NO. 131420

In the

Supreme Court of Illinois

KEVIN HAASE and RILEY HAASE,

Plaintiff/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. 3-23-0369

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*.

REPLY BRIEF OF DEFENDANTS/APPELLANTS

Sally J. Scott (#6204350)
sjs@franczek.com
Amy K. Dickerson (#6293155)
akd@franczek.com
Erin K. Walsh (#6313323)
ekw@franczek.com
FRANCZEK P.C.
300 S. Wacker Drive, Ste. 3400
Chicago, IL 60606
(312) 986-0300

Attorneys for Defendants/Appellants

E-FILED
6/18/2025 6:04 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

Plaintiffs' brief focuses on two arguments: the standard for willful and wanton conduct should be lowered to a standard closer to negligence; and Dayhoff should have known that Student A was aggressive and a danger to other students. But Illinois courts have consistently held that a plaintiff's general allegation that a teacher should have known harm would occur is insufficient to satisfy the standard for willful and wanton conduct. Plaintiffs disregard the "course of action" requirement in the Tort Immunity Act, which requires facts showing that Dayhoff had knowledge of impending harm or a high probability of serious harm to Riley when he was looking at his devices rather than supervising.

It is undisputed that Student A had been in Dayhoff's class for seven months at the time of the incident. Plaintiffs presented no evidence of prior injuries involving Student A or of any conflict between Riley and Student A. The record further shows Dayhoff lacked knowledge of Student A's prior misbehavior. Assuming that Riley was playing soccer aggressively on the day of the injury, that is not sufficient to establish that Dayhoff should have known of a high probability of serious harm or impending danger to Riley.

Plaintiffs' claims against the District similarly fail because the District had investigated Student A's disciplinary referrals and had implemented what it determined to be appropriate remedial measures. Thus not only have Plaintiffs failed to provide any evidence of a conscious disregard for the safety of other students or knowledge of impending danger, but the District is also entitled to immunity under §2-201.

Given the insufficient evidence to establish willful and wanton conduct and because the Tort Immunity Act shields Defendants from liability, summary judgment is warranted.

I. STANDARD OF REVIEW

It is plaintiff's burden to present a factual basis that would arguably entitle him or her to judgment. *Lutz v. Goodlife Entertainment, Inc.*, 208 Ill. App. 3d 565, 568 (1st Dist.

1990). Contrary to Plaintiffs' representation, this Court did not apply the *Pedrick* standard, (which applies to directed verdicts) to a summary judgment appeal in *Adams v. N. Ill. Gas Co*., 211 Ill. 2d 32, 43 (2004). The "identical standard" referenced in *Jones v. Pneumo Abex,* concerned judgment n.o.v and directed verdicts. 2019 IL 123895, ¶26. This Court also did not apply the *Pedrick* standard in the following summary judgment appeals addressing similar issues: *Cohen v. Chicago Park Dist.,* 2017 IL 121800; *Murray v. Chicago Youth Ctr,* 224 Ill. 2d 213 (2007)*; Abrams v. City of Chicago*, 211 Ill. 2d 251 (2004); *Harrison v. Hardin County Cmty Unit Sch. Dist. No. 1*, 197 Ill. 2d 466 (2001).

II. THE RECORD EVIDENCE DOES NOT ESTABLISH DAYHOFF ENGAGED IN WILLFUL AND WANTON CONDUCT

Plaintiffs argue whether Defendants' conduct was willful and wanton is a question of fact that belongs to a jury. However, reviewing courts have regularly granted summary judgment when the undisputed facts do not establish willful and wanton conduct – as is the case here. As this Court has previously held, "[i]f there is insufficient evidence to sustain an allegation of willful and wanton conduct, the issue should not go to the jury for its consideration." *Barr v. Cunningham*, 2017 IL 120751, ¶15; *Cohen,* 2017 IL 121800, ¶27.

Plaintiffs assertion "whether a defendant knew or should have known of an impending danger is a question of fact that cannot be decided as a matter of law" (Pl. Br. p. 14, 17) is directly contradicted by this Court's decisions in *Barr* and *Cohen,* where the Court upheld dismissal as a matter of law because there were insufficient facts to support such an allegation.[1] Plaintiffs' reliance on *Bailey v. City of Decatur* and *Schellenberg v.*

[1] See also *Biancorosso v. Troy Cmty. Consol. Sch. Dist. No.30C*, 2019 IL App (3d) 180613; *Shwachman v. Northfield Twp. High Sch. Dist. 225,* 2016 IL App (1st) 143865-U; *Pomaro v. Cmty. Consol. Sch. Dist. 21*, 278 Ill. App. 3d 266 (1st Dist. 1995); *Castaneda v. Cmty Unit Sch. Dist. No. 200,* 268 Ill. App. 3d 99 (2d Dist. 1994); *Toller v. Plainfield Sch. Dist. 202*, 221 Ill. App. 3d 554 (3d Dist. 1991); *Jackson v. Chi. Bd. Of Educ.,* 192 Ill. App. 3d

Winnetka Park Dist. for this proposition is misplaced, as neither involved claims of willful and wanton supervision. Pl. Br. p. 14, 17.

A. Plaintiffs' Attempt to Modify the Requirements for Willful and Wanton Conduct Should be Denied

The Illinois General Assembly has defined willful and wanton conduct in the Tort Immunity Act as "a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property." 745 ILCS 10/1-210. Plaintiffs and Amicus ITLA focus their arguments on the terms "utter indifference" and "conscious disregard for safety" to argue "actual knowledge of impending danger" or foreseeable harm is not required. In doing so, they disregard the requisite "course of action" element and seemingly advocate for applying a negligence standard. Precedent cited in Defendants' initial brief to this Court definitively establishes that Plaintiffs must demonstrate not only negligence but also that Defendants engaged in a conscious "course of action" showing a deliberate intention to cause harm or an utter indifference to or conscious disregard for the plaintiff's safety.

To establish the "course of action," Plaintiffs must show when Dayhoff was on his computer, he had knowledge that such conduct posed "a high probability of serious physical harm or an unreasonable risk of harm" (*Albers v. Cmty. Consul. #204 Sch.*, 155 Ill. App. 3d 1083, 1085 (5th Dist. 1987); *Jackson,* 192 Ill. App. 3d at 1100[2]) or "knowledge of impending danger." *Barr,* 2017 IL 120751, ¶20[3] *citing Lynch v. Bd of Edu. of*

1093, 1100 (1st Dist. 1989); *Guyton v. Roundy*, 132 Ill. App. 3d 573 (1st Dist. 1985); *Pomrehn v. Crete-Monee High Sch. Dist.,* 101 Ill. App. 3d 331, 335 (3d Dist.1981).

[2] *See also Toller,* 221 Ill. App. 3d at 557; *Siegmann v. Buffington,* 237 Ill. App. 3d 832 (3rd Dist. 1992); *Pomrehn,* 101 Ill. App. 3d at 334–35; *Templar v. Decatur Pub. Sch. Dist. No. 61,* 182 Ill. App. 3d 507, 512 (4th Dist. 1989).

[3] *Barr* relied on *Burke* when addressing the standard for willful and wanton conduct refuting Amicus ITLA's argument that *Murray* overruled *Burke*.

Collinsville Cmty Unit Dist. No. 10, 82 Ill. 2d 415, 430-31 (1980) (finding 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 the other person was involved"); *Biancorosso,* 2019 IL App (3d) 180613, ¶17.

"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]." *Torres v. Peoria Park Dist*, 2020 IL App (3d) 190248, ¶24. "Such conduct imports consciousness that an injury may probably result from the act done and reckless disregard of the consequences." *Brown v. Ill. Terminal Co.*, 319 Ill. 326, 331 (1925). "Willful and wanton misconduct goes far beyond mere inadvertence, which may constitute ordinary negligence, because it requires a conscious disregard for the safety of others;" it "should shock the conscience." *Oravek v. Cmty Sch. Dist. 146*, 264 Ill. App. 3d 895, 900 (1st Dist. 1994). "The party doing the wanton act or failing to act "must be conscious. . . from his knowledge of the surrounding circumstances and existing conditions, that his conduct will naturally and probably result in injury." *Oelze v. Score Sports Venture, LLC,* 401 Ill. App. 3d 110, 122–23 (1st Dist. 2010).

Because teachers act "*in loco parentis*" and cannot provide "constant surveillance" of "every child at all times while in school or while engaged in a school-related activity" (*Albers,* 155 Ill. App. 3d at 1086; *Mancha v. Field Museum of Nat'l Hist.*, 5 Ill. App. 3d 699, 702 (1st Dist. 1972)), "courts have repeatedly held that a teacher's failure to supervise student activities during which a student was injured, does not in itself constitute willful

and wanton conduct." *Guyton,* 132 Ill. App. 3d at 579.[4] Further inherent in this standard is the courts' recognition that teachers are responsible for supervising a large number of students at once, and that a group of middle school students, particularly when engaging in recreational activities, may behave in ways that injure themselves or others. "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." *Choice,* 2012 IL App (1st) 102877, ¶72. "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 actual or constructive notice of a high probability of serious harm occurring was necessary." *Holsapple,* 157 Ill. App. 3d at 393; *Pomrehn*, 101 Ill. App. 3d at 335; *Jackson,* 192 Ill. App. 3d at 1100 ("a plaintiff must show that the teacher or school was aware or should have known that the absence of supervision posed a high probability of serious harm or an unreasonable risk of harm.").

A 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; *Pomrehn*, 101 Ill. App. 3d at 335; *Mancha,* 5 Ill. App. 3d at 702. Further, merely being aware of a risk of injury or speculation as to potential harm is insufficient. *Choice,* 2012 IL App (1st) 102877, ¶72; *Pomaro,* 278 Ill. App. 3d at 169-70; *Tijerina v. Evans*, 150 Ill. App. 3d 288, 292-93 (2d Dist. 1986).

---

[4] See also *Jackson*, 192 Ill. App. 3d at 1100; *Pomrehn*, 101 Ill. App. 3d at 335; *Clay v. Chicago Bd of Educ.*, 22 Ill. App. 3d 437, 439, 441 (1st Dist. 1974); *Booker v. Chicago Bd of Educ.*, 75 Ill. App. 3d 381, 386 (1st Dist. 1979); *Woodman v. Litchfield Cmty Sch. Dist. No. 12*, 102 Ill. App. 2d 330, 334 (5th Dist. 1968); *Cipolla v. Bloom Twp. High Sch. Dist. No. 206*, 69 Ill. App. 3d 434, 437-38 (1st Dist. 1979).

Thus, willful and wanton supervision occurs where the educator is aware of specific, probable harm or impending danger and acts in conscious disregard of that foreseeable danger or with utter indifference to the consequences. Where such knowledge is lacking, courts have consistently found the facts to be insufficient, as a matter of law. *See Barr,* 2017 IL 120751, ¶20; *Jackson*, 192 Ill. App. 3d at 1100; *Pomrehn*, 101 Ill. App. 3d at 335; *Biancorosso,* 2019 IL App (3d) 180613, ¶17; *Castaneda,* 268 Ill. App. 3d at 106; *Pomaro,* 278 Ill. App. 3d at 170; *Shwachman,* 2016 IL App (1st) 143865-U, ¶39.

B. There is No Evidence Showing Dayhoff Knew of Student A's Prior Misbehavior Nor Would This Knowledge Make Riley's Injury Foreseeable and Probable

When the record facts are considered, Plaintiffs' argument that Dayhoff should have known his lack of supervision would result in harm is insufficient as a matter of law because there are no facts establishing Dayhoff had the requisite foreknowledge of "impending danger" or a "high probability of foreseeable harm" when he turned his attention to his devices. *Barr,* 2017 IL 120751, ¶20; *Jackson*, 192 Ill. App. 3d at 1100.

Plaintiffs' argument that Dayhoff "either knew or should have known Student A had a history of fighting and propensity to be physically aggressive with other students" and "whether Dayhoff knew or should have known about Student A's history of physical aggression and fighting is a disputed fact," not only lacks factual support, but also fails as a matter of law. Pl. Br. p. 19-20.

Under well-established precedent, which Plaintiffs have not refuted, knowledge about prior discipline does not equate to a high probability of foreseeable harm to which an educator cannot leave that student unsupervised. Contrary to Plaintiffs' arguments, school districts and their employees owe no specific duty to protect a student from or prevent intentional or unprovoked misconduct by another student. *See Doe ex. Rel. Doe v.*

Lawrence Hall Youth Serv., 2012 Ill. App (1st) 103758 ¶38 (finding schools have no duty "to guard against the unanticipated willful and wanton misconduct by others"); *Albers,* 155 Ill. App. 3d at 1086 (finding no duty to protect a student from assault by another); *Geimer v. Chi. Park Dist*., 272 Ill. App. 3d 629, 637 (1st Dist. 1995) (finding district "owed no duty to prevent the intentional misconduct" by another); *Thames v. Bd. of Edu.*, 269 Ill. App. 3d 210 (1st Dist. 1994) (requiring actual knowledge of a *particular risk* to the *particular plaintiff* to establish a duty to a particular student).

Consequently, courts have repeatedly rejected willful and wanton supervision claims premised on the misconduct of another student when the two students had no prior conflict. In *Floyd v. Rockford Park Dist*, the court found 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 child had never previously been aggressive toward the plaintiff. 355 Ill. App. 3d 695, 701 (2d Dist. 2005). Likewise in *Albers*, the court found that previously violent behavior did not make it foreseeable that the aggressor would assault the plaintiff or that he could not be left unsupervised. 155 Ill.App.3d at 1086; *See also Brooks v. McLean Cty. Unit Dist. No. 5*, 2014 IL App (4th) 130503, ¶¶39, 41; *Jackson,* 192 Ill. App. 3d at 1100; *Clay,* 22 Ill. App. 3d at 439, 441; *Cipolla,* 69 Ill. App. 3d at 437-38; *Booker,* 75 Ill. App. 3d at 386; *Woodman,* 102 Ill. App. 2d at 334; *Siegmann,* 237 Ill. App. 3d at 834; *Templar,* 182 Ill. App. 3d at 510-13; *Guyton,* 132 Ill. App. 3d at 578-79.

Plaintiffs rely on *Gammon v. Edwardsville Cmty Unit Sch. Dist. No. 7*; yet this case illustrates this point. In *Gammon*, the court found sufficient allegations that the defendant had knowledge of a high probability of foreseeable, probable harm to the student because the aggressor student had made *specific, direct threats of violence against the plaintiff,* the

district was aware of these threats, and it failed to take any action to supervise either student. 82 Ill. App. 3d 586, 587-90 (5th Dist. 1980).

Similarly, *Doe ex rel. Ortega-Piron v. Chicago Bd. of Educ*. is distinguishable because the district had knowledge of previous instances of sexual assault against the plaintiff by the aggressor student as documented in a protective plan, which prohibited these students from being left together unsupervised, and subsequently put these two students together without supervision. 213 Ill. 2d at 28-29.

Unlike the plaintiffs in *Gammon* and *Doe*, Riley confirmed he had no prior conflict with Student A. (SUP CS327). Moreover, unlike in *Gammon*, the District implemented interventions for Student A following his disciplinary referrals, and unlike *Doe*, Student A did not have a documented plan limiting his interactions with other students. (SUP CS108; CS115; CS133). The mere fact that Student A had prior discipline for fighting or aggression does not create a presumption of a high probability of foreseeable harm or unreasonable risk of harm sufficient to establish Dayhoff acted willfully or wantonly by allegedly failing to supervise the soccer game. Under Plaintiffs' standard, any subsequent misconduct by a student, regardless of context, would subject the District to liability for failing to prevent it. This is inconsistent with the governing legal standards as outlined above.

Summary judgment is even more evident here because the record evidence, viewed in the light most favorable to Plaintiffs, fails to establish Dayhoff had knowledge of Student A's prior misconduct or discipline. It is undisputed that Student A had been in Dayhoff's class for seven months at the time of the incident. Dayhoff did not issue Student A any referrals for discipline during the seven months prior to the incident,[5] and Dayhoff testified

[5] The referral dated August 23, 2016 in the gym was not made by Dayhoff (SUP CS 64).

he 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 also was not aware of Student A's prior disciplinary history. (SUP CS64-66).

Plaintiffs highlight Riley's statement that he had witnessed three altercations in gym class (fighting, throwing a basketball at a student, and a third he couldn't remember), but Riley could not say when the incidents occurred, and there is no evidence Dayhoff was present or witnessed this conduct. (SUP CS328-29). Riley also contradicts himself:

> **Q. Did you ever seen [Student A], let's say beside this one gym class, did you ever see Mr. Dayhoff have to put (Student A) to the side for misbehaving?**
> A. Once.
> **Q. And describe that, please.**
> A. That was because he was messing with kids when Mr. Dayhoff was taking attendance, and Mr. Dayhoff put him to the side. But he didn't tell him to go, he just told him to go sit somewhere else. (SUP CS348).

Jacob and Dayhoff corroborated this testimony when they stated they had never witnessed Student A in a fight (in PE or otherwise) prior to the incident. (SUP CS 371; CS64-66). Plaintiffs presented no evidence that Dayhoff had knowledge Student A had previously harmed any other student in Dayhoff's class nor that Student A had threatened violence against Riley or any other student in Dayhoff's class either that day or in the past.

Plaintiffs assert there is "evidence that e-mails were sent to all of Student A's teachers, including Mr. Dayhoff, after several of Student A's disciplinary incidents had occurred;" yet, the record evidence cited in support of this statement is an email dated January 17, 2018[6] (**a year *after*** the incident); and a communication dated August 26, 2016 uploaded to the District's Skyward system, which addressed his goals for the year:

> [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

[6] Plaintiff incorrectly states January 17, 2017. (Pl Br. p. 8) (SUP CS686).

> 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. (SUP CS439).

The record contains no email about Student A during the 2016-2017 school year other than the August 26, 2016 email. Plaintiffs' assertions that the "administration was required to inform teachers if a student has a history of physical aggression or fighting" and "for every five referrals a student receives, a problem-solving meeting is triggered after which an email is supposed to be sent to teacher" misstate the record evidence. Pl. Br. p. 7-8. Hensley did not testify that such a requirement existed, and Walz stated that notifying teachers of discipline was a discretionary decision she made on a case-by-case basis. (SUP CS459-60, CS102-03). Plaintiffs also claim "the Record contains e-mails corresponding to those meetings," but again cite only the January 17, 2018 email. Pl. Br. p. 8. Lenfield did not testify that "she would expect an email would be sent for every meeting which Student A was discussed;" rather, in reference to the January 17, 2018 email, she stated this email may be sent out before a problem-solving meeting to allow a teacher an opportunity to submit concerns about a student. Pl. Br. p. 8. Lenfield's statement that "emails are sent through the school's Skyward system as a matter of course" was in reference to her August 26, 2016 email, nothing more. Pl. Br. p. 8.

Finally, Plaintiffs argue Dayhoff had access to the Skyward system where a student's disciplinary report is found. It is undisputed that Dayhoff had access and that Dayhoff never looked at Student A's disciplinary report. (SUP CS 64-65). Nor was there any duty or obligation to look up a student's disciplinary history. (SUP CS731). Imposing

liability for failing to proactively research the disciplinary history of every student taught, in this case over 100 students, particularly when Dayhoff had no prior disciplinary issues with Student A, would impose a tremendous burden and drastically expand the scope of potential liability. Plaintiffs' argument imposes a standard of negligence and ignores the requirement of impending danger or a high probability of harm.

In sum, there is no record evidence that Dayhoff had knowledge of Student A's prior misconduct, but even if there was, this knowledge does not establish Dayhoff was aware or should have known that his lack of supervision on the day in question posed a high probability of serious harm to Riley as Student A's conduct of shoulder-checking Riley was unforeseeable, and the two had no prior substantive interaction. Riley admitted such: "I didn't think [Student A] personally targeted me…I think he was messing around too much." (SUP CS346).

C. Dayhoff Lacked Knowledge of Specific, Probable Harm or Impending Danger During Class

Plaintiffs stray from the record regarding the length of time Student A engaged in aggressive conduct, and the nature of his conduct. They do so to argue that "a reasonable person in Dayhoff's position would have recognized Student A would inevitably injure another student if he was allowed to continue pushing, shoving, and running into them indiscriminately" and "a reasonable jury could conclude Student A's obvious, ongoing, and physically aggressive conduct throughout class would have put a reasonable person on notice of the unreasonable risk of harm of the other students in the class." Pl. Br. p. 18-19.

Regardless, such misstatements are immaterial because Plaintiffs' argument applies the logical fallacy of retrospective determinism. They argue Dayhoff should have known Riley would be injured based on Student A's conduct during the soccer game; yet, their

theory rests on the fact that "Dayhoff willfully ignored his class in favor of screen time, rendering him oblivious to an apparent and ongoing danger that he easily could have, and should, have seen had he simply look up from his devices." Pl. Br. p. 24.[7] By arguing that Dayhoff did not supervise the soccer game, Plaintiffs fail to establish how Dayhoff had notice of Student A's behavior during the game. Absent knowledge, any purported disputes as to Student A's conduct during the game are immaterial.

Again, when the record facts are considered, Plaintiffs' argument that Dayhoff should have known his lack of supervision would result in harm is insufficient as a matter of law because there are no facts establishing Dayhoff had the requisite knowledge of "impending danger" or a "high probability of foreseeable harm" during the soccer game. *Barr,* 2017 IL 120751, ¶20; *Jackson*, 192 Ill. App. 3d at 1100. It is undisputed that Student A had been in Dayhoff's class for seven months at the time of the incident. Plaintiffs presented no evidence that Dayhoff had knowledge that Student A had previously harmed any other student in Dayhoff's class and presented no evidence that any other students had been injured playing soccer or during any of the activity Student A had participated in during the seven months prior. (SUP CS327, CS64-65). There is also no evidence anyone was injured during the game in question prior to Riley, and no one had complained about Student A's behavior. (SUP CS321, CS360, CS71, CS74).

In *Barr*, this Court addressed whether the evidence concerning a student's injury in gym class while playing floor hockey was sufficient to establish willful and wanton

[7] Riley and Jacob's testimony on the day in question is that they respectively glanced up "once or twice" or "from time to time" in Dayhoff's direction and saw him on his device. (SUP CS85, CS323). Defendants do not dispute they saw Dayhoff on his device, but that does not establish that he never looked up from his computer to observe the soccer game.

supervision. This Court upheld the lower court's granting of the district and teacher's motion for directed verdict, finding "the plaintiff did not present evidence of any other injuries suffered by anyone playing floor hockey" and "there was no evidence defendants were aware of facts that would have put a reasonable person on notice of the risk of serious harm from the activity." 2017 IL 120751, ¶20.

Like the plaintiff in *Barr*, Plaintiffs have failed to introduce any evidence of prior injuries on the day in question or otherwise. *See also Cohen,* 2017 IL 121800, ¶31 (no prior injuries to alert defendant to any extraordinary risk or danger to the users); *Floyd,* 355 Ill. App. 3d at 701 ("prior knowledge of similar acts is required to establish a course of action"); *Pomrehn,* 101 Ill. App. 3d at 335 ("no prior problems or hazards with the team members" to show "reckless or conscious disregard of known danger"); *Biancorosso,* 2019 IL App (3d) 180613, ¶17 (no evidence of prior injuries or complaints to support claim the teacher was aware of impending danger); *Castaneda,* 268 Ill. App. 3d at 105-06; *Holsapple,* 157 Ill. App. 3d at 394; *Shwachman,* 2016 IL App (1st) 143865-U, ¶39.

Regarding the risk of harm from the activity, this Court in *Barr* distinguished floor hockey from the "obvious dangerous activities" described in *Murray v. Chicago Youth Ctr,* and *Hadley v. Witt Unit Sch.*, which is equally applicable here. 2017 IL 120751, ¶23. In *Murray*, the Court addressed a different section of the Tort Immunity Act, Section 3-109, which applies to specified hazardous activities. Noting the "legislature intended to hold local governmental entities and their employees to a higher standard of care for *hazardous* recreational activities, such as trampolining," this Court held that the defendants' failure to take any safety precautions in light of their knowledge of the inherent dangers of the *activity* raised genuine issues of material fact. 224 Ill. 2d at 234, 246. In

contrast, soccer, like floor hockey, is not a "hazardous recreational activity," making *Murray* distinguishable. 745 ILCS 10/3-109; *Barr,* 2017 IL 120751, ¶23.

Similarly, *Hadley* involved a teacher's failure to act after observing a student engage in an "inherently dangerous activity" (pounding scrap metal through an anvil) for twenty minutes and then leaving him unattended without direction to stop or wear safety googles. 123 Ill. App. 3d 19, 20, 23 (5th Dist. 1984). *Hill v. Galesburg Cmty. Unit Sch. Dist. 205*, is similarly distinguishable because the teacher had knowledge the student was performing a chemistry experiment involving explosive chemicals and consciously disregarded the student's safety by directing him to participate without eye protection despite a statutory duty to use such protection. 346 Ill. App. 3d 515, 519, 522 (3rd Dist. 2004).

In *Landers v. Sch. Dist. No. 203,* the alleged facts showed the teacher had prior knowledge specific to the plaintiff of a foreseeable injury. 66 Ill. App. 3d 78 (5th Dist. 1978). The instructor directed an overweight student to practice a gymnastics maneuver on her own, without personal instruction, a preliminary testing of her strength, or a proper spotter, despite knowing that the student did not know how to perform the gymnastics maneuver and had previously experienced neck pain when attempting it. *Id*. at 80-82.

Likewise, in *Doe ex rel. Ortega-Piron v. Chicago Bd. of Educ*., the court found the school district "should have known of the likelihood of harm" based on its undisputed knowledge of previous instances of sexual assault by a particular student against the plaintiff, documented in a protective plan specifically prohibiting the two students from being left together unsupervised. 213 Ill. 2d at 28-29.

In contrast, Student A's conduct, though described as "rough" or "aggressive[8]," was not directed at Riley, as acknowledged by Jacob:

> **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. (SUP CS360).

Plaintiffs' attempt to use these cases to argue Dayhoff acted willful and wantonly by "ignoring a known or readily apparent danger in a school setting" is meritless because, unlike the above, there are no facts to show Dayhoff had knowledge of such alleged danger. Plaintiffs have not provided a single case with facts analogous to this matter to support their argument that Dayhoff's inadequate supervision of the game is sufficient to establish willful and wanton on the grounds that he "should have known" his lack of supervision would result harm. In contrast, Defendants have provided this Court with close to thirty cases specifically addressing the standard for willful and wanton supervision in the context of schools that expressly refute this argument, including when the injury results from participation in an activity, from the misconduct of another student, and when a teacher leaves students completely unsupervised. Each case illustrates that foreknowledge of "impending danger" or "specific and probable harm" must be present and that merely being aware of a risk of injury or speculation as to potential harm (such as students participating in a PE activity) is insufficient to establish willful and wanton supervision.

While Plaintiffs refer to Jacob's testimony that they were playing soccer for twenty to thirty minutes, Jacob admitted he was not sure of the time. (SUP CS359). It is undisputed

[8] Jacob's statement of it being "more like a football game" was solely in reference to Student A shoulder-checking Riley. (SUP CS371).

the class began at 10:22 AM, and the injury occurred at 10:45 AM. (SUP CS695, CS743, C65). During those twenty-three minutes, the students changed clothes, completed warmup exercises, and chose teams, which Riley testified took fourteen minutes. (SUP CS319-20). Riley and Jacob also testified the first four to five minutes of the soccer game was normal. (SUP CS319, CS355). Based on their testimony, Student A was disruptive to the game for four to five minutes before the injury occurred. Regardless, the amount of time Dayhoff allegedly was not supervising does not create a disputed issue of fact sufficient to preclude summary judgment. Illinois courts have repeatedly upheld summary judgment where students were unsupervised for fifteen to thirty minutes. *See Jackson*, 192 Ill. App. 3d at 1101 (teacher left disabled students unsupervised for twenty to thirty minutes); *Castaneda,* 268 Ill. App. 3d at 105-06 (students unsupervised during thirty minute off-campus bike ride); *Pomrehn,* 101 Ill. App. 3d at 335 (coach left team unsupervised for fifteen minutes).

III. THE DISTRICT'S ACTIONS RELATED TO STUDENT A WERE NOT WILLFUL AND WANTON

Plaintiffs "contention against the District is that it failed to disseminate information that, by Dayhoff's admission, would have led Dayhoff to increase his level of supervision over Student A during the class period at issue." Pl. Br. P. 36. Not only does this argument concede Dayhoff lacked notice regarding Student A's prior misconduct, but there is no policy that required the dissemination of this information. Riley and Jacob's description of Student A as aggressive based on their admittedly limited interaction with him and gossip heard "through the grapevine," does not create an issue of fact of whether Student A met the requirements under Section 504 or IDEA to warrant increased supervision, a behavioral intervention plan, IEP, or Section 504 Plan. (SUP CS370-71; CS350). There was also no policy requiring dissemination of such information to Dayhoff. (SUP CS102-03; CS115).

Plaintiffs fail to refute the District's arguments that its administrators' investigation and implementation of discipline and remedial measures shield it from liability. *See Barr,* 2017 IL 120751, ¶18 ("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."); *Cohen,* 2017 IL 121900, ¶33 (rejecting that defendant could have done more to prevent injury, declaring "[w]hile this may be true, we think it clear that to equate defendant's actions in this case with willful and wanton conduct would render that standard synonymous with ordinary negligence."); *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"); *Burke,* 148 Ill. 2d at 449 ("mere inadvertence incompetence, unskillfulness, or a failure to take precautions" insufficient to rise to the level of willful and wanton conduct); *Grant v. Bd of Trustees of Valley View Sch. Dist. No 365-U,* 286 Ill. App. 3d 642, 647 (3rd Dist. 1997); *Siegmann,* 237 Ill. App. 3d at 834.

IV. §2-201 BARS PLAINTIFFS' CLAIMS

Plaintiffs' argument that §3-108 supersedes and precludes application of §2-201 is meritless. As recognized by this Court in *Epstein v. Chicago Bd. of Edu.,* the immunities under §2–201 and under §3–108 operate independently of one another:

> One such immunity is for the performance of discretionary functions, granted in sections 2–109 and 2–201. A second immunity is for the failure to supervise activities on public property, granted in section 3–108(a). These immunities operate independently of one another. The proper way to give meaning to both of these statutory immunities is to recognize that the discretionary immunity provided for in sections 2–109 and 2–201 does not in any way operate to remove or otherwise limit the immunity granted in section 3–108(a) for the failure to supervise. 178 Ill.2d 370, 382 (1997).

Numerous other cases have also applied both §§2-201 and 3-108 jointly: *Trotter v. Sch. Dist*. 218, 315 Ill. App. 3d 1, 18 (2000); *Malinksi v. Grayslake Cmty High Sch. Dist*, 2014

Ill App (2d) 130685, ¶16; *Grandalski ex rel. Grandalski v. Lyons Tp. High Sch. Dist. 204*, 305 Ill. App. 3d 1 (1st Dist. 1999); *Marshall v. Evanston Skokie Sch. Dist. 65*, 2015 IL App (1st) 131654-U; *D.M. ex. Rel. C.H. v. National Sch. Bus Serv., Inc*. 305 Ill. App. 3d. 735, 738 (2d Dist. 1999); *Castillo v. Bd. of Educ. of City of Chi*, 2018 IL App (1st) 171053, ¶2.

Plaintiffs' reliance on *Murray v. Chi. Youth Ctr.* is inapplicable because *Murray* addressed immunity under §2-201 and §3-109. Notably, *Murray* expressly recognized that but for the involvement of a hazardous activity, both §§2-201 and 3-108 would have applied: "we determine. . . section 2-201 and 3-108(a) of the Act would ordinarily provide immunity against the type of allegations advanced by plaintiffs." 224 Ill. 2d at 234.

Plaintiffs argue "the series of bullying cases in which a school failed to take disciplinary action against a student to prevent further bullying [] are not applicable as this is not a bullying case." Pl. Br. p. 45. Yet, this precedent addresses the implementation of discipline for students who have acted aggressively and acknowledges that administrators are in the best position to determine if discipline is warranted and what remedial action to take. According, the administrators' decisions related to Student A, including the discipline and the remedial interventions imposed, whether he needed a behavioral intervention plan or should have been categorized as "aggressive," and what information to disseminate to his teachers about his behavior are entitled to absolute immunity. Amicus ITLA's argument that §2-201 does not immunize the District is meritless. §2-201 in combination with §2-109 provides the District with immunity, as recognized by this Court. 745 ILCS 10/2-109; *Arteman v. Clinton Cmty. Unit Sch. Dist. 15*, 198 Ill.2d 475, 487-88 (2002).

Additionally, Plaintiffs argue "Defendants have not established Dayhoff made any decision at all, let alone a discretionary one involving policy." Pl. Br. p. 42. Yet, this

ignores Dayhoff's testimony that he exercised his discretion to implement a recreational day; permitted Student A to participate even though he was not dressed; and chose what he considered was the best location to supervise. (SUP CS68, CS73, CS77). These decisions are afforded protection. *See Harrison,* 197 Ill. 2d at 472; *Courson v. Danville Sch. Dist. No. 118*, 333 Ill. App. 3d 86, 90 (4th Dist. 2002); *Arteman,* 198 Ill.2d at 487-488.

Dayhoff also observed three or four boys, including Riley and Student A, battling for the ball shortly before the injury and determined this to be "normal scrum" for a ball and nothing out of the ordinary. (SUP CS75-76). As Plaintiffs argue, Dayhoff stated if he had observed a student being aggressive, he would have removed that student from the game. (SUP CS 74). Plaintiffs refuse to acknowledge that whether Student A's conduct was "physical aggression" or "normal scrum" during the soccer game requires discretion and judgment when deciding whether he needed to intervene in the game. *See Karas v. Strevell*, 227 Ill. 2d 440, 464 (2008) ("coaching and officiating decisions involve subjective decision making 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"); *Geimer*, 272 Ill. App. 3d at 638. While Plaintiffs may disagree with how Dayhoff supervised his class or the line between normal scrum and aggressive behavior, Dayhoff's exercise of discretion is subject to immunity.

V. PLAINTIFFS' EXPERT OPINIONS ARE NOT PROPERLY BEFORE THIS COURT AND DO NOT CREATE A GENUINE ISSUE OF MATERIAL FACT

Plaintiffs argue that the opinions and conclusions of their expert, Dr. Imber, support a finding that Defendants' conduct was willful and wanton. Pl. Br. p. 9. Plaintiffs fail to include that the trial court had struck Dr. Imber's opinions and conclusions prior to ruling

on Defendants' Motion for Summary Judgment, finding they did not comply with the evidentiary standards required by Rule 191 as they were "replete with conclusions and opinions and contains no personal knowledge of the facts relied upon to reach those conclusions and opinions." (C789-92). Plaintiffs did not appeal the trial court's ruling and should not be considered here. (C886-896). Under the "law of the case," a ruling by a trial court that could have been challenged but was not, is binding in subsequent stages of the case. *Miller v. Lockport Realty Group, Inc*, 377 Ill. App. 3d 369 (1st Dist. 2007).

VI. DEFENDANTS ARE NOT LIABLE FOR EXPENSES UNDER COUNT II

Plaintiffs' arguments are unpersuasive. *Manago v. Cty of Cook* involved creditors. 2017 IL 121078, ¶33 ("Giving the statutes their plain and ordinary meaning, creditors may seek a remedy under [Family Expense Act] in the appropriate case."). *Graul v. Adrian,* 32 Ill. 2d 345 (1965) did not involve the Family Expense Act. Regardless, as set forth above, Plaintiffs cannot establish the required underlying liability.

CONCLUSION

The standard for willful and wanton supervision is a high burden requiring that Dayhoff had knowledge that his lack of supervision would result in a high probability of serious harm or impending danger to Plaintiff. Given the lack of record evidence supporting the requisite knowledge, this matter should be decided as a matter of law in favor of Defendants. 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) table of contents and 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 20 pages.

Dated: June 18, 2025

Respectfully submitted,

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

By: */s/ Erin K. Walsh*
One of Their Attorneys

Sally J. Scott
sjs@franczek.com
Amy K. Dickerson
akd@franczek.com
Erin K. Walsh
ekw@franczek.com
Franczek P.C.
300 South Wacker Drive, Suite 3400
Chicago, IL 60606
(312) 986-0300

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 **June 18, 2025**, she caused to be filed with the Clerk of the Illinois Supreme Court, using the Odyssey e-file electronic system, the **REPLY BRIEF OF DEFENDANTS/APPELLANTS.**

Dated: June 18, 2025

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

By: */s/ Erin K. Walsh*
One of Their Attorneys

Sally J. Scott sjs@franczek.com
Amy K. Dickerson akd@franczek.com
Erin K. Walsh ekw@franczek.com
FRANCZEK P.C.
300 S. Wacker Drive, Ste. 3400
Chicago, IL 60606
(312) 986-0300

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 June 18, 2025, a true and correct copy of the foregoing **Reply Brief of Defendants/Appellants** to be filed electronically via Odyssey e-FileIL with the Clerk of the Illinois Supreme Court, which will send a filed stamped copy to all attorneys of record, and copies to be served by electronic mail upon the counsel of record, namely:

Robert J. Napleton
Brion W. Doherty
NAPLETON & PARTNERS
140 S. Dearborn, Suite 1500
Chicago, IL 60603
bnapleton@rjnlawoffice.com
bdoherty@rjnlawoffice.com

Lynn D. Dowd
Patrick C. Anderson
Law Offices of Lynn D. Dowd
29 W. Benton Avenue
Naperville, IL 60540
office@lynndowdlaw.com
patrick@juriswriter.com

Attorneys for Appellees

Nicholas Nepustil
Benjamin & Shapiro, Ltd.
180 North LaSalle Street
Suite 2600
Chicago, Illinois 60601
nnepustil@benshaplaw.com

Attorneys for Amicus Curiae
Illinois Trial Lawyers Association

Caroline A. Roselli, Esq.
Nikoleta Lamprinakos, Esq.
Matthew M. Swift, Esq.
Kathie N. DiPiero, Esq.
Holly E. Jacobs, Esq.
Robbins Schwartz
190 South LaSalle Street, Suite 2550
Chicago, Illinois 60603
croselli@robbins-schwartz.com
nlamprinakos@robbins-schwartz.com
msift@robbins-schwartz.com
kdipiero@robbins-schwartz.com
hjacobs@robbins-schwartz.com

Attorneys for Amicus Curiae
Illinois Association of School Boards

Dustin, S. Fisher, Deputy General Counsel
Sara Yager, General Counsel
Andrew Fiske, Deputy General Counsel
Park District Risk Management Agency
2033 Burlington Avenue
Lisle, Illinois 60532
dfisher@pdrma.org
syager@pdrma.org
afiske@pdrma.org

Attorneys for Amicus Curiae
The Park District Risk Management Agency

/s/ Erin K. Walsh