Supreme Court No. 948984
C/A No. 341976-III

WASHINGTON SUPREME COURT

HEIDI JO HENDRICKSON, a single person,

Plaintiff-Respondent and Cross-Petitioner,

vs.

MOSES LAKE SCHOOL DISTRICT, a municipal corporation,

Defendant-Petitioner.

AMICUS CURIAE BRIEF IN SUPPORT OF MOSES LAKE SCHOOL DISTRICT'S PETITION FOR REVIEW

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I. IDENTITY AND INTEREST OF AMICUS CURIAE

Washington Schools Risk Management Pool ("WSRMP") adopts and incorporates the statement of interest set forth in its motion for leave to file an *Amicus Curiae* brief.

II. STATEMENT OF THE CASE

Heidi Hendrickson cut her thumb while using a table saw in high school shop class. She sued Moses Lake School District ("School District"), alleging negligence in failing to provide proper guards/safety equipment, failing to provide reasonable instruction and/or failing to provide reasonable supervision. CP 1523. School District acknowledged its duty to exercise reasonable care to protect Ms. Hendrickson from injury, but argued its teacher did exercise reasonable care.

The jury returned a special verdict of negligence, but found the School District's negligence was not a proximate cause of Hendrickson's injury. CP 1539. The Court of Appeals reversed the judgment on the verdict, holding that the trial court erred in failing to instruct the jury that the "special relationship" between a school and minor student creates a "heightened duty of care" to protect the student from foreseeable harm.[1]

[1] *Hendrickson v. Moses Lake School District*, 199 Wn.App. 244, 249, 398 P.3d 1199 (2017) (hereafter "Decision").

For more than 80 years, this Court has consistently held that the special relationship a school has with its students may create a duty to protect a student where there otherwise would be no duty. But when the existence of a duty was undisputed, requiring a court to instruct the jury that a School District has a heightened duty of care was in conflict with prior decisions of this Court and other Court of Appeals decisions. This Court should accept review to clarify that the standard for school liability has not changed. Otherwise, this new heightened standard of virtual strict liability will create unprecedented liability for public schools.

III. ARGUMENT

Whether the Court of Appeals erred in creating a new heightened standard of liability for schools is an issue of substantial public interest that should be resolved by this Court pursuant to RAP 13.4(b)(4). The Court of Appeals Decision below is in conflict with precedent from this Court and is in conflict with the two 2016 Division I decisions upon which it relied, justifying review pursuant to RAP 13.4(b)(1) and (2).

This Court should grant School District's Petition for Review to clarify that a special relationship/foreseeability instruction is only required when a jury is being asked to determine whether a duty to protect a student attaches in a given factual scenario. Here a student was injured in class while under the supervision of a teacher. The parties agreed a duty existed.

The jury was asked to determine whether the teacher was negligent by not exercising reasonable care to fulfill the acknowledged duty. In such circumstances, a "special relationship" instruction is unnecessary and may lead a jury to erroneously conclude—as the Court of Appeals did in this case—that the "special relationship" creates a higher standard of care for a school than an ordinary negligence standard. It does not.

A. The "Special Relationship" A School Has With A Student Is Only Relevant To Determining Whether A Duty Attaches When The Existence Of A Duty And/Or Foreseeability Of Injury Is Disputed

The first element that must be proved in any negligence case is the existence of a duty.[2] Washington courts have long held that the "special relationship" between a school and a minor student may create a duty to protect a student where there otherwise would be no duty.[3] So when the existence of a duty is unclear, such as when a student is harmed by someone who does not work for the school or when not under the school's direct supervision, a jury must determine whether the student was in a "field of danger" that the school should have foreseen. If so, the special relationship places a duty on the school to use reasonable care to protect the student.[4]

Because the school's special relationship with its students may

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[2] *Tincani v. Inland Empire Zoological Soc.*, 124 Wn.2d 121, 127, 875 P.2d 621, (1994).
[3] See *McLeod v.Grant County School Dist. No. 128*, 42 Wn.2d 316, 320-22, 255 P.2d 360 (1953).
[4] *Id.*; *N.L. v. Bethel School District*, 186 Wn. 2d 422, 431, 378 P.3d 162 (2016).

create a duty to protect in situations where no duty would otherwise exist, Division I held in *Quynn*[5] and *Hopkins*[6]—where plaintiffs were injured by other students—that it was error not to instruct the jury on this foreseeability test used to determine whether a duty arose from the special relationship. When the existence of a duty is in dispute, requiring some instruction on the foreseeability test a jury is required to apply to determine whether the school had a duty to protect the student under the facts presented appears to be consistent with the reasoning of this Court in *McLeod* and *Bethel*.

B. A "Special Relationship" Does Not Create A Heightened Duty—Schools Are Still Held To A Negligence Standard

While a school's special relationship with a student may broaden the factual circumstances under which a duty to protect arises, this relationship does not heighten the duty of ordinary care that is owed. The Court of Appeals erroneously held a school's special relationship with students creates a "heightened duty of care."[7] Both parties agree this is incorrect; a school district owes its students an ordinary duty of reasonable care.[8]

Hendrickson urges this Court to ignore this error, arguing the Court

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[5] *Quynn v. Bellevue Sch. Dist.*, 195 Wn. App. 627,631,643,383 P.3d 1053 (2016).
[6] *Hopkins v. Seattle Pub. Sch. Dist. No. 1*, 195 Wn. App. 96,106,380 P.3d 584, *review denied*, 186 Wn.2d 1029, 385 P.3d 123 (2016).
[7] *Hendrickson v. Moses Lake School District*, 199 Wn.App. at 249, 252.
[8] See School District's Petition for Review at 5-8; Answer to Petition for Review and Cross Petition at 10, 12 ("This does not mean that a school owes a duty greater than reasonable care to its students.").

of Appeal's reference to a "heightened" duty was not meant to imply any greater duty than ordinary care. *Id*. But Hendrickson's suggestion that "heightened" was just an unfortunate choice of words by the Court of Appeals ignores the argument she relied upon below and the reasoning of the Court of Appeals. For if the standard by which the jury should have determined negligence was the ordinary negligence standard, then this jury was properly instructed and the trial judgment should be affirmed.

At trial, Hendrickson asked the court to instruct the jury that a school district has "a heightened duty of care to protect [a student] from foreseeable harm." CP1308. This word choice was no accident. Hendrickson argued to the trial court, as she does to this Court, that a school district's duty is so high that it assumes legal responsibility for a plaintiff's negligence and is barred from asserting comparative negligence:

> The **elevated duty** imposed upon the actor in a special relationship also works to alleviate the injured person of fault, even when the self-inflicted harm may have come as a result of the injured person's own perceived negligence.[9]

Under this heightened duty, a school would be liable even when a teacher gives exemplary warnings and instructions to students. The student cannot be at fault because the teacher should foresee that the student will ignore the teacher's warnings and instructions. Hendrickson is advocating

[9] Plaintiff's Trial Brief at 3-4 (emphasis added), CP 352-3.

for the adoption of a virtual strict liability standard for schools that is contrary to long-standing precedent. If this new liability standard is adopted, school shop classes, science labs and physical education classes would become unmanageable liability risks.

The Court of Appeals correctly held that Hendrickson's claim that a school district is barred from asserting comparatively negligence "goes too far" and contravenes long-standing precedent.[10] Yet the Court of Appeals was persuaded that a school district's special relationship with a student creates a heightened duty of care. And there is no question that when the court held a school district has a "heightened duty of care," it meant a higher duty than reasonable care required by the ordinary negligence standard.

In hypothesizing why the failure to give a heightened duty instruction might have made a difference in this case, the Court of Appeals speculated that the jury may have found the School District liable on some theory that was a proximate cause of injury if properly instructed on the "greater duty" arising from the special relationship rather than the "lesser duty" of ordinary negligence.[11] The court explained:

> . . . it is possible the jury found . . . no breach of an ordinary duty to provide instruction or supervision. However, had the jury been instructed correctly, it would have understood the district had not just an ordinary duty of care, but a heightened obligation that also

[10] *Hendrickson v. Moses Lake School District*, 199 Wn.App at 252.
[11] *Hendrickson v. Moses Lake School District*, 199 Wn.App at 250.

> encompassed protecting Ms. Hendrickson against reasonably foreseeable self-inflicted harm.[12]

The special relationship a school has to a minor student invokes a broader range of factual circumstances that may give rise to a school's duty to protect a student, but this should not be conflated with a heightened standard of care once duty has been established. Washington courts have long held school districts have the duty "to exercise such care as an ordinarily responsible and prudent person would exercise under the same or similar circumstances."[13] This is an ordinary negligence standard, and the precise standard of care the trial court correctly instructed the jury to use in assessing whether the shop teacher was negligent in this case. *See* Court Instruction Nos. 12 and 13, CP 1528-29.

C. When The Existence of A Duty Is Undisputed, A Special Relationship Instruction Is Unnecessary and Potentially Misleading

The School District admitted it had a duty to protect Ms. Hendrickson in the factual setting presented by this case. A student cut her thumb while using a table saw in a shop class being supervised by a teacher.

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[12] *Id.* The Court of Appeals cited *McLeod* in support of its new heightened standard: "*McLeod,* 42 Wn.2d at 321 (enhanced duty of care includes duty to protect against foreseeable student misconduct)." *Id.* But McLeod addressed a school district's duty to protect a student from foreseeable misconduct by *other students*, not unprecedented strict liability for self-inflicted harm.

[13] *Briscoe v. School Dist. No. 123, Grays Harbor County*, 32 Wn.2d 353, 362, 201 P.2d 697, 702 (1949) (citing *Rice v. Sch. Dist.No. 302*, 140 Wash. 189, 248 P. 388 (1926)); *Quynn v. Bellevue Sch. Dist.,* 195 Wn. App. at 634.

The alleged negligent actor was a school employee, and it is indisputable that a student using a table saw is within the "general field of danger" described in *McLeod*. The facts of this case did not require the jury to analyze whether the special relationship between the school and Ms. Hendrickson created a duty that would not otherwise exist.[14] The School District clearly acknowledged and accepted its legal duty in its trial brief:

> **DUTY OF CARE**
>
> The District does owe Ms. Hendrickson a duty of reasonable care, which includes proper supervision and the duty to use reasonable care to protect Ms. Hendrickson against foreseeable risks. Mr. Chestnut did provide this care when he trained her how to safely use the table saw. (CP506)

Hendrickson asserted three theories of negligence:

(1) Failure to use and maintain required safety equipment and guards,

(2) Failure to provide reasonable instruction to plaintiff,

(3) Failure to reasonably supervise the plaintiff.

CP1523. The School District acknowledged these duties, but asserted its teacher exercised reasonable care in fulfilling each of these duties.

Where the existence of a duty is admitted, and the trial issue is whether a school exercised reasonable care in fulfilling its duty, a "special relationship" instruction is unnecessary and likely to lead a jury

[14] "In this matter, it is undisputed that the School District owed a duty to Ms. Hendrickson." Plaintiff's Trial Brief at 3, CP 352.

to improperly apply a higher standard of care than ordinary negligence.[15]

After the underlying trial, but before review by the Court of Appeals, Division I reversed two trial courts for failing to give a special relationship/foreseeability instruction. Citing the *Quynn* and *Hopkins* 2016 Division I decisions, the Court of Appeals concluded without analysis that: "There is no serious dispute over whether the trial court should have issued an instruction explaining the district's heightened duty of care."[16] But both *Quynn* and *Hopkins* involved students who were suing school districts for injuries inflicted by other students. They do not support the erroneous holding that a special relationship instruction must be given when the existence of a duty is undisputed.

In *Hopkins*, the plaintiff student was punched in the head by a special education student in the locker room after gym class. The Hopkins court held that because the school district would only have a duty to protect the plaintiff if the plaintiff was in the "general field of danger" where injury was foreseeable, "in this case, it was essential to instruct the jury on foreseeability."[17]

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[15] "The district is required to exercise such care as a reasonably prudent person would exercise under the same or similar circumstances." Plaintiff's Trial Brief at 3, CP 352
[16] *Hendrickson v. Moses Lake School District*, 199 Wn.App at 249 and fnte. 1.
[17] *Hopkins v. Seattle Pub. Sch. Dist. No. 1*, 195 Wn. App.at 108 (emphasis added).

In *Quynn*, the plaintiff student claimed she was harassed, intimidated and bullied on a school bus. The court explained that "as a general rule, 'there is…no duty to prevent a third party from causing physical injury to another, unless 'a special relationship exists…'" Therefore, instruction was required on how to determine whether a duty arose from the special relationship.[18]

These Division I cases relied upon by the court below do not support the Decision below. Review is justified under RAP 13.4(2).

IV. CONCLUSION

This Court should accept review to correct the error below that creates a new heightened standard of care for schools. This Court should clarify that schools are still judged by an ordinary negligence standard. A special relationship instruction is only required when the existence of a duty is disputed, not in a straight-forward negligence case in which a student claims she was injured during class, by the actions of a school employee.

Respectfully submitted this 23rd day of October, 2017.

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[18] See *Quynn v. Bellevue Sch. Dist.*, 195 Wn. App. at 633 (citations omitted).

CERTIFICATE OF SERVICE

I certify that on this date I mailed a copy of the document to which this is affixed by electronic mail, via the Court's ePortal service system and via U.S. mail, postage prepaid, to:

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