td>
<td>affirmed</td>
<td>matter of law</td>
<td>P-ruling of trial court</td>
</tr>
<tr>
<td>2006</td>
<td>Sanford v. Stiles</td>
<td>1</td>
<td>is counselor entitled to immunity under PA Political Subdivision Tort Claims Act</td>
<td>yes counselor is entitled</td>
<td>The Act provides broad tort immunity with 8 exceptions; none of which apply to this case.</td>
<td>affirmed</td>
<td>statute</td>
<td>P-ruling of trial court</td>
</tr>
<tr>
<td>2007</td>
<td>Nguon v. Wolf</td>
<td>1</td>
<td>was principal entitled to discretionary immunity under state law</td>
<td>yes he is entitled to immunity</td>
<td>Section 48911 imposes duty to notify parents, but discretion as to information provided is the principal’s duty.</td>
<td>grant of summary judgment</td>
<td>statute</td>
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<tr>
<td>2007</td>
<td>Murphy v. Bajjani</td>
<td>1</td>
<td>whether superintendent and board members were entitled to official or qualified immunity</td>
<td>yes defendants were entitled since statute mandating a school safety plan is a discretionary act</td>
<td>the statutory mandate calls for the plan’s creator to exercise a discretionary duty</td>
<td>reversed</td>
<td>matter of law</td>
<td>P-ruling of trial court</td>
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<td>2007</td>
<td>Ex. Parte Trottman</td>
<td>1</td>
<td>are principal and aide entitled to state-agent immunity</td>
<td>yes they are entitled</td>
<td>Al law provides state-agent immunity for individuals exercising judgment in discharge of duties imposed by statute, rule or regulation</td>
<td>writ of mandamus issued</td>
<td>statute</td>
<td>P-ruling of trial court</td>
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<td>2</td>
<td>did principal and aide act w&amp;w or beyond their authority</td>
<td>no, not established genuine issue of material fact</td>
<td>plaintiff did not establish that genuine issue of material fact exist as to whether principal exceeded authority</td>
<td>writ of mandamus issued</td>
<td>issue of material fact</td>
<td>P-ruling of trial court</td>
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<td>3</td>
<td>does plaintiff’s allegations contain sufficient malice to question official immunity</td>
<td>plaintiff’s allegations due not suggest actual malice enough to overcome immunity</td>
<td>doctrine of official immunity protects public agents from personal liability for discretionary acts within scope of employment</td>
<td>reversed</td>
<td>issue of material fact</td>
<td>P-ruling of trial court</td>
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- **2007 Ex. Parte Trottman**
- **2** whether public employees owe a ministerial duty to provide medical care
  - there is no imposed duty to provide medical care
  - No state statute exist that imposed duty to provide medical care nor does the court suggest public schools rise to constitutional duty to protect
  - reversed matter of law P-ruling of trial court
- **2007 Ex. Parte Trottman**
- **3** does plaintiff’s allegations contain sufficient malice to question official immunity
  - plaintiff’s allegations due not suggest actual malice enough to overcome immunity
  - reversed
  - P-ruling of trial court
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<td></td>
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<td>3</td>
<td>defendant principal is entitled to state-agent immunity for failing to formulate and enforce proper checkout in negligence supervising personnel</td>
<td>yes entitled to state-agent immunity for these claims</td>
<td>AI law provides state-agent immunity for individuals exercising judgment in discharge of duties imposed by statute, rule or regulation</td>
<td>writ of mandamus issued</td>
<td>statute</td>
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<tr>
<td>2007</td>
<td>Peterson v.</td>
<td>1</td>
<td>did teacher act with actual malice or intent to cause injury</td>
<td>teacher is entitled to official immunity under GA law</td>
<td>GA case law prohibits liability for discretionary acts absent w&amp;w and within scope of authority</td>
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