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This Order was filed under
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2026 IL App (4th) 251383-U

NO. 4-25-1383

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 11, 2026
Carla Bender
4th District Appellate
Court, IL

SHAYNE WITHERS,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Ogle County
BYRON COMMUNITY UNIT SCHOOL DISTRICT	)	No. 19L38
226; RICHARD MESSLING, Individually; JEFFREY	)	
BOYER, as Agent and/or Employee of Byron	)	
Community Unit School District 226; SEAN	)	
CONSIDINE, as Agent and/or Employee of Byron	)	
Community Unit School District 226; JAMES KANN, as	)	
Agent and/or Employee of Byron Community Unit	)	
School District 226; JAY MULLENS, as Agent and/or	)	
Employee of Byron Community Unit School District 226;	)	
and MICHAEL MANDZEN, as Agent and/or Employee	)	
of Byron Community Unit School District 226; and	)	
CHESSEMAN COACHES, INC.,	)	
Defendants	)	
(Byron Community Unit School District 226, Jeffrey	)	Honorable
Boyer, Sean Considine, James Kann, Jay Mullens, and	)	Anthony W. Peska,
Michael Mandzen, Defendants-Appellees).	)	Judge Presiding.

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.
Justices Zenoff and DeArmond concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed the order granting summary judgment to some defendants, concluding (1) all of plaintiff's claims of willful and wanton supervision, except for the "bus incident," were time barred; (2) the school district and its employees were immune from liability under sections 2-109 and 2-201 of the Local Governmental and Governmental Employees Tort Immunity Act (Act) (745 ILCS 10/2-109, 2-201 (West 2018)); and (3) section 3-108 of the Act (*id.* § 3-108) was inapplicable.
- ¶ 2 In November 2019, plaintiff, Shayne Withers, filed a complaint against, among

others, defendants Byron Community Unit School District 226 (hereinafter Byron), Jeffrey Boyer (a math teacher and head football coach for the Byron high school team), Sean Considine (a volunteer football coach for the Byron high school team), James Kann (the athletic director for the Byron high school), Jay Mullens (the principal of the Byron high school), and Michael Mandzen (the assistant principal of the Bryon high school) (collectively, Byron and its staff). Plaintiff alleged (1) Richard Messling, a classmate and fellow football teammate of his who is a defendant but not a party to this appeal, personally bullied and hazed him or directed others to do so and (2) Byron and its staff were liable because they willfully and wantonly failed to supervise Messling and his followers to stop, prevent, and protect plaintiff from the bullying and hazing by Messling. (Plaintiff later agreed to dismiss defendant Cheeseman Coaches, Inc., and, thus, it is no longer a party in this case.)

¶ 3 After plaintiff filed a second amended complaint, Byron and its staff filed a motion for summary judgment pursuant to section 2-1005 of the Code of Civil Procedure (735 ILCS 5/2-1005 (West 2024)), arguing (1) most of plaintiff's claims of alleged willful and wanton supervision were time barred and (2) Byron and its staff were immune from liability under the Local Governmental and Governmental Employees Tort Immunity Act (Act) (745 ILCS 10/1-101 *et seq.* (West 2018)). The trial court agreed and granted the motion for summary judgment.

¶ 4 Plaintiff appeals, arguing the trial court erred by granting summary judgment. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 On November 21, 2019, plaintiff, who was born on September 12, 2000, filed his original complaint. Almost two years later, he filed a 27-count second amended complaint against, among others, Byron and its staff. He alleged, relevant to this appeal, that defendants

acted willfully and wantonly when they failed to supervise Messling and protect plaintiff from Messling's and his "football follow[ers']" bullying and hazing. Plaintiff claimed Messling's and his followers' bullying and hazing constituted a continuing tort, detailing 12 different incidents that happened between September 24, 2015, and November 23, 2018.

¶ 7 Depositions of the parties were subsequently taken, and they revealed the following.

¶ 8 A. Depositions

¶ 9 1. *Plaintiff's Deposition*

¶ 10 Plaintiff, who said he was friends with Messling in fifth and sixth grade but not in high school, detailed the 12 incidents of bullying and hazing to which he was subjected.

¶ 11 He alleged that on September 24, 2015, fellow classmates, not including Messling, called him names, and plaintiff hid behind a ticket booth.

¶ 12 On December 9, 2015, fellow students, not including Messling, allegedly provoked plaintiff to call out to female students in a school bathroom. Disciplinary reports regarding the incident did not state whether plaintiff was bullied into doing so or that Messling was involved.

¶ 13 Plaintiff alleged that on January 11, 2016, Messling and some of his friends called plaintiff "gay" and made disparaging remarks about plaintiff and his family. Disciplinary reports prepared after the incident did not state that this occurred. Instead, the reports stated plaintiff stood before a fellow classmate's desk in an intimidating manner and called that student a "fat ass" and "fat fuck." When asked to explain the discrepancy between what plaintiff alleged happened and what the reports showed, plaintiff confirmed the actions described in the report and said he retaliated to the name calling and "ma[d]e it a little bit bigger of a scene."

¶ 14 On February 24, 2016, Messling allegedly pressured plaintiff to e-mail him a copy of plaintiff's completed homework. Disciplinary reports did not indicate Messling coerced plaintiff to do this.

¶ 15 Plaintiff also asserted that on April 28, 2016, Messling encouraged plaintiff's classmates and football teammates to make insulting and derogatory remarks about plaintiff and his family in front of other students. Plaintiff maintained that he was then attacked in the bathroom because Messling directed others to do so. Disciplinary reports prepared right after the incident did not state that Messling directed other students to make fun of plaintiff or attack him.

¶ 16 Plaintiff testified that on February 1, 2017, Messling and other students called him names in the lunchroom and threw a milk carton at him. When plaintiff threw a milk carton back at them, he received a detention. Disciplinary reports did not state Messling was involved. Instead, the reports reflected plaintiff threw a milk carton at a special-needs student.

¶ 17 Plaintiff stated that on March 21, 2017, Messling suggested that plaintiff ask a fellow student about the student's mother, knowing this would upset the student. Disciplinary reports prepared after the incident did not indicate Messling encouraged or incited plaintiff to do this.

¶ 18 Plaintiff claimed that on December 31, 2017, Messling encouraged and incited football players to call plaintiff names in front of teachers during the first hour of school. Plaintiff was then pushed into a glass trophy case by another student. Disciplinary reports did not state that Messling encouraged or incited others to harass plaintiff.

¶ 19 In the spring of 2018, Messling and other students allegedly rubbed lotion into plaintiff's new boots. Plaintiff reported the incident to Mandzen, who said he would investigate the incident. Plaintiff alleged Byron staff deliberately failed to document this incident.

¶ 20 Plaintiff also claimed that on April 18, 2018, upperclassmen called plaintiff names and told him they were going to beat him up. Plaintiff hid in a storage locker in the athletic department and punched a hole in the wall of the storage locker as an outcry for help. Disciplinary reports prepared after the incident indicated only that plaintiff punched a hole in the wall.

¶ 21 On October 26, 2018, the football team participated in an activity known as the Oreo cookie run (cookie run). The cookie run was organized by junior and senior football players as an initiation for sophomore players and was based on a scene from a movie or television series titled *Blue Mountain State*. The objective of the run was to jog the length of the football field with an Oreo cookie between one's buttocks; if the cookie dislodged, the player had to pick it up and eat it. Plaintiff, who implicated Messling as being involved in the cookie run, said he never participated in the cookie run; the Byron coaches did not plan the cookie run or know about it; when the football coaches learned about the cookie run after the fact, they did not approve of it; and no Byron staff were around when the football players discussed it.

¶ 22 Plaintiff then described the "bus incident," which happened on November 23, 2018. The Byron football team had qualified for the state championship and took two charter buses to Champaign, Illinois, for the championship game. The varsity team rode on one bus, and the junior varsity team rode on the other. Coaches Boyer and Considine rode with the varsity team, and they sat at the front of the bus. Plaintiff sat toward the back of the varsity team bus, near his friends and next to teammate Carson Wilse. Messling sat two rows away from plaintiff, on the other side of the bus.

¶ 23 On the way home from the game, plaintiff fell asleep on the dimly lit bus. When he woke up near the end of the bus trip, he was asked if he wanted to see a funny video that one

of the players recorded on a cell phone. The video showed plaintiff sleeping with a penis on his face. When the players around plaintiff told him it was Messling's genitalia, Messling asked, " 'How did you like my dick in your mouth after it [was] in your girlfriend last night.' "

¶ 24 Plaintiff, who was angered by this incident, did not talk to the coaches or other Byron staff about it. Instead, he reported it to the police the next day.

¶ 25 Plaintiff stated that after the bus incident, he missed 1½ months of school, suffered from severe depression and anger issues, and sought mental health treatment.

¶ 26 *2. Buster Barton's Deposition*

¶ 27 Buster Barton, the Byron superintendent, stated the high school's bullying and bus policies were set out in the board policies and the student handbook. The bus policies outlined behaviors that were acceptable and those that were prohibited. Hazing, like bullying, was not allowed. Barton stated that a student code of conduct was issued to each student, who was required to sign it.

¶ 28 Barton, who was somewhat familiar with plaintiff and Messling, described both as "[p]retty nice kid[s]" and "pals." Barton did note that Messling could be "a little naughty."

¶ 29 Concerning the cookie run, Barton said that following an investigation, it was concluded that no hazing occurred because hazing required coercion into or refraining from doing something. Barton said hazing does not arise from mere name calling.

¶ 30 Regarding the bus incident, Barton said it clearly was a violation of board policies prohibiting sexual harassment. Barton talked to the football player who allegedly filmed the assault, and the player denied doing so.

¶ 31 *3. Mullens's Deposition*

¶ 32 Mullens, the high school principal, asserted there was a behavioral guide and

student code of conduct for students and athletes in both the student and Illinois High School Association (IHSA) handbooks. Although Mullens stated he handled some behavioral issues as principal of the high school, Mandzen, as the assistant principal, addressed the majority of such problems.

¶ 33 Mullens remembered Messling, who he described as a “class clown,” had some disciplinary issues. Mullens characterized plaintiff as a “clown,” too, and stated that “[plaintiff] and [Messling] were best friends.” Mullens explained plaintiff and Messling “hung out together all the time; they sat together at lunch; they were in the hallways together; they were on the same football team together; [and] they did stuff outside of school together.” Mullens also “remember[ed plaintiff and Messling were] constantly horsing around with one another,” hiding each other’s books and cell phones, messing around with each other’s homework, and wrestling in the hallways and locker rooms. Mullens stated any animosity between plaintiff and Messling arose only after the bus incident.

¶ 34 When Mullens was asked about some of the 12 incidents of bullying and hazing delineated in plaintiff’s second amended complaint, he stated plaintiff initiated the encounters, noting that what plaintiff had relayed was “not true.” For example, on September 24, 2015, when plaintiff was in gym class, he hid behind a ticket booth, avoiding the substitute teacher, and called other students names as they walked past.

¶ 35 On April 28, 2016, plaintiff made derogatory comments directed at a special-needs student. The student retaliated, and plaintiff told the student to meet him in the bathroom to fight. Although Mullens believed Messling was probably there when this encounter occurred, Mullens noted the incident ended with a physical altercation in the boys’ bathroom between plaintiff and the special-needs student.

¶ 36 Mullens learned that on December 13, 2017, plaintiff followed another student, who was a fellow football teammate, as he walked down the school hallway. Plaintiff tried to trip his teammate. The teammate told plaintiff to stop, plaintiff refused to do so, and the teammate pushed plaintiff into a glass trophy case.

¶ 37 Although Mullens agreed he had no report indicating any students had rubbed lotion into plaintiff's new boots, he was aware that, on April 18, 2018, plaintiff punched a hole in the wall of the area where the athletic department stored equipment. Mullens observed plaintiff did this as a type of rite of passage in which many other football players had previously engaged.

¶ 38 Concerning the cookie run, no coaches or other Byron staff knew about it before it took place. Although Mullens had no idea when the tradition started, he assumed it began sometime between 2016 and 2018, which was around the time the movie *Blue Mountain State* debuted.

¶ 39 Regarding the bus incident, Mullens learned about it soon after it happened. Although he later heard stories that plaintiff had done something similar to Messling or that other football players had engaged in similar conduct, no evidence was ever produced supporting such allegations. After Mullens learned about the bus incident, Messling was expelled for the longest period allowed, and thereafter, plaintiff's and Messling's schedules were changed so that they were never in any part of the school building together. Additionally, Messling was banned from participating in any other IHSA events. This proved to be unfortunate for Messling because he probably would have been a state champion wrestler if he had been allowed to compete on the wrestling team his senior year.

¶ 40 *4. Mandzen's Deposition*

¶ 41 Mandzen, the assistant principal, confirmed the student handbooks contained the

student codes of conduct and ethics, as well as a discipline matrix. This matrix listed the consequences of certain improper behavior and would have been followed when any conflicts between plaintiff and Messling arose. In addition to the student handbook, each athletic program had its own handbook that governed student behavior. The athletic handbook was created by the head coach of each sport and was shared with the athletic director. Both the student and athletic program handbooks contained, among other things, bus riding policies and expectations Byron had for students while riding the bus.

¶ 42 Mandzen knew plaintiff and Messling were “pretty good buddies,” who might pick on each other a little bit from time to time. Mandzen, who characterized Messling as a “knucklehead,” was never aware of Messling engaging in any type of bullying or hazing at school, which Mandzen described as an intentional pattern of prohibited activities. Mandzen believed plaintiff was similar to Messling in that both of them were “good kids,” but from time to time, they “ma[d]e bad choices,” like grabbing each other’s scrotum as they passed each other in the hallway.

¶ 43 When asked about some of the 12 incidents of alleged bullying and hazing contained in plaintiff’s second amended complaint, Mandzen stated he was surprised to learn plaintiff hid behind a ticket booth when other students were allegedly calling him names on September 24, 2015. Mandzen explained, “It would be more typical of [plaintiff] calling them names.” Mandzen elaborated that if plaintiff was called names, he would report such an incident to an adult or address the issue more directly, not cower behind a ticket booth.

¶ 44 Mandzen testified that the February 24, 2016, incident arose because plaintiff and Messling were sharing homework with each other or with another student or teammate. The December 13, 2017, incident ended when plaintiff was pushed into a trophy case because he

would not stop trying to trip a football teammate as the teammate walked down the hall.

Although Mandzen remembered the spring 2018 incident, where students rubbed lotion into plaintiff's boots, he did not know whether Messling was involved.

¶ 45 Concerning the cookie run, Mandzen presumed it started around 2016 to 2018, around the time the movie *Blue Mountain State* debuted. However, no Byron staff member was aware of the cookie run until after it took place in 2018.

¶ 46 Regarding the bus incident, Mandzen said he learned about it the Monday after Thanksgiving 2018, when the police alerted the school. After that, Messling's mother said plaintiff had done something similar to Messling and Messling was merely retaliating. Prior to the bus incident, Mandzen was unaware of incidents like this happening.

¶ 47 *5. Kann's Deposition*

¶ 48 Kann stated that, as the director of athletics for the Byron high school, all head coaches from every sport reported to him. In the football program, all assistant coaches, whether volunteers or not, reported to Boyer, the head football coach.

¶ 49 The athletic programs each had a code of conduct handbook for student athletes that was created by the head coach. A section in the student handbook also contained the athletic code of conduct. The handbooks, which contained an anti-bullying policy, defined bullying. The coaches were made aware of the anti-bullying policy and were expected to follow it. The coaches presented all the information in the handbooks to players and parents at an annual meeting. Thereafter, the coaches continually made players aware of what the handbooks stated and helped players make good decisions.

¶ 50 Kann stated that adequate supervision on bus rides to athletic events was required and at least one coach needed to be on the bus. Coaches determined who sat where. Kann was

unaware of any issues or a history of violence or disagreements between plaintiff and Messling before the bus incident.

¶ 51 *6. Boyer's Deposition*

¶ 52 Head football coach Jeffrey Boyer, who was a role model for plaintiff and talked to him and Messling every day, knew plaintiff had some disciplinary problems. He explained that, like Messling, school was difficult for plaintiff.

¶ 53 Boyer asserted he was unaware of any animosity between plaintiff and Messling. Indeed, Boyer said, "I witnessed [their friendship] every day for four years." He said plaintiff and Messling spent time together in class, working out in the weight room, and laughing. Accordingly, Boyer was "a hundred percent confident that those guys were good friends."

¶ 54 Boyer, who was aware of the cookie run and the bus incident after they happened, knew nothing about the other alleged bullying and hazing incidents detailed in plaintiff's second amended complaint. Plaintiff never told Boyer that anyone bullied him or subjected him to hazing. Boyer knew that the school board prohibited hazing and bullying. He believed that if a student was bullied, the student could fill out a form and submit it to the counseling department for review.

¶ 55 Regarding the cookie run, Boyer said he did not know anything about it before 2018, and he did not recall any "buzz" or "unusual conversation amongst" the players at a team dinner that took place right before it happened.

¶ 56 When discussing the bus incident, Boyer, who was well aware of what constituted good behavior on school bus trips, explained how bus rides were handled. As the head football coach, Boyer was in charge of the assistant and volunteer coaches. When the team traveled to games, the coaches sat at the front of the bus, and the players sat in the back, which was

customary. Boyer allowed the players to pick where they wanted to sit on the bus and did not tolerate any misconduct, explaining that he and Considine had allowed their own children to sit with the players on a previous bus trip, an arrangement with which Boyer was “[a]bsolutely” comfortable. During bus rides, the coaches, per custom and practice, periodically walked the aisle of the bus.

¶ 57 On November 23, 2018, the day of the bus incident, Boyer was unaware of any facts or circumstances suggesting Messling would batter plaintiff on the bus, and he did not observe any conduct between the two that suggested that a battery would take place. Boyer explained that given the fact the team lost the championship game, the 2 hour and 45 minute bus ride home was quiet, depressing, and dark. Most of the players slept. Plaintiff never told Boyer what happened on the bus, and Boyer never saw any video of the battery.

¶ 58 Boyer learned about the bus incident one week after it happened and reached out to plaintiff because he knew that what had happened was a lot for a high school student to handle. Boyer told plaintiff that he cared about him.

¶ 59 *7. Considine’s Deposition*

¶ 60 Considine, a volunteer football coach who served as a mentor and father figure to plaintiff, stated plaintiff was a tough, aggressive, and good person who was not the type to be picked on easily or often. Considine asserted that if Messling was bullying or hazing plaintiff or plaintiff was being harassed by others, he would have known about it, given their close relationship. Considine was not involved in disciplining either plaintiff or Messling, whom Considine described as “buddies.”

¶ 61 Considine, who had played on the Byron high school football team when he was a student in the 1990s, did not know about the cookie run before it happened, but he believed it

coaches reached the back of the bus. Cheeseman described the event as a “first-time incident.”

¶ 67

9. Wilsie’s Deposition

¶ 68 Wilsie, who was a year behind plaintiff and Messling in school and on the varsity football team with them both, stated he did not know any details of the cookie run, but to the extent he knew about it, he believed it began around 2016, when Wilsie was a freshman. The coaches, who would not have approved of the cookie run, knew nothing about it until after it took place in 2018.

¶ 69 Wilsie said the coaches were very picky about the players’ behavior on bus trips. He explained that the coaches expected the players to behave and pick up after themselves.

¶ 70 On the night of the bus incident, Wilsie sat near plaintiff, who was seated in front of Messling. Wilsie did not see Messling batter plaintiff but instead heard a big commotion, asked what had happened, and was told Messling put his genitalia on plaintiff’s face. Wilsie estimated the whole incident lasted 30 seconds. Wilsie asserted he was unaware of and never heard about such conduct happening previously. He was also unaware of Messling bullying plaintiff.

¶ 71

10. Messling’s Deposition

¶ 72 Messling stated he met plaintiff in grade school. He said, “[M]e and [plaintiff] were more of—have always been friends and would always mess around and stuff.” By “mess[ing] around,” Messling said he and plaintiff played tag in school, threw wadded up paper balls at each other, and engaged in similar “ticky tack back and forth,” “guy/friend,” or “boy things.”

¶ 73 Messling asserted that throughout his four years of high school, he was told bullying would not be tolerated. Messling was never in trouble for bullying classmates in high

statute of limitations (745 ILCS 10/8-101(a) (West 2018)) and (2) Byron and its staff were immune from liability under sections 2-109 and 2-201 of the Act (*id.* §§ 2-109, 201). Regarding the statute of limitations argument, Byron and its staff claimed no continuing tort existed because the incidents of bullying and hazing did not involve a common nucleus of actors or conduct. Concerning its immunity from liability, Byron and its staff contended (1) Byron staff were public employees who made policy decisions, (2) their acts or omissions giving rise to plaintiff's injuries resulted from a determination of policy and an exercise of discretion, and (3) they were therefore immune (see *id.* § 2-201). Accordingly, because Byron staff were immune from liability, Byron was also immune (see *id.* § 2-109).

¶ 79

2. The Trial Court's Ruling

¶ 80

In August 2025, the trial court granted defendants' motion for summary judgment. When doing so, the court first noted that claims brought under the Act are subject to a one year statute of limitations. However, because plaintiff was a minor when most of the events giving rise to his cause of action occurred, the statute of limitations was tolled until plaintiff reached the age of majority, *i.e.*, 18 years old. Plaintiff filed his original complaint on November 21, 2019. All of plaintiff's claims of alleged willful and wanton supervision, except for the bus incident, occurred more than one year before the complaint was filed. As a result, all of plaintiff's claims of alleged willful and wanton supervision, except for the bus incident, were time barred.

¶ 81

The trial court then noted that even if all of the claims of willful and wanton supervision except for the one involving the bus incident were not time barred, Byron and its staff were immune from liability because they exercised their discretion when creating policies regarding bullying and hazing and then made decisions about how best to discipline such

behavior. Focusing on the bus incident, the court observed that almost everyone stated that plaintiff and Messling were friends and no animosity existed between the two of them before the bus incident. Boyer, who was unaware of any facts or circumstances suggesting Messling would batter plaintiff on the bus, allowed the varsity players, who were assigned to one bus, to sit wherever they pleased. Boyer assigned the varsity coaches to the bus for the varsity players, and the coaches, who had gone over the bus riding policies with the players and would not tolerate misconduct, walked the aisle of the bus a number of times while the team traveled on the bus. Accordingly, the court concluded that defendants were immune to suit under the Act and entitled to summary judgment in their favor.

¶ 82 C. Further Proceedings

¶ 83 On October 8, 2025, more than 30 days later, plaintiff filed a motion for partial reconsideration, arguing, with regard to the bus incident, that the trial court applied the immunity under section 2-201 of the Act too broadly. The court denied the motion on November 21, 2025, and entered a written finding consistent with Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016). Plaintiff filed a notice of appeal on December 19, 2025.

¶ 84 This appeal followed.

¶ 85 II. ANALYSIS

¶ 86 Plaintiff appeals, arguing that the trial court erred by granting defendants' motion for summary judgment because (1) plaintiff's claims of willful and wanton supervision are not timed barred because the final acts of bullying and hazing occurred less than one year after the statute of limitations began running; (2) Byron and its staff are not immune from liability under sections 2-109 and 2-201 of the Act; and (3) section 3-108(a) of the Act (745 ILCS 10/3-108(a) (West 2018)) is more specific and should apply instead of section 2-201 of the Act (*id.* § 2-201)

because Byron and its staff willfully and wantonly failed to supervise Messling, which resulted in injury to plaintiff.

¶ 87 We disagree and affirm.

¶ 88 A. The Applicable Law

¶ 89 “The purpose of summary judgment is not to try a question of fact, but to determine if one exists.” *Robidoux v. Oliphant*, 201 Ill. 2d 324, 335 (2002). Thus, “[s]ummary judgment is appropriate where 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.” (Internal quotation marks omitted.) *Id.*; 735 ILCS 5/2-1005(c) (West 2018). “Although a plaintiff is not required to prove his case at the summary judgment stage, in order to survive a motion for summary judgment, the nonmoving party must present a factual basis that would arguably entitle the party to a judgment.” *Robidoux*, 201 Ill. 2d at 335. Mere speculation does not create a genuine issue of material fact sufficient to survive summary judgment. *Bowles v. Owens-Illinois, Inc.*, 2013 IL App (4th) 121072, ¶ 19. We review *de novo* an order granting summary judgment. *Chicago Sun-Times v. Cook County Health & Hospitals System*, 2022 IL 127519, ¶ 24.

¶ 90 With these principles in mind, we turn to the arguments plaintiff raises on appeal.

¶ 91 B. This Case

¶ 92 1. *Statute of Limitations*

¶ 93 a. Conventional Laws

¶ 94 Generally, a plaintiff who sustains a tortious injury has two years from the date of the injury to commence an action against the person or people who caused the injury. See 735 ILCS 5/13-202 (West 2018). However, “[i]f the [plaintiff], *** at the time the cause of action

accrued, is under the age of 18 years ***, then he or she may bring the action within 2 years after the person attains the age of 18 years.” *Id.* § 13-211(a). That said, when the person responsible for the plaintiff’s injury is a government entity or an employee of one, the plaintiff’s cause of action must be “commenced within one year from the date that the injury was received or the cause of action accrued.” 745 ILCS 10/8-101(a) (West 2018). Reading these provisions together, if a plaintiff is a minor when his cause of action accrues and his claims are against a government entity or its employees, he has one year after he turns 18 to file suit. See *Lee v. Naperville Community Unit School District 203*, 2015 IL App (2d) 150143, ¶ 14.

¶ 95 Because in the present case plaintiff turned 18 on September 12, 2018, he had until September 12, 2019, to file suit as to the incidents of willful and wanton supervision occurring *before* he turned 18. Plaintiff initiated this action against Byron and its staff on November 21, 2019, two months after plaintiff’s one year statute of limitations expired, *i.e.*, two months after he turned 19. Accordingly, the 10 incidents of willful and wanton supervision occurring *before* plaintiff turned 18 are time barred, as the trial court correctly ruled.

¶ 96 Plaintiff also alleged two incidents of willful and wanton supervision occurring *after* he turned 18—namely, the cookie run and the bus incident. For those claims, plaintiff had one year from the date they occurred to file suit. 745 ILCS 10/8-101(a) (West 2018). The cookie run took place on October 26, 2018, and the bus incident occurred on November 23, 2018. As previously noted, plaintiff initiated this action against Byron and its staff on November 21, 2019. Because the cookie run occurred one year and one month before plaintiff filed suit, plaintiff’s claim of willful and wanton supervision premised on the cookie run is barred. However, plaintiff’s claim based upon the bus incident is not barred because it happened two days shy of the expiration of the one-year statute of limitations.

¶ 97

b. The Continuing Tort Rule

¶ 98 Plaintiff argues that under the continuing tort rule, none of his 12 claims of willful and wanton supervision are timed barred. The continuing tort rule provides, “where a tort involves continuing or repeated injurious behavior, the statute of limitations does not begin to run until the date of the last injury or when the tortious acts cease.” (Internal quotation marks omitted.) *Pavlik v. Kornhaber*, 326 Ill. App. 3d 731, 745 (2001). The reason for the continuous tort rule was explained in the context of intentional infliction of emotional distress, as follows:

“Illinois courts have said that in many contexts *** repetition of the behavior may be a critical factor in raising offensive acts to actionably outrageous ones. [Citation.] It may be the pattern, course and accumulation of acts that make the conduct sufficiently extreme to be actionable, whereas one instance of such behavior might not be. [Citation.] It would be logically inconsistent to say that each act must be independently actionable while at the same time asserting that often it is the cumulative nature of the acts that give rise to the [injury]. Likewise, we cannot say that cumulative continuous acts may be required to constitute the tort but that prescription runs from the date of the first act. [Citations.] Because it is impossible to pinpoint the specific moment when enough conduct has occurred to become actionable, the termination of the conduct provides the most sensible place to begin the running of the prescriptive period.” *Id.* at 745-46.

Given the reason for the rule, it necessarily applies when “the acts are continuous, by the same actor, and of a similar nature.” *Id.* at 745.

¶ 99 In the present case, the continuing tort rule does not apply. The 12 incidents of alleged willful and wanton supervision took place over a four-year period. More specifically, two

incidents occurred in 2015, three in 2016, three in 2017, and four in 2018. These acts are not the type of pervasive conduct envisioned in cases applying the continuous tort rule to avoid the bar of a statute of limitations. See, *e.g.*, *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 275, 284 (2003); *Taylor v. Board of Education of the City of Chicago*, 2014 IL App (1st) 123744, ¶ 47; *Pavlik*, 326 Ill. App. 3d at 746. Moreover, plaintiff's injuries did not involve the same actors or the same type of injury. Even if we credit only plaintiff's version of the events, it is clear that during some of the incidents, the actors involved included Messling, but when Messling was not implicated, unnamed students, unidentified football teammates, and unspecified upperclassmen were involved. The type of injuries plaintiff sustained were also not the same or similar. His injuries ranged from ruined boots and embarrassment or humiliation to sexual battery.

¶ 100 In sum, we conclude all of plaintiff's claims of willful and wanton supervision, except for the bus incident, are time barred. Accordingly, we consider only the bus incident in evaluating the remainder of plaintiff's arguments.

¶ 101 2. *Sections 2-109 and 2-201 of the Act*

¶ 102 Section 2-109 of the Act dictates that "[a] local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable." 745 ILCS 10/2-109 (West 2018). Section 2-201 of the Act delineates when a public employee is immune from liability for an injury, providing as follows:

"Except as otherwise provided by Statute, a public employee serving in a position involving [(1)] the determination of policy or [(2)] 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." *Id.* § 2-201.

¶ 103 "[S]ection [2-201] affords immunity to a public employee only if his alleged

wrongful act or omission was both a determination of policy and an exercise of discretion.” *D.M. ex rel. C.H. v. National School Bus Service, Inc.*, 305 Ill. App. 3d 735, 738 (1999). “A determination of policy is one that requires the balancing of competing interests and the making of a judgment as to what solution will best serve each.” *Id.*

“ ‘[D]iscretionary acts are those which are unique to a particular public office, while ministerial acts are those which a person performs on a given state of facts in a prescribed manner, in obedience to the mandate of legal authority, and without reference to the official’s discretion as to the propriety of the act.’ ” *Id.* at 739 (quoting *Synder v. Curran Township*, 167 Ill. 2d 466, 474 (1995)).

“Defined another way, the making of a decision about whether or how to perform an act is generally discretionary, whereas the actual mechanical performance of the act is merely ministerial.” *Id.*

¶ 104 “[T]he process by which a school decides which students to assign to each bus [is not] a simple one.” *Id.* at 738-39. “The school must presumably consider a variety of factors, such as the number of available buses and drivers, the distance each bus would travel, *** the capacity of each bus, *** and so on.” *Id.* at 739. “The school must then reach a decision that fulfills a set of seemingly incompatible objectives, including *** safety[] and cost-effectiveness.” *Id.* “This is a complex calculus that clearly requires the balancing of competing interests and the making of a judgment that will satisfy them most efficiently.” *Id.*

¶ 105 In the present case, we conclude Byron and its staff both (1) determined policies related to the football team riding the bus and (2) exercised discretion in carrying out those policies. Specifically, Boyer, as the head coach, decided what rules the football team had to follow when they rode on a bus for a football game. Those rules included that no misconduct of

any kind would be allowed. Based on the number of players, Boyer or other employees of the high school decided two buses were needed to transport the high school football team to the championship game. They then arranged to hire a charter bus company to provide transportation. Boyer determined that the varsity team would ride on one bus and the other players would travel to the game on the other. Boyer also assigned himself and other varsity coaches, like Considine, to the bus for the varsity football players. Boyer allowed the varsity players to sit where they wanted on the varsity team bus, while the coaches sat up front. Depending on when the game was held and ended, Boyer or other employees of the high school decided when to leave the high school and return. Boyer, based on his and the school's policies, chose to assign plaintiff to the same bus as Messling. This clearly was a determination of policies and an exercise of discretion in carrying them out. See *id.*

¶ 106 To highlight how Byron and its staff were not performing a ministerial task, we rely on *D.M.* Like the school bus in *D.M.*, the charter bus company here performed the ministerial act of transporting the football team to the championship game in the way Byron and its staff prescribed. *Id.* at 739. The acts of carrying out the policies set and decided by Byron and its staff constituted ministerial acts, not the formulation of the policies and procedures and the exercise of discretion in implementing them.

¶ 107 Although plaintiff recognizes that under section 2-201 of the Act, Byron and its staff must present evidence that they made a conscious decision about the conduct that plaintiff alleged to have caused his injuries, he claims “the conduct alleged to have caused [his] damages is the failure to intercede to prevent him from being sexually assaulted.” Plaintiff clearly misconstrues the immunity afforded by section 2-201. The immunity Byron and its staff have under section 2-201 involves creating policies and exercising discretion in carrying them out. It

does not, as plaintiff contends, concern policing and stopping criminal activity on a bus when Byron and its staff are completely unaware of any hostility between plaintiff and Messling or past incidents of improper sexual advances or current sexual malfeasance between them. Taking plaintiff's position to its logical conclusion, the Act would become a nullity because all public entities would be responsible for all types of injuries regardless of the procedures the public entity put in place to avoid injuries or whether it was aware of facts indicating it should have known the plaintiff would be injured.

¶ 108 In support of his position, plaintiff cites *Reyes v. Board of Education of the City of Chicago*, 2019 IL App (1st) 180593. In that case, an aide for special-needs students, who was charged with supervising children on a bus, fell asleep and failed to stop the repeated sexual assaults of a special-needs student. *Id.* ¶¶ 10-11, 54. The parents of the special-needs student sued the aide. *Id.* ¶¶ 1, 3. The aide claimed she was immune from liability under section 2-201 of the Act. *Id.* ¶ 15. The appellate court disagreed, explaining as follows:

“As for failing to stay awake and supervise the bus, we cannot see how falling asleep on the job and thus not performing any duties could be a decision where [the aide] balanced competing interests and made a judgment call. That conduct is not immunized under section 2-201 of the Act.” *Id.* ¶ 54.

¶ 109 The present case is unlike *Reyes*. Putting aside the fact that *Reyes* most likely concerned the performance of ministerial acts, the conditions on the bus that the aide created in *Reyes*, which led to the special-needs student being sexually assaulted, did not arise from the formation of policies and the exercise of discretion in implementing them. Here, in contrast, Boyer exercised his discretion and assigned all the varsity football players, which included plaintiff and Messling, to the same charter bus. When he did so, he was unaware of any problems

between plaintiff and Messling that would have suggested the two should be separated. Indeed, as far as Boyer and other Byron staff knew, plaintiff and Messling were very good friends. Per custom and practice, the coaches periodically walked the aisle of the bus to ensure proper procedures prohibiting misconduct were followed. When alerted to a commotion on the way home from the championship game, the coaches immediately investigated. Nothing indicates that the commotion was the sexual battery of plaintiff or, more importantly, if it was, that the coaches were made aware of it at that time so they could discipline Messling. Indeed, plaintiff admitted he never told anyone about the incident right after it happened, opting instead to report it to the police the next day.

¶ 110 In sum, we conclude that the acts of Byron and its staff, who were unaware of any antagonism between plaintiff and Messling, are immune from liability under the Act because they determined policies and exercised discretion in carrying them out when they assigned plaintiff and Messling to the same bus where the sexual battery occurred.

¶ 111 *3. Section 3-108(a) of the Act*

¶ 112 Plaintiff claims that section 3-108(a) of the Act (745 ILCS 10/3-108(a) (West 2018)), not section 2-201 (*id.* § 2-201), should apply because section 3-108(a) is more specific, and under that section, Byron and its staff are not immune from liability. We question whether section 3-108(a) is applicable at all given the facts of this case.

¶ 113 Section 3-108(a) provides:

“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. *Id.* § 3-108(a).

¶ 114 Determining whether section 3-108(a) of the Act applies begins with ascertaining its meaning. When interpreting a statute, we are guided by the well-settled rules of statutory construction, which provide that we “must ascertain and give effect to the true intent and meaning of the legislature, considering first the actual language of the statute.” *Castenada v. Community School District Unit No. 200*, 226 Ill. App. 3d 514, 516 (1992). “ ‘Those terms which are unambiguous, when not specifically defined, must be given their plain and ordinary meaning.’ ” *Id.* at 516-17 (quoting *Waste Management of Illinois, Inc. v. Illinois Pollution Control Board*, 145 Ill. 2d 345, 348 (1991)). “ ‘Moreover, this court shall not insert words into legislative enactments when the statute otherwise presents a cogent and justifiable legislative scheme.’ ” *Id.* (quoting *Waste Management of Illinois Inc.*, 145 Ill. 2d at 348).

¶ 115 The plain and ordinary meaning of section 3-108(a) indicates that immunity attaches when, as relevant here, the injury happens “on” public property. 745 ILCS 10/3-108(a) (West 2018). The bus incident happened on a private bus that Byron had chartered to take the high school football team to the championship game. Although section 3-101 of the Act (*id.* § 3-101) defines “public property” as “real or personal property owned or leased by a local public entity,” the chartered bus here does not fall within this definition. Compare Black’s Law Dictionary (12th ed. 2024) (defining lease as “to grant the *possession and use* of (land, buildings, rooms, movable property, etc.) to another in return for rent or other consideration” (emphasis added)) with Black’s Law Dictionary (12th ed. 2024) (defining charter as “to hire or rent for temporary *use*” (emphasis added)).

¶ 116 Moreover, there is a cogent legislative scheme in not extending section 3-108(a) immunity to injuries occurring on a private charter bus, that is to say, off public property. Simply

put, “[t]he legislature may have *** declined to interfere with private property by extending the immunity to conduct occurring outside public property.” *Castenada*, 226 Ill. App. 3d at 517.

¶ 117 Cases addressing whether an injury happened “on” public property have noted that there has to be a “nexus” between the supervising government actor and the situs of the supervision leading to the injury before section 3-108(a) will apply. *Id.* at 518. In a case where teachers were charged with negligent supervision of a student who was assaulted at a museum by youths not affiliated with the school, the appellate court did not consider the application of section 3-108(a). *Mancha v. Field Museum of Natural History*, 5 Ill. App. 3d 699, 700, 703 (1972). Instead, the appellate court applied, *sua sponte*, section 2-202 of the Act (see Ill. Rev. Stat. 1965, ch. 85, ¶ 2-202), and held the teachers were not liable for the student’s injuries. *Mancha*, 5 Ill. App. 3d at 703.

¶ 118 In the present case, like in *Mancha*, no nexus exists between Byron and its staff and the charter bus. Although the high school coaches were in charge of the football team, just like the teachers were in charge of the students in *Mancha*, the sexual battery here and the assault in *Mancha* did not happen on school grounds. Instead, they happened off school property. The mere fact the injuries happened as part of school-sponsored activities is simply not enough to conclude the injuries happened “on” public property for purposes of section 3-108(a). 745 ILCS 10/3-108(a) (West 2018).

¶ 119 Of further importance here is the fact the charter bus is not public property but instead is a private company owned by Cheeseman. See *Castenada*, 226 Ill. App. 3d at 517 (“Section 3-108 specifically states that the immunity exists on *any* public property. In delineating the scope of the immunity, the legislature did not include a requirement that the property be owned by the supervising defendant.” (Emphasis in original.)). Accordingly, the supervision by

the high school coaches on the bus cannot have occurred “on” public property. 745 ILCS 10/3-108(a) (West 2018). Because it did not occur “on” public property (*id.*), section 3-108(a) does not apply.

¶ 120 Plaintiff does not address whether the bus incident occurred “on” public property for purposes of section 3-108(a) of the Act (*id.*). Instead, he focuses primarily on the cookie run and claims Byron and its staff’s failure to act to protect him constituted willful and wanton conduct. Putting aside that we have determined that the claims of willful and wanton supervision premised on the cookie run are time barred, we conclude that plaintiff has put the cart before the proverbial horse. Whether a government actor’s supervision, or lack thereof, is willful and wanton needs to be addressed under section 3-108(a) of the Act only if the supervising occurred “on” public property. *Id.* Because that condition is not met in the present case, section 3-108(a) is irrelevant here.

¶ 121 Because section 3-108(a) of the Act does not apply in this case, we need not address whether it is narrower in scope than section 2-201.

¶ 122 III. CONCLUSION

¶ 123 For the reasons stated, we affirm the trial court’s judgment.

¶ 124 Affirmed.