2026 IL App (5th) 250671-U

NO. 5-25-0671

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

KIMBERLY FALCONER, Special Administrator of the Estate of Jermaine Falconer, Plaintiff-Appellant, v. EAST ST. LOUIS SCHOOL DISTRICT NO. 189, Defendant-Appellee.	)	Appeal from the Circuit Court of St. Clair County. No. 20-L-148 Honorable Heinz M. Rudolf, Judge, presiding.

JUSTICE McHANEY delivered the judgment of the court.
Justices Sholar and Clarke concurred in the judgment.

ORDER

¶ 1 *Held*: Where East St. Louis School District No. 189 was granted immunity under the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1-101 *et seq.* (West 2016)), we affirm the circuit court's order granting summary judgment in favor of the school district.

¶ 2 On March 6, 2019, Jermaine Falconer (Jermaine), an East St. Louis High School student, was engaged in a conditioning program on school property when he collapsed. After a 911 call, paramedics/emergency medical technicians (EMTs) arrived on scene and transported Jermaine to Touchette Memorial Hospital, where he died. It was later determined that Jermaine had a previously undiagnosed cardiac condition.

¶ 3 Kimberly Falconer (Falconer), Jermaine's mother, filed suit against East St. Louis School District No. 189 (the school district) contending that the school district was guilty of both negligent

and willful and wanton conduct because (1) no school district employee used an automated external defibrillator (AED) and/or attempted to administer cardiopulmonary resuscitation (CPR) and (2) the school district violated the Automated External Defibrillator Act (AED Act) (410 ILCS 4/1 *et seq.* (West 2016)) and the Physical Fitness Facility Medical Emergency Preparedness Act (Facility Preparedness Act) (210 ILCS 74/1 *et seq.* (West 2016)) by failing to staff the school conditioning program with properly trained personnel and failing to have a statutorily mandated medical emergency plan (210 ILCS 74/10(a), (b) (West 2016)).

¶ 4 The school district filed its motion for summary judgment claiming immunity pursuant to the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/1-101 *et seq.* (West 2016)). The school district argued that Falconer could not establish that its actions/inactions were the proximate cause of Jermaine's death. The circuit court agreed and entered summary judgment, concluding, *inter alia*, that any specific statutory violations did not supersede the immunity provided by the Tort Immunity Act. For the following reasons, we affirm.

¶ 5 I. BACKGROUND

¶ 6 Jermaine was a 16-year-old student at the school district. Prior to that date, Jermaine had participated in the football program, and had never complained about shortness of breath, lightheadedness, or having a rapid heartbeat. On March 6, 2019, he participated in a preseason football conditioning program in the school district's weight room, which included cardiovascular endurance circuit exercises. During a rest period, at approximately 4:03 p.m., Jermaine collapsed. A coach in the room saw that Jermaine had collapsed and signaled for assistance. Almost immediately, coaches Trevor Dismukes (Dismukes) and Terry Hawthorne (Hawthorne) went to

Jermaine and turned him onto his back. Dismukes called 911. Hawthorne checked Jermaine's wrist and found a radial pulse. Hawthorne was certified in both CPR and the use of an AED.

¶ 7 The school district maintained a health clinic—the East Side Health District (the health clinic)—inside the school adjacent to the weight room. While Hawthorne was attending to Jermaine, Dismukes, Darren Sunkett, and students began knocking on the health clinic door to get the medical assistants' attention. At the time of Jermaine's collapse, the clinic was staffed by two medical assistants—Keishya Bland (Bland) and Brittney Bean (Bean). Both Bland and Bean had been trained on how to take a person's vital signs and how to use an AED. At 4:15 p.m., Bland arrived in the weight room and took Jermaine's pulse. At that time, his pulse was 54, and minutes later, the pulse via a radial artery was 40. Bean then entered the weight room with a blood pressure cuff, a stethoscope, and a thermometer. Using the blood pressure cuff, Bean recorded a blood pressure of 100/52. Neither medical assistant performed CPR or used the AED because at the time Jermaine had a discernable pulse and blood pressure.

¶ 8 An ambulance crew of EMTs (Travis Hulsey (Hulsey) and Kimberly Waller (Waller)) arrived at the weight room just before 4:19 p.m. Hulsey and Waller transported Jermaine to the ambulance. Neither Hulsey nor Waller performed CPR or used an AED because Jermaine had a discernable pulse. At 4:23 p.m. in the ambulance, Waller checked Jermaine's vital signs and determined that he had a blood pressure of 130/76, a pulse rate of 120, and respirations of 8 breaths per minute. At approximately 4:28 p.m., as the ambulance was pulling into the Touchette Hospital parking lot, Waller took another vital reading and found that Jermaine had a pulse rate of 122.

¶ 9 After Waller and Hulsey transferred Jermaine from their care to the Touchette Hospital staff, Jermaine lost his pulse. Touchette Hospital staff immediately administered CPR, but were unsuccessful, and Jermaine was pronounced dead at 5 p.m.

¶ 10 Everyone involved with Jermaine's care prior to his transfer to Touchette Hospital staff testified that they did not use an AED because he had a pulse and was breathing. It was later determined that Jermaine's cause of death was probable cardiac dysrhythmia in an individual with ventricular hypertrophy.[1]

¶ 11 The school district had an AED device in the weight room in addition to seven other AEDs throughout the school property. All AED devices on site were ZOLL AED Plus devices and the manuals contained warnings not to use the AED if the suspected cardiac arrest victim had a pulse or signs of circulation:

> "CONTRAINDICATIONS FOR USE
>
> Do NOT use when a patient:
>
> ■ Is conscious; or
>
> ■ Is breathing; or
>
> ■ Has a detectable pulse or other signs of circulation."

¶ 12 On July 10, 2020, Falconer filed her first amended complaint which contained four counts. Counts I and II were based in negligence, while counts III and IV alleged willful and wanton misconduct.

¶ 13 Falconer presented expert witness testimony from two individuals: Timothy A. Beaver, M.D., a sports cardiologist, and Todd L. Seidler, Ph.D., an expert in risk management of athletic programs. Dr. Beaver testified that cardiac arrest involves a nonsustainable heart rhythm that does not create good perfusion of the body and can result in death. He testified that an AED should be used on a collapsed nonresponsive athlete. Acknowledging that staff attending to Jermaine

[1]"[A] thickening of the wall of the heart's main pumping chamber (the left ventricle)." https://www.heart.org/en/health-topics/heart-valve problems-and-disease/heart-valve-problems-and-causes/what-is-left-ventricular-hypertropy-lvs

detected a pulse, he stated that the AED should still be used, explaining that not all pulses are sufficient to be perfusing or life-sustaining, and thus an AED should always be used when an individual collapses. He explained that Jermaine's death stemmed from an arterial oxygen saturation below 50%, meaning his death resulted from being oxygen-deprived. Acknowledging that individuals may be incapable of assessing whether a perfusing pulse exists versus a detectable pulse, Dr. Beaver testified that it is therefore critical that an AED be administered to regulate the heart. He further opined that an AED would not have defibrillated if Jermaine had a perfusing pulse. Use of an AED should ideally have occurred within three minutes of collapse. He testified that if there had been early AED intervention by school district staff, Jermaine had a greater than 50% change of survival, and possibly as high as 89%.

¶ 14 Dr. Seidler testified that he is a college professor of Sports Administration at the University of New Mexico. Since 2001, Dr. Seidler has assisted college and high school athletic programs with protocol reviews and risk management. Although no longer AED-certified, he had been certified through 2024. He testified that cardiac arrest is the number one killer of student athletes. He stated that early intervention is critical because survivability decreases by 10% with each passing minute. In his opinion, the school district lacked adequately trained staff and failed to have an appropriate emergency response plan, which would include a designated individual to call 911 and a designated person to retrieve the AED and initiate a predetermined revival protocol. He confirmed that the AED device, and not individuals assessing the athlete's breathing and heartbeat, should determine the resulting protocol, stating that if a perfusing rhythm is detected by the AED there would be no harm to the student if an attempt to use the AED was made. Dr. Seidler opined that the school district's coaches were inadequately trained in emergency response because no one attempted to revive Jermaine with the AED or CPR.

¶ 15 The school district hired its own expert witness, Kenneth Stein, M.D., who serves as a consultant in the medical field but previously worked in area hospital emergency departments and as an intensivist. He testified that there were multiple types of cardiac rhythms but disagreed that an AED should be used if the person has a detectable pulse. He confirmed that AEDs before 2019 did not detect the presence of a pulse, but only detected the nature of heart rhythms, specifically the existence of shockable arrythmias. He agreed that the AED would not authorize a shock unless it detected a shockable dysrhythmia. He confirmed that no one can determine if a patient is in v-tach by feeling the pulse. He agreed that Jermaine's oxygen saturation was well below normal which indicated a state of oxygen deprivation. Ultimately, Dr. Stein opined that the AED should only be applied if the heart is not beating. However, despite the manual's warnings to the contrary, Dr. Stein confirmed that the AED would not have harmed Jermaine if improperly used. Dr. Stein testified that by the time Jermaine flatlined at Touchette Hospital, the opportunity to rescue him had passed.

¶ 16 On April 4, 2025, the school district filed a motion for summary judgment pursuant to section 2-1005 of the Code of Civil Procedure (735 ILCS 5/2-1005 (West 2022)). The school district argued that summary judgment was appropriate because the school district's actions/inactions were not the proximate cause of Jermaine's death and the Tort Immunity Act provided the school district with immunity. In response, Falconer argued that those immunities were inapplicable because more specific statutory provisions of the AED Act and the Facility Preparedness Act controlled. On August 11, 2025, the circuit court entered summary judgment in favor of the school district based upon the Tort Immunity Act. For the following reasons, we affirm.

¶ 17 II. ANALYSIS

¶ 18 Motions for summary judgment are governed by section 2-1005 of the Code of Civil Procedure, which provides that summary judgment should be granted only 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." 735 ILCS 5/2-1005(c) (West 2022). "Rulings on motions for summary judgment are reviewed *de novo*." *Village of Bartonville v. Lopez*, 2017 IL 120643, ¶ 34. A summary judgment order may be affirmed on any basis contained within the record. *Id.* "The trial court strictly construes the pleadings, depositions, admissions, and affidavits against the movant and liberally in favor of the nonmoving party in determining whether a genuine issue of material fact exists." *Gabriel v. Alton Memorial Hospital*, 2025 IL App (5th) 240729, ¶ 24 (citing *Berke v. Manilow*, 2016 IL App (1st) 150397, ¶ 31). " 'The nonmoving party may defeat a claim for summary judgment by demonstrating that a question of material fact exists.' " *Id.* (quoting *Berke*, 2016 IL App (1st) 150397, ¶ 31).

¶ 19 A. Negligence

¶ 20 Falconer's complaint contained two counts based on negligence. "To recover damages based upon negligence, a plaintiff must prove that the defendant owed a duty to the plaintiff, that the defendant breached that duty, and that the breach was the proximate cause of the plaintiff's injury." *Krywin v. Chicago Transit Authority*, 238 Ill. 2d 215, 225 (2010). Without regard to the elements of duty, breach of duty, and/or damages, we find that Falconer was unable to establish that any action/inaction by the school district was the proximate cause of Jermaine's death. Proximate causation involves a question of fact that must be determined by the trier of fact and can be determined as a matter of law by the court if the facts alleged show that the plaintiff would

not be entitled to recover. *Abrams v. City of Chicago*, 211 Ill. 2d 251, 257-58 (2004). Proximate causation cannot be based on "mere speculation, guess, or conjecture." *Gyllin v. College Craft Enterprises, Ltd.*, 260 Ill. App. 3d 708, 714 (1994).

¶ 21 Proximate causation involves two distinct components—cause in fact and legal cause. *Abrams*, 211 Ill. 2d at 258. "A defendant's conduct is a 'cause in fact' of the plaintiff's injury only if that conduct is a material element and a substantial factor in bringing about the injury." *Id.* The conduct is a material element and a substantial factor in causing the injury if the injury would not have occurred without the defendant's conduct. *Id.* Legal cause involves the concept of foreseeability with the question being whether " ' the injury is of a type that a reasonable person would see *as a likely result* of his or her conduct.' " (Emphasis in original.) *Id.* (quoting *First Springfield Bank & Trust v. Galman*, 188 Ill. 2d 252, 260 (1999), citing *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 456 (1992)). Legal cause can be established if a defendant's acts are " 'so closely tied to the plaintiff's injury that he should be held legally responsible for it.' " *Simmons v. Garces*, 198 Ill. 2d 541, 558 (2002) (quoting *McCraw v. Cegielski*, 287 Ill. App. 3d 871, 873 (1996)). "A determination as to legal cause is 'a policy decision that limits how far a defendant's legal responsibility should be extended for conduct that, in fact, caused the harm.' " *Id.* (quoting *Lee*, 152 Ill. 2d at 455).

¶ 22 We find that the school district's conduct was neither the actual or legal cause of Jermaine's death. The autopsy report established that Jermaine had left ventricular hypertrophy. Thus, his death was caused by an unknown, underlying medical condition. Falconer contends that the school district is liable because neither the coaches nor the medical assistants used the AED or performed CPR. As previously stated, there was no genuine issue of material fact to establish that either the AED or CPR would have been medically appropriate because Jermaine continued to breathe and

had a pulse after collapsing. Jermaine stopped breathing and lost his pulse *after* his arrival at the hospital following transport by ambulance and in-transit care by the EMTs. While Falconer's and the school district's experts agreed that use of an AED would not have harmed Jermaine, that fact does not establish the necessary actual or legal cause of Jermaine's death.

¶ 23 Moreover, Falconer is unable to establish that the school district's actions/inactions were the legal cause of Jermaine's death as his death was not foreseeable. Falconer completed the mandatory preparticipation forms for Jermaine and listed no known health conditions. Thus, nothing about Jermaine's medical history could have put the school district on notice that he was at risk of suffering a cardiac event. Historically, Jermaine had never complained about shortness of breath, being lightheaded, or having a rapid heartbeat after participation in any football practice or game.

¶ 24 B. Willful and Wanton Conduct

¶ 25 Falconer also alleged that the school district's actions/inactions constituted willful and wanton conduct. Willful and wanton conduct is not a separate and independent tort and is "an aggravated form of negligence." *Jane Doe-3 v. McLean County Unit District No. 5 Board of Directors*, 2012 IL 112479, ¶ 19. In determining whether a case's evidence establishes the existence of willful and wanton conduct, a court must closely scrutinize the facts provided in the record. *Hicks v. City of O'Fallon*, 2019 IL App (5th) 180397, ¶ 47 (citing *Hampton v. Cashmore*, 265 Ill. App. 3d 23, 30 (1994)). To establish damages based upon willful and wanton conduct, the plaintiff must plead and prove the same negligence claim elements: duty, breach of the duty, and proximate causation. *Jane Doe-3*, 2012 IL 112479, ¶ 19 (citing *Krywin*, 238 Ill. 2d at 225). Additionally, the plaintiff must establish "either a deliberate intention to harm or a conscious disregard" for a person's welfare. *Id.* (citing *Doe v. Chicago Board of Education*, 213 Ill. 2d 19,

28 (2004)); see also 745 ILCS 10/1-210 (West 2016) (defining willful and wanton conduct as "a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property").

¶ 26 "The term 'willful and wanton' includes a range of mental states, from actual or deliberate intent to cause harm, to conscious disregard for the safety of others or their property, to utter indifference for the safety or property of others." *Hicks*, 2019 IL App (5th) 180397, ¶ 46 (citing *Murray v. Chicago Youth Center*, 224 Ill. 2d 213, 235 (2007)). As the Illinois Supreme Court has noted, willful and wanton conduct mandates a " 'conscious and deliberate disregard for the rights or safety of others.' " *Burke v. 12 Rothschild's Liquor Mart, Inc.*, 148 Ill. 2d 429, 449 (1992) (quoting *Bresland v. Ideal Roller & Graphics Co.*, 150 Ill. App. 3d 445, 458 (1986)). Whether conduct is willful and wanton raises a question of fact, but a court may nevertheless hold as a matter of law that a public employee's actions do not amount to willful and wanton conduct if no other contrary conclusion may be drawn from the record. *Young v. Forgas*, 308 Ill. App. 3d 553, 562 (1999). When the acts of a public entity cannot be characterized as willful and wanton, summary judgment is appropriate. *Hampton*, 265 Ill. App. 3d at 31 (citing *Dunbar v. Latting*, 250 Ill. App. 3d 786, 793 (1993)).

¶ 27 We agree with the circuit court's finding that Falconer failed to establish any genuine issue of material fact to support a conclusion that the school district acted with "either a deliberate intention to harm or a conscious disregard" for Jermaine's welfare. *Jane Doe-3*, 2012 IL 112479, ¶ 19 (citing *Doe*, 213 Ill. 2d at 28). Here, pursuant to the manufacturer of the AED, use of either the AED or CPR was contraindicated because Jermaine had a pulse and heartbeat. Within seconds of Jermaine's collapse, a 911 call was made. Coach Hawthorne, who was trained in CPR and the

use of the AED, assessed Jermaine's situation. Because Jermaine was breathing and had a discernible pulse, CPR and/or use of the AED was determined not to be required. Additionally, upon notification of the medical emergency, the medical assistants entered the weight room and assessed the situation. Jermaine was being assessed until the ambulance and EMTs arrived, after which the EMTs took over monitoring Jermaine's condition. Accordingly, because we agree that the school district's actions and/or inactions did not constitute willful and wanton conduct, summary judgment was appropriate. *Hampton*, 265 Ill. App. 3d at 31 (citing *Dunbar*, 250 Ill. App. 3d at 793).

¶ 28 C. AED and Facility Preparedness Acts

¶ 29 Falconer argues that the circuit court erred in relying upon the Tort Immunity Act because the Illinois Supreme Court mandates use of newer and more specific statutory acts over older acts like the Tort Immunity Act. *Abruzzo v. City of Park Ridge*, 231 Ill. 2d 324, 346-48 (2008). We find that the AED Act and the Facility Preparedness Act do not apply to the specific facts of this case. We turn to the AED Act and the Facility Preparedness Act.

¶ 30 Our legislature intended "to encourage" training in lifesaving first aid to include the use of AEDs. 410 ILCS 4/5 (West 2016). The Facility Preparedness Act defines a physical fitness facility to include an indoor facility "owned or operated by *** a public *** elementary or secondary school" and "supervised by one or more persons *** employed by the *** school ***." 210 ILCS 74/5.25(a)(1) (West 2016). Pursuant to the Facility Preparedness Act (210 ILCS 74/1 *et seq.* (West 2016)) and the AED Act (410 ILCS 4/1 *et seq.* (West 2016)), the school district must (1) own and keep an AED within the physical fitness facility (210 ILCS 74/15(a), 5.25(a)(1), (2) (West 2016)); (2) maintain the AED (210 ILCS 74/15(c) (West 2016); 410 ILCS 4/20(a)(2) (West 2016)); and (3) ensure that any individual who may be an AED rescuer or user will have been trained to use

the AED and to perform CPR (410 ILCS 4/20(a)(3) (West 2016)). Moreover, each physical fitness facility "must adopt and implement a written plan for responding to medical emergencies that occur at the facility during the time that the facility is open" (210 ILCS 74/10(a) (West 2016)) and "must ensure that there is a trained AED user on staff during staffed business hours" (*id.* § 15(b)).

¶ 31 Falconer contends that both the AED Act and the Facility Preparedness Act required the school district staff to use an AED on Jermaine. In support, she relies upon *Dawkins v. Fitness International, LLC*, 2022 IL 127561. In *Dawkins*, the fitness center client had no discernable pulse and was not breathing. *Id.* ¶ 5. The facility staff did not use an AED. *Id.* The Illinois Supreme Court affirmed the appellate court's holding that the Facility Preparedness Act mandated use of an AED in that case and that the fitness center's non-use of an AED under medical circumstances when use would be appropriate amounted to willful and wanton conduct. *Id.* ¶ 41. We find *Dawkins* distinguishable. Here, following Jermaine's collapse, the coaches, medical assistants from the onsite health clinic, and responding EMTs all determined that Jermaine had a discernable pulse and was breathing. Pursuant to the instructions of the manufacturer of the AED systems present at the school district, the AED should not have been used because Jermaine had a pulse and was breathing.

¶ 32 Falconer also relies upon *Abruzzo v. City of Park Ridge*, 231 Ill. 2d 324 (2008). In *Abruzzo*, the plaintiff's minor son died following a medical emergency. *Id.* at 329. Park Ridge emergency personnel responded to Abruzzo's 911 call and found her son to be unresponsive. *Id.* She alleged that the emergency workers acted willfully and wantonly by failing to properly evaluate or assess her son, failed to transport him to a hospital, and failed to prepare a "run sheet" memorializing the first response to the 911 call. *Id.* at 328-29. Nine hours later, a second 911 call was placed, and upon arrival of the emergency workers, it was determined that the minor was in cardiac arrest. *Id*

at 328. The workers attempted resuscitation, but the minor child died after being transported to a hospital. *Id.* at 328-29. Ultimately, the Illinois Supreme Court found that the immunity provision of the Emergency Medical Services (EMS) Systems Act (EMS Act) controlled over the more general Tort Immunity Act provisions as the EMS Act was more comprehensive in scope in that it provided for the coordination and integration of all prehospital and interhospital emergency medical services. *Id.* at 345 (citing 210 ILCS 50/2 (West 2004)). The court explained:

> "[T]he EMS Act is designed to apply to the delivery of emergency medical services. In contrast, the relevant sections of the Tort Immunity Act have a more general application to tort claims against local public entities and public employees for failing to perform, or adequately perform, an examination or a diagnosis. *** We conclude that the EMS Act is more specifically related to the facts here involving emergency responders and the delivery of emergency medical care." *Id.* at 346 (citing 745 ILCS 10/6-105, 6-106(a) (West 2004)).

¶ 33 Although the AED Act and the Facility Preparedness Act are more specific than the Tort Immunity Act, and while the allegations here claim that the school district was at fault for failing to use an AED or render CPR assistance, use of an AED or CPR was contraindicated because Jermaine continued to breathe and maintained a pulse while under the supervision and/or care of school district personnel. Jermaine continued to breathe and maintain a pulse after the EMTs arrived, loaded him in the ambulance, and transported him to the local hospital. It was only after his arrival at the hospital that Jermaine stopped breathing and lost his pulse, necessitating an emergency protocol to include use of an AED and/or CPR. Under these facts, we do not find that the AED Act and the Facility Preparedness Act superceded the applicable provisions of the Tort Immunity Act.

¶ 34 We agree with the circuit court's conclusions that the Tort Immunity Act bars Falconer's claims. "Local governmental entities are liable in tort on the same basis as private tortfeasors unless a valid statute dealing with tort immunity imposes limitations upon that liability." *Michigan Avenue National Bank v. County of Cook*, 191 Ill. 2d 493, 503 (2000). "The immunities afforded to units of local government under the Tort Immunity Act operate as an affirmative defense which, if properly raised and proven by the public entity, precludes *** damages." *Id.* With the Tort Immunity Act, the Illinois legislature intended "to prevent the diversion of public funds from their intended purpose to the payment of damage claims." *Henrich v. Libertyville High School*, 186 Ill. 2d 381, 393 (1998) (citing *Bubb v. Springfield School District 186*, 167 Ill. 2d 372, 378 (1995)). We find that the following four sections of the Tort Immunity Act protect the school district and its employees from liability in this case.

¶ 35 D. Section 6-105 of the Tort Immunity Act

¶ 36 Section 6-105 provides:

> "Neither a local public entity nor a public employee acting within the scope of his employment is liable for injury caused by the failure to make a physical *** examination, or to make an adequate physical *** examination of any person for the purpose of determining whether such person has a disease or physical *** condition that would constitute a hazard to the health or safety of himself or others." 745 ILCS 10/6-105 (West 2016).

Section 6-105 lacks a willful and wanton conduct exception to the applicable immunity provided. *Id.* Here, to the extent that the school district coaches and/or the medical assistants undertook a physical examination of Jermaine after his collapse to determine "whether such person has a disease or physical *** condition" that would endanger his health, those individuals cannot be held

liable for failing to examine Jermaine to determine what caused his collapse. See *Grandalski v. Lyons Township High School District 204*, 305 Ill. App. 3d 1, 12 (1999) (holding that section 6-105 immunized the school district from liability after a student suffered an injury in a physical education class and allegedly received negligent or no medical care from the teacher and the school nurse). Here, in addition to making an immediate 911 call, all school district employees who responded to Jermaine's collapse assessed his condition and determined that he was breathing and had a pulse.

¶ 37 E. Section 6-106(a) of the Tort Immunity Act

¶ 38 Section 6-106(a) provides: "Neither a local public entity nor a public employee acting within the scope of his employment is liable for injury resulting from diagnosing or failing to diagnose that a person is afflicted with *** [a] physical illness *** or from failing to prescribe for [a] *** physical illness ***." 745 ILCS 10/6-106(a) (West 2016); see also *Michigan Avenue National Bank*, 191 Ill. 2d at 516-17. Here, the coaches and medical assistants immediately called 911 and determined that Jermaine was breathing and had a pulse. Upon arrival of the ambulance, Jermaine's care was transferred to the EMTs, and he was transported to the area hospital. Accordingly, section 6-106(a) of the Tort Immunity Act provided the school district with immunity from liability for any diagnosis or failure to diagnose in assessing Jermaine's emergency medical condition. 745 ILCS 10/6-106(a) (West 2016).

¶ 39 F. Section 2-201 of the Tort Immunity Act

¶ 40 Section 2-201 provides: "Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused." 745 ILCS 10/2-201 (West 2016).

¶ 41 Section 2-201 provides absolute immunity from both negligent and willful and wanton conduct. *Malinski v. Grayslake Community High School, District 127*, 2014 IL App (2d) 130685, ¶ 8. This section of the Tort Immunity Act involves a public employee's determination of policy or exercise of discretion and provides immunity for discretionary acts undertaken in the determination of policy. *Id.* "Whether an act or omission is classified as discretionary within the meaning of section 2-201 escapes precise formulation and should be made on a case-by-case basis in light of the particular facts and circumstances." *Monson v. City of Danville*, 2018 IL 122486, ¶ 29 (citing *Snyder v. Curran Township*, 167 Ill. 2d 466, 474 (1995)). Immunity pursuant to section 2-201 is absolute and includes both negligent and willful and wanton conduct. *Id.* (citing *In re Chicago Flood Litigation*, 176 Ill. 2d 179, 195-96 (1997)). To claim immunity pursuant to this section, the defendant must prove that its employee "held either a position involving the determination of policy or a position involving the exercise of discretion." *Id.*

¶ 42 Discretionary acts are acts of a public nature that are unique to a particular public office. *Aretman v. Clinton Community Unit School District No. 15*, 198 Ill. 2d 475, 484 (2002). A policy determination would include acts that require the public entity or its employee to balance competing interests and to make a judgment call as to what solution will best serve each of those interests. *Albers v. Breen*, 346 Ill. App. 3d 799, 808 (2004). Immunity is granted to certain public officials under the premise "that such officials should be allowed to exercise their judgment in rendering decisions without fear that a good-faith mistake might subject them to liability. *Harrison v. Hardin County Community Unit School District No. 1*, 197 Ill. 2d 466, 472 (2001) (citing *White v. Village of Homewood*, 285 Ill. App. 3d 496, 502 (1996)).

¶ 43 To claim immunity pursuant to section 2-201, the school district "must prove the employee either held a position involving the determination of policy or a position involving the exercise of

discretion." *Reyes v. Board of Education of City of Chicago*, 2019 IL App (1st) 180593, ¶ 51 (citing *Monson*, 2018 IL 122486, ¶ 29). In contrast to discretionary acts, ministerial acts "are those that a person performs on a given state of facts, in a prescribed manner, in obedience to legal authority, and without reference to the official's discretion as to the propriety of the act." *Trotter v. School District 218*, 315 Ill. App. 3d 1, 13 (2000) (citing *Snyder*, 167 Ill. 2d at 474). Whether an act is construed as "discretionary" involves a legal question to be determined by a court. *Reyes*, 2019 IL App (1st) 180593, ¶ 51 (citing *Monson*, 2018 IL 122486, ¶ 31).

¶ 44 Here, Falconer alleged that the school district "[i]ntentionally failed to properly staff the weight room during student use." Falconer provides no school district policy, statutory or caselaw authority, administrative regulations, or other evidence establishing that there was a specific mandated ratio of staff to students or any other rules relative to students participating in weight room exercises. We find that Falconer failed to allege that the school district engaged in a ministerial act. See *Trotter*, 315 Ill. App. 3d at 13. A staffing decision regarding the number of coaches supervising the weight room where Jermaine collapsed would have been of a discretionary nature, like a policy determination necessitating a balance of the supervisory needs of the students utilizing the weight room.

¶ 45 Falconer alternatively argues that the school district failed to "supervise extracurricular school activities with the knowledge and skills necessary to properly administer first aid and cardiopulmonary resuscitation, including learning how to use an automated external defibrillator." Here, coaches Dismukes and Hawthorne were supervising the weight room at the time of Jermaine's collapse. Hawthorne was certified in both CPR and trained on how to use the AED located in the room. The same knowledge and training applies to the medical assistants who were called to the weight room after Jermaine collapsed. We find that the decision to render CPR or use

an AED is purely discretionary in nature and is dependent on the necessity and propriety of the existing situational facts.

¶ 46 G. Section 3-108 of the Tort Immunity Act

¶ 47 Section 3-108 provides:

> "(a) Except as otherwise provided in this Act, neither a local public entity nor a public employee who undertakes to supervise an activity on or the use of any public property is liable for an injury unless the local public entity or public employee is guilty of willful and wanton conduct in its supervision proximately causing such injury.
>
> (b) Except as otherwise provided in this Act, neither a local public entity nor a public employee is liable for an injury caused by a failure to supervise an activity on or the use of any public property unless the employee or the local public entity has a duty to provide supervision imposed by common law, statute, ordinance, code or regulation and the local public entity or public employee is guilty of willful and wanton conduct in its failure to provide supervision proximately causing such injury." 745 ILCS 10/3-108 (West 2016).

¶ 48 To establish liability pursuant to section 3-108, Falconer was required to plead a "course of action" that established that the school district's actions/inactions were the proximate cause of Jermaine's injuries, and that the school district's actions constituted willful and wanton conduct. *Geimer v. Chicago Park District*, 272 Ill. App. 3d 629, 637 (1995). Falconer alleged that the school district failed to follow Illinois Department of Public Health rules regarding training on CPR and use of an AED, failed to train or supervise its employees to properly respond to emergency situations, and failed to properly staff the weight room with employees and equipment. However,

Falconer failed to provide any genuine issue of material fact to establish the level of conduct required for a finding of willful and wanton conduct mandated by section 3-108 of the Tort Immunity Act. 745 ILCS 10/3-108 (West 2016). Actions or inactions that constitute inadvertence, incompetence, or unskillfulness do not constitute willful and wanton conduct. *Geimer*, 272 Ill. App. 3d at 637 (citing *Bialek v. Moraine Valley Community College School District 524*, 267 Ill. App. 3d 857, 865 (1994)); 745 ILCS 10/1-210 (West 2016).

¶ 49 III. CONCLUSION

¶ 50 For the above reasons, we affirm the order of the St. Clair County circuit court granting summary judgment in favor of the school district.

¶ 51 Affirmed.