NO. 131420

IN THE

Supreme Court of Illinois

KEVIN HAASE and RILEY HAASE, **Plaintiffs/Appellees,** **v.** **KANKAKEE SCHOOL DISTRICT 111, and DARREN WILBUR DAYHOFF,** **Defendants/Appellants.**	**On Petition for Leave to Appeal From the Appellate Court of Illinois, Third Judicial District, Appeal No. 3-23-369** **There Heard on Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County Illinois, Case No. 2018-L-00012 The Honorable Lindsay Parkhurst, Judge Presiding**

BRIEF OF DEFENDANTS/APPELLANTS

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E-FILED
4/30/2025 2:22 PM
CYNTHIA A. GRANT
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POINTS AND AUTHORITIES

NATURE OF THE CASE

This case addresses the question of what constitutes willful and wanton conduct when a student with a history of disciplinary referrals shoulder checks another student, with whom he had no prior conflicts or substantive interaction, during a soccer game in PE class. Under the Appellate Court's ruling, the mere existence of the student's disciplinary history, even though the PE teacher had no knowledge of it and had experienced no prior issues with the student either on the day in question or during the seven months he had been in class, is sufficient to expose the District and the teacher to liability for willful and wanton supervision for failing to prevent the injury. Moreover, under the Appellate Court's ruling, the District is exposed to liability for willful and wanton conduct based on its administrators' conscious decision not to disseminate information about a student's prior disciplinary referrals as part of the implemented remedial measures. Both findings contradict longstanding Illinois Supreme Court and appellate court precedent under similar fact patterns and ignore precedent granting absolute immunity to the District under §2-201 of the Illinois Tort Immunity Act. 745 ILCS 10/2-201. In contradicting existing precedent, the Appellate Court's opinion fundamentally alters the duties and protections afforded to public entities, particularly teachers and schools.

ISSUES PRESENTED FOR REVIEW

1) Is a physical education teacher's intermittent supervision of students playing soccer during PE class for approximately nine minutes – due to his use of a work

computer or phone - willful and wanton conduct, despite the absence of any knowledge that such supervision would result in a high probability of serious harm to the plaintiff?

2) Is the decision not to disseminate a student's prior disciplinary history to all teachers willful and wanton conduct when no policy requires such disclosure and the District's administrators took other remedial action to address the student's behavior?

3) Is a school district entitled to immunity under §§2-201 and 2-109 of the Tort Immunity Act (745 ILCS 10/2-201; 2-109) for its administrators' decisions when investigating student misconduct and determining appropriate remedial intervention, including whether and what information to disseminate to teachers?

4) Is a PE teacher entitled to immunity under §2-201 of the Tort Immunity Act for his decisions related to the class curriculum/activity, including how to perform his teaching responsibilities, the location from which to observe students, the use of his work device during class, and whether to intervene in the soccer game based on his observation of the game?

STATEMENT OF JURISDICTION

On July 24, 2023, the Honorable Lindsay Parkhurst granted Defendants' Motion for Summary Judgment, finding that Defendants had not engaged in willful and wanton conduct, as defined by §1-210 of the Illinois Tort Immunity Act (745 ILCS 10/1-210), that Defendants were entitled to immunity pursuant to §§3-108 and 2-201 of the Tort Immunity Act (735 ILCS 10/3-108; 2-201), and that the Family Expense Act (750 ILCS 65/15) was inapplicable. (A113-18; C880-85). On November 14, 2024, the Appellate Court issued a Rule 23 Order, reversing the circuit court's grant of Defendants' Summary Judgment Motion, with one Justice dissenting. (A93-108). On December 5, 2024, Defendants timely

petitioned for rehearing, which the Appellate Court denied on December 11, 2024. (A92). On January 15, 2025, Defendants timely petitioned for Leave to Appeal, which this Court granted on March 26, 2025. (A1). Defendants timely filed a Notice of Election to submit this Appellant Brief on April 7, 2025.

STATUTES INVOLVED

745 ILCS 10/1-210: Willful and wanton conduct as used in this Act means 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 or their property. This definition shall apply in any case where a 'willful and wanton' exception is incorporated into any immunity under this Act.

745 ILCS 10/2-201: 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 discretion even though abused.

745 ILCS 10/2-109: 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.

745 ILCS10/3-108: Except as otherwise provided in this Act, neither a local public entity nor a public employee who undertakes to supervise an activity on or the use of any public property is liable for an injury unless the local public entity or public employee is guilty of willful and wanton conduct in its supervision proximately causing such injury.

STATEMENT OF FACTS[1]

A. Riley's Injury during Gym Class

Riley was a seventh-grade student who was injured on March 13, 2017, during a soccer game in gym class when another student (Student A) shoulder checked him. (C432-35). Plaintiffs sued the District and Dayhoff (Riley's P.E. teacher), alleging Dayhoff was willful and wanton in his supervision of his gym class and the District was willful and

[1] Citations to the Common Law Record are "C". Citations to the Supplement to the Sealed Common Law Record are "SUP CS". Citations to the Report of Proceedings are "R". Citations to the Appendix are "A".

wanton by not implementing appropriate interventions for Student A prior to the incident or otherwise protecting Riley. (C432-37).

Seventh-grade students attend physical education class every day. (SUP CS64). There were approximately 30 students in the class, all of which were boys. (SUP CS61, CS69). Dayhoff has discretion on how to teach his P.E. class and which activities to teach, and he balances the students' safety with the goals of his P.E. class. (SUP CS67-68, CS77-78). On the day of the incident, Dayhoff chose to implement a recreational game day, which he occasionally did before transitioning into a new curriculum unit. (SUP CS68, CS356). Dayhoff provided students with instruction on the expectations for the recreational game days at the beginning of the year and periodically during the school year. (SUP CS78). Dayhoff divided the gymnasium so that in one half students could play basketball and in the other half students could play soccer. (SUP CS68, CS356).

The class began at 10:22 a.m. (SUP CS695). Riley, Jacob (Riley's friend), and Dayhoff all testified that after the students changed into their PE uniforms, Dayhoff took attendance, and the students completed their warmup exercises. (SUP CS319, CS356, CS71). Riley stated this took ten minutes. (SUP CS320). After the completion of the warmup exercises, Dayhoff went to his desk to input the class attendance, and the students decided if they wanted to play soccer or basketball. (SUP CS69-71, CS319, CS322, CS356). The majority of students chose to play basketball. (SUP CS320). Riley and Jacob played soccer. (SUP CS320, CS356).

The students who chose to play soccer first selected captains, and Riley testified it took about four minutes to pick teams. (SUP CS319, CS356). Dayhoff stated Student A "was not dressed so he started off sitting on the sideline" but "periodically I would let the

no dresses participate so that they are not sitting on the side doing nothing" "and so then [Student A] chose to go down and play soccer." (SUP CS73). Dayhoff observed Student A "playing soccer like the rest of them." (SUP CS74).

Riley and Jacob testified that the first four to five minutes of the soccer game were normal and only after that did Student A begin "running in and out" and "goofing off." (SUP CS319, CS355). Riley stated Student A "kept on running in and trying to grab the ball" and "thought it was funny," but "we just [] blew it off" and "kept playing soccer as normal." (SUP CS319-21). When subsequently asked, "what else do you remember about that day in gym class, Riley responded "not that much." (SUP CS321). The next thing he remembered was "[s]omebody kicking the ball out of bounds and me going to get it, and that's all I remember." (SUP CS321). Riley confirmed Student A never tried to grab the ball from him (SUP CS327) and reiterated he did not remember Student A doing anything else that day during the soccer game. (SUP CS328).

Jacob stated "besides [Student A] coming in and out of the game, it was a pretty normal game, pretty normal day" (SUP CS357-58) and later when asked if he remembered anything else about the soccer game affirmed it was "[j]ust a normal game of soccer, [] minus [Student A] running in and out of the game." (SUP CS359). Jacob observed Student A playing "rough on defense" - not shoving with his hands but "using his body pressure" to get the ball and kicking the ball "unnecessarily hard" but described Student A's interaction with Riley as being "in a way you would typically expect when someone's playing soccer." (SUP CS360). Jacob did not remember Student A having physical contact with other students during the soccer game (SUP CS372) and did not remember seeing Student A doing anything else prior to the incident. (SUP CS359).

Dayhoff chose to supervise the class from the southeast corner of the gym because "it's easier to see everybody and what everybody is doing from that particular area. If I go other places then I have to keep turning my head to watch whether it's basketball being played or the soccer kids or the kids that are not dressed [] to see what they are doing. So standing there I can look and everybody is right in front of me." (SUP CS77). Dayhoff testified, on the day in question, he also occasionally walked around the gym, including to half-court where students were playing soccer, to supervise and monitor the class to ensure students were behaving correctly. (SUP CS71-72). Dayhoff stated he was actively monitoring everyone that day. (SUP CS77).

Jacob recalled seeing Dayhoff on his laptop or phone "once or twice." (SUP CS85). Riley looked over at Dayhoff from time to time during the game because Dayhoff was below a clock. (SUP CS323). Dayhoff stated any use of his computer or phone during class was school-related, such as inputting the attendance or responding to an email. (SUP CS69-70). Neither Riley nor Jacob knew what Dayhoff was doing on his computer or phone. (SUP CS322, CS325, CS363). There is no policy prohibiting a teacher's use of his computer or phone during the school day. (SUP CS69).

While Dayhoff was supervising and shortly before the incident occurred, he observed "a group of boys battling for the soccer ball," including Riley and Student A, but he determined that to be "normal scrum" for the ball and "nothing out of the ordinary beyond trying to get the soccer ball." (SUP CS75-76). Dayhoff stated if he had observed a student being aggressive, he would have removed that student from the game. (SUP CS74). He clarified he did not see "Student A engaged in any sort of aggressive or unwanted

physical contact with the other students throughout the soccer game," and recalled "[j]ust that he was playing soccer just like the rest of them." (SUP CS74).

The injury occurred at 10:45 AM, which was approximately nine minutes into the soccer game and four to five minutes after Student A began running in and out. (SUP CS743). According to Jacob, "Riley got passed the ball from somebody and he went to get the ball because it was kicked toward the wall and Student A ran at full speed, leveled his shoulder, and hit Riley into a wall to retrieve the ball." (SUP CS360). Jacob clarified the wall was near the goal area and that "[he] was waiting for Riley to pass to [him] since the ball was near the goal [and he] was around the goal area." (SUP CS360). Riley recalls "somebody kicking the ball out of bounds and me going to get it, and that's all I remember." (SUP CS321). Riley clarified he learned about the incident through Jacob. (SUP CS35-36).

Riley and Student A had no substantive interaction before this incident. (SUP CS327). Riley testified "I didn't think [Student A] personally targeted me…I think he was messing around too much." (SUP CS346). There were no complaints made to Dayhoff about Student A prior to the incident either on the day in question or any other day. (SUP CS321, CS360, CS71, CS74). Student A caused no prior injuries to Riley or during Dayhoff's gym class during the 2016-2017 school year. (SUP CS327, CS64-65). Riley further confirmed he never had any issues or confrontations with Student A:

> **Q. Okay. Have you had any problems with (Student A) in gym class ever? So let's talk about before March 13th.**
> A. No.
> **Q. No, okay. Have you ever had any problems with (Student A) in school?**
> A. No. (SUP CS327)

B. Kankakee School District Policies and Procedures on Student Conduct

The 2016-17 District Handbook included a Student Code of Conduct, which lists disciplinary infractions. (SUP CS101). School personnel write referrals for students believed to have committed an infraction. (SUP CS101). Whether and when to complete a referral and what to include in the description is within the discretion of the teacher or administrator. (SUP CS116). Normally, the assistant principal would meet with the referred student to investigate and use her discretion to determine if something needed to be done to support the student or other students and to determine the appropriate discipline, if any. (SUP CS97, CS106, CS114).

Fiona Walz was the assistant principal for the seventh grade and was responsible for student discipline, curriculum development, and all aspects of Kankakee Junior High. (SUP CS100). Upon receiving a referral about a student, Walz would speak with the teacher and students involved and then make a determination about the appropriate course of action. (SUP CS107). Walz used discretion in deciding whether to discipline students and the appropriate level of discipline. (SUP CS105-06). Walz chose not to look back at disciplinary records from previous years, but to start each year fresh. (SUP CS104). Walz determined on an individual basis whether to inform staff about a student's history of aggression, if there was any such history. (SUP CS102-03). There is no policy requiring teachers to review or monitor the District's system for a student's behavioral reports or a student's background or disciplinary history. (SUP CS731).

C. Student A's Disciplinary History

During the 2016-2017 school year, Student A was referred for discipline twenty times for cutting class, being in an unauthorized area, or insubordination, and disciplined

for thirteen of these referrals. (SUP CS118-123). He was referred three times for physical aggression, four times for fighting, and once for use of profanity. (SUP CS118-19). Five of the seven referrals for physical aggression or fighting occurred in the first half of the school year, and three of those did not identify Student A as the instigator. (SUP CS122-23). During the month preceding the incident, Student A was only referred for "insubordination," being in an "unauthorized area" and not letting others into a room. (SUP CS120). Most of Student A's referrals were made by Student A's art teacher, Ms. Harris. (SUP CS118-19, CS401).

D. The District's Remedial Actions Related to Student A

Walz investigated each of Student A's referrals. (SUP CS97, CS100, CS107, CS120-23). Walz used discretion in deciding whether to discipline, the appropriate level of discipline, and whether to inform staff about a student's history or the discipline imposed. (SUP CS102-06). Walz determined Student A was not a physically aggressive student or in any way dangerous based on her personal interactions with Student A and investigation of his referrals and determined she only needed to communicate that Student A required increased supervision for his wandering. (SUP CS108, CS115). Sarah Lenfield was Student A's guidance counselor, and like Walz, determined Student A was not a physically aggressive student. (SUP CS130, CS133). Lenfield clarified that though Student A had been involved in some fights, he was often the target. (SUP CS130, CS133). Lenfield never received any notification from a teacher about a concern of physical aggression by Student A in the classroom or with a particular student. (SUP CS133).

Principal Hensley, Walz, and Lenfield were part of a "problem-solving team" also referred to as the "seventh grade team" or "grade level team" that made decisions related

to appropriate interventions for students, including Student A. (SUP CS93, CS109-11, CS588, CS600). This team provided both academic and behavioral support for students based on the student's individual needs. (SUP CS93, CS111, CS588, CS600). Student A received support services through the District, including being part of Great Start Kid (a support to help certain students - academic or behavioral - acclimate to a new building), a pro-social group (to improve social skills for students), Social Academic Instructional Group (SAIG), being paired with a Beta Kid (a high achieving 8th grade student), CIPS (an academic support), and Check In Check Out (CICO) (a support to aid with accountability related to attendance, behavioral, or academic concerns). (SUP CS110-13, CS128, CS279-81, CS403, CS405). There was no school policy specifically requiring a District administrator to inform teachers of a particular student's behavior or discipline; rather, it was made on an individual basis. (SUP CS102-03).

E. Dayhoff Lacked Knowledge of Student A's Disciplinary History

During the seven months Student A had been in Dayhoff's class prior to the incident, Dayhoff did not recall having any disciplinary problems with Student A, did not recall Student A getting into a fight in gym class or making any referral for discipline for Student A. (SUP CS64-66). Dayhoff recalled Student A "not dressing, not participating for class sometimes, maybe just goofing around" but nothing "out of the ordinary" or what he would consider "serious." (SUP CS66).

F. Summary Judgment In Favor of Defendants

The circuit court found Defendants were entitled to immunity for negligent supervision pursuant to §3-108 because Plaintiffs could not establish willful and wanton conduct, finding that "Illinois law holds allegations of failure to supervise student activities

and/or leaving children unsupervised is not enough to establish willful and wanton conduct" and there were no facts "to establish [Dayhoff] engaged in a conscious choice of action with knowledge of serious danger to others." (C883-84; A116-17).

The circuit court further found the District immune under §2-201 for its decisions related to the disciplinary and remedial measures imposed on Student A following its investigation of his referrals for discipline. (C884-85; A117-18). The circuit court also found that §2-201 immunity applied to Dayhoff's decisions related to his class on the day of the incident, including the activity of the day, how to supervise his class, and whether to intervene in the game, as they involved balancing competing interests related to instruction, efficiency, time, and student safety and making a judgment call as to which solution worked best for his class. (C883; A116).

G. Appellate Court's Reversal and Dissenting Opinion

On November 14, 2024, the Appellate Court reversed the circuit court, ruling that there are disputed facts as to whether Dayhoff was entitled to immunity pursuant to §2-201. (A99-101). The Court did not address the District's immunity under §2-201 related to its discretionary policy decisions concerning Student A's disciplinary referrals and the remedial measures it imposed. (A93-103). The court found there were issues of fact regarding whether Defendants' actions were willful and wanton; specifically, that "[i]f Student A was in fact physically aggressive and a danger to other students, and that information was known to the District, the failure to disseminate such information to his teachers may be willful and wanton" and that "[k]nowledge of Student A's aggression and the lack of precautions to protect other students may demonstrate indifference or conscious disregard for students' safety." (A103).

In a dissenting opinion, Justice Hettel emphasized that the Appellate Court's decision contradicted twenty-five appellate court decisions involving allegations against school staff for inadequate supervision, which consistently held that a teacher's failure to supervise student activities resulting in injury does not constitute willful and wanton conduct. (A105-08). Applying the precedent to this matter, he found:

> The undisputed evidence established that Student A had been in Dayhoff's class for seven months at the time of the incident. Plaintiffs presented no evidence that Student A had previously harmed any other student in gym class at any time prior to this incident nor did they present evidence that Student A had threatened violence against Riley or any other student in the gym class on the day in question or at any other time. Even assuming that Student A had engaged in violence in school on other occasions and was playing soccer aggressively on the day in question, the evidence fails to establish that Dayhoff "was aware or should have known that the absence of supervision posed a high probability of serious harm or an unreasonable risk of harm" to Riley on the day of the incident. (A107). (citations omitted)

H. Petition for Rehearing and Petition for Appeal

On December 5, 2024, Defendants timely petitioned for rehearing, which the Appellate Court denied on December 11, 2024. (A92). On January 15, 2025, Defendants timely submitted its Petition for Leave to Appeal, asserting that the Appellate Court's decision contradicted longstanding Illinois Supreme Court and appellate court precedent on four points:

1) The Appellate Court's finding that a teacher's alleged inadequate supervision of students playing soccer during PE class because he was using his work computer or phone could constitute willful and wanton conduct directly contradicts at least *twenty-five* appellate court opinions. As Justice Hettel noted in his dissent, inadequate supervision or even the complete failure to supervise students in a school setting does not, as a matter of

law, rise to the level of willful and wanton conduct unless the teacher had knowledge that such lack of supervision posed a high probability of serious physical harm to the plaintiff.

2) The Appellate Court's finding that if the offending student "was in fact physically aggressive and a danger to other students, and that information was known to the District, the failure to disseminate such information to his teachers may be willful and wanton," conflicts with Illinois Supreme Court precedent holding that "school employees who exercised some precautions to protect students from injury, even if those precautions were insufficient, were not guilty of willful and wanton conduct." *Barr v. Cunningham*, 2017 IL 120751, ¶18; *Lynch v. Bd of Educ. of Collinsville Cmty Unit Dist. No*. 10, 82 Ill. 2d 415, 430-31 (1980). The undisputed facts show the District took remedial action to address the student's behavior during the school year; therefore, the Appellate Court's finding that failing to take additional precautions could be willful and wanton contradicts existing, binding precedent.

3) The Appellate Court's finding conflicts with well-established precedent, including at least *eight* appellate court cases applying §2-201 immunity to a school district for their administrators' decisions when investigating student misconduct and determining appropriate remedial intervention. 745 ILCS 10/2-201. As §2-201 provides full immunity, it is irrelevant whether the District's failure to take additional action could constitute willful and wanton conduct. *In re Chi. Flood Litig.*, 176 Ill.2d 179, 196 (1997).

4) The Appellate Court's finding disregarded Dayhoff's conscious, discretionary decisions related to his class, which are fully immunized under §2-201. (A109-11).

ARGUMENT

I. STANDARD OF REVIEW

The proper construction of a statute is a question of law, subject to *de novo* review. *Barnett v. Zion Park Dist.*, 171 Ill. 2d 378, 385 (1996). This Court reviews the grant of summary judgment *de novo*, applying the same standard as does the trial court. *Abrams v. City of Chicago*, 211 Ill. 2d 251, 257 (2004); *Harrison v. Hardin Cty Cmty Unit Sch. Dist. No. 1*, 197 Ill. 2d 466, 470 (2001). It is the Plaintiffs' burden to present a factual basis that would arguably entitle them to a judgment. *Lutz v. Goodlife Entertainment, Inc.*, 208 Ill. App. 3d 565, 568 (1st Dist. 1990). As recognized by Justice Hettel in his dissent and this Court, if there is insufficient evidence to sustain an allegation of willful and wanton conduct, the issue should be decided as a matter of law. *Barr,* 2017 IL 120751, ¶15; *Murray v. Chic. Youth Ctr*, 224 Ill.2d 213, 245 (2007).

Here the record supports a finding affirming the Defendants' Motion for Summary Judgment, as: (1) no facts establish that Dayhoff had knowledge that his alleged inadequate supervision posed a high probability of serious harm to Riley, thus his conduct is immunized under §3-108 of the Tort Immunity Act; (2) the undisputed facts show the District's administrators took remedial action to address Student A's behavior during the school year; therefore, their alleged failure to take additional precautions such as disseminating additional information does not constitute willful and wanton conduct; (3) the District is entitled to absolute immunity pursuant to §2-201 of the Tort Immunity Act for its administrators' discretionary policy decisions related to its investigation of Student A's referrals and determination of the appropriate remedial action; and (4) Dayhoff is entitled to absolute immunity under §2-201 of the Tort Immunity Act for his conscious,

discretionary decisions related to the activity for the day, how best to supervise the class activities, and whether to intervene in the soccer game.

II. APPLYING ESTABLISHED PRECEDENT, THE UNDISPUTED FACTS DO NOT EVIDENCE WILLFUL AND WANTON SUPERVISION

§3-108 of the Tort Immunity Act protects public entities and its employees from liability for the failure to supervise or negligent supervision:

> Except as otherwise provided in this Act, neither a local public entity nor a public employee who undertakes to supervise an activity on or the use of any public property is liable for an injury unless the local public entity or public employee is guilty of willful and wanton conduct in its supervision proximately causing such injury. 745 ILCS 10/3-108.

Willful and wanton conduct is viewed as an aggravated form of negligence. *Brooks v. McLean Cty. Unit Dist. No. 5*, 2014 IL App (4th) 130503, ¶20. Not only must Plaintiffs prove the basic elements of a negligence claim - a duty, a breach of that duty and an injury proximately resulting from the breach – but they must also prove Defendants engaged in a "course of action" that shows an actual or deliberate intention to cause harm or that, if not intentional, shows an utter indifference to or conscious disregard for Riley's safety. 745 ILCS 10/1-210; *Harris v. Thompson,* 2012 IL 112525, ¶41. In contrast to ordinary negligence, willful and wanton conduct should "shock the conscience." *Oravek v. Cmty Sch. Dist. 146*, 264 Ill. App. 3d 895, 900 (1st Dist. 1994).

The Appellate Court's opinion directly conflicts with longstanding precedent finding that the failure to supervise student activities, in and of itself, does not establish willful and wanton conduct as a matter of law. Rather, each appellate district has held that the facts must show a course of action that the defendant acted or failed to act with knowledge that his lack of supervision posed a high probability of foreseeable harm to the plaintiff. *Jackson v. Chi. Bd. Of Educ.,* 192 Ill. App. 3d 1093, 1100 (1st Dist. 1989); *Floyd*

v. Rockford Park Dist, 355 Ill. App. 3d 695, 701 (2d Dist. 2005); *Pomrehn v. Crete-Monee High Sch. Dist.,* 101 Ill. App. 3d 331, 334–35 (3d Dist.1981); *Templar v. Decatur Pub. Sch. Dist. No. 61,* 182 Ill. App. 3d 507, 512 (4th Dist. 1989); *Albers v. Cmty. Consul. #204 Sch.*, 155 Ill. App. 3d 1083, 1085 (5th Dist. 1987).

"A plaintiff's general allegation that the teacher or school should have known the harm would occur without adult supervision is insufficient to satisfy this standard." *Jackson,* 192 Ill. App. 3d at 1100; *Holsapple v. Case Cmty. Unit Sch. Dist. C-1*, 157 Ill. App. 3d 391, 394 (4th Dist. 1987). Additionally, "[m]ere speculation as to potential harm, or conclusory allegations as to knowledge of potential harm, are . . . insufficient to sustain a cause of action for willful and wanton misconduct." *Choice v. YMCA of McHenry Cty*., 2012 IL App (1st) 102877, ¶75.

Illinois courts for the last fifty years have repeatedly held that the breach of a duty to supervise, including inadequate supervision or the complete failure to supervise students in a school setting does not, as a matter of law, rise to the level of willful and wanton conduct as a tremendous burden would be imposed on school districts and teachers if they were required to provide "constant surveillance of the children." *Mancha v. Field Museum of Nat'l Hist.*, 5 Ill. App. 3d 699, 702 (1st Dist. 1972). The Appellate Court's ruling in this matter directly contradicts the rulings in at least twenty-five other appellate court cases with similar fact patterns:

In *Mancha,* groups of 12-year old students were allowed to view exhibits during a field trip to the Field Museum unsupervised, which resulted in a student being physically assaulted. *Id*. at 700. The court dismissed a willful and wanton supervision claim on the pleadings:

> The burden sought to be imposed on the defendant school district and teachers is a heavy one which would require constant surveillance of the children. A baseball game, a football game or a game of hopscotch played on school grounds might break up in a fight resulting in serious injury to one or more of the children. A teacher cannot be required to watch the students at all times while in school, on the grounds, or engaged in school-related activity. *Id*. at 702.

Similarly, in *Jackson v. Chicago Bd. Of Educ.*, a teacher left a classroom of students with mental disabilities for a period of thirty minutes, which resulted in the plaintiff sustaining an injury by another student who was described as a "wild" person. 192 Ill. App. 3d at 1096, 1101. The court granted summary judgment in favor of the school district, recognizing "Illinois courts have consistently held that a teacher's mere act of leaving children unsupervised will not be sufficient to establish willful and wanton misconduct," and finding that "plaintiff's general allegation that a teacher or school should have known the harm would occur without adult supervision is insufficient to establish willful and wanton misconduct." *Id*. at 1100.

In *Albers v. Cmty. Consul. #204 Sch.*, a student was permanently injured by another student described as having "dangerous propensities" while the teacher left the students unsupervised for ten minutes. 155 Ill. App. 3d at 1084, 1086. Noting that the aggressor student had never previously injured the plaintiff, the court, on appeal of a jury verdict in favor of the defendants, held that "[t]he general potential for danger with groups of children is not sufficient standing alone to sustain a claim of willful and wanton misconduct." *Id.* at 1086. The court declared "schools and teachers cannot be charged with the duty of anticipating and guarding against the willful and wanton misconduct by other children who suddenly without provocation attack other students," and found the student's previously violent behavior did not make it foreseeable that he would assault the plaintiff or that he could not be left unsupervised. *Id.*

Similarly, in *Floyd v. Rockford Park Dist*., a child violently struck another child in the head with a metal golf club, causing serious injuries. 355 Ill. App. 3d at 700. The child had allegedly regularly exhibited belligerent and violent behavior toward the supervisors and other children, and fought with, threatened, and verbally abused the other children. *Id*. at 697-98. Despite this, the court dismissed the complaint on the pleadings, finding that the plaintiff's allegations about the aggressor's "general bad behavior," even if the defendant was aware of it are insufficient to create a basis for willful and wanton conduct because the aggressor child had never previously been aggressive toward the plaintiff. *Id.* at 703-04.

These principles have been consistently applied across the appellate courts. *See Brooks,* 2014 IL App (4th) 130503, ¶¶39, 41 (affirming dismissal of the complaint on the pleadings, finding there were no facts, even if proven, that would permit an inference of willful and wanton supervision because there were no facts the district "had any knowledge of past injuries to its students" or "any specific danger to [the plaintiff] on the [day of the incident]"); *Clay v. Chicago Bd of Educ.*, 22 Ill. App. 3d 437, 439, 441 (1st Dist. 1974) (dismissing the complaint finding, as a matter of law, the plaintiff could not state a claim for willful and wanton supervision based on allegations that a student with violent propensities assaulted the plaintiff while the teacher was absent from the classroom, noting the "tremendous burdens that would be imposed by a different decision"); *Cipolla v. Bloom Twp. High Sch. Dist. No. 206*, 69 Ill. App. 3d 434, 437-38 (1st Dist. 1979) (granting the school district's motion to dismiss, finding no set of facts can be proved to entitle the plaintiff to his willful and wanton supervision claim premised on unprovoked attack of another student); *Booker v. Chicago Bd of Educ.*, 75 Ill. App. 3d 381, 386 (1st Dist. 1979) (finding no willful and wanton supervision despite appointing a student who had previously

threatened the plaintiff as a bathroom monitor, and the plaintiff was later assaulted by that student in the bathroom); *Woodman v. Litchfield Cmty Sch. Dist. No. 12*, 102 Ill. App. 2d 330, 334 (5th Dist. 1968) (finding a teacher did not act willfully in failing to supervise her class when a student without provocation kicked another in the head while the she was absent from the classroom); *Templar,* 182 Ill. App. 3d at 510-13 (finding no willful and wanton supervision premised on an assault by another student); *Gubbe v. Catholic Dioc. of Rockford*, 122 Ill. App. 2d 71, 79 (2d. Dist. 1970) (finding allegations of inadequate supervision during recess, which resulted in second assault on the plaintiff was insufficient to allege willful and wanton supervision); *Guyton v. Roundy*, 132 Ill. App. 3d 573, 578-79 (1st Dist. 1985).

The above principles also have been uniformly applied in the context of students participating in recreational or sports activities. In *Geimer v. Chicago Park Dist*., the plaintiff was injured during a touch football game allegedly due to the referee's willful and wantonly supervision and failure to expel from the game a participant who had exhibited rough play. 272 Ill. App. 3d 629 (1st Dist. 1995). The court reversed a judgment n.o.v., finding the district "owed no duty to prevent the intentional misconduct" by another, and concluded "inadequate supervision" whether in "sports cases" or "where one of the students had demonstrated violent tendencies towards others" is not willful and wanton conduct, as a matter of law. *Id*. at 632-34, 637-39; *See also Lynch,* 82 Ill. 2d at 430-31 (inadequate supervision during a powder puff game, which resulted in a student injury, did not rise to level of willful and wanton conduct); *Pfister v. Shusta,* 167 Ill. 2d 417, 425 (1995) (recognizing "those who participate in soccer, football, softball, basketball, or even a spontaneous game of can kicking, choose to play games in which physical contact among

participants is inherent in the conduct of the game. Participants in such games assume a greater risk of injury resulting from the negligent conduct of co-participants."); *Pomaro v. Cmty Consol. Sch. Dist. 21*, 278 Ill. App. 3d 266, 269-270 (1st Dist. 1995) (finding a teacher's inadequate supervision of P.E. class not willful and wanton); *Poelker v. Warrensburg Latham Cmty. Unit Sch. Dist. No. 11*, 251 Ill. App. 3d 270, 278 (4th Dist. 1993) (inadequate supervision of track practice resulting in head injury from thrown discus was not willful and wanton); *Tijerina v. Evans*, 150 Ill. App. 3d 288, 292-93 (2d. Dist. 1986) (dismissing willful and wanton supervision claim on the pleadings, finding no specific allegations showing why the PE teacher knew or should have known of impending danger to the injured student during wiffle ball activity); *Ramos v. City of Countryside*, 137 Ill. App. 3d 1028 (1st Dist.1985) (inadequate supervision of game of "bombardment," which resulted in the plaintiff being stuck in the eye with a softball by an older participant who "threw the ball with excess force" was not willful and wanton); *Montague v. Sch. Bd. of Thornton Fractional Twp. North High Sch. Dist. 215*, 57 Ill. App. 3d 828, 831-32 (1st Dist. 1978) (finding lack of supervision and use of spotters in PE tumbling segment was not willful and wanton); *Fustin v. Bd. of Ed. of Cmty. Unit Dist. No. 2,* 101 Ill. App. 2d 113, 114-17 (5th Dist. 1968).

In each of the above scenarios, whether viewing it through the lens of a teacher failing to supervise students for an extended period of time (up to 30 minutes), a teacher tasked with supervising a student who has previously exhibited "dangerous propensities," or a physical education teacher or coach tasked with supervising a contact sport, Illinois courts have recognized that a teacher cannot supervise every student during every minute

and only when a lack of supervision is coupled with the teacher's knowledge of a high probability of specific, foreseeable harm to the plaintiff can willful and wanton be found.

Thus, even taking as true Plaintiffs' arguments that Dayhoff was preoccupied with his work device instead of supervising, under the precedent cited above, Dayhoff's failure to supervise the soccer game for approximately nine minutes is insufficient as a matter of law to constitute willful and wanton conduct. Plaintiffs' focus on Student A's disciplinary history does not change the analysis as the above precedent holds that general bad behavior, even if the Defendants were aware of it, is insufficient to establish willful and wanton conduct and there are no facts to support an argument that Dayhoff knew of a high probability of specific, foreseeable harm to Riley, regardless of the extent to which he supervised the soccer game. In fact, Plaintiff conceded as much during oral argument on Defendants' Motion for Summary Judgment, declaring "I agree with the defense when they say some general aggression is not going to make the district liable." (R21).

To require Dayhoff to anticipate the injury that occurred when there were no previous injuries or complaints made to him related to the recreational day, soccer, or Student A either on the day in question or during the seventh months prior to the incident; when he had no knowledge of Student A's referrals for discipline or alleged aggressive behavior and had never witnessed Student A engage in physical aggression or any behavior that was "out of the ordinary" or that he would call "serious"; and when there was no previous or apparent conflict between Riley and Student A approaches a strict liability standard. *See Castaneda v. Cmty Unit Sch. Dist. No. 200,* 268 Ill. App. 3d 99, 105-06 (2d Dist. 1994) ("To say that [the teacher] had a duty to foresee and prevent the bicycle collision under the totality of the facts before us would impose on school districts and the teachers

they employ a burden approaching strict liability and make outdoor school field trips impossible").

This is particularly the case here given that Student A's interaction with Riley during the soccer game was in a way you would expect from someone playing soccer, according to Jacob, Riley, and Dayhoff. (SUP CS327, CS360, CS74). Student A's conduct towards Riley was unforeseeable and unprovoked, and Dayhoff cannot be charged with the duty of anticipating and guarding against Student A's misconduct during the soccer game. Most telling is that even Riley admitted "I didn't think [Student A] personally targeted me…I think he was messing around too much." (SUP CS346).

In *Barr v. Cunningham,* this Court granted summary judgment in favor of the school district, in part, finding "the plaintiff did not present evidence of any other injuries suffered by anyone playing floor hockey under any circumstances." 2017 IL 120751, ¶20.

In *Castaneda v. Cmty Unit Sch. Dist. No. 200,* the court affirmed summary judgment in favor of the school district for an alleged failure to supervise students participating in a thirty minute off-campus bike ride, finding the teacher had no duty to foresee and prevent the collision caused by a student who was not following directions and goofing off given there were no prior injuries. 268 Ill. App. 3d at 105-06.

Similarly, in *Pomrehn v. Crete-Monee High Sch. Dist.,* the court affirmed summary judgment, finding a coach's failure to supervise his team for fifteen minutes, which resulted in the plaintiff sustaining serious injuries, was not willful and wanton because "there was no prior problems or hazards with the team members, or the practice area" to show "reckless or conscious disregard of known danger." 101 Ill. App. 3d at 335. The court declared "there is a risk of injury and a danger involved in almost any gathering of

teenagers. Yet this general potential for danger with groups of children is not sufficient to support a charge of willful and wanton misconduct." *Id*.; *see also Holsapple,* 157 Ill. App. 3d at 394 (affirming dismissal on the pleadings, finding the plaintiff "did not allege that there had been any previous injuries or threats of injury, and there was no allegation that the defendant knew of previous incidents" to state a willful and wanton supervision claim); *Biancorosso v. Troy Cmty. Consol. Sch. Dist. No.30C*, 2019 IL App (3d) 180613, ¶17 (rejecting a willful and wanton claim based on inadequate safety precautions and supervision during a middle school cheer practice, finding the plaintiff did not offer any evidence the district was aware of impending danger regarding the cheerleading stunts or any instances of prior injuries to other cheerleaders, and there were no complaints regarding the condition or use of the mats during practice); *Floyd,* 355 Ill. App. 3d at 701 (declaring "prior knowledge of similar acts is required to establish a course of action"); *Knapp v. Hill*, 276 Ill. App. 3d 376, 385-86 (1st Dist. 1995) (affirming dismissal on the pleading, which alleged an automotive shop teacher failed to supervise high school students who engaged in horseplay during class resulting in the death of the student, finding no allegations of previous injuries, when they occurred (if in fact they even occurred), or how the school district is charged with knowledge of them); *Shwachman v. Northfield Twp. High Sch. Dist. 225,* 2016 IL App (1st) 143865-U, ¶39 (granting summary judgment in favor of the district, "[c]onsidering mushball has been played at [the school] for years without injury from a thrown bat we would be hard-pressed to conclude that the activity involved "probable" harm or danger."); *Montague,* 57 Ill. App. 3d at 829, 831-32.

The Appellate Court's expansive standard of liability will have a chilling effect on public entities' willingness to provide physical education to students because a public entity

would have to take on the impossible task of preventing all injuries, no matter how remote and improbable. Short of turning physical education classes into lectures where students study physical activities from books instead of participating in them, common sense dictates that there will always be a risk of injury to students who participate in physical activities. *See Mancha*, 5 Ill. App. 3d at 702 ("If the law imposed such burdens it would well discourage schools and teachers from affording opportunities to children to enjoy many extracurricular activities. It has long been recognized that something other than classroom teaching is needed for a sound education. Learning is not confined to books."); *Pomrehn,* 101 Ill. App. 3d at 335 ("there is a risk of injury and a danger involved in almost any gathering of teenagers. Yet this general potential for danger with groups of children is not sufficient to support a charge of willful and wanton misconduct."); *Holsapple,* 157 Ill. App. 3d 391 at 335 ("[p]laintiff's conclusion that defendant 'should have known' that such incidents 'could occur' and 'could result in injuries,' could be said about any place where athletes gather."); *Choice,* 2012 IL App (1st) 102877, ¶72 ("the mere fact that students may comport themselves in such a manner as to expose themselves or others to injury is legally insufficient to support a claim of willful and wanton misconduct in the absence of a specific, foreseeable, and probable danger."); *Pfister,* 167 Ill. 2d at 427 ("Basketball, hockey, and soccer all permit some bodily contact and, in actual practice, more contact is permitted than a reading of the rules would indicate. In all of the above sports, players regularly commit contact beyond that which is permitted by the rules even as applied. [] This is to be expected. If every time a negligent foul resulted in injury, and liability was imposed, the game of basketball as we know it would not be played.").

In sum, the Appellate Court's decision contradicts well-established precedent by holding that a jury could find willful and wanton conduct based on Dayhoff's use of his work device during class rather than actively supervising students for approximately nine minutes while they played soccer. It also holds that unforeseeable and unprovoked misconduct by another student could impute willful and wanton liability on a school district solely because the student has a disciplinary record, even though the two students had no prior conflict or interaction and Dayhoff was not aware of this record. This holding would require every school within the State to provide heightened supervision to every student with a disciplinary record and would impose a duty on every teacher to anticipate or prevent unprovoked misconduct of another student, which is untenable and conflicts with well-established Illinois precedent as reviewed above.

In the absence of facts showing Dayhoff had knowledge that his lack of supervision posed a high probability of foreseeable harm to Riley, his conduct amounts, at most, to negligent supervision, which is immunized under §3-108. 745 ILCS 10/3-108. Summary judgment is therefore appropriate.

III. THE UNDISPUTED FACTS SHOW THE DISTRICT TOOK VARIOUS IDENTIFIABLE AND DOCUMENTED STEPS TO ADDRESS STUDENT A'S PRIOR REFERRALS

The Appellate Court ignored relevant precedent in finding that if the District was aware Student A was physically aggressive and a danger to students, failure to disseminate such information to Student A's teachers could be willful and wanton. (A103). Contrary to precedent, the court's analysis focused on the disputed fact of Student A's aggressiveness. However, the correct analysis is whether the District's actions in response to Student A

could be considered willful and wanton. This has been decided by this Court in the negative.

This Court's precedent holds that "school employees who exercised some precautions to protect students from injury, even if those precautions were insufficient, were not guilty of willful and wanton conduct." *Barr,* 2017 IL 120751, ¶18. Failure to take additional precautions does not evidence an "utter and conscious disregard," and the plaintiffs must do more than merely prove the failure to take precautions. *Burke v. 12 Rothchild's Liq. Mart,* 148 Ill. 2d 429, 449 (1992) (finding "mere inadvertence, incompetence, unskillfulness, or a failure to take precautions" insufficient to rise to the level of willful and wanton conduct); *Lynch,* 82 Ill. 2d at 430 ("The evidence does not demonstrate an utter and conscious disregard for the safety of the girls, simply insufficient precautions for their protection"). Instead, liability can be found "where the act was done with actual intention or with a conscious disregard or indifference of the consequences when the known safety of other person was involved." *Lynch,* 82 Ill. 2d at 415.

Here, the Third District Appellate Court not only ignored this Court's precedent, but also its own prior rulings on this issue. In *Grant v. Bd of Trustees of Valley View Sch. Dist. No 365-U*, the decedent had expressed to other students his intention to commit suicide, which was reported to a school counselor. 286 Ill. App. 3d 642 (3rd Dist. 1997). The counselor questioned the decedent but took no action other than calling his mother and advising that she should take him to a hospital for drug overdose treatment. *Id*. at 644. She did not discuss the decedent's suicide threats. *Id.* The decedent later acted on his threat, and the mother sued the district for willful and wanton conduct. *Id*. The Third District Appellate Court affirmed the trial court's dismissal of the pleadings finding "[w]hile the

nondisclosure of Jason's suicide threats, if proven, could well constitute negligence, the plaintiff has failed to allege sufficient facts that would support a finding that either [the counselor] or any other school official acted with conscious disregard or indifference for Jason's safety or had knowledge that their conduct posed a high probability of serious physical harm to Jason," reasoning that the counselor had contacted the mother "and advised her to take Jason to the hospital, albeit for a drug overdose." *Id.* at 647. In other words, because the counselor took some precaution, even if that precaution was insufficient or failed to prevent the harm, the plaintiff could not state a claim for willful and wanton conduct. *Id*.

Similarly, in *Siegmann v. Buffington,* a student sued the school district after being assaulted by another student a second time on school property. 237 Ill. App. 3d 832 (3rd Dist. 1992). The principal had been informed of the aggressor student's threat toward the plaintiff, met with the aggressor student, and instructed him not to bother the plaintiff. *Id.* at 833. Despite this, the aggressor student assaulted the plaintiff again. *Id.* The Third District Appellate Court affirmed the trial court's grant of summary judgment in favor of the district, finding the principal's actions did not amount to willful and wanton conduct because he took "reasonable steps to remedy the situation," even if "failing to take further action may have been somewhat careless." *Id.* at 834. The court rejected the argument that the failure to take additional safety precautions, such as having a monitor stationed at the parking lot, evidenced willful and wanton conduct. It reasoned, "[w]hile it appears in hindsight that this may have been a more prudent course of action, [the principal's] failure to do so does not indicate an 'utter and conscious disregard' for the safety of the plaintiff." *Id. citing Lynch*, 82 Ill. 2d at 430; *See also Bielema v. River Bend Cmty. Sch. Dist. No. 2*,

2013 IL App (3d) 120808, ¶19 (finding the school "took some action to remedy the danger posed" even though the principal "could have done more to warn" the plaintiff); *Toller v. Plainfield Sch. Dist. 202*, 221 Ill. App. 3d 554, 558 (3d Dist. 1991) (relying on *Lynch* to find no willful and wanton misconduct in connection with a wrestling match without proper weight classifications held during sixth grade gym class); *Biancorosso*, 2019 IL App (3d) 180613, ¶¶14-18 (relying on *Barr* to find "the district took sufficient safety precautions to protect [the plaintiff] from injury and the fact that she was injured despite its efforts does not equate to a finding of willful and wanton conduct").

Illinois appellate courts in other districts have also followed this Court's precedent, finding that ineffectiveness, incompetence, or the failure to take additional precautions is not willful and wanton conduct as a matter of law. *See Shwachman,* 2016 IL App (1st) 143865-U, ¶41 (though the precautions taken did not prevent the injury, "[m]ere ineffectiveness [] does not establish a course of action demonstrating that a defendant was utterly indifferent or consciously disregarded the safety of others"); *Castaneda,* 268 Ill. App. 3d at 104-06 ("the mere fact that [teacher] could have done more to prevent the accident, does not [] permit a jury to conclude that he acted with reckless disregard for the safety of others"); *Geimer*, 272 Ill. App. 3d at 637 ("incompetent discretionary decisions" to remedy bad behavior "fails to show willful and wanton conduct as a matter of law"); *Templar,* 182 Ill. App. 3d at 512 (finding no willful and wanton conduct when a school takes action to remedy situation after first fight, even if unsuccessful); *Leja v. Cmty. Unit Sch. 300*, 2012 IL App (2d) 120156, ¶11; *Mitchell v. Special Educ. Jt. Agreement Sch. Dist. 208*, 386 Ill. App. 3d 106, 111-12 (1st Dist. 2008); *Stiff v. Eastern Ill. Area of Special Educ.*, 279 Ill. App. 3d 1076, 1082 (4th Dist. 1996); *Poelker,* 251 Ill. App. 3d at 278.

The undisputed record shows that Assistant Principal Walz investigated each of Student A's disciplinary referrals and imposed remedial measures and interventions. (SUP CS97, CS100, CS105-07, CS110-14, CS120-23). Further, Walz, Principal Hensley, and guidance counselor Lenfield, among others, all met to discuss Student A's academic and social development and determined and implemented appropriate interventions to assist him, including Great Start Kid, a pro-social group, SAIG, Beta Kid, CIPS, and CICO and also notified his teachers of Student A's wandering. (SUP CS93, CS109-13, CS128-29, CS600). Because District administrators took reasonable steps to investigate and remedy the situation after each referral for discipline, the District was not "utterly indifferent" and the failure to take an additional precaution, such as disseminating additional information to teachers, cannot sustain a willful and wanton claim. The Appellate Court's reasoning – namely, that the District, in hindsight, did not take every foreseeable precaution to prevent this type of injury – is directly contrary to well settled law and to this Court's own analysis of willful and wanton conduct under the Tort Immunity Act. As recognized in *Lynch*, "merely because a defendant could have done more to ensure safety, it does not follow that their conduct was willful and wanton." *Lynch*, 82 Ill. 2d at 430.

IV. THE UNDISPUTED FACTS EVIDENCE THE DISTRICT'S DISCRETIONARY POLICY DECISIONS RELATED TO STUDENT A

The Appellate Court overlooked longstanding precedent when it failed to address the application of §2-201 immunity to the District's discretionary decisions concerning Student A, including its investigation into the discipline referrals and chosen remedial measures. The Appellate Court incorrectly denied summary judgment, stating there was a question of fact on whether the alleged failure to disseminate information about Student A to his teachers was willful and wanton. (A103). However, because such policy decisions

are fully immunized under §2-201, it is irrelevant whether willful and wanton conduct could be found. *In re Chi. Flood Litig.*, 176 Ill. 2d at 196.

§2-201 provides:

> 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 discretion even though abused. 745 ILCS 10/2-201.

"Discretionary actions are those unique to a particular public office while ministerial acts 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." *Snyder v. Curran Township*, 167 Ill. 2d 466, 474 (1995). The alleged act must also involve a policy decision, which "requires the [public employee/entity] to balance competing interests and to make a judgment call as to what solution will best serve each of those interests." *Harinek v. 161 North Clark St. Ltd. P'ship*, 181 Ill. 2d 335, 342 (1998); *Albers v. Breen,* 346 Ill. App. 3d 799, 808 (4th Dist. 2004). Immunity that applies to employees under §2-201 of the Tort Immunity Act also applies to the entity itself. *Arteman v. Clinton Cmty. Unit Sch. Dist. 15*, 198 Ill. 2d 475, 487-88 (2002).

Illinois appellate courts have repeatedly held that determining appropriate discipline and interventions for a student and the dissemination of that information are discretionary policy decisions that fall within §2-201. As the court stated in *Mulvey v. Carl Sandburg High Sch.*, "this immunity provision applies to bar claims brought regarding the failure of school officials to discipline school bullies." 2016 IL App (1st) 151615, ¶47. The court found tort immunity applies because the policy required the district to determine if bullying occurred, the resulting consequences, and any appropriate remedial actions. *Id*.

In *Malinksi v. Grayslake Cmty High Sch. Dist*, the plaintiff alleged he was being subjected to verbal and physical abuse to the point that he was threatening suicide and had previously informed school officials "on numerous occasions" about being bullied by other students. 2014 IL App (2d) 130685, ¶2. The appellate court dismissed the claim that the district failed to take sufficient action to prevent the bullying and subsequent injury, finding the implementation of student discipline requires discretion, and the district's actions to address the situation were fully immunized under §2-201. *Id.* at ¶13.

In *Castillo v. Bd. of Educ. of City of Chi.*, a student claimed school officials failed to protect her from repeated harassment and assault by another student. 2018 IL App (1st) 171053. The appellate court affirmed dismissal on a motion to dismiss as "what the law requires," reasoning "the Board's alleged failure to prevent [] harassment depended on discretionary decisions regarding school discipline," for which "the Board has statutory immunity" under §2-201. *Id.* at ¶2.

In *Hascall v. Williams,* 2013 IL App (4th) 121131, a student was subjected to repeated bullying and assault by another student. The student's mother had repeatedly notified the principal and superintendent of the continuing bullying and had requested that the plaintiff be reassigned to a different classroom. *Id*. at ¶4. The principal advised her "[w]e will handle the situation," but did not reassign the plaintiff and the bullying continued. *Id*. at ¶4-9. The appellate court held the district's alleged inadequate response to the bullying and failure to reassign the plaintiff constituted discretionary acts and policy determinations and, therefore, defendants were immune under §2-201. *Id*. at ¶29. *See also D.M. ex. Rel. C.H. v. National Sch. Bus Serv., Inc.* 305 Ill. App. 3d. 735, 740 (2d Dist. 1999)

(finding the act of assigning the plaintiff to a bus with a student who had previously harmed him was a determination of policy and an exercise of discretion pursuant to §2-201).

In *Albert v. Bd. of Educ. of City of Chicago,* the plaintiff argued the principal failed to properly respond to a fight between two students, which resulted in a second fight later that afternoon and the death of the student. 2014 IL App (1st) 123544, ¶1. The appellate court applied §2-201 immunity, finding the principal's actions to discipline the student and address the situation were fully immunized even though his actions failed to prevent the subsequent fight. *Id*. at ¶63-68. *See also Albers,* 346 Ill. App. 3d at 808 (applying §2-201, finding "[w]e have little doubt that [the principal's] actions here constituted a policy determination as the cases have defined it. A school principal dealing with a disciplinary matter must balance competing interests—the confidentiality of his information source, the appropriate level of punishment, the concerns of all the children's parents, the impact of his decision on the student body generally—and make a judgment as to what balance to strike among them" and "[c]ertainly, the way that a principal handles an instance of bullying in his school falls within the definition [of a discretionary act]; any student who has been sent to the principal's office could attest that he has broad discretion in how to handle such situations."); *Marshall v. Evanston Skokie Sch. Dist. 65,* 2015 IL App (1st) 131654-U, ¶6 (finding the district administrator's decisions regarding how to address a student's mental health issues and the degree of supervision, including whether to disseminate mental health records to his teachers, was immunized under §2-201).

The above cases are dispositive of the issue and should have been followed by the Appellate Court in this matter. It is undisputed that Student A had a history of referrals for discipline. (SUP CS118-119). However, the Appellate Court failed to consider that the

undisputed facts conclusively show Assistant Principal Walz investigated each of Student A's referrals and used her judgment and discretion to determine what discipline or interventions to impose to address the situation. (SUP CS97, CS100, CS102-07, CS120-23). Each remedial measure was determined on an individual basis depending on the situation. (SUP CS102, CS106-07). Principal Hensley, Walz, and guidance counselor Lenfield, as members of the "problem solving team", also used their judgment to determine Student A should be part of Great Start Kid, a pro-social group, SAIG, Beta Kid, CIPS, and CICO. (SUP CS93, CS110-13, CS128-29, CS279-81, CS600). The District's determination that Student A was not a "physically aggressive student," did not need a Behavioral Intervention Plan or increased supervision, and that teachers only needed to be notified of Student A's wandering was based on Walz's investigation of the referrals, problem solving team meeting discussions, and the team members' personal interactions with Student A. (SUP CS102, CS108, CS115, CS130-31, CS133). These decisions fall squarely within the scope of §2-201.

Applying dispositive precedent, §2-201 provides full immunity to the District with regard to its administrators' decisions addressing Student A's behavior, including what information to disseminate to his teachers, regardless of whether those decisions were willful and wanton and proximately caused Riley's injuries. The Appellate Court's holding contradicts this line of precedent and causes confusion as to whether decisions about a student's discipline and remedial interventions are discretionary policy decisions.

Moreover, in rejecting this line of precedent, the Appellate Court effectively inserted itself into the role of the administrator and passed judgment on the appropriate remedial action without ever meeting this student or investigating the referrals. This

precedent goes against strong public policy in favor of schools being in the best position to determine the appropriate remedial action for their students. The Appellate Court's holding would open the floodgates to question every disciplinary decision and impede a school official's ability to exercise judgment, which undermines the very purpose of discretionary immunity: "Grants of immunity to public employees are premised upon the idea that such officials should be allowed to exercise their judgment in rendering decisions without fear that a good faith mistake might subject them to liability." *Harrison,* 197 Ill. 2d at 472.

V. THE UNDISPUTED FACTS SUPPORT A FINDING THAT DAYHOFF EXERCISED CONSCIOUS, DISCRETIONARY DECISIONS

The Appellate Court's decision also disregarded precedent, as cited in Section IV, in denying summary judgment because Dayhoff made conscious, discretionary decisions related to the activity for the day, the location to observe students, participation by students who did not dress, and whether to intervene based on his observation of the game, which he determined to be "normal scrum" for a ball. (SUP CS75-77). *See Harrison,* 197 Ill. 2d at 472 (finding principal's decision to refuse a student's request to leave school early due to weather was protected under §2-201); *Arteman,* 198 Ill. 2d at 487-88 (holding that §2-201 immunizes a teacher's decision not to provide safety equipment during a P.E. activity because such decisions are discretionary policy determinations); *Harinek,* 181 Ill. 2d at 342 (finding a fire marshal's direction to an office worker to stand near a door during a fire drill involved a determination of policy and an exercise of discretion because in planning and conducting fire drills, the fire marshal had to balance various interests that might compete for the time and resources of the fire department, including the interests of efficiency and safety); *Courson v. Danville Sch. Dist. No. 118*, 333 Ill. App. 3d 86, 90 (4th Dist. 2002) (finding a teacher's decision to allow students to operate a table saw without a proper safety

shield and without warning them of the particular danger constituted a "discretionary policy determination").

Moreover, there is an inherent risk in every physical activity in which the students participate in a PE class, even more when the students are participating in a contact sport, such as soccer. The line between what is "aggressive behavior" that needs to be sanctioned and "normal scrum" for the ball required the use of Dayhoff's discretion and judgment. Indeed, this Court has previously recognized the subjective decision-making inherent in coaching and officiating a contact sport:

> [T]he enforcement of the rules [in a contact sport] directly affects the way in which the sport is played. Imposing too strict a standard of liability on the enforcement of those rules would have a chilling effect on vigorous participation in the sport. Finally, as the organizational defendants point out, coaching and officiating decisions involve subjective decisionmaking that often occurs in the middle of a fast moving game. It is difficult to observe all the contact that takes place during an [] game, and it is difficult to imagine activities more prone to second-guessing than coaching and officiating.

Karas v. Strevell, 227 Ill. 2d 440, 464 (2008); *See also Geimer*, 272 Ill. App. 3d at 638 (finding "referees made incompetent discretionary decisions").

Dayhoff chose the activity, chose where to position himself to supervise the class, permitted Student A to play soccer, and observed at least some of the soccer game involving Student A and Riley, which he described as "normal" and "nothing out of the ordinary." (SUP CS68, CS75-77). Dayhoff should have immunity based on these discretionary policy decisions. Moreover, Dayhoff's use of his work device does not negate his use of discretion as those facts show that Dayhoff, like every teacher, had to balance various responsibilities that might compete for his time and make a discretionary decision as to how best to fulfill his teaching duties.

While Plaintiffs may disagree with the way Dayhoff supervised his class or the line between normal scrum and aggressive behavior during a soccer game, Dayhoff's discretionary judgment is entitled to full immunity under §2-201. *Harrison,* 197 Ill. 2d at 472; *Geimer*, 272 Ill. App. 3d at 638 *citing Jefferson v. City of Chicago*, 269 Ill. App. 3d 672 (1st Dist. 1995) ("Public officials should be free to exercise or not exercise their discretion without fear of having to answer in damages for a wrong decision. That is the clear purpose of the statutory immunity scheme established by the Tort Immunity Act.")

VI. DEFENDANTS ARE NOT LIABLE FOR EXPENSES UNDER COUNT II

Plaintiffs seek medical expenses pursuant to the Family Expense Act, 750 ILCS 65/15. (C436-37). The Act, however, does not impose liability on a teacher or a school district for such expenses. 750 ILCS 65/15. Rather, it was designed to bolster creditor's rights and clearly delineate when a creditor may maintain an action against one spouse, or another, in a family. 750 ILCS 65/15; *Proctor Hospital v. Taylor*, 279 Ill. App. 3d 624, 627 (3d Dist. 1996) ("the purpose of this statute is to protect creditors"); *North Shore Cmty Bank and Trust Co. v. Kollar*, 304 Ill. App. 3d 838 (1st Dist. 1999). Accordingly, the Act does not apply to this case where the parents attempt to hold the school district and district employee liable for expenses.

This claim must also be dismissed because recovery is contingent upon finding an underlying liability. *Shwachman,* 2016 IL App (1st) 143865-U, n. 6; *Hooke v. Montessori Sch. of Lake Forest,* 2023 IL App (2d) 230059-U, ¶105; *Cullotta v. Cullotta,* 287 Ill. App. 3d 967, 975 (1st Dist. 1997). As set forth above, Plaintiffs cannot establish the required underlying liability. As such, this Court should affirm the dismissal of Count II.

CONCLUSION

Wherefore, Defendants respectfully request that this Honorable Court enter an order reversing the Appellate Court's Order, affirming the circuit court's ruling and dismissing Plaintiffs' Second Amended Complaint with prejudice, and granting any other relief that the Court finds appropriate.

CERTIFICATE OF COMPLIANCE

Pursuant to Supreme Court Rule 341(c), I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the Certificate of Service and those matters to be appended to the brief under Rule 342(a), is 37 pages.

Dated: April 30, 2025

Respectfully submitted,

KANKAKEE SCHOOL DISTRICT 111 and DARREN DAYHOFF, Defendants-Appellants

By: */s/ Erin K. Walsh*
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NO. 131420

IN THE

Supreme Court of Illinois

KEVIN HAASE and RILEY HAASE, **Plaintiffs/Appellees,** **v.** **KANKAKEE SCHOOL DISTRICT 111, and DARREN WILBUR DAYHOFF,** **Defendants/Appellants.**	**On Petition for Leave to Appeal From the Appellate Court of Illinois, Third Judicial District, Appeal No. 3-23-369** **There Heard on Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County Illinois, Case No. 2018-L-00012 The Honorable Lindsay Parkhurst, Judge Presiding**

NOTICE OF FILING

To: See Attached Certificate of Service

The undersigned attorney hereby certifies that on **April 30, 2025**, she caused to be filed with the Clerk of the Illinois Supreme Court, using the Odyssey e-file electronic system, the **BRIEF OF DEFENDANTS/APPELLANTS AND APPENDIX.**

Dated: April 30, 2025

Respectfully submitted,
KANKAKEE SCHOOL DISTRICT 111 AND DARREN DAYHOFF,
Defendants/Appellants.

By: /s/ Erin K. Walsh
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CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements in this instrument are true and correct and that on April 30, 2025, a true and correct copy of the foregoing **BRIEF OF DEFENDANTS/APPELLANTS AND APPENDIX** was filed electronically via Odyssey e-FileIL with the Clerk of the Illinois Supreme Court, and copies to be served by electronic mail upon the counsel of record, namely:

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NO. 131420

IN THE

Supreme Court of Illinois

KEVIN HAASE and RILEY HAASE, **Plaintiffs/Appellees,** **v.** **KANKAKEE SCHOOL DISTRICT 111, and DARREN WILBUR DAYHOFF,** **Defendants/Appellants.**	**On Petition for Leave to Appeal From the Appellate Court of Illinois, Third Judicial District, Appeal No. 3-23-369** **There Heard on Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County Illinois, Case No. 2018-L-00012 The Honorable Lindsay Parkhurst, Judge Presiding**

DEFENDANTS/APPELLANTS' APPENDIX TO BRIEF

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March 26, 2025

In re: Kevin Haase et al., Appellees, v. Kankakee School District 111 et al., Appellants. Appeal, Appellate Court, Third District. 131420

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above entitled cause. We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed with the Clerk's office.

With respect to oral argument, a case is made ready upon the filing of the appellant's reply brief or, if cross-relief is requested, upon the filing of the appellee's cross-reply brief. Any motion to reschedule oral argument shall be filed within five days after the case has been set for oral argument. Motions to reschedule oral argument are not favored and will be allowed only in compelling circumstances. The Supreme Court hears arguments beginning the second Monday in September, November, January, March, and May. Please see Supreme Court Rule 352 regarding oral argument.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

NO. _____

IN THE

Supreme Court of Illinois

KEVIN HAASE and RILEY HAASE, **Plaintiffs/Respondents,** **v.** **KANKAKEE SCHOOL DISTRICT 111, and DARREN WILBUR DAYHOFF,** **Defendants/Petitioners.**	**On Petition for Leave to Appeal From the Appellate Court of Illinois, Third Judicial District, Appeal No. 3-23-369** **There Heard on Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County Illinois, Case No. 2018-L-000012, The Honorable Lindsay Parkhurst, Judge Presiding**

PETITION FOR LEAVE TO APPEAL

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ORAL ARGUMENT REQUESTED IF PETITION GRANTED

E-FILED
1/15/2025 1:23 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

POINTS AND AUTHORITIES

PRAYER FOR LEAVE TO APPEAL

Defendants the Board of Education of Kankakee School District 111 and Darren Dayhoff, pursuant to Ill. Sup. Ct. R. 315, petition this Court for leave to appeal from the Illinois Appellate Court, Third District, reversal of the circuit court's granting of Defendants' Motion for Summary Judgment. The Appellate Court's decision conflicts with well-established Illinois Supreme Court and Appellate Court precedent addressing §§3-108 and 2-201 of the Illinois Tort Immunity Act (TIA). If this Petition for Leave to Appeal is granted, Defendants ask this Court to reverse the judgment of the Appellate Court and affirm the circuit court's ruling, granting Defendants summary judgment.

STATEMENT OF THE JUDGMENT BELOW

On November 14, 2024, the Appellate Court issued a Rule 23 Order, reversing the circuit court's grant of Defendants' Summary Judgment Motion, with one Justice dissenting. (A-1-A-6; A-13-A-16). On December 5, 2024, Defendants timely petitioned for rehearing, which the Appellate Court denied on December 11, 2024. (A-17-A-59).

POINTS RELIED ON FOR REVERSAL

The Appellate Court contradicted longstanding Illinois Supreme Court and Appellate Court precedent on four points:

1) The Appellate Court found a teacher's alleged inadequate supervision of students playing soccer during PE class because he was using his work computer or phone could constitute willful and wanton conduct. This holding directly contradicts numerous appellate court cases, as Justice Hettel noted in dissent: "Courts in this state have repeatedly held that allegations against school staff for inadequate supervision are insufficient as a matter of law to establish willful and wanton conduct." (A-13). The dissent cited *twenty-five* appellate court cases holding that inadequate supervision or even the complete failure

to supervise students in a school setting does not, as a matter of law, rise to the level of willful and wanton conduct, unless the teacher had knowledge that such lack of supervision posed a high probability of serious physical harm to the plaintiff. (A-13-A-14).

As recognized by the dissenting opinion:

> The undisputed evidence established that Student A had been in Dayhoff's class for seven months at the time of the incident. Plaintiffs presented no evidence that Student A had previously harmed any other student in gym class at any time prior to this incident nor did they present evidence that Student A had threatened violence against Riley or any other student in the gym class on the day in question or at any other time. Even assuming that Student A had engaged in violence in school on other occasions and was playing soccer aggressively on the day in question, the evidence fails to establish that Dayhoff "was aware or should have known that the absence of supervision posed a high probability of serious harm or an unreasonable risk of harm" to Riley on the day of the incident. (A-15). (citations omitted)

2). The Appellate Court found that if the offending student "was in fact physically aggressive and a danger to other students, and that information was known to the District, the failure to disseminate such information to his teachers may be willful and wanton." (A-11). This conflicts with Illinois Supreme Court precedent holding that "school employees who exercised some precautions to protect students from injury, even if those precautions were insufficient, were not guilty of willful and wanton conduct." *Barr v. Cunningham*, 2017 IL 120751, ¶18; *Lynch v. Bd of Educ. of Collinsville Cmty Unit Dist. No*. 10, 82 Ill. 2d 415, 430-31 (1980). The undisputed facts show the District took remedial action to address the offending student's behavior during the school year; therefore, the Appellate Court's finding that failing to take additional precautions could be willful and wanton contradicts existing, binding precedent.

3). The Appellate Court's finding further conflicts with well-established precedent, including at least *eight* appellate court cases applying §2-201 immunity to a school district

for their administrators' decisions when investigating student misconduct and determining appropriate remedial intervention. 745 ILCS 10/2-201; *Castillo v. Bd. of Educ. of City of Chi.*, 2018 IL App (1st) 171053; *Mulvey v. Carl Sandburg High Sch.,* 2016 IL App (1st) 151615; *Malinksi v. Grayslake Cmty High Sch. Dist*, 2014 IL App (2d) 130685; *Albert v. Bd. of Educ. of City of Chi.*, 2014 IL App (1st) 123544; *Hascall v. Williams*, 2013 IL App (4th) 121131; *Marshall v. Evanston Skokie Sch. Dist. 65,* 2015 IL App (1st) 131654-U (March 27, 2015)*; Albers v. Breen*, 346 Ill.App.3d 799 (4th Dist. 2004); *D.M. ex. Rel. C.H. v. Nat'l Sch. Bus Serv. Inc.*, 305 Ill.App.3d. 735 (2d Dist. 1999). As §2-201 provides full immunity, it is irrelevant whether the District's failure to take additional action could constitute willful and wanton conduct. *In re Chi. Flood Litig.*, 176 Ill.2d 179, 196 (1997).

4). The Appellate Court disregarded Dayhoff's conscious, discretionary decisions related to his class, which are fully immunized under §2-201. 745 ILCS 10/2-201.

The Appellate Court's opinion conflicts with well-established precedent under similar fact patterns and fundamentally changes the duties and protections afforded to teachers and schools. Defendants request this Court correct the Appellate Court's ruling.

STATEMENT OF FACTS

A. Facts Surrounding Lawsuit

Riley was a seventh-grade student who was injured on March 13, 2017, during a soccer game in gym class when another student (Student A) ran into him. Plaintiffs sued the District and Dayhoff (Riley's P.E. teacher), alleging Dayhoff was willful and wanton in his supervision of his gym class and the District was willful and wanton by not implementing appropriate interventions for Student A prior or otherwise protecting Riley.

The class began at 10:22 AM. (R. SUP. CS695). That day, Dayhoff implemented a recreational day where students could either play soccer or basketball. (R. SUP. CS700).

Riley, Jacob (Riley's friend), and Dayhoff all testified that after the students changed into their PE uniforms, Dayhoff took attendance, and the students completed their warmup exercises. (R. SUP. CS319-320, CS356, CS71). Riley indicated this took ten minutes. (R. SUP. CS320). After the completion of the warmup exercises, Dayhoff went to his desk, and the students decided if they wanted to play soccer or basketball. (R. SUP. CS320; CS322; CS356; CS372). The majority of students chose to play basketball. (R. SUP. CS320).

The students who chose to play soccer first selected captains, and Riley testified it took about four minutes to pick teams. (R. SUP. CS320; CS356). Riley and Jacob testified that the first four to five minutes of the soccer game were normal and only after that did Student A begin "running in and out" and "goofing off." (R. SUP. CS321; CS81). Riley stated Student A "kept on running in and trying to grab the ball" and "thought it was funny," but "we just [] blew it off." (R. SUP. CS319-21). Riley confirmed Student A never tried to grab the ball from him. (R. SUP. CS327). Jacob stated it was "[j]ust a normal game of soccer, [] minus [Student A] running in and out of the game." (R. SUP. CS83). Jacob also observed Student A playing "aggressive defense" - not shoving with his hands but "using his body pressure" to get the ball but described Student A's interaction with Riley as being "in a way you would typically expect when someone's playing soccer." (R. SUP. CS84).

Dayhoff chose to supervise the class from the southeast corner of the gym because he could see the entire gym and what everyone was doing without having to turn one way or another. (R. SUP. CS77). Riley and Jacob recalled glancing up once or twice during the game and seeing Dayhoff on his laptop or phone. (R. SUP. CS35; CS85). Dayhoff stated any use of his computer or phone during class was school-related, such as responding to an email. (R. SUP. CS70). While he was supervising and shortly before the incident

occurred, Dayhoff observed three or four boys, including Riley and Student A, battling for the ball, but he determined that to be "normal scrum" for a ball and nothing out of the ordinary. (R. SUP. CS75, CS76). Dayhoff stated if he had observed a student being aggressive, he would have removed that student from the game. (R. SUP. CS74).

The injury occurred at 10:45 AM, which was approximately nine minutes into the soccer game and four to five minutes after Student A allegedly began running in and out. (R. SUP. CS743). According to Jacob, "Student A ran at full speed, leveled his shoulder, and hit Riley into a wall to retrieve the ball." (R. SUP. CS84). Riley and Student A had no substantive interaction before this incident. (R. SUP. CS327). Riley testified "I didn't think [Student A] personally targeted me…I think he was messing around too much." (R. SUP. CS346). There were no prior injuries or complaints made to Dayhoff about Student A prior to the incident. (R. SUP. CS321; CS84; CS71; CS74). Dayhoff did not see Student A engaging in aggressive behavior during the soccer game. (R. SUP. CS74).

During the 2016-2017 school year Student A was referred for discipline twenty times for cutting class, being in an unauthorized area, or insubordination, and disciplined for thirteen of these referrals. (R. SUP. CS118-123). He was also referred three times for physical aggression, four times for fighting, and once for use of profanity. *Id*. Five of the seven referrals for physical aggression or fighting occurred in the first half of the 2016-2017 school year, and three of those did not identify Student A as the instigator. *Id*.

Assistant Principal Walz investigated each of Student A's referrals. (R. SUP. CS97; CS100; CS107; CS118-123). Walz used discretion in deciding whether to discipline, the appropriate level of discipline, and whether to inform staff about a student's history or the discipline imposed. (R. SUP. CS105-06). Walz determined Student A was not a physically

aggressive student or in any way dangerous, and only communicated to staff that Student A required increased supervision for his wandering. (R. SUP. CS108; CS115). Sarah Lenfield was Student A's guidance counselor, and like Walz, determined Student A was not a physically aggressive student. (R. SUP. CS130; CS133). Lenfield clarified that though Student A had been involved in some fights, he was often the target. (R. SUP. CS130; CS133) Lenfield never received any notification from a teacher about a concern of physical aggression by Student A in the classroom or with a particular student. (R. SUP. CS133).

Principal Hensley, Walz, and Lenfield were part of a "problem-solving team" that made decisions related to appropriate interventions for students, including Student A. (R. SUP. CS93; CS109; CS600). This team provided both academic and behavioral supports for students, based on the student's individual needs. (R. SUP. CS93; CS600). Student A received support services through the District, including being part of a pro-social group, Social Academic Instructional Group (SAIG), and Check In Check Out (CICO), a support to aid with accountability. (R. SUP. CS110-113; CS128-29; CS279-281).

Dayhoff did not recall having any disciplinary issues with Student A, but recalled Student A "not dressing, not participating for class sometimes, [and] just goofing around." (R. SUP. CS66). Dayhoff never made a disciplinary referral about Student A and never witnessed Student A engaging in behavior he would call "serious." (R. SUP. CS64; CS66).

B. Summary Judgment In Favor of Defendants

The circuit court found Defendants were entitled to immunity for negligent supervision pursuant to §3-108 because Plaintiffs could not establish willful and wanton conduct, finding that "Illinois law holds allegations of failure to supervise student activities and/or leaving children unsupervised is not enough to establish willful and wanton

conduct" and there were no facts "to establish [Dayhoff] engaged in a conscious choice of action with knowledge of serious danger to others." (C883-884; A-63-A-64).

The circuit court further found the District immune under §2-201 for its decisions related to the disciplinary and remedial measures imposed on Student A following its investigation of his referrals for discipline. (C884-885; A-64-A-65). The circuit court also found that §2-201 immunity applied to Dayhoff's decisions related to his class on the day of the incident, including the activity of the day, how best to supervise his class, and whether to intervene in the game, as they involved balancing competing interests related to instruction, efficiency, time, and student safety and making a judgment call as to which solution worked best for his class. (C883; A-63).

C. Appellate Court's Reversal and Dissenting Opinion

On appeal, the Appellate Court reversed the circuit court, ruling that there are disputed facts as to whether Dayhoff was entitled to immunity pursuant to §2-201. (A-8). The Court did not address the District's immunity under §2-201 related to its discretionary policy decisions concerning Student A's disciplinary referrals and the remedial measures it imposed. The court found there were issues of fact regarding whether Defendants' actions were willful and wanton; specifically, that "[i]f Student A was in fact physically aggressive and a danger to other students, and that information was known to the District, the failure to disseminate such information to his teachers may be willful and wanton" and that "[k]nowledge of Student A's aggression and the lack of precautions to protect other students may demonstrate indifference or conscious disregard for students' safety." (A-11).

In a dissenting opinion, Justice Hettel noted the Appellate Court's decision contradicted twenty-five appellate court decisions, which addressed allegations against

school staff for inadequate supervision and repeatedly found that a teacher's failure to supervise student activities during which a student was injured does not constitute willful and wanton conduct. (A-13-A-16).

ARGUMENT

I. THE APPELLATE COURT CONTRADICTED ESTABLISHED PRECEDENT WHEN IT FOUND THE FAILURE TO SUPERVISE WAS WILLFUL AND WANTON CONDUCT

The Appellate Court's opinion directly conflicts with longstanding precedent, including Illinois Supreme Court precedent, finding that the failure to supervise student activities, in and of itself, does not establish willful and wanton conduct as a matter of law. Rather, each appellate district has held the facts must show a course of action that the defendant acted or failed to act with knowledge that his lack of supervision posed a high probability of foreseeable harm to the plaintiff. *Jackson v. Chi. Bd. Of Educ.,* 192 Ill. App. 3d 1093, 1100 (1st Dist. 1989); *Floyd v. Rockford Park Dist*, 355 Ill. App. 3d 695, 700 (2d. Dist. 2005); *Pomrehn v. Crete-Monee High Sch. Dist.,* 101 Ill.App.3d 331, 334–35 (3d Dist.1981); *Templar v. Decatur Pub. Sch. Dist. No. 61,* 182 Ill. App. 3d 507, 512 (4th Dist. 1989); *Albers v. Cmty. Consul. #204 Sch.*, 155 Ill. App. 3d 1083, 1086 (5th Dist. 1987).

It is the Plaintiffs' burden to present a factual basis that would arguably entitle them to a judgment. *Lutz v. Goodlife Entertainment, Inc.*, 208 Ill.App.3d 565, 568 (1st Dist. 1990). As recognized by Justice Hettel in his dissent and the Illinois Supreme Court, if there is insufficient evidence to sustain an allegation of willful and wanton conduct, the issue should be decided as a matter of law. *Barr,* 2017 IL 120751, ¶15.

A. The Appellate Court's Decision Contradicts Precedent Establishing Dayhoff Had Immunity Under §3-108

Here, summary judgment is appropriate because there are no facts that establish or infer that Dayhoff had knowledge that his alleged inadequate supervision posed a high

probability of foreseeable harm to Riley. Student A had been in Dayhoff's class for seven months at the time of the incident. During those seven months, Student A had not harmed or threatened violence against Riley or any other student in gym class. (R. SUP. CS327; CS64, CS66). Dayhoff never referred Student A for discipline, never witnessed Student A engage in physical aggression or any behavior he would call serious, and did not receive any notification about Student A being aggressive. (R. SUP. CS64, CS66). There is no evidence Student A had any substantive interaction with Riley before the incident, and Riley confirmed that he had never had any issues or confrontations with Student A:

> **Q. Okay. Have you had any problems with (Student A) in gym class ever? So let's talk about before March 13th.**
> A. No.
> **Q. No, okay. Have you ever had any problems with (Student A) in school?**
> A. No. (R. SUP. CS327)

There were no prior injuries in class before Riley's injury on the day of the incident or otherwise, resulting from students playing soccer or Student A, and no evidence that any student complained about Student A's conduct prior to Riley's injury. (R. SUP. CS321; CS71; CS74; CS84). Furthermore, Student A's interaction with Riley during the soccer game was "in a way you would expect from someone playing soccer" according to both Riley and Jacob. (R. SUP. CS327, CS84). Even Riley admitted "I didn't think [Student A] personally targeted me…I think he was messing around too much." (R. SUP. CS346).

Student A's conduct towards Riley was unforeseeable and unprovoked, and in the absence of facts showing Dayhoff had knowledge that his lack of supervision posed a high probability of foreseeable harm to Riley, his conduct amounts, at most, to negligent supervision, which is immunized under §3-108 of the TIA. 745 ILCS 10/3-108. Illinois courts for the last fifty years have repeatedly held that the breach of a duty to supervise,

including inadequate supervision or the complete failure to supervise students in a school setting does not, as a matter of law, rise to the level of willful and wanton conduct as a tremendous burden would be imposed on school districts and teachers if they were required to provide "constant surveillance of the children." *Mancha v. Field Museum of Nat'l Hist.*, 5 Ill.App.3d 699, 702 (1st Dist. 1972). The Appellate Court's ruling in this matter directly contradicts the rulings in numerous other appellate court cases with similar fact patterns:

In *Mancha,* groups of 12-year old students were allowed to view exhibits during a field trip to the Field Museum unsupervised that resulted in a student being physically assaulted. The court dismissed a willful and wanton supervision claim on the pleadings:

> The burden sought to be imposed on the defendant school district and teachers is a heavy one which would require constant surveillance of the children. A baseball game, a football game or a game of hopscotch played on school grounds might break up in a fight resulting in serious injury to one or more of the children. A teacher cannot be required to watch the students at all times while in school, on the grounds, or engaged in school-related activity. *Id*. at 702.

In *Jackson v. Chicago Bd. Of Educ*, a teacher left a classroom of students with mental disabilities for a period of thirty minutes, which resulted in plaintiff sustaining an injury by another student who was described as a "wild" person. 192 Ill.App.3d at 1096, 1101. The court granted summary judgment in favor of the school district, recognizing "Illinois courts have consistently held that a teacher's mere act of leaving children unsupervised will not be sufficient to establish willful and wanton misconduct," and finding that "plaintiff's general allegation that a teacher or school should have known the harm would occur without adult supervision is insufficient to establish willful and wanton misconduct." *Id*. at 1100.

In *Albers v. Cmty. Consul. #204 Sch.*, a student was permanently injured by another described as having "dangerous propensities" while the teacher left the students

unsupervised for ten minutes. 155 Ill.App.3d at 1084, 1086. Noting that the aggressor student had never previously injured plaintiff, the court, on appeal of a jury verdict in favor of the defendants, held that "[t]he general potential for danger with groups of children is not sufficient standing alone to sustain a claim of willful and wanton misconduct." *Id.* at 1086. The court declared "schools and teachers cannot be charged with the duty of anticipating and guarding against the willful and wanton misconduct by other children who suddenly without provocation attack other students," and found the student's previously violent behavior did not make it foreseeable that he would assault the plaintiff or that he could not be left unsupervised. *Id.; See Clay v. Chicago Bd of Educ.*, 22 Ill. App. 3d 437, 439, 441 (1st Dist. 1974) (dismissing complaint finding, as a matter of law, plaintiff could not state claim for willful and wanton supervision based on allegations that a student with violent propensities assaulted plaintiff while the teacher was absent from the classroom, noting the "tremendous burdens that would be imposed by a different decision."); *Cipolla v. Bloom Twp. High Sch. Dist. No. 206*, 69 Ill.App.3d 434, 437-38 (1st Dist. 1979) (granting motion to dismiss, finding no set of facts can be proved to entitle plaintiff to willful and wanton supervision claim premised on unprovoked attack of another student); *Booker v. Chicago Bd of Educ.*, 75 Ill.App.3d 381, 386 (1st Dist. 1979) (no willful and wanton supervision despite appointing as monitor for students' entry into a bathroom a student whom she knew had allegedly threatened plaintiff on prior occasions, and on this occasion plaintiff was assaulted in the bathroom); *Woodman v. Litchfield Cmty Sch. Dist. No. 12*, 102 Ill.App.2d 330, 334 (5th Dist. 1968) (holding teacher did not act willfully in failing to supervise when a student without provocation kicked another in the head, causing permanent damage); *Templar,* 182 Ill.App.3d at 510-513 (no willful and wanton

supervision premised on assault by another student); *Gubbe v. Catholic Dioc. of Rockford*, 122 Ill.App.2d 71, 79 (2d. Dist. 1970) (allegations of inadequate or improperly supervised recess area allegedly resulting in second assault on plaintiff insufficient to allege willful and wanton supervision); *Guyton v. Roundy*, 132 Ill. App. 3d 573, 578-79 (1st Dist. 1985); *Fustin v. Bd. of Ed. of Cmty. Unit Dist. No. 2,* 101 Ill.App.2d 113, 114 (5th Dist. 1968).

In *Floyd v. Rockford Park Dist*., a child violently struck another child in the head with a metal golf club, causing serious injuries. 355 Ill.App.3d 695, 700 (2d. Dist. 2005). The child had allegedly regularly exhibited belligerent and violent behavior toward the supervisors and other children, and fought with, threatened, and verbally abused the other children. *Id*. at 697-98. Despite this, the court dismissed the complaint on the pleadings, finding that plaintiff's allegations about the aggressor's "general bad behavior," even if defendant was aware of it, insufficient to create a basis for willful and wanton conduct because the aggressor had never previously been aggressive toward the plaintiff. *See Brooks v. McLean Cty. Unit. Dist. No. 5*, 2014 IL App (4th) 130503, ¶39, 41 (affirming dismissal of the complaint on the pleadings, finding there were no facts, even if proven, that would permit an inference of willful and wanton supervision because there were no facts the district "had any knowledge of past injuries to its students" or "any specific danger to [plaintiff] on the [day of the incident]").

In *Castaneda v. Cmty Unit Sch. Dist. No. 200*, the court affirmed summary judgment in favor of the district for an alleged failure to supervise students participating in 30 minute off-campus bike ride, finding the teacher had no duty to foresee and prevent the collision caused by a student who was not following directions and goofing off given there were no prior injuries. 268 Ill.App.3d 99, 105-06 (2d. Dist. 1994). The court declared to

hold otherwise "would impose on school districts and the teacher they employ a burden approaching strict liability and would make outdoor school field trips impossible." *Id*.

In *Pomrehn v. Crete-Monee High Sch. Dist.,* the court affirmed summary judgment, finding a coach's failure to supervise his team for fifteen minutes, which resulted plaintiff sustaining serious injuries, was not willful and wanton because "there was no prior problems or hazards with the team members, or the practice area" to show "reckless or conscious disregard of known danger." 101 Ill. App. 3d at 335. The court declared "there is a risk of injury and a danger involved in almost any gathering of teenagers. Yet this general potential for danger with groups of children is not sufficient to support a charge of willful and wanton misconduct." *Id*.; *Choice v. YMCA of McHenry Cty*., 2012 IL App (1st) 102877, ¶72 ("the mere fact that students may comport themselves in such a manner as to expose themselves or others to injury is legally insufficient to support a claim of willful and wanton misconduct in the absence of a specific, foreseeable, and probable danger.").

In *Holsapple v. Case Cmty. Unit Sch. Dist. C-1*, a student was injured during a confrontation in an unsupervised locker room and claimed that there had previously been altercations in the locker room. 157 Ill. App. 3d 391 (4th Dist. 1987). The court affirmed dismissal on the pleadings, finding plaintiff "did not allege that there had been any previous injuries or threats of injury, and there was no allegation that defendant knew or should have known of previous incidents" to state a willful and wanton supervision claim. *Id.* at 394. The court declared "[p]laintiff's conclusion that defendant 'should have known' that such incidents 'could occur' and 'could result in injuries,' could be said about any place where athletes gather." *Id.; Knapp v. Hill*, 276 Ill.App.3d 376 (1st Dist. 1995) (affirming dismissal of a complaint, which alleged automotive shop teacher failed to supervise high school

students who engaged in horseplay during class resulting in the death of the student); *Tijerina v. Evans*, 150 Ill.App.3d 288, 292-93 (2d. Dist. 1986) (dismissing willful and wanton supervision claim finding no specific allegations setting forth facts showing why defendant Evans knew or should have known of impending danger to the injured student).

In *Geimer v. Chicago Park Dist*., the plaintiff was injured during a touch football game allegedly due to the referee's willful and wantonly supervision and failure to expel from the game a participant who had exhibited rough play. 272 Ill.App.3d 629 (1st Dist. 1995). The court reversed a judgment n.o.v., finding the district "owed no duty to prevent the intentional misconduct" by another, and alleged "inadequate supervision" whether in "sports cases" or "where one of the students had demonstrated violent tendencies towards others" is not willful and wanton conduct, as a matter of law. *Id*. at 632-34, 637-39; *Lynch,* 82 Ill. 2d at 430-31 (inadequate supervision during sports match did not rise to level of willful and wanton conduct); *Pomaro v. Cmty Consol. Sch. Dist. 21*, 278 Ill.App.3d 266, 269-270 (1st Dist. 1995) (inadequate supervision of P.E. class not willful and wanton); *Biancorosso v. Troy Cmty. Consol. Sch. Dist. No.30C*, 2019 IL App (3d) 180613, ¶¶14-18 (same); *Poelker v. Warrensburg Latham Cmty. Unit Sch. Dist. No. 11*, 251 Ill.App.3d 270, 278 (4th Dist. 1993) (inadequate supervision of track practice resulting in head injury from thrown discus not willful and wanton); *Ramos v. City of Countryside*, 137 Ill. App.3d 1028 (1st Dist.1985) (inadequate supervision, which resulted in plaintiff being stuck in the eye with a softball was not willful and wanton); *Montague v. Sch. Bd. of Thornton Fractional Twp. North High Sch. Dist. 215*, 57 Ill.App.3d 828, 831-32 (1st Dist. 1978).

In sum, the Appellate Court's decision contradicts well-established precedent by holding that a jury could find willful and wanton conduct based on Dayhoff looking at his

computer/phone during class rather than supervising for nine minutes or so while students were playing soccer and that unforeseeable and unprovoked misconduct by another student could impute willful and wanton liability on a school district based solely on the student having a disciplinary record, despite the two students never having any previous conflict or interaction. This holding would require every school within the State to provide heightened supervision to every student with a disciplinary record and would impose a duty on every teacher to anticipate or prevent unprovoked misconduct of another student, which is untenable and conflicts with well-established Illinois precedent as reviewed above.

II. THE APPELLATE COURT DISREGARDED ILLINOIS SUPREME COURT PRECEDENT WHEN IT FOUND THE DISTRICT'S ACTIONS COULD CONSTITUTE WILLFUL AND WANTON CONDUCT

The Appellate Court ignored relevant precedent in finding that if Student A was physically aggressive and a danger to students, and the District was aware of that, failure to disseminate such information to Student A's teachers could be willful and wanton. (A-11). Contrary to precedent, the court's analysis focused on the disputed fact of Student A's aggressiveness, but the correct analysis is whether the District's actions in response to Student A could be considered willful and wanton. This has been decided by the Supreme Court in the negative.

Illinois Supreme Court precedent holds that "school employees who exercised some precautions to protect students from injury, even if those precautions were insufficient, were not guilty of willful and wanton conduct." *Barr,* 2017 IL 120751, ¶18. Failure to take additional precautions does not evidence an "utter and conscious disregard." *Burke v. 12 Rothchild's Liq. Mart,* 148 Ill.2d 429, 449 (1992) (holding plaintiffs to do more than merely prove … the failure to take precautions); *Lynch,* 82 Ill.2d at 430 ("The evidence does not demonstrate an utter and conscious disregard for the safety of the girls, simply

insufficient precautions for their protection"); *Siegmann v. Buffington,* 237 Ill. App. 3d 832 at 834 (no willful and wanton conduct when defendant took reasonable, but careless and inadequate, steps to remedy situation after first fight); *Shwachman v. Northfield Twp. High Sch. Dist. 225,* 2016 IL App (1st) 143865-U, ¶41(though the precautions taken did not prevent the injury, "[m]ere ineffectiveness [] does not establish a course of action demonstrating that a defendant was utterly indifferent or consciously disregarded the safety of others"); *Bielema v. River Bend Cmty. Sch. Dist. No. 2*, 2013 IL App (3d) 120808, ¶19 (finding school "took some action to remedy the danger posed by" even though principal "could have done more to warn" plaintiff); *Castaneda,* 268 Ill. App. 3d at 104-06 ("the mere fact that [teacher] could have done more to prevent the accident, does not [] permit a jury to conclude that he acted with reckless disregard for the safety of others"); *Geimer*, 272 Ill.App.3d at 637 ("incompetent discretionary decisions" to remedy bad behavior "fails to show willful and wanton conduct as a matter of law."); *Templar,* 182 Ill.App.3d at 512 (no willful and wanton conduct when a school takes action to remedy situation after first fight, even if unsuccessful); *Leja v. Cmty. Unit Sch. 300*, 2012 IL App (2d) 120156, ¶11; *Toller v. Plainfield Sch. Dist. 202*, 221 Ill.App.3d 554, 558 (3d Dist. 1991); *Mitchell v. Special Educ. Jt. Agreement Sch. Dist. 208*, 386 Ill. App. 3d 106, 111-12 (1st Dist. 2008); *Stiff v. Eastern Ill. Area of Special Educ.*, 279 Ill.App.3d 1076, 1082 (4th Dist. 1996); *Biancorosso*, 2019 IL App (3d) 180613, ¶¶14-18; *Poelker,* 251 Ill.App.3d at 278.

The undisputed record shows that Assistant Principal Walz investigated each of Student A's disciplinary referrals and imposed remedial measures and interventions. (R. SUP. CS97; CS100; CS105-107, CS110-114, CS118-123). Further, Walz, Principal Hensley, and guidance counselor Lenfield all met to discuss Student A's academic and

social development and determined and implemented appropriate interventions to assist him. (R. SUP. CS93; CS109-113; CS128-129; CS600). Because District administrators took reasonable steps to remedy the situation after each referral for discipline, the District was not "utterly indifferent" and the failure to take an additional precaution, such as disseminating information to teachers, cannot sustain a willful and wanton claim.

III. THE APPELLATE COURT FAILED TO CONSIDER THE APPLICATION OF §2-201 TO THE DISTRICT'S DECISIONS RELATED TO STUDENT A

The Appellate Court overlooked and misapprehended longstanding, established precedent when it failed to address the application of §2-201 immunity to the District's discretionary decisions concerning Student A, including its investigation into the referrals for discipline and appropriate remedial measures. The Appellate Court incorrectly denied summary judgment, stating there was a question of fact on whether the alleged failure to disseminate information about Student A to his teachers was willful and wanton. (A-11). However, because such policy decisions are fully immunized under §2-201, including willful and wanton misconduct, it is irrelevant whether willful and wanton conduct could be found. *In re Chi. Flood Litig.*, 176 Ill.2d at 196.

Illinois courts have consistently and repeatedly held that determining and implementing appropriate discipline and interventions for a student and the dissemination of that information are discretionary policy decisions that fall within the scope of §2-201. As the court stated in *Mulvey v. Carl Sandburg High Sch.*, "this immunity provision applies to bar claims brought regarding failure of school officials to discipline school bullies." 2016 IL App (1st) 151615, ¶47. The court agreed with prior decisions that had found tort immunity applies because the policy required the district to determine if bullying occurred, what consequences would result and any appropriate remedial actions. *Id*.

In *Malinksi v. Grayslake Cmty High Sch. Dist*, the court dismissed a claim that the district failed to take sufficient action to prevent bullying and subsequent injury, finding implementation of student discipline requires discretion. 2014 IL App (2d) 130685, ¶13.

In *Castillo v. Bd. of Educ. of City of Chi.*, a student claimed school officials failed to protect her from harassment and assault by another student. 2018 IL App (1st) 171053. The court affirmed dismissal on a motion to dismiss as "what the law requires," reasoning "the Board's alleged failure to prevent [] harassment depended on discretionary decisions regarding school discipline," for which "the Board has statutory immunity" under §2-201. *Id.* ¶2; *See Hascall,* 2013 IL App (4th) 121131 ¶25 (holding District performed discretionary acts in responding to student's allegations of aggressive behavior when denied student's request to transfer to another classroom); *Albers,* 346 Ill.App.3d at 808 (applying §2-201, finding "principal dealing with a disciplinary matter must balance competing interests and make a judgment as to what balance to strike among them."); *D.M. ex. Rel. C.H.,* 305 Ill.App.3d. at 740 (finding the act of assigning plaintiff without additional protection to a bus with a student who had previously harmed him was a determination of policy and an exercise of discretion pursuant to §2-201); *Albert,* 2014 IL App (1st) 123544, ¶68 (applying §2-201 to disciplinary decision of principal following a fight between two students, which did not prevent a second fight and resulted in the death of a student); *Marshall,* 2015 IL App (1st) 131654-U, ¶6 (finding decisions regarding the appropriate way to address the student's supervision and mental health issues, including whether to disseminate mental health records to his teachers immunized under §2-201).

The above cases are dispositive of the issue and should have been followed by the Appellate Court in this case. It is undisputed that Student A had a history of referrals for

discipline. (R. SUP. CS118-123). However, the Appellate Court failed to consider that the undisputed facts conclusively show the Assistant Principal Walz investigated each of Student A's referrals and used her judgment and discretion to determine what discipline or interventions to impose to address the situation. (R. SUP. CS97, CS100, CS105-07, CS110-14). Each remedial measure was determined on an individual basis depending on the situation. (R. SUP. CS102; CS106-07). Principal Hensley, Walz, and guidance counselor Lenfield, as members of the "problem solving team" for Student A, also used their judgment to determine Student A should be part of a pro-social group, SAIG, and CICO. (R. SUP. CS93; CS95; CS109-13; CS128-129; CS279-281; CS600). The District's determination that Student A was not a "physically aggressive student," did not need a Behavioral Intervention Plan or increased supervision, and that teachers only needed to be notified of Student A's wandering was based on Walz's investigation of the referrals, problem solving team meeting discussions, and the problem solving team's personal interactions with Student A. (R. SUP. CS102; CS108; CS115; CS130-131; CS133).

These decisions fall squarely within the scope of §2-201. Applying dispositive precedent, §2-201 provides full immunity to the District with regard to its administrators' decisions addressing Student A's behavior, including what information to disseminate to his teachers, regardless of whether those decisions were willful and wanton and proximately caused Riley's injuries. *See also Harrison v. Hardin County Cmty Unit Sch. Dist. No. 1*, 197 Ill.2d 466, 472 (2001) ("Grants of immunity to public employees are premised upon the idea that such officials should be allowed to exercise their judgment in rendering decisions without fear that a good faith mistake might subject them to liability.")

IV. THE APPELLATE COURT DISREGARDED DAYHOFF'S DISCRETIONARY DECISIONS

The Appellate Court's decision also disregarded precedent, as cited in Section III, in denying summary judgment because Dayhoff made conscious, discretionary decisions related to the activity for the day, the location to best observe all the students, and whether to intervene based on his observation of the game, which he determined to be "normal scrum" for a ball. (R. SUP. CS75-77). *See also Harrison,* 197 Ill.2d at 472 (finding principal's decision to refuse a student's request to leave school early due to weather was protected under §2 -201); *Arteman v. Clinton Cmty. Unit Sch. Dist. 15,* 198 Ill.2d 475, 487-488 (2002)(finding teacher's decision not to provide safety equipment during a P.E. activity immunized under §2-201); *Courson v. Danville Sch. Dist. No. 118*, 333 Ill. App. 3d 86, 90 (4th Dist. 2002) (finding a teacher's decision to allow students to operate table saw without a proper safety shield).

That Dayhoff was briefly on his device does not negate his use of discretion and judgment as those facts merely show that Dayhoff, like every teacher, had to balance various interests that might compete for his time and make a judgment as to how best to perform his teaching responsibilities. While Plaintiffs may disagree with the way Dayhoff supervised his class or the line between normal scrum and aggressive behavior during a soccer game, Dayhoff's judgment is entitled to full immunity under §2-201.

CONCLUSION

Wherefore, Defendants respectfully request that this Honorable Court enter an order reversing the Appellate Court's Order, affirming the circuit court's ruling and dismissing Plaintiffs' Second Amended Complaint with prejudice, and granting any other relief that the Court finds appropriate.

CERTIFICATE OF COMPLIANCE

Pursuant to Supreme Court Rule 341(c), I certify that this Petition for Leave to Appeal conforms to the requirements of Supreme Court Rules 315(c) and (d) and Supreme Court Rules 341 through 343. The length of this Petition, excluding the pages or words contained in the Rule 341(d) cover, and this Rule 341(c) certificate of compliance, the certificate of service and those matters to be appended to the Petition under Rule 315(c)(6), is 20 pages.

Dated: January 15, 2025

Respectfully submitted,

KANKAKEE SCHOOL DISTRICT 111 and DARREN DAYHOFF, Defendants/Petitioners.

By: */s/ Erin K. Walsh*
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No.

IN THE SUPREME COURT OF ILLINOIS

KEVIN HAASE and RILEY HAASE, Plaintiffs/Respondents v. KANKAKEE SCHOOL DISTRICT 111 and DARREN DAYHOFF, Defendants/Petitioners.	)	On Petition for Leave to Appeal from the Illinois Appellate Court, Third District, Appeal No.: 3-23-0369 Appeal from the Circuit Court of Kankakee County, Illinois Trial Court No. 18-L-12 Hon. Lindsay Parkhurst Judge Presiding

NOTICE OF FILING

To: *See Attached Certificate of Service*

The undersigned attorney hereby certifies that on **January 15, 2025**, she caused to be filed with the Clerk of the Illinois Supreme Court, using the Odyssey e-file electronic system, the **PETITION FOR LEAVE TO APPEAL WITH APPENDIX OF DEFENDANTS/PETITIONERS KANKAKEE SCHOOL DISTRICT 111 AND DARREN DAYHOFF**.

Dated: January 15, 2025

Respectfully submitted,
KANKAKEE SCHOOL DISTRICT 111 and DARREN DAYHOFF,
Defendants/Petitioners.

By: */s/ Erin K. Walsh*
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CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements in this instrument are true and correct and that on January 15, 2025, a true and correct copy of the foregoing **PETITION FOR LEAVE TO APPEAL OF PETITIONERS AND ACCOMPANYING APPENDIX** to be filed electronically via Odyssey e-FileIL with the Clerk of the Illinois Supreme Court, and copies to be served by electronic mail upon the counsel of record, namely:

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NO. _____

IN THE

Supreme Court of Illinois

KEVIN HAASE and RILEY HAASE, **Plaintiffs/Respondents,** **v.** **KANKAKEE SCHOOL DISTRICT 111, and DARREN WILBUR DAYHOFF,** **Defendants/Petitioners.**	**On Petition for Leave to Appeal From the Appellate Court of Illinois, Third Judicial District, Appeal No. 3-23-369** **There Heard on Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County Illinois, Case No. 2018-L-000012, The Honorable Lindsay Parkhurst, Judge Presiding**

PETITIONERS' APPENDIX TO PETITION FOR LEAVE TO APPEAL

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Order filed November 14, 2024

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2024

KEVIN HAASE and RILEY HAASE,	)	Appeal from the Circuit Court
	)	of the 21st Judicial Circuit,
Plaintiffs-Appellants,	)	Kankakee County, Illinois,
	)	
	)	Appeal No. 3-23-0369
v.	)	Circuit No. 18-L-12
	)	
KANKAKEE SCHOOL DISTRICT 111 and	)	
DARREN WILBUR DAYHOFF,	)	Honorable
	)	Lindsay Parkhurst,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE DAVENPORT delivered the judgment of the court.
Justice Holdridge concurred in the judgment.
Justice Hettel dissented.

ORDER

¶ 1 *Held*: Summary judgment was improper because there are disputed issues of material fact. Reversed and remanded.

¶ 2 Plaintiffs filed a two-count complaint against defendants Kankakee School District 111 (District) and Darren Dayhoff (Dayhoff), alleging defendants (1) engaged in willful and wanton conduct and (2) were liable for plaintiffs' expenses under the Family Expense Act (750 ILCS 65/15 (West 2016)). The circuit court granted defendants' motion for summary judgment, finding

defendants were immune from liability under section 2-201 of the Local Government and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/2-201 (West 2016)). For the following reasons, we reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 On March 13, 2017, Riley Haase was injured by a classmate (Student A) while playing soccer in Dayhoff's physical education class at Kankakee Junior High School. These are essentially the only facts the parties agree on. The accounts below were taken from depositions.

¶ 5 According to Riley, class started as usual. Dayhoff took attendance and placed basketballs and soccer balls in the middle of the gymnasium, allowing students to choose their activity. Riley and his friend, Jacob Gilreath, chose to play soccer. Generally, except for the first and last ten minutes of class, Dayhoff minded his own business on his laptop or phone and sat in the corner of the gym with his feet up on a desk. That day, Dayhoff sat at the desk with his laptop open during class. Student A, who was not part of the soccer game, interfered with the game and tried to grab the ball. Student A had a reputation for being a troublemaker. Riley picked up an out-of-bounds ball; the next thing he knew, Jacob was walking him over to Dayhoff, yelling that Riley had been tackled into a wall and knocked out of his shoes. Dayhoff told them, "It'll be fine, go back to class." According to Riley, he was never taken to the office that day, and he was in a lot of pain.

¶ 6 Jacob was in the same gym class. He saw Student A "running around being obnoxious" that day. He believed Student A was being unnecessarily rough and shoving students playing soccer. Riley ran to the wall to get a ball and Student A ran at full speed after him, shoulder-checking Riley into the wall. Riley lay on the ground, not moving, for 30 seconds. Jacob brought Riley over to Dayhoff, who was sitting at his desk. Jacob told Dayhoff what happened, and Dayhoff told them that it would be fine and to go sit against the wall. After class, Jacob took Riley

to the office. Before this incident, Jacob knew Student A to be physically aggressive and heard about him being in fights. He had also seen Dayhoff on his cellphone and laptop during class in the past.

¶ 7 According to Dayhoff, at the time of the incident, he was in the southeast corner of the gym because he could see everything without needing to turn his head. There was a desk in that corner, but he did not sit there during the entire class. If he brought his laptop to class, he would place it on the desk. Dayhoff did not regularly use his laptop during class. However, he might have used it to look at work-related emails. He carried his personal phone in class but only ever checked it briefly.

¶ 8 Normally, students not dressed in gym uniform would sit out during that class, but Dayhoff periodically allowed them to participate. Dayhoff initially said he did not remember if Student A was dressed for class on the day in question. Later, he said Student A was not dressed in his gym uniform, so Student A started class on the sideline. Dayhoff allowed Student A to play soccer. He did not see Student A engage in any aggressive or unwanted physical contact with other students that day. Student A "was playing soccer just like the rest of them." According to Dayhoff, if he saw Student A engaged in aggressive physical contact with the other students, Student A "would have been removed from the game because he was not dressed[.]" Dayhoff did not see Riley get injured. He saw a group of students, including Riley and Student A, battling for the soccer ball. The first time he learned about Riley's injury was when Riley and Jacob came over to him during class. He said Riley seemed fine but said his arm hurt, so he sent Riley and Jacob to the front office.

¶ 9 Dayhoff did not recall having any disciplinary problems with Student A throughout the school year. Nor did he recall being told about any student's disciplinary history. Dayhoff was

surprised to hear that Student A had 29 reported disciplinary issues from August 2016 to March 2017. The only problems he had with Student A involved not dressing for gym class, not participating, or goofing off.

¶ 10 Fiona Walz was the assistant principal who oversaw discipline for the seventh grade. A violation of the student code of conduct was called a "referral," and Student A received referrals, but she did not recall any of their details. She communicated to staff that Student A needed increased supervision for his wandering, but she did not believe he was physically aggressive.

¶ 11 Sarah Lenfield was the school counselor. She worked with Student A on several occasions. She did not believe he was physically aggressive. Although Student A was involved in some fights, he was often the target. He was not prone to initiate fights. Lenfield "never got any notifications about teachers' concern about the aggression for [her] to work on that one on one. It was more peer relationship and social settings, where [Student A] functioned at a very lower level than his typical age group would."

¶ 12 Charles Hensley was the principal. He believed Riley was sent to the office on the day of the injury because he recalled Riley saying he ran into the wall going after the ball and that he felt fine. The incident was deemed an accident. He did not remember if the administration ever considered Student A to be physically aggressive or a person who got into fights. Hensley never had any disciplinary issues or problems with Dayhoff as a teacher, and Dayhoff was not disciplined after this incident.

¶ 13 According to Student A's disciplinary record, he received 29 referrals from August 2016 to March 2017. Of those referrals, 24 were for insubordination, physical aggression, and fighting. The rest were for being in an unauthorized area, cutting class, profanity, and theft.

¶ 14 On February 16, 2018, plaintiff Kevin Haase filed a two-count complaint as Riley's parent and next friend. Count I alleged the District, through its employee Dayhoff, had a duty to refrain from willful and wanton conduct that could cause injury to a student in class and defendants breached that duty when Dayhoff did not supervise the class. Count II made a claim under the Family Expense Act, alleging Kevin became obligated for Riley's medical expenses following the injury.

¶ 15 On June 5, 2018, Kevin filed an amended complaint. Count I of the amended complaint alleged Dayhoff knew Student A had a history of violent behavior, Dayhoff should have supervised Student A more closely, and the District, through Dayhoff, and Dayhoff individually, exhibited an utter indifference to or conscious disregard for the students' safety. Count II remained the same.

¶ 16 On September 12, 2022, Kevin filed a second amended complaint, adding Riley as a named plaintiff because he had reached the age of majority.

¶ 17 Defendants moved for summary judgment, arguing section 2-201 of the Tort Immunity Act granted immunity to public entities and their employees for discretionary acts. Accordingly, they argued Dayhoff was entitled to immunity for his decisions on how to conduct and supervise his class, and the District was entitled to immunity for its determination and implementation of appropriate discipline and interventions for Student A. Defendants further argued plaintiffs could not provide evidence of defendants' willful and wanton conduct. Finally, defendants argued they were not liable for medical expenses because the Family Expense Act did not impose liability on a teacher or school district, and even if it did, recovery was contingent on finding an underlying liability.

¶ 18 The court granted defendants' motion. It found that Dayhoff's conduct in supervising his gym class—allowing "game day," allowing Student A to participate in the soccer game, and not

interceding in the soccer game—involved both the exercise of discretion and a determination of policy. The court found Hensley, Walz, and Lenfield exercised their discretion and made policy determinations in their assessment, evaluation, and plan for educating, disciplining, and managing Student A. They also exercised their discretion and made policy determinations in deciding what information to communicate to faculty and staff about Student A. The court found no set of facts would entitle plaintiffs to relief and overcome the immunity provided to defendants under sections 2-109 and 2-201 of the Tort Immunity Act. The court further found that, assuming section 3-108 of the Tort Immunity Act applied, defendants' conduct was not extreme and outrageous and did not shock the conscience. Lastly, the court found the Family Expense Act did not apply to this case because its purpose was to protect creditors, and defendants were not creditors. Plaintiffs appeal.

¶ 19 II. ANALYSIS

¶ 20 On appeal, plaintiffs argue the circuit court erred in granting summary judgment because (1) section 2-201 of the Tort Immunity Act does not provide immunity where there was no evidence Dayhoff made a conscious decision on whether to remove Student A from class, (2) section 3-108 pertains to supervision and Dayhoff's failure to supervise was willful and wanton when he failed to stop an ongoing danger, and (3) Riley's father is entitled to recover damages for medical expenses from defendants.

¶ 21 Summary judgment will be granted if the "pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2022). "In reviewing a trial court's grant of summary judgment, we do not assess the credibility of the testimony presented but, rather, determine only whether the evidence presented was

sufficient to create an issue of material fact." *Lau v. Abbott Laboratories*, 2019 IL App (2d) 180456, ¶ 37. "In determining whether a genuine issue of material fact exists, the pleadings, depositions, admissions and affidavits must be construed strictly against the movant and liberally in favor of the opponent." *Mashal v. City of Chicago*, 2012 IL 112341, ¶ 49. "A genuine issue of material fact precluding summary judgment exists where the material facts are disputed or, if the material facts are undisputed, reasonable persons might draw different inferences from the undisputed facts." *Adames v. Sheahan*, 233 Ill. 2d 276, 296 (2009). "Summary judgment is a drastic means of disposing of litigation and, therefore, should be granted only when the right of the moving party is clear and free from doubt." *Id.* We review the circuit court's decision to grant a motion for summary judgment *de novo*. *Shaw v. U.S. Financial Life Insurance Co.*, 2022 IL App (1st) 211533, ¶ 26.

¶ 22 A. Section 2-201

¶ 23 Section 2-201 of the Tort Immunity Act provides, "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 discretion even though abused." 745 ILCS 10/2-201 (West 2016). "The plain statutory language states that the act or omission giving rise to the injuries must constitute *both* an exercise of discretion *and* a determination of policy." (Emphases added.) *Andrews v. Metropolitan Water Reclamation District of Greater Chicago*, 2019 IL 124283, ¶ 37. "[D]iscretionary decisions are those unique to a particular public office, which involve the exercise of personal deliberation and judgment in deciding whether to perform a particular act, or how and in what manner that act should be performed." (Internal quotation marks omitted.) *Wright-Young v. Chicago State University*, 2019 IL App (1st) 181073, ¶ 77. "[D]iscretion connotes a conscious

decision." *Monson v. City of Danville*, 2018 IL 122486, ¶ 33. Policy determinations require defendants "to balance competing interests and to make a judgment call as to what solution will best serve each of those interests[.]" *Wright-Young*, 2019 IL App (1st) 181073, ¶ 77.

¶ 24 The parties disagree over whether Dayhoff made a conscious decision. Plaintiffs argue Dayhoff was not paying attention to his class, so he could not have made any conscious decisions about something he was not aware of. But defendants argue Dayhoff made a number of decisions that day, including what sports the students would play in class, allowing students to participate even though they were not dressed in uniform, and from where he supervised the class.

¶ 25 There are conflicting accounts of what Dayhoff was doing during the gym class on the day in question. Riley and Jacob reported seeing him sitting at a desk, focused on his laptop. Dayhoff said he was supervising while walking around the gym. Riley reported that Student A was not playing soccer, but kept running in and out of the game. Jacob reported Student A was being obnoxious and unnecessarily rough during the game. Dayhoff observed Student A "playing soccer just like the rest of them." Dayhoff said if he saw Student A being physically aggressive, he would have removed him from the game because Student A was not dressed for class.

¶ 26 Defendants have to prove section 2-201 immunity applies. *Andrews*, 2019 IL 124283, ¶ 23. In *Andrews*, the defendant did not establish discretionary immunity under section 2-201 and, therefore, was not entitled to summary judgment. *Id.* ¶ 52. There, workers were using two ladders when the plaintiff fell on a coworker, causing severe injuries. *Id.* ¶ 6. The defendant admitted he was unaware of this two-ladder setup. *Id.* ¶ 35. There was no evidence that the defendant exercised judgment or skill in making decisions about ladders, or that he balanced competing interests and determined the solution to best serve those interests. *Id.* The supreme court stated, "In the absence of a judgment call and a weighing of risks and benefits, there is nothing to protect." *Id.* ¶ 41.

Similarly, it is not clear if Dayhoff made a conscious decision in allowing Student A to participate in class or if he was even aware of Student A's behavior during that class.

¶ 27 Here, these disputed facts made summary judgment improper. The disputed facts call into question whether Dayhoff made a decision, let alone a discretionary decision. Dayhoff said he allowed Student A to participate and saw him playing soccer with the other students. Riley and Jacob said Student A was being disruptive and unnecessarily rough during the soccer game. But there is no evidence that Student A was ever removed from the game. It was defendants' burden to support their claim of section 2-201 immunity with evidence of conscious decision-making, and they failed to sustain that burden. See *Andrews*, 2019 IL 124283, ¶ 46. If Dayhoff did not know what was happening in his gym class, it also calls into question whether he made a policy determination. Because section 2-201 requires both a discretionary decision and a policy determination, and there are facts in dispute as to whether either or both occurred, the court should not have granted summary judgment.

¶ 28 B. Section 3-108

¶ 29 Plaintiffs argue that section 3-108 of the Tort Immunity Act applies, rather than section 2-201, and Dayhoff's failure to supervise was willful and wanton. "[W]here there exists a general statutory provision and a specific statutory provision, either in the same or in another act, both relating to the same subject, the specific provision controls and should be applied." *Knolls Condominium Ass'n v. Harms*, 202 Ill. 2d 450, 459 (2002). Section 3-108 specifically applies to supervision or the failure to supervise. Section 3-108 provides,

> "(a) Except as otherwise provided in this Act, neither a local public entity nor a public employee who undertakes to supervise an activity on or the use of any public property is liable for an injury unless the local public entity or public

> employee is guilty of willful and wanton conduct in its supervision proximately causing such injury.
>
> (b) Except as otherwise provided in this Act, 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 unless the employee or the local public entity has a duty to provide supervision imposed by common law, statute, ordinance, code or regulation and the local public entity or public employee is guilty of willful and wanton conduct in its failure to provide supervision proximately causing such injury." 745 ILCS 10/3-108 (West 2016).

"Supervision has been defined to include not only passive oversight of an activity but also direction, teaching, demonstration of techniques and—to some degree—active participation in an activity while supervising it." (Internal quotation marks omitted.) *Doe v. Dimovski*, 336 Ill. App. 3d 292, 298 (2003). But "[t]he quality or level of the teacher's supervision of the class is irrelevant to a section 3-108 analysis." *Hill v. Galesburg Community Unit School District 205*, 346 Ill. App. 3d 515, 521 (2004).

¶ 30 " 'Willful and wanton conduct' as used in [the Tort Immunity] Act means 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 or their property." 745 ILCS 10/1-210 (West 2016). This definition applies in any immunity under the Tort Immunity Act where a willful and wanton exception is incorporated. *Id.* "Willful and wanton conduct differs from mere negligence in that it requires a conscious choice of a course of action, either with knowledge of the serious danger to others involved in it or with knowledge of facts which would disclose this danger to any reasonable [person]." (Internal quotation marks omitted.) *Doe v. Bridgeforth*, 2018

IL App (1st) 170182, ¶ 46. "Illinois courts define willful and wanton conduct, in part, as the failure to take reasonable precautions after knowledge of impending danger." *Id.* "Inadvertence, incompetence, or unskillfulness does not constitute willful and wanton conduct." *Callaghan v. Village of Clarendon Hills*, 401 Ill. App. 3d 287, 301 (2010). "Generally, whether a defendant's conduct is willful and wanton is a question for the jury." *Cohen v. Chicago Park District*, 2017 IL 121800, ¶ 27.

¶ 31 We do not reach a decision whether section 3-108 applies instead of section 2-201. We only find due to the disputed material facts, the court improperly granted summary judgment. Here, there are numerous facts in dispute regarding Student A and defendants' actions or inactions. In particular, Student A's reputation and level of aggression are disputed. Riley and Jacob both said they knew Student A was aggressive before this incident and he got into fights. But Walz and Lenfield said he was not aggressive or the initiator, but more so a target. The only communications about Student A that Walz sent to teachers were about his tendencies to wander, and Lenfield never received concerns from teachers that Student A exhibited aggressive behavior. However, Student A's disciplinary record for part of the 2016-2017 school year shows multiple referrals for insubordination and physical aggression. If Student A was in fact physically aggressive and a danger to other students, and that information was known to the District, the failure to disseminate such information to his teachers may be willful and wanton. Knowledge of Student A's aggression and the lack of precautions to protect other students may demonstrate indifference or conscious disregard for students' safety. Genuine issues of fact exist on the question of whether defendants' conduct was willful and wanton. Thus, summary judgment was improper.

¶ 32 C. Family Expense Act

¶ 33 The Family Expense Act "codifies the common-law rule making parents liable for the expenses of their minor children." *Manago By & Through Pritchett v. County of Cook*, 2017 IL 121078, ¶ 12. Its purpose is to protect creditors. *Baez v. Rosenberg*, 409 Ill. App. 3d 525, 531 (2011). "The common law in turn gives parents a cause of action against a tortfeasor who, by injuring their child, caused them to incur the medical expenses." *Bauer ex rel. Bauer v. Memorial Hospital*, 377 Ill. App. 3d 895, 922 (2007). Therefore, "because the [Family Expense Act] renders parents liable for the medical expenses of their minor children, parents can maintain a cause of action against a tortfeasor who injures their child for the recovery of resultant medical expenses." *Cullotta v. Cullotta*, 287 Ill. App. 3d 967, 975 (1997). But "[s]ince a parent's action under such circumstances is derivative, if a defendant is not liable in tort for the underlying injury to the child, the defendant cannot be held liable to the child's parent for the payment of medical expenses." *Id.*

¶ 34 Defendants argue the Family Expense Act does not impose liability on a teacher or a school district for medical expenses because it was designed to delineate when a creditor may maintain an action against one spouse. Although defendants are correct in citing the purpose of the Family Expense Act, their argument ignores the common law that gives parents a cause of action against a tortfeasor that injures their child. The circuit court erred in finding the Family Expense Act did not apply. Although defendants are not creditors, Kevin, who is responsible for Riley's medical expenses, is entitled to recover damages for medical expenses that may have resulted from defendants' actions. Because issues of material fact made summary judgment on count I improper, we also find summary judgment on count II, which was derivative of count I, improper.

¶ 35 Despite defendants' assertions that the facts are undisputed, we find there are material facts in dispute. Defendants' right to a judgment was not clear and free from doubt, and the court erred in granting summary judgment to defendants.

¶ 36 III. CONCLUSION

¶ 37 The judgment of the circuit court of Kankakee County is reversed and remanded.

¶ 38 Reversed and remanded.

¶ 39 JUSTICE HETTEL, dissenting:

¶ 40 I dissent from the majority's order in this case because I believe the conduct alleged in plaintiffs' complaint was not willful and wanton as a matter of law. As such, I would affirm the trial court's entry of summary judgment in favor of defendants on both counts of plaintiffs' complaint.

¶ 41 The majority states the general rule that "whether a defendant's conduct is willful and wanton is a question for the jury." *Supra* ¶ 31 (quoting *Cohen v. Chicago Park District*, 2017 IL 121800, ¶ 27). However, the majority fails to mention that if there is insufficient evidence to sustain an allegation of willful and wanton conduct, the issue should be decided as a matter of law. See *Barr v. Cunningham*, 2017 IL 120751, ¶ 15.

¶ 42 Courts in this state have repeatedly held that allegations against school staff for inadequate supervision are insufficient as a matter of law to establish willful and wanton conduct. See *id.* ¶ 18; *Lynch v. Board of Education of Collinsville Community Unit District No. 10*, 82 Ill. 2d 415, 430-31 (1980); *Biancorosso v. Troy Community Consolidated School District No. 30C*, 2019 IL App (3d) 180613, ¶¶ 14-18; *Brooks v. McLean County School District Unit 5*, 2014 IL App (4th) 130503, ¶¶ 39-43; *Mitchell v. Special Education Joint Agreement School District No. 208*, 386 Ill. App. 3d 106, 111-12 (2008); *Stiff v. Eastern Illinois Area of Special Education*, 279 Ill. App. 3d 1076, 1082 (1996); *Pomaro v. Community Consolidated School District 21*, 278 Ill. App. 3d 266, 269-270 (1995); *Castaneda v. Community Unit School District No. 200*, 268 Ill. App. 3d 99, 104-06 (1994); *Poelker v. Warrensburg Latham Community Unit School District No. 11*, 251 Ill. App.

3d 270, 278 (1993); *Siegmann v. Buffington*, 237 Ill. App. 3d 832, 834 (1992); *Washington v. Chicago Board of Education*, 204 Ill. App. 3d 1091, 1095-97 (1990); *Jackson v. Chicago Board of Education*, 192 Ill. App. 3d 1093, 1100-01 (1989); *Templar v. Decatur Public School District No. 61*, 182 Ill. App. 3d 507, 512-13 (1989); *Holsapple v. Casey Community Unit School District C-1*, 157 Ill. App. 3d 391, 393-94 (1987); *Tijerina v. Evans*, 150 Ill. App. 3d 288, 292-93 (1986); *Weiss v. Collinsville Community Unit School District No. 10*, 119 Ill. App. 3d 68, 71-72 (1983); *Guyton v. Roundy*, 132 Ill. App. 3d 573, 578-79 (1985); *Booker v. Chicago Board of Education*, 75 Ill. App. 3d 381, 385-86 (1979); *Cipolla v. Bloom Township High School District No. 206*, 69 Ill. App. 3d 434, 437-38 (1979); *Montague v. School Board of Thornton Fractional Township North High School District 215*, 57 Ill. App. 3d 828, 831-32 (1978); *McCauley v. Chicago Board of Education*, 66 Ill. App. 3d 676, 677-79 (1978); *Clay v. Chicago Board of Education*, 22 Ill. App. 3d 437, 440-41 (1974); *Mancha v. Field Museum of Natural History*, 5 Ill. App. 3d 699, 702-03 (1972); *Gubbe v. Catholic Diocese of Rockford*, 122 Ill. App. 2d 71, 79 (1970); *Woodman v. Litchfield Community School District No. 12, Montgomery County*, 102 Ill. App. 2d 330, 334 (1968).

¶ 43 "Our courts have repeatedly held that a teacher's failure to supervise student activities during which a student was injured, does not in itself constitute wilful and wanton conduct." *Guyton*, 132 Ill. App. 3d at 579 (citing *Booker*, 75 Ill. App. 3d 381, *Clay*, 22 Ill. App. 3d 437, *Woodman*, 102 Ill. App. 2d 330, and *Mancha*, 5 Ill. App. 3d 699). Additionally, "Illinois courts have consistently held that a teacher's mere act of leaving children unsupervised will not be sufficient to establish willful and wanton misconduct." *Jackson*, 192 Ill. App. 3d at 1100 (citing *Pomrehn v. Crete-Monee High School District*, 101 Ill. App. 3d 331 (1981), *Cipolla*, 69 Ill. App. 3d 434, and *Mancha*, 5 Ill. App. 3d 699). To establish willful and wanton conduct based on

inadequate supervision in a school setting, the plaintiff must present evidence that the teacher "was aware or should have known that the absence of supervision posed a high probability of serious harm or an unreasonable risk of harm." *Jackson*, 192 Ill. App. 3d at 1100. A plaintiff's allegations that a teacher "should have known the harm would occur without adult supervision is insufficient to satisfy this standard." *Id.* (citing *Holsapple*, 157 Ill. App. 3d 391).

¶ 44 I agree with the majority that there are disputed facts in this case. However, I disagree that the disputed facts preclude entry of summary judgment in favor of defendants. While the disputed facts may raise an issue as to whether Dayhoff was guilty of negligence, they are insufficient to establish willful and wanton conduct. See *Brooks*, 2014 IL App (4th) 130503, ¶ 42; *Montague*, 57 Ill. App. 3d at 831.

¶ 45 The undisputed evidence established that Student A had been in Dayhoff's class for seven months at the time of the incident. Plaintiffs presented no evidence that Student A had previously harmed any other student in gym class at any time prior to this incident nor did they present evidence that Student A had threatened violence against Riley or any other student in the gym class on the day in question or at any other time. Even assuming that Student A had engaged in violence in school on other occasions and was playing soccer aggressively on the day in question, the evidence fails to establish that Dayhoff "was aware or should have known that the absence of supervision posed a high probability of serious harm or an unreasonable risk of harm" (*Jackson*, 192 Ill. App. 3d at 1100) to Riley on the day of the incident. See *Clay*, 22 Ill. App. 3d at 441 (plaintiff failed to allege facts sufficient to support claim for willful and wanton conduct by teacher where fellow student struck plaintiff in the face with a ruler without provocation while the teacher was absent from the classroom and the teacher knew or should have known that the student had been involved in similar incidents in the past); *Brooks*, 2014 IL App (4th) 130503, ¶¶ 40–42

(failure to monitor students in bathroom where school officials were aware students were playing a game that involved "boys striking each other about the chest and abdomen" was insufficient to establish willful and wanton conduct); *Gubbe*, 122 Ill. App. 2d at 72, 79 (plaintiff who was beaten by another student during recess failed to show willful and wanton conduct by school officials for inadequate supervision even though plaintiff had previously asked school officials for protection against the student).

¶ 46 Based on the facts of this case, I would affirm the trial court's grant of summary judgment to defendants because plaintiffs' failure to present sufficient facts to support a finding of willful and wanton conduct renders defendants immune from liability under section 3-108 of the Act. See *Biancorosso*, 2019 IL App (3d) 180613, ¶ 18. Because defendants have immunity under section 3-108 of the Act, there is no need to address defendants' immunity under section 2-201 of the Act. See *Brooks*, 2014 IL App (4th) 130503, ¶ 43. Furthermore, plaintiffs' Family Expense Act claim also fails because defendants are not liable for plaintiff's injuries. See *Cullotta*, 287 Ill. App. 3d at 975.

No. 3-23-0369

IN THE APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT

KEVIN HAASE and RILEY HAASE, Plaintiffs-Appellants, v. KANKAKEE SCHOOL DISTRICT 111 and DARREN DAYHOFF, Defendants-Appellees.	)	Appeal from the Circuit Court of Kankakee County, Illinois No.: 18-L-12 Hon. Lindsay Parkhurst Judge Presiding

PETITION FOR REHEARING OF DEFENDANTS-APPELLEES KANKAKEE SCHOOL DISTRICT 111 AND DARREN DAYHOFF

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Dated: December 5, 2024

ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

NATURE OF THE CASE

This summary of the case is provided for convenience for the Court on rehearing. Defendants incorporate in its entirety their Statement of Facts set forth in Defendants-Appellees' Response Brief, pp. 3-12. Riley Haase was a seventh-grade student at Kankakee Junior High who was injured during a soccer game in gym class when another student (Student A) ran into him while playing soccer. The two students had no prior conflict before this incident. Plaintiffs sued the School District and P.E. teacher Darren Dayhoff, alleging Dayhoff was willful and wanton in his supervision of his gym class, and the District was willful and wanton by not implementing appropriate discipline or interventions for Student A prior to the incident or otherwise protecting Riley.

On summary judgment, the trial court found Plaintiffs' claims fall squarely within the scope of §2-201 discretionary immunity under the Illinois Local Government and Governmental Employees Tort Immunity Act ("TIA"), 745 ILCS 10/2-201, which immunizes the District and its employees for injuries resulting from discretionary policy decisions, regardless of whether willful and wanton conduct is found. (C893). It found Dayhoff made conscious decisions related to the activity for the class, the best position to supervise the class, whether to allow Student A to participate, and whether to intervene in the soccer game. *Id.* It also found that such decisions are discretionary policy decisions because they required Dayhoff to balance competing interests related to instruction, efficiency, time, and student safety and make a judgment call as to which solutions worked best for his class. *Id.* The trial court also found the District's decisions regarding the appropriate discipline and interventions for Student A, and the dissemination of that information are discretionary policy decisions that fall within the scope of §2-201. (C894)

Furthermore, the trial court found that the District and Dayhoff also had immunity under §3-108 of the TIA, 745 ILCS 10/3-108, which immunizes public entities and its employees for injuries resulting from the failure to supervise student activities or negligent supervision, because Plaintiffs could not establish willful and wanton conduct. (C893-94). The trial court recognized "Illinois law holds allegations of failure to supervise student activities and/or leaving children unsupervised is not enough to establish willful and wanton conduct." *Id.* The court found no facts "to establish [Dayhoff] engaged in a conscious choice of action with knowledge of serious danger to others." (C894).

On appeal, a Panel for this Court reversed the trial court, ruling that there are disputed facts as to whether Dayhoff was entitled to immunity pursuant to §2-201. The Panel overlooked the actions taken by the District administrators related to Student A and did not address the District's immunity under §2-201 related to its discretionary policy decisions concerning Student A's disciplinary referrals and the remedial measures it imposed. Related to §3-108, the Panel found that there were issues of fact regarding whether Defendants' actions were willful and wanton. The Panel found "[i]f Student A was in fact physically aggressive and a danger to other students, and that information was known to the District, the failure to disseminate such information to his teachers may be willful and wanton" and that "[k]nowledge of Student A's aggression and the lack of precautions to protect other students may demonstrate indifference or conscious disregard for students' safety." *November 14, 2024 Order*, p 11.

In a dissenting opinion, Justice Hettel found that the conduct alleged in Plaintiffs' complaint was not willful and wanton as a matter of law. He cited to multiple Illinois cases

holding that allegations against school staff for inadequate supervision are insufficient as a matter of law to establish willful and wanton conduct. He further found

> Plaintiffs had presented no evidence that Student A had previously harmed any other student in gym class at any time prior to this incident nor did they present evidence that Student A had threatened violence against Riley or any other student in gym class on the day in question or at any other time. Even assuming Student A had engaged in violence in school on other occasions and was playing soccer aggressively on the day in question, the evidence fails to establish that Dayhoff 'was aware or should have known that the absence of supervision posed a high probability of serious harm or an unreasonable risk of harm' to Riley on the day of the incident. *Id.* p. 15-16.

Justice Hettel held Plaintiffs' failure to present sufficient facts to support a finding of willful and wanton conduct renders Defendants immune from liability under §3-108 of the TIA.

As set forth below, the Panel overlooked undisputed facts and misapprehended well-established precedent when it failed to consider that the failure to supervise students during a class activity, in and of itself, is not willful and wanton conduct and that the existence of a student's prior disciplinary record unrelated to the plaintiff is insufficient to establish knowledge of a high probability of serious, foreseeable harm to the Plaintiff. Because there are no facts establishing any prior injuries to Riley or any other student or complaints about Student A's behavior during the soccer game, or any prior conflict between Riley and Student A to put Dayhoff on notice of a high probability of foreseeable harm, Plaintiffs cannot meet their burden, and summary judgment was appropriate.

The District's actions related to Student A also cannot establish willful and wanton conduct because the failure to take additional or alternative precautions, as a matter of law, is insufficient to constitute willful and wanton conduct. Here, the record shows specific remedial actions taken by the District based on their investigation of Student A's referrals

and assessment of Student A. Thus, the alleged failure to disseminate additional information to Student A's teachers is insufficient to sustain a willful and wanton claim.

Further, the Panel overlooked the District's immunity under §2-201 of the TIA for the investigative and remedial actions taken by District administrators related to Student A, which are undisputed. Because Illinois law holds that investigating student misconduct and determining the appropriate discipline and remedial measures, including whether to disseminate information to other teachers, constitute discretionary policy decisions protected under §2-201, it is irrelevant whether the District's actions *could* constitute willful and wanton conduct because such decisions are protected, as a matter of law.

For these reasons, as set forth more fully below, Defendants respectfully submit this Petition for Rehearing and request the Court correct the following points that were overlooked or misapprehended in accordance with Illinois Supreme Court Rule 367(b).

ARGUMENT

Illinois appellate procedure provides the non-prevailing party with the opportunity for rehearing in order to apprise the court of points the party believes were "overlooked or misapprehended." 134 Ill.2d R. 367(b). The right to apply for a rehearing "is a matter of grace or favor, growing largely out of the willingness of the court to correct any inadvertent error." *Salsitz v. Kreiss*, 198 Ill. 2d 1, 19–20 (2001).

I. THE PANEL OVERLOOKED THAT THERE IS INSUFFICIENT EVIDENCE, AS A MATTER OF LAW, TO SUSTAIN A WILLFUL AND WANTON CLAIM

Here, the Panel overlooked that there is insufficient evidence to establish Plaintiffs' willful and wanton supervision claim, even when viewing the facts in the light most favorable to Plaintiffs. As recognized by Justice Hettel in his dissent in this case and the Illinois Supreme Court, if there is insufficient evidence to sustain an allegation of willful

and wanton conduct, the issue should be decided as a matter of law. *Barr v. Cunningham*, 2017 IL 120751, ¶15 ("If there is insufficient evidence to sustain an allegation of willful and wanton conduct, the issue should not go to the jury for its consideration.").

By overlooking the issue of whether the facts, viewed in the light most favorable to Plaintiffs, are sufficient to establish willful and wanton supervision, the Panel's holding directly conflicts with longstanding precedent, including Illinois Supreme Court precedent, finding that the failure to supervise student activities, even for extended periods of time, in and of itself, does not establish willful and wanton conduct as a matter of law. Rather, the facts must show a course of action that the defendant acted or failed to act with knowledge that his lack of supervision posed a high probability of foreseeable harm to the plaintiff. It is the Plaintiffs' burden to present a factual basis that would arguably entitle them to a judgment. *Lutz v. Goodlife Entertainment, Inc.*, 208 Ill.App.3d 565, 568 (1st Dist. 1990).

As applied here, summary judgment is appropriate because regardless of whether some facts are in dispute, there are ***no facts*** that establish or infer that Dayhoff had knowledge that his inadequate supervision or absence of supervision posed a high probability of foreseeable harm to Riley. It is undisputed there were no prior injuries in class before Riley's injury on the day of the incident or otherwise resulting from the students playing soccer or Student A, and there is no evidence that any student complained about Student A's conduct prior to Riley's injury. (R. SUP. CS321; CS360, CS703, CS706). Additionally, there is no evidence Student A previously pushed, threatened, or confronted Riley either before the incident or during the soccer game. (R. SUP CS37, CS41, CS115). In the absence of such facts, Dayhoff's conduct at most amounts to negligent supervision, which is immunized under §3-108 of the TIA. Further, the Panel overlooked the remedial

actions taken by the District related to Student A and misapprehended the law when it found that the failure to take an additional precaution could constitute willful and wanton conduct.

A. Willful and Wanton Standard

Willful and wanton conduct is viewed as an aggravated form of negligence. *Brooks v. McLean Cty. Unit Dist. No. 5*, 2014 IL App (4th) 130503, ¶20. However, in contrast to ordinary negligence, willful and wanton conduct should "shock the conscience." *Oravek v. Cmty Sch. Dist.146*, 264 Ill.App.3d 895, 900 (1st Dist. 1994). A defendant is guilty of willful and wanton conduct, as defined in the TIA and established Illinois case law, if the defendant has engaged in a course of action that shows either an actual or deliberate intention to harm or an utter indifference to, or conscious disregard for, the plaintiff's welfare. See 745 ILCS 10/1-210 (West 2018); *Harris v. Thompson,* 2012 IL 112525, ¶ 41.

As there is no allegation or evidence of actual or deliberate intention to harm, Plaintiffs must prove that the Defendants engaged in a course of action that shows an utter indifference to, or conscious disregard for, Riley's welfare. *Id.* To satisfy the necessary "course of action" element, Plaintiffs must show facts demonstrating that the District, through Dayhoff, acted, or failed to act, with ***knowledge that such conduct posed a high probability of serious physical harm to Riley***. *Pomrehn v. Crete-Monee High Sch. Dist.,* 101 Ill.App.3d 331, 334–35 (3d Dist. 1981); *Jackson v. Chi. Bd. Of Educ.,* 192 Ill.App.3d 1093, 1100 (1st Dist. 1989); *Templar v. Decatur Pub. Sch. Dist. No. 61,* 182 Ill.App.3d 507, 512 (4th Dist. 1989); *Albers by Albers v. Cmty. Consul. #204 School*, 155 Ill.App.3d 1083, 1086 (5th Dist. 1987); *Floyd ex rel. Floyd v. Rockford Park Dist.*, 355 Ill.App.3d 695, 700 (2d. Dist. 2005); *Johnson v. Highland Elementary Sch.,* 2020 IL App (2d) 190479-U, ¶31; *Choice v. YMCA of McHenry Cty.*, 2012 IL App (1st) 102877, ¶ 72; *Leja v. Cmty.*

Unit Sch. 300, 2012 IL App (2d) 120156, ¶ 11; *Weiss v. Collinsville Cmty Unit Sch. Dist. No. 10*, 119 Ill.App.3d 68, 71-72 (5th Dist. 1983). In the absence of such knowledge, Illinois courts have consistently held that willful and wanton conduct is not present. *Choice,* 2012 IL App (1st) 102877, ¶ 72.

B. Dayhoff's Failure to Supervise the Soccer Game Amounted to Approximately Nine Minutes, Which is Insufficient As a Matter of Law to Constitute Willful and Wanton Conduct

The Panel's opinion overlooks the issue of whether the facts, disputed or otherwise, are sufficient to establish willful and wanton conduct, as a matter of law, and focuses solely on the application of §2-201 immunity as applied to Dayhoff and the alleged disputes in the facts. Plaintiffs argue §2-201 could not apply because Dayhoff was preoccupied with his computer or phone and was not supervising his class, and the Panel reversed the trial court's summary judgment ruling, finding there were disputed issues of fact as to what Dayhoff was doing during the class. However, even assuming Dayhoff was not supervising the game (because he was on his computer or phone, focusing on the basketball game, which the majority of the students were playing, or otherwise preoccupied), his inadequate supervision or lack of supervision of the soccer game, as a matter of law, is insufficient to establish a claim for willful and wanton conduct. The Panel misapprehended well-established precedent when it found to the contrary.

Illinois courts have consistently and routinely held that the breach of a duty to supervise, including inadequate supervision or the complete failure to supervise, students in a school setting does not, as a matter of law, rise to the level of willful and wanton conduct as a tremendous burden would be imposed on school districts and teachers if they were required to provide "constant surveillance of the children." *Mancha v. Field Museum of Nat'l Hist.*, 5 Ill.App.3d 699, 702 (1st Dist. 1972); *Jackson,* 192 Ill.App.3d at 1100

("Illinois courts have consistently held that a teacher's mere act of leaving children unsupervised will not be sufficient to establish willful and wanton misconduct."); *Albers,* 155 Ill.App.3d. at 1086 (the failure to supervise school activities does not rise to the level of willful and wanton conduct because a teacher cannot supervise each and every child at all times while in school or while engaged in a school-related activity); *Holsapple v. Case Cmty. Unit Sch. Dist. C-1*, 157 Ill.App.3d 391 (4th Dist. 1987) (courts considering the issue of whether the failure to supervise school activities rises to the level of willful and wanton conduct "have generally determined that it does not."); *Lynch v. Bd of Edu. of Collinsville Cmty Unit Dist. No.* 10, 82 Ill. 2d 415, 430-31 (1980) (inadequate supervision during sports match did not rise to level of willful and wanton conduct); *Johnson,* 2020 IL App (2d) 190479-U, ¶30, 32; *Biancorosso v. Troy Cmty. Consol. Sch. Dist. No. 30C*, 2019 IL App (3d) 180613, ¶¶ 14-18; *Brooks*, 2014 IL App (4th) 130503, ¶¶ 39-43; *Choice,* 2012 IL App (1st) 102877, ¶ 72; *Mitchell v. Special Edu. Joint Agreement Sch. Dist. No. 208*, 386 Ill. App.3d 106, 111-12 (1st Dist. 2008); *Floyd,* 355 Ill.App.3d. at 701; *Stiff v. Eastern Ill. Area of Special Edu.*, 279 Ill.App.3d 1076, 1082 (4th Dist. 1996); *Knapp v. Hill*, 276 Ill. App.3d 376, 384-85 (1st Dist. 1995); *Pomaro v. Cmty Consol. Sch. Dist. 21*, 278 Ill.App.3d 266, 269-270 (1st Dist. 1995); *Castaneda v. Cmty Unit Sch. Dist. No. 200*, 268 Ill.App.3d 99, 104-06 (2d. Dist. 1994); *Poelker v. Warrensburg Latham Cmty. Unit Sch. Dist. No. 11*, 251 Ill.App.3d 270, 278 (4th Dist. 1993); *Siegmann v. Buffington*, 237 Ill.App.3d 832, 834 (3d. Dist. 1992); *Templar,* 182 Ill.App.3d at 512-13; *Ramos v. City of Countryside*, 137 Ill. App.3d 1028 (1st Dist.1985); *Tijerina v. Evans*, 150 Ill.App.3d 288, 292-93 (2d. Dist. 1986); *Guyton v. Roundy*, 132 Ill. App. 3d 573, 578-79 (1st Dist. 1985); *Weiss,* 119 Ill.App.3d at 71-72; *Booker v. Chicago Bd of Edu.*, 75 Ill.App.3d 381, 385-86

(1st Dist. 1979); *Cipolla v. Bloom Twp. High Sch. Dist. No. 206*, 69 Ill.App.3d 434, 437-38 (1st Dist. 1979); *Montague v. Sch. Bd. of Thornton Fractional Twp. North High Sch. Dist. 215*, 57 Ill.App.3d 828, 831-32 (1st Dist. 1978); *Clay v. Chicago Bd of Edu.*, 22 Ill. App. 3d 437, 440-41 (1st Dist. 1974); *Gubbe v. Catholic Diocese of Rockford*, 122 Ill.App.2d 71, 79 (2d. Dist. 1970); *Woodman v. Litchfield Cmty Sch. Dist. No. 12*, 102 Ill.App.2d 330, 334 (5th Dist. 1968); *Fustin v. Bd. of Ed. of Cmty. Unit Dist. No. 2,* 101 Ill.App.2d 113, 114 (5th Dist. 1968).

As recognized by the court in *Mancha,* which dismissed a willful and wanton supervision claim premised on a teacher allowing groups of 12-year old students to view exhibits at a museum unsupervised that resulted in a student being physically assaulted:

> The burden sought to be imposed on the defendant school district and teachers is a heavy one which would require constant surveillance of the children. A baseball game, a football game or a game of hopscotch played on school grounds might break up in a fight resulting in serious injury to one or more of the children. A teacher cannot be required to watch the students at all times while in school, on the grounds, or engaged in school-related activity. 5 Ill.App.3d at 702.

Indeed, it is because "there is a risk of injury and danger involved in almost any gathering of teenagers" (*Pomrehn*, 101 Ill.App.3d at 335), that "[t]he general potential for danger with groups of [unsupervised] children is not sufficient standing alone to sustain a willful and wanton claim. *Albers,* 155 Ill.App.3d. at 1086; *Holsapple,* 157 Ill.App.3d at 393 (noting "any gathering of teenagers produced a certain risk of injury but that did not create the high likelihood of injury occurring such as would make the failure to provide supervision willful and wanton. Rather, [] a showing of [] notice of a high probability of serious harm occurring was necessary"); *Choice,* 2012 IL App (1st) 102877, ¶72 ("The mere fact that students may comport themselves in such a manner as to expose themselves

or others to injury is legally insufficient to support a claim of willful and wanton misconduct in the absence of a specific, foreseeable, and probable danger.").

Significantly, Illinois courts have denied finding willful and wanton conduct even when there is a complete lack of supervision for an extended period of time, which is the basis of Plaintiffs' claim. In *Jackson*, the appellate court affirmed summary judgment in favor of the school district finding no willful and wanton conduct after the teacher left a classroom of students with mental disabilities for a period of ***thirty minutes***, which resulted in plaintiff sustaining an injury by another student who was described as a "wild" person. 192 Ill.App.3d at 1096, 1101. The court recognized that "Illinois courts have consistently held that a teacher's mere act of leaving children unsupervised will not be sufficient to establish willful and wanton misconduct," and found that "plaintiff's general allegation that a teacher or school should have known the harm would occur without adult supervision is insufficient to establish willful and wanton misconduct." *Id.* at 1100; *See also Castaneda,* 268 Ill. App.3d at 104-06 (affirming summary judgment in favor of school for alleged failure to supervise students participating in 30 minute off campus bike ride); *Pomrehn,* 101 Ill.App.3d at 335 (softball team members unsupervised for 15 minutes); *Albers,*155 Ill.App.3d at 1086 (student unattended in classroom for up to 10 minutes); *Holsapple*, 157 Ill.App.3d at 393; *Mancha,* 5 Ill.App.3d at 672; *Guyton*, 132 Ill. App. 3d at 579; *Booker*, 75 Ill.App.3d 381, *Clay,* 22 Ill.App.3d at 437, *Woodman*, 102 Ill. App. 2d at 330, *Cipolla*, 69 Ill.App.3d at 434.

The Court further overlooked that even assuming Dayhoff was entirely preoccupied by his screens during the time the students were engaging in the soccer game, the time

frame he was not supervising the game soccer amounted to approximately nine minutes, the first four or five of which was a normal game according to Jacob and Riley.

The class began at 10:22 AM. (R. SUP CS695). Riley, Jacob and Dayhoff all consistently testified that after the students changed into their PE uniforms, Dayhoff took attendance, and then the students completed their warmup exercises. (R. SUP. CS319-320, CS356). Riley indicated this took ten minutes. (R. SUP. CS319-320). After the completion of the warmup exercises on the day of the incident, Riley and Jacob testified that Dayhoff dropped the soccer balls and basketballs in the middle of the gym, and then he went to his mobile cart with his laptop and/or phone, and the students decided if they wanted to play soccer or basketball that day. (R. SUP. CS320; CS322; CS356; CS372). Both Riley and Jacob stated the students who chose to play soccer first selected captains, and Riley indicated it took approximately four minutes to pick teams. (R. SUP. CS319; CS320; CS356). Riley and Jacob also consistently testified that the first four to five minutes of the soccer game was normal and only after that did Student A begin "running in and out" of the game. (R. SUP CS319-321; CS357-358). The injury occurred at 10:45 AM. (R. SUP CS743). Therefore, the time frame that Dayhoff was not supervising the soccer game amounted to a mere ***nine minutes***, and Student A was only disruptive to the soccer game for approximately ***four to five minutes*** before the injury occurred.

Riley's Testimony:

Q. So you remember about the first ten minutes Mr. Dayhoff took attendance and you were doing warm-up exercises, and then you started to play soccer where you described there were two captains and you picked teams, is that correct?

A. Yes.

Q. And then you played a normal game of soccer for about the first four minutes, is that what you said?

A. Yes.

Q. Then what do you remember?

A. He kept on running in.

Q. Who is he?

A. (Student A). (R. SUP. CS319)

* * *

Q. So what do you remember again? You said you were playing soccer for the first four minutes, and then what do you remember?

A. He kept on running in and trying to grab the ball, and I think he thought it was funny.

Q. When you say he kept running in to grab the ball, what do you mean?

A. He would like -- Whoever was kicking the ball to score a goal for the game, he would run up and try to push them for the ball. (R. SUP. CS319-320).

* * *

Q. So, Riley, we were talking about what you remember on March 13th, 2017 during gym class that day, and so you said that the class started out and you were about ten minutes taking attendance and doing warm-up exercises, and then you remembered that you played soccer – or everybody got together and you chose teams, right, for soccer?

A. Yes.

Q. About how long do you think that took?

A. Maybe four minutes. I really don't know.

Q. And then you also said after about --You were playing soccer, and you said after about the first four minutes you talked about (Student A) running in to grab a ball?

A. We didn't talk about it. We just kind of blew it off because he did it like a couple of times. I don't really know how many times he did it. And we just kind of blew it off because he went to bug other kids. (R. SUP. CS320).

* * *

Q. And you said you didn't talk about it and you just brushed it off?

A. Yes.

Q. And then he left the soccer game?

A. Yes.

Q. Did you see him go over to another part of the gym?

A. Yes.

Q. And then what else do you remember about that day in gym class?

A. Not that much. (R. SUP. CS321).

* * *

Q. So once you saw (Student A) leave the soccer game and go somewhere else, did you just keep playing soccer as normal?

A. Yes.

Q. And what's the next thing that you remember from that?

A. Somebody kicking the ball out of bounds and me going to get it, and that's all I remember. (R. SUP. CS321).

Jacob's Testimony:

Q. So you said -- how did you say the gym class started that day?

A. Like every other day, we go to the locker room, get changed and when we're done, we come out into our little lines that Mr. Dayhoff gives us and then we take attendance from there and then we do our warm-ups. And then if we're doing a

curriculum that week, we'll start with that -- or we'll do that, but if not, he'll give us some basketballs, soccer balls and we'll go from there and, you know, just play basketball or soccer.

Q. And that is what you remember happening on this particular day of the incident?

A. Yes.

Q. You said there was no specific curriculum you were doing that day, so it was a day when you were given the option of playing basketball or soccer; is that correct?

A. Correct.

Q. And you chose to play soccer?

A. Yes. (R. SUP. CS356).

* * *

Q. How did you -- did you play against another team?

A. Yeah, whatever people go over there to decide to play soccer, in general, they'll usually pick captains at random so they'll pick teams and then pick teams.

Q. So that's what happened on that day?

A. Uh-huh. (R. SUP. CS356).

* * *

Q. And then you mentioned [Student A]. Were you on the same team as him?

A. At the beginning -- at the beginning, I don't remember if he was actually chosen onto a team because he was just in and out of the game.

Q. And what do you mean by -- so you don't remember if he was initially chosen when the captains were choosing teams?

A. Yes.

Q. And what do you mean by when you say in and out of the game?

A. He would be in there for, like, five minutes, ten minutes at a time. Then he'd go leave for a minute or two to go do something else randomly, if it was, like, go interrupt the basketball game or go see what other kids are doing against the wall, that didn't dress that day, and then he'd come back for another couple of minutes and then do the same thing. (R. SUP. CS357).

* * *

Q. Okay. So when you were playing soccer, what do you recall about the soccer game when you were playing?

A. Besides [Student A] coming in – besides [Student A] coming in and out of the game, it was a pretty normal game, pretty normal day.

Q. And you saw [Student A] playing soccer on that day?

A. In and out, yeah.

Q. You said that he left the game at some point?

A. In and out.

Q. So how many times did you see him leave the game?

A. I don't remember specifics about that, a specific number. (R. SUP. CS357-358).

Applying Illinois precedent, even assuming Dayhoff failed to supervise during the thirteen minutes before the injury occurred (only nine of which the students were playing

soccer), this is insufficient, as a matter of law, to state a willful and wanton claim. The Panel overlooked these facts and misapprehended the law when it found otherwise.

C. There is No Evidence to Support Dayhoff Had Knowledge that His Lack of Supervision Posed High Probability of Serious Physical Harm to Riley

Similar to the above precedent granting summary judgment in favor of the school, there is no evidence demonstrating that the District, through Dayhoff, acted, or failed to act, with ***knowledge that such conduct posed a high probability of serious physical harm to Riley***. It is undisputed there were no prior injuries in class before Riley's injury either on the day of the incident or otherwise resulting from students playing soccer or Student A, and there is no evidence that any student complained about Student A's conduct prior to Riley's injury. (R. SUP. CS321; CS360, CS703, CS706); *See Barr*, 2017 IL 120751, ¶23 (affirming summary judgment finding no evidence of prior injuries or a risk of serious injuries associated with the activity of floor hockey); *Floyd*, 355 Ill.App.3d at 702 (stating "prior knowledge of similar injuries is required to establish "a course of action"); *Foulks v. Cmty. Unit Sch. Dist. 428*, 2021 IL App (2d) 200461-U, ¶23 (dismissing willful and wanton claim, finding plaintiff failed to allege facts that defendants were aware of prior similar injuries from students or knowledge the activity was inherently dangerous); *Castaneda,* 268 Ill.App.3d at 105–06 (finding teacher had no duty to foresee and prevent the bicycle collision given there were no prior injuries, reasoning to hold otherwise "would impose on school districts and the teachers they employ a burden approaching strict liability and make outdoor school field trips impossible"); *Tijerina,* 150 Ill.App.3d at 292-93 (dismissing willful and wanton claim finding no specific allegations setting forth facts to show why defendant Evans knew or should have known of impending danger to the injured student); *Shwachman v. Northfield Twp. High Sch. Dist. 225,* 2016 IL App (1st) 143865-U, ¶39

(affirming summary judgement in favor of district because there was no evidence that others had been similarly injured to conclude the activity involved "probable" harm or danger); *Holsapple*, 157 Ill.App.3d at 394.

Additionally, there is no evidence Student A previously pushed, threatened, or confronted Riley, in any manner, either before the incident. (R. SUP CS37, CS41, CS115). Instead, ***Student A's interaction with Riley*** during the soccer game was "in a way you would expect from someone playing soccer" according to both Riley and Jacob:

Jacob's testimony:

Q. Prior to Riley hitting the wall, did you see him make contact with Riley at all?

A. Other than trying to get the ball from him or, like, something like that.

Q. In a way that you would typically expect when someone's playing soccer?

A. Yeah.

Q. Anything else prior to Riley hitting the wall that you remember seeing Student A do to anyone in the soccer game besides what we've talked about?

A. No. (R. SUP CS 359)

* * *

Q. Did he have contact with other students during the soccer game, physical contact?

A. Not that I can remember. (R. SUP CS 372)

Riley's Testimony

Q. Okay. So during gym class on March 13th, earlier you said [Student A] was running in and trying to grab the ball from people, is that right?

A. Yes.

Q. And I believe you also said earlier that he never tried to grab the ball from you, is that correct?

A. Yes. (R. SUP. CS327).

* * *

Q. Do you remember [Student A] doing anything else during gym class that day during the soccer game?

A. No. (R. SUP CS 328).

Riley stated "I didn't think [Student A] personally targeted me…I think he was messing around too much" (R. SUP CS346). Riley further confirmed that he had never had any issues or confrontations with Student A either in gym class or in school prior to the incident.

Q. Okay. Have you had any problems with (Student A) in gym class ever? So let's talk about before March 13th.

A. No.

Q. No, okay. Have you ever had any problems with (Student A) in school?

A. No. (R. SUP CS 327)

Simply put, the Panel overlooked that there are no facts to support the argument that Dayhoff had knowledge that his failure to supervise the soccer game posed a high probability of foreseeable physical harm to Riley, and therefore misapprehended well-established precedent when it reversed summary judgment in favor of Defendants.

D. Student A's Prior Referrals for Discipline Are Insufficient to Establish Foreseeable Harm

The Panel's focus on Student A's prior disciplinary referrals by other teachers and finding that "knowledge of Student A's aggression and lack of precautions to protect other students may demonstrate indifference or conscious disregard for student safety," overlooks the facts and misapprehends well-established precedent. Illinois law has made clear that inadequate supervision or failure to supervise does not constitute willful and wanton conduct even when a student is present in the class who has previously exhibited dangerous propensities or violent behavior. The salient point here, which the undisputed facts confirm, is that Student A and Riley had no prior conflict. As such, a student's general aggression or previous instances of violent behavior, are insufficient, as a matter of law, to create the presumption that an assault on Riley was foreseeable. *See Albers,* 155 Ill. App. 3d. at 1086; *Floyd,* 355 Ill. App.3d. at 702; *Brooks,* 2014 App. (4th) 130503, ¶40-42; *Siegmann,* 237 Ill. App. 3d at 834; *Geimer v. Chi. Park Dist.*, 272 Ill.App.3d 629, 631, 637 (1st Dist. 1995); *Booker*, 75 Ill. App. 3d at 385-86; *Clay,* 22 Ill. App. 3d at 437; *Woodman,* 102 Ill. App. 2d at 334; *Mancha,* 5 Ill. App. 3d at 702; *Rabel v. Ill. Wesleyan Univ.*, 161 Ill. App. 3d 348, 361 (4th Dist. 1987); *Gubbe*, 122 Ill.App.2d at 72, 79; *Templar,* 182 Ill. App. 3d at 510-513; *Fustin,* 101 Ill. App. 2d at 114.

In *Albers,* a teacher left her classroom, including an aggressor student with "above average range" of students with "dangerous propensities" unsupervised for approximately ten minutes. 155 Ill.App.3d. at 1086. The Illinois appellate court held that Plaintiff had not met his burden for proving willful and wanton conduct because the "failure to supervise school activities does not rise to the level of willful and wanton conduct nor is the general potential for danger with groups of children sufficient to sustain a claim of willful and wanton misconduct." *Id.* The court expressly stated "schools and teachers cannot be charged with the duty of anticipating and guarding against the willful and wanton misconduct by other children who suddenly without provocation attack other students." *Id.* The court further expressly found that the fact that the student had previously exhibited violent behavior did not make it foreseeable that he would assault the plaintiff or that he could not be left unsupervised. *Id.*

Similarly, in *Floyd,* the court applied §3-108, finding that a child's "general bad behavior," including previous violent behavior towards other children did not create a basis for willful and wanton conduct, even if defendant was aware of it, because a child's "general aggressiveness was not necessarily a precursor to *plaintiff's* injuries" and plaintiff failed to allege that the attacker child had previously been aggressive toward the plaintiff. 355 Ill. App.3d. at 703-04; *See also Siegmann,* 237 Ill. App. 3d at 834; *Clay,* 22 Ill. App. 3d at 441 (no willful and wanton conduct where student struck plaintiff in the face with a ruler without provocation while teacher was absent from the classroom and the teacher knew or should have known that the student has been involved in similar incidents in the past); *Geimer*, 272 Ill.App.3d at 630-31, 637 (no willful and wanton conduct when failed to expel a player from touch football game for his rough play before he injured the

plaintiff); *Brooks,* 2014 App. (4th) 130503, ¶40-42 (failure to monitor students in bathroom where school officials were aware students were playing a game that involved "boys striking each other about the chest and abdomen" was insufficient to established willful and wanton conduct"); *Booker,* 75 Ill. App. 3d at 386 (teacher not guilty of willful and wanton conduct when she appointed as monitor for students' entry into a bathroom a student whom she knew had allegedly threatened plaintiff on prior occasions, and on this occasion plaintiff was assaulted in the bathroom); *Woodman,* 102 Ill. App. 2d at 334 (holding teacher did not act willfully in failing to supervise when a student without provocation kicked another in the head, causing permanent damage); *Gubbe*, 122 Ill.App.2d at 72, 79 (no willful and wanton conduct based on inadequate supervision when plaintiff was beaten by another student during despite plaintiff previously seeking protection from student); *Ramos,* 137 Ill.App.3d at 1028; *Templar,* 182 Ill.App.3d at 510-513; *Fustin,* 101 Ill.App.2d at 114.

Plaintiffs' failure to establish willful and wanton conduct becomes even more evident when comparing it to a case which found in a plaintiff's favor. In *Gammon v. Edwardsville Cmty Unit Sch. Dist. No. 7*, 82 Ill. App. 3d 586 (5th Dist. 1980), the court held the plaintiff had alleged sufficient facts to establish that the defendant had knowledge of a high probability of foreseeable, probable harm to the student, finding that the complaint had alleged that the aggressor student had made *specific, direct threats of violence against the plaintiff,* that the district was aware of these credible threats, and that it failed to take *any action* to supervise the plaintiff or aggressor student. *Id.* at 587-590. Unlike the plaintiff in *Gammon*, there is no evidence that Student A ever previously exhibited aggression towards Riley. (R. SUP CS37, CS41, CS115). In fact, there are no

allegations to establish or infer any relationship between Riley and Student A let alone a hostile relationship. Moreover, unlike *Gammon*, the District implemented interventions for Student A after he had received referrals for discipline. (R.SUP CS105-107, CS111-114, CS128-129). *Gammon* is inapposite.

E. Dayhoff's Purported Knowledge of Student A's Behavioral History is Not in Dispute

Contrary to the Panel's finding, Dayhoff's purported knowledge of Student A's behavioral history is not in dispute. There is simply no evidence to support the conclusion Dayhoff had knowledge of Student A's disciplinary record. During the seven months Student A had been in Dayhoff's class, Dayhoff never referred Student A for discipline and never witnessed any behavior that he would call serious. (R. SUP CS64, CS66). Though Dayhoff has access to the Skyward system where Student's A disciplinary report could be found, Dayhoff has over 100 students during a given year, and the principal confirmed there was no policy or duty requiring Dayhoff to periodically review the system for his student's behavioral reports. (R. SUP CS61, CS731). Indeed, for the court to require such would place a tremendous burden. The only evidence Plaintiffs could point to was an email from Student A's guidance counselor, Sarah Lenfield, to Student A's teachers, sent seven months prior to the incident, the purpose of which was to notify his teachers of Student A's return from a disciplinary action and "identify a support system, his goals, his strengths, and that he was moving forward." (R. SUP CS400, CS401). The email provides, in full:

> [Student A] has a goal this year to get all A's in his classes. He was able to communicate that he knows he needs to use the adults in the building when he becomes angry or have a conflict with a peer. [Student A] identified his supports being [Lenfield] and his father. We discussed procedures on how he can come see me if he was having difficulties and needing to talk. [Student A] admitted in the past he did not complete a lot of his homework and that is why he had some lower grades in the past. We discussed the importance of staying on top

> of all of his work and trying to stay focused in classes. . . He was in good spirits and stated he enjoys his classes here at KJHS. (R. SUP CS155).

In sum, the Panel overlooked that there is no evidence to support a finding that Dayhoff knew or should have known that Student A was going to push Riley during the soccer game. The Panel's opinion should be corrected because it goes against well-established precedent by suggesting that a jury could find willful and wanton conduct based on Dayhoff looking at his computer/phone during class rather than supervising for a mere thirteen minutes (only nine of which the students were playing soccer) and that unforeseeable and unprovoked misconduct by another student could impute willful and wanton liability on a school district based solely on the student having a disciplinary record, despite the two students never having any previous conflict or interaction. This holding would require every school within the State to provide one-to-one personal care and heightened supervision to every student with a disciplinary record and would impose a duty on every teacher to anticipate or prevent unprovoked misconduct of another student, which is untenable and conflicts with well-established Illinois precedent. *Albers,* 155 Ill.App.3d. at 1086; *Floyd,* 355 Ill.App.3d at 701-04; *Siegmann,* 237 Ill. App. 3d at 834; *Booker,* 75 Ill. App. 3d at 386; *Gubbe,* 122 Ill. App. 2d at 79; *Rabel,* 161 Ill. App. 3d at 361; *Clay,* 22 Ill. App. 3d at 437; *Woodman,* 102 Ill. App. 2d at 334; *Castaneda,* 268 Ill.App.3d at 105-06.

The undisputed facts, when viewed in light most favorable to Plaintiffs illustrate only that Dayhoff's actions amounted to inattentiveness, inadvertence, or incompetence, which according to the Illinois Supreme Court is insufficient to constitute willful and wanton conduct, as a matter of law. ***Burke v. 12 Rothchild's Liq. Mart,*** 148 Ill.2d 429, 449 (1992) (holding plaintiffs to do more than merely prove inadvertence, inattentiveness, incompetence, or the failure to take precautions); *Vilardo v. Barrington Cmty Sch. Dist.*

220, 406 Ill.App.3d 713, 724 (2d Dist. 2010) ("More than mere inadvertence or momentary inattentiveness which may constitute ordinary negligence is necessary for an act to be classified as willful and wanton misconduct."); *Geimer,* 272 Ill.App.3d at 637 ("Willful and wanton conduct is not to be confused with simple negligence and requires more than mere inadvertence or inattentiveness."); *Castaneda,* 268 Ill. App. 3d at 104-06 (affirming summary judgment, finding "the mere fact that [teacher] could have done more to prevent the accident, does not [] permit a jury to conclude that he acted with reckless disregard for the safety of others"); *Floyd,* 355 Ill.App.3d at 701; *Stiff,* 279 Ill.App.3d at 1082.

F. The District's Actions Related to Student A Were Not Willful And Wanton

The Panel incorrectly denied summary judgment on the basis that whether the alleged failure to disseminate information about Student A to his teachers may be willful and wanton. This finding misapprehends the law. Whether or not this may have been a prudent course of action, the District's failure to do so does not indicate an "utter and conscious disregard" for the safety of Riley.

The record shows that Assistant Principal Walz investigated each of Student A's disciplinary referrals and imposed remedial measures and interventions. (R. SUP CS97, CS105-107, CS111-114, CS128-129). Further, the record shows Assistant Principal Walz, Principal Hensley, and guidance counselor Lenfield all met to discuss Student A's academic and social development and determined appropriate interventions to assist him. (R. SUP CS109, CS112-113, CS128-129, CS600). Because the District's administrators took reasonable steps to remedy the situation after each referral for discipline, the failure to take an additional precaution cannot sustain a willful and wanton claim, as a matter of law. *Burke*, 148 Ill.2d at 449; *Barr,* 2017 IL 120751, ¶18 ("This court has held that school employees who exercised some precautions to protect students from injury, even if those

precautions were insufficient, were not guilty of willful and wanton conduct."); *Lynch,* 82 Ill.2d at 430 ("The evidence does not demonstrate an utter and conscious disregard for the safety of the girls, simply insufficient precautions for their protection"); *Siegmann,* 237 Ill. App. 3d at 834; *Shwachman,* 2016 IL App (1st) 143865-U, ¶41 (though the precautions taken did not prevent the injury, "[m]ere ineffectiveness, however, does not establish a course of action demonstrating that a defendant was utterly indifferent or consciously disregarded the safety of others"); *Bielema ex rel. Bielema v. River Bend Cmty. Sch. Dist. No. 2,* 2013 IL App (3d) 120808, ¶19 (affirming summary judgment, finding school "took some action to remedy the danger posed by" even though principal "could have done more to warn" plaintiff); *Leja,* 2012 IL App (2d) 120156, ¶11; *Toller v. Plainfield Sch. Dist. 202,* 221 Ill.App.3d 554, 558 (3d Dist. 1991); *Mitchell*, 386 Ill.App. 3d at 111-12; *Stiff,* 279 Ill.App.3d at 1082; *Biancorosso*, 2019 IL App (3d) 180613, ¶¶14-18; *Poelker,* 251 Ill.App.3d at 278.

II. SECTION 3-108 OF THE TIA BARS PLAINTIFFS' CLAIMS

As there is no evidence to support Plaintiffs' willful and wanton claim as to Dayhoff or the District, summary judgment is appropriate under Illinois Supreme Court precedent, and it is improper for this matter to go to a jury. *Barr*, 2017 IL 120751, ¶15; *Toller,* 221 Ill.App.3d at 558; *Jackson,* 192 Ill.App.3d at 1101; *Guyton*, 132 Ill.App.3d at 579; *Mitchell*, 386 Ill.App.3d at 112; *Pomrehn,* 101 Ill.App.3d at 336; *Castaneda,* 268 Ill.App.3d at 105-06; *Pomaro,* 278 Ill.App.3d at 270; *Bielema,* 2013 IL App (3d) 120808, ¶19.

Further, because Plaintiffs failed to meet their burden of establishing willful and wanton conduct, §3-108 bars Plaintiffs' willful and wanton supervision claim: neither a local public entity nor a public employee who undertakes to supervise an activity on or the

use of any public property is liable for an injury unless the local public entity or public employee is guilty of willful and wanton conduct in its supervision proximately causing such injury. 745 ILCS 10/3-108(a); *Biancorosso*, 2019 IL App (3d) 180613, ¶18; *Johnson,* 2020 IL App (2d) 190479-U, ¶42; *Brooks*, 2014 IL App (4th) 130503, ¶43; *Floyd*, 355 Ill. App. 3d at 704; *Ramos,* 137 Ill. App. 3d at 1033; *Marshall,* 2015 IL App (1st) 131654-U, ¶69; *Shwachman,* 2016 IL App (1st) 143865-U, ¶37, 41.

III. THE PANEL MISAPPREHENDED LONGSTANDING, ESTABLISHED PRECEDENT WHEN IT FAILED TO CONSIDER THE APPLICATION OF SECTION 2-201 OF THE TIA TO THE DISTRICT'S DECISIONS RELATED TO STUDENT A'S REFERRALS

The Panel's Order did not address the District's argument that §2-201 of the TIA immunizes the District from liability. As such, the Panel overlooked these undisputed facts and misapprehended longstanding, established precedent, which grants a school district absolute immunity regardless of whether willful and wanton conduct can be found for decisions related to an investigation into student misconduct, and decisions related to student discipline and remedial measures.

By overlooking this precedent, the Panel incorrectly denied summary judgment stating there was a question of fact on whether the alleged failure to disseminate information about Student A to his teachers was willful and wanton. However, because such policy decisions are immunized under §2-201, which immunizes "liability for both negligence and willful and wanton misconduct," it is irrelevant whether willful and wanton conduct could be found. *In re Chi. Flood Litig.*, 176 Ill.2d 179, 196 (1997); *McGurk v. Lincolnway Cmty Sch. Dist. No. 210,* 287 Ill.App.3d 1059 (3d. Dist. 1997); *Arteman v. Clinton Cmty. Unit Sch. Dist. 15*, 198 Ill.2d 475, 487-88 (2002) (holding immunity that applies to employees under §2-201 of the Tort Immunity Act also applies to the entity itself)

Illinois courts have consistently and repeatedly held that determining and implementing appropriate discipline and interventions for a student and the dissemination of that information are discretionary policy decisions that fall within the scope of §2-201. *See Mulvey v. Carl Sandburg High Sch.,* 2016 IL App (1st) 151615, ¶¶47–48 (immunizing district's implementation of bullying policy under 2-201 as it requires discretionary determinations of what occurred and appropriate consequences and remedial actions); *Malinksi v. Grayslake Cmty High Sch. Dist*, 2014 IL App (2d) 130685, ¶¶12–13 (dismissing willful and wanton claim alleging district failed to provide safe environment pursuant to 2-201, finding implementation of student discipline requires discretion); *Hascall v. Williams*, 2013 IL App (4th) 121131 ¶25 (holding principal, superintendent, and District performed discretionary acts in responding to student's allegations of aggressive behavior when denied student's request to transfer to another classroom); *Albers v. Breen*, 346 Ill.App.3d 799, 808 (4th Dist. 2004)(applying 2-201, finding "principal dealing with a disciplinary matter must balance competing interests and make a judgment as to what balance to strike among them."); *Castillo v. Bd. of Edu. of City of Chi.*, 2018 IL App (1st) 171053 (holding that determining what behavior constituted bullying or harassment – or in this case aggression – and when to intervene are discretionary policy decisions protected under 2-201); *D.M. ex. Rel. C.H. v. Nat'l Sch. Bus Service, Inc.*, 305 Ill.App.3d. 735, 740 (2d Dist. 1999) (finding the act of assigning plaintiff, without extraordinary protection, to a bus with a student who had allegedly previously harmed him was a determination of policy and an exercise of discretion pursuant to 2-201); *Albert v. Bd. of Educ. of City of Chi.*, 2014 IL App (1st) 123544, ¶ 68 (applying 2-201 to disciplinary decision of principal following a fight between two students, which did not prevent a second fight and resulted in the death

of a student); *Marshall,* 2015 IL App (1st) 131654-U, ¶6; (applying 2-201 to wrongful death claim, finding decisions regarding the appropriate way to address the student's mental health issues and to supervise the student, including whether to disseminate the student's mental health records to his teachers, involved discretionary policy decisions).

The above cases are dispositive of the issue. For example, in *Castillo,* a student claimed school officials failed to protect her from harassment or assault by another student. The court affirmed dismissal on a motion to dismiss as "what the law requires." 2018 IL App (1st) 171053, ¶2. The court reasoned "the Board's alleged failure to prevent [] harassment depended on discretionary decisions regarding school discipline," for which "the Board has statutory immunity" under §2-201. *Id.*

In *Albers v. Breen,* the plaintiffs alleged that a student was bullied and sued. The court affirmed a motion to dismiss, finding §2-201 applied and concluded:

> Certainly, the way that a principal handles an instance of bullying in his school falls within the definition [of a discretionary act]; any student who has been sent to the principal's office could attest that he has broad discretion in how to handle such situations. . . . We conclude that [the principal's] decision about how best to handle [plaintiff's] allegations of bullying constituted a discretionary policy decision. 346 Ill.App.3d at 675.

It is undisputed that Student A had a history of referrals for discipline. (R. SUP CS118-123). However, the Panel overlooked that the undisputed facts conclusively show the District's administrators used their judgment and discretion to determine what discipline and/or interventions to provide to Student A to address the situation. Specifically, Assistant Principal Walz investigated each of Student A's referrals by speaking to the teacher and students involved and she used her discretion when determining the appropriate remedial measure for Student A. (R. SUP CS97, CS100, CS105-107, CS111-114). Each remedial measure imposed was determined on an individual basis depending on the

situation. (R. SUP CS106-107). Principal Hensley, Assistant Principal Walz, and guidance counselor Lenfield where members of the "problem solving team" for Student A and these individuals used their judgment to determine Student A should be part of a pro-social group, Social Academic Instructional Group (SAIG), and Check In Check Out (CICO), a support to aid with accountability. (R. SUP CS109, CS112-113, CS128-129, CS600).

The District's determination that Student A was not a "physically aggressive student" and did not need a Behavioral Intervention Plan or increased supervision was based on Assistant Principal Walz's investigation of the referrals, problem solving team meeting discussions, and the problem solving team's personal interactions with Student A. (R. SUP CS108, CS115, CS130-131, CS133). Based on this, the problem-solving team further determined teachers didn't need to be informed of any discipline or interventions of Student A beyond being on notice of his wandering. (R. SUP CS102, CS115, CS131, CS133). These decisions were made on an individual basis and fall squarely within the scope of §2-201. Following the above precedent, §2-201 provides absolute immunity to the District with regard to its decisions addressing Student As behavior, determining whether he was physically aggressive, disseminating such information to his teachers, or otherwise implementing the appropriate disciplinary or remedial measures.

That the above precedent applied 2-201 immunity even when a subsequent assault occurred against the same student while the district had knowledge further demonstrates that it should apply in this case when Student A merely had a history of discipline, none of which was ever directed at Riley. Given that remedial measures were taken based on the District's investigation and assessment of the situation, it is not for the Courts to second guess discretionary policy decisions made by school administrators concerning these

measures. Indeed, this is the purpose of §2-201. *Harrison v. Hardin County Cmty Unit Sch. Dist. No. 1*, 197 Ill.2d 466, 472 (2001) ("Grants of immunity to public employees are premised upon the idea that such officials should be allowed to exercise their judgment in rendering decisions without fear that a good faith mistake might subject them to liability.")

Taken together, the District's administrators used their discretion and judgment investigating a referral and determining the appropriate disciplinary consequence. They also collaborated during problem solving meetings to determine if Student A needed any support or interventions, including any additional supervision, and made a discretionary policy decision about what information to provide teachers about Student A. Because these discretionary policy decisions are fully immunized under §2-201, the District cannot be held liable, as a matter of law, regardless of whether those decisions were willful and wanton and proximately caused Riley's injuries. As such, the court's finding that there are issues of fact on the question of whether the District's conduct constituted willful and wanton does not warrant the denial of summary judgment. Applying dispositive precedent, Defendants should be granted summary judgment.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court grant this Petition for Rehearing, and affirm the trial court's grant of summary judgment in favor of Defendants with respect to the application of §2-201 and §3-108 of the TIA and the failure to state a claim for willful and wanton conduct and consequently under the Illinois Family Expense Act, and such other relief as it deems just and proper.

CERTIFICATE OF COMPLIANCE

Pursuant to Supreme Court Rule 341(c), I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the Certificate of Service and those matters to be appended to the brief under Rule 342(a), is 27 pages.

Dated: December 5, 2024

Respectfully submitted,

KANKAKEE SCHOOL DISTRICT 111 and DARREN DAYHOFF, Defendants-Appellees

By: */s/ Erin K. Walsh*
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No. 3-23-0369

IN THE APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT

KEVIN HAASE and RILEY HAASE, Plaintiffs-Appellants, v. KANKAKEE SCHOOL DISTRICT 111 and DARREN DAYHOFF, Defendants-Appellees.	)	Appeal from the Circuit Court of Kankakee County, Illinois No.: 18-L-12 Hon. Lindsay Parkhurst Judge Presiding

NOTICE OF FILING AND CERTIFICATE OF SERVICE

To: *See Attached Service List*

The undersigned attorney hereby certifies that on **December 5, 2024**, she caused to be filed with the Clerk of the Illinois Appellate Court, Third Judicial District, using the Odyssey e-file electronic system, the **PETITION FOR REHEARING OF DEFENDANTS-APPELLEES KANKAKEE SCHOOL DISTRICT 111 AND DARREN DAYHOFF**.

The undersigned further certifies that a copy of the **PETITION FOR REHEARING OF DEFENDANTS-APPELLEES KANKAKEE SCHOOL DISTRICT 111 AND DARREN DAYHOFF** was served upon the individuals to whom notice is directed by the Odyssey e-file system and also by electronic mail on this 5th day of December, 2024.

Dated: December 5, 2024

Respectfully submitted,

KANKAKEE SCHOOL DISTRICT 111 and DARREN DAYHOFF, Defendants-Appellees

By: */s/ Erin K. Walsh*
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Haase v. Kankakee School District 111 and Darren Dayhoff

Case No. 3-23-0369

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December 11, 2024

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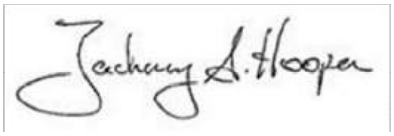
RE: Haase, Kevin et al., v. Kankakee School District 111, et al.
General No.: 3-23-0369
County: Kankakee County
Trial Court No: 18L12

The Court has this day, December 11, 2024, entered the following order in the above entitled case:

Appellee's Petition for Rehearing is DENIED.



Zachary A. Hooper
Clerk of the Appellate Court

c: Amy Kosanovich Dickerson
Brion William Doherty
Lynn Downey Dowd
Patrick C. Anderson
Robert Joseph Napleton
Sally J. Scott

2024 IL App (3d) 230369-U

Order filed November 14, 2024

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2024

KEVIN HAASE and RILEY HAASE,	)	Appeal from the Circuit Court
	)	of the 21st Judicial Circuit,
Plaintiffs-Appellants,	)	Kankakee County, Illinois,
	)	
	)	Appeal No. 3-23-0369
v.	)	Circuit No. 18-L-12
	)	
KANKAKEE SCHOOL DISTRICT 111 and	)	
DARREN WILBUR DAYHOFF,	)	Honorable
	)	Lindsay Parkhurst,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE DAVENPORT delivered the judgment of the court.
Justice Holdridge concurred in the judgment.
Justice Hettel dissented.

ORDER

¶ 1 *Held*: Summary judgment was improper because there are disputed issues of material fact. Reversed and remanded.

¶ 2 Plaintiffs filed a two-count complaint against defendants Kankakee School District 111 (District) and Darren Dayhoff (Dayhoff), alleging defendants (1) engaged in willful and wanton conduct and (2) were liable for plaintiffs' expenses under the Family Expense Act (750 ILCS 65/15 (West 2016)). The circuit court granted defendants' motion for summary judgment, finding

defendants were immune from liability under section 2-201 of the Local Government and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/2-201 (West 2016)). For the following reasons, we reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 On March 13, 2017, Riley Haase was injured by a classmate (Student A) while playing soccer in Dayhoff's physical education class at Kankakee Junior High School. These are essentially the only facts the parties agree on. The accounts below were taken from depositions.

¶ 5 According to Riley, class started as usual. Dayhoff took attendance and placed basketballs and soccer balls in the middle of the gymnasium, allowing students to choose their activity. Riley and his friend, Jacob Gilreath, chose to play soccer. Generally, except for the first and last ten minutes of class, Dayhoff minded his own business on his laptop or phone and sat in the corner of the gym with his feet up on a desk. That day, Dayhoff sat at the desk with his laptop open during class. Student A, who was not part of the soccer game, interfered with the game and tried to grab the ball. Student A had a reputation for being a troublemaker. Riley picked up an out-of-bounds ball; the next thing he knew, Jacob was walking him over to Dayhoff, yelling that Riley had been tackled into a wall and knocked out of his shoes. Dayhoff told them, "It'll be fine, go back to class." According to Riley, he was never taken to the office that day, and he was in a lot of pain.

¶ 6 Jacob was in the same gym class. He saw Student A "running around being obnoxious" that day. He believed Student A was being unnecessarily rough and shoving students playing soccer. Riley ran to the wall to get a ball and Student A ran at full speed after him, shoulder-checking Riley into the wall. Riley lay on the ground, not moving, for 30 seconds. Jacob brought Riley over to Dayhoff, who was sitting at his desk. Jacob told Dayhoff what happened, and Dayhoff told them that it would be fine and to go sit against the wall. After class, Jacob took Riley

to the office. Before this incident, Jacob knew Student A to be physically aggressive and heard about him being in fights. He had also seen Dayhoff on his cellphone and laptop during class in the past.

¶ 7 According to Dayhoff, at the time of the incident, he was in the southeast corner of the gym because he could see everything without needing to turn his head. There was a desk in that corner, but he did not sit there during the entire class. If he brought his laptop to class, he would place it on the desk. Dayhoff did not regularly use his laptop during class. However, he might have used it to look at work-related emails. He carried his personal phone in class but only ever checked it briefly.

¶ 8 Normally, students not dressed in gym uniform would sit out during that class, but Dayhoff periodically allowed them to participate. Dayhoff initially said he did not remember if Student A was dressed for class on the day in question. Later, he said Student A was not dressed in his gym uniform, so Student A started class on the sideline. Dayhoff allowed Student A to play soccer. He did not see Student A engage in any aggressive or unwanted physical contact with other students that day. Student A "was playing soccer just like the rest of them." According to Dayhoff, if he saw Student A engaged in aggressive physical contact with the other students, Student A "would have been removed from the game because he was not dressed[.]" Dayhoff did not see Riley get injured. He saw a group of students, including Riley and Student A, battling for the soccer ball. The first time he learned about Riley's injury was when Riley and Jacob came over to him during class. He said Riley seemed fine but said his arm hurt, so he sent Riley and Jacob to the front office.

¶ 9 Dayhoff did not recall having any disciplinary problems with Student A throughout the school year. Nor did he recall being told about any student's disciplinary history. Dayhoff was

surprised to hear that Student A had 29 reported disciplinary issues from August 2016 to March 2017. The only problems he had with Student A involved not dressing for gym class, not participating, or goofing off.

¶ 10 Fiona Walz was the assistant principal who oversaw discipline for the seventh grade. A violation of the student code of conduct was called a "referral," and Student A received referrals, but she did not recall any of their details. She communicated to staff that Student A needed increased supervision for his wandering, but she did not believe he was physically aggressive.

¶ 11 Sarah Lenfield was the school counselor. She worked with Student A on several occasions. She did not believe he was physically aggressive. Although Student A was involved in some fights, he was often the target. He was not prone to initiate fights. Lenfield "never got any notifications about teachers' concern about the aggression for [her] to work on that one on one. It was more peer relationship and social settings, where [Student A] functioned at a very lower level than his typical age group would."

¶ 12 Charles Hensley was the principal. He believed Riley was sent to the office on the day of the injury because he recalled Riley saying he ran into the wall going after the ball and that he felt fine. The incident was deemed an accident. He did not remember if the administration ever considered Student A to be physically aggressive or a person who got into fights. Hensley never had any disciplinary issues or problems with Dayhoff as a teacher, and Dayhoff was not disciplined after this incident.

¶ 13 According to Student A's disciplinary record, he received 29 referrals from August 2016 to March 2017. Of those referrals, 24 were for insubordination, physical aggression, and fighting. The rest were for being in an unauthorized area, cutting class, profanity, and theft.

¶ 14 On February 16, 2018, plaintiff Kevin Haase filed a two-count complaint as Riley's parent and next friend. Count I alleged the District, through its employee Dayhoff, had a duty to refrain from willful and wanton conduct that could cause injury to a student in class and defendants breached that duty when Dayhoff did not supervise the class. Count II made a claim under the Family Expense Act, alleging Kevin became obligated for Riley's medical expenses following the injury.

¶ 15 On June 5, 2018, Kevin filed an amended complaint. Count I of the amended complaint alleged Dayhoff knew Student A had a history of violent behavior, Dayhoff should have supervised Student A more closely, and the District, through Dayhoff, and Dayhoff individually, exhibited an utter indifference to or conscious disregard for the students' safety. Count II remained the same.

¶ 16 On September 12, 2022, Kevin filed a second amended complaint, adding Riley as a named plaintiff because he had reached the age of majority.

¶ 17 Defendants moved for summary judgment, arguing section 2-201 of the Tort Immunity Act granted immunity to public entities and their employees for discretionary acts. Accordingly, they argued Dayhoff was entitled to immunity for his decisions on how to conduct and supervise his class, and the District was entitled to immunity for its determination and implementation of appropriate discipline and interventions for Student A. Defendants further argued plaintiffs could not provide evidence of defendants' willful and wanton conduct. Finally, defendants argued they were not liable for medical expenses because the Family Expense Act did not impose liability on a teacher or school district, and even if it did, recovery was contingent on finding an underlying liability.

¶ 18 The court granted defendants' motion. It found that Dayhoff's conduct in supervising his gym class—allowing "game day," allowing Student A to participate in the soccer game, and not

interceding in the soccer game—involved both the exercise of discretion and a determination of policy. The court found Hensley, Walz, and Lenfield exercised their discretion and made policy determinations in their assessment, evaluation, and plan for educating, disciplining, and managing Student A. They also exercised their discretion and made policy determinations in deciding what information to communicate to faculty and staff about Student A. The court found no set of facts would entitle plaintiffs to relief and overcome the immunity provided to defendants under sections 2-109 and 2-201 of the Tort Immunity Act. The court further found that, assuming section 3-108 of the Tort Immunity Act applied, defendants' conduct was not extreme and outrageous and did not shock the conscience. Lastly, the court found the Family Expense Act did not apply to this case because its purpose was to protect creditors, and defendants were not creditors. Plaintiffs appeal.

¶ 19 II. ANALYSIS

¶ 20 On appeal, plaintiffs argue the circuit court erred in granting summary judgment because (1) section 2-201 of the Tort Immunity Act does not provide immunity where there was no evidence Dayhoff made a conscious decision on whether to remove Student A from class, (2) section 3-108 pertains to supervision and Dayhoff's failure to supervise was willful and wanton when he failed to stop an ongoing danger, and (3) Riley's father is entitled to recover damages for medical expenses from defendants.

¶ 21 Summary judgment will be granted if the "pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2022). "In reviewing a trial court's grant of summary judgment, we do not assess the credibility of the testimony presented but, rather, determine only whether the evidence presented was

sufficient to create an issue of material fact." *Lau v. Abbott Laboratories*, 2019 IL App (2d) 180456, ¶ 37. "In determining whether a genuine issue of material fact exists, the pleadings, depositions, admissions and affidavits must be construed strictly against the movant and liberally in favor of the opponent." *Mashal v. City of Chicago*, 2012 IL 112341, ¶ 49. "A genuine issue of material fact precluding summary judgment exists where the material facts are disputed or, if the material facts are undisputed, reasonable persons might draw different inferences from the undisputed facts." *Adames v. Sheahan*, 233 Ill. 2d 276, 296 (2009). "Summary judgment is a drastic means of disposing of litigation and, therefore, should be granted only when the right of the moving party is clear and free from doubt." *Id.* We review the circuit court's decision to grant a motion for summary judgment *de novo*. *Shaw v. U.S. Financial Life Insurance Co.*, 2022 IL App (1st) 211533, ¶ 26.

¶ 22 A. Section 2-201

¶ 23 Section 2-201 of the Tort Immunity Act provides, "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 discretion even though abused." 745 ILCS 10/2-201 (West 2016). "The plain statutory language states that the act or omission giving rise to the injuries must constitute *both* an exercise of discretion *and* a determination of policy." (Emphases added.) *Andrews v. Metropolitan Water Reclamation District of Greater Chicago*, 2019 IL 124283, ¶ 37. "[D]iscretionary decisions are those unique to a particular public office, which involve the exercise of personal deliberation and judgment in deciding whether to perform a particular act, or how and in what manner that act should be performed." (Internal quotation marks omitted.) *Wright-Young v. Chicago State University*, 2019 IL App (1st) 181073, ¶ 77. "[D]iscretion connotes a conscious

decision." *Monson v. City of Danville*, 2018 IL 122486, ¶ 33. Policy determinations require defendants "to balance competing interests and to make a judgment call as to what solution will best serve each of those interests[.]" *Wright-Young*, 2019 IL App (1st) 181073, ¶ 77.

¶ 24 The parties disagree over whether Dayhoff made a conscious decision. Plaintiffs argue Dayhoff was not paying attention to his class, so he could not have made any conscious decisions about something he was not aware of. But defendants argue Dayhoff made a number of decisions that day, including what sports the students would play in class, allowing students to participate even though they were not dressed in uniform, and from where he supervised the class.

¶ 25 There are conflicting accounts of what Dayhoff was doing during the gym class on the day in question. Riley and Jacob reported seeing him sitting at a desk, focused on his laptop. Dayhoff said he was supervising while walking around the gym. Riley reported that Student A was not playing soccer, but kept running in and out of the game. Jacob reported Student A was being obnoxious and unnecessarily rough during the game. Dayhoff observed Student A "playing soccer just like the rest of them." Dayhoff said if he saw Student A being physically aggressive, he would have removed him from the game because Student A was not dressed for class.

¶ 26 Defendants have to prove section 2-201 immunity applies. *Andrews*, 2019 IL 124283, ¶ 23. In *Andrews*, the defendant did not establish discretionary immunity under section 2-201 and, therefore, was not entitled to summary judgment. *Id.* ¶ 52. There, workers were using two ladders when the plaintiff fell on a coworker, causing severe injuries. *Id.* ¶ 6. The defendant admitted he was unaware of this two-ladder setup. *Id.* ¶ 35. There was no evidence that the defendant exercised judgment or skill in making decisions about ladders, or that he balanced competing interests and determined the solution to best serve those interests. *Id.* The supreme court stated, "In the absence of a judgment call and a weighing of risks and benefits, there is nothing to protect." *Id.* ¶ 41.

Similarly, it is not clear if Dayhoff made a conscious decision in allowing Student A to participate in class or if he was even aware of Student A's behavior during that class.

¶ 27 Here, these disputed facts made summary judgment improper. The disputed facts call into question whether Dayhoff made a decision, let alone a discretionary decision. Dayhoff said he allowed Student A to participate and saw him playing soccer with the other students. Riley and Jacob said Student A was being disruptive and unnecessarily rough during the soccer game. But there is no evidence that Student A was ever removed from the game. It was defendants' burden to support their claim of section 2-201 immunity with evidence of conscious decision-making, and they failed to sustain that burden. See *Andrews*, 2019 IL 124283, ¶ 46. If Dayhoff did not know what was happening in his gym class, it also calls into question whether he made a policy determination. Because section 2-201 requires both a discretionary decision and a policy determination, and there are facts in dispute as to whether either or both occurred, the court should not have granted summary judgment.

¶ 28 B. Section 3-108

¶ 29 Plaintiffs argue that section 3-108 of the Tort Immunity Act applies, rather than section 2-201, and Dayhoff's failure to supervise was willful and wanton. "[W]here there exists a general statutory provision and a specific statutory provision, either in the same or in another act, both relating to the same subject, the specific provision controls and should be applied." *Knolls Condominium Ass'n v. Harms*, 202 Ill. 2d 450, 459 (2002). Section 3-108 specifically applies to supervision or the failure to supervise. Section 3-108 provides,

> "(a) Except as otherwise provided in this Act, neither a local public entity nor a public employee who undertakes to supervise an activity on or the use of any public property is liable for an injury unless the local public entity or public

> employee is guilty of willful and wanton conduct in its supervision proximately causing such injury.
>
> (b) Except as otherwise provided in this Act, 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 unless the employee or the local public entity has a duty to provide supervision imposed by common law, statute, ordinance, code or regulation and the local public entity or public employee is guilty of willful and wanton conduct in its failure to provide supervision proximately causing such injury." 745 ILCS 10/3-108 (West 2016).

"Supervision has been defined to include not only passive oversight of an activity but also direction, teaching, demonstration of techniques and—to some degree—active participation in an activity while supervising it." (Internal quotation marks omitted.) *Doe v. Dimovski*, 336 Ill. App. 3d 292, 298 (2003). But "[t]he quality or level of the teacher's supervision of the class is irrelevant to a section 3-108 analysis." *Hill v. Galesburg Community Unit School District 205*, 346 Ill. App. 3d 515, 521 (2004).

¶ 30 " 'Willful and wanton conduct' as used in [the Tort Immunity] Act means 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 or their property." 745 ILCS 10/1-210 (West 2016). This definition applies in any immunity under the Tort Immunity Act where a willful and wanton exception is incorporated. *Id.* "Willful and wanton conduct differs from mere negligence in that it requires a conscious choice of a course of action, either with knowledge of the serious danger to others involved in it or with knowledge of facts which would disclose this danger to any reasonable [person]." (Internal quotation marks omitted.) *Doe v. Bridgeforth*, 2018

IL App (1st) 170182, ¶ 46. "Illinois courts define willful and wanton conduct, in part, as the failure to take reasonable precautions after knowledge of impending danger." *Id.* "Inadvertence, incompetence, or unskillfulness does not constitute willful and wanton conduct." *Callaghan v. Village of Clarendon Hills*, 401 Ill. App. 3d 287, 301 (2010). "Generally, whether a defendant's conduct is willful and wanton is a question for the jury." *Cohen v. Chicago Park District*, 2017 IL 121800, ¶ 27.

¶ 31 We do not reach a decision whether section 3-108 applies instead of section 2-201. We only find due to the disputed material facts, the court improperly granted summary judgment. Here, there are numerous facts in dispute regarding Student A and defendants' actions or inactions. In particular, Student A's reputation and level of aggression are disputed. Riley and Jacob both said they knew Student A was aggressive before this incident and he got into fights. But Walz and Lenfield said he was not aggressive or the initiator, but more so a target. The only communications about Student A that Walz sent to teachers were about his tendencies to wander, and Lenfield never received concerns from teachers that Student A exhibited aggressive behavior. However, Student A's disciplinary record for part of the 2016-2017 school year shows multiple referrals for insubordination and physical aggression. If Student A was in fact physically aggressive and a danger to other students, and that information was known to the District, the failure to disseminate such information to his teachers may be willful and wanton. Knowledge of Student A's aggression and the lack of precautions to protect other students may demonstrate indifference or conscious disregard for students' safety. Genuine issues of fact exist on the question of whether defendants' conduct was willful and wanton. Thus, summary judgment was improper.

¶ 32 C. Family Expense Act

¶ 33 The Family Expense Act "codifies the common-law rule making parents liable for the expenses of their minor children." *Manago By & Through Pritchett v. County of Cook*, 2017 IL 121078, ¶ 12. Its purpose is to protect creditors. *Baez v. Rosenberg*, 409 Ill. App. 3d 525, 531 (2011). "The common law in turn gives parents a cause of action against a tortfeasor who, by injuring their child, caused them to incur the medical expenses." *Bauer ex rel. Bauer v. Memorial Hospital*, 377 Ill. App. 3d 895, 922 (2007). Therefore, "because the [Family Expense Act] renders parents liable for the medical expenses of their minor children, parents can maintain a cause of action against a tortfeasor who injures their child for the recovery of resultant medical expenses." *Cullotta v. Cullotta*, 287 Ill. App. 3d 967, 975 (1997). But "[s]ince a parent's action under such circumstances is derivative, if a defendant is not liable in tort for the underlying injury to the child, the defendant cannot be held liable to the child's parent for the payment of medical expenses." *Id.*

¶ 34 Defendants argue the Family Expense Act does not impose liability on a teacher or a school district for medical expenses because it was designed to delineate when a creditor may maintain an action against one spouse. Although defendants are correct in citing the purpose of the Family Expense Act, their argument ignores the common law that gives parents a cause of action against a tortfeasor that injures their child. The circuit court erred in finding the Family Expense Act did not apply. Although defendants are not creditors, Kevin, who is responsible for Riley's medical expenses, is entitled to recover damages for medical expenses that may have resulted from defendants' actions. Because issues of material fact made summary judgment on count I improper, we also find summary judgment on count II, which was derivative of count I, improper.

¶ 35 Despite defendants' assertions that the facts are undisputed, we find there are material facts in dispute. Defendants' right to a judgment was not clear and free from doubt, and the court erred in granting summary judgment to defendants.

¶ 36 III. CONCLUSION

¶ 37 The judgment of the circuit court of Kankakee County is reversed and remanded.

¶ 38 Reversed and remanded.

¶ 39 JUSTICE HETTEL, dissenting:

¶ 40 I dissent from the majority's order in this case because I believe the conduct alleged in plaintiffs' complaint was not willful and wanton as a matter of law. As such, I would affirm the trial court's entry of summary judgment in favor of defendants on both counts of plaintiffs' complaint.

¶ 41 The majority states the general rule that "whether a defendant's conduct is willful and wanton is a question for the jury." *Supra* ¶ 31 (quoting *Cohen v. Chicago Park District*, 2017 IL 121800, ¶ 27). However, the majority fails to mention that if there is insufficient evidence to sustain an allegation of willful and wanton conduct, the issue should be decided as a matter of law. See *Barr v. Cunningham*, 2017 IL 120751, ¶ 15.

¶ 42 Courts in this state have repeatedly held that allegations against school staff for inadequate supervision are insufficient as a matter of law to establish willful and wanton conduct. See *id.* ¶ 18; *Lynch v. Board of Education of Collinsville Community Unit District No. 10*, 82 Ill. 2d 415, 430-31 (1980); *Biancorosso v. Troy Community Consolidated School District No. 30C*, 2019 IL App (3d) 180613, ¶¶ 14-18; *Brooks v. McLean County School District Unit 5*, 2014 IL App (4th) 130503, ¶¶ 39-43; *Mitchell v. Special Education Joint Agreement School District No. 208*, 386 Ill. App. 3d 106, 111-12 (2008); *Stiff v. Eastern Illinois Area of Special Education*, 279 Ill. App. 3d 1076, 1082 (1996); *Pomaro v. Community Consolidated School District 21*, 278 Ill. App. 3d 266, 269-270 (1995); *Castaneda v. Community Unit School District No. 200*, 268 Ill. App. 3d 99, 104-06 (1994); *Poelker v. Warrensburg Latham Community Unit School District No. 11*, 251 Ill. App.

3d 270, 278 (1993); *Siegmann v. Buffington*, 237 Ill. App. 3d 832, 834 (1992); *Washington v. Chicago Board of Education*, 204 Ill. App. 3d 1091, 1095-97 (1990); *Jackson v. Chicago Board of Education*, 192 Ill. App. 3d 1093, 1100-01 (1989); *Templar v. Decatur Public School District No. 61*, 182 Ill. App. 3d 507, 512-13 (1989); *Holsapple v. Casey Community Unit School District C-1*, 157 Ill. App. 3d 391, 393-94 (1987); *Tijerina v. Evans*, 150 Ill. App. 3d 288, 292-93 (1986); *Weiss v. Collinsville Community Unit School District No. 10*, 119 Ill. App. 3d 68, 71-72 (1983); *Guyton v. Roundy*, 132 Ill. App. 3d 573, 578-79 (1985); *Booker v. Chicago Board of Education*, 75 Ill. App. 3d 381, 385-86 (1979); *Cipolla v. Bloom Township High School District No. 206*, 69 Ill. App. 3d 434, 437-38 (1979); *Montague v. School Board of Thornton Fractional Township North High School District 215*, 57 Ill. App. 3d 828, 831-32 (1978); *McCauley v. Chicago Board of Education*, 66 Ill. App. 3d 676, 677-79 (1978); *Clay v. Chicago Board of Education*, 22 Ill. App. 3d 437, 440-41 (1974); *Mancha v. Field Museum of Natural History*, 5 Ill. App. 3d 699, 702-03 (1972); *Gubbe v. Catholic Diocese of Rockford*, 122 Ill. App. 2d 71, 79 (1970); *Woodman v. Litchfield Community School District No. 12, Montgomery County*, 102 Ill. App. 2d 330, 334 (1968).

¶ 43 "Our courts have repeatedly held that a teacher's failure to supervise student activities during which a student was injured, does not in itself constitute wilful and wanton conduct." *Guyton*, 132 Ill. App. 3d at 579 (citing *Booker*, 75 Ill. App. 3d 381, *Clay*, 22 Ill. App. 3d 437, *Woodman*, 102 Ill. App. 2d 330, and *Mancha*, 5 Ill. App. 3d 699). Additionally, "Illinois courts have consistently held that a teacher's mere act of leaving children unsupervised will not be sufficient to establish willful and wanton misconduct." *Jackson*, 192 Ill. App. 3d at 1100 (citing *Pomrehn v. Crete-Monee High School District*, 101 Ill. App. 3d 331 (1981), *Cipolla*, 69 Ill. App. 3d 434, and *Mancha*, 5 Ill. App. 3d 699). To establish willful and wanton conduct based on

inadequate supervision in a school setting, the plaintiff must present evidence that the teacher "was aware or should have known that the absence of supervision posed a high probability of serious harm or an unreasonable risk of harm." *Jackson*, 192 Ill. App. 3d at 1100. A plaintiff's allegations that a teacher "should have known the harm would occur without adult supervision is insufficient to satisfy this standard." *Id.* (citing *Holsapple*, 157 Ill. App. 3d 391).

¶ 44 I agree with the majority that there are disputed facts in this case. However, I disagree that the disputed facts preclude entry of summary judgment in favor of defendants. While the disputed facts may raise an issue as to whether Dayhoff was guilty of negligence, they are insufficient to establish willful and wanton conduct. See *Brooks*, 2014 IL App (4th) 130503, ¶ 42; *Montague*, 57 Ill. App. 3d at 831.

¶ 45 The undisputed evidence established that Student A had been in Dayhoff's class for seven months at the time of the incident. Plaintiffs presented no evidence that Student A had previously harmed any other student in gym class at any time prior to this incident nor did they present evidence that Student A had threatened violence against Riley or any other student in the gym class on the day in question or at any other time. Even assuming that Student A had engaged in violence in school on other occasions and was playing soccer aggressively on the day in question, the evidence fails to establish that Dayhoff "was aware or should have known that the absence of supervision posed a high probability of serious harm or an unreasonable risk of harm" (*Jackson*, 192 Ill. App. 3d at 1100) to Riley on the day of the incident. See *Clay*, 22 Ill. App. 3d at 441 (plaintiff failed to allege facts sufficient to support claim for willful and wanton conduct by teacher where fellow student struck plaintiff in the face with a ruler without provocation while the teacher was absent from the classroom and the teacher knew or should have known that the student had been involved in similar incidents in the past); *Brooks*, 2014 IL App (4th) 130503, ¶¶ 40-42

(failure to monitor students in bathroom where school officials were aware students were playing a game that involved "boys striking each other about the chest and abdomen" was insufficient to establish willful and wanton conduct); *Gubbe*, 122 Ill. App. 2d at 72, 79 (plaintiff who was beaten by another student during recess failed to show willful and wanton conduct by school officials for inadequate supervision even though plaintiff had previously asked school officials for protection against the student).

¶ 46 Based on the facts of this case, I would affirm the trial court's grant of summary judgment to defendants because plaintiffs' failure to present sufficient facts to support a finding of willful and wanton conduct renders defendants immune from liability under section 3-108 of the Act. See *Biancorosso*, 2019 IL App (3d) 180613, ¶ 18. Because defendants have immunity under section 3-108 of the Act, there is no need to address defendants' immunity under section 2-201 of the Act. See *Brooks*, 2014 IL App (4th) 130503, ¶ 43. Furthermore, plaintiffs' Family Expense Act claim also fails because defendants are not liable for plaintiff's injuries. See *Cullotta*, 287 Ill. App. 3d at 975.

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Appellate Courts.

Instructions

Check the box to the right if your case involves parental responsibility or parenting time (custody/visitation rights) or relocation of a child.

Just below "Appeal to the Appellate Court of Illinois," enter the number of the appellate district that will hear the appeal and the county of the trial court.

If the case name in the trial court began with "In re" (for example, "In re Marriage of Jones"), enter that name. Below that, enter the names of the parties in the trial court, and check the correct boxes to show which party is filing the appeal ("appellant") and which party is responding to the appeal ("appellee").

To the far right, enter the trial court case number, the trial judge's name, and the Supreme Court Rule that allows the appellate court to hear the appeal.

☐ **THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 311(a).**

APPEAL TO THE APPELLATE COURT OF ILLINOIS

THIRD **District**

from the Circuit Court of

Kankakee **County**

FILED
Kankakee County
21st Judicial Circuit
8/16/2023 12:09 PM
Sandra M Cianci
CIRCUIT COURT CLERK

In re

KEVIN HASSE and RILEY HASSE

Plaintiffs/Petitioners *(First, middle, last names)*

☑ **Appellants** ☐ **Appellees**

v.

KANKAKEE SCHOOL DISTRICT 111

Defendants/Respondents *(First, middle, last names)*

☐ **Appellants** ☑ **Appellees**

Trial Court Case No.:
2018 L 12

Honorable
Lindsay Parkhurst
Judge, Presiding

Supreme Court Rule:
301, 303

NOTICE OF APPEAL (CIVIL)

In **1**, check the type of appeal.

For more information on choosing a type of appeal, see *How to File a Notice of Appeal.*

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☑ Appeal
☐ Interlocutory Appeal
☐ Joining Prior Appeal
☐ Separate Appeal
☐ Cross Appeal

In **2**, list the name of each person filing the appeal and check the proper box for each person.

2. Name of Each Person Appealing:

Name: Kevin Hasse and Riley Hasse
First *Middle* *Last*

☑ Plaintiff-Appellant ☐ Petitioner-Appellant

OR

☐ Defendant-Appellant ☐ Respondent-Appellant

Name: _____
First *Middle* *Last*

☐ Plaintiff-Appellant ☐ Petitioner-Appellant

OR

☐ Defendant-Appellant ☐ Respondent-Appellant

In **3**, identify every order or judgment you want to appeal by listing the date the trial court entered it.

3. List the date of every order or judgment you want to appeal:

07/24/2023 A copy of which is attached to this Notice of Appeal and incorporated by reference
Date

_____
Date

_____
Date

In **4**, state what you want the appellate court to do. You may check as many boxes as apply.

4. State your relief:

☑ reverse the trial court's judgment *(change the judgment in favor of the other party into a judgment in your favor)* and ☑ send the case back to the trial court for any hearings that are still required; Reverse the July 24, 2023 Summary Judgment Order and remand for trial

☐ vacate the trial court's judgment *(erase the judgment in favor of the other party)* and ☐ send the case back to the trial court for a new hearing and a new judgment;

☐ change the trial court's judgment to say: _____

☐ order the trial court to: _____

☐ other: _____

and grant any other relief that the court finds appropriate.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign by hand and print your name. Fill in your address, telephone number, and email address, if you have one.

/s/ Brion W. Doherty *Your Signature*	140 S. Dearborn St. Suite 1500 *Street Address*
_____ *Your Name*	Chicago, IL 60603 *City, State, ZIP*
bdoherty@rjnlawoffice.com *Email*	(312) 726-2699 *Telephone*
	_____ *Attorney # (if any)*

All appellants must sign this form. Have each additional appellant sign the form here and enter their complete name, address, telephone number, and email address, if they have one.

Additional Appellant Signature

/s/ *Signature*	_____ *Street Address*
_____ *Name*	_____ *City, State, ZIP*
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	_____ *Attorney # (if any)*

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      Street, Apt # *City* *State* *ZIP*
      Email address: akd@franczek.com, ekw@franczek.com, sjs@franczek.com

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      Date
      At: _____ ☐ a.m. ☐ p.m.
      Time

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Date

At: _____ ☐ a.m. ☐ p.m.
Time

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Brion W. Doherty
Print Your Name

59975
Attorney # (if any)

IN THE 21ST JUDICIAL CIRCUIT COURT
KANKAKEE COUNTY, ILLINOIS

KEVIN AND RILEY HASSE, PLAINTIFFS,
VS.
KANKAKEE SCHOOL DISTRICT 111, DEFENDANTS.

No. 2018 L 12

MEMORANDUM OF DECISION

Defendants School and School Employees filed a motion for summary judgment on the issue of immunity under §§ 2–109 and 2–201 of *The Governmental Employees Tort Immunity Act*, 745 ILCS 10/1-101 et seq. Plaintiff Student argues School is liable under the § 3—108 willful and wanton exception. The court considered the briefs and all attached exhibits, oral arguments, the Illinois Code of Civil Procedure, relevant caselaw, and precedent.

- **STANDARD OF REVIEW**

The purpose of summary judgment is to determine whether there are any genuine issues of triable fact. *Kobus v. Formfit Co.*, 35 Ill. 2d 533, 538 (1966). The Illinois Code of Civil Procedure provides summary judgement is appropriate if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. 735 ILCS 5/2-1005. See also *Carruthers v. B.C. Christopher*, 57 Ill. 2d 376,380 (1974). A motion for summary judgment and the supporting documents must be construed strictly against the movant and liberally in favor of the opponent. *In Re The Estate of Whittington*, 107 Ill. 2d 169, 177 (1985).

Summary judgment is a drastic means of disposing of causes and should be granted only when the right of the movant is clear and free from doubt. *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986). *Gilbert v. Sycamore*, 156 Ill. 2d 511, 518 (1993). At the summary judgment stage, plaintiff is not required to prove their case, but in order to survive a motion for summary judgment they must present a factual basis that would arguably entitle them to a judgment. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 335 (2002).

The Discretionary Immunity Doctrine is codified in sections 2–109 and 2–201 of the *Tort Immunity Act* 745 ILCS 10/2–109, 2–201. The plain language of section 2–201 is unambiguous and the Illinois Supreme Court held section 2—201 immunizes the public entity from both negligence and willful and wanton misconduct. *In re Chicago Flood Litig.*, 176 Ill. 2d 179, 196 (1997). Under § 2-109, if the alleged wrongdoing relates to a discretionary act of an employee, there is immunity for both the employee and the public entity regardless of whether the employee is a party defendant. Under Illinois law, there is absolute immunity in the performance of discretionary functions under §§ 2–109 and 2–201 of the Act. *Kennell v. Clayton Twp.*, 239 Ill. App. 3d 634, 640 (4th Dist. 1992). § 3-108 provides willful and wanton exception if a public employee is guilty of willful and wanton conduct in its failure to provide supervision proximately causing such injury.

Discretionary acts are unique to a particular public office while ministerial acts are those performed 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 own discretion or judgment as to the propriety of the act. *Snyder v. Curran Twp.,* 167 Ill. 2d 466, 474 (1995) citing *Larson v. Darnell*, 113 Ill. App. 3d 975, 977 (3rd Dist. 1983). Illinois law holds an act is a determination of policy if it requires a balancing of interests and making a judgment call as to which solution

would best serve each of those interests. Further, the act or conduct can be a determination of policy even if it does not occur at the planning level or involve the formulation of principles to achieve a common public benefit. *Harrison v. Hardin County Community Unit School District No. 1*, 197 Ill. 2d 466 (2001) (finding a decision to deny a student's request to leave school early due to weather involved a determination of policy). *Reed v. City of Chicago, No. 01 C 7865*, 2002 WL 406983 (N.D. Ill. Mar. 14, 2002).

- **UNDISPUTED FACTS**

On March 13, 2016, Teacher was conducting P.E. class where he took attendance, had the students do warm-ups, and decided to allow the students a recreational game day where Teacher divided the gym in half with some students playing basketball on one side and some students playing soccer on the other side. Teacher supervised the class from the southeast corner where he could observe the entire gym and by walking around. Teacher was observed using his phone and computer during the class. Plaintiff Student was playing soccer. Teacher allowed Student A who did not dress for Gym to play soccer. Teacher did not intercede in the soccer play.

Student A was observed by other students running in and out of the game and playing roughly and aggressively. During a scrum for the ball, Student A ran at full speed, levelled his shoulder, and hit Plaintiff Student into the wall. Plaintiff Student sustained an injured arm. Student A had a documented disciplinary history with the School Administration. In August 2016, 7 months prior to the incident, the school counselor sent an e-mail to Student A's teachers stating Student A was going through the school's moving forward process and Student A knows he needs to utilize adults in the building when he becomes angry or has

conflict with a peer. Counselor testified she determined Student A not to be an aggressive student and only communicated to staff Student A required increased supervision for his wandering.

Student A and Plaintiff Student had no prior history. Plaintiff Student testified he did not think Student A personally targeted him, but was just messing around too much. Teacher did not recall any disciplinary issues with Student A throughout the school year except sometimes Student A did not dress for gym class or he goofed around. Student A had never gotten into a fight in gym class.

- **ANALYSIS**

The conduct of Teacher during gym class involved the exercise of his discretion and judgment. The conduct of Teacher also involved determination of policy because Teacher engaged in balancing of interests and making a judgment call as to which solution worked best for P.E. class and Student A. The court finds Teacher's decision to allow game day, to allow Student A to participate in the soccer game, deciding not to intercede in the soccer game, and to determine how to supervise gym class involved both the exercise of his discretion and judgment and a determination of policy. The court finds the allegations against Teacher when viewed in a light most favorable to Plaintiff are not sufficient to state a cause of action upon which relief can be granted. Further, the court finds no set of facts can be proven entitling Plaintiff to the relief sought because of the immunity provided to Teacher and School District in 745 ILCS §§ 2–109 and 2–201.

Illinois law holds allegations of failure to supervise student activities and/or leaving children unsupervised is not sufficient to establish willful and wanton conduct. *Jackson v. Chicago Bd. Ed*;., 192 Ill. App. 3d 1093 (1st Dist. 1989). Inadvertence and inattentiveness are

not sufficient to establish willful and wanton conduct. *Burke v. 12 Rothschild*, 148 Ill. 2d 429 (1992). *Albers v. Cmty. Consul.*, 155 Ill. App. 3d 1083 (5th Dist. 1987). The court finds there is no set of facts, even when facts are construed in a light most favorable to Plaintiff, to establish Teacher engaged in a conscious choice of action with knowledge of serious danger to others and there are no facts that shock the conscience. *Burke* at 449. Further, Student A's general aggressiveness cannot support a finding of willful and wanton conduct because Student A's prior misconduct was never directed at Plaintiff Student. *Albers,* at 1084. *Floyd v. Rockford Park Dist.,* 355 Ill. App. 3d 695, 701 (2nd Dist. 2005). Thus, Teacher's conduct was not willful and wanton and § 3-108 willful and wanton exception does not apply to these facts.

Principal's, Assistant Principal's, and School Counselor's determination Student A was not physically aggressive, deciding disciplinary measures, electing what if any information to disseminate to staff and faculty regarding Student A, and determining which supports to provide to Student A require the exercise of discretion and judgment and involve determination of policy. The court finds Principal, Assistant Principal, and School Counselor exercised their discretion and judgment and made policy determinations in their assessment, evaluation, and plan for educating, disciplining, and managing Student A. They also exercised their discretion and made policy determinations in deciding what information to communicate to staff and faculty about Student A. The court finds the allegations against Principal, Assistant Principal, School Counselor, and School District when viewed in a light most favorable to Plaintiff are not sufficient to state a cause of action upon which relief can be granted.

The court further finds no set of facts can be proven entitling Plaintiff to the relief sought because of the absolute immunity provided to Principal, Assistant Principal, and School Counselor, and School District under 745 ILCS §§ 2–109 and 2–201. Illinois law held the

willful and wanton exception did not apply where a student was attacked by a classmate for a second time despite the school having knowledge of the first assault because a school employee's determination of the appropriate disciplinary response and decision to intervene were disciplinary and not supervisory and fully immunized under 2—201. *Castillo v. Bd. of Educ. of City of Chicago*, 2018 IL App (1st) 171053, ¶ 17. *Castillo* also holds the area of school discipline is covered by 2—201 immunity. The court finds Principal, Assistant Principal, School Counselor, and School District are covered by 2—201 and 2—109 immunity. Even if the court assumed *arguendo* § 3-108 willful and wanton exception applied, the court finds the conduct of Principal, Assistant Principal, School Counselor, and School District's conduct did not rise to the level of extreme and outrageous conduct and did not shock the conscience and the court would not apply the willful and wanton exception in this case.

The court finds *The Family Expense Act*, 750 ILCS 65/15 does not apply to this case because Defendants are not creditors and the Family Expense Act purpose is to protect creditors. *Proctor Hosp. v. Taylor*, 279 Ill. App. 3d 624, 627 (3rd Dist. 1996). Therefore, as a matter of law, Defendants are entitled to summary judgment on the Family Expense Act issue.

THE COURT FINDS AND ORDERS:

1. Defendant's Motion for Summary Judgment on the 2nd Amended Complaint is granted and summary judgment is entered in favor of Defendants and against Plaintiff.

2. Plaintiff's 2nd Amended Complaint at Law is hereby dismissed with prejudice.

3. This order is final and appealable.

4. All future court dates are stricken and the case is off call.

ENTERED: 7·24·23

Lindsay Parkhurst

Lindsay Parkhurst, Circuit Judge

COMMON LAW RECORD[1]

[1] The Parties summary judgment briefs and exhibits were filed under seal with the circuit court to protect the identity of Student A in accordance with the Agreed Protective Order and Circuit Court's September 4, 2020 Order.

SUPPLEMENT TO THE SEALED COMMON LAW RECORD

REPORT OF PROCEEDINGS