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Court of Appeals Case No. 45832-2-II

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IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

N. L.,

Respondent,

vs.

BETHEL SCHOOL DISTRICT,

Petitioner.

FILED

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WASHINGTON STATE
SUPREME COURT

BRIEF OF AMICUS CURIAE OF THE WASHINGTON STATE
SCHOOL DIRECTORS ASSOCIATION, THE ASSOCIATION OF
WASHINGTON SCHOOL PRINCIPALS AND THE
WASHINGTON ASSOCIATION OF SCHOOL
ADMINISTRATORS IN SUPPORT OF PETITIONER

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 ORIGINAL

TABLE OF CONTENTS

I. IDENTITY AND INTEREST OF AMICI CURIAE 1

II. INTRODUCTION 3

III. STATEMENT OF THE CASE 4

IV. ARGUMENT..... 4

 A. SCHOOL DISTRICTS IN WASHINGTON SHOULD NOT BE HELD LIABLE FOR THE AFTER-HOURS, OFF-CAMPUS CRIMINAL CONDUCT OF STUDENTS..... 4

 B. MERE KNOWLEDGE OF A STUDENT’S DANGEROUSNESS SHOULD NOT BE A BASIS OF SCHOOL DISTRICT TORT LIABILITY..... 10

 C. THE *J.N. VS. BELLINGHAM SCHOOL DISTRICT* ANALYSIS DOES NOT APPLY TO AFTER-HOURS, OFF-CAMPUS MISCONDUCT 12

 D. THE MONITORING AND NOTIFICATION OF A REGISTERED SEX OFFENDER IS THE RESPONSIBILITY OF LAW ENFORCEMENT – NOT THE RESPONSIBILITY OF SCHOOLS. 17

 E. PUBLIC POLICY DICTATES AGAINST IMPOSING TORT LIABILITY ON SCHOOL DISTRICTS FOR AFTER-HOURS, OFF-CAMPUS MISCONDUCT OF STUDENTS. 17

 F. PRIVACY LAWS PROHIBIT A SCHOOL DISTRICT FROM WARNING STUDENTS OF THE BEHAVIOR DISORDERS OF OTHER STUDENTS..... 19

V. CONCLUSION..... 21

TABLE OF AUTHORITIES

Cases

<i>Banks v. New York City Dep't of Educ.</i> , 895 N.Y.S.2d 512, (N.Y.App. 2010).....	13
<i>Bertrand v. Bd. of Educ. of City of New York</i> , 707 N.Y.S.2d 218 (N.Y.App.Div. 2000)	15
<i>Briscoe v. School Dist. No. 123, Grays Harbor County</i> , 32 Wn.2d 353, 201 P.2d 697(1949).....	6
<i>Coates v. Tacoma School Dist. No. 10</i> , 55 Wn.2d 392, 347 P.2d 1093 (1960).	6
<i>Frederick v. Vermillon Parish School Bd.</i> , 772 So.2d 208 (La.App. 2000)	15
<i>Gross v. Family Servs. Agency, Inc.</i> , 716 So.2d 337 (Fla.App. 1998)	14
<i>Hayes v. Sheraton Operating Corp.</i> , 156 So.3d 1193 (La.App. 2014)	12
<i>Hoff v. Vacaville Unified School Dist.</i> , 968 P.2d 522, 19 Cal.4 th 925 (Cal. 1998)	18
<i>Huey v. Caldwell Parish School Bd.</i> , 109 So.3d 924 (La.App. 2013)	13
<i>J.N. v Bellingham School Dist.</i> , 74 Wn. App. 49, 871 P.2d 1106 (1994).....	12
<i>Kazanjian v. School Bd. of Palm Beach County</i> , 967 So.2d 259 (Fla.App. 2007)	14
<i>Matallana v. School Bd. of Miami-Dade County</i> , 838 So.2d 1191, 1192 (Fla.App. 2003)	14
<i>McLeod v. Grant County School Dist. No. 128</i> ,	

42 Wn.2d 316, 255 P.2d 360 (1953).....	6
<i>N.L. v. Bethel School Dist.</i> , 187 Wn.App. 460, 348 P.3d 1237 (2015), <i>rev. granted</i> 184 Wn.2d 1002, 357 P.3d 665 (2015)	11, 12
<i>Oglesby v. Seminole County Bd. of Public Instruction</i> , 328 So.2d 515 (Fla.App. 1976).	19
<i>Parella by Pelella v. Ulmer</i> , 518 N.Y.S.2d 91 (N.Y. Sup. Ct. 1987).....	15, 16
<i>Rife v. Long</i> , 908 P.2d 143 (Idaho 1995)	16
<i>Rupp v. Bryant</i> , 417 So.2d 658 (1982)	14
<i>Schwartz v. Elerding</i> , 166 Wn.App. 608, 270 P.3d 630 (2012), <i>rev. denied</i> 174 Wn.2d 1010, 281 P.3d 686 (2012)	7
<i>Sheikh v. Choe</i> 156 Wn.2d 441, 128 P.3d 574 (2006)	9, 10
<i>S.J. v. Lafayette Parrish School Bd.</i> , 41 So.3d 1119 (La. 2010).....	12
<i>Stoddart v. Pocatello School Dist. No. 25</i> , 239 P.3d 784 (Idaho 2010)	13
<i>Taggart v. State</i> , 118 Wn.2d 195, 822 P.2d 243 (1992)	10
<i>Terrell C. v. Dep't of Soc. & Health Servs.</i> , 120 Wn.App. 20, 84 P.3d 899 (2004), <i>rev. denied</i> 152 Wn.2d 1018, 101 P.3d 109 (2004)	10
<i>Travis v. Bohannon</i> , 128 Wn. App. 231, 115 P.3d 342 (2005).....	6
<i>Williams v Orleans Parish School Bd.</i> , 2008 WL 399353 (La.App. 2008)	12

Statutes

RCW 4.24.190 7

RCW 4.24.550 17

RCW 9A.44.130..... 20

Family Educational Rights and Privacy Act
20 U.S.C. § 1232g 21

Protection of Pupils Amendment,
20 U.S.C. § 1232h 21

Regulations

WAC 392-172A-05225..... 21

34 CFR Part 99..... 21

34 CFR Part 300..... 21

Other Authorities

A Citizen’s Guide to Washington State’s K-12 Finance (Senate Ways and Means Committee -- 2012)..... 5

Craig Brown, *School board liability, the insurance crisis and accident compensation*, 12 Educ. & Law J. 273 (2002-03) 8

David A. Decker, *When the king does wrong: what immunity does local government deserve?*, 6 Illinois B.J. 138 (March 1998) 8

Larry Matsuda, *Teaching Students with Severe Emotional and Behavioral Disorder: Best Practices Guide to Intervention at 1* (Seattle Univ. School of Education – January 2005)..... 11

Model Policy No. 3144..... 20

Personnel by Major Position and Gender (Office of the Supt. of Public Instruction for School Year 2011-12)..... 5

Principles of Actuarial Science (Society of Actuaries Committee on Actuarial Principles – 1992)..... 2

School Safety Center, Juvenile Sex Offenders in Schools (OSPI). 19

I. IDENTITY AND INTEREST OF AMICI CURIAE

The Washington State School Directors Association (WSSDA) is made up of all 1,477 school board members from Washington State's 295 school districts. The school district members of WSSDA serve more than one million students. WSSDA is an advocate for public education and student achievement and serves as a unified voice for local school leaders throughout the state. WSSDA fosters relationship with the Legislature, the Governor's office, the Superintendent of Public Instruction, members of Congress, federal agencies and a myriad of education organizations. WSSDA works closely with school boards and school districts to establish consistent and effective policies for the operation of public schools in Washington. WSSDA has been involved in working with the Washington State Legislature in establishing reasonable limits on the liability of school districts to students and others.

WSSDA has a keen interest in this case because the opinion by the Court of Appeals represents an enormous expansion of school district liability. WSSDA concludes that this expansion of liability is of such a nature that school districts may not be able to procure adequate liability insurance against the risk and the potential cost of this expanded liability to school districts and this expansion of liability will have a significant

financial impact on education in Washington.¹ In addition, WSSDA concludes that the opinion by the Court of Appeals imposes a new duty on school districts that will be nearly impossible to manage related to the off-campus, after-hours misconduct of students.

The Association of Washington School Principals (AWSP) is a professional association consisting of building level school administrators in the state of Washington. AWSP has more than 3,400 members, which includes more than 96 percent of all public school principals and assistant principals in the state of Washington. Established in 1972, AWSP has been a leading voice on K-12 education for more than 40 years in many areas including the supervision and discipline of students. Since building level administrators are primarily responsible developing strategies for the supervision and discipline of students, AWSP members are directly impacted by the newly expanded liability of school districts established in

¹ Liability insurance is determined by principles of actuarial science. To determine risk, actuaries use mathematical models. “A mathematical model is *potentially valid* if it produces results that are consistent with available observations of the modeled phenomena and of similar phenomena and is capable of being validated relative to the specified observed results when sufficient data are available.” *Principles of Actuarial Science* at 570 (Society of Actuaries Committee on Actuarial Principles – 1992) (Emphasis in original.) “A mathematical model is said to be *valid within a specified degree of accuracy* relative to certain observed results if it reproduces these results within that degree of accuracy.” *Id.* at 569. (Emphasis in original.) For a risk to be insurable, “the fact of its occurrence is definitely determinable.” *Id.* at 574. As can be appreciated, significant expansion of tort liability for the after-hours, off campus

the challenged opinion of the Court of Appeals. On behalf of its members, AWSP can provide the Court with insight on the issues raised in this appeal.

The Washington Association of School Administrators (WASA) is an organization open to all professional school administrators and has more than 1,600 members across the state of Washington. WASA is committed to leadership in providing equity and excellence in student learning and the proper supervision of students. The opinion by the Court of Appeals directly impacts the members of WASA, who are primarily responsible for the development of policies and practices regarding the supervision of students in public schools. The holding in the challenged opinion of the Court of Appeals places an impossible burden on school administrators regarding the supervision and control of students for their off-campus, after-school-hours criminal misconduct. WASA can provide the court with important insight on the practical impact on school administration of the opinion of the Court of Appeals in this case.

II. INTRODUCTION

criminal acts of a school district's students presents a formidable problem to come up with a valid mathematical model.

The opinion by the Court of Appeals in *N.L. v. Bethel School District*² significantly expands school district liability to now include the misconduct of students (including criminal acts) occurring off campus and after school hours, while the students are no longer under the care, control or supervision of the school district. This expansion of liability will have enormous financial and operational impact on the schools in this state. This Court should reverse the opinion of the Court of Appeals and affirm the trial court's entry of summary judgment in favor of Bethel School District.

III. STATEMENT OF THE CASE

Amici accept and adopt Bethel School District's statement of the case.

IV. ARGUMENT

A. SCHOOL DISTRICTS IN WASHINGTON SHOULD NOT BE HELD LIABLE FOR THE AFTER-HOURS, OFF-CAMPUS CRIMINAL CONDUCT OF STUDENTS.

The operation of school districts has an enormous impact on the public. Schools are often the center of community interest. "In the 2010-11 school year, over 1,040,000 students were enrolled in 2,281 public

² 187 Wn.App. 460, 348 P.3d 1237 (2015), *rev. granted* 184 Wn.2d 1002,

schools across the state.”³ Public schools employ more than 100,000 persons.⁴ “In the 2011-13 biennium (fiscal years 2012 and 2013), the Legislature appropriated \$13.6 billion, or 44 percent, of the state near-general fund for the support and operation of K-12 public schools.”⁵ An expansion of tort liability to a student’s off-campus and after-hours criminal conduct would create a substantial financial and operational risk that will certainly affect the public coffers. Building principals and other school administrators would be saddled with the impossible task of determining how to supervise students while off-campus and after-hours.

The previous opinions of this Court and the Court of Appeals limited a school district’s liability for student misconduct to situations where the students were (or should have been) under the care, custody and supervision of the school district. Until the opinion of the Court of

357 P.3d 665 (2015).

³ *A Citizen’s Guide to Washington State’s K-12 Finance* at 3 (2012), accessed at: <http://leg.wa.gov/Senate/Committees/WM/Documents/K12%20Guide%202012%20FINAL5.pdf>

⁴ *Personnel by Major Position and Gender* (Office of the Supt. of Public Instruction for School Year 2011-12), accessed at: http://www.k12.wa.us/dataadmin/pubdocs/personnel/2011_2012PersonnelByMajorPositionandGender.pdf This includes a full time equivalent (FTE) of 52,898 classroom teachers and 36,255 classified personnel.

⁵ *A Citizen’s Guide, supra* at 13. About 65 percent of budgeted school district revenues in 2010-11 were from state sources; about \$1.8 billion (about 18 percent) was from local taxes; about \$1.3 billion (about 13 percent) was from federal sources and about \$414 million (about four percent) was from miscellaneous sources. *Id.* at 16-17. *See also McCleary v. State*, 173 Wn.2d 477,

Appeals in this case, it was widely and commonly recognized that school districts in this state are only liable for injuries caused by the misconduct of a student when that student is in or should be in the care and custody of a school district either at school or in extracurricular activities sponsored by the school. *Briscoe v. School Dist. No. 123, Grays Harbor County*, 32 Wn.2d 353, 363, 201 P.2d 697 (1949)(failure to supervise a “keep away” game played during school on playground); *McLeod v. Grant County School Dist. No. 128*, 1953, 42 Wn.2d 316, 255 P.2d 360 (1953)(premises liability for student misconduct on unsupervised school grounds);⁶ *Travis v. Bohannon*, 128 Wn.App. 231, 238, 115 P.3d 342 (2005)(school sponsored activity that should have been supervised by the school district). School districts have not been held responsible for the personal off-campus misconduct of students. *Coates v. Tacoma School Dist. No. 10*, 55 Wn.2d 392, 394, 347 P.2d 1093 (1960)(high school student injured in an automobile accident occurring away from school during initiation ceremonies into a club which had no connection with the school).⁷

495-96, 269 P.3d 227 (2012)(describing state funding for the K-12 system in the 2005-07 biennium).

⁶ “Four members of the court thought we went too far [in *McLeod*] in holding that an intervening forcible rape should have been anticipated, as a consequence of a failure to properly supervise the play of children on the school premises.” *Coates v. Tacoma School Dist. No. 10*, 55 Wn.2d 392, 396, 347 P.2d 1093 (1960).

⁷ The *Coates* court stated at 399: “A complaint by a minor student for personal injuries against a school district is demurrable where the event causing

This is a rule of common sense recognizing that a school district can effectively control its students only while they are in the care and control of the school district. A school district generally owes the same duty to students while in the district's care and control that a parent owes to his or her children. The *in loco parentis* doctrine recognizes that a school district assumes the role of the parent whilst the children are in the district's care, control and custody.⁸

Expanding the traditional liability of schools for off-campus, after-school student criminal misconduct would result in a monumental increase in potential tort liability for all school districts in the state. In addition, because the nature of such liability would be virtually impossible to predict or control, it is very likely that traditional school district risk pools and insurance carriers would not be able to underwrite the potential exposure, thereby exposing school district and state budgets to

the injuries is so distant in time and place from any normal school activity that it would be assumed that the protective custody was in the parents, unless facts and circumstances are alleged which extend the duty of the school district beyond the normal school district-student relationship.” The Court of Appeals in this case did not have the authority to overrule this Court’s opinion in *Coates*.

⁸ Interestingly, the opinion by the Court of Appeals imposes a greater liability on the school district for the malicious misconduct of children than currently exists for their parents. RCW 4.24.190 limits a parent’s liability for the willful or malicious misconduct of children living with them to \$5,000. *Schwartz v. Elerding*, 166 Wn.App. 608, 612, 270 P.3d 630, 633 (2012), *rev. denied*, 174 Wn.2d 1010, 281 P.3d 686 (2012).

unwarranted expense.⁹ *See Rife v Long*, 908 P.2d 143 (Idaho 1995), which held that a school district was not liable for injuries taking place off school grounds. The *Rife* court stated at 148:

We find, in weighing these basic policy considerations, **the burden on our school districts would be enormous**. If we were to impose a duty on each school district to protect its students outside of school and school hours, **they would incur substantial financial and additional manpower burdens**.

(Emphasis added.)

Clearly **the price of liability insurance . . . is related to the risk of an insured being found liable in tort**. The risk has to do with the activities engaged in by the insured person. **It also has to do with the rules that determine when liability attaches** and, if so, the extent of damages payable. If courts seem to be interpreting these rules more liberally than in the past, we would expect to see consequential increases in premiums.

Craig Brown, *School board liability, the insurance crisis and accident compensation*, 12 *Educ. & Law J.* 273, 275 (2002-03). (Emphasis added.)

The Court of Appeals' unprecedented ruling making the school district liable for the off-campus, after-hours criminal misconduct of a student creates an unmanageable risk that will have significant implications on the cost of education.

⁹ School districts already pay large amounts for liability insurance. For example, in 1995 Illinois school districts paid \$385 million (or three percent of total spending) for liability insurance. David A. Decker, *When the king does wrong: what immunity does local government deserve?*, 6 *Illinois B.J.* 138, 144 (March 1998).

The ruling by the Court of Appeals creates a new duty of supervision that would require school administrators and school boards to develop new policies and procedures for supervision that would likely conflict with a parent's duty to supervise children when they are not in school. If the school district is liable for after-hours, off-campus criminal behavior it will have to formulate new strategies to manage the risk. It would have to "take charge" and set limits on student conduct occurring outside of the school day. This would create an unworkable situation. Would school staff members be required to stay with some students after-school at their private homes or dictate to their parents the "ground rules" of their time at home? Would school staff have to warn students of the behavioral issues of their peers, which could violate a student's right of privacy and confidentiality under various privacy laws that currently protect students? The administration of this newly created liability will be nearly impossible.

This Court has, in other analogous situations, rejected this liability concept of after-hours, off-campus duties to supervise. For example, where children placed in foster care have criminally assaulted others the Court has not held the state liable. *Sheikh v. Choe* 156 Wn.2d 441, 128 P.3d 574, 576 (2006) In *Sheikh*, the victim of an assault by four dependent wards of the state sued the state to recover for his injuries

arguing that the state owed to him a common law duty to control the conduct of the dependent wards. This Court recognized that “our common law imposes no duty to prevent a third person from causing physical injury to another.” *Id* at 448. This Court noted that the “take charge” liability for the criminal misconduct of others is limited to governmental supervision of parolees and probationers because in that situation the government has the authority to significantly regulate the parolees’ conduct. *Id.* at 449, *citing Taggart v. State*, 118 Wn.2d 195, 218–21, 822 P.2d 243 (1992). The *Sheikh* court recognized limitations to the “take charge” duty, including Division One’s decision declining to impose a duty where DSHS had undertaken supervision of two children who later sexually assaulted a neighbor child. *Terrell C. v. Dep’t of Soc. & Health Servs.*, 120 Wn.App. 20, 29, 84 P.3d 899, *rev. denied* 152 Wn.2d 1018, 101 P.3d 109 (2004). Based on common law duties and public policy *Sheikh* concluded that the State owed no duty to the assault victim. *Id.* at 454. The Court of Appeals ruling at bar is directly contrary to *Sheikh* and imposes a “take charge duty” on Bethel School District for the after-hours, off-campus criminal misconduct of one of its students.

B. MERE KNOWLEDGE OF A STUDENT’S DANGEROUSNESS SHOULD NOT BE A BASIS OF SCHOOL DISTRICT TORT LIABILITY.

The Court of Appeals held: “A school district’s knowledge of one of its student’s dangerousness may give rise to a jury question of foreseeability.” *N.L. v. Bethel School Dist.*, 187 Wn.App. at 460, 348 P.3d 1237 (2015), *rev, granted* 184 Wn.2d 1002, 357 P.3d 665. To date, no Washington court has held that knowledge of dangerousness can result in school district tort liability for off-campus, after-hours student criminal misconduct. The adoption of this theory of liability would expose schools to potential tort liability not only for the acts of registered sex offenders but also for the out-of-school acts of thousands of students identified with emotional and behavioral disorders (EBD).¹⁰

Schools in Washington are required to educate all students, including students with aggressive behavioral issues and sexual predators. To make a school district liable for a student’s out-of-school conduct merely because the student attends school and the district is aware of the student’s behavioral issues would create an unprecedented and unworkable responsibility on every school district in the state.

¹⁰ “Based on criteria from DSM-IV, 15 to 20% of the entire student population is said to have a clinically significant emotional and/or behavioral disorder at any one time.” Larry Matsuda, *Teaching Students with Severe Emotional and Behavioral Disorder: Best Practices Guide to Intervention* at 1 (Seattle Univ. School of Education – January 2005). “[A]bout 2 % of the student population would meet the criteria for EBD.” *Id.* at 2. The report can be accessed at:

<http://www.k12.wa.us/SpecialEd/Families/pubdocs/bestpractices.pdf>

C. THE J.N. VS. BELLINGHAM SCHOOL DISTRICT ANALYSIS DOES NOT APPLY TO AFTER-HOURS, OFF-CAMPUS MISCONDUCT.

The Court of Appeals applied the analysis of *J.N. v Bellingham Sch. Dist.*, 74 Wn. App. 49, 871 P.2d 1106 (1994) to this case.¹¹ *J.N.* involved an injury occurring *on campus while J.N. was under the direct supervision of the school district.* Application of the *J.N.* supervision standards to off-campus, after-school student activity will be impracticable if not impossible. A school district has no way to effectively control the out-of-school conduct of students with a known disturbed or aggressive propensity. *See also:*

- *Hayes v. Sheraton Operating Corp.*, 156 So.3d 1193, 1198 (La.App. 2014)(holding that a charter school board was not liable for the off-campus rape of a freshman student at an end-of-year party hosted at a hotel by a classmate's mother):

Furthermore, it is well established that a school board's duty of reasonable supervision is limited to instances where the student is [in] its custody or control."¹²

¹¹ "This case is analogous to *J.N.*," the court stated. *N.L. v. Bethel School Dist.*, 187 Wn.App.460, 470, 348 P.3d 1237 (2015). "*J.N.* presented sufficient evidence that the school district had notice of the possibility of the specific harm inflicted." *Id.*

¹² *Citing S.J. v. Lafayette Parrish Sch. Bd.*, 41 So.3d 1119, 1126 (La. 2010)(finding no liability when a student was sexually attacked off school grounds, while walking home from school); *Williams v Orleans Parish Sch. Bd.*, 2008 WL 399353 (La.App. 2008)(finding no liability when a student was killed by another student after both students left school without permission); *Huey v.*

- *Huey v. Caldwell Parish School Bd.*, 109 So.3d 924, 928 (La.App. 2013)(holding that a school board was not liable for the rape of a 16-year-old student by an adult male non-student that took place off campus), *writ denied* 110 So.2d 589 (La. 2013):

The liability of the school board and its employees to students exists only when the school board has actual custody of the students entrusted in their care. . . . In this case LaShaun was aboard a CPSB school bus on her way to school, in the care of defendant, when she was allowed to exit at the health unit or hospital.

- *Banks v. New York City Dep't of Educ.*, 895 N.Y.S.2d 512, 513 (N.Y.App. 2010)(holding that a school district was not liable for a student's personal injuries sustained on a city bus during a school trip when a fellow student threw a firecracker):

However, a school's duty to protect its students from negligence is coextensive with and concomitant to its physical custody and control over its students. . . . Therefore, once students leave their school's orbit of authority, parents are free to resume custodial control and the school's custodial duty ceases

- *Stoddart v. Pocatello School Dist. No. 25*, 239 P.3d 784, 791-92 (Idaho 2010)(holding that a school district was not liable for the murder of a student at her home during the night by two classmates; the

Caldwell Parish Sch. Bd., 109 So.3d 924 (La.App. 2003)(finding no liability where student was sexually assaulted off campus).

school district had investigated the threat made by one of the murderers to commit a school shooting):

This case requires the Court to determine whether the scope of this general duty should be extended to require that a school district take reasonable steps to prevent a violent criminal act against a student by a fellow student away from school grounds and not in connection with a school-sponsored activity. . . . In light of the lack of foreseeability of this crime and **the enormous burden that would be imposed upon school districts if we were to find that a duty exists** in this case, we conclude that no duty attached to the School District under these circumstances. . . . Rather, despite the enormity of the harm involved in this case, our decision turns on the related considerations of foreseeability and the burdens a contrary decision would impose on school districts. . . . **[W]e simply cannot impose such an enormous burden on school districts.**

(Paragraphing omitted; emphasis added.)

- *Kazanjian v. School Bd. of Palm Beach County*, 967 So.2d 259, 264 (Fla.App. 2007)(holding that a school district was not liable for the death of a student who left school without authorization and was killed in a motor vehicle accident), *rev. denied* 980 So.2d 489 (Fla. 2008):

To the extent that the plaintiff is arguing that the school owed a duty to supervise Kaitlin and/or Charles off school property, such an argument is foreclosed by both statute and case law.¹³

¹³ *Citing Rupp v. Bryant*, 417 So.2d 658, 668 n. 26 (1982)(“The school has no duty to supervise off-premises activities of students which are not school related.”); *Matallana v. Sch. Bd. of Miami-Dade County*, 838 So.2d 1191, 1192 (Fla.App. 2003)(holding that the school had no duty to supervise at the time of an incident which occurred off school premises and was unrelated to any school activities); *Gross v. Family Servs. Agency, Inc.*, 716 So.2d 337, 339 (Fla.App. 1998)(stating that schools generally have not been held to have a duty of

- *Bertrand v. Bd. of Educ. of City of New York*, 707 N.Y.S.2d 218, 219 (N.Y.App.Div. 2000)(holding that a school district was not liable for the assault of a student that occurred in a subway station off school premises), *appeal denied* 714 N.Y.S.2d 710 (2000):

[I]t is well established that a school's duty to protect a child from the negligence of a third party is coextensive with, and concomitant to, its physical custody and control over the child. When the custody ceases because the child has passed out of the orbit of its authority in such a way that the parent is free to reassume control over the child's protection, the school's custodial duty also ceases. . . . As a result, where a student is injured off school premises generally the school cannot be held liable for the breach of a duty that extends only to the boundaries of school property.

- *Frederick v. Vermillion Parish School Bd.*, 772 So.2d 208, 213 (La.App. 2000)(holding that a school board was not liable for the sexual assault of a student by another student; the assaulted student was not notified that her after-hours school band practice had been cancelled and she accepted a ride with a fellow student), *writ denied* 681 So.2d 561 (La. 2001):

First, we find no point in the law which imposes liability for off-campus incidents comparable to our circumstances. . . . And the school has no control or authority over that which happens off of school grounds.

supervision when injuries occurred off-campus while students have been involved in non-school related activities); *Paella ex rel. Paella v. Ulmer*, 518 N.Y.S.2d 91, 93 (N.Y.Sup.Ct. 1987)(holding that the school board had no duty to supervise once truant student was beyond its lawful control).

- *Rife v. Long*, 908 P.2d 143, 148 (Idaho 1995)(holding that a school district had no liability for injuries to a grade school student off school grounds on the way home from school when the student walked off the curb and into the wheels of a tractor-trailer):

While we have recognized a common law duty to protect against the reasonably foreseeable risk of harm to a student *while in the District's custody*, we have not previously extended the duty once the student is no longer in a relationship of control or supervision by the District.

...

We find, in weighing these basic policy considerations, the burden on our school districts would be enormous. If we were to impose a duty on each school district to protect its students outside of school and school hours, they would incur substantial financial and additional manpower burdens.

(Emphasis in original.)

- *Paella by Pelella v. Ulmer*, 518 N.Y.S.2d 91, 93 (N.Y. Sup. Ct. 1987)(holding that a school district was not liable for injuries sustained by a truant student in an accident which occurred several miles from school and after normal school hours):

The court has found no precedent for the proposition that a school district is responsible for an injury to a student which occurs off school grounds except where such student was involved in a school sponsored or supervised off-campus activity.

D. THE MONITORING AND NOTIFICATION OF A REGISTERED SEX OFFENDER IS THE RESPONSIBILITY OF LAW ENFORCEMENT – NOT THE RESPONSIBILITY OF SCHOOLS.

The Court of Appeals suggested that a school district has a legal duty to monitor a registered sex-offender's conduct after school hours and away from the school campus. A school district has no legal authority to impose its supervision authority on students after school is out and they leave campus. The authority to warn the public about sexual predators rests primarily with law enforcement and not with school districts. RCW 4.24.550 (sex offenders and kidnapping offenders – release of information to public). A school district does not have a “take charge duty” to protect a student from another student after-hours and off-campus.¹⁴ The opinion of the Court of Appeals in this case would transfer the monitoring requirement to schools at an untold cost.

E. PUBLIC POLICY DICTATES AGAINST IMPOSING TORT LIABILITY ON SCHOOL DISTRICTS FOR AFTER-HOURS, OFF-CAMPUS MISCONDUCT OF STUDENTS.

With more than one million students attending public schools in Washington, creating a duty on school districts for misconduct of students while away from the campus and after school hours in non-school

sponsored activities is, simply, a dangerous public policy. The potential costs to school districts for this implausible tort liability would be significant and have an adverse impact on the educational process in Washington. This Court has recognized the public policy implications of saddling a government institution with potential liability for the criminal conduct of its wards in *Sheikh, supra*.¹⁵ The public policy concerns are even greater if the institution is a school district.

If such expanded liability of school districts is deemed to be warranted, it should be accomplished by the Legislature – not the courts. *See, e.g., Hoff v Vacaville Unified School Dist.*, 968 P.2d 522, 536-37, 19 Cal.4th 925 (Cal. 1998)(holding that a school district was not liable for injuries to a pedestrian who was injured when a student motorist jumped the curb of a high school parking lot and struck plaintiff on the sidewalk across the street; “In light of California’s statutory scheme of limited governmental liability, **the special relationship doctrine can impose no greater duty of protection on school districts for off-school-grounds**

¹⁴ *See, e.g., Sheikh v. Choe*, 156 Wn.2d 441, 451-52, 128 P.3d 574 (2006)(state owed no “take charge duty” to protect plaintiff from the intentional torts by two minors who assaulted plaintiff), which is discussed above.

¹⁵ “Finally, *public policy considerations* weigh strongly in favor of concluding that DSHS owes no duty to protect the public from the criminal acts of dependent children. . . . In sum, the nature of DSHS’s statutory relationship to dependent children, the existing case law, and *public policy consideration* all support a conclusion that the State owed no duty to Aba Sheikh.” *Sheikh*, 156 Wn.2d at 454-55. (Emphasis added.)

hazards than the Legislature has authorized by statute.”) (Emphasis added.)

This Court should follow the opinion in *Oglesby v. Seminole County Bd. of Public Instruction*, 328 So.2d 515 (Fla.App. 1976). A public school student with known violent propensities was suspended from school and after school hours assaulted another student at an off-campus location unconnected with any school-related facility or program. (The student who was assaulted died as a result of his injuries.) The court held that the school was not liable to the victim on the basis of failure to properly supervise the suspended student. There is no duty to supervise troubled students “at off-campus locations which are unrelated to school activities or programs,” the court held. *Id.* at 517.

F. PRIVACY LAWS PROHIBIT A SCHOOL DISTRICT FROM WARNING STUDENTS OF THE BEHAVIOR DISORDERS OF OTHER STUDENTS.

The opinion of the Court of Appeals implies that Bethel School District should have warned or notified N.L. and other students of the dangerous propensities of Clark. “Juvenile sex offenders in Washington have a continued right to a public education after their conviction, and many return to public schools after periods of confinement.”¹⁶

¹⁶ School Safety Center, *Juvenile Sex Offenders in Schools (OSPI)*. Accessed at: <http://www.k12.wa.us/Safetycenter/Offenders/default.aspx>

“Convicted juvenile sex offenders in Washington must register with their local sheriff and must notify the sheriff before attending any public or private school in Washington.”¹⁷ “School principals may only disseminate information about registered sex offenders in accordance with RCW 9A.44.130.”¹⁸

OSPI has published model policies and procedures concerning student sexual offenders. Model Policy No. 3144 provides:

Confidentiality

The principal and school staff will maintain confidentiality regarding these students, the same as all students in the school. Any written information or records received by a principal as a result of a notification are confidential and may not be further disseminated except as provided in a state or federal law.

...

Inquiries by the Public

Inquiries by the public at large (including parents and students), **regarding students required to register as a sex or kidnapping offender are to be referred directly to local law enforcement.** Law enforcement agencies receive relevant information about the release of sex and kidnapping offenders into communities and **decide when information needs to be released to the public.**

(Emphasis added.)

¹⁷ *Id.*

¹⁸ *Id.*

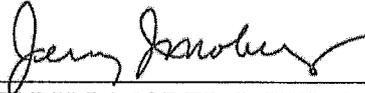
Personal information about students is the type of information that is generally protected by privacy laws that prohibit such disclosures. *See, e.g., Family Educational Rights and Privacy Act* (20 U.S.C. § 1232g; 34 CFR Part 99) and *Protection of Pupils Rights Amendment*, 20 U.S.C. § 1232h. The holding in this case may also implicate behaviorally disabled students. Other privacy laws also protect information related to students. *See, e.g.,* 34 CFR Part 300 (assistance to states for the education of children with disabilities) and WAC 392-172A-05225 (consent for release of records).

V. CONCLUSION

The opinion subject to this appeal greatly expands the traditional liability of school districts for actions of students. It moves the circle of supervision from the confines of the school grounds to the entire community. A major change in school district supervision requirements like this one is best left to the determination of the Legislature and not the courts. The Legislature is better able to study the impacts on public education that will result from this expansion of liability. This Court should find that, under existing case law, such an extension of liability is not warranted.

RESPECTFULLY SUBMITTED this 11th of December, 2015.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 11th day of December 2015, I caused a true and correct copy of this Amici Curiae Brief of The Washington State School Directors Association; The Association of Washington School Principals; and the Washington Association of School Administrators to be delivered in the manner indicated below to the following counsel of record:

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OFFICE RECEPTIONIST, CLERK

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Greetings,

Attached please find the Brief of Amicus Curiae of the Washington State School Directors Association, The Association of Washington School Principals and the Washington Association of School Administrators in Support of Petitioner in the above matter. Please don't hesitate to contact our office with any questions or concerns.

Thank you,
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