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Sarah Lindley

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VIOLENCE AND INJURY IN ILLINOIS SCHOOLS: STUDENTS DESERVE A REMEDY

SARAH LINDLEY*

INTRODUCTION

A developmentally disabled female student was sodomized by a male student on the bus while being transported home from school.¹ Homer Williams, the bus driver, failed to prevent or intervene in the sexual assault of the female student.² In her complaint against the school district, the victim alleged that the school board committed willful and wanton³ misconduct by failing to prevent or intervene in her sexual assault.⁴ The Appellate Court of Illinois affirmed the trial court's dismissal of the plaintiff's complaint, reasoning that the school board had immunity pursuant to the Tort Immunity Act.⁵ Further, in addressing section 34-84(a) of the Illinois School Code,⁶ which places an affirmative duty on school boards, through their agents, to maintain discipline among students, the court held that the School Code does not defeat immunity conferred upon public

* J.D. Candidate, June 2002

1. A.R. v. Chicago Bd. of Educ., 724 N.E.2d 6, 10 (Ill. App. Ct. 1999).

2. *Id.*

3. Holsapple v. Casey Community Unit Sch. Dist. C-1, 510 N.E.2d 499, 500 (Ill. 1987) (quoting Schneiderman v. Interstate Transit Lines, Inc., 69 N.E.2d 293, 300 (Ill. 1946)). The Supreme Court of Illinois has defined willful and wanton conduct as an intentional injury or act "committed under circumstances exhibiting a reckless disregard for the safety of others, such as failure, after knowledge of impending danger, to exercise ordinary care to prevent it . . ." *Id.*

4. A.R., 724 N.E.2d at 10.

5. Pursuant to the Local Governmental and Governmental Employees Tort Immunity Act, the school board was immune from liability for its negligent conduct. *Id.* at 11. 745 ILL. COMP. STAT. 10/4-102 (West 2000) provides in part that:

[n]either a local public entity nor a public employee is liable for failure to establish a police department or otherwise provide police protection service or, if police protection is provided, for failure to provide adequate police protection or service, failure to prevent the commission of crimes, failure to detect or solve crimes, and failure to identify or apprehend criminals.

6. 105 ILL. COMP. STAT. 5/34-84a (West 2000).

entities pursuant to the Tort Immunity Act.⁷

Compare the previous Illinois case to a similar matter in New Jersey, where a student riding on a school bus was blinded in one eye by a pellet shot by a fellow student.⁸ The Supreme Court of New Jersey asserted that the school board had failed to exercise "reasonable supervisory care" for the safety of its students.⁹ In affirming the trial court's finding for the plaintiff, the court reasoned that in an action against a board of education for personal injury damages, "ordinary principles of negligence" should apply.¹⁰

Clearly, the legal analysis and reasoning in the Illinois and New Jersey cases illustrates that both jurisdictions maintain opposing views of municipal liability. This Comment explores Illinois municipal liability with respect to education and the duty to supervise students, ultimately proposing a change in the current standard. Part I begins with an analysis of immunity in Illinois, both past and present. It also examines the current willful and wanton exception to immunity. Part II explores educational liability in South Carolina, New Jersey, New York, and California, and compares their respective standards to the current Illinois law. Part III proposes that Illinois adopt a combination of South Carolina and New York law, namely a gross negligence standard with an emphasis on foreseeability.

I. SOVEREIGN IMMUNITY IN ILLINOIS

The Illinois courts extended the concept of sovereign immunity to schools in 1898.¹¹ However, the Illinois Supreme

7. Section 5/34-84(a) states that "[teachers] stand in the relation of parents and guardians to the pupils." Thus, teachers are immune from liability resulting from negligent supervision, unless willful and wanton conduct is plead and proven. 105 ILL. COMP. STAT. 5/34-84a.

8. Jackson v. Hankinson, 238 A.2d 685, 685 (N.J. 1968).

9. *Id.* at 687.

10. *Id.* The court refused to apply the concept of "active wrongdoing," which emphasized the notion that municipalities should be immune from tort responsibility. *Id.* The court noted that "there has been a shift towards frank recognition that municipal entities, along with all or others, should justly be held accountable for injuries resulting from their tortious acts and omissions under ordinary principles of negligence . . ." *Id.* at 688. The court also emphasized that the relationship between students and school authorities is not voluntary; rather, students are required by law to attend school. *Id.* Thus, school boards are obligated to take the reasonable precautions necessary to ensure the safety and well-being of their students, and if a school board's negligence causes a child to be injured, it should be held accountable in the same manner as other tortfeasors. *Id.*

11. Kinnare v. City of Chicago, 49 N.E. 536, 537 (Ill. 1898). In *Kinnare*, the Illinois Supreme Court held that the Chicago Board of Education was immune from liability for the death of an employee who had fallen from the roof of a school building because the Board failed to provide scaffolding and other

Court abolished that same immunity in 1959.¹² The Illinois Constitution formally adopted this abolition of sovereign immunity in 1970.¹³ Specifically, article 13, section 4 provides that “[e]xcept as the General Assembly may provide by law, sovereign immunity in this state is abolished.”¹⁴ However, in 1965 the legislature passed the Local Government and Governmental Employers Tort Immunity Act.¹⁵ As a result, legislation enacted to “protect local public entities and public employees from liability arising from the operation of government” superseded the court’s abolishment of sovereign immunity.¹⁶

In 1998, the legislature amended section 3-108¹⁷ of the Tort Immunity Act to exclude willful and wanton misconduct.¹⁸

safeguards. *Id.* The court reasoned that school boards, like other state agencies, should not be liable for the torts or negligence of its agents. *Id.*

12. *Molitor v. Kaneland Community Unit Dist. No. 302*, 163 N.E.2d 89, 96 (Ill. 1959). In *Molitor*, the Illinois Supreme Court abolished the notion of sovereign immunity with respect to school boards and school districts. *Id.* The plaintiff brought an action against the school district for personal injuries sustained by his son when the school bus he was riding in exploded and burned, as a result of the bus driver’s negligence. *Id.* at 89. The court reasoned that in contemporary times, the legal system should not regress to medieval premises of liability. *Id.* at 96. In response to the defendants’ notion that immunity preserves and protects public funds and property, the court stated “[w]e do not believe that in this present day and age, when public education constitutes one of the biggest businesses in the country, that school immunity can be justified on the protection-of-public-funds theory.” *Id.* at 94. The court also asserted that abolishing immunity might decrease the frequency of school bus accidents, because school districts will be encouraged to exercise greater care in the selection and supervision of bus drivers. *Id.* at 95.

13. David A. Decker, *When the King Does Wrong: What Immunity Does Local Government Deserve?*, 86 ILL. B.J. 138, 140 (1998).

14. *Id.* (citing ILL. CONST. of 1970, art. XIII, § 4.)

15. 745 ILL. COMP. STAT. 10/1-101 et seq. (West 2000).

16. 745 ILL. COMP. STAT. 10/1-101.1 (West 2000).

17. 745 ILL. COMP. STAT. 10/3-108 (West 2000). The statute reads as follows:

(a) Except as otherwise provided in this Act, neither a local public entity nor a public employee who undertakes to supervise an activity on or the use of any public property is liable for an injury unless the local public entity or public employee is guilty of willful and wanton conduct in its supervision proximately causing such injury.

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

18. In 1997, the governor vetoed this amendment for fear that an increase in accountability for willful and wanton supervision would “open the floodgates” for lawsuits and “risk eroding the tort immunity that has

However, the legislature also amended section 1-210,¹⁹ which defines “willful and wanton conduct.” Particularly, section 1-210 of the Illinois Statute reads as follows:

“[w]illful and wanton conduct” as used in this Act means a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property. This definition shall apply in any case where a “willful and wanton” exception is incorporated into any immunity under this Act.²⁰

The legislature has not extended this amendment to all sections of the Tort Immunity Act, and the Illinois Supreme Court cautioned courts “not to depart from the plain language of the Tort Immunity Act by reading into it exceptions, limitations, or conditions that conflict with express legislative intent.”²¹

Prior to the 1998 amendment of section 3-108 of the Tort Immunity Act, educators were virtually immune from liability if the cause of action was predicated on the duty to supervise. However, not all school district defendants sought immunity under the Act.²² Rather, much of the case law in Illinois centers on the court’s interpretation of applicable provisions of the Illinois School Code,²³ which the legislature enacted in 1961. Particularly, sections 5/24-24²⁴ and 5/34-84a²⁵ pertain to liability that stems from the duty to supervise. Both sections state in part that “[i]n all matters relating to the discipline in and conduct of the schools and the school children, [the teachers] stand in the relation of

traditionally been afforded municipalities and that is essential to the effective delivery of government services.” Decker, *supra* note 13, at 143-44. This premise seemingly draws from *Russell v. Men of Devon*, a 1788 English case in which government tort immunity was established. 100 Eng. Rep. 359 (1788). In *Russell*, the court reasoned that “it is better that an individual should sustain an injury than that the public should suffer an inconvenience.” *Id.* at 362.

19. 745 ILL. COMP. STAT. 10/1-210 (West 2000).

20. *Id.*

21. A.R. v. Chicago Bd. Of Educ., 724 N.E.2d 6, 13 (Ill. App. Ct. 1999).

22. *Henrich v. Libertyville High Sch.*, 683 N.E.2d 135, 138-39 (1997). For example, in *Henrich*, the plaintiff cited to several Illinois Supreme Court cases that addressed the willful and wanton exemption of sections 24-24 and 34-84a of the School Code, alleging that in those matters the defendants were only entitled to immunity as to negligent supervision, but not as to willful and wanton misconduct. *Id.* The court rejected plaintiff’s argument. *Id.* at 139. It reasoned that the cited cases did not address the applicability of the Tort Immunity Act, because the defendants in the cited cases did not avail themselves of immunity under the Act. *Id.*

23. 105 ILL. COMP. STAT. 5/1-1 et seq. (West 2000).

24. *See* 105 ILL. COMP. STAT. 5/24-24 (West 2000) (applying to cities of 500,000 or less).

25. *See* 105 ILL. COMP. STAT. 5/34-84a (West 2000). (applying to cities of 500,000 or more).

parents and guardians to the pupils."²⁶ Thus, to impose liability on educators pursuant to the aforementioned statutes, a plaintiff must prove willful and wanton misconduct.²⁷ The Supreme Court of Illinois has held that the *in loco parentis* relationship extends to all activities associated with the school, and applies in nondisciplinary as well as disciplinary matters.²⁸

The Illinois courts offered several policy reasons in support of the current standard. For example, it has been asserted that the School Code reflects a legislative intent that emphasizes the *in loco parentis* relationship as necessary for a successful learning environment. Thus, to hold teacher and school districts liable for ordinary acts of negligence would seriously jeopardize this relationship.²⁹ However, the Illinois Supreme Court has somewhat limited this argument through its 1993 narrowing of parental immunity.³⁰ The supreme court also indicated that a higher standard of liability would constrain educators, because they would be in constant fear of impending lawsuits.³¹ The Illinois Supreme Court noted that consequently, the impending nature of such actions would drain teacher time and possibly discourage persons from pursuing education as a career.³² Still, the majority view has not gone uncriticized. Judges have written strong dissenting opinions condemning school boards for their unwillingness to assume responsibility, along with criticism of the court's strict interpretation of willful and wanton misconduct.³³

26. *Id.* See also 105 ILL. COMP. STAT. 5/24-24 (2000).

27. See *Kobylanski v. Chicago Bd. of Educ.*, 347 N.E.2d 705, 709 (Ill. 1976) (holding that both statutes were intended to confer the status of *in loco parentis* upon educators). Thus, since parents are only liable to children for willful and wanton misconduct, teachers should not be subjected to liability stemming from mere negligence. *Id.*

28. *Hopwood v. Elmwood Community High Sch. Dist.* 322, 525 N.E.2d 247, 248 (Ill. App. Ct. 1988). See also *Montague v. Sch. Bd. of Thornton Fractional Township North High Sch. Dist.* 215, 373 N.E.2d 719, 722 (Ill. App. Ct. 1978) (holding that a teacher had not acted willfully and wantonly by positioning a vaulting horse too high thereby causing a student injury).

29. *Gerrity v. Beatty*, 373 N.E.2d 1323, 1325 (Ill. 1978).

30. *Cates v. Cates*, 619 N.E.2d 715, 729 (Ill. 1993). In *Cates*, the supreme court held that a child may recover against a parent for negligence except when the conduct is inherent to the parent-child relationship. *Id.* Accordingly, the court fashioned a new test for immunity, which centered on whether the alleged conduct involved parental discretion, discipline, and supervision or care of the child. *Id.*

31. *Thomas v. Chicago Bd. of Educ.*, 395 N.E.2d 538, 541 (Ill. 1979).

32. *Id.*

33. See *Booker v. Chicago Bd. of Educ.*, 394 N.E.2d 452, 455-56 (Ill. App. Ct. 1979) (Simon, J., dissenting). The appellate court conceded that a teacher may never maintain total control over a classroom; however,

[a]n acceptable school system requires that a board of education assume responsibility for protecting students who receive such threats and report them to the school authorities . . . [and a] jury could reasonably

Subsequent to the enactment of the School Code, courts were forced to differentiate between it and the Tort Immunity Act. Unfortunately for plaintiffs, the Tort Immunity Act took precedence.³⁴ Thus, when the Tort Immunity Act applied, the minimal relief granted to plaintiffs through the School Code was destroyed. Upon reaching that conclusion the Illinois Supreme Court conceded that:

[w]e realize that our decision may be perceived as potentially leading to harsh results in that students injured during supervised activities in public schools will no longer be able to recover from a school district even if the school district engaged in willful and wanton misconduct related to the supervision of the activity.³⁵

Although the legislature has limited specific sections of the Tort Immunity Act to willful and wanton misconduct, the premise that the Tort Immunity Act takes precedence over the School Code continues to dominate, and has been extended to additional sections of the Act.³⁶ Apparently, if school board defendants present a theory of immunity pursuant to the Tort Immunity Act,

find that the teacher's conduct was wanton, that she recklessly abandoned her duty to safeguard the plaintiff and exhibited a willful disregard for the plaintiff's safety by failing to recognize and prevent the foreseeable and imminent danger that the extortionist would carry out her threats if presented with an opportunity to do so.

Id. See also *Grant v. Bd. of Trustees of Valley View Sch. Dist.*, 676 N.E.2d 705, 709 (1997) (Breslin, J., dissenting) (asserting that defendant school board's failure to alert mother of suicide victim of the serious risk that victim posed to himself amounted to willful and wanton conduct, and should have been question for jury).

34. *Henrich v. Libertyville High Sch.*, 683 N.E.2d 135, 140 (Ill. App. Ct. 1997). In *Henrich*, the appellate court affirmed the trial court's dismissal of plaintiff's claim for failure to state a cause of action, because the school board defendant was immune from liability pursuant to section 3-108(a) of the Tort Immunity Act. *Id.* The court maintained that one of the purposes of the Tort Immunity Act was to provide immunity to "local public entit[ies]" such as school districts. *Id.* at 139. Moreover, the court concluded that the statutes were to be interpreted independently of each other. *Id.* at 140. Thus, even though the School Code did provide immunity for willful and wanton conduct, section 10/3-108(a) of the Tort Immunity Act did not. *Id.* Because the statutes were to be interpreted independently, the defendant could avail itself of the immunity afforded by the Tort Immunity Act. *Id.*

35. *Id.*

36. See, e.g., *D.M. v. Nat'l Sch. Bus Serv., Inc.*, 713 N.E.2d 196, 198 (Ill. App. Ct. 1999). The plaintiff was assaulted while riding home from school. *Id.* His complaint alleged that the school district had knowledge of the assailant's previous attack on the victim; thus, the district willfully and wantonly failed to protect plaintiff from danger. *Id.* The court noted that even though section 3-108(a) of the Tort Immunity Act had expressly narrowed the scope of immunity to willful and wanton misconduct, section 2-201 of the School Code had not, and the "amendment did not affect the supreme court's conclusion that the Tort Immunity Act preempts the School Code . . ." *Id.* at 202.

plaintiffs will not recover.³⁷ This notion is especially ironic considering that in 1959 the supreme court, in eradicating sovereign immunity in Illinois, concluded that "the rule of school district tort immunity is unjust, unsupported by any valid reason, and has no rightful place in modern day society."³⁸

The courts have created a foundation of analysis with respect to willful and wanton misconduct in the context of the Illinois School Code. Acknowledging that willful and wanton misconduct is difficult to prove, courts have been consistently stringent in interpreting behavior that is alleged to fall within the parameters of the School Code's only immunity exception.³⁹ Rather, only in a limited number of instances have the courts been willing to apply the willful and wanton exception.⁴⁰

37. See *A.R. v. Chicago Bd. of Educ.*, 724 N.E.2d 6, 10 (Ill. App. Ct. 1979) (holding that the plaintiff, who had been sodomized by a male student on the bus ride home, had failed to state a cause of action, because the plaintiff's claim was predicated on the failure of the defendant to prevent one student from committing a crime against another, which fell under section 4-102 of the Tort Immunity Act).

38. *Molitor v. Kaneland Community Unit Dist. No. 302*, 163 N.E.2d 89, 96 (Ill. 1959).

39. See, e.g., *Templar v. Decatur Pub. Sch. Dist.*, 538 N.E.2d 195, 197 (Ill. App. Ct. 1989). In *Templar*, the plaintiff experienced permanent, partial loss of vision in one eye as a result of being hit in the eye by a male student while waiting for the school doors to open. *Id.* The plaintiff's father had telephoned the administration four times regarding the behavior of the male student who eventually assaulted his daughter. *Id.* The court held that no evidence of willful and wanton misconduct existed and affirmed the trial court's directed verdict for the school board defendant. *Id.*

In *Poynter v. Kankakee Sch. Dist. No. 111*, the plaintiff brought an action to recover for injuries received as a result of a riot that erupted at school. 370 N.E.2d 667, 668 (Ill. App. Ct. 1977). The plaintiff alleged that the defendant school board had knowledge of an impending disturbance and failed to take steps to avoid the riot and protect its students from the consequences of a potential riot. *Id.* The principal of the school had received information that on a particular day there would be a racial altercation between black and white students. *Id.* at 669. To prevent the impending riot, the principal stationed himself in the parking lot to prohibit an assembly of students in that area. *Id.* However, he did not ask or call for the assistance of other faculty members or the police. *Id.* The court held that the plaintiff failed to allege any willful and wanton conduct on the part of the defendants. *Id.* at 670.

In *Booker v. Chicago Bd. of Educ.*, the plaintiff was physically assaulted by her school classmates in the bathroom. 394 N.E.2d 452, 453 (Ill. App. Ct. 1979). Her teacher had been told that these particular classmates had threatened the victim with physical harm unless she made payments of money to them. *Id.* With this knowledge, the teacher appointed as monitor the student that the victim had named as the leader of the classmates who had threatened her. *Id.* When the victim was inside the bathroom, she was physically assaulted by a group of classmates. *Id.* The victim's complaint against the school board was dismissed for failure to state a cause of action. *Id.* at 455.

40. See *Gammon v. Edwardsville Community Unit Sch. Dist. No. 7*, 403 N.E.2d 43, 46 (Ill. App. Ct. 1980) (holding that the school district had

Both the Illinois Supreme Court and Illinois Appellate Court have offered several definitions,⁴¹ as well as requirements, of willful and wanton misconduct.⁴² The courts have also strongly emphasized conduct that does not fall within their willful and wanton definitions.⁴³ For example, simply alleging a failure to supervise on the part of educators or administrators will not satisfy the willful and wanton exception.⁴⁴ Moreover, teachers are not expected to anticipate and guard against a student's sudden

committed willful and wanton misconduct when a counselor had been warned of a classmate's threats to the victim but failed to respond to the warning, which resulted in the student being injured when struck in eye by the same classmate); *Hadley v. Witt Unit Sch. Dist.* 66, 462 N.E.2d 877, 881 (1984) (holding that willful and wanton misconduct was at issue when teacher left students unsupervised while they participated in a dangerous experiment that involved hammering metal).

In *Barth v. Bd. of Educ. of the City of Chicago*, an eleven-year-old male student was injured while playing in the schoolyard. 490 N.E.2d 77, 79 (Ill. App. Ct. 1986), *overruled by In re Chicago Flood Litig.*, 680 N.E.2d 265 (Ill. 1997). He was taken to the school office where his illness was apparent. *Id.* The school secretary, after some delay, contacted his mother, who asked that the boy be taken to the hospital. *Id.* Doctors discovered a blood clot on the boy's brain that had caused severe physical and mental damage, due to the delay in treatment. *Id.* at 80. The court held that the actions of the school were willful and wanton. *Id.* at 84.

41. See *Holsapple v. Casey Community Unit Sch. Dist.*, 510 N.E.2d 499, 500 (Ill. App. Ct. 1979) (quoting *Schneiderman v. Interstate Transit Lines, Inc.*, 69 N.E.2d 293, 300 (1946)). The Appellate Court defined willful and wanton misconduct as an "intentional injury or an act 'committed under circumstances exhibiting a reckless disregard for the safety of others, such as a failure, after knowledge of impending danger, to exercise ordinary care to prevent it . . .'" *Id.*; *Knapp v. Hill*, 657 N.E.2d 1068, 1073 (Ill. App. Ct. 1995) (quoting *Burke v. 12 Rothschild's Liquor Mart*, 593 N.E.2d 522 (1992)). The court held that to establish willful and wanton misconduct, the plaintiff must allege consciousness on part of the teacher, "either with knowledge of the serious danger to others involved in it or with knowledge of facts which would disclose this danger to any reasonable man." *Id.*

42. See *Knapp*, 657 N.E.2d at 1074 (asserting that a plaintiff must establish that the teacher was "aware or should have known that the lack of supervision posed a high probability of serious harm or an unreasonable risk of harm.").

43. *Id.* at 1073. The plaintiff had to allege more than "mere inadvertence, incompetence, unskillfulness, or a failure to take precautions" to establish willful and wanton misconduct on the part of the school district. *Id.* (quoting *Burke*, 593 N.E.2d at 522).

44. *Holsapple*, 510 N.E.2d at 500. In affirming the trial court's dismissal of the plaintiff's complaint, the court held that the plaintiff had not sufficiently alleged willful and wanton misconduct. *Id.* at 501. The court noted that even though a gathering of students produced a certain risk of injury, it did not create such a high likelihood of injury so as to make the failure to supervise willful and wanton misconduct. *Id.* at 500. Further, "a teacher cannot be required to watch the students at all times while in school, on the grounds, or engaged in school-related activity." *Id.* at 500-01 (quoting *Mancha v. Field Museum of Natural History*, 283 N.E.2d 899, 902 (1972)).

behavior.⁴⁵

Arguably the aforementioned interpretations and definitions coincide with interpretations of willful and wanton conduct in other contexts. Even if the definitions are similar, the application is distinct. Nevertheless, judges have in most cases failed to find willful and wanton misconduct on the part of teachers and administrators.⁴⁶ Thus, a potential plaintiff, injured as the result of the negligence of teachers or school administrators, has a very small chance of establishing any liability. In fact, a plaintiff's complaint will most likely not survive the pleadings.

Some plaintiffs have alternatively attempted to establish a special duty exception,⁴⁷ which imposes liability upon a public entity that is otherwise immune pursuant to the Tort Immunity Act.⁴⁸ However, courts are reluctant to find that this special duty of care applies to relationships between students and teachers or administrators.⁴⁹

School violence statistics are helpful and potentially influential when assessing whether educators had knowledge or were aware of impending violence or harm to students. In 1995, the Illinois State Board of Education published a report on school

45. *Knapp*, 657 N.E.2d at 1074. The court maintained that a teacher cannot supervise each and every child at all times while in school or while engaged in a school-related activity. *Id.* (quoting *Albers v. Community Consol. Sch.*, 508 N.E.2d 1252 (1987)). The general potential for danger with groups of children is not sufficient standing alone to sustain a claim for willful and wanton misconduct. *Id.*

46. See cases cited *supra* in notes 39-40.

47. *Thames v. Bd. of Educ.*, 645 N.E.2d 445, 448 (Ill. App. Ct. 1994). The Court outlined the four elements necessary to establish a special duty:

1. the entity was uniquely aware of the particular danger or risk to which the plaintiff was exposed;
2. the injury was caused by specific acts or omissions on the part of the entity;
- 3 the specific acts or omissions were affirmative or willful in nature; and
4. injury occurred while the plaintiff was under the direct and immediate control of the entity's employees or agents.

Id. at 448-49.

48. *Lawson v. City of Chicago*, 662 N.E.2d 1377, 1389 (Ill. App. Ct. 1996).

49. See *Thames*, 645 N.E.2d at 452 (rejecting finding that board's alleged knowledge that weapons were routinely brought into schools did establish an awareness that the plaintiff was in danger, but rather only a general knowledge of possible danger to all students). See also *Lawson*, 662 N.E.2d at 1377. In *Lawson*, the court held that a school board that allegedly permitted armed persons on the premises did not owe decedent a special duty of care; rather, the board's duty to protect the decedent was the same as its duty to protect all individuals who were lawfully on the premises. *Id.* at 1390. The court reasoned that there was no evidence that the board knew a particular student was in possession of a gun on the premises, or that the decedent was in danger of being shot by that student. *Id.* at 1389.

violence that exposed some alarming statistics.⁵⁰ The report stated that school violence was increasing, and more students were getting into trouble due to violent or potentially violent behavior.⁵¹ For instance the report indicated the students surveyed in 1988 and 1989 only 1,573 were suspended for assault or battery, as opposed to 5,840 in 1993 and 1994.⁵²

The report also noted that the most compelling statistics were from the Illinois Department of Health, which indicated that in 1993 homicide was the leading cause of death for young people between the ages of 15 and 19.⁵³ The trend in teen violence is further evidenced by the fact that teen murders have doubled in the last ten years. This trend is even more alarming given that within the next ten years the number of youths between the ages of 15 and 19 is expected to increase by twenty-three percent, thus, increasing the potential for youth violence and youthful victims.⁵⁴

Clearly, teachers and administrators have easy access to this statistical information. Thus, they are on constructive notice that violence in their schools is significantly increasing and their students are becoming increasingly more violent. Arguably, this knowledge should create a greater duty on the part of teachers and educators, leading to a safer learning environment for students.

II. MUNICIPAL LIABILITY STANDARDS IN OTHER JURISDICTIONS

The Illinois Legislature, as well as the Illinois courts, can look to other jurisdictions for a template of a different, more effective

50. ILLINOIS STATE BOARD OF EDUCATION, SAFE AT SCHOOL . . . A PUBLIC PROMISE: RECOMMENDATIONS FOR RESTORING SAFETY AND ORDER IN ILLINOIS SCHOOLS 1 (1995).

51. *Id.* In a 1995 Illinois Youth Risk Behavior Survey of students in grades 9-12, twelve percent of male and two percent of female students had carried a gun on one or more of the past thirty days. *Id.* at 19. Nine percent of students had carried a weapon on school property at least once in the previous thirty days. *Id.* Over twenty percent of all students, and thirty-three percent of male students reported carrying some type of weapon at least once in the past thirty days. *Id.* Further, this statistic was the same for the state as a whole as when Chicago was excluded from the calculation. *Id.* Six percent of students had not attended school at least once in the past thirty days because they felt unsafe. *Id.* Nine percent of students reported being threatened or injured with a weapon on school property at least once in the past twelve months. *Id.* In addition, data reported by 886 Illinois School Districts indicated that students were arrested, suspended, expelled, or otherwise disciplined 4,645 times for weapon use or possession, and 4,898 times for acts of violence against teachers. *Id.* In addition, 9,810 disciplinary actions were taken as a result of illegal gang activity, and there were 51,594 reported acts of violence against students. *Id.* A similar survey was compiled in 1991 by the Illinois Criminal Justice Information Authority that yielded similar results. *Id.*

52. *Id.* at 20.

53. *Id.* at 21.

54. *Id.* at 21.

standard of municipal liability in education. Part II of the Comment focuses its analysis on the municipal liability standards in other jurisdictions, specifically South Carolina, New Jersey, New York, and California. Each of the aforementioned states has a different standard of educational liability that is more lenient than the current willful and wanton standard in Illinois.

A. South Carolina

South Carolina has a “gross negligence” standard of municipal liability, which has been codified by statute.⁵⁵ When governmental entities exercise their duty to supervise, protect, or control in a grossly negligent manner, they can be held accountable for student injuries.⁵⁶ The South Carolina courts have defined gross negligence as the failure to exercise “slight care.”⁵⁷ This gross negligence standard provides a limited waiver of a school board’s governmental immunity.⁵⁸ A review of South Carolina case law shows that the gross negligence standard is more advantageous to injured plaintiffs than the Illinois willful and wanton⁵⁹ standard.⁶⁰ Further, it does not subject school board defendants to unreasonable liability.⁶¹

55. S.C. CODE ANN. § 15-78-60(25). Section 15-78-60(25) of the South Carolina Tort Claims Act states that:

[t]he governmental entity is not liable for a loss resulting from responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner.

Id.

56. *Clyburn v. Sumter County Sch. Dist.* 17, 429 S.E.2d 862, 865 (S.C. Ct. App. 1993).

57. *Doe v. Orangeburg County Sch. Dist. No. 2*, 495 S.E.2d 230, 224 (S.C. Ct. App. 1998). The South Carolina courts have also defined gross negligence as the “absence of slight care that is necessary under the circumstances,” and “where a person is so indifferent as to his conduct as not to give slight care to what he is doing.” *Clyburn*, 429 S.E.2d at 865.

58. Cary Silverman, *School Violence: Is it Time to Hold School Districts Responsible for Inadequate Safety Measures?*, 145 W. ED. L. REP. 535, 551 (2000).

59. The Illinois Appellate Court defined willful and wanton misconduct as an “intentional injury or an act committed under circumstances exhibiting a reckless disregard for the safety of others, such as failure, after knowledge of impending danger, to exercise ordinary care to prevent it.” *Holsapple*, 510 N.E.2d at 500.

60. *See Doe*, 495 S.E.2d 230 (asserting that the school board demonstrated gross negligence when a male student, who had previously fondled female students, sexually assaulted the victim when the teacher left them alone); *Duncan v. Hampton County Sch. Dist. #2*, 517 S.E.2d 449 (S.C. Ct. App. 1999) (affirming the trial court’s finding against the school board defendant that demonstrated gross negligence when it left unsupervised two mentally handicapped male students who sexually abused the victim).

61. *See Etheredge v. Richland Sch. Dist. One*, 534 S.E.2d 275 (S.C. Ct. App.

A principal advantage of the gross negligence standard is the likelihood of a jury trial.⁶² Conversely, Illinois courts dismiss countless complaints for failure to state a cause of action.⁶³ The Illinois courts should not be so willing to dismiss claims made against school districts.⁶⁴ Early dismissal deprives an injured student plaintiff of an opportunity to have a jury trial, and denies plaintiffs a remedy for their injuries.⁶⁵ The gross negligence standard, on the other hand, affords a jury, as opposed to a judge, with an opportunity to determine whether the alleged negligent conduct renders the school board liable. Policy favors the gross negligence standard because the question of school board liability is more appropriately a question of fact for a jury rather than a question of law for a judge.

B. New Jersey

New Jersey's school districts are subject to liability pursuant to ordinary principles of negligence.⁶⁶ Particularly, New Jersey has experienced a shift towards the recognition that municipal entities should be held accountable for injuries pursuant to principles of common law negligence.⁶⁷ The New Jersey Supreme Court emphasized that the teacher-student relationship is not voluntary, but rather one that is compelled by law.⁶⁸ Therefore, school authorities are obligated to take the precautions necessary

2000) (holding that the school district was not liable for the wrongful death of the decedent, because the school district had no direct knowledge or notice of the animosity between the students).

62. See *Grooms v. Marlboro County Sch. Dist.*, 414 S.E.2d 802 (S.C. Ct. App. 1992) (holding that whether the school district demonstrated gross negligence when mentally handicapped student was assaulted while the janitor watched was a question of fact for the jury); *Woodell v. Marion Sch. Dist. One*, 414 S.E.2d 794 (S.C. Ct. App. 1992) (holding that whether the plaintiff student's injury resulted from the alleged grossly negligent supervision was a question of fact for the jury).

63. See *Henrich v. Libertyville High Sch.*, 683 N.E.2d 135, 140 (Ill. App. Ct. 1997) (holding that plaintiff's complaint failed to state a cause of action); *D.M. v. Nat'l School Bus Serv., Inc.*, 713 N.E.2d 196, 202 (Ill. App. Ct. 1999) (holding that plaintiff's complaint failed to state a cause of action because Section 2-201 of the Tort Immunity Act afforded the school district immunity); *A.R. v. Chicago Bd. of Educ.*, 724 N.E.2d 6, 10 (Ill. App. Ct. 1999) (holding that plaintiff's complaint failed to state a cause of action, because the school board defendant was immune pursuant to Section 4-102 of the Tort Immunity Act); *Poynter v. Kankakee School Dist. No. 111*, 370 N.E.2d 667, 670 (Ill. App. Ct. 1977) (holding that plaintiff failed to allege willful and wanton conduct).

64. Landra Ewing, *When Going to School Becomes an Act of Courage: Students Need Protection From Violence*, 36 BRANDEIS J. FAM. L. 627, 641 (1998).

65. *Id.*

66. *Jackson v. Hankinson*, 238 A.2d 685, 688 (N.J. Sup. Ct. 1968).

67. *Id.*

68. *Id.*

to ensure safe learning environments for students and teachers.⁶⁹ Likewise, by forcing students to attend school, students should be able to safely rely on security measures implemented by the schools.⁷⁰

New Jersey also acknowledges the *in loco parentis* nature of the teacher-student relationship.⁷¹ The Illinois courts recognize this relationship as well; however, the Illinois interpretation limits rather than expands liability.⁷² Further, Illinois and New Jersey courts both recognize the impulsivity of children, yet both courts perceive its implications differently. New Jersey concedes that teacher supervision can prevent impulsive behavior in children.⁷³ Illinois, on the other hand, asserts that teachers should not be expected to guard against impulsive student behavior.⁷⁴

69. *Id.* The duty to supervise goes beyond the duty to supervise against the criminal acts of third parties. See *Sutphen v. Benthian*, 397 A.2d 709 (N.J. Super. Ct. App. Div. 1979) (reversing trial court's finding that the defendant school district had no duty to supervise a floor hockey game in which plaintiff was injured); *Law v. Newark Bd. of Educ.*, 417 A.2d 560 (N.J. Super. Ct. App. Div. 1980) (holding that defendant school board had a duty to supervise students who were run over by a city fire truck while they were participating in a recreational program administered by the board).

70. *Ewing*, *supra* note 64, at 643.

71. *Titus v. Lindberg*, 228 A.2d 65, 69 (N.J. Sup. Ct. 1967). By nature of the teacher-student relationship, teachers are entrusted with a duty to supervise students. *Id.* The failure to exercise this duty with reasonable care will result in liability on behalf of both the teacher and the school board. *Id.* In recognizing the significance of the teacher-student relationship the New Jersey Supreme Court stated that:

[t]he duty of school personnel to exercise reasonable supervisory care for the safety of students entrusted to them, and their accountability for injuries resulting from failure to discharge that duty, are well recognized in our State and elsewhere.

Id. at 68.

72. 105 ILL. COMP. STAT. 5/34-84(a); 105 ILL. COMP. STAT. 5/24-24. Section 5/34-84(a) and Section 5/24-24 of the Illinois School Code state that "teachers stand in the relation of parents and guardians to pupils." *Id.* See *Kobylanski v. Chicago Bd. of Educ.*, 347 N.E.2d 705, 708 (Ill. 1976) (recognizing that the teacher-student relationship is cloaked with willful and wanton immunity; therefore, teachers are immune from liability resulting from negligent supervision, unless willful and wanton conduct is plead or proven).

73. *Titus*, 228 A.2d at 70 (quoting *Ohman v. Bd. Of Educ.*, 90 N.E.2d 474, 478 (1949)). The New Jersey Supreme Court recognized that:

[c]hildren have a known proclivity to act impulsively without thought of the possibilities of danger. It is this lack of mature judgment which makes supervision so vital. The mere presence of the hand of authority and discipline normally is effective to curb this youthful exuberance and to protect the children against their own folly.

Id.

74. *Knapp*, 657 N.E.2d at 1074 (quoting *Albers*, 508 N.E. 2d at 1252). The Illinois Appellate Court noted that:

a teacher cannot supervise each and every child at all times while in school or while engaged in a school-related activity. The general potential for danger with groups of children is not sufficient standing

The common law negligence theory of liability has been criticized for subjecting school districts to too much liability, while at the same time requiring additional financial expenditures in an effort to avoid liability.⁷⁵ However, New Jersey school districts have not become prey to injured student plaintiffs.⁷⁶ Further, plaintiffs must obviously establish all the elements of common law negligence, especially proximate cause, which is not an easy burden. Additionally, a negligence standard of liability affords student plaintiffs an opportunity to obtain a remedy, whereas the stricter Illinois standard does a disservice to many plaintiffs by favoring the defendant and not allowing for a just remedy.

C. New York

While New York, like New Jersey, has a negligence standard of municipal liability in education, the New York courts strongly emphasize the element of "foreseeability."⁷⁷ Teachers have a duty to adequately supervise students, and are required to exercise the same care a parent would observe in comparable circumstances.⁷⁸ If a third party caused a student's injury, as a condition to a school board's liability, a student must establish that the third-party acts which caused the injury could have been reasonably anticipated.⁷⁹ Specifically, "[t]he test to be applied is whether under all the circumstances the chain of events that followed the negligent act or omission was a normal or foreseeable consequence of the situation created by the school's negligence."⁸⁰ The same standard applies when a student's injury does not involve the negligent or criminal acts of a third party.⁸¹ However, without advanced knowledge or forewarning, schools will not be held to insure against the consequences of sudden, impulsive, unanticipated acts of other students.⁸²

alone to sustain a claim for wilful and wanton misconduct.

Id.

75. Silverman, *supra* note 58, at 551.

76. See *Doktor v. Greenberg*, 155 A.2d 793 (N.J. Super. Ct. App. Div. 1959) (holding that the school district was not liable for a student, because the need for closer supervision over students could not have reasonably been apprehended).

77. See *Busby v. Ticonderoga Cent. Sch. Dist.*, 258 A.2d 762 (N.Y. App. Div. 1999) (asserting that the premise of a school board's liability is based upon the foreseeability of harm pertaining to actual or constructive notice of a student's dangerous propensity of previous conduct).

78. *Mirand v. New York*, 637 N.E.2d 263, 266 (N.Y. 1994).

79. *Id.*

80. *Id.*

81. See *Benitez v. New York City Bd. of Educ.*, 541 N.E.2d 29 (N.Y. 1989) (holding that defendant school board had a duty to exercise ordinary reasonable care to protect students who were involved in extracurricular activities).

82. *Busby*, 684 N.E.2d at 710.

Even though a liability standard centered on foreseeability is more stringent than the gross negligence and negligence standards discussed above, it is still more prone to plaintiff recovery than the Illinois standard,⁸³ and is more likely to afford a plaintiff a jury trial.⁸⁴ New York's standard also protects the school districts from senseless lawsuits, which are financially draining.⁸⁵ Moreover, the plaintiff must establish all elements of negligence.⁸⁶

Thus, injured student plaintiffs have a reasonable chance of recovery, notwithstanding the potential difficulty in proving a negligence cause of action.

D. California

California's legislature codified municipal liability, including school district liability, by statutes that, among other things, impose liability for breach of a mandatory duty created by statute.⁸⁷ Section 815.16 of the California Code holds school

83. See *Mirand v. New York*, 637 N.E.2d 263 (affirming trial court's finding that the incident which led to the plaintiff student's injuries was a foreseeable consequence of a situation created by the school's negligence). *But see D.M v. Nat'l Sch. Bus Serv., Inc.* 713 N.E.2d 196 (Ill. App. Ct. 1999) (holding that the school district, which had knowledge of the assailant's previous attack on the victim, was not liable for the plaintiff's assault by his attacker); *Templar v. Decatur Pub. Sch. Dist.*, 538 N.E.2d 195 (Ill. App. Ct. 1998) (holding that the school district, which had been informed by the victim's parent that a certain male student had threatened the victim several times was not liable for injuries sustained by the victim at the hand of the same male student, on school grounds); *Poynter v. Kankakee Sch. Dist.*, 370 N.E.2d 667 (Ill. App. Ct. 1977) (holding that the school board, which had information of a possible race riot, was not liable for injuries that resulted from the riot).

84. See *Gonzalez v. Mackler*, 19 A.D.2d 229 (N.Y. App. Div. 1963) (holding that whether the school district was liable for the injury sustained by a student who was struck by a rubber-tipped pointer thrown by a second student was a question of fact for the jury); *Cianci v. Bd. of Educ.*, 18 A.D.2d 930 (N.Y. App. Div. 1963) (holding that whether the school district was vicariously liable for negligence of a principal who had left the student plaintiff and his attacker unsupervised, was a question of fact for the jury).

85. *Mirand*, 637 N.E.2d at 266. In *Mirand*, the Court of Appeals asserted that:

[s]chools are not insurers of safety, however, for they cannot reasonably be expected to continuously supervise and control all movements and activities of students; therefore, schools are not to be held liable 'for every thoughtless or careless act by which one pupil may injure another' . . . an injury caused by the impulsive, unanticipated act of a fellow student ordinarily will not give rise to a finding of negligence absent proof of prior conduct that would have put a reasonable person on notice to protect against the injury-causing act.

Id.

86. *Id.* The Court of Appeals recognized that even if a breach of supervision is established, a plaintiff must still establish the elements of negligence, particularly proximate cause. *Id.*

87. CAL. EDUC. CODE § 815.6 (West 2000)

districts liable for their negligence when subjected to a mandatory duty imposed by statute,⁸⁸ and Section 49079 of the Education Code imposes a mandatory duty on school districts to inform teachers of a student's record of physical violence.⁸⁹ Further, Section 44807 of the Education Code provides in part that "every teacher in the public schools shall hold pupils to a strict account for their conduct."⁹⁰

California school districts as well as their employees have a general duty to supervise student conduct on school grounds.⁹¹ The duty involves and is limited to school-related functions and activities taking place during school hours.⁹² A school district is not an insurer of safety, but it is liable for the negligence of its officers and employees.⁹³ Further, it is not necessary that the very injury that occurred be foreseeable by school district authorities.⁹⁴ Rather, negligence is established if a "reasonably prudent person would foresee that injury of the same general type would be likely to happen in the absence of such safeguards."⁹⁵ Still, an injured plaintiff must establish a proximate causal connection between the

88. *Id.* Section 815.6 of the California Education Code states that:
[w]here a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty.

Id. Note that whether a statute was intended to impose a mandatory duty on school boards is a question of law. *Clausing v. San Francisco Unified Sch. Dist.*, 221 Cal. App. 3d 1224, 1239 (1990).

89. *Skinner v. Vacaville Unified Sch. Dist.*, 37 Cal. App. 4th 31, 39 (1995). Section 49079 states in part that:

[a] school district shall inform the teacher of every student who has caused, or who has attempted to cause, serious bodily injury or injury . . . to another person. The district shall provide the information to the teacher based on any written records that the district maintains or receives from a law enforcement agency regarding a student described in this section.

CAL. EDUC. CODE § 49079 (West 2001).

90. CAL. EDUC. CODE § 44807 (West 2001).

91. *See Iverson v. Muroc Unified Sch. Dist.*, 32 Cal. App. 4th 218 (1995) (asserting that the school district had a duty to supervise students during school sessions, school activities, recesses, and lunch periods).

92. *Id.* at 41. *See Rodrigues v. San Jose Unified Sch. Dist.*, 322 P.2d 70 (Cal. Ct. App. 1958) (holding that the school district was liable for its negligent supervision of a student who died from injuries sustained from a fall off a playground apparatus).

93. *See Charonnat v. San Francisco Unified Sch. Dist.*, 57 Cal. App. 2d 840, 843 (1943); *Beck v. San Francisco Unified Sch. Dist.*, 225 Cal. App. 2d 503, 507 (1964).

94. *Beck*, 225 Cal. App. 2d at 507.

95. *Id.*

lack of supervision and the incident that caused the injury.⁹⁶

In 1982, the legislature amended the California Constitution to contain a section that addressed in part the safety requirement of California schools.⁹⁷ Specifically, the section declares that, “[a]ll students and staff of primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful.”⁹⁸ The amendment arguably imposed an affirmative duty on school districts to make their schools safe and free from crime and violence.⁹⁹

California’s theory of school district liability is distinctly different from the Illinois willful and wanton standard. California, through the enactment of Section 28(c) of the California Constitution, has taken a proactive approach to addressing school violence and the dangers sometimes associated with schools.¹⁰⁰ Unfortunately, Illinois has yet to take such a proactive approach to its schools. The California legislature has made it easier for injured student plaintiffs to recover by using traditional negligence standards to assess the liability of school districts.¹⁰¹

96. *Id.*

97. Kimberly A. Sawyer, *The Right to Safe Schools: A Newly Recognized Inalienable Right*, 14 PAC. L.J. 1309, 1310 (1983). In 1982 California voters approved Proposition 8, known as “The Victim’s Bill of Rights,” as a response to an escalating crime rate. *Id.* Voters hoped to help rid school campuses of crime and violence by providing school districts with an affirmative duty to make their schools safe. *Id.*

98. CAL. CONST. art. I, § 28.

99. See Sawyer, *supra* note 97, at 1309. However, the California Court of Appeals held that Section 28(c) of the California Constitution:

[i]s not self-executing, in the sense that it does not provide an independent right of action for damages. Neither does it impose an express affirmative duty on any government agency to guarantee the safety of schools . . . [r]ather, it merely indicates principals, without laying down rules by means of which those principals may be given the force of law.

Clausing, 221 Cal. App. 3d at 1237.

100. *Forgnone v. Salvador Union Elementary Sch. Dist.*, 106 P.2d 932 (1940); *Charonnat v. San Francisco Unified Sch. Dist.*, 56 Cal. App. 2d 840 (1943). Also note that as early as the 1940’s, California’s school districts were subjected to their current negligence standard of liability. *Id.* At the same time, Illinois school districts were protected from any liability pursuant to sovereign immunity. See generally *Molitor v. Kaneland Community Unit Dist.*, 163 N.E.2d 89 (Ill. 1959) (abolishing the notion of sovereign immunity with respect to school boards and school districts).

101. See *Forgnone v. Salvador Union Elementary Sch.*, 106 P.2d 932 (1940) (reversing demurrer that trial court granted to defendant school district in matter in which student plaintiff’s arm was broken by another student); *Charonnat v. San Francisco Unified Sch. Dist.*, 56 Cal. App. 2d 840 (affirming trial court’s verdict for student plaintiff whose leg was broken by another student during recess); *Buzzard v. East Lake Sch. Dist.*, 93 P.2d 233 (Cal. Dist. Ct. App. 1939) (affirming trial court’s verdict for student plaintiff who was injured when another student ran over him with a bike).

Illinois, on the other hand, continues to bar recovery by placing almost impossible standards on student plaintiffs that emphasize traditional notions of sovereign immunity.¹⁰²

III. IMPLICATIONS OF IMPOSING LOWER LIABILITY STANDARDS ON SCHOOL DISTRICTS

The aforementioned state liability standards demonstrate that imposing liability on school districts for their acts of negligence will not bankrupt school districts or subject them to senseless tort claims.¹⁰³ It is possible to hold school districts to a higher standard, thereby creating a safer learning environment for students and teachers. While Illinois continues to adhere to old-fashioned theories of sovereign immunity, other state jurisdictions have acknowledged that school districts, as municipal entities, are not protected by a blanket of immunity. Illinois should look outside its borders for examples of municipal liability in education that afford injured student plaintiffs a remedy.

Imposing liability on school districts would encourage them to limit their liability by implementing security measures intended to limit student injury.¹⁰⁴ When a school district ignores the safety of its students and fails to implement reasonable security measures, it should be subjected to liability for the injuries that naturally result from its lack of security implementation.¹⁰⁵ Thus, the primary purpose of imposing a lower standard would be the heightened security that would afford students a greater sense of security and provide a more conducive environment for learning. Thereby, it provides schools with greater incentive to increase security, in order to offset the cost of potential litigation.¹⁰⁶ Naturally, a lower standard might result in large damage awards against school districts;¹⁰⁷ however, "it is likely that taxpayers are

102. See *Henrich v. Libertyville High Sch.*, 683 N.E.2d 135 (Ill. App. Ct. 1997) (affirming trial court's dismissal of plaintiff's claim for failure to state a cause of action, because school board was immune from liability pursuant to the Tort Immunity Act); *D.M. v. Nat'l Sch. Bus Serv.*, 713 N.E.2d 196 (Ill. App. Ct. 1999) (holding Tort Immunity Act afforded school district immunity); *A.R. v. Chicago Bd. of Educ.*, 724 N.E.2d 6 (Ill. App. Ct. 1999) (holding that plaintiff's claim failed to state a cause of action because the school board defendant was immune from liability pursuant to the Tort Immunity Act).

103. See *Etheredge v. Richland Sch. Dist. One*, 534 S.E.2d 275 (holding that a South Carolina school district was not liable because of a lack of direct knowledge); *Doktor v. Greenberg*, 155 A.2d 793 (holding that a New Jersey school district was not liable because the injury could not have been reasonably foreseeable); *Mirand v. New York*, 637 N.E.2d 263 (affirming that New York school districts are not liable "for every thoughtless or careless act by which one pupil may injure another.")

104. Silverman, *supra* note 58, at 550-51.

105. Ewing, *supra* note 64, at 643.

106. *Id.*

107. It is important to note that liability insurance directly protects school

willing to bear the difference so long as they are assured that their contribution will improve safety in their local schools.¹⁰⁸ Other scholars have suggested that even if schools feel compelled to spend significant funds to improve safety, schools can expect long-term savings as a result of a decrease in workers' compensation claims.¹⁰⁹

Illinois should look beyond the confines of its borders for examples of other means to allocate liability upon its school districts. New Jersey, South Carolina, California, and New York have each implemented unique standards that afford injured student plaintiffs a remedy, as well as protect school board defendants from senseless liability.¹¹⁰ Although all four approaches provide a logical framework for Illinois to follow, a combination of the South Carolina and New York approach would be most advantageous, given the current state of Illinois law.¹¹¹

IV. A PROPOSAL FOR CHANGE IN ILLINOIS

Illinois should adopt a gross negligence¹¹² standard with an emphasis on foreseeability.¹¹³ This proposed change would not be a drastic change in the current law, but it would more readily afford injured student plaintiffs an opportunity for recovery.¹¹⁴ Illinois plaintiffs would no longer be required to establish that school board defendants had acted willfully and wantonly. Further, the potential for school board defendants to present a theory of

district funds from large damage awards. Decker, *supra* note 13, at 144. In 1995, according to the Illinois Department of Revenue, Illinois school districts only spent approximately three percent of their total budgets on liability insurance, and "given the tremendous breadth of local government activity and the relatively minor cost of insurance, it is illogical to impose liability on individuals and private corporations but not local governments." *Id.* The emphasis should not rest in immunizing school districts, but rather in determining to what extent school districts will be held accountable for negligence, especially when students have been injured. *Id.*

108. *Id.*

109. Noel M. Johnson, *The Chicago Public Schools and Its Violent Students: How Can the Law Protect Teachers?*, 48 DEPAUL L. REV. 907, 947 (1999).

110. See *supra* note 103 and accompanying text.

111. See *Kobylanski*, 347 N.E.2d at 709 (holding that teachers and administrators were only liable for their willful and wanton misconduct).

112. *Doe*, 495 S.E.2d 230. The South Carolina courts have defined gross negligence as the failure to exercise "slight care." *Id.*

113. The New York test, which emphasizes foreseeability, is "whether under all the circumstances the chain of events that followed the negligent act or omission was a normal or foreseeable consequence of the situation created by the school's negligence." *Mirand*, 637 N.E.2d at 266.

114. See generally *Grooms*, 414 S.E.2d 802; *Woodell*, 414 S.E.2d 794 (confirming that a gross negligence standard creates a high probability that injured student plaintiffs would be granted a jury trial); *Gonzalez*, 19 A.D.2d 229; *Cianci*, 18 A.D.2d 930 (confirming that question of foreseeability creates a question of fact for the jury).

immunity pursuant to the Tort Immunity Act¹¹⁵ would be eliminated.

A. Gross Negligence with an Emphasis on Foreseeability

An emphasis on foreseeability would require an injured plaintiff to establish that the "negligent act or omission was a normal or foreseeable consequence of the situation created by the school's negligence."¹¹⁶ Since plaintiffs would be required to establish foreseeability along with the elements of gross negligence, the foreseeability requirement would aid in deterring senseless liability upon Illinois' school districts.¹¹⁷ However, the addition of the foreseeability requirement does not suggest that a gross negligence standard would produce frivolous lawsuits against Illinois school districts. Rather, foreseeability would provide another wall of protection for Illinois schools districts, and Illinois law makers might find the proposal more attractive with this additional safeguard.

The proposed combination of gross negligence and foreseeability would provide the most effective and practical alternative, given the current standard. The change would prove significant for injured student plaintiffs. It would also provide a realistic option for both the legislature and judicial system, which continue to preserve archaic notions of sovereign immunity.¹¹⁸ However, before Illinois can begin addressing the need for change, both the legislature and the courts must recognize, as New Jersey did, that sovereign immunity in this context is outdated and impractical.¹¹⁹ Unfortunately, as long as the Illinois courts and legislature continue to associate sovereign immunity with education, change is unlikely.

Countless injured student plaintiffs have been denied the opportunity to proceed in the Illinois courts, because of either the high willful and wanton standard, or the potential grant of school

115. 745 ILL. COMP. STAT. 10/1-101 et seq. See also *Templar*, 538 N.E.2d at 197 (corroborating the notion that the Tort Immunity Act, if applicable, takes precedence over the Illinois School Code).

116. *Mirand*, 637 N.E.2d at 266.

117. *Id.* The New York Court of Appeals asserted that school districts were not liable for the unanticipated acts of students. *Id.*

118. Section 3-108 of the Tort Immunity Act was amended in 1998 to narrow the scope of immunity for negligent supervision to exclude immunity from willful and wanton conduct. 745 ILL. COMP. STAT. 10/3-108. Prior to the 1998 amendment, educators were essentially immune from liability predicated on the duty to supervise. Further, the Illinois Supreme Court has substantially limited the minimal relief granted to plaintiffs through the School Code, 105 ILL. COMP. STAT. 5/1-1 et seq., by asserting that the Tort Immunity Act takes precedent. *Henrich*, 683 N.E.2d at 140.

119. New Jersey has experienced a shift towards the realization that municipal entities should be held accountable for injuries pursuant to principals of common law negligence. *Jackson*, 238 A.2d at 688.

district immunity.¹²⁰ If those same plaintiffs had been able to proceed according to the proposed gross negligence and foreseeability standard, an entirely different result would have occurred. For example, the female student in *A.R. v. Chicago Bd. of Educ.*,¹²¹ who was sodomized by a male student on the bus, might have been able to establish a question of fact regarding the gross negligence of the bus driver and school as well as the foreseeability of her injury.

Illinois could also propose a constitutional amendment guaranteeing students and teachers the inalienable right to attend schools that are safe, secure, and peaceful.¹²² The amendment would not impose an affirmative duty upon school districts.¹²³ However, it would acknowledge the legislature's emphasis on school safety. An amendment would also give the citizens of Illinois a voice and vote in this important matter.

B. Preventative Measures and a Safer School Environment

The goal of imposing a lower standard of liability is not to create a situation that will potentially subject school districts to tremendous liability. Rather, "the primary purpose of placing greater responsibility on the school district would be to encourage preventative measures and thereby create a safer environment for all."¹²⁴ In fact, if the gross negligence and foreseeability standard is put into practice, Illinois schools would reap the benefits of safer schools, greater emphasis on teacher-student relationships, more administration involvement, and better, more well rounded programs on violence and safety.¹²⁵ However, in order to provide

120. See *supra* note 62 and accompanying text.

121. 724 N.E.2d at 10. The Appellate Court affirmed the dismissal of plaintiff's claim, because the school board defendant had immunity pursuant to the Tort Immunity Act. *Id.* at 11.

122. See CAL. CONST. art. I, § 28. This section asserts that "[a]ll students and staff of primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful." *Id.*

123. See *Clausing*, 221 Cal. App. 3d at 1237 (asserting that Section 28(c) of the California Constitution did not create an affirmative duty upon school districts).

124. Silverman, *supra* note 58, at 550-51; Ewing, *supra* note 64, at 643. Asserting that students are required to attend school, therefore, they cannot escape the environment of the school they are required to attend. Thus, "courts should be more open to arguments that students are in the custodial care of the school because students must attend school and must rely on the school to provide a safe environment." *Id.*

125. In the 1999 Annual Report on School Safety, published by the U.S. Department of Education and the U.S. Department of Justice, a section was dedicated to model school programs that have helped to improve school safety. U.S. Department of Education and Justice, 1999 Annual Report on School Safety 1 (1999), available at www.ed.gov/pubs/edpubs.html (last visited Jan. 26, 2001). For example, the Linwood Elementary School in Robins AFB, Georgia instituted the Linwood Pride Discipline Plan, which helps students

schools with an incentive to change, they must feel compelled to allocate the funds necessary to accomplish these goals. The proposed gross negligence and foreseeability standard would provide this incentive. Conversely, the current willful and wanton standard coupled with the possibility of immunity, provides school districts with little financial incentive to allocate funds to the aforementioned programs.

C. Adversarial Weaknesses

Opponents might contend that school districts, as governmental entities, should be protected from excessive liability. However, this argument was discredited by the Illinois Supreme Court's 1959 decision in *Moliter v. Kaneland Community Unit Dist.*,¹²⁶ which expressly rejected sovereign immunity.¹²⁷ Specifically, the court stated that "[w]e do not believe that in this present day and age, when public education constitutes one of the biggest businesses in the country, that school immunity can be justified on the protection-of-public-funds theory."¹²⁸ In the forty years since the *Moliter* decision, schools have reaped the benefit of capitalistic growth, and like other businesses and corporations, should be held accountable for their actions.

Other jurisdictions also provide support for the rejection of sovereign immunity as applied to school districts. For instance, New Jersey has experienced a shift towards the realization that school districts, as municipal entities, should be held accountable for injuries pursuant to common law negligence.¹²⁹

Some opponents may also fear that an increase in liability will substantially deplete valuable school funds. However, that fear is illegitimate. The 1995 Illinois Property Tax Report¹³⁰ revealed that Illinois school districts spent only 3.04% of their

take responsibility for their own actions. *Id.* at 41. The program has helped to create a nurturing and safe learning environment. *Id.* At Otto Middle School in Lansing, Michigan, The Peace Center offers students alternatives to violence. *Id.* at 42. Through the coalition of parents, teachers, administration, and students, The Peace Center has helped to establish a culture of non-violence. *Id.* If Illinois school districts felt compelled to allocate the necessary funds and manpower to violence prevention, many of the successful programs listed in the 1999 Annual Report on School Safety, could become a reality for Illinois students. See also Silverman, *supra* note 58, at 550-51 (asserting that imposing liability upon school districts would encourage them to implement programs and safety measures that would be advantageous to students).

126. 163 N.E.2d 89.

127. *Id.* at 96.

128. *Id.* at 94. See also Decker, *supra* note 13, at 144(asserting that the Illinois Supreme Court's decision in *Moliter v. Kaneland Community Unit Dist.* has been "swallowed by statutory and judicial exceptions").

129. *Jackson*, 238 A.2d at 688.

130. Decker, *supra* note 13, at 144.

total budget on liability insurance.¹³¹ Thus, “given the tremendous breadth of local government activity and the relatively minor cost of insurance, it is illogical to impose liability on individuals and private corporations but not local governments.”¹³²

D. A Realistic Change

A change in the liability standard will not eliminate the reality of violence in Illinois schools. However, to effectuate a positive change, some person or entity must take responsibility for the violent tendencies of Illinois’ youth. Following the aftermath of the Columbine tragedy, President Clinton made the following statement:

Let us speak clearly and with one voice Acts of hate must strengthen our resolve and deepen our determination that Americans will come together and stand together against violence, intolerance, and hatred. In all these efforts we must first assume responsibility, at home and *at school*, in Hollywood and the heartland, and here in Washington.¹³³

Must Illinois wait for a school tragedy to occur in one of its schools before its lawmakers and courts address the need for more administration intervention in Illinois schools?

CONCLUSION

This Comment does not offer an absolute answer to ending the violence and injury prevalent in Illinois schools,¹³⁴ however, it

131. *Id.*

132. *Id.*

133. U.S. Department of Education and Justice, 1999 Annual Report on School Safety 17 (1999), *available at* www.ed.gov/pubs/edpubs.html (last visited Jan. 26, 2001) (emphasis added). The report included several reactions to the Columbine tragedy, which addressed the need for school intervention. For example, Linda Marinovich of Seattle, Washington stated that “until the schools start looking at our kids as individuals and start addressing them according to their needs, we are going to continue to have this problem,” and Holli Eddins of New Orleans, Louisiana stated that “[t]eachers and school counselors need to work together to evaluate their students.” *Id.* at 22, 25. Parents seem to agree that school administrations have an affirmative duty to take some action towards providing students with a safe learning environment.

134. The U.S. Department of Education and Justice publishes an annual indicator of school crime and safety, which addresses the prevalence of crime and violence in America’s schools. U.S. Department of Education, Indicators of School Crime and Safety 1 (1999), *available at* <http://nces.ed.gov> (last visited Jan. 26, 2001). The report details specific behavior and tracks it over a course of several years. *Id.* Even though crime rates in America’s schools have declined, this report suggests that violence, gangs, and drugs continue to permeate our school systems. *Id.* For example, the students surveyed appeared to feel less safe at school than students surveyed in previous years, even though the actual percentages of victimization have decreased. *Id.*

does offer an alternative. Clearly, governments must be proactive when approaching problems relating to the public schools, and until schools, as a municipal entity, begin to accept responsibility, the violence will continue. Illinois' students deserve to attend schools that foster learning and not violence.