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SUPREME COURT
OF THE STATE OF WASHINGTON

N.L.,
Respondent,
v.
BETHEL SCHOOL DISTRICT,
Petitioner.

**SUPPLEMENTAL BRIEF
OF PETITIONER BETHEL SCHOOL DISTRICT**

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 ORIGINAL

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I. INTRODUCTION

This case represents an unprecedented expansion of tort liability for school districts. The Court of Appeals opinion permits an entire category of cases involving non-custodial injuries to come before the jury. Indeed, litigants have already started citing the opinion in an effort to increase the scope of liability for school districts. The Court of Appeals opinion sharply departs from decades of precedent that imposes a duty of care on school districts only when the harm is foreseeable and occurs in a custodial setting. The opinion effectively eliminates the requirement of a custodial relationship. In order to restore longstanding precedent, this Court should reverse the Court of Appeals and affirm the dismissal of Bethel School District (“BSD”). There must be an outer boundary to school district liability. Wherever that precise boundary lays, this case falls outside it.

II. STATEMENT OF ISSUES

On September 30, 2015, this Court granted BSD’s Petition for Review without modifying or limiting the issues presented. As set forth in BSD’s Petition for Review, the issues for review are:

- (1) Whether a school district owes a student, who skipped an after-school activity and voluntarily left school property with another student, a duty of care to protect that student from the risk of injuries that did not occur on school property and did not occur in the course of any school-sponsored or school-supervised off-campus activity.

- (2) Whether a school district's alleged failure to properly supervise a student while on-campus is a proximate cause of another student's injuries that did not occur on school property, did not occur in the course of any school-sponsored or school-supervised off-campus activity, and occurred after the two students skipped an after-school activity and voluntarily left school property together.

III. SUPPLEMENTAL STATEMENT OF THE CASE

BSD rests on the Counter Statement of the Case set forth in its Response Brief filed with Division II of the Court of Appeals.

IV. SUPPLEMENTAL ARGUMENT

A. The Court of Appeals Decision is Already Being Cited in Attempts Expand Tort Liability of School Districts

*The strength of a proposed parade of horrors . . . lies in direct proportion to . . . the probability that the parade will in fact materialize.*¹

BSD draws this Court's attention to *Reuben Monzon, as legal guardian of J.M., and Regina Monzon v. Kitsap County, Sandra Bloechl, and Central Kitsap School District*, Pierce County Superior Court Cause No. 15-2-06328-1, filed February 2, 2015.² This lawsuit arises out of a vehicle-pedestrian accident that occurred on a public road near a school

¹ *Milne v. Stephen Slesinger, Inc.*, 430 F.3d 1036, 1046 (9th Cir. 2005) (internal quotation and citation omitted).

² Although these filings are matters of public record and subject to judicial notice, *City of Bellevue v. Hellenthal*, 144 Wn.2d 425, 441, 28 P.3d 744 (2001), BSD has included the relevant pleadings and briefs in the Appendix to this supplemental brief. BSD is not asking this Court to accept the truth of the facts or allegations asserted therein, but simply to note that *N.L. v. Bethel School District*, 187 Wn. App. 460, 348 P.3d 1237 (2015) was cited in one of the briefs.

located within the Central Kitsap School District (“CKSD”).³ Initially, the plaintiffs sued only Kitsap County, who owned the road, and Ms. Bloechl, the driver of the vehicle that struck Ms. Monzon and J.M.⁴ But the plaintiffs amended their complaint to add CKSD as a defendant.⁵

CKSD filed a motion to dismiss, arguing that the plaintiffs were not in CKSD’s custody because they were traveling to and from school and not using a district-provided means of transportation.⁶ Kitsap County opposed the motion, arguing that “the rule to be derived from Washington case law is that school districts are liable for injuries caused by dangers that are known to the school district when the injury has a sufficient nexus to the school, regardless of whether the school had direct custody at the time of injury.”⁷ Kitsap County’s argument conflicts with decades of precedent that has consistently limited school districts’ liability to injuries that are foreseeable and occur in a custodial setting.⁸ *See, e.g., McLeod v. Grant County Sch. Dist.*, 42 Wn.2d 316, 321, 255 P.2d 360 (1953). To support its

³ Appendix A (Complaint for Damages) at ¶ 4.5.

⁴ Appendix A at ¶¶ 4.2, 4.5.

⁵ Appendix B (Amended Complaint) at ¶ 5.5.

⁶ Appendix C (Central Kitsap School District’s Motion to Dismiss) at pgs. 3-5.

⁷ Appendix D (Kitsap County’s Response) at pg. 6.

⁸ To be clear, BSD recognizes that a school district’s custody over students is not limited to school property. A custodial relationship may exist, for example, during an off-campus activity supervised by the school district. *Travis v. Bohannan*, 128 Wn. App. 231, 115 P.3d 342 (2005). No such activity occurred in this case.

proposition, Kitsap County cited the very Court of Appeals opinion that is currently before this Court—*N.L. v. Bethel School District*.⁹

Kitsap County’s brief was filed on September 20, 2015, ten days before BSD’s Petition for Review was granted. Before this Court even decided to review the Court of Appeals opinion, at least one litigant was already utilizing the opinion in an attempt to hold school districts liable for noncustodial injuries. To be sure, the opinion was cited by a co-defendant rather than a plaintiff, and CKSD was dismissed from the lawsuit. But *Monzon* is just the first of what will certainly be many more cases that invoke *N.L.* in attempts to dramatically expand the scope of liability for school districts.

BSD and the *amici curiae* parties in support of BSD have warned that the Court of Appeals opinion will lead to far-reaching consequences for school districts in this state. This “parade of horrors” is not fictional. *Milne*, 430 F.3d at 1046. To the contrary, it has already started to “materialize,” which should give this Court grave concern. *Id.*

B. BSD’s Dismissal Should Be Affirmed on the Duty Element

N.L. has concentrated her arguments on location of the alleged negligence rather than the location of the injury. For example, N.L. asserts that “the breach of duty owed [to] N.L. occurred on campus.” Answer to

⁹ Appendix D at n.15.

Petition for Review at pg. 14. But N.L. oversimplifies the duty analysis. The existence of a legal duty depends on “mixed considerations of logic, common sense, justice, policy, and precedent.” *Snyder v. Med. Serv. Corp.*, 145 Wn.2d 233, 243, 35 P.3d 1158 (2001) (internal quotation omitted).

Another critical consideration is foreseeability. School districts only have a duty to protect against harms that fall within a “general field of danger” that can be “anticipated.” *McLeod*, 42 Wn.2d at 320. Logically, if a harm is outside the general field of anticipated danger, then there is no duty to protect against that harm. The Court of Appeals acknowledged this. *N.L.*, 187 Wn. App. at 469 (“A school district’s duty to exercise reasonable care extends *only* to foreseeable risks of harm.”) (emphasis added).

Thus, the first step in the analysis of duty is whether the “actual harm” was “reasonably foreseeable.” *McLeod*, 42 Wn.2d at 321. If the answer is “no,” then no duty existed in the first place. As such, the location and nature of the harm cannot be ignored when considering the question of duty. There are at least three circumstances that place the injury outside the scope of the general field of anticipated danger. *First*, the injury did not occur on school property and did not occur in the course of any school-sponsored or school-supervised off-campus activity. This fact has consistently limited the types of harms that school districts must protect

students against. *See, e.g., Scott v. Blanchet High Sch.*, 50 Wn. App. 37, 45, 747 P.2d 1124 (1987).

Second, the injury was the result of criminal conduct (*i.e.*, Second Degree Assault), which is “usually not reasonably foreseeable.” Clerk’s Paper’s (“CP”) at 60; *Parrilla v. King County*, 138 Wn. App. 427, 436, 157 P.3d 879 (2007) (citing *Bernethy v. Walt Failor’s*, 97 Wn.2d 929, 934, 653 P.2d 280 (1982)).

Third, the injury occurred after both N.L. and Nick Clark voluntarily skipped track practice. CP 49 at 56:14-17; CP 54 at 96:5-9. Although she acknowledged that she should have been at track practice, N.L. has not alleged that BSD breached any duty by failing to monitor *her*. Nor did N.L. present any evidence in the trial court that BSD knew of any propensity of hers to skip classes or afterschool activities. According to N.L., however, the injury in this case was foreseeable even though it was precipitated by her failure to fulfill her obligations as a student.

Taken together, the circumstances of the injury in this case are “so highly . . . improbable as to be wholly beyond the range of expectability.” *McLeod*, 42 Wn.2d at 323. Because the injury was outside the field of generally anticipated danger, there was no duty to prevent that injury. *McLeod*, 42 Wn.2d at 320; *N.L.*, 187 Wn. App. at 469 (“A school district’s

duty to exercise reasonable care extends *only* to foreseeable risks of harm.”) This conclusion is a matter of law. *Travis*, 128 Wn. App. at 237-38.

Yet the Court of Appeals concluded that foreseeability (and hence the existence of a duty) was “a question for the jury.” *N.L.*, 187 Wn. App. at 472. The Court of Appeals rested its holding exclusively on Mr. Clark’s “lengthy school discipline record” that included “multiple instances of sexual conduct.” *Id.* at 471. The Court of Appeals reasoned that Mr. Clark’s criminal sexual assault of N.L. was “closely related to and of the same character” as Mr. Clark’s on-campus “conduct.” *Id.* at 472. However, Mr. Clark’s only prior criminal conviction arose out of that occurred in June 2004—nearly *three years* before the incident with N.L. CP 64-69; CP 73. Moreover, the Court of Appeals discounted other circumstances (*e.g.*, the off-campus, non-custodial setting and N.L.’s decision to voluntarily skip track practice and leave campus) that distinguished the “character” of N.L.’s injury from Mr. Clark’s other conduct. *N.L.*, 187 Wn. App. at 472.

The off-campus, non-custodial setting of incident not only made N.L.’s injury decidedly less foreseeable, but the distinction between custodial and non-custodial harms is a second distinct component of the duty analysis. Indeed, the custodial relationship between students and school districts is “the essential rational for imposing a duty.” *N.K. v. Corp. of the Presiding Bishop of the Church of Latter-Day Saints*, 175 Wn. App.

517, 532, 307 P.3d 730 (2013); *see also* RESTATEMENT (SECOND) OF TORTS § 320 cmt. b (1965).

Prior to the Court of Appeals opinion, school districts owed a duty to students when the harm was foreseeable *and* the injury occurred in a custodial context. *McLeod*, 42 Wn.2d at 319, 321. The Court of Appeals essentially eliminated the second component of duty analysis,¹⁰ which is why litigants are already citing the Court of Appeals opinion for the proposition that “school districts are liable for injuries caused by dangers that are known to the school district when the injury has a sufficient nexus to the school, *regardless* of whether the school had direct custody.”¹¹

The Court of Appeals erroneously reduced the duty analysis from two components (foreseeability and custody) to just one (foreseeability). BSD’s dismissal should have been upheld under decades of precedent that has declined to impose liability on school districts for noncustodial injuries. Moreover, the Court of Appeals erred by holding that foreseeability element was a jury question in this case. Given that (1) the injury occurred off-campus and in a non-custodial setting; (2) the injurious conduct was criminal in nature; (3) the only prior criminal conviction for Mr. Clark was

¹⁰ For example, the Court of Appeals concluded that this case was “more like” *J.N. v. Bellingham Sch. Dist. No. 501*, 74 Wn. App. 49, 871 P.2d 1106 (1994) than other cases cited by BSD, even though the injury in *J.N.* occurred on campus. *N.L.*, 187 Wn. App. at 472.

¹¹ Appendix D at pg. 6 (emphasis added).

nearly three years before the incident in this case; and (4) the injury was precipitated by a series of voluntary decisions by N.L. herself, the injury in this case was “so improbable as to be wholly beyond the range of expectability.” *McLeod*, 42 Wn.2d at 323. Accordingly, this Court should reverse the Court of Appeals and affirm BSD’s dismissal because no actionable duty existed as a matter of law.

C. BSD’s Dismissal Should Be Affirmed on the Causation Element

“Analyses of duty and proximate cause often overlap and are always subject to policy considerations.” *Travis*, 128 Wn. App. at 242. Like the existence of a duty, proximate cause has two components: (1) cause-in-fact, and (2) legal causation. *Kim v. Budget Rent A Car Sys.*, 143 Wn.2d 190, 203, 15 P.3d 1283 (2001). Legal causation is a “much more fluid concept than cause in fact” and focuses on “whether, as a matter of policy, the connection between the ultimate result and the act of the defendant is too remote or insubstantial to impose liability.” *Tyner v. Dep’t of Soc. and Health Servs.*, 141 Wn.2d 68, 82, 1 P.3d 1148 (2000) (internal quotation omitted). The “mixed considerations” involved in legal causation are “logic, common sense, justice, policy, and precedent.” *Lowman v. Wilbur*, 178 Wn.2d 165, 169, 309 P.3d 387 (2013) (internal quotation omitted).

The trial court dismissed this case on causation grounds, Verbatim Report of Proceedings (“VRP”) at 18:5-7, but the Court of Appeals reversed, reasoning that the injury was not “so highly extraordinary or improbable that no reasonable person could be expected to anticipate it.” *N.L.*, 187 Wn. App. at 474 (internal quotation omitted). As demonstrated above in the discussion of foreseeability within the element of duty, the injury in this case was too attenuated as a matter of law. The policy considerations related to foreseeability of duty and legal causation “overlap” and warrant the same result: Reversal of the Court of Appeals and affirmance of the trial court’s dismissal of BSD. *Travis*, 128 Wn. App. at 242. Upholding the Court of Appeals opinion would allow an entire new category of lawsuits against school districts to be taken to the jury.

VI. CONCLUSION

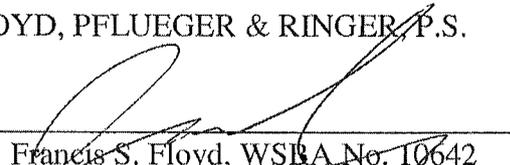
For the reasons set forth above and in BSD's Response Brief filed with Division II of the Court of Appeals, BSD respectfully requests that this Court affirm the trial court's summary judgment dismissal of BSD.

Dated this 30th day of October, 2015.

Respectfully submitted,

FLOYD, PFLUEGER & RINGER, P.S.

By


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APPENDIX

Appendix A – Complaint for Damages filed in *Monzon, et al. v. Kitsap County, et al.* (Pierce County Superior Court Cause No. 15-2-06328-1)

Appendix B – Amended Complaint filed in *Monzon, et al. v. Kitsap County, et al.*

Appendix C – Central Kitsap School District 401’s Motion to Dismiss or Motion for Judgment on the Pleadings filed in *Monzon, et al. v. Kitsap County, et al.*

Appendix D – Kitsap County’s Response to Central Kitsap School District 401’s Motion to Dismiss or for Judgment on the Pleadings filed in *Monzon, et al. v. Kitsap County, et al.*

APPENDIX A

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KEVIN STOCK
COUNTY CLERK
NO: 15-2-06328-1

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7 **SUPERIOR COURT FOR THE STATE OF WASHINGTON**
8 **COUNTY OF PIERCE**

9 Case No.

10 REGINA MONZON, individually, REUBEN
11 MONZON, legal guardian of J.M., a minor,

COMPLAINT FOR DAMAGES

12 Plaintiffs,

13 v.

14 COUNTY OF KITSAP, and SANDRA BLOECHL

15 Defendants.

16 COMES NOW plaintiffs, by and through their attorneys, Friedman | Rubin and Apodaca
17 Law Firm, and for their cause of action against the defendants allege and aver as follows:

18 **I. PARTIES**

19 1.1 Plaintiff Regina Monzon is and was at all times herein, a resident of Bremerton,
20 Kitsap County, Washington.

21 1.2 Reuben Monzon is the legal guardian of Plaintiff J.M., a minor, and is and was at
22 all times herein mentioned also a resident of Kitsap County, Washington.

23 1.3 Defendant Kitsap County is a political subdivision organized and existing under
24 the laws of the State of Washington.

25 1.4 Sandra Bloechl is a resident of Kitsap County, Washington.

1 **II. JURISDICTION AND VENUE**

2 2.1 The acts and omission which give rise to this lawsuit occurred in Kitsap County,
3 State of Washington.

4 2.2 Kitsap County is a defendant in this matter and pursuant to RCW 36.01.050 venue
5 is proper in Pierce County Superior Court.

6 **III. SERVICE OF CLAIM FOR DAMAGES**

7 3.1 Plaintiffs properly served a Claim for Damages pursuant to RCW 4.96.020 on
8 Defendant Kitsap County on September 18, 2014.

9 3.2 More than 60 days have elapsed since service of the Claim for Damages.

10 3.3 All requirements of RCW 4.96.020 have been fulfilled and this matter is properly
11 before the Court.

12 **IV. FACTS**

13 4.1 The County of Kitsap owns, maintains, controls, and operates Central Valley
14 Road N.E. as part of its public roadway system within the limits of Kitsap County, Washington.
15 The location involving this claim, Central Valley Road N.E., is a two-lane arterial street with one
16 lane of travel in each direction, north and south. Kitsap County designated the crosswalk as a
17 "school crossing."

18 4.2 N.E. Conifer Drive is a local street within Kitsap County's roadway system that is
19 used primarily for direct access to residential and other abutting properties. N.E. Conifer Drive
20 terminates at the intersection with Central Valley Road N.E.

21 4.3 On December 12, 2012, at or about 7:14 a.m., Plaintiffs, Regina and her younger
22 brother J. M., were walking to Fairview Jr. High School. They were crossing Central Valley
23 Road N.E. in a marked crosswalk near N.E. Conifer Drive.

24 4.4 Plaintiffs were crossing Central Valley Road from east to west in a normal and
25 proper manner and pace within the confines of the crosswalk.

26 4.5 As Regina and J.M. were walking in the westbound direction of the crosswalk,
27 Regina was stuck and run over by a southbound vehicle driven by Defendant Sandra Bloechl.
28

1 4.6 Defendant Bloechl was driving her 1993 Toyota pickup alone and in a normal
2 manner within her proper lane of travel in the southbound lane.

3 4.7 At the time of the incident the headlights of Defendant Bloechl's vehicle were on
4 and were operating normally.

5 4.8 At the time of the incident Defendant Bloechl's ability to operate a motor vehicle
6 was not impaired by any substances including but not limited to drugs or alcohol.

7 4.9 As a result of the collision described above, Plaintiff Regina Monzon suffered
8 serious severe and permanent injuries including scalp degloving when her hair became entangled
9 in the vehicle drivetrain as it ran over her.

10 4.10 In addition, Regina suffered sacral fractures, left pelvic fracture, left dorsal foot
11 degloving, multiple rib fractures, pulmonary contusions, acute contusions, and lacerations on her
12 lower lip. She continues to suffer numerous residual symptoms and conditions from her injuries
13 including her brain injury and emotional and psychosocial issues and impairments.

14 4.11 Plaintiff J.M., was in the crosswalk walking behind his sister, Regina, when she
15 was stuck by the vehicle driven by defendant Bloechl. He observed the severe injuries, pain and
16 suffering of his sister, and personally experienced the horror of the event as it happened.

17 4.12 J.M. has suffered and continues to suffer severe mental and emotional stress due
18 to observing the injuries to his sister. He was in the scope of foreseeable harm from the
19 defendants' negligence, his reaction was objectively and subjectively reasonable given the
20 circumstances of the event, and there has been objective symptomatology of his symptoms. As a
21 result, J.M. has a recognizable claim for negligent infliction of emotional distress.

22 **V. TORTIOUS CONDUCT**

23 5.1 Plaintiffs reallege and incorporate each and every other allegation set forth herein.

24 5.2 Defendant Sandra Bloechl was negligent in failing to observe plaintiffs in the
25 crosswalk, failing to avoid a collision and the resulting injuries and damages to Plaintiffs.

26 5.3 As the owner and maintainer/controller and operator of Central Valley Road NE
27 and its roadway system, Kitsap County had a duty to design, construct and maintain, and to
28 conduct periodic reviews of the pedestrian crossing that Kitsap County installed and marked,

1 ensuring that it was reasonably safe for public travel and use. In doing so, Kitsap County owed a
2 duty to consider the totality of the relevant surrounding circumstances of the crosswalk location
3 including its operation and functionality, and among other considerations: 1) An evaluation of
4 the signage and device markings; 2) pedestrian traffic; and 3) observing and remediating the
5 insufficient level of illumination of the crosswalk in the Southbound lane where Plaintiff Regina
6 Monzon was struck.

7 5.4 Kitsap County had a duty to maintain the crosswalk in a manner that is reasonable
8 safe for ordinary travel in light of the circumstances of its particular nature in order to maintain it
9 in a reasonably safe condition.

10 5.5 Kitsap County was aware that this area experienced a significant amount of
11 pedestrian traffic, including a large number of students approaching Fairview Junior High School
12 and Woodlands Elementary school.

13 5.5 Among other things, Kitsap County created and failed to safeguard a dangerous
14 crosswalk with the following defects:

- 15 • Inadequate visibility and low contrast;
- 16 • Poorly planned illumination of the crosswalk for southbound traffic;
- 17 • Placement of a crosswalk forward of existing luminaries and outside of the
18 intersection;
- 19 • Inconsistent markings and warnings among all pedestrian facilities in the area;
- 20 • No actuated warning system for pedestrians to alert approaching motorists of their
21 presences; and
- 22 • Inadequate illumination intensity to account for changes in the road conditions, such
23 as moisture on the road surface.

24 5.6 As a direct and proximate result of said negligence, Plaintiffs were injured,
25 suffering personal injuries and economic and non-economic damages as herein alleged.

26 **VI. RESPONDEAT SUPERIOR**

27 6.1 The negligence of Kitsap County's staff and personnel heretofore alleged, was
28 committed while they were acting as agents of the Kitsap County. Said negligence was

1 committed while they acted or failed to act within the scope of authority and said agency and
2 while said staff and personnel were engaged in the performance of duties which were expressly
3 or impliedly assigned to defendant and/or which were expressly or impliedly required by the
4 contract of employment between the staff and personnel and Kitsap County and their negligent
5 actions and inactions as alleged were for the furtherance of Kitsap County's interest.

6 **VII. JOINT AND SEVERAL LIABILITY**

7 7.1 Plaintiff Regina Monzon was injured as she crossed Central Valley Road N.E. in
8 a proper manner within the Kitsap County's marked crosswalk.

9 7.2 As pedestrian travelers properly within the marked crosswalk, Plaintiffs had the
10 right-of-way granted to pedestrians by the law.

11 7.3 Neither plaintiff committed any act of fault that was a proximate cause for their
12 respective injuries. Plaintiffs are fault-free.

13 7.4 Because Plaintiffs are fault-free, all tortfeasors that caused them injuries are
14 jointly and severally liable for those injuries, damages and losses.

15 **VIII. ("ECONOMIC") SPECIAL DAMAGES**

16 8.1 As a direct and proximate result of Defendants' negligence, Plaintiffs incurred
17 reasonable and necessary expenses that are objectively verifiable for medical and health care
18 including, but not limited to, charges incurred for physicians, surgeons, drugs and medications,
19 hospital costs, physical therapy, rehabilitation and other medical and health care that were
20 reasonable and necessary for the treatment of Plaintiffs' injuries and causally related to
21 Defendants' negligence. Plaintiffs will continue to incur like expenses in the future of an
22 unknown amount.

23 8.2 As a further direct and proximate result of Defendants' negligence, Plaintiff
24 Regina Monzon will suffer a loss of wages and an impaired ability to work in the future as a
25 result of the injuries received, and further loss of chance and opportunity to advance in her career
26 and earning potential.

27 8.4 As a direct and proximate result of Defendants' negligence, Plaintiff Regina
28 Monzon has incurred miscellaneous out-of-pocket expenses in connection with costs of

1 transportation to obtain reasonable and necessary health care, household expenses for
2 housekeeping and/or essential services, and similar miscellaneous out-of-pocket expense that are
3 continuing in nature, together with all economic damages recoverable by law.

4 **IX. ("NON-ECONOMIC") GENERAL DAMAGES**

5 9.1 As a further direct and proximate result of Defendants' negligence, Plaintiff
6 Regina Monzon suffered bodily injury, including pain and suffering, both mental and physical,
7 and with a reasonable certainty will experience same in the future. Said injuries also caused
8 permanent scarring and bodily disfigurement and physical disability. Further, Plaintiffs have
9 suffered a reduction in Plaintiffs' ability to enjoy life, both past and future, as they did
10 previously. All of Plaintiffs' general damages are continuing in nature and result in permanent
11 injury and damage to Plaintiffs.

12 9.2 Plaintiff Regina Monzon's harms and losses are multifaceted, and her physical
13 and emotional injuries affect all aspects of her life.

14 9.3 As a further direct and proximate result of Defendants' negligence, Plaintiff J.M.
15 suffered both mental and emotional injuries which will affect all aspects of his life.

16 **X. PRAYER FOR RELIEF**

17 WHEREFORE, plaintiffs pray for judgment against Defendants, as follows:

- 18 • judgment of liability for their injuries and all damages and losses allowable by
- 19 law;
- 20 • for an award of economic and non-economic damages;
- 21 • pre-judgment interest on liquidated economic damages;
- 22 • reasonable attorney's fees and costs allowed by law; and
- 23 • such further relief as the Court deems fair and equitable.

24 //

25 //

26 //

27 //

28 //

1 DATED this 24th day of February 2015.

2 FRIEDMAN | RUBIN®

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Attorneys for Plaintiffs

APPENDIX B

June 19 2015 1:08 PM

KEVIN STOCK
COUNTY CLERK
NO: 15-2-06328-1

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7 **SUPERIOR COURT FOR THE STATE OF WASHINGTON**
8 **COUNTY OF PIERCE**

9 REGINA MONZON, individually, REUBEN
10 MONZON, legal guardian of J.M., a minor,

Case No. 15-2-06328-1

11 Plaintiffs,

AMENDED COMPLAINT

12 v.

13 COUNTY OF KITSAP, SANDRA
14 BLOECHL, and CENTRAL KITSAP
15 SCHOOL DISTRICT 401,

16 Defendants.

17 COMES NOW plaintiffs, by and through their attorneys, Friedman | Rubin and Apodaca
18 Law Firm, and for their cause of action against the defendants allege and aver as follows:

19 **I. PARTIES**

20 1.1 Plaintiff Regina Monzon is and was at all times herein, a resident of Bremerton,
21 Kitsap County, Washington.

22 1.2 Reuben Monzon is the legal guardian of Plaintiff J.M., a minor, and is and was at
23 all times herein mentioned also a resident of Kitsap County, Washington.

24 1.3 Defendant Kitsap County is a political subdivision organized and existing under
25 the laws of the State of Washington.

26 1.4 Defendant Sandra Bloechl is a resident of Kitsap County, Washington.

27 1.5. Defendant Central Kitsap School District 401 is a political subdivision organized
28 and existing under the laws of the State of Washington.

1 **II. JURISDICTION AND VENUE**

2 2.1 The acts and omission which give rise to this lawsuit occurred in Kitsap County,
3 State of Washington.

4 2.2 Kitsap County is a defendant in this matter and pursuant to RCW 36.01.050 venue
5 is proper in Pierce County Superior Court.

6 **III. SERVICE OF CLAIM FOR DAMAGES**

7 3.1 Plaintiffs properly served a Claim for Damages pursuant to RCW 4.96.020 on
8 Defendant Kitsap County on September 18, 2014.

9 3.2 Plaintiffs properly served a Claim for Damages pursuant to RCW 4.96.020 on
10 Defendant Central Kitsap School District on April 1, 2015.

11 3.3 More than 60 days have elapsed since service of the Claim for Damages.

12 3.4 All requirements of RCW 4.96.020 have been fulfilled and this matter is properly
13 before the Court.

14 **IV. FACTS**

15 4.1 The County of Kitsap owns, maintains, controls, and operates Central Valley
16 Road N.E. as part of its public roadway system within the limits of Kitsap County, Washington.
17 The location involving this claim, Central Valley Road N.E., is a two-lane arterial street with one
18 lane of travel in each direction, north and south. Kitsap County designated the crosswalk as a
19 "school crossing."

20 4.2 N.E. Conifer Drive is a local street within Kitsap County's roadway system that is
21 used primarily for direct access to residential and other abutting properties. N.E. Conifer Drive
22 terminates at the intersection with Central Valley Road N.E.

23 4.3 On December 12, 2012, at or about 7:14 a.m., Plaintiffs, Regina and her younger
24 brother J. M., were walking to Fairview Jr. High School. They were crossing Central Valley
25 Road N.E. in a marked crosswalk near N.E. Conifer Drive.

26 4.4 Plaintiffs were crossing Central Valley Road from east to west in a normal and
27 proper manner and pace within the confines of the crosswalk.
28

1 4.5 As Regina and J.M. were walking in the westbound direction of the crosswalk,
2 Regina was stuck and run over by a southbound vehicle driven by Defendant Sandra Bloechl.

3 4.6 Defendant Bloechl was driving her 1993 Toyota pickup alone and in a normal
4 manner within her proper lane of travel in the southbound lane.

5 4.7 At the time of the incident the headlights of Defendant Bloechl's vehicle were on
6 and were operating normally.

7 4.8 At the time of the incident Defendant Bloechl's ability to operate a motor vehicle
8 was not impaired by any substances including but not limited to drugs or alcohol.

9 4.9 As a result of the collision described above, Plaintiff Regina Monzon suffered
10 serious severe and permanent injuries including scalp degloving when her hair became entangled
11 in the vehicle drivetrain as it ran over her.

12 4.10 In addition, Regina suffered sacral fractures, left pelvic fracture, left dorsal foot
13 degloving, multiple rib fractures, pulmonary contusions, acute contusions, and lacerations on her
14 lower lip. She continues to suffer numerous residual symptoms and conditions from her injuries
15 including her brain injury and emotional and psychosocial issues and impairments.

16 4.11 Plaintiff J.M., was in the crosswalk walking behind his sister, Regina, when she
17 was stuck by the vehicle driven by defendant Bloechl. He observed the severe injuries, pain and
18 suffering of his sister, and personally experienced the horror of the event as it happened.

19 4.12 J.M. has suffered and continues to suffer severe mental and emotional stress due
20 to observing the injuries to his sister. He was in the scope of foreseeable harm from the
21 defendants' negligence, his reaction was objectively and subjectively reasonable given the
22 circumstances of the event, and there has been objective symptomatology of his symptoms. As a
23 result, J.M. has a recognizable claim for negligent infliction of emotional distress.

24 **V. TORTIOUS CONDUCT**

25 5.1 Plaintiffs reallege and incorporate each and every other allegation set forth herein.

26 5.2 Defendant Sandra Bloechl was negligent in failing to observe plaintiffs in the
27 crosswalk, failing to avoid a collision and the resulting injuries and damages to Plaintiffs.
28

1 5.3 As the owner and maintainer/controller and operator of Central Valley Road NE
2 and its roadway system, Kitsap County had a duty to design, construct and maintain, and to
3 conduct periodic reviews of the pedestrian crossing that Kitsap County installed and marked,
4 ensuring that it was reasonably safe for public travel and use. In doing so, Kitsap County owed a
5 duty to consider the totality of the relevant surrounding circumstances of the crosswalk location
6 including its operation and functionality, and among other considerations: 1) An evaluation of
7 the signage and device markings; 2) pedestrian traffic; and 3) observing and remediating the
8 insufficient level of illumination of the crosswalk in the Southbound lane where Plaintiff Regina
9 Monzon was struck.

10 5.4 Kitsap County had a duty to maintain the crosswalk in a manner that is reasonable
11 safe for ordinary travel in light of the circumstances of its particular nature in order to maintain it
12 in a reasonably safe condition.

13 5.5 Kitsap County was aware that this area experienced a significant amount of
14 pedestrian traffic, including a large number of students approaching Fairview Junior High School
15 and Woodlands Elementary school.

16 5.5 Among other things, Kitsap County created and failed to safeguard a dangerous
17 crosswalk with the following defects:

- 18 • Inadequate visibility and low contrast;
- 19 • Poorly planned illumination of the crosswalk for southbound traffic;
- 20 • Placement of a crosswalk forward of existing luminaries and outside of the
21 intersection;
- 22 • Inconsistent markings and warnings among all pedestrian facilities in the area;
- 23 • No actuated warning system for pedestrians to alert approaching motorists of their
24 presences; and
- 25 • Inadequate illumination intensity to account for changes in the road conditions, such
26 as moisture on the road surface.

27 5.6 Central Kitsap School District may have been negligent in:

- 28 • failing to supervise or monitor students traveling to and from school;

- 1 • failing to adequately instruct students on safe travel routes, procedures, and methods;
- 2 • failing to create, adopt, implement, or enforce adequate policies regarding student
- 3 safety regarding traveling to and from school, including policies restricting students
- 4 from walking to or from school at all times or during certain hours or requiring that
- 5 students who walk to or from school wear reflective gear;
- 6 • maintaining a school start time which encourages or requires students to walk to or
- 7 from school during hours of decreased visibility;
- 8 • failure to provide adequate crossing guard or safety patrol;
- 9 • failure to properly design, maintain, or control traffic; failure to take adequate
- 10 measures to prevent against the known risk of pedestrian versus vehicle collisions
- 11 occurring near or adjacent to school property; and
- 12 • failure to inform Kitsap County of any unsafe condition or design regarding the
- 13 crosswalk or roadway at issue.

14 5.7 As a direct and proximate result of said negligence, Plaintiffs were injured,
15 suffering personal injuries and economic and non-economic damages as herein alleged.

16 **VI. RESPONDEAT SUPERIOR**

17 6.1 The negligence of Kitsap County's staff and personnel heretofore alleged, was
18 committed while they were acting as agents of the Kitsap County. Said negligence was
19 committed while they acted or failed to act within the scope of authority and said agency and
20 while said staff and personnel were engaged in the performance of duties which were expressly
21 or impliedly assigned to defendant and/or which were expressly or impliedly required by the
22 contract of employment between the staff and personnel and Kitsap County and their negligent
23 actions and inactions as alleged were for the furtherance of Kitsap County's interest.

24 6.2 The negligence of Central Kitsap School District staff and personnel heretofore
25 alleged, was committed while they were acting as agents of the Central Kitsap School District.
26 Said negligence was committed while they acted or failed to act within the scope of authority and
27 said agency and while said staff and personnel were engaged in the performance of duties which
28 were expressly or impliedly assigned to defendant and/or which were expressly or impliedly

1 required by the contract of employment between the staff and personnel and Central Kitsap
2 School District and their negligent actions and inactions as alleged were for the furtherance of
3 Central Kitsap School District's interest.

4 **VII. JOINT AND SEVERAL LIABILITY**

5 7.1 Plaintiff Regina Monzon was injured as she crossed Central Valley Road N.E. in
6 a proper manner within the Kitsap County's marked crosswalk.

7 7.2 As pedestrian travelers properly within the marked crosswalk, Plaintiffs had the
8 right-of-way granted to pedestrians by the law.

9 7.3 Neither plaintiff committed any act of fault that was a proximate cause for their
10 respective injuries. Plaintiffs are fault-free.

11 7.4 Because Plaintiffs are fault-free, all tortfeasors that caused them injuries are
12 jointly and severally liable for those injuries, damages and losses.

13 **VIII. ("ECONOMIC") SPECIAL DAMAGES**

14 8.1 As a direct and proximate result of Defendants' negligence, Plaintiffs incurred
15 reasonable and necessary expenses that are objectively verifiable for medical and health care
16 including, but not limited to, charges incurred for physicians, surgeons, drugs and medications,
17 hospital costs, physical therapy, rehabilitation and other medical and health care that were
18 reasonable and necessary for the treatment of Plaintiffs' injuries and causally related to
19 Defendants' negligence. Plaintiffs will continue to incur like expenses in the future of an
20 unknown amount.

21 8.2 As a further direct and proximate result of Defendants' negligence, Plaintiff
22 Regina Monzon will suffer a loss of wages and an impaired ability to work in the future as a
23 result of the injuries received, and further loss of chance and opportunity to advance in her career
24 and earning potential.

25 8.4 As a direct and proximate result of Defendants' negligence, Plaintiff Regina
26 Monzon has incurred miscellaneous out-of-pocket expenses in connection with costs of
27 transportation to obtain reasonable and necessary health care, household expenses for
28

1 housekeeping and/or essential services, and similar miscellaneous out-of-pocket expense that are
2 continuing in nature, together with all economic damages recoverable by law.

3 **IX. (“NON-ECONOMIC”) GENERAL DAMAGES**

4 9.1 As a further direct and proximate result of Defendants’ negligence, Plaintiff
5 Regina Monzon suffered bodily injury, including pain and suffering, both mental and physical,
6 and with a reasonable certainty will experience same in the future. Said injuries also caused
7 permanent scarring and bodily disfigurement and physical disability. Further, Plaintiffs have
8 suffered a reduction in Plaintiffs’ ability to enjoy life, both past and future, as they did
9 previously. All of Plaintiffs’ general damages are continuing in nature and result in permanent
10 injury and damage to Plaintiffs.

11 9.2 Plaintiff Regina Monzon’s harms and losses are multifaceted, and her physical
12 and emotional injuries affect all aspects of her life.

13 9.3 As a further direct and proximate result of Defendants’ negligence, Plaintiff J.M.
14 suffered both mental and emotional injuries which will affect all aspects of his life.

15 **X. PRAYER FOR RELIEF**

16 WHEREFORE, plaintiffs pray for judgment against Defendants, as follows:

- 17 • judgment of liability for their injuries and all damages and losses allowable by
- 18 law;
- 19 • for an award of economic and non-economic damages;
- 20 • pre-judgment interest on liquidated economic damages;
- 21 • reasonable attorney’s fees and costs allowed by law; and
- 22 • such further relief as the Court deems fair and equitable.

23 //
24 //
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1 DATED this 19th day of June 2015.

2 FRIEDMAN | RUBIN®

3
4 By: /s/ Kenneth R. Friedman

5 Kenneth R. Friedman, WSBA #17148
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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of June 2015, a copy of the foregoing document was served in the manner noted upon the following:

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Christine M. Palmer [] Via Fax
Kitsap County Prosecuting Attorney's Office [X] Via Email
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FRIDMAN | RUBIN
By: Alicia S. Stanley, Paralegal

APPENDIX C

August 20 2015 11:31 AM

The Honorable Vicki L. Hogan
KEVIN STOCK
COUNTY CLERK
NO: 15-2-06328-1

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

REGINA MONZON, individually, REUBEN
MONZON, legal guardian of J.M., a minor,

Plaintiffs,

vs.

COUNTY OF KITSAP, SANDRA
BLOECHL, and CENTRAL KITSAP
SCHOOL DISTRICT 401,

Defendants.

NO. 15-2-06328-1

CENTRAL KITSAP
SCHOOL DISTRICT 401'S
MOTION TO DISMISS OR FOR
JUDGMENT ON THE PLEADINGS

Noted for September 18, 2015 at 9:00 a.m.

Defendant Central Kitsap School District 401, pursuant to CR 12(b)(6), moves for dismissal from this lawsuit. The District is entitled to dismissal because the Plaintiffs were not in its custody or control when they were injured, and Plaintiffs thus fail to state a claim on which relief may be granted as a matter of law. Alternatively, Central Kitsap School District requests the Court enter judgment in its favor based on the allegations in the Amended Complaint pursuant to CR 54(b).

I. PROCEDURAL STATUS AND ALLEGATIONS

On December 12, 2012, Regina Monzon was struck by a small truck driven by Sara Bloechl while crossing Central Valley Road in Bremerton, Washington. Regina and her minor brother, J.M., filed their lawsuit against the County of Kitsap and Bloechl on or around February

1 25, 2015. The Complaint alleges that Regina Monzon suffered serious and permanent injuries
2 and that her minor brother has suffered emotional and psychological injuries from witnessing the
3 event. After Kitsap County indicated that the District was a non-party at fault, Plaintiffs
4 amended the complaint to name the District. The District accepted service and filed an Answer
5 on July 8, 2015.

6 In their Amended Complaint, Plaintiffs allege, *inter alia*, the following material things:

- 7 1. N.E. Conifer Drive is a local street within Kitsap County's roadway system that is
8 used primarily for direct access to residential and other abutting properties. N.E.
9 Conifer Drive terminates at the intersection with Central Valley Road N.E. (AC ¶
10 4.2)
- 11 2. At around 7:14 a.m. on December 12, 2012, Plaintiffs Regina Monzon and her
12 younger brother, J.M., were walking to Fairview Jr. High School. They were
13 crossing Central Valley Road N.E. in a marked crosswalk near N.E. Confer Drive.
14 (AC at ¶ 4.3)
- 15 3. Plaintiffs were crossing Central Valley Road from east to west in a normal and proper
16 manner and pace within the confines of the crosswalk. (AC at ¶ 4.4)
- 17 4. As Regina and J.M. were walking in the westbound direction of the crosswalk,
18 Regina was struck and run over by a southbound vehicle driven by Sandra Bloechl.
19 (AC at ¶ 4.5)

20 Plaintiffs further that Central Kitsap School District may have been negligent in the
21 following things:

- 22 • Failing to supervise or monitor students travelling to and from school.
- 23 • Failing to adequately instruct students on safe travel routes, procedures and
24 methods.
- Failing to adopt policies regarding safety traveling to and from school and
requiring them to wear reflective gear.
- Maintaining a school start time that encourages or requires students to walk to or

1 from school during hours of decreased visibility.

- 2 • Failing to provide adequate crossing guard or safety patrol.
- 3 • Failing to properly “design, maintain, or control” traffic.
- 4 • Failing to take adequate measures to prevent against the known risk of pedestrian
5 versus vehicle collisions occurring near or adjacent to school property.
- 6 • Failing to inform Kitsap County of any unsafe condition regarding the crosswalk.
(Amended Complaint at ¶ 5.6).

7 II. ARGUMENT.

8 Taking the well-pled facts as true, each of Plaintiffs’ stated reasons for alleging that the
9 District was negligent fail as a matter of law because they were outside of the custody or control
10 of the District when they suffered their injuries. “On a [CR] 12(b)(6) motion, a challenge to the
11 legal sufficiency of the plaintiff’s allegations must be denied unless no state of facts which
12 plaintiff could prove, consistent with the complaint, would entitle the plaintiff to relief on the
13 claim.” *Halvorson v. Dahl*, 89 Wn.2d 673, 674, 574 P.2d 1190 (1978). Here, Plaintiffs cannot
14 prove any set of facts that would support their claim under Washington law.

15 Alternatively, Central Kitsap School District requests the Court enter judgment in its
16 favor based on the allegations in the Amended Complaint pursuant to CR 54(b). “In a motion for
17 judgment on the pleadings, the moving party admits all facts well-pleaded and the untruth of
18 allegations that have been denied by the nonmoving party.” *N. Coast Enterprises, Inc. v.*
19 *Factoria P’ship*, 94 Wash. App. 855, 861, 974 P.2d 1257, 1261 (1999) *citing* *Hodgson v.*
20 *Bicknell*, 49 Wash.2d 130, 136, 298 P.2d 844 (1956). The allegations set forth above and in the
21 remainder of the Amended Complaint, taken as true, fail to state a claim.

22 **A. The District Owes No Duty to Supervise or Monitor Students Travelling To and 23 From School.**

24 The starting point of the analysis of Plaintiffs’ claims against Central Kitsap School
District is to recognize that school districts do not owe a duty of care to students who are
travelling to or from school, unless the school is providing the transportation. This legal

1 principle eliminates the Plaintiffs' claims against the District, which are premised on the
2 erroneous assumption that the District had the authority or ability to supervise and control
3 students walking to school. In this state, the law unequivocally limits a school district's duty to
4 "protecting the children in its custody." *Wagenblast v. Odessa School District*, 110 Wn.2d 845,
5 856, 758 P.2d 968 (1988). At common law, a school district owes its students a duty to "employ
6 ordinary care and to anticipate reasonably foreseeable dangers so as to take precautions for
7 protecting the children in its custody from such dangers." *Wagenblast*, 110 Wn.2d at 856.
8 School districts are responsible for the safety of a pupil outside of school hours and outside of its
9 custody only if the district assumes the control and supervision over the activity. In the words of
10 Washington's Attorney General:

11 If a district is "providing" transportation to its pupils . . . it then assumes custodial
12 responsibility for the pupils while they are en route to or from school by means of
13 this transportation. Otherwise, no such responsibility – and resultant duty – exist,
14 for the rule to be derived from the cases cited herein is that a school district has no
15 duty and therefore no potential liability with regard to supervision and protection
16 of pupils en route to and from school unless it has exercised and assumed
17 supervision and control, consistent with its authority, over the pupils during such
18 time.

19 1968 Op. Att'y Gen. No. 24, at *4.

20 This principle is widely established in jurisdictions outside of Washington, as well. Thus,
21 in *Gilmore v. City of Zion*, 237 Ill. App. 3d 744, 178 Ill. Dec. 671, 605 N.E. 2d 110 (2d Dist.
22 1992), a seven-year-old student was struck by a car while attempting to cross a roadway on her
23 way to school. The court dismissed the school district, holding that the district owed the student
24 no duty. The court rejected the claim that, by voluntarily placing a crossing guard at the
intersection, the school district assumed a duty to have a guard present at the time of the
accident. The court found that the scope of any duty was limited to extent of the undertaking,
which, in this case was the period preceding the official start of the school day. In this case,
there is even less: the District has not assumed any undertaking.

Plaintiffs' related arguments also cannot stand in face of the general legal principle that a
school district has no duty and therefore no potential liability with regard to supervision and

1 protection of pupils *en route* to and from school on who are not on a school district bus. As
2 such, the District owes no duty to instruct students about how to get to school. Students and their
3 families are free to decide how to get to school, whether or not to use the District busses, what
4 other type of transportation to use, and what routes to take. Because these decisions are outside
5 of the control of the District, the District owed no duty to the Plaintiffs related to their choices
6 about routes or methods of travel to school.

7 **B. The District Owes No Duty to Adopt a Policy Regarding Safe Traveling To and
8 From School or Requiring Students to Wear Reflective Gear.**

9 Plaintiffs allege that the District was negligent in that it ought to have required its
10 students to wear reflective gear while walking to school. The problem with Plaintiff's reflective
11 gear theory is that under the well-established principle discussed above the District has no
12 authority and thus no duty to tell students what to wear on their way to school. Even if Olympia
13 High School or Fairview Junior High School were organized as "uniform schools" with a
14 uniform requirement under RCW 28A.320.140, which they are not, the District could not be held
15 responsible for what families and students do on their way to school, outside of the custody and
16 control of the school. If the District had a uniform requirement, students would be free to
17 disregard that requirement until they arrived on school property. Thus, the District owes no duty
18 to enact a policy requiring the wearing of reflective gear or anything else while students are
19 traveling to school, because they are not within the custody or control of the District during that
20 time. And even if this was not a legal fact, Plaintiffs cannot establish that the lack of such an
21 unenforceable policy was a cause of the accident in this case.

22 **C. The District Owes No Duty to Maintain a School Start Time That Prevents
23 Students From Walking To School During Dark Morning Hours.**

24 Plaintiffs allege that District was negligent for not starting classes later in the day. The
District has authority to set the start times of school. It also has wide discretion about how to
exercise that authority, and cannot be sued for negligence in what it decides. *See* RCW
28A.320.015 granting school boards "broad discretionary" power to adopt policies related to

1 education that do not conflict with statute.

2 In any case, the duty advocated by Plaintiffs – a supposed “duty to start school later in the
3 day” – would not solve the problem of students walking to school in the dark during winter
4 months. The District is required by statute and code to provide a minimum number of
5 instructional hours each year. RCW 28A.150.220. Thus, if classes were started later in the
6 morning when there was more light, then students would be released later in the day – in the
7 dark. Moreover, adjusting the start time for one school in the District would require an
8 adjustment to the start and release times of all of the schools in the District, because the District
9 uses the same school busses for its high school, middle school, and grade schools. Plaintiffs’
10 argument illustrates why discretionary policy decisions about school start times and scheduling
11 are committed to the discretion of the District and cannot support a claim of negligence. The
12 Court should find as a matter of law that the Plaintiffs fail to state a claim here because: 1) the
13 allegation, taken as true, does not logically support a claim because starting classes later in the
14 day results in students being released in the dark hours, and 2) as a matter of law, the District
15 owed no duty to begin its school day whenever Plaintiffs believe it should have because that is
16 committed to the discretion of the school board.

15 **D. The District Owes No Duty to Provide Crossing Guards.**

16 By statute, Washington schools are permitted – but not required – to post crossing guards
17 at crosswalks near them. RCW 46.61.385 authorizes the appointment and operation of school
18 patrols but does not impose a duty to exercise the power. A school district has wide discretion in
19 the exercise of its powers and the establishment of school patrols is within its discretion. *See*
20 *Parents v. Seattle School Dist.*, 149 Wn.2d 660, 674, 72 P.3d 151 (2003) (regarding discretion).

21 Applying the general principle that schools are not required or able to supervise students
22 outside of their control, other jurisdictions considering the issue have found that school districts
23 are not liable for the absence of patrols. Affirming a judgment for the defendant public school
24 district where a kindergarten student was hit by a car while walking to school, the court in
Wright v. Arcade School District, 230 Cal. App. 2d 272, 40 Cal. Rptr. 812 (3d Dist. 1964), held

1 that the school district had no duty to provide a crossing guard at the intersection. In that case, as
2 here, a statute authorized but did not require establishment of school safety patrols. The court
3 said that there was no statutory obligation to provide protection to pupils en route between home
4 and school and that ordinarily, a person had no duty to take affirmative steps to protect another
5 from harm emanating from a third person.

6 In an action where a kindergarten student was injured walking home from school just
7 before noon, the court in *Jefferson County School Dist. v. Gilbert*, 725 P.2d 774, 35 Ed. Law
8 Rep. 294 (Colo. 1986), held that the school district was not negligent in failing to post crossing
9 guards during the late-morning time period when kindergarten students walked home from
10 school. The court stated that, even if the school district placed crossing guards there in the
11 afternoon, it did not follow that it also assumed a duty to do so in the morning. A recent case in
12 Arizona similarly found that a charter school had no duty to post crossing guards at a busy city
13 intersection near the school that many of its students had to cross to and from school.

14 Plaintiffs can point to no Washington authority that is contrary to the great weight of law,
15 nor is there any Washington authority holding that RCW 46.61.385 creates any mandate or duty.
16 Rather, the law is that a school district has wide discretion in the exercise of its powers and the
17 establishment of school patrols is within its discretion. *Parents v. Seattle School Dist.*, 149
18 Wn.2d at 674. As such, Plaintiffs fail to state a claim.

19 **E. The District Owes No Duty to Design, Maintain, or Control Traffic or**
20 **Prevent Collisions.**

21 It is axiomatic that a District cannot have a duty to do something that it has no power to
22 do. A school district is a political entity and a creature of statute. Pursuant to statute:

- 23 (1) The board of directors of each school district may exercise the following:
- 24 (a) The broad discretionary power to determine and adopt written policies not in
conflict with other law that provide for the development and implementation
of programs, activities, services, or practices that the board determines will:
- (i) Promote the education and daily physical activity of kindergarten
through twelfth grade students in the public schools; or
 - (ii) Promote the effective, efficient, or safe management and operation of
the school district;

1 (b) Such powers as are expressly authorized by law; and

2 (c) Such powers as are necessarily or fairly implied in the powers expressly
3 authorized by law.

4 RCW 28A.320.015.

5 The District has no purpose or authority to design, maintain or control traffic. Likewise,
6 a school district's purpose and authority gives it no power to prevent pedestrian accidents in
7 county crosswalks.

8 The Court should reject Plaintiffs' argument that the District owed a duty to warn the
9 County that the crosswalk in question contained technical deficiencies or to engage in traffic-
10 related activities beyond the purpose and powers granted to it by the legislature.

11 CONCLUSION

12 The District owed only one duty: to "employ ordinary care and to anticipate reasonably
13 foreseeable dangers so as to take precautions for protecting the children in its custody from such
14 dangers." *Wagenblast*, 110 Wn.2d at 856. Under that principle, as interpreted by the State
15 Attorney General and applied in other jurisdictions, the District owed no duty to students
16 travelling to school through a means of transportation that was not provided by the District.
17 Kitsap School District had no control over the route that the Plaintiffs chose to take on the
18 morning in question and had no ability to control what clothing Regina Monzon wore while
19 walking to school. The crosswalk was created by Kitsap County at its present location directly
20 in front of the school. Under the facts set forth in the Amended Complaint, the District cannot be
21 liable because it did not violate any duty that it owed to the Plaintiffs and the harm that they
22 suffered occurred while they were outside of the custody and control of the District.

23 For these reasons, the District respectfully urges the Court to enter its order dismissing
24 Central Kitsap School District from this matter, with prejudice, pursuant to Rule 12(b)(6), or, in
the alternative, to enter judgment pursuant to Rule 54(b) based on the allegations of the
Amended Complaint.

1 **CERTIFICATE OF SERVICE**

2 I, certify under penalty of perjury under the laws of the State of Washington, I caused
3 the original of the foregoing document to be filed with the Court via the Court's electronic filing
4 system, with a copy to be served on the following counsel of record:

5 Via U.S. Mail
Kenneth R. Friedman
6 James A. Hertz
1126 Highland Ave
7 Bremerton, WA 98337

8 Via U.S. Mail
David Apodaca
9 Apodaca Law Firm
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11 Via U.S. Mail
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14 Port Orchard, WA 98366-4676

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17 DATED this 19th day of August, 2015.

18
19 /s/Michael B. Tierney
20 Michael B. Tierney, WSBA #13662

EXHIBIT A

The Honorable Vicki L. Hogan

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

REGINA MONZON, individually, REUBEN
MONZON, legal guardian of J.M., a minor,

NO. 15-2-06328-1

Plaintiffs,

PROPOSED ORDER GRANTING
CENTRAL KITSAP SCHOOL DISTRICT
401'S MOTION TO DISMISS OR FOR
JUDGMENT ON THE PLEADINGS

vs.

COUNTY OF KITSAP, SANDRA
BLOECHL, and CENTRAL KITSAP
SCHOOL DISTRICT 401,

Defendants.

THIS MATTER having come on regularly before the undersigned Judge of the above
entitled Court based on Defendant Central Kitsap School District 401's Motion to Dismiss or for
Judgment on the Pleadings and the Court having reviewed the files and records herein, it is
hereby:

ORDERED that Defendant Central Kitsap School District 401's Motion to Dismiss or for
Judgment on the Pleadings is hereby GRANTED.

DATED this _____ day of September, 2015.

The Honorable Vicki L. Hogan

1 Presented by:

2 TIERNEY & BLAKNEY

3

4 By: _____

Paul Correa, WSBA No. 48312

5 Michael B. Tierney, WSBA No. 13662

Attorney for Defendant

6 Central Kitsap School District

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APPENDIX D

Judge: Honorable Vicki L. Hogan
Hearing Date: September 18, 2015
Hearing Time: 9:00 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

REGINA MONZON, individually, REUBEN
MONZON, legal guardian of J.M., a minor,

Plaintiffs,

-vs-

COUNTY OF KITSAP, SANDRA BLOECHL,
and CENTRAL KITSAP SCHOOL DISTRICT
401,

Defendants.

NO. 15-2-06328-1

KITSAP COUNTY'S RESPONSE TO
CENTRAL KITSAP SCHOOL
DISTRICT 401'S MOTION TO
DISMISS OR FOR JUDGMENT ON
THE PLEADINGS

I. INTRODUCTION

Defendant Kitsap County, by and through its attorneys, Ione S. George and Christy Palmer, Prosecuting Attorneys for Kitsap County, respectfully request that the Court deny Central Kitsap School District 401's ("the District") motion to dismiss. The District's motion relies upon factual assertions outside the pleadings and only mildly relevant case law to conclude that the District cannot be liable under any hypothetical set of facts. The Court should treat this motion as one for summary judgment and deny the District's requested relief as premature. The parties in this matter have not had a meaningful opportunity to obtain discovery

1 regarding the District's role and conduct involving the factual issues raised by this matter.
2 Kitsap County anticipates that further discovery may reveal a legally supported claim against
3 the District.
4

6 II. AUTHORITY

7 A CR 12(b)(6)

8 A trial court may only grant dismissal for failure to state a claim under CR 12(b)(6) if "it
9 appears beyond doubt that the plaintiff can prove no set of facts, consistent with the complaint,
10 which would entitle the plaintiff to relief."¹ In deciding a motion for dismissal pursuant to CR
11 12(b)(6), a court may consider hypothetical facts not part of the formal record.² To defeat a
12 12(b)(6) motion, a party must only present a set of facts that could conceivably be raised by the
13 complaint to support a legally sufficient claim.³ CR 12(b)(6) motions are granted only
14 "sparingly and with care."⁴
15

16
17 On a motion for dismissal pursuant to CR 12(b)(6), "if matters outside the pleading are
18 presented to and not excluded by the court, the motion shall be treated as one for summary
19 judgment" and disposed of as provided in CR 56, with all parties given reasonable opportunity
20 to present all material pertinent to such motion. CR 12(b)(7). Similarly, if matters outside the
21 pleadings are presented to and not excluded by the court on a motion for judgment on the
22 pleadings, the motion shall also be treated as one for summary judgment pursuant to CR 56. CR
23

24
25 ¹ *Haberman v. Washington Pub. Power Supply Sys.*, 109 Wn. 2d 107, 120, 744 P.2d 1032, 1046 (1987) amended,
109 Wn. 2d 107, 750 P.2d 254 (1988) (citing *Orwick v. Seattle*, 103 Wn.2d 249, 254, 692 P.2d 793 (1984)).

26 ² *Haberman* at 120 citing *Halvorson v. Dahl*, 89 Wn.2d 673, 675, 574 P.2d 1190 (1978).

27 ³ *Worthington v. Westnet*, 182 Wn. 2d 500, 505, 341 P.3d 995, 998 (2015) citing *San Juan v. No New Gas Tax*, 160
Wn.2d 141, 164, 157 P.3d 831 (2007).

28 ⁴ *Haberman* at 120 citing *Orwick*, 103 Wn.2d at 253.

1 12(c).

2 However, summary judgment shall be granted only if the moving party can show there is
3 no genuine issue as to any material fact and the moving party is entitled to judgment as a matter
4 of law. CR 56(c). If a party opposing summary judgment cannot present facts essential to justify
5 its opposition, the court may deny the motion or grant a continuance to allow for additional
6 discovery. CR 56(f).

7
8 **B. The District Presents Matters Outside the Pleadings**

9 The District's Motion contains the following unsupported factual assertions that are
10 outside the pleadings:

- 11 • The District has not assumed any undertaking.
- 12 • The District has no authority to tell students what to wear on their way to school.
- 13 • District schools are not organized as "uniform schools."
- 14 • Starting school later in the day would not solve the problem of students walking to
15 school in the dark during winter months.
- 16 • If classes were started later in the morning when there was more light, then students
17 would be released later in the day – in the dark.
- 18 • Adjusting the start time for one school in the District would require an adjustment to the
19 start and release times of all the schools in the District.
- 20 • The District uses the same school busses for its high school, middle school, and grade
21 schools.

22
23 **C. The District's Motion Should Be Treated As A Motion For Summary Judgment**
24 **Pursuant to CR 56 Which Requires Discovery Be Conducted**

25 While the District has framed its motion as a motion for dismissal under 12(b)(6) and
26 CR 54(b), the District presents facts and matters outside the pleadings which requires the Court
27
28

1 to treat this motion as one for summary judgment, under CR 56. As identified above, the
2 District's motion relies upon several factual assertions not supported by affidavit or declaration
3 that relate primarily to the existence of a duty of care. Consideration of these factual assertions
4 by the Court would give rise to a number of other matters outside the pleadings that this Court
5 should consider before determining whether dismissal is appropriate; all of which are subject to
6 significant ongoing discovery. Other such matters outside the pleadings include: (1) comments
7 made by District officials regarding their knowledge of exceptional dangers posed by inattentive
8 and reckless drivers in the collision area and efforts to alleviate these dangers,⁵ (2) District
9 policies requiring the superintendent to create procedures for the operation of a school safety
10 patrol,⁶ and (3) the District's admission that it failed to follow Washington law's safe walk
11 routes requirements.⁷ These matters all bear on whether the District is liable for plaintiffs'
12 injuries and should be considered by the Court. Accordingly, this motion should be treated as
13 one for summary judgment pursuant to CR 56.
14
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17 Considering the District's motion under the summary judgment standard, any ruling as
18 to the District's liability at this stage is premature. The District has only been a defendant in this
19 lawsuit for three months.⁸ Parties are still in the early stages of discovery.⁹ Kitsap County just
20 served the District with its first set of written discovery and the District's responses are not due
21 until on or about October 9, 2015.¹⁰ After responses are received, the parties will likely conduct
22 a 30(b)(6) deposition of the District. Specifically, the parties need additional discovery as to
23
24

25 ⁵ Declaration of Christine Palmer ("CMP Dec."), Exhibits A, B, and C.

26 ⁶ CMP Dec., Exhibit D.

27 ⁷ CMP Dec., Exhibit E.

28 ⁸ CMP Dec. ¶7.

⁹ Id.

¹⁰ Id.

1 following issues: (1) did the District provide bus transportation to the plaintiffs, (2) did the
2 District provide any kind of instructions or guidance regarding walking to school safely, (3) did
3 the District issue instructions to students/parents as to drop off and pick up procedures, (4) did
4 the District have a safety program in place, (5) did the District adopt policies or procedures
5 regarding transportation to school, (6) did the District consider the safety of students when it
6 established school start times, (7) was the subject crosswalk identified or marked on any safe
7 walk route plan or maps, and (8) did school authorities notify Kitsap County of any hazardous
8 conditions regarding the subject crosswalk, among other things. Until these factual questions are
9 explored through discovery, it would be premature to dismiss the District from this lawsuit.
10

11
12 **D. The Court Should Deny Dismissal Pursuant to CR 12(b)(6)**

13 Even if this Court declined to consider any facts outside of the pleadings, the District's
14 motion for dismissal pursuant to CR 12(b)(6) should be denied.

15
16 **1. The District Owed A Custodial Duty to Plaintiffs**

17 The District recognizes that it has a custodial duty to students, however, the District
18 claims that it can never be liable to a student who is not in its direct custody at the time of
19 injury. In support of this assertion, the District cites one Washington case from 1988,
20 *Wagenblast v. Odessa School District*, 110 Wn.2d 845, 758 P.2d 968 (1988). This case does not
21 answer the question at hand. It addresses an entirely different question -- whether a school can
22 require students to sign liability waivers for school-related activities.¹¹ The limitation that the
23 District offers as to its duty under Washington law does not actually exist in Washington case
24

25
26
27

¹¹ *Wagenblast* at 856.
28

1 law.¹²

2 It is well-settled case law that schools have a duty to exercise reasonable care to protect
3 students in its custody.¹³ This duty requires schools to “anticipate dangers which may
4 reasonably be anticipated, and to then take precautions to protect the pupils in its custody from
5 such dangers.”¹⁴ No Washington case has addressed, much less answered in the negative, the
6 question of whether a school district is liable for injuries, that were both foreseeable and
7 resulting from specifically-known dangers, incurred by a student walking in a school zone
8 crosswalk just steps from school.
9

10 In fact, the rule to be derived from Washington case law is that school districts are liable
11 for injuries caused by dangers that are known to the school district when the injury has a
12 sufficient nexus to the school, regardless of whether the school had direct custody at the time of
13 injury.¹⁵ In one particular case, a Washington court held that a school district owed a duty of
14 care to a student who was sexually assaulted by another student off school grounds.¹⁶ The court
15 held that the critical issue was whether the actual harm fell within a general field of danger
16 which should have been anticipated by the school.¹⁷
17

18 Here the District was directly aware that students were exposed to a significant risk of
19 harm by people driving recklessly and inattentively during drop off and pick up times just
20

21
22 ¹² The District also relies on an Attorney General Opinion from 1968. This opinion addresses whether school
23 districts are liable for injuries to students who are transported to school by their parents. The plaintiffs in this matter
24 were not transported to school by their parents. According to the complaint, they were walking.

25 ¹³ *N.L. v. Bethel School District*, 187 Wn. App. 460, 469, 348 P.3d 1237 (2015).

26 ¹⁴ *Id.* at 469 citing *McLeod v. Grant County School District No. 128*, 42 Wn.2d 316, 320, 255 P.2d 360 (1953).

27 ¹⁵ See *N.L. v. Bethel Sch. Dist.*, 187 Wn. App. 460, 469, 348 P.3d 1237, 1242 (2015) (school liable for sexual
28 assault of student at the hands of student attending another school when the school knew of the assailant’s disturbed
and aggressive behavior.); compared with *Coates v. Tacoma School District, No. 10*, 55 Wn.2d 392, 347 P.2d 1093
(1960) (school not liable for injuries sustained by student in collision that occurred several miles from school at
2:00 am on a non-school day when intoxicated driver hit a pole because there was insufficient nexus to the school).

¹⁶ *N.L.*, 187 Wn. App. at 469-70.

¹⁷ *Id.* at 470.

1 outside school doors.¹⁸ In this case, the notice to the District and the causal nexus are both
2 sufficient to establish a duty of care. In addition, there is no question that the District owed a
3 duty to the plaintiffs when they were in the District's custody. The plaintiffs were students of
4 the District and, therefore, were within the District's custody five days a week for several hours
5 each day. What exactly was the scope of the duty owed to students during those hours? It is
6 certainly plausible that the duty owed by the District during those times encompassed notifying
7 or instructing students regarding the known dangers which existed right outside school doors, or
8 adopting safe walking/transportation policies. Even if the plaintiffs were not in the District's
9 custody at the exact time of the injury, this does not render the District immune from any
10 liability for acts it should have undertaken to warn, guide, and assist students while the students
11 were within its custody.
12
13

14 **2. The District Owed A Duty To Protect Plaintiffs From Unreasonable Risks**
15 **Arising From Its Own Conduct**

16 The District's motion focuses exclusively on custodial and statutory duties and
17 disregards that a duty of care may arise in other circumstances. Under Washington law, every
18 actor whose conduct involves an unreasonable risk of harm to another bears a duty to exercise
19 reasonable care to prevent the risk from taking effect.¹⁹ A risk is "unreasonable" pursuant to this
20 principle if a reasonable person would have foreseen it.²⁰ The existence of a duty turns on the
21 foreseeability of the risk created.²¹
22

23 Discovery has just begun with respect to facts involving the District's conduct and
24

25 ¹⁸ CMP Dec., ¶2-4.

26 ¹⁹ *Minahan v. W. Washington Fair Ass'n*, 117 Wn. App. 881, 897, 73 P.3d 1019, 1027 (2003), *as corrected* (Oct.
14, 2003) (citing Restatement (Second) of Torts §321.).

27 ²⁰ *Id.* at 897.

28 ²¹ *Higgins v. Intex Recreation Corp.*, 123 Wn. App. 821, 837, 99 P.3d 421 (2004) (quoting *Rasmussen v. Bendotti*,
107 Wn. App. 947, 956, 29 P.3d 56 (2001)).

1 should deny the District's motion for dismissal because there exists several sets of facts under
2 which the District could be liable, all of which require further exploration through discovery.

3 Respectfully submitted this 16 day of September, 2015.

4
5 TINA R. ROBINSON
6 Kitsap County Prosecuting Attorney

7 

8 IONE S. GEORGE, WSBA No. 18236
9 CHRISTINE M. PALMER, WSBA No. 42560
10 Deputy Prosecuting Attorneys
11 Attorneys for Defendant Kitsap County

CERTIFICATE OF SERVICE

I, Batrice Fredsti, declare, under penalty of perjury under the laws of the State of Washington, that I am now and at all times herein mentioned, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the above document in the manner noted upon the following:

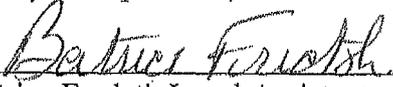
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2955 80th Ave SE, Suite 102
Mercer Island, WA 98040

SIGNED in Port Orchard, Washington this 16th day of September, 2015.


Batrice Fredsti, Legal Assistant
Kitsap County Prosecutor's Office
614 Division Street, MS-35A
Port Orchard WA 98366
Phone: 360-337-4992

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that SOPHEARY SANH, Legal Assistant, on the 30th day of October, e-filed (via email) with the Supreme Court of Washington the foregoing document:

1. Supplemental Brief of Petitioner Bethel School District

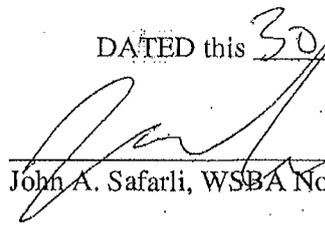
Additionally, JOHN A. SAFARLI, attorney, caused to be served a true and correct copy of the above via Hand Delivery, to the following:

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Counsel for Respondent N.L.

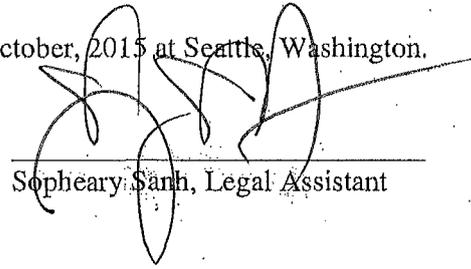
A copy of the above has been served upon the following counsel via regular U.S. mail:

Jerry J. Moberg
Jerry Moberg & Associates, P.S.
P.O. Box 130
124 3rd Avenue SW
Ephrata, WA 98823

DATED this 30 day of October, 2015 at Seattle, Washington.



John A. Safarli, WSBA No. 44056



Sopheary Sanh, Legal Assistant

OFFICE RECEPTIONIST, CLERK

To: Sopheary Sanh
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Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

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Subject: N.L. v. Bethel School District, Cause No. 91775-2

Case Name: N.L., Respondent, v. BETHEL SCHOOL DISTRICT, Petitioner.	Cause No. 91775-2 Attorney for: Respondent BETHEL SCHOOL DISTRICT
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