AN ANALYSIS OF LEGAL LIABILITY OF VIRGINIA
EDUCATORS AND SCHOOL SYSTEMS

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The doctrine of sovereign immunity in the Commonwealth of Virginia has evolved over time and the redefinition of the doctrine has been subjected to the interpretation by courts involving cases with varied facts and circumstances that have challenged the boundaries and flexibility of this legal concept. Determining the protection that a state agent was entitled to was the guiding principle in case law regarding sovereign immunity; however, understanding the purpose and intent of the doctrine of sovereign immunity was critical to determining the boundaries and criteria of the doctrine of immunity. In this dissertation, the researcher analyzed tort law as it applied to educators and public-school districts through the Virginia court system under common law and the Virginia Tort Claims Act (VTCA, 1981). The case analysis provided an overview of lawsuits heard and decisions rendered in negligence cases brought against educators and educational entities prior to and after the enactment of the Virginia Tort Claims Act in 1981.
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CHAPTER 1
INTRODUCTION

Background of the Study

Litigation and landmark court cases involving students and educational organizations and their employees have profoundly impacted the landscape of education and have shaped the behaviors, responses, and attitudes of most educators in the United States. Reglan (1992) wrote legal decisions have shaped the operations of public schools; therefore, the majority of educational policy, curriculum challenges, and students’ and teachers’ rights have been challenged and created within the court system. *Brown v. Board of Education of Topeka, KS* (1954) forced equal learning opportunities for all students by declaring segregation in schools unconstitutional and *Tinker v. Des Moines Independent Community School District* (1969) ruled on behalf of student expression by declaring that students at school retain their first amendment right to free speech. These two well-known cases have served as the cornerstone in subsequent court rulings and the practice of educators, administrators, and school districts. While public school litigation has played an important role in transforming education, others argued that much legal action could be prevented or handled outside the court system.

Sovereign immunity was rooted in the theory that “the king can do no wrong” (Duhaime’s Law Dictionary, n.d., para. 4); therefore, agents of the government were immune from such litigation. The evolution of sovereign immunity resulted in judicial and statutory modification at the federal and state level since the original doctrine of sovereign immunity. Sovereign immunity historically provided protection from tortuous liability to local school districts because of their role as agencies of the state. Alexander and Alexander (2012) noted that in addition to the many exceptions of sovereign immunity, “the general rule prevails that the
state and its agencies are immune from tort liability, such immunity being grounded on the sovereign character of the state” (p. 723).

In this dissertation, I analyze tort law as it applied to educators and public-school districts through the Virginia court system under common law and the Virginia Tort Claims Act (VTCA, 1981). The case analysis provided an overview of lawsuits heard and decisions rendered in negligence cases brought against educators and educational entities since the enactment of the Virginia Tort Claims Act in 1981.

Statement of the Problem

Teacher’s lack of knowledge regarding their professional behavior and obligations to protect students as it related to state and federal laws would not serve as a shield against lawsuits related to their legal duties owed to students and a breach of that duty. Society has become more sophisticated and fluent in consumerism which posed a greater threat that litigation would be entered into regarding student safety and the role and responsibilities of educators and school entities (Ripps, 1975). Most educators have developed a basic awareness of the application of legal concepts in educational settings; however, the ever-changing legislation and judicial decisions that impact educator practice continued to foster the misunderstandings of legal application to teacher behaviors and actions (Wagner, 2007). There was a growing uncertainty of what was allowable in classrooms involving teacher and student actions and behaviors. Legal information was often embedded in the institutional knowledge of educational organizations, which provided an inaccurate portrayal of protected teacher’s rights and left school personnel feeling anxious and fearful of litigation designed to ensnare any educator who made an innocent mistake (Fischer, Schimmel, & Kelly, 1999).
It has been estimated that 1,500 to 3,000 lawsuits were brought against public educators and districts on an annual basis (Reglin, 1992), thus creating an urgency for educators to raise their awareness of current legal issues as it related to their scope of employment. An educator’s lack of public school law knowledge has never served as a viable excuse to deter litigation. Institutional knowledge and *word of mouth* has often served as the means of knowledge regarding public school law. This has led to a lack of awareness and possible legal action against teachers in the classroom. Teacher preparation programs have not invested the resources, education, and accountability in preparing pre-service teachers about potential legal calamity in the role as educator. Reglin (1992) noted education was a right for all children, and as a result, lawsuits have increased at an exponential rate because of the public’s desire to have someone pay when they have been wronged in the educational setting. Doughtery (2004) stated tort claims are the most common form of litigation brought against educators and school districts. Tort claims brought against educators and school districts have served as evidence of the legal activism that continues to affect the educational system. Tort claims in the educational setting have often been a result of an action or act of negligence that resulted in the harm of a student. Tort liability fell under four different categories: intentional interference, strict liability, negligence, and defamation. Of these four categories, intentional interference and negligence were based on the supposition that a person was injured at the fault of another individual. This study focused on analyzing negligence.

Alexander and Alexander (2012) defined a tort as “a civil wrong independent of contract that may be malicious and intentional, or it may be the result of negligence and disregard for the rights of others” (p. 632). A more concise definition of a tort was a violation of a person’s law-created rights caused by the act or omission of action by another individual that resulted in harm.
in which an appropriate remedy was sought (Keeton, Dobbs, Keeton, & Owen, 1984).

Sovereign Immunity in Virginia

Sovereign immunity for the Commonwealth of Virginia was the strongest under Virginia law, and most scholars agreed that its vitality has remained strong under common law; unless waived by the Virginia Tort Claims Act, the Commonwealth’s immunity was absolute (Anthony & McMahon, 2000). The doctrine of sovereign immunity evolved over time and the redefinition of the doctrine has been subjected to the interpretation by courts involving cases with varied facts and circumstances that have challenged the boundaries and flexibility of this legal concept. Determining the protection that a state agent was entitled to was the guiding principle in case law regarding sovereign immunity; however, understanding the purpose and intent of the doctrine of sovereign immunity was critical to determining the boundaries and criteria of the doctrine of immunity.

In Board of Public Works v. Gannt (1882), the privilege of sovereignty provided a sense of security for public workers and officials to do their jobs without the fear of carrying out their duties related to their job responsibilities. It also alleviated the fear of citizens taking public jobs because of protected immunity that served as a deterrent from becoming a victim of a lawsuit as it related to their job. Sovereign immunity was meant to preserve the purse strings of the state and to deter the whims of citizens to sue governmental agents and agencies due to their duties and responsibilities to ensure the welfare of the public. Hinchey v. Ogden (1983) expanded the purpose of sovereign immunity as it relied upon 72 Am.Jur.2d States, Territories, and Dependencies § 99, which described sovereign immunity “as a rule of social policy, which protects the state from burdensome interference with the performance of its governmental functions and preserves its control over state funds, property, and instrumentalities” (226 Va. At
Since the state could only act through the individuals that serve, the protection afforded to the sovereign could not exist to protect only the state; this protection must extend to the employees of the state. Otherwise, the state would be restricted in its operations if it were subject to direct suit. Anthony and McMahon (2000) noted sovereign immunity served multiple purposes including (a) a protection of public funds, (b) the assurance that citizens would take public jobs without the fear of lawsuits, (c) the protection of societal norms by encouraging public servants to act in accordance with public safety measures, and (d) the prevention of citizens influencing the acts of governmental agencies as it related to public policy.

Counties of Virginia were viewed as political subdivisions and were entitled to the same immunity as the commonwealth because they were created as geographical subdivisions designed to administer state policy at the local level (Anthony & McMahon, 2000). In 2012, Seabolt v. County of Ablemarla, the Supreme Court of Virginia upheld the dismissal of the charges in which the plaintiff filed suit against the county for gross negligence in maintaining a public park. The dismissal of the case was based on common law sovereign immunity because the county, acting as the sovereign, did not waive its immunity. In Seabolt v. County of Ablemarla (2012), the plaintiff cited Code section 15.2-1809, which waived sovereign immunity for cities and towns related to the gross negligence in the operation of parks and recreational facilities. However, since the county was named in the suit, common law immunity was applicable because the statute cited cities and towns only. Additionally, county employees enjoyed the same immunity applied to the counties.

In contrast, cities have not been afforded the same immunity as the commonwealth and counties in Virginia. Anthony and McMahon (2000) explained “a city or municipality engages in
two types of functions: governmental functions (which are like the functions undertaken by the state) and proprietary functions (which are more akin to the functions of a private corporation)” (p. 11). The level of immunity provided to the city was determined by the function that the city engaged in which is mentioned in the tort liability suit.

Applying the governmental/proprietary distinction was troublesome in practice due to the characterization of the task. An example of this convoluted distinction was demonstrated when a cyclist sued the Richmond Metropolitan Authority due to injuries sustained while cycling across an icy bridge (Cook & Rosser, 2016). The authority claimed sovereign immunity because they claimed that snow removal was a governmental function due to the intent of the task to secure citizen safety. However, since the authority could not provide evidence related to the length of time that the ice had been on the roadway, the court dismissed the sovereignty plea based on a previous Virginia Supreme Court ruling stating that a proprietary task was based on maintenance and not a governmental response to an emergency. Similarly, in Burson v. City of Bristol (1940), the court refused to grant immunity to the city when firefighters took down a wall from a fire that had occurred five days previously. The plaintiff’s property was damaged because of the firefighters tearing down the brick walls of a burned building adjacent to the property. Since the removal of the wall was not an emergency, the task was viewed as proprietary as opposed to governmental therefore sovereign immunity was denied to the firefighters. Court rulings in Virginia have supported sovereign immunity for city entities involved in tasks that included both governmental and proprietary duties.

Government employees that received protection under sovereign immunity in Virginia shared the same measure of complexity as state agencies. Absolute immunity was afforded to persons who served in the highest levels of government including judges, governors, legislative
members, and high-level government officials (Anthony & McMahon, 2000). Virginia Code Ann. § 15.2-1405 stated that “members of governing bodies of counties, cities, towns or political subdivisions were immune from suit for failing to exercise discretionary or governmental authority, except for gross negligence, intentional misconduct, or misappropriation of funds” (Cook & Rosser, 2016, p. 30). James v Jane (1980) and Messina v. Burden (1984) provided courts with a multi-faceted test to determine employee eligibility for sovereign immunity.

Anthony and McMahon (2000) outlined the considered factors:

1. The nature of the function performed by the employee;
2. The extent of the state’s interest and involvement in the function;
3. The degree of control and discretion exercised by the state over the employee; and
4. Whether the act complained of involved the use of judgment and discretion. (p. 12)

The extensive list of governmental employees included school employees such as teachers, administrators, superintendents, and school board members (Anthony & McMahon, 2000).

In Virginia, sovereign immunity offered protection for state employees; however, exceptions to the doctrine under Virginia law reflected a reality check that total immunity in all situations was a myth (Virginia Tort Claims Act, 1981). The most common exceptions included negligent conduct, intentional torts, and acts outside the scope of one’s employment. Matthews (2012) wrote that the doctrine of sovereign immunity is vibrant in Virginia and only statutory amendments through state law can create a waiver. The most significant statute, the Virginia Tort Claims Act (1981) provided a broad waiver of immunity for tort claims, however strict timelines and procedures have guided the requirements of legal action.

Significance of the Study

The intent of this study was to add to the body of knowledge pertaining to the concept of
sovereign immunity as the judicial doctrine is applied against Virginia public school educators and Virginia public school districts. This researcher was purposed with providing an understanding of sovereign immunity as it related to litigation involving public educators and public-school districts. This researcher continued the legal analysis of state tort claims acts presented in previous studies conducted by Carman (2009), Lacefield (2010), Kriesal-Hall (2013), Herauf (2014), McDaniel (2014), and Perry (2017) in which they analyzed Texas, Oklahoma, Mississippi, New Mexico, Georgia, and Kansas, respectively.

Educators had increasingly become more aware of the level of liability associated with the educational development of students including the safety and well-being of all children entrusted to their care at school (Vacca, 1974). This researcher analyzed how Virginia courts have interpreted case law regarding tort claims against Virginia public school educators and Virginia public school districts since the enactment of the Virginia Tort Claims Act in 1981.

**Research Question**

The research question that guided this study was,

How have Virginia state courts interpreted common law and the Virginia Tort Claims Act (1981) in litigation against Virginia public school districts and their employees in respect to negligence?

**Definitions of Important Terms**

*Administrative discretion*—A public official’s or agency’s power to exercise judgement in the discharge of one’s duties (US Legal, 2016).

*Claim*—A demand for money, property, or a legal remedy to which one asserted a right; esp., the part of a complaint in a civil action specifying what relief the plaintiff asked for (Claim, 1995).
Claimant—Someone who claimed a right against the government especially for money (Claimant, 1995).

Discretionary act—A deed involving an exercise of personal judgment and conscience (Discretionary act, 1995).

Employee—A person that was employed (Employee, 1995).

Liability—The quality, state, or condition of being legally obligated or accountable; legal responsibility for another or to society, enforceable by civil remedy or criminal punishment (Liability, 1995).

Ministerial act—Of, related to, or involving an act that involved obedience to instructions or laws instead of discretion, judgment, or skill; a duty that was so plain in point of law and so clear in matter of fact that no element of discretion was left to the precise mode of its performance (Ministerial, 1995).

Negligence—The failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that fell below the legal standard established to protect others against unreasonable risk of harm (Negligence, 1995).

Political subdivision—A division of a state that existed primarily to discharge some function of local government (Federal Register, 2016).

Proprietary function—A municipality’s conduct that was performed for the profit or benefit of the municipality, rather than for the benefit of the public (Proprietary, 1995).

Sovereign immunity—A government’s immunity from being sued in its own courts without its consent (Alexander & Alexander, 2019).
Tort—Alexander and Alexander (2012) defined a tort as “a civil wrong independent of contract that may be malicious and intentional, or it may be the result of negligence and disregard for the rights of others” (p. 632).

Summary of Chapters

In Chapter 2, an overview and historical perspective of sovereign immunity in the United States and case law that has shaped the doctrine of sovereign immunity is provided. I expound on tort liability and negligence within the scope of job responsibilities and expectations. A summary and analysis of the impact of the Federal Tort Claims Act and the Virginia Tort Claims Act (1981) upon the doctrine of immunity is outline to demonstrate the complexity of immunity related to public educators and school districts.

In Chapter 3, I provide the framework of the research method used. For the purpose of this study, legal research and analysis is applied through the incorporation of the issue, rule, application, conclusion (IRAC) method. This type of research is comprised of relevant case law identification, case law analysis, document analysis of law dissertations, review journals, and key texts within the field. This methodology was implemented through the analysis of case law brought against Virginia public school employees and Virginia public school districts as it related to common law and the Virginia Tort Claims Act (1981). Several search engines, including Nexis Uni® and Westlaw, were used to identify case law related to educational court cases heard and ruled upon under the Virginia Tort Claims Act (1981).

Chapter 4 consists of a thorough analysis of case law pertaining to common law and the Virginia Tort Claims Act (1981) as related to negligence that involved public-school systems and its employees. The IRAC method of briefing cases is used to analyze relevant cases and to
provide a comprehensive overview of the impact of the Virginia Tort Claims Act (1981) related to educational case law.

Chapter 5 consists of the key findings from the analysis of case law discussed in Chapter 4 and implications of the court’s rulings. Finally, Chapter 5 provides recommendations for further study and action.
CHAPTER 2
REVIEW OF THE LITERATURE

Sovereign Immunity

Much of American law was based on old English common law in which a person could not sue the king for laws created by the king. This rationale was based on the premises that the person could not sue the authority who created the right to sue (Olsen, 1996). This notion transferred to sovereign government which afforded protection of government employees and prevented claims against the United States government. The doctrine of sovereign immunity became the cornerstone of judicial practice in the United States through the use of historical English texts such as Blackstone’s Commentaries and various English legal books (Alexander & Alexander, 2012). The practice of governmental immunity served as an early protection for state agents including public school employees. The American Law Institute (1998) reports justified the importance of immunity in public education by defending the actions of the courts related to the support of policy.

The courts have taken the position that public education is for the benefit of all, that the welfare of the few must be sacrificed in the public interest, and that school funds and property may not be diverted to pay private damages since such diversion may impair public education. (Alexander & Alexander, 2012, pp. 722-723)

Anthony and McMahon (2000) explained that sovereign immunity offered governmental entities and their employees protection against tort liability suits. In Hinchev v. Ogden (1983), the Supreme Court of Virginia emphasized the spirit of sovereign immunity was the “rule of social policy, which protected the state from burdensome interference with the performance of its governmental functions and preserved its control over state funds, property, and instrumentals” (Justia US Law, 1983, para. 12). Anthony and McMahon (2000) expanded on this ruling stating that sovereign immunity protected against vexatious lawsuits involving governmental employees.
which allowed citizens the opportunity to work in such positions by alleviating the fear of litigious activity surrounding the capacity in which they served in their jobs.

Traditionally, employers were responsible for the acts of their employees under the doctrine of “respondent superior” (Ripps, 1975, p. 19). This doctrine held the employer solely or, in some cases, partially responsible for potential judgements against employees. Sovereign immunity provided litigious exception for school districts and colleges. Although a universal following and application of the immunity doctrine has served as majority foundation throughout the federal court system, some states have continued to reinterpret the doctrine of sovereign immunity and have prevented this old-age notion of supreme protection to be applied to state employees in tort claims related to school districts. Molitor v. Kaneland Community Unit School District (1959) challenged the status quo rulings regarding tortious lawsuits involving school district employees in Illinois. Alexander and Alexander (2012) addressed the impact that the Molitor case had on the adherence to sovereign immunity at the state level in Illinois. The authors explained that Molitor v. Kaneland Community Unit School District (1959) “directly refuted the legal rational” (p. 723) that served as the foundation of sovereign immunity. In this case, the plaintiff, Thomas Molitor, was injured in a school bus accident when the bus driver left the road and hit a culvert which resulted in an explosion of the vehicle and caused burns to the student. The trial court’s decision favored the defendant based on the grounds of immunity for the school district. The Appellate Court affirmed the decision of the trial court, and the case progressed to the Supreme Court of Illinois. The Supreme Court reversed the ruling of the lower courts stating the rule of sovereign immunity rested on a rotten foundation and the application of total immunity related to an antiquated practice seemed irrelevant in a time of modernism. The Supreme Court further stated that their decision aligned with the Supreme Court in Florida that
in preserving the sovereign immunity theory, courts have overlooked the fact that the Revolutionary War was fought to abolish that *divine right of kings* on which the theory was based *Molitor v. Kaneland Community Unit School District* (1959).

Chemerinsky (2001) further supported this stance by stating that courts have continually applied the doctrine of sovereign immunity; however, this principle remains inconsistent with the central theme of American government which supported the notion that everyone, including the government, was accountable to the laws of the country. Throughout history, state and federal courts have applied the principal of sovereign immunity in various ways. However, case law has supported the expansion of this doctrine. Governmental immunity has prevailed with few exceptions; but Murphy (1968) predicted that movement towards recasting the doctrine of sovereign immunity would indicate that a consideration towards the individual citizen was paramount over governmental entities and their agents.

**Discretionary Acts vs. Ministerial Acts**

Discretionary acts were actions taken by public officials within the scope of their authority and done without malice or the intent to harm (Alexander & Alexander, 2019). School agents have made thousands of decisions daily regarding the care of their students. These employees were expected to exercise sound judgment and good reasoning while working with students. Immunity protected state agents from personal liability for discretionary acts when they were acting in their official capacity. A ministerial act requires compliance of a simple and specific duty (Alexander & Alexander, 2019). In education, a ministerial act was grounded in board policy which was determined by the governing board of the school district. When a school employee failed to comply with stated policy, immunity may not be granted; however, some policies allowed school agents to use discretion related to specific policy. In *Grammens v. Dollar*
David Dollar, the student, suffered an eye injury when he launched a rocket made of water and air pressure in science class. Since David Dollar was not wearing eye protection, he filed suit against his teacher, Patricia Grammens, for the lack of adherence to school policy which stated eye protection gear should be worn by students when handling explosive materials. The trial court offered immunity to Grammens stating her actions were discretionary; however, the court of appeals overturned the judgement claiming that the eye protection policy required a ministerial act. The Supreme Court of Georgia reversed the Court of Appeals decision stating that school employees had the right to use discretion related to the factors of the ministerial act. In this case, the policy stated eye protection needed to be used when explosive materials were in use. Ms. Grammens exercised her judgement by not requiring her students to wear eye protection since the experiment did not involve explosive materials.

Ministerial acts (1995) were related to a set of instructions or law and required compliance rather than discretion, judgement, or skill. Ministerial acts differed from discretionary acts because of the level of expectations related to the different acts. Discretionary acts were provided a level of immunity; however, this level of protection was not extended to acts involving ministerial functions (Alexander & Alexander, 2019). The contributing factor that affected the differences in immunity protections was the nature of the ministerial function which constituted an action of compliance, not discretion.

The Restatement of Torts, Second provided clarification to courts in the interpretation on whether an act fell under discretionary or ministerial functions (American Law Institute, 1965). Alexander and Alexander (2019) asserted that the following factors should be considered as opposed to the strict adherence of the definition of each term. These factors were,
1. The nature and importance of the function that the officer was performing.
2. The extent to which liability would impact future actions of the employee.
3. The financial imposition placed on the employee.
4. The likelihood that the outcome would directly harm other people.
5. Other options to meet the remedy sought by the injured party.

Texas offered a clear division between the level of protection from tort liability in discretionary duties as opposed to ministerial duties. The statute maintains, (A) Professional employee of a school district is not personally liable for any act that is incident to or within the scope of the duties of the employee’s position of employment and that involves the exercise of judgment or discretion on the part of the employee except in circumstances in which a professional employee uses excessive force in the discipline of student or negligence resulting in bodily injury to students. (FindLaw, 2012, para. 1)

As discussed in Kriesel-Hall’s (2013) dissertation, two court cases—Chesshir v. Sharp (2000) and Myers v. Doe (2001)—in Texas best exemplified the difference between discretionary and ministerial functions and how the courts have ruled in favor and against the school employee.

In Chesshir v. Sharp (2000), a kindergarten teacher brought an electric fryer to school so that she could fry doughnuts for her students. Her pupils were learning the letter “d” and the teacher felt as if this fun activity would allow her students to make a learning connection between a well-loved food and the letter d. During the process of cooking the doughnuts, a student stepped on the cord of the fryer thus resulting in the hot grease spilling on another student which caused serious burns. The trial court dismissed the case, and the decision was upheld by the Texas appellate court. The Chesshir v. Sharp (2000) ruling affirmed the teacher was using her discretion in the activity designed to enforce the phonetic sounds and she could not be sued.

However, when a judgement or discretionary call was not involved, certain immunity might not be applied. In the case of Myers v. Doe (2001), allegations were made regarding sexual assault between two special education students. Mary Doe had alleged that a male student had
sexually assaulted her on multiple occasions. As a result of the allegations, policies were put into place to prevent future assaults. The policies that were created with the expectation of compliance were: (a) The school elevator was to remain locked, (b) The students would always be personally escorted, and (c) The office must be contacted if either student were tardy to class (Walsh, Kemerer, & Maniotis, 2010). After the development of the policies, it was alleged that Mary Doe was assaulted on two other occasions. Since compliance of the policy fell under a ministerial function, immunity was not applied. As a result, a Texas intermediate appellate court upheld the trial court’s decision.

Tort Liability

A tort differed from a crime and was governed by a separate and distinct body of law. A tort claim was brought about by an injured party seeking compensation for a civil wrongdoing while a crime was initiated by the state as a means of protecting the public (Alexander & Alexander, 2019). Tort claims involved the action or inaction of a person or entity that had a detrimental impact on an individual. In the school setting, case law has demonstrated many different variations of tort liability involving students, employees, educators, and educational institutions. The outcome of tort suits was often decided by the central theme of the standard of reasonableness of actions involving others in a situation that led to the injury of a student.

In addition to student’s academic growth, teachers had been responsible for the safety and emotional well-being of students. Vacca (1974) claimed the increasing number of tort claims brought against teachers was not only a result of a litigious society, but a result of the nature of the relationship between students and teachers. Tort claims against educators which involved students differed from claims brought against public employees and members of the public due to the expectation that “teachers must exercise a degree of care towards his or her students
greater than that degree of care exercised by any other public employee (Vacca, 1974, p. 448). Inherently, most would agree that teachers used caution in the classroom and learning spaces; however, when accidents occurred, the burden of proof fell on the plaintiff in determining whether the danger could have been foreseen and steps could have been taken to avoid the danger.

In *Fagan v. Summers* (1972), a student was injured when another student threw a smaller rock on the ground which caused a larger rock to bounce upwards and hit the student in the eye thus causing him to lose the sight in his left eye. The father of the student claimed that better supervision on the playground could have avoided the accident. The teacher had stated that she had walked past the small group of boys sitting on the ground playing and laughing and did not witness any potential harm. Shortly thereafter, one of the students cried out in pain when the accident occurred. The teacher had stepped away from the group only 30 seconds before the child was hit by the rock. The Supreme Court of Wyoming granted a summary judgement stating,

> There is no requirement for a teacher to have under constant and unremitting scrutiny all precise spots where every phase of play activity is being pursued; and there is no compulsion that general supervision be continuous and direct at all times and all places. (Court Listener, 1972, para. 7)

Tort liability fell under four different categories: intentional interference, strict liability, negligence, and defamation (Alexander & Alexander, 2019). Of these four categories, intentional interference and negligence are based on the supposition that a person was injured at the fault of another individual.

**Intentional Interference**

Intentional harm fell into four different categories of *harm*: (a) harm to an individual, (b) harm to an individual’s dignity or reputation, (c) harm to property, and (d) harm to economic
interests of a person or entity (Alexander & Alexander, 2019). The intent to cause harm has been held to the same standard as physical harm inflicted on an individual in the courts system. Assault and battery have been used interchangeably; however, there was a distinct difference between the two actions. Assault did not involve a physical act while battery did include a physical action towards another person. Assault was an intentional tort that contained elements of an emotional and mental violation (Alexander & Alexander, 2019). In *State v. Daniel* (1953), the court rendered that

> an assault is an intentional offer or attempt by violence to do any injury to the person of another. There must be an overt act or an attempt, or the unequivocal appearance of an attempt, with force and violence, to do a corporal injury such an act that will convey to the mind of the other person a well-grounded apprehension of personal injury. (Justia US Law, 1953, para. 4)

Battery of a student involved physical contact by another student or school representative. Most tort cases involving battery of a student included some form of corporal punishment; however, courts have typically sided with the teacher or administrator in these cases based on the doctrine of “in loco parentis” which meant “in place of the parents” (In loco parentis, n.d., para. 1). This doctrine allowed the teacher or administrator much leeway in the discipline of the student if reasonable care was used. California Education Code §48907 held that administrators and teachers had the same degree of physical control over children that the parent might use and that this law provided immunity for such action taken by a school employee in the discipline of a child (California Legislative Information, 2011). Alexander and Alexander (2012) emphasized the criteria that courts had historically considered in tort claims involving excessive force in discipline. These involved

- Part of the body in which the punishment was applied
- The object used to discipline
- The manner of the discipline
• The age of the student
• Student’s behavior history
• Nature of the offense or action
• The temperament of the person administering the discipline (Alexander & Alexander, 2019)

Additionally, in loco parentis held the educator to a standard of care when using sound and prudent judgement in the protection of their students (DeMitchell, 2007).

Infliction of emotional distress had been categorized as an intentional tort. The challenge for courts regarding torts involving emotional distress had been the ability to delineate between true mental anguish as opposed to hurt feelings. Alexander and Alexander (2012) outlined the four factors that must be proven to sustain a claim involving emotional distress. The four factors include

(1) that defendant’s conduct was outrageous  
(2) that the defendant acts were intentional or in reckless disregard of the probability of causing emotional distress  
(3) that the plaintiff suffered severe or extreme emotional distress  
(4) the defendant’s act was the actual proximate causation of the emotional distress  
(Alexander & Alexander, 2012, p. 635)

In Spears v. Jefferson Parish School Board (1994), the Louisiana Court of Appeals affirmed the trial court decision in holding the school district liable for damages involving the intentional act of a teacher imposing emotional harm to a child. The gym teacher, Coach Brooks, told a group of Kindergarten-aged boys that he would kill them when asked what he would do if they did not stop misbehaving. One of the students was Justin Spears, minor of the plaintiffs, Joyce and Samuel Spears. Coach Brooks removed two of the boys from the cafeteria to accompany him to his office where they could be supervised. Justin Spears stayed in the cafeteria. The two boys questioned Coach Brooks as to how he would kill them, and he explained that he would hang
them with a jump rope around their necks. Coach Brooks asked the two boys if they would like to play a joke on Justin. When they agreed, Coach Brooks called Justin into his office and told him that the boys were dead because he had hanged them by their necks. The boys were pretending to be dead with jump ropes around their necks. Justin became emotionally distraught.

Due to the trauma of this joke, Justin exhibited infantile behaviors and demonstrated a fear towards Coach Brooks (Spears v. Jefferson Parish School Board, 1994). His emotional need for his parents increased as well as his separation anxiety. Justin’s parents sought the assistance of a psychologist who opined that Justin had experienced a traumatic experience outside the range of a normal interaction. The trial court rendered judgement in favor of the plaintiffs stating the trauma that Justin had experienced as a result of the educator’s practical joke had robbed him of a typical childhood. The court’s decision was upheld by review of the Federal Supreme Court.

The final classification of intentional tort is false imprisonment (Alexander & Alexander, 2019). While these cases were very few, the burden of proof lies on the plaintiff to prove that the student had been held in the technical sense of imprisonment. According to Alexander and Alexander (2019), this was difficult to prove since the retention of students is an appropriate action based on statute, board policy, and constitutional law. Additionally, evidence must indicate that the teacher or administrator “acted unlawfully, exceeding their privileges to exercise reasonable control over student’s conduct” (Alexander & Alexander, 2012, p. 636). Courts have continued to apply the doctrine of in loco parentis in defense of teacher enacting their right to employ reasonable restraints on students to protect the child and other students.

Strict Liability

Strict liability involved tort litigation in which a person is injured through no action or fault of another individual and makes up for a small percentage of tort claims in the educational
setting. Alexander and Alexander (2012) wrote “strict liability was often referred to as liability without fault” (p. 638). When an activity considered abnormally dangerous results in harm of an individual, the person or entity best able to bear the burden could be held liable in a tort claim.

The Restatement of Torts listed six factors that describe an action or situation that is considered abnormally dangerous:

(a) Existence of a high degree of risk of some harm to the person, land or chattels of others; (b) likelihood that the harm that results from it will be great; (c) inability to eliminate the risk by the exercise of reasonable care; (d) extent to which the activity is not a matter of common usage; (e) inappropriateness of the activity to the place where it is carried on; and (f) extent to which its value to the community is outweighed by its dangerous attributes. (American Law Institute, 1965, p. 36)

Not all these factors needed to be present in a case, and each factor bore equal weight in court decisions. Situations involving abnormally dangerous activity in an educational setting were rare but might include field trips, hazardous lab experiments, or shop activity (Alexander & Alexander, 2012). As the resurgence of career and technology education has continued to abound in the educational landscape, administrators’ and teachers’ knowledge of the factors and case law involving strict liability might be warranted to avoid potential student harm and liability.

Negligence

Negligence occurred when an educator, administrator, or learning institution breeched the duty to protect students from imminent as well as foreseeable danger that could possibly cause harm to a child or if they failed to act on behalf of a student in which an injury occurred (Owen, 2007). Negligence tort claims prevailed as the most common type of litigation brought against educators and involved the failure to use reasonable care in an attempt to avoid harming an individual (Walsh et al., 2010). Seitz (1964) asserted there was a difference between unavoidable accidents and injuries that could have been avoided due to a teacher’s actions or their failure to
Seitz defined a teacher’s role in the standard of care involving students:

[T]eachers . . . must act toward pupils as would the reasonable, prudent person or parent under the circumstances. This standard does not make teachers the insurers of the safety of children. If school personnel have acted as the reasonable, prudent parent under the circumstances and nevertheless a child is injured, the teacher cannot be held responsible. The teacher or administrator are not liable for pure accidents. (as cited in Vacca, 1974, p. 449)

Love (2013) analyzed the impact of tort claims involving teachers and the correlation between proactive versus reactive training for educators as a means of preventing student injury. Love referenced research conducted by Barrios, Jones, and Gallagher (2007) regarding negligence related claims. In 2007, Barrios et al. facilitated a study analyzing tort claims from 1996-2002 in which a school district or employee was sued due to injury of a student. The researchers uncovered two-thirds of the cases resulted in a monetary award to the plaintiff and 7.6% of the 455 cases occurred in a shop class or laboratory. Barrios et al. (2007) also concluded that 58% of the cases resulted in injury due to the lack of supervision. Alexander and Alexander (2019) categorized the four types of negligence to include duty, standard of care, proximate/legal cause, and injury.

Duty

Vacca (1974) wrote litigation had summarized the duties of a teacher into the following categories: (a) instruction, (b) supervision, and (c) maintenance of materials and equipment used by students. Effective instruction has been intended to guide students in the mastery of an objective. In Doe v. San Francisco Unified School District (1973), the parents of a student claimed their child was not taught to read thus impacting his ability to secure a job. Peter Doe attended and graduated from the San Francisco Unified School District with a good attendance record, few discipline matters, and proficient grades; however, his literacy level was equivalent
to a fifth grader which classified him as a functional illiterate adult (Gordon, 1975). Gordon (1975) asserted that Doe had “alleged that the defendant school district and its agents and employees failed to use reasonable care in providing plaintiff with adequate instruction, guidance, counseling, and supervision in basic academic skills” (p. 464). The Superior Court of California sustained the defendant’s demurrer, which served as an allegation that “must be dismissed for failure of the cause of action” even if the allegations were true (Gordon, 1975, p. 467). Subsequently, Peter Doe filed an appeal in which the court upheld the original decision for the district.

The Doe v. San Francisco Unified School District (1973) case influenced California legislative action regarding the education code and its expansion to benefit the general public by creating graduation standards governed by local school boards. The intent was to create a level of expected proficiency for all students in the free public-school system while alleviating future tortious lawsuits for school districts in which a student was incapable of learning (Gordon, 1975). The overarching question in tort claims involving a student’s ability to learn was the place and level of accountability. Arguably, identifying the grade, teacher, or subject responsible for the lack of learning would be impossible to attain especially when viewing the deficit across a 12-year time span.

Secondly, supervision served as a category related to the duty of a teacher. In Osborne v. Montgomery (1931), the judge standardized the requirement of duty by stating,

Every person is negligent when, without intending any wrong, he does such as act of omits to take such a precaution that under the circumstances be, as an ordinary prudent person, ought reasonable to foresee that he will thereby expose the interest of another to an unreasonable risk of harm. (Alexander & Alexander, 2012, p. 64)

Newnham (2000) expanded the notion of the duty of care by claiming that “the relationship between teachers and students imposes a duty of care on teachers” (p. 46) and extended to a level
of protection from harmful events where the risk of injury is foreseeable. Newnham continued to outline the expectations of reasonable duty of care by highlighting the greater the risk of injury to a student, the greater the duty required by the educator. Some classroom environments required a higher duty of supervision due to the very nature of the activities involved in the learning process. Some examples of these types of learning environments included gyms, science labs, auto classes, and shop environments. With the insurgence of career educations, teachers’ understanding of their required duty of supervision was vital.

In correlation with the required duty of supervision, an educator’s lack of knowledge regarding the liability associated with supervision has created an environment of misinformation and urban legends (Tie, 2014). One area of misunderstanding was the liability that a teacher incurred upon their absence from the classroom. Ripps (1975) supported this notion through his claim regarding the administrator’s duty to educate their teaching staff regarding potential classroom liabilities. He wrote, “Administrators have the responsibility to make decisions, inform teachers as to possible classroom legal problems and attempt to resolve problems that arise in the school or on the campus and try to prevent these problems from reaching the courts” (Ripps, 1975, p. 24). While districts provided sound instructional professional development, legal literacy and training had traditionally been omitted from annual teacher training requirements. Love (2013) asserted through proper training and preparation of faculty members, school districts could take a proactive approach through professional development as a means to prevent future negligence claims involving student injury.

Alexander and Alexander (2019) explained that as a matter of law, a teacher was not negligent due to their absence in the classroom. While this should bring comfort to educators, Alexander and Alexander (2019) listed some classroom elements that should be considered when
leaving students unattended:

- The activity in which the students were engaged
- The materials in use during the teacher’s absence
- The age and emotional capacity of the students
- The teacher’s prior knowledge of the class behaviors
- The duration of the absence

Additionally, a lack of supervision did not only apply to teachers leaving the classroom, it also applies to the level of student supervision while present within the learning environment. Vacca (1974) outlined the factors that were often considered regarding the supervision of students. Such factors included age, experience, physical capacity, and the rigor of the assignment.

Vacca (1974) offered some examples regarding negligence due to the lack of teacher supervision. In *Jay v. Walla Walla Colleges* (1959), the college professor was found negligent when his absence resulted in an injury of a student during a lab experiment involving highly flammable gases. Additionally, two other cases demonstrated a judicial ruling on behalf of the plaintiff regarding unsupervised negligence. In *Cirillo v. City of Milwaukee* (1967), a class of 48 students was left unattended by the gym teacher for 25 minutes. A student was injured after the class engaged in rowdy behavior. In *Schnell v. Travelers Insurance Company* (1972), the teacher allowed her class to be supervised by an 11-year-old student. During the absence of the teacher, a student put his hand through a plate glass window (Vacca, 1974). In the *Cirillo v. City of Milwaukee* (1967) ruling and the *Schnell v. Travelers Insurance Company* (1972) ruling, the judge ruled that these actions could have been foreseen and the injuries could have been prevented if the classes had not been unsupervised.

As previously stated, teachers could be found negligent in the supervision of students while in the presence of their students because of faulty equipment or lack of judgement when
instructing students on the procedures of classroom activities. Love (2013) highlighted court cases related to this type of negligence. In Cureton v. Philadelphia School District (2002), a 13-year-old student disfigured his right finger while cleaning a table saw in shop class. The student was given permission to clean the saw and after completing this task, he reached over to turn on the saw. His untucked shirttail was caught in the machine and the pulley amputated a portion of the student’s finger. The court ruled in favor of the student since the teacher should have turned off the main power to the saw in an attempt to foresee the potential injury. In Wells v. Harrisburg Area School District (2005), an 11th grade student lost his ring finger, the tips of his thumb and sustained serious injury to his middle finger on his left hand. The student was using a table saw in shop class when he experienced a kick back from the saw. When he lost his balance, he placed his hand on the saw blade which resulted in the hand injury. The courts found that the table saw guard should have been in use and found the teacher negligent because he instructed the students not to engage the guard when the table saw was in use.

Standard of Care

The standard of care was the level of care or conduct expected to do a job. Alexander and Alexander (2019) avowed the risk involved in a task impacted the standard of care. When courts ruled on tort claims involving the standard of care, teacher’s actions are held to the standard of a reasonable lay person (Alexander & Alexander, 2019). Owen (2001) wrote the duty of educators related to the standard of care evolved over time through different interpretations of court decisions regarding tort claims involving negligent acts. Alexander and Alexander (2019) provided clarification of the standard of care owed to students through the decision of a Vermont court in Eastman v. Williams (1965).

A teacher’s relationship to the pupils under his care and custody differs from that generally existing between a public employee and a member of the general public. In a
limited sense the teacher stands in the parent’s place in his relationship to a pupil . . . and has such a portion of the powers of the parent over the pupil as is necessary to carry out his employment. In such relationship, he owes his pupils the duty of supervision. (Justia US Law, 1965, para. 13)

The standard of teacher supervision and the required standard of care could not be easily defined through the application of one court’s decision. Each situation carried its own set of circumstances which have caused courts to judge each claim on its own merit with consideration of previous rulings. Owen (2001) penned the standard of care and duty of a reasonable educator was much more than the ability to foresee a potential injury to students. Owen continued his argument by stating “an implication that a person’s duty to exercise due care is limited only by foreseeability is simply wrong” (p. 772).

Newnham (2000) asserted the determination of appropriate standard of care was through the court’s application of the notion of an unfortunate accident or the actions or omission thereof that resulted in an injury to a student. Newnham suggested to the courts that “each case should be judged on its own merits” (p. 48).

Proximate of Legal Cause

As mentioned in Perry’s (2017) dissertation, proximate of legal cause served as the existence of a connection between the action of the teacher and the injury of the student. Newnham (2000) established this element of negligence to be the most difficult to establish due the foreseeability factor. Additionally, the breach of duty must be proven as it related to the standard of care appropriate to the student. Owen (2007) maintained the plaintiff must prove a direct link between the sustained injury to the teacher’s action. Alexander and Alexander (2019) outlined three requirements that must be established to demonstrate causation: (a) the injury would not have occurred had the teacher been present; (b) the injury of the student was a natural result of the teacher’s negligence; and (c) there was no reason to intervene.
In *Medeiros v. Sitrin* (2009), the Supreme Court of Rhode Island upheld the ruling in the superior court on behalf of the teacher, Ronald Ford. The court found that Mr. Ford did not breach his duty by not being present in one of his classrooms in which the plaintiff, Michael Medeiros was injured due to an altercation with other students. Michael Medeiros arrived late to his class with Mr. Ford because he had stopped to pick up his paycheck at his place of employment. Due to the nature of Mr. Ford’s subject, Marine Occupations, his learning space was divided into two areas including a standard classroom and a lab. In order to get to the classroom, the students had to pass through the lab. Due to this room configuration, Mr. Ford had limited visibility to the lab when he was facilitating the learning with his students in the classroom. As a safety precaution, Mr. Ford intentionally kept the main door from the lab to the outside hallway ungreased so that he could be alerted if a student entered the lab after class had begun (*Medeiros v. Sitrin*, 2009). On February 1, 2002, shortly after class had begun, Mr. Ford heard a crash from the lab area. Upon entering the lab, Michael Medeiros was lying on his back and had sustained a fractured and dislocated ankle due to a skirmish with two other students in the lab. The plaintiff argued that Mr. Ford “had a duty to supervise students within his charge” (FindLaw, 2009b, para. 8). The courts interpreted the meaning of constant supervision not to include a constant physical presence with the students. *Medeiros v. Sitrin* (2009) ascertained that previous case rulings supported the standard of care that Mr. Ford gave his students and his lack of physical presence in the lab was not a breach of duty.

A recent court ruling in Georgia supported immunity for a teacher that was not present in the classroom when a student died as a result of horseplay. In *Barnett v. Caldwell* (2018), the teacher, Phyllis Caldwell, left her classroom for unknown reasons and asked another teacher to listen out for her classroom while she was away (FindLaw, 2018). The other teacher was located
next door to the classroom and shared a common entrance with Ms. Caldwell’s classroom.

During the teacher’s absence from the class, two students began to engage in horseplay which resulted in the death of one of the students. The deceased student fell to the ground during the horseplay while the other student fell on top of him. The teacher returned to her class 30 minutes later to find the student was unconscious. The student was later pronounced dead at the hospital due to an injury sustained as a result of the horseplay. The student died from a loss of blood resulting from a laceration to a major vessel caused by a dislocated collar bone (Alexander & Alexander, 2019).

The teacher handbook stated that students should never be left unsupervised in the classroom, however the handbook lacked clarification on the term unsupervised. The principal clarified that supervision related to proximity and acknowledged that teachers were allowed to be out of the classroom for up to 15 minutes as long as another teacher was asked to listen and have a general understanding (Alexander & Alexander, 2019) of the actions of the students in the classroom. The principal encompassed this notion by stating that supervision did not have to include a visual element. The teacher was offered discretionary immunity because there was no evidence of intent to injure the student. The courts held that the teacher was using her discretion in her action to leave the classroom for a bathroom break. Since the faculty handbook did not specifically define unsupervised, the act was not considered ministerial which involved an act that required compliance. In the case of Barnett v. Caldwell (2018), the supervisor’s directive established the defining difference between a ministerial act versus discretionary act (FindLaw, 2018). In this case, the written policy and the lack of clarity related to the policy admonished this act from being a ministerial act. The Court of Appeals applied the question of whether the school’s policy or the principal’s interpretation of that policy as expressed to Caldwell and other teacher was so clear, definite, and certain in directing Caldwell’s
actions that it established a ministerial duty requiring no exercise of discretion whatsoever (Alexander & Alexander, 2019, p. 879).

The court found that the plaintiff could not show that.

Students fight intervention continued to be a questionable liability for teachers as it related to negligence and proximate cause. In the current climate of cell phones and social media, teachers have to presume that they were one step away from the nightly news. Holben and Zirkel (2001) asserted student fights demanded quick action from teachers, “therefore, any perceived fear of litigation is not likely to be a major deliberative factor of the teacher’s decision-making process” (p. 168), related to their involvement. On the contrary, Schimmel (2011) found most educators were misinformed about their rights and responsibilities as educators and this lack of legal literacy had a direct impact on their job. According to Schimmel’s research, 26.4% of the teachers that were polled answered the following question correctly: Teachers can be held liable for student injuries that occurred when they broke up a fight. This low percentage was reflective of legal knowledge that most teachers possessed. Due to the Coverdell Teacher Protection Act (2001), most educators were immunized from liability as related to school fights if their actions were carried out “to control, discipline, expel, or suspend a student or maintain order or control in the classroom or school” (U.S. Department of Education, 2001, para. 3). This act granted immunity to teacher for their good faith acts in order to maintain peace and prevent student injury related to school violence. The exception from this immunity was if the teacher’s action were intentional or criminal in nature.

Injury or Damage

Teachers have been entrusted with most precious commodity of generations and have been given a great responsibility to teach, protect, and ensure the safety of their students (Smale, Gustafson, & Gounka, 2014). When a student sustained an injury or the loss of life due to a
teacher’s actions or omission to act, the victim or the victim’s family has sought damages (Alexander & Alexander, 2019). Evidence of actual harm served as the final required element in a negligence claim. As discussed by Perry (2017), harm was the actual damage that a plaintiff has endured as a result of a teacher’s breach of duty. This element must be present in a lawsuit involving negligence.

Vacca (1974) advised members of the school community to always use discernment in an effort to protect the welfare, safety, and health of their students. Vacca further advised the doctrine of sovereign immunity was not an absolute protection especially if an injury was a result of teacher negligence. Ripps (1975) affirmed this claim through his caution offered to educators. Ripps (1975) asserted teachers’ liability for injury to a student due to their negligence equated to that of a private citizen outside the school environment. Seitz (1971) wrote teacher and school personnel must take precautions by reasonably foreseeing potential harm to students. As litigation in education continued, the need for legal awareness has increased. Schimmel (2011) maintained that teachers should not view themselves as potential victims of litigation; however, they should equip themselves with legal knowledge as a means of protecting themselves and their students.

Federal Tort Claims Act

The Federal Tort Claims Act allowed the federal government to act as a self-insurer and acknowledges liability for the wrongful acts or omissions of its employees acting within the scope of their jobs. Under this act, the U.S. Government was liable to the same extent as an individual and the United States took the place of the employee named in a liability suit (U.S. House of Representatives, n.d.). Four factors must be present when filing a claim under the Federal Tort Claims Act:
1. The claimant must prove that he was injured by an employee of the federal government.

2. The governmental employee was acting within their official duties.

3. The employee was acting wrongfully or negligently.

4. The negligent or wrongful act caused damage or injury to the person or property. (U.S. House of Representatives, n.d., para. 3)

Under sovereign immunity, citizens were not allowed to sue the king; however, the Federal Tort Claims Act modernized the theory of sovereign immunity by permitting certain lawsuits against federal employees acting within the scope of their employment. Tortious or wrongful conduct against a federal agency or employee could be barred by sovereign immunity unless certain criteria applicable to the tort claims act were present.

Coverdell Teacher Protection Act

As part of the No Child Left Behind Act of 2001 (2002), the U.S. Congress enacted the Coverdell Teacher Protection Act in 2001. As of 2002, “the Elementary and Secondary Education Act (ESEA), Public Law 107-110, contained in subpart the Paul D. Coverdell Teacher Protection Act of 2001” (Alexander et al., 2019, p. 885) immunized educational employees, including school board members, in state public and private educational entities that received Chapter 70 funds from lawsuits related to their scope of responsibility in an educational setting. The Coverdell Act defined the teacher to include teachers, instructors, administrators, and any educational employees who work in a public or private school system (Coverdell Teacher Protection Act, 2001). The Coverdell Teacher Protection Act provided immunity if the teacher was taking responsible actions to maintain discipline and order which promoted an appropriate learning environment. Like most tort claim Acts, the Coverdell Teacher Protection Act applied immunities and exceptions to the liability of teachers. The Act stated that no teacher in a school
should be liable for harm caused by an act or an omission of the teacher if:

A. The teacher was acting within the scope of their responsibilities to the school district;

B. The actions aligned with Federal, State, and Local laws in an effort to discipline a student and/or control the learning environment appropriately;

C. The teacher was properly licensed and certified to act in the capacity in which they serve;

D. The harm was not caused by a criminal or intentional misconduct, gross negligence, reckless misconduct, or an indifference to one’s rights or safety; or

E. The harm was not related to the operation of a motor vehicle in which the state requires the operator of the vehicle to possess’ proper licensure and insurance (Coverdell Teacher Protection Act, 2001).

In addition to the outline of immunities, the Act stipulated the exceptions to the immunities that applied to teachers. The limitations on the liability of the teacher should not apply to misconduct if:

A. The behavior or action constituted a court convicted crime of violence or an act of terrorism;

B. The action involved moral turpitude with a child;

C. The misconduct violated a federal or state civil rights law; or

D. The defendant was under the influence of alcohol or drugs at an intoxicating level determined by the state law (Coverdell Teacher Protection Act, 2001).

In addition to the immunities and exceptions stated in the Act, limitations of economic liability to the teacher were outlined and were determined by the percentage proportion of the teacher’s responsibility of the claimant’s harm. To date, only 30 reported cases have mentioned the Coverdell Teacher Protection Act, none of which took place in Virginia.

Virginia Tort Claims Act

Sovereign immunity for the Commonwealth of Virginia was the strongest under Virginia law, and unless waived by the Virginia Tort Claims Act (1981), the Commonwealth’s immunity
was absolute (Anthony & McMahon, 2000). The doctrine of sovereign immunity has evolved over time and has been redefined through court rulings that involved cases with varied facts and circumstances and have challenged the boundaries and flexibility of this legal concept. Sovereign immunity doctrine derived from the notion that the king can do no wrong which provided an insulated layer of protection for the government related to tort claims. The foundational idea of immunity derived from old English law has evolved throughout the nation as states have modified the doctrine of sovereign immunity to allow for state employees and entities to be held liable for acts related to tortious injuries associated with gross negligence.

The guaranteed right of sovereignty provided a sense of security for public workers and officials to do their jobs without the fear of carrying out their duties related to their job responsibilities (Board of Public Works v. Gannt, 1882). Sovereign immunity was meant to preserve the funds of the state and to deter the whims of citizens to sue governmental agents due to their duties designed to ensure the welfare of the public. Additionally, it alleviated the fear of citizens taking public jobs because of protected immunity that served as a determent from becoming a victim of a lawsuit as it related to their occupation. Since the state could only act through the individuals that served, the protection afforded to the sovereign could not exist to protect only the state, this protection must extend to the employees of the state. The list of governmental employees included school employees, such as teachers, administrators, superintendents, and school board members.

Anthony and McMahon (2000) noted that sovereign immunity has served multiple purposes including a protection of public funds, the assurance that citizens would take public jobs without the fear of lawsuits, and the protection of societal norms by encouraging public servants to act in accordance with public safety measures. James v Jane (1980) and Messina v.
Burden (1984) have provided courts with a multi-faceted test to determine employee eligibility for sovereign immunity. Anthony and McMahon (2000) outlined the considered factors:

1. The nature of the function performed by the employee
2. The extent of the state’s interest and involvement in the function
3. The degree of control and discretion exercised by the state over the employee
4. Whether the act complained of involved the use of judgment and discretion (p. 12)

In Virginia, sovereign immunity offered protection for state employees; however, exceptions to the doctrine under Virginia law reflected a reality check that total immunity in all situations was a myth (Virginia Tort Claims Act (1981)). Any suit brought against the commonwealth of Virginia was protected by the doctrine of sovereign immunity for acts involving negligence of state agents except to the extent that the Virginia Tort Claims Act allows such suits to proceed. The most common exceptions included negligent conduct, intentional torts, and acts outside the scope of one’s employment. Matthews (2012) wrote that the doctrine of sovereign immunity was vibrant in Virginia and only statutory amendments through state law could create a waiver. The most significant statute, the Virginia Tort Claims Act (1981), provided a broad waiver of immunity for tort claims; however, strict timelines and procedures guided the requirements of legal action.

The state of Virginia passed the Virginia Tort Claims Act in 1981. The Virginia Tort Claims Act (1981) shared similarities with the Federal Tort Claims Act by permitting tort claims against the commonwealth of Virginia under circumstances involving a private citizen which would be held liable to the claimant. This has resulted in sovereign immunity as the exception and liability as the rule of governance. The Virginia Tort Claims Act (1981) created a path for litigation against state workers that involved injury or death to another person as a result of a negligent act. Roche (2014) asserted the Virginia Tort Claims Act (1981) maintained a host of
exceptions and criteria related to claims filed under the Virginia Tort Claims Act (1981). The Virginia Tort Claims Act (1981) usurped the doctrine of sovereign immunity in Virginia, however four factors must be considered in the determination of the application of immunity. *James v. Jane* (1980) outlined the four-factor test that courts should have applied when making a determination regarding immunity:

1. The nature and function performed by the employee
2. The extent of the state’s interest and involvement in the function
3. The degree of control and direction exercised by the state over the employee
4. Whether the act complained of involved the use of judgment and discretion

The complexities of the Virginia Tort Claims Act (1981) served as a guide for citizens that brought claims against state workers. There were many restrictions and considerations in the application and question as to whether the Virginia Tort Claims Act (1981) applied to an event that resulted in a tort claim. Considerations included:

1. Was the employee engaged in a discretionary or ministerial act at the time of the accident
2. Was there a high proof of gross or intentional negligence as opposed to regular negligence
3. Was the employee acting outside their scope of employment
4. If the Virginia Tort Claims Act (1981) applied to the situation, was the tort claim filed within one year of the accident
5. Was the commonwealth named as the defendant (Quinn, 2008)

Another limitation of the Virginia Tort Claims Act (1981) was the time limit allowed to file a tort claim against the commonwealth. The statute of limitations mentioned in Va. Code § 8.01-195.7 of Virginia Tort Claims Act (1981) stated that every claim cognizable against the Commonwealth or a transportation district under this article shall be forever barred, unless within one year after the cause of action accrues to
the claimant the notice of claim required by § 8.01-195.6 is properly filed. (Virginia Law, 1981b, para. 1)

Va. Code §8.01-195.3 limited the damages to a plaintiff to $100,000 for claims involving “damage to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any Commonwealth employee while acting within the scope of his employment” (Virginia Law, 1981a, para. 1). In *James v. Jane* (1980), the Supreme Court of Virginia held that the cap of $100,000 was applicable in tortious claims involving ordinary negligence, not cases that involved gross negligence or intentional torts.

The Virginia Tort Claims Act (1981b) Va. Code 8.01-195.1 to 8.01-195.8 partially forfeited its immunity from claims of tortious injuries caused by state employees. According to the Virginia Tort Claims Act (1981), all state entities were not protected equally. Some afforded a more robust level of protection related to tort claims. In Virginia, all state employees had immunity, both statutory and case law for ordinary negligence but not for gross negligence (D. Alexander, personal communication, May 25, 2018).

Allen, Allen, Allen, and Allen (2018) emphasized that gross negligence was demonstrated when a person proved a complete lack of care to someone’s need. The definition of gross negligence was noted under the Virginia Model Jury Instruction No. 4.030 which stated,

Gross negligence was that degree of negligence which showed such indifference to others as constitutes an utter disregard of caution amounting to a complete neglect of the safety of another person. It is such negligence as would shock fair-minded people, although it is something less than willful recklessness. (Allen et al., 2018, Footnote 3)

In *Frazier v. City of Norfolk* (1987), the Supreme Court of Virginia expanded the definition of gross negligence as

that degree of negligence which shows an utter disregard of prudence amounting to complete neglect of the safety of another. It is the heedless and palpable violation of legal duty respecting the rights of others. . . . Gross negligence amounts to the absence of slight diligence, or the want of even scant care. (Justia US Law, 1987, para. 25)
Allen et al. (2018) explained the jury often decided the question of gross negligence; however, as a matter of law, gross negligence did not exist if the defendant could prove some degree of care. In the case of *Whitley v. Commonwealth* (2000) which involved a wrongful death suit against the doctors and nurses at a correctional facility, the Supreme Court of Virginia upheld a trial court decision that the defendants utilized some degree of care in the treatment of an inmate’s epileptic condition while incarcerated at a state correctional facility. In *Whitley v. Commonwealth*, the mentally impaired inmate died due to an epileptic seizure. The administrator of his estate claimed medical malpractice because the medical staff failed to monitor his medication levels to the extent of preventing the onset of seizures. The court did not agree with the claim of gross negligence because the medical staff exercised some degree of care by monitoring his blood samples and ensured that the patient took his medicine at least 85% of the time (*Whitley v. Commonwealth*, 2000).

Since counties of the commonwealth served as the political and geographical arm of the state’s business, they enjoyed absolute immunity afforded to the state. Additionally, school boards serve as political subdivisions of the state and shared comparable county immunity. Phelan and Antell (n.d.) asserted that school boards were clothed in county immunity because they “act in connection with public education as agents or instrumentalities of the State, in the performance of a governmental function and consequently they partake of the state’s sovereignty with respect to tort liability” (pp. 6-7). Phelan and Antell (n.d.) noted one important caveat regarding school board immunity. Va. Code 22.1-194 allowed for school boards to be liable for vehicle accidents up to the limit of their insurance policy. *Linhart v. Lawson* (2001) held a school board liable for a bus accident however the courts found the bus driver qualified for immunity under Va. Code 22.1-194.
According to the Code of Virginia § 8.01-220.1:2, civil immunity was offered for teachers under certain circumstances.

A. Any teacher employed by a local school board in the Commonwealth shall not be liable for any civil damages for any acts or omissions resulting from the supervision, care or discipline of students when such acts or omissions are within such teacher’s scope of employment and are taken in good faith in the course of supervisions, care or discipline of students, unless such acts or omissions were the result of gross negligence or willful misconduct.

B. No school employee or school volunteer shall be liable for any civil damages arising from the prompt good faith reporting of alleged acts of bullying or crimes against others to the appropriate school official in compliance with specified procedures.

C. This section shall not be construed to limit, withdraw or overturn any defense or immunity already existing in statutory or common law . . ., or to prohibit any person subject to bullying or a criminal act from seeking redress under other provision of law (Virginia Law, 1997, para. 1-3).

In *Burns v. Gagnon* (2012), a student was severely beaten in Gloucester High School cafeteria after the assistant principal had received a warning that the fight was going to take place a few hours prior to the event. The assistant principal did not respond to the warning. When the plaintiff filed suit, Mr. Burns claimed immunity under the Code of Virginia § 8.01-220.1:2 (Virginia Law, 1997). The courts ruled that the language in the code mentioned “teacher” which excluded Mr. Burns from immunity; however, the court ruled that since Mr. Burns served in a position of authority and performed tasks equal to an agent of the sovereign, he was protected by limited common law sovereign immunity (*Burns v. Gagnon*, 2012). Landry (2015) asserted that the Virginia Supreme Court’s decision set a precedent for future behavior of administrators. The precedent was the lack of action by an administrator served a greater purpose than the safety of the students (Landry, 2015). Sovereign Immunity and the application of the Virginia Tort Claims Act (1981) has been a complicated and fluid process that has changed over time with subsequent court rulings.
In this review of literature, I provided an overview of the historical perspective of sovereign immunity in the United States. The advent of American democracy was founded on the laws and practice from England because there was no formal codified law, only an understanding from the early adopters of the nation’s government (Smith, 2016). Sovereign immunity was meant to protect the King’s purse. Throughout time and many court decisions that involved sovereign immunity, protection for governmental agents continued to change and the absolute immunity, enjoyed by the King, became a challenged and complex doctrine that has shaped the protection afforded to employees of the state. The doctrine of sovereign immunity was not intended to invalidate claims, it served as a protection for state workers to seek relief against judgements brought against them that resulted in a tort claim.

Anthony and McMahon (2000) expanded this notion stating that sovereign immunity protected against vexatious lawsuits involving governmental employees which allowed citizens the opportunity to work in such positions by alleviating the fear of litigious activity surrounding the capacity in which they serve in their jobs. Throughout history, state and federal courts have applied the principal of sovereign immunity in various ways. However, case law has supported the expansion of this doctrine.

Governmental immunity has prevailed with few exceptions. Murphy (1968) predicted that movement towards recasting the doctrine of sovereign immunity would indicate that a consideration towards the individual citizen was paramount over governmental entities and their agents. Arguably, some believed that sovereign immunity existed as a bad social policy intended to protect the state’s purse; however, immunity ensured government operations were not hindered by vexatious lawsuits (Ham, 1999).
The researcher also outlined an overview of tort liability in this literature review. Tort litigation has remained complex due to the nature of the circumstances related to the incident that resulted in the injury of another person. The essential elements of tort liability included intentional interference, strict liability, negligence, and defamation (Alexander & Alexander, 2019). Tort liability in the educational system has continued to depend on case law precedents and decisions to guide the boundaries of school district and school employees’ liability. The outcome of tort litigation has often been decided by the central theme of the standard reasonableness of actions involving others in a situation that led to the injury of a student.

An overview of the enactment of and landmark cases related to common law and the Virginia Tort Claims Act (1981) were analyzed. Additionally, Virginia code and statute were discussed as it provided a framework for court decisions involving tort claims against the Commonwealth. Successive analysis of court cases before the enactment of the Virginia Tort Claims Act (1981) and thereafter provided direction on how Virginia state courts have interpreted the Virginia Tort Claims Act in litigation against school districts and employees with respect to negligence.
CHAPTER 3
RESEARCH DESIGN AND METHODOLOGY

The focus of this dissertation is to provide a legal analysis of the manner in which Virginia courts have applied the Virginia Tort Claims Act (1981) in court cases involving school districts and public-school employees. As more fully explained in Chapter 2, the Virginia Tort Claims Act (1981) served as a vehicle by which the Commonwealth partially forfeited its immunity from tort claims. The study was a “qualitative, document-based, legal-historical, multiple-case” (Brackett, 2014, p. 75) inquiry that analyzed Virginia state tort court cases through December 31, 2018. The qualitative case analysis of tort liability cases involving Virginia school districts and/or district employees were organized by court cases prior to the 1981 Virginia Tort Claims Act and after. The researcher used legal research methodology to answer the research question: How have Virginia state courts interpreted common law and the Virginia Tort Claims Act litigation against Virginia public school districts and their employees related to negligence?

The analysis of case law is multi-faceted due to the social and political factors interwoven in legal issues. Legal interpretation was a moving target based on relevant facts, law, situational factors, case studies, and the current outside temperature. Tyler (2017) asserted how the nature of legal scholars has propelled them to an “adoption of an institutional design approach in which laws and the policies and practices of legal authorities are examined through a consideration of their impact upon the goals of the legal system” (p. 131). Rowe (2009) stated that the research and analysis of the law is complex, and this process allowed legal scholars the skills and opportunities to fashion an understanding of the law and to design novel approaches to guide others in their own knowledge and application of previous case decisions and precedents that had
been set by previous court decisions. Although complex, legal research and analysis was rooted in common sense planning and organization. The key to answering a legal question was rooted in an understanding of the legal question and a well-designed process of research. Rowe (2009) explained that the development of schema related to the legal question could be attained through basic searches utilizing Google which would lead to sites that would provide the foundational knowledge related to the research question. This researcher conducted numerous informal searches related to sovereign immunity and tort law to build an understanding of these legal doctrines. These searches led to law firm blogs and presentations that educated me on the topic of this study. This foundational information provided an understanding that helped me maneuver through subsequent articles, dissertations, and case law related to the research question.

I continued the legal analysis of state tort claims acts presented in the following dissertations:

- Carman’s (2009) dissertation—*Analysis of Qualified Immunity for Texas Public School Professional Employees as Interpreted by the Texas Courts*

- Lacefield’s (2010) dissertation—*A Legal Analysis of Litigation Against Oklahoma Educators and School Districts Under the Oklahoma Governmental Tort Claims Act*

- Kriesal-Hall’s (2013) dissertation—*A Legal Analysis of Litigation Against Mississippi Educators and School Systems Under the Mississippi Tort Claims Act*

- Herauf’s (2014) dissertation—*Immunity for New Mexico Public School Districts and the 1978 Tort Claims Act*

- McDaniel’s (2014) dissertation—*A Legal Analysis of Litigation Against Georgia Educators and School Systems Under the Georgia Governmental Tort Claims Act*

- Perry’s (2017) dissertation—*A Legal Analysis of Litigation Against Kansas Educators and School Districts Under the Kansas Tort Claims Act*

- Price’s (2018) dissertation—*A Legal Analysis of Litigation Against Louisiana Educators and School Districts, Before and After the Louisiana Governmental Claims Act*
Additionally, reference to the above-mentioned dissertations’ methodology chapters played a critical part to the structure and design in Chapter 3.

Legal Research Design

Rowe (2009) asserted the key to effective legal research was based in the basic understanding of the issue or legal doctrine, which in this study was the application of the doctrine of sovereign immunity as it related to common law and Virginia Tort Claims Act (1981) involving cases against educators and public-school systems. The text, *American Public School Law*, set a foundation of knowledge related to the legal constructs of sovereign immunity for public servants as well as specific case law that has impacted the variables and outcomes of state tort claims (Alexander & Alexander, 2019). Alexander and Alexander outlined sources of law and noted that judicial decisions or a court precedent was not only beneficial for legal research but had also been used to influence court decisions. A precedent was a prior ruling that has been used to argue a legal point in a subsequent case. However, judges determined whether the past precedent should be considered in the ruling of the case. Law and societal factors were continually changing thus impacting the application of the law in courts. Since the burden of future repercussions of a case ruling could have an influence over society norms and expectations, it was imperative that court decisions considered factors such as past precedents, current societal issues, trends, and social sciences (Rublin, 2011). This concept became a common thread throughout the current investigator’s research of tort cases in Virginia as well as surrounding states. As the educational landscape has changed over the past decades, judicial decisions involving tort claims against teachers, administrators, and school districts has held true to the doctrine of immunity while considering the trends in society as well as the learning environment.
The data for the current study were collected from primary and secondary sources of law. Primary sources included case law related to tort claims involving public school educators and public districts in Virginia and surrounding states. Additionally, I researched and reviewed federal and state statutes as they related to the research question. Federal and state statutes as well as court cases were available on the Nexis Uni® database. The Nexis Uni® database was accessed through the University of North Texas Library homepage. Since I attend the University of North Texas, log-in credentials afforded free access to this resource. Additionally, Westlaw, a computer-assisted legal research tool was accessed for the procurement of primary sources.

Brackett (2014) asserted most legal researchers preferred the Westlaw database over the Nexis Uni® database. I found both online databases sufficient and beneficial for the research process.

Secondary sources, including law review articles, dissertations, legal manuals, and law texts, provided a deep understanding of the historical perspective of sovereign immunity, tort law, and the legal framework that has guided many outcomes in state tort cases. Brackett (2014) stated that legal research required flexibility, perseverance, and a consistent effort to locate and determine the latest decision of each analyzed case. The Shepard© citation system was used to determine the most recent ruling on each case.

The Shepard© citation system is a system used within Nexis Uni® (a computer-assisted legal research system) that tracked the previous history and subsequent legal decisions of court cases through a process that was known as the verb to “Shepardize©” a case. (Brackett, 2014, p. 61)

This process resulted in an understanding of the most current legal decision upheld by the courts.

Common to Price (2018), a series of Boolean searches were conducted on various search engines including Nexis Uni®, Westlaw, Google, and Google Scholar. George Boole, an English mathematician, originated the structure of Boolean search parameters. Collins (2018) asserted that through George Boole’s books, The Mathematical Analysis of Logic (1847) and An
Investigation of the Laws of Thought (1854), the constructs of Boolean algebra set the fundamental language to modern computing and programming. Boolean searches transcend across all search engines and databases and allowed me to combine words and phrases that have utilized key words and symbols such as or, and, not, near, subtraction symbol, and the addition symbol (Collins, 2018). The implementation of these key words and symbols assured a concise search process in the research of tort claims related to public school employees and districts before and after the enactment of the Virginal Tort Claims Act of 1981.

To assist in answering the research questions, I analyzed all published cases involving decisions that interpreted how the doctrine of state sovereign immunity had been applied to litigation involving Virginia Public School districts and their employees prior to and after the enactment of the Virginia Tort Claims Act in 1981. Like Price (2018), separate Boolean searches were conducted in Nexis Uni®. An example of one of the searches was: [name (school!) and “tort claim!”]. Additionally, Google Scholar was utilized through the following steps:

1. Select case law
2. Select Virginia Courts which include Court of Appeals and Supreme Court
3. Select 4th Circuit courts
4. The following search phrases were typed into the search box—tort claims and school employees, tort claims and school districts, sovereign immunity and school districts, and sovereign immunity and school employees

The search resulted in a return of many court cases in which I discerned the relevancy of each case to the research question and analyzed applicable court cases.

Data Analysis: Issue, Rule Application, Conclusion (IRAC) Method

Legal analysis required the ability to problem solve and creatively think through case law in order to draw conclusions related to outcome trends. In the study of law, the IRAC method has
served as the dominant approach for case study analysis for the past 40 years (Burton, 2016). Kift, Israil, and Field (2010) defined legal reasoning as “the practice of identifying the legal rules and processes of relevance to a particular legal issue and applying those rules and processes in order to reach a reasonable conclusion about, or to generate an appropriate response to the issue” (p. 18). Problem solving approaches in the discipline of law analysis included numerous methods that benefit the different stakeholders: practitioners, students, and clients (Burton, 2016).

As a student and learner of case analysis, this researcher utilized the IRAC method to achieve a deeper understanding of the factors involved in applicable court cases and the application of the law implemented by the courts. The IRAC method dated back to 1976 and has been characterized as a traditional approach to legal reasoning and problem solving (Burton, 2016). IRAC is an acronym that represents issue, rule, application, and conclusion.

- **Issue**
  - What is the question presented to the court?
  - What are the parties asking the courts to decide?

- **Rule**
  - What relevant rules of law are used by the court to reach its decision?
  - There are often multiple rules of law applied to rulings.

- **Application/Analysis**
  - Most critical portion of the brief.
  - The analysis examines how the courts applied the rule to the facts.
  - Understanding the application of the rule to the facts can help predict future outcomes to similar cases.
  - Sets a precedent for future cases
Burton (2016) provided a linear grid that guided me in case analysis through a disseminating process utilizing the IRAC method. This grid included vital elements that should be considered when studying a relevant case, as shown in Table 1.

Table 1

**IRAC Grid**

<table>
<thead>
<tr>
<th>Issue</th>
<th>Rule</th>
<th>Application</th>
<th>Conclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Identify the legal issues based on the relevant rules of law</td>
<td>• Identify the relevant rules of law</td>
<td>• Make a linkage between the elements of the law and factual problem</td>
<td>• Reach a convincing conclusion on all of the legal issues in the factual problem, based on strong support from statute and case law</td>
</tr>
<tr>
<td>• Frame the relevant legal issues in the factual problem as questions using materials facts, party names, and elements of the relevant rules of law</td>
<td>• Break down the relevant rules of law into elements</td>
<td>• Make analogies between the factual problem and the case law</td>
<td>• Justify why alternative conclusions were not reached</td>
</tr>
<tr>
<td>• Include definitions from statute and case law</td>
<td>• Include the facts of cases that are similar to factual problem</td>
<td>• Distinguish the factual problem from the case law</td>
<td></td>
</tr>
<tr>
<td>• Include the facts of cases that are similar to factual problem</td>
<td>• Make assumptions clear</td>
<td>• Make additional facts required</td>
<td></td>
</tr>
</tbody>
</table>
The relevant court cases were organized through a spreadsheet that chronically listed court case decisions related to litigation involving sovereign immunity and public-school districts and their employees. Since the case decisions were organized chronologically, the delineation of cases prior to and after the enactment of the VTCA (1981) allowed me the opportunity to compare court decisions regarding state immunity and the impact of the VTCA. As categories and themes emerged in the analysis of the cases, additional columns were added to the spreadsheet which provided a “big-picture” view for Chapter 4 of this research. Rowe (2009) asserted the researching, writing, and analyzing of court decisions was a complex and interwoven process that requires thorough study and organization. Through research, the utilization of the IRAC method, and an organizational plan, I was able to define the parameters of the inquiry and apply case law research, and court decisions to answer the following question: How have Virginia state courts interpreted common law and Virginia Tort Claims Act (1981) in litigation against Virginia public school districts and their employees related to negligence?
CHAPTER 4
ANALYSIS OF THE LAW

In Chapter 4, by design, I discuss and analyze cases that involved tort liability in Virginia prior to and after the passage of the 1981 Virginia Tort Claims Act. In this chapter, I analyze tort cases that involved school districts and district employees in the state of Virginia. There are four cases analyzed prior to the passage of the Virginia Tort Claims Act (1981) and ten cases analyzed post the passage of the Virginia Tort Claims Act (1981).

Cases Prior to the 1981 Virginia Tort Claims Act

*Kellam v. School Board of the City of Norfolk* (1960)

Edith Kellam attended a concert at Blair Junior High School and slipped and fell in the aisle of the school auditorium. Since the school board had leased out the auditorium to the company that hosted the concert, Kellam filed suit against the school board for their failure to maintain safe aisles in the auditorium. In *Kellam v. School Board of the City of Norfolk* (1960),

Kellam alleged that the board failed to use reasonable care to maintain the common passageways in a reasonably safe condition, and allowed them to be slick and slippery so that plaintiff, who had paid admission to the concert given by the lessee, was caused to fall while walking down the aisle of the auditorium and was thereby injured (Justia US Law, 1960, para. 6)

Additionally, the plaintiff alleged liability and negligence on the theory of nuisance because the aisle was insufficiently maintained thus causing a dangerous environment and furthermore alleged the board should be held liable because they acted in a proprietary function as opposed to a governmental function thus forfeited immunity. The board filed a demurer which was sustained by The Court of Law and Chancery of the City of Norfolk which recognized that the board acted as an agent of the state and performed governmental functions (*Kellam v. School Board of the City of Norfolk*, 1960). The doctrine of sovereign immunity in Virginia offered
governmental agencies immunity from tortious activity while they operated in governmental capacities (Fry v. County of Albemarle, 1889; Mann v. County Board of Arlington County, 1957; Nelson County v. Loving, 1919). The basis for a school board’s immunity from liability as a result of tortious injury was founded on the fact that the school board has served as an arm of the state and has acted in a governmental capacity as set forth by the law (Kellam v. School Board of the City of Norfolk, 1960). In Boice v. Board of Education of Rock District (1931), the courts asserted,

As the board is purely a statutory creation, it has no authority to change in any way the mold in which it was fashioned by the legislature. It cannot alter the fact that it is a governmental agency; neither can it step down from its pedestal of immunity, for that immunity is incident to a governmental agency. (Court Listener, 1931, para. 3).

Government employees that received protection under sovereign immunity in Virginia shared the same measure of complexity as state agencies. Virginia Code Ann. § 15.2-1405 stated that “members of governing bodies of counties, cities, towns or political subdivisions were immune from suit for failing to exercise discretionary or governmental authority, except for gross negligence, intentional misconduct, or misappropriation of funds” (Cook & Rosser, 2016., p. 30). The extensive list of governmental employees included school employees such as teachers, administrators, superintendents, and school board members (Anthony & McMahon, 2000).

In Kellam v. School Board of the City of Norfolk (1960), the plaintiff contended that when the School Board leased the auditorium, it acted in a proprietary capacity which forfeited its immunity as a governmental entity. According to the Code of Virginia 1950 § 22.1-71,

The duly appointed or elected members shall constitute the school board. Every such school board is declared a body corporate and, it its corporate capacity, is vested with all the powers and charged with all the duties, obligations and responsibilities imposed upon school boards by law and may sue, be sued, contract, be contracted with and, in
accordance with the provisions of this title, purchase, take, hold, lease, and convey school property, both real and personal (Virginia Law, 1997, para. 1).

The school board asserted that the rental of the school building for the purpose of the concert was not done in a proprietary manner, they merely exercised their powers allotted to them in statute for governmental purposes. The Virginia Supreme Court supported this assertion through their reference in 160 A.L.R. 7 at page 67. It stated:

It is the general rule that education functions or activities are not converted from a governmental to a proprietary character, so as to render the rule of immunity inapplicable, by the fact that a charge of tuition or other fees is made in connection with the operation or maintenance of a public school or state or public university; or that admission was charged to a school even, such as an athletic game or contest between school teams conducted as part of their physical education program; or in permitting a third party organization to use school premises for public lectures, concerts, or other educational or social interests, even though a nominal sum is charged to defray the cost of heat, light, and the life in connection therewith, or that the particular function or activity was merely optional or discretionary rather than mandatory (Justia US Law, 1960, para. 26)

In Kellam v. School Board of the City of Norfolk (1960), the Supreme Court of Virginia, affirmed the decision of the lower courts which held the school board was not liable for negligent tort, and it did not act in a proprietary capacity thus forfeited its governmental immunity. The Supreme Court cited the ruling in Bingham v. Board of Education (1950) which stated,

the reasons given by most courts in holding boards of education immune from liability for negligence center around the proposition that school boards act in connection with public education as agents of the state . . . and if the schools are to be stripped of immunity, the stripping process should be by legislative enactment and not by court decree. (Justia US Law, 1960, para. 34)

No subsequent legal history pertaining to Kellam v. School Board of the City of Norfolk (1960) existed.

Crabbe v. County School Board of Northumberland County and Albrite (1968)

In Crabbe v. County School Board of Northumberland Cty and Bobby Lee Albrite (1968), the plaintiff, Dandridge Cockrell Crabbe, filed a motion for judgement against the school board
and an employee of the district, Mr. Bobby Lee Albrite. Mr. Albrite served as the plaintiff’s
teacher at North Cumberland High School. The plaintiff alleged that he sustained an injury to his
hand when he received instruction from Mr. Albrite on February 3, 1965. Crabbe claimed that
the power saw was defective thus resulted in his hand injury. Crabbe alleged that the school
board was negligent in its maintenance and care of the power saw because it was defective and
improperly equipped. Additionally, Crabbe held that Albright was negligent because he
permitted the plaintiff to use the defective power saw and failed to instruct him on the proper use
of the saw (Crabbe v. County School Board of Northumberland Cty and Bobby Lee Albrite, 1968). Both defendants filed separate demurrers. The board asserted that the operation of the
school served as a governmental function thus provided common law immunity from the liability
of the plaintiff. Albrite claimed that the school board’s immunity extended to him as the
employee of the school board. The lower court sustained both demurrers and dismissed the case.
The plaintiff appealed the case to the Supreme Court of Virginia (Crabbe v. County School
Board of Northumberland Cty and Bobby Lee Albrite, 1968).

The Supreme Court of Virginia held the lower court’s decision related to the school board
immunity under common law. The court cited Kellam v. School Board of the City of Norfolk
(1960), in which the Virginia Supreme Court held that in the operation and maintenance of the
school building, a school board acted as a governmental agency or arm of the State and was
“immune from liability for tortious personal injury negligently inflicted” (Court Listener, 1960,
para. 4). Additionally, the Supreme Court noted their holding in Krutili v. Board of Education of
Butler District (1925) by asserting the operation of a school was a governmental function of the
school board, thus provided immunity for the school board from liability for personal injuries.
sustained by a student and caused by the alleged negligence of a teacher employed by the school board.

The Virginia Supreme Court affirmed in part in favor of the school board which demonstrated absolute sovereign immunity under common law for the school board, which functioned in its governmental capacity as an arm of the state, however the Virginia Supreme Court did not uphold the decision of the lower court which allowed the immunity of the board to extend to their employee and reversed in part for the defendant, Mr. Albrite. The court cited Elder v. Holland (2008) in which a police officer was held liable for the use of defamatory language while he executed his role as an officer of the state. While the state itself was immune from tortious liability under Virginia common law, that immunity did not extend to the employee of the state through his engagement of gross negligent behavior. Since Mr. Albrite knowingly allowed a student to use a defective power saw without proper instruction or warning, the immunity of the school board did not extend to his negligent actions (Crabbe v. County School Board of Northumberland Cty and Bobby Lee Albrite, 1968). Lentz v. Morris (1988) later overruled Crabbe insofar as it addressed the employee’s liability for negligent behavior.

Short v. Griffitts (1979)

In Short v. Griffitts (1979), Kenneth Shorts brought action against Joseph Griffitts, athletic director, Richard Lee, baseball coach, and Albert Redman, grounds supervisor at Herndon High School in Fairfax County. Short alleged that he sustained an injury when he fell on broken glass while he ran laps on the outdoor track facility (Short v. Griffitts, 1979). The defendants, Griffitts, Lee, and Redman, filed a plea of sovereign immunity since they performed supervisory duties for the school board. They asserted that the common law immunity enjoyed by the school board extended to them.
Kenneth Short alleged that the defendants had a duty to establish procedures that ensured the maintenance and safety of the track (Short v. Griffitts, 1979). Additionally, he claimed that proper supervision and clear communication to the janitorial staff fell within the scope of their employment (Short v. Griffitts, 1979). The defendants relied on Lawthorne v. Harlan (1973) which extended governmental immunity to three employees. The Supreme Court of Virginia found the reliance on this case for justified immunity to be misplaced. In Short v. Griffitts (1979), the Supreme Court asserted,

Here, as in Crabbe, we are involved with a local governmental agency, created by the sovereign power of the state, and entitled by virtue of that fact to governmental immunity. Additionally, we are involved with the employees of such a local governmental agency whom we have specifically held do not enjoy governmental immunity and who are answerable for their own acts of simple negligence. We make a distinction between the sovereign Commonwealth of Virginia and its employees, and a governmental agency created by the Commonwealth, and its employees. (Justia US Law, 1979, para.6)

It was important to note the court found the employees in Lawhorne v. Harlan (1973) were engaged in acts related to the scope of their employment and tasks which involved discretionary thought processes. The court supported this decision with the ruling that was handed down in Sayers v. Bullar (1942). In this case, the plaintiff alleged that the actions of two state workers caused an explosion during the construction of a water pipeline. For the first time, the Supreme Court was called to pass judgement against state workers. In Sayers v. Bullar (1942), the Supreme Court asserted that it would be unwise for state employees to be held liable for acts within the scope of their employment, and

The true rule would seem to be to require proof of some act done by the employee outside the scope of his authority, or of some act within the scope of authority but performed so negligently that it can be said that its negligent performance takes him who did it outside the protection of his employment. (Court Listener, 1979, para. 7-8)

In Short v. Griffitts (1979), the Supreme Court held that employees of local school board
did not enjoy the immunity afforded to the school board when said employees engaged in
negligent acts or acted outside the scope of their employment. *Lentz v. Morris* (1988) later
overruled *Short v. Griffitts* (1979) insofar as it addressed the employee’s liability for negligent
behavior.


*Banks v. Sellers* (1982) was appealed to the Virginia Supreme Court in 1982. Since the
claim arose in the lower courts in 1975, the Supreme Court of Virginia did not apply the Virginia
Tort Claims Act because the Virginia Tort Claims Act applied to claims that accrued on or after
July 1, 1982. In *Banks v. Sellers* (1982), Lynette Banks, a high school student, was stabbed by
another student at school. Banks alleged Joseph Sellers, Superintendent of Henrico County
Public Schools, and Colin Steele, principal of Henrico High School, were negligent in their duty
to provide a safe learning environment (*Banks v. Sellers*, 1982). The question on appeal was
whether a plea of sovereign immunity was available to the superintendent and principal under
common law. The Supreme Court of Virginia considered the factors outlined by *James v. Jane*
(1980).

1. The nature and function performed by the employee
2. The extent of the state’s interest and involvement in the function
3. The degree of control and direction exercised by the state over the employee
4. Whether the act complained of involved the use of judgment and discretion (*Justia

When the Supreme Court analyzed statute, judicial precedent, and applied the factors set forth by
*James v. Jane* (1980), they determined the following decision regarding the immunity of the
superintendent and principal.

Our analysis convinces us that a division superintendent is a supervisory official who
exercises powers involving a considerable degree of judgment and discretion . . . when the duties of the division superintendent and the high school principal are compared, it is apparent that the principal is, for his school, essentially a counterpart of the superintendent. (US Law Justia, 1982, para. 15-16)

In Banks v. Sellers (1982), the Supreme Court of Virginia affirmed the judgement of the trial court and held the superintendent and high school principal were protected by the doctrine of sovereign immunity. No subsequent legal history pertaining to Banks v. Sellers (1982) existed.

Cases Post-Enactment of the 1981 Virginia Tort Claims Act

Murphy v. Fairfax County Sch.Bd. (1984)

Murphy v. Fairfax County Sch.Bd. (1984) involved a student’s claim that alleged the school board and employees of the school district installed a poorly designed staircase in his high school. Jeffrey Murphy, the plaintiff, attended Robinson High School, a campus operated by the Fairfax County School Board. He claimed that a stairway, located in the school building, was improperly designed, constructed, and maintained thus caused an injury to one of his fingers. The plaintiff alleged that the construction of the stairway protruded from the wall and was held with a fastener that caught his ring and subsequently, ripped off his ring finger (Murphy v. Fairfax County Sch.Bd., 1984).

Murphy filed a personal injury action against the Fairfax County School Board, Clifford C. Phillips, Director of Maintenance Services, Robert Russell, Principal of Robinson High School, and William Burkholder, Superintendent of Schools. Murphy claimed negligence in the design, installation, and maintenance of the stairway which resulted in his hand injury (Murphy v. Fairfax County Sch.Bd., 1984). The defendants invoked their right to sovereign immunity.

The Virginia Tort Claims Act (1981b) Va. Code 8.01-195.1 to 8.01-195.8 partially forfeited its immunity from claims of tortious injuries caused by state employees. According to the Virginia Tort Claims Act (1981b), all state entities are not protected equally, however Va.
Code Ann. §8.01-195.2 defined “state agency” as any department, institution, authority, instrumentality, board, or other administrative agency of the government of the commonwealth of. The Virginia Tort Claims Act (1981b) redefined state agencies and School Boards as—defined in §22.1-1—“are not state agencies nor are employees of school boards state employees” (para. 4). This language in the Virginia Tort Claims Act continued common law immunity and exempted school boards and their employees from the waiver of immunity from simple negligence that the Virginia Tort Claims Act offered.

The Circuit Court of Fairfax County overruled the school board’s plea of sovereign immunity based on their claim that the School Board functioned as an agent of the state. The Virginia Tort Claims Act clearly stated the school board was not an agent of the state, so their immunity was based on common law sovereign immunity. The Circuit Court reviewed the roles of the superintendent and principal and applied the four-factor test (James v. Jane, 1980) with a focus on the fourth factor which analyzed the roles of the defendants and the level of discretion and managerial capacity involved in the role. The Circuit Court sustained the superintendent and principal’s plea for sovereign immunity because each of them acted in a supervisory role that exercised discretion and judgement. The court was unable to determine if the Director was entitled to immunity. No subsequent legal history pertaining to Murphy v. Fairfax County Sch.Bd. (1984) existed.

Lentz v. Morris (1988)

Lentz v. Morris (1988) involved a student, Jeffrey Lentz, who, while participating in a physical education class, was injured. On November 9, 1984, the plaintiff alleged that he was assigned to a physical education class supervised by the defendant, Johnny Morris. During the P.E. class on November 9, 1984, the students played tackle football without proper safety
equipment. During the class, Jeffrey Lentz was tackled with great force thus caused injury to his body. The plaintiff asserted that the P.E. teacher should have known that tackle football without protective gear could cause injury to the students. Lentz alleged that his injuries resulted from Mr. Morris’ negligence and lack of supervision of the activity (Lentz v. Morris, 1988).

The teacher, Mr. Morris, filed a demurrer which was sustained by the Circuit Court of Virginia Beach that found Mr. Morris was immune from liability due to the doctrine of sovereign immunity. The plaintiff appealed the decision of the trial court based on Crabbe v. County School Board of Northumberland Cty and Bobby Lee Albrite (1968) and Short v. Griffitts (1979) which contended that the sovereign immunity that extended to the school board did not extend to the teacher who performed his duties as the teacher. The plaintiff urged the Virginia Supreme Court that “insulation of this individual from responsibility for his own negligent acts does not achieve any purposes for which immunity is ordinarily extended to governmental employees” (US Law, Justia, 1988, para. 80). The Supreme Court disagreed. The court referenced the purpose of the decision in Messina v. Burden (1984) and stated that it was a watershed decision related to sovereign immunity.

In Messina, against the background of the purposes of the doctrine, the general principles applicable to the concept, and the facts and circumstances of the cases at hand, we proceeded to engage in a necessary “line-drawing” exercise to determine which government employees were entitled to immunity. This, in one case, we held that a state supervisor employee who was charged with simple negligence while acting within the scope of his employment was immune, there being no charge of gross negligence or intentional misconduct. (Justia US Law, 1984, para. 11)

Additionally, the Supreme Court analyzed the factors set forth by James v Jane (1980) and Messina v. Burden (1984) which provided courts with a multi-faceted test to determine employee eligibility for sovereign immunity. Anthony and McMahon (2000) outlined the considered factors:
1. The nature of the function performed by the employee
2. The extent of the state’s interest and involvement in the function
3. The degree of control and discretion exercised by the state over the employee
4. Whether the act complained of involved the use of judgment and discretion (p. 12)

The Supreme Court sustained the decision of the trial court and affirmed that Mr. Morris was an employee of an immune governmental entity and asserted that he did not act with gross negligence or intentional misconduct. Although the Court agreed that Mr. Morris acted with simple negligence in the supervision and care of the class, the facts did not support gross negligence or intentional misconduct (*Lentz v. Morris*, 1988). *Lentz v. Morris* (1988) overturned the Virginia Supreme Court’s ruling in *Crabbe v. County School Board of Northumberland Cty and Bobby Lee Albrite* (1968) and *Short v. Griffitts* (1979) as it addressed the liability of the school employee’s actions related to negligent behavior.

*Pusey v. Fairfax County Sch.Bd. (1990)*

The following cases were related to the same incident; however, the plaintiff filed two different action suits in the Circuit Court of Fairfax County Virginia. In *Pusey v. Fairfax County Sch.Bd. (1990)*, the plaintiff, Pusey, alleged negligence of the school board and principal when she slipped and fell while she attended an event at West Potomac High School. The court asserted that under the holding of *Kellam v. School Board of the City of Norfolk* (1960), the school board served as a governmental agency of the Commonwealth and was immune from suit regarding injuries sustained by the plaintiff. The court referenced statute §22.1-131 Va. Code which states

A school board may permit the use, upon such terms and conditions as it deems proper, of such school property as will not impair the efficiency of the schools. The school board may authorize the division superintendent to permit use of the school property, including buildings, grounds, vehicles, and other property, under such conditions as it deems will
not impair the efficiency of the schools and are, therefore, proper. (Justia US Law, 2014, para. 1)

The Circuit Court asserted when an activity hosted at the campus was non-school related, the school board remained immune from suit brought against them from members of the general public that attended the event hosted at the school, because the school board enjoyed the immunity granted to them as an agent of the state, that same level of immunity was shared by the principal of the campus in the supervision of the campus if the criteria set forth in *James v. Jane* (1980) was met (*Pusey v. Fairfax County Sch.Bd.*, 1990). Although the actions of the principal were not noted by the plaintiff, Virginia code § 22.1-293 authorized school boards to employ principals to “supervise the operation and management of the school or schools and property to which he has been assigned, in accordance with the rules and regulations of the school board” (Virginia Law, 2013, para. 2). Since there were no allegations that contradicted this information, the Court ruled that the principal operated in a supervisory role that involved discretion and was therefore entitled to the same immunity afforded to the school board (*Banks v. Sellers*, 1982).

*Pusey v. Riner* (1992)

The second case which involved the same plaintiff was *Pusey v. Riner* (1992). In 1992, Ruth Pusey filed suit against Jack Riner, the grounds supervisor for West Potomac High School, and his employees. While attending an event, Ruth Pusey suffered injuries when she slipped and fell while walking across the parking lot at West Potomac High School. She alleged that the cause of her fall was the result of accumulated snow and ice on the parking lot (*Pusey v. Riner*, 1992). Ms. Pusey alleged negligence, third party beneficiary status, and a violation of a duty under Va. Code Ann. §22.1-79(3) which directed the school boards duty to manage and control school property (Virginia Law, 1950). As an employee of the school board, Jack Riner was entitled to the same immunity protection of the board. As an employee of the board, the Circuit
Court applied the test set forth by *Messina v. Burden* (1984) and *James v. Jane* (1980). The court found that Mr. Riner, coordinator of the grounds section, served in a managerial and administrative capacity which allowed him to exercise discretion in the duties of his employment. The Circuit Court ruled that Mr. Riner was entitled to sovereign immunity. The court sustained the defendant’s demurrer and the supervisor’s plea of sovereign immunity and dismissed the case with prejudice as to all defendants (*Pusey v. Riner*, 1992). No subsequent legal history pertaining to *Pusey v. Fairfax County Sch.Bd.* (1990) or *Pusey v. Riner* (1992) existed.


A similar case that involved a school board and its employee was *Mattox v. Campbell County Sch.Bd.* (1995). Ms. Mattox alleged she was injured when a large steam radiator fell on her foot. When repairs were made at Altavista Elementary School, a steam radiator was detached from its mounting and the pipes that held it in place. When Ms. Mattox brushed up against the radiator, it fell on to her foot from the vertical position thus caused a foot injury (*Mattox v. Campbell County Sch.Bd.*, 1995). Ms. Mattox brought an action against the school board and one of its employees with the intent to recover damages.

The Circuit Court ruled on the question of the board’s sovereign immunity by citing *Crabbe v. County School Board of Northumberland Cty and Bobby Lee Albrite* (1968) in which the Virginia Supreme Court’s decision demonstrated absolute sovereign immunity for the school board, which functioned in its governmental capacity as an arm of the state. Considering the Supreme Court’s decision on *Short v. Griffitts* (1979), the Circuit Court ruled the Campbell County School Board was entitled to the doctrine of sovereign immunity under common law against allegations of simple negligence. In consideration of Gene Montgomery, employee of the
school board, the Circuit Court relied on the test set forth by *Messina v. Burden* (1984) which asked the following questions: (a) the nature of the function performed by the employee; (b) the extent of the state’s interest in the function; (c) the degree of control exercised by the state over the employee; and (d) whether the act required discretion of the employee (*Messina v. Burden*, 1984). Based on the Supreme Court’s decision in *Messina v. Burden* (1984), any employee of the school board that operated in a supervisory or administrative capacity and used discretion in their duties was covered under the common law sovereign immunity of the school board.

The final question posed to the Circuit Court in *Mattox v. Campbell County Sch.Bd.* (1995) addressed the allegation of gross negligence in the actions of Gene Montgomery. The court asserted

> There is nothing in the motion for judgment to indicate that Gene Montgomery committed any act that would constitute gross negligence. There may be an issue as to whether the actual employees removing the radiator were guilty of gross negligence. However, there is nothing alleged that Montgomery himself undertook any acts that would constitute gross negligence (*Mattox v. Campbell County Sch. Bd.*, 1995).

Based on the rulings, the Circuit Court of Campbell County Virginia dismissed the case of *Mattox v. Campbell County Sch.Bd.* (1995). No legal history pertaining to this case existed.

*Carr v. School Bd.* (1999)

In *Carr v. School Bd.* (1999), a student was threatened with bodily harm from a fellow schoolmate, so the student stayed at home. Her fear of being attacked at school kept her from attending class. The vice principal called the student’s mom and reassured her of the protection that her daughter would receive. He promised her that he would keep her safe; however, upon the student’s return to the school, she was severely beaten by another student. The student sustained injuries as a result of the violent attack (*Carr v. School Bd.*, 1999). The plaintiff alleged school
administrators exhibited negligent behavior because they failed to keep the student safe from the attack. The plaintiff filed action against the school board, the principal, and the vice principal.

The defendants claimed sovereign immunity from tortious liability, and the Circuit Court of Salem upheld the claim and asserted that the school board and the campus administrators were protected from liability based on the common law doctrine of sovereign immunity (Carr v. School Bd., 1999). The Circuit Court recognized the unfairness of the doctrine of sovereignty and the hardship placed on individuals, however the court referred to the decision from the Virginia Supreme Court in Hinchey v. Ogden (1983) that asserted

In Modern times, it (the doctrine of sovereign immunity) is more often explained as a rule of social policy, which protects the state from burdensome interference with the performance of its governmental functions and preserves its control over state funds, property, and instrumentalities. The public service might be hindered and the public safety endangered if the supreme authority could be subjected to suit at the instance of every citizen, and consequently controlled in the use and disposition of the means required for the proper administration of the government. (Court Listener, 1983, para. 12).

The Circuit Court reasoned that the school board acted as the arm of the government (Kellam v. School Board of the City of Norfolk, 1960) and

the basis for a school board’s immunity from liability for tortious injury has been generally found in the fact that it is a governmental agency or arm of the state and acts in a governmental capacity in the performance of its duties imposed by law. (Court Listener, 1960, para. 5)

Additionally, the court recognized the principal and assistant principal, employees of the school board, exercised managerial and administrative functions which utilized discretion when completing their duties related to their employment (Banks v. Sellers, 1982). The principal and assistant principal were enveloped in immunity for their alleged act of simple negligence (Carr v. School Bd., 1999), which resulted in the sustainment of the defendants’ demurrer and the dismissal of the case. No legal history pertaining to Carr v. School Bd. (1999) existed.
In *Croghan v. Fairfax County Sch.Bd.* (2002), the plaintiff filed suit against the Fairfax County School Board in 2002 regarding alleged injuries that he sustained in 1993 while he attended the fifth grade at an elementary school. The plaintiff alleged that his fifth-grade teacher observed several students throw him to the ground as part of a school play rehearsal. The plaintiff sustained injuries that required hospitalization due to a head injury. The plaintiff alleged that the injury had a long-term impact on his ability to learn because the damages included a permanent decrease in his mental cognition. The plaintiff asserted the school board and teacher were liable for the gross negligence of the event because they had a duty to protect him and ensure his safety. The plaintiff named the school board as the defendant in the court action suit (*Croghan v. Fairfax County Sch.Bd.*, 2002). The plaintiff claimed the school board breached their duty to the safety of the students through the teacher’s behavior.

The school board filed a demurrer and claimed sovereign immunity. The school board argued that

> It is an instrumentality of the Commonwealth and is therefore entitled to absolute immunity against tort claims. School Board points out that some of the individual employees of School Board enjoy only a qualified form of immunity. However, as School Board’s immunity is absolute, it cannot be liable for the torts of its employees unless there is a statutory provision that waives immunity. (*Croghan v. Fairfax County Sch.Bd.*, 2002)

The plaintiff disputed the school board’s entitlement to common law sovereign immunity for the alleged gross negligence and asserted the board’s immunity was waived under the Virginia Tort Claims Act (1981). State and governmental agencies had been cloaked with the doctrine of sovereign immunity, and courts had supported this doctrine when these agencies caused injuries due to negligent behavior while they acted in a governmental capacity. Sovereign immunity for the Commonwealth was the strongest under Virginia common law, and most legal
scholars agreed that its vitality had remained strong. Unless waived by the Virginia Tort Claims Act (1981), the Commonwealth’s immunity was absolute (Anthony & McMahon, 2000). Virginia courts had held that this immunity applied to school boards as “it is a governmental agency or arm of the state and acts in a governmental capacity in the performance of its duties imposed by law” (Court Listener, 1960, para. 5).

Since the plaintiff claimed the school board’s immunity was waived under the Virginia Tort Claims Act (1981b), the Circuit Court cited Va. Code Ann. § 8.01-195.1 which provided a waiver of immunity to claims against the state and its transportation districts (Anthony & McMahon, 2000). Va. Code Ann. §8.01-195.2 provided the definitions of state agencies which asserted that school boards did not function as an agency of the state, therefore the Virginia Tort Claims Act (1981) “does not abrogate the immunity of counties, cities, state agencies, or school boards” (Anthony & McMahon, 2000, p. 14). The Circuit Court of Fairfax County sustained the School Board’s demurrer and dismissed the case. No legal history pertaining to Croghan v. Fairfax County Sch.Bd. (2002) existed.


Koffman v. Garnett (2003) involved a student, Andrew W. Koffman, and his coach, James Garnett. James Garnett was employed by the Botetourt County School district as an assistant coach tasked with the supervision and instruction of the defensive line of the middle school football team. During the fall of 2000, Koffman participated in the middle school football program in Botetourt County. Since this was his first year to play organized sports, his coach, Mr. Garnett, appointed him as a third string defensive player (Koffman v. Garnett, 2003).

The football team lost their first game of the season which angered Coach Garnett because he felt as if the defensive line did an inadequate job of tackling the opposing team’s
players. During the first practice after the loss of the game, Coach Garnett ordered Koffman to hold a football and stand motionless so that Garnett could explain proper tackling techniques to the team. Garnett proceeded to tackle Koffman and throw him to the ground which resulted in a broken bone in Koffman’s arm. The coach was twice as large as Koffman and demonstrated great force when he lifted Koffman off the ground and threw him down unexpectantly (Koffman v. Garnett, 2003).

The Koffman family alleged Andy’s injury was based on simple and gross negligence and an intentional act of assault and battery. In the trial court, Coach Garnett filed a demurrer and plea of sovereign immunity. The defendant asserted that the facts did not render Koffman’s lack of consent to the demonstration which did not support the allegation of gross negligence and assault and battery. The trial court dismissed the action and found that Garnett, an employee of the school board,

was entitled to sovereign immunity for acts of simple negligence and that the facts alleged were insufficient to state causes of action for gross negligence, assault, or battery because the instruction and playing of football are inherently dangerous and always potentially violent. (Court Listener, 2003, para. 6)

While the plaintiffs recognized the defendant’s right to sovereign immunity, they appealed the case to the Virginia Supreme Court and asserted that facts did demonstrate gross negligence, assault, and battery (Court Listener, 2003). The Supreme Court of Virginia referenced its decision in Ferguson v. Ferguson (1971) in its definition of negligence.

The degree of negligence which show indifference to others as constitutes an utter disregard of prudence amounting to a complete neglect of the safety of the guest. It must be such a degree of negligence as would shock minded men although something less than willful recklessness (Justia US Law, 1971, para. 26).

The trial court observed that participation in football, a dangerous sport, could lead to an injury. However, the plaintiffs argued that the size difference between Koffman and Garnett deserved
consideration from the courts. Additionally, the plaintiff asserted that the relationship between player and coach was based on compliance. The Virginia Supreme Court noted that

The facts alleged in this case, however, go beyond the circumstances of simply being tackled in the course of participating in organized football. Here Garnett’s knowledge of his greater size and experience, his instruction implying that Andy was not to take any action to defend himself from the force of the tackle, the force he used during the tackle, and Garnett’s previous practice of not personally using force to demonstrate or teach football technique could lead a reasonable person to conclude that, in this instance, Garnett’s actions were imprudent and were taken in utter disregard for the safety of the player. (Court Listener, 2003, para. 10)

The Supreme Court of Virginia reversed the decision of the trial court which stated a lack of causes of action to prove gross negligence and remanded the case so the Koffmans could pursue the claim for punitive damages. Regarding the claim of battery, the Virginia Supreme Court asserted that the plaintiff did not sufficiently plead a claim for battery so the demurrer for the battery claim was sustained. No subsequent appellate history existed for Koffman v. Garnett (2003).

Gagnon v. Burns (2009)

In Gagnon v. Burns, a student, Shannon H. Diaz, met with the principal, Layton H. Beverage, and the vice-principal, W.R. Travis Burns, to discuss a disciplinary issue (FindLaw, 2009a). Mr. Diaz informed the two administrators that an impending fight was supposed to take place between his friend, Gregory Gagnon, and another student at the school. Mr. Burns told Diaz that he would alert security, however he failed to report the potential fight to security or additional staff members. Gagnon filed suit Mr. Burns for simple and gross negligence (FindLaw, 2009a). Gagnon alleged that Mr. Burns

Owed him various duties of care and that he breached those duties by, among other things, (1) failing to implement necessary policies and procedures to rein in student-on-student fights at the school; (2) taking no action in response to Diaz’ report; and (3) failing to protect him from Newsome’s conduct. (FindLaw, 2009a, para. 6)
Burns filed a demurrer and stated that he was immune from simple negligence under common law and under the VTCA (1981) §8.01-220.1:2 which provided civil immunity for teachers under certain circumstances.

Any teacher employed by a local school board in the Commonwealth shall not be liable for any civil damages for any acts or omissions resulting from the supervision, care or discipline of students when such acts or omissions are within such teacher’s scope of employment and are taken in good faith in the course of supervision, care or discipline of students, unless such acts or omissions were the result of gross negligence or willful misconduct. (Virginia Law, 1997, para. 1)

Additionally, Burns asserted that Gagnon’s claims were deficient in their proof of his allegations of gross negligence (Justia US Law, 2012). The circuit court denied Burn’s demurrer and applied the four factor test as determined in Messina v. Burden (1984) and James v. Jane (1980). The question considered by the courts was whether the alleged act of Mr. Burns was discretionary or ministerial. The circuit court determined that “Burn’s omitted act of notifying school security of the reported impending physical altercation or otherwise investigating the report of . . . Diaz was ministerial” (Justia Law, 2012, para. 12) and that according to Virginia Law (1997) §8.01-220.1:2., civil immunity for teachers would not apply to Mr. Burns.

*Burns v. Gagnon* (2012)

*Burns v. Gagnon* (2012) was an appeal of *Gagnon v. Burns* (2009) by the defendant, assistant principal Travis Burns (Justia US Law, 2012). In this case, Burns challenged the circuit court’s decision that ruled on the issue of his legal duty to protect and his entitlement to sovereign immunity. The Circuit Court did not identify the legal duties that were owed to Gagnon. In *Burns v. Gagnon* (2012), Gagnon stated three duties were owed to him by Mr. Burns:

1. A heightened duty of care to protect him from Newsome
2. A common law duty of ordinary care
3. An assumed duty to investigate the report from Diaz regarding the potential fight and to alert the security guard (Justia US Law, 2012)
The Supreme Court of Virginia asserted that the idea of foreseeability came into play when a person’s duty to protect another individual is contingent upon a third party’s behaviors and actions (Burdette v. Marks, 1992). The exception to the inability to foresee a potential hazard for another individual lay in the special relationship between the two parties. The Supreme Court of Virginia did not define, nor has any court case ever defined the relationship between a teacher and a student as a special relationship (Burns v. Gagnon, 2012).

Gagnon asserted that Mr. Burns, the supervising adult, had a duty for reasonable care. The defendant compared the reasonable duty owed to him compared to the court’s declaration in Kellermann v. McDonough (2009). Under common law,

when a parent relinquishes the supervision and care of a child to an adult who agrees to supervise and care for that child, the supervising adult must discharge that duty with reasonable care . . . however the supervising adult is not an insurer of the child’s safety. Rather, the supervising adult must discharge his or her duties as a reasonable prudent person would under similar circumstances. (Court Listener, 2009, para. 19).

The Court recognized that the situational elements were different in the two cases, however they did acknowledge that the duty for reasonable care did exist because Gagnon was required to attend school due to attendance and Mr. Burns owed a duty to supervise and ensure the safety, learning, and well-being of all students. The court disseminated between the two cases through their assertion that Burns could only be held liable if he failed to administer his duties as a reasonably prudent person would do in a similar situation (Justia US Law, 2012).

To make this determination, the Virginia Supreme Court looked to the Restatement (Second) of Torts §324A which proclaimed:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protections of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking if:

(a) His failure to exercise reasonable care increases the risk of such harm, or
(b) His has undertaken to perform a duty owed by the other to the third person, or
(c) The harm is suffered because of reliance of the other or the third person upon the undertaking. (Justia US Law, 2012, para. 37).

Gagnon argued that Mr. Burns assured Diaz that he would investigate the report and alert security, however neither the courts nor the jury could determine that Mr. Burns followed through with his investigation and failed to exercise reasonable care with the information that he gleaned from his investigation. It was concluded that Mr. Burns owed a common law duty of care, so the question turned to his entitlement of sovereign immunity (Justia US Law, 2012).

While Burns argued that he qualified for sovereign immunity under common law and the VTCA §8.01-220.1:2 (A) which stated that “any teacher employed by a local school board in the Commonwealth shall not be liable for any civil damages for any acts or omissions resulting from the supervision, care or discipline of students” (Virginia Law, 1997, para. 1). However, the definition of teacher was not defined in statute, so the courts defined it in a typical fashion which referred to a person that instructed another individual. Since Mr. Burns served as an administrator, the Court concluded the §8.01-220.1:2 (A) did not apply to him.

Since common law offered immunity from simple negligence, the Virginia Supreme Court applied the four-factor test determined by Messina v. Burden (1984) and James v. Jane (1980). The fourth factor became the question the Court considered in their determination of Burns’ immunity. The fourth factor in the test was related to discretionary actions. In Gagnon v. Burns, 2009, the lower court found that Mr. Burn’s actions were ministerial in nature which disqualified him from common law sovereign immunity (FindLaw, 2009a). The Supreme Court of Virginia did not uphold this decision. The Court stated Mr. Burns’ actions related to the information that he received from Diaz involved a great deal of discretion. For example, Mr. Burns had to decide if he would take any action against the information of the pending fight. He also had to consider the source of the information since Diaz had just recently received a
reprimand for his own behavior. Burns was not provided a time or the other student’s name, so he had to determine the most appropriate means of investigating the fight and informing the security guard. Therefore, the Virginia Supreme Court asserted that the Circuit Court erred in their decision that Burns was not entitled to the protection of sovereign immunity under the common law of Virginia (Burns v. Gagnon, 2012). No subsequent appellate history existed for Burns v. Gagnon (2012).

Conclusion

The cases analyzed in this chapter have provided an extensive sample of court litigation that involved public school education before the passage of the Virginia Tort Claims Act (1981) and after the enactment of the Virginia Tort Claims Act (1981). The cases that were analyzed before the implementation of the Virginia Tort Claims Act (1981) relied on the multi-faceted test set forth by Messina v. Burden (1984) and James v. Jane (1980) to determine employee eligibility for sovereign immunity related to cases that involved negligence. This same test was utilized in court cases after the passage of the Virginia Tort Claims Act (1981). Throughout the study of Virginia case law in Chapter 4, this researcher has concluded that the Courts in Virginia have remained consistent in their consideration and application of previous court decisions. By established criteria laid out in Messina v. Burden (1984), Kellam v. School Board of the City of Norfolk (1960), and Lentz v. Morris (1988), the courts established a fixed measuring stick in which to measure subsequent cases. This ensured fair and consistent rulings throughout time related to the doctrine of sovereign immunity and the impact of the Virginia Tort Claims Act (1981a). Through the review and analysis of Virginia court cases that involved tort litigation against public schools and their employees, the common thread of judicial precedent was present
and ensured like-comparisons and a framework in which to build and support the doctrine of sovereign immunity in Virginia.

In cases that involved negligence, the court applied the Virginia Tort Claims Act (1981a) with strict compliance and consideration, however in cases that relied on common law sovereign immunity, the four-factor test, set forth by *Messina v. Burden* (1984) and *James v. Jane* (1980), was applied with mixed reasoning and decisions in the lower courts.
CHAPTER 5
FINDINGS, CONCLUSIONS, AND IMPLICATIONS

The Doctrine of Sovereign Immunity remains “alive and well in Virginia” per Messina v. Burden (Justia US Law, 1984, para 13). The Virginia courts continue to interpret this doctrine and challenge the boundaries of sovereignty through each case decision. Additionally, the courts demonstrate their role in the application of the doctrine of sovereign immunity to public school litigation. The Virginia Supreme Court has not viewed its role as one to abolish the doctrine, nor has the General Assembly considered this option through legislation.

Prior to the enactment of the Virginia Tort Claims Act in 1981, the Supreme Court stated, “admittedly, no single all-inclusive rule can be enunciated or applied in determining entitlement to sovereign immunity” (Shepherd, 2008, p. 2). Virginia Code Ann. § 15.2-1405 states “members of governing bodies of counties, cities, towns or political subdivisions are immune from suit for failing to exercise discretionary or governmental authority, except for gross negligence, intentional misconduct, or misappropriation of funds” (Cook & Rosser, 2016, p. 30). The question that litigation poses to the court is to what degree of negligence is a state employee accountable. The four-factor test established in James v. Jane (1980) assists state courts in this determination. One of the prongs of the test involves discretion of the employee in matters of negligent behavior. The interpretation of this discretion prong has been somewhat inconsistent among the lower courts and often overturned at the Virginia Supreme Court level. After the implementation of the Virginia Tort Claims Act (1981a), the courts continue to apply the four-factor test to cases related to negligence that involve a public-school employee.

Research Design

I analyzed 14 cases against Virginia school districts and employees involving tortious
claims that occurred before and after the enactment of the Virginia Tort Claims Act of 1981. The IRAC method of analysis was employed, and this method focused on the identification of the issue or question, the rules of law used by the courts to reach its decision, the application of the rule of law, and the conclusions that were drawn to justify the application of the case ruling.

The following question guided the research and case analysis:

How have Virginia state courts interpreted the common law and Virginia Tort Claims Act (1981) in litigation against Virginia public school districts and their employees in respect to negligence?

Findings

Litigation Prior to the 1981 Virginia Tort Claims Act

Prior to the passage of the Virginia Tort Claims Act (1981a), the state and its agencies are afforded common law immunity if they operate within their governmental capacities. School boards enjoy the immunity of the Commonwealth because they are considered arms of the state. School board immunity protects against tortious liability for personal injury. Prior to the enactment of the Virginia Tort Claims Act (1981a), the Virginia Supreme Court, through judicial precedents, re-defined the differences between state agencies and agencies that were created by the state.

Of these four cases that took place before the Virginia Tort Claims Act of 1981, the courts ruled in favor of the school board’s immunity, however the immunity of the teacher(s), while upheld at the lower court level, was not sustained at the Virginia Supreme Court level in every situation.

In Kellam v. School Board of the City of Norfolk (1960) and Crabbe v. County School Board of Northumberland Cty and Bobby Lee Albrite (1968), the school board maintained its
entitlement to sovereign immunity because of its role as a state agency. Virginia Code Ann. § 15.2-1405 states “members of governing bodies of counties, cities, towns or political subdivisions were immune from suit for failing to exercise discretionary or governmental authority, except for gross negligence, intentional misconduct, or misappropriation of funds” (Cook & Rosser, 2016, p. 30). In *Kellam v. School Board of the City of Norfolk* (1960), the plaintiff slipped and fell at a campus that was governed by the school board. The plaintiff claimed that the board’s immunity was waived since they acted in a proprietary capacity because they leased the school auditorium to a third party for a concert event. Virginia code 150 §22.1-71 granted authority to the school board to lease out property to outside entities (Virginia Law, 1998). The board asserted and the courts agreed that the rental of the building was not conducted in a proprietary manner, they exercised their powers allotted to them in statute.

In *Crabbe v. County School Board of Northumberland Cty and Bobby Lee Albrite* (1968), the plaintiff sued the board and one of their employees because of a hand injury that he sustained while he used a defective power saw. The lower court ruled, and the Virginia Supreme Court held the decision for the school board’s immunity under common law. *Crabbe* claimed the school board was negligent in its maintenance of equipment at the school. The school board asserted, and the courts agreed that the operation of the school board served as a governmental function thus provided immunity from liability under common law.

In *Crabbe v. County School Board of Northumberland Cty and Bobby Lee Albrite* (1968), the plaintiff also filed a claim against his teacher, Mr. Albrite. Crabbe claimed that Mr. Albrite was negligent in his duties as a teacher because he allowed the student to use the defective power saw without proper instruction. The Virginia Supreme Court reasoned that Mr. Albrite, employee of the school district, was not exempt from liability related to the performance of his duties. The
Court claimed that Mr. Albrite knowingly allowed a student to use a defective power saw without proper instruction or warning thus forfeited his right to the immunity of the School Board. This decision was later overruled in *Lentz v. Morris* (1988).

A similar ruling from the Virginia Supreme Court was seen in *Short v. Griffitts* (1979). The plaintiff brought action against three employees of the school district for negligent behavior in the maintenance of the outdoor track facility. The Virginia Supreme Court held that employees of the school board did not enjoy the immunity afforded to the board when the employees were engaged in negligent acts. This decision was later overruled in *Lentz v. Morris* (1988).

The final case analyzed was *Banks v. Sellers* (1982). In consideration of the past judicial precedents, the Supreme Court of Virginia applied the four-factor test outlined by *James v. Jane* (1980) to determine the immunity of the superintendent and vice principal in *Banks v. Sellers* (1982). In this case, the courts start to analyze the roles and responsibilities of the employees of the School Board to determine the validity of the “use of discretion” argument. In *Banks v. Sellers* (1982), the Virginia Supreme Court stated,

> Our analysis convinces us that a division superintendent is a supervisory official who exercises powers involving a considerable degree of judgment and discretion . . . when the duties of the division superintendent and the high school principal are compared, it is apparent that the principal is, for his school, essentially a counterpart of the superintendent. (Justia US Law, 1982, paras. 15–16)

The Supreme Court of Virginia affirmed the judgement of the trial court and held that the superintendent and high school principal was protected by the doctrine of sovereign immunity because both roles required a high level of judgment and discretion.

Litigation after the Enactment of the 1981 Virginia Tort Claims Act

The Virginia Tort Claims Act of 1981 was the most significant statute that impacted the
sovereign immunity of state agencies and their employees. It partially waived immunity of the Commonwealth for tortuous claims (Anthony & McMahon, 2000). The Virginia Tort Claims Act (1981a) redefined state agencies and state agents thus impacted levels of immunity previously outlined in statute. State agencies referred to departments, institutions, authority, instrumentality, board, or other administrative agency of the government of the Commonwealth of Virginia. School Boards, as defined in §22.1-1, “are not state agencies nor are employees of school boards state employees” (Virginia Tort Claims Act, 1981c, para. 3). This allowed school boards the same immunity set forth by statute because their classification of a non-state agency did not waive their immunity. Additionally, the term employee was redefined to mean “any officer, employee or agent of any agency, or any person acting on behalf of an agency in an official capacity, temporarily or permanently in the service of the Commonwealth, or any transportation district, whether with or without compensation” (Virginia Tort Claims Act, 1981c, para. 2).

Of these ten cases that took place after the enactment of the Virginia Tort Claims Act of 1981, five of the cases named the school board as one of the defendants. The cases that named the school boards were Murphy v. Fairfax County Sch.Bd. (1984), Pusey v. Fairfax County Sch.Bd. (1990), Mattox v. Campbell County Sch.Bd. (1995), Carr v. School Bd. (1999), and Croghan v. Fairfax County Sch.Bd. (2002). Similar to the cases pre-VTCA, the courts ruled in favor of the school board’s immunity. The courts asserted that the enactment of the Virginia Tort Claims Act (1981a) did not change the cloak of sovereign immunity for school boards.

In nine of the cases, the plaintiff filed suit against the school employee for acts related to negligence. In the previous case of Banks v. Sellers (1982), the Supreme Court applied the four-factor test (James v. Jane, 1980) to the role of the superintendent and principal which determined immunity eligibility. That same test was applied to six of the cases that occurred after the
enactment of the Virginia Tort Claims Act of 1981. In two of the cases, the Virginia Supreme Court rendered a decision that did not support the immunity of the school employee due to gross negligence.

In *Lentz v. Morris* (1988), the Virginia Supreme Court examined the impact of their decision which involved immunity for teachers. In their application of the *James and Messina* (1984) test as it related to immunity, the court asserted,

If school teachers performing functions equivalent to this defendant are to be hauled into court for the conduct set forth by these facts, fewer individuals will aspire to be teachers, those who have embarked on a teaching career will be reluctant to act and orderly administration of the school systems will suffer, all to the detriment of our youth and public at large. (Justia US Law, 1984, para. 16)

In *Lentz v. Morris* (1988), the Virginia Supreme Court continued to justify the rationale that supported the decision in this case as well as set the precedent for past and future cases that involved alleged acts of negligence by school employees. The court referenced the purpose of the decision in *Messina v. Burden* (1984)

In *Messina*, against the background of the purposes of the doctrine, the general principles applicable to the concept, and the facts and circumstances of the cases at hand, we proceeded to engage in a necessary “line-drawing” exercise to determine which government employees were entitled to immunity. Thus, in one case, we held that a state supervisor employee who was charged with simple negligence while acting within the scope of his employment was immune, there being no charge of gross negligence or intentional misconduct (Justia US Law, 1984, para. 11).

The Virginia Supreme Court’s decision in *Lentz v. Morris* (1988), overturned previous decisions in *Crabbe v. County School Board of Northumberland Cty and Bobby Lee Albrite* (1968) and *Short v. Griffitts* (1979) as it related to the liability of the teacher’s negligent behavior. In both cases, the original Virginia Supreme Court decision held the school employee liable for gross negligent behavior, however the application of the four-factor test in *Lentz v. Morris* (1988), resulted in an overruling in *Crabbe* and *Short.*
In *Murphy v. Fairfax County Sch.Bd.* (1984), *Pusey v. Fairfax County Sch.Bd.* (1990),
(1999), the courts applied the four-factor test set forth by *James v. Jane* (1980) and refined by

1. The nature of the function performed by the employee
2. The extent of the state’s interest and involvement in the function
3. The degree of control and discretion exercised by the state over the employee
4. Whether the act complained of involved the use of judgment and discretion (Anthony
   & McMahon, 2000, p. 12)

In the above-mentioned court cases, the emphasis was placed on the fourth factor, and in all
cases, the courts rendered a decision of sovereign immunity for the employee of the school
district. In each case, the court considered and outlined the specific duties of the role of the
employee and determined the level of administrative and discretionary tasks associated with the
position.

The remaining three cases analyzed in Chapter 4 were *Koffman v. Garnett* (2003),
*Gagnon v. Burns* (2009), and *Burns v. Gagnon* (2012). These cases challenged the definition of
gross negligence and the application of the four-factor test and the agreement of courts related to
the duties of the employee that involved discretion. In *Koffman v. Garnett* (2003), the plaintiff
alleged the football coach was responsible for gross negligence, assault, and battery due to an
injury sustained by the plaintiff during football practice. The trial court dismissed the action and
found Garnett was entitled to sovereign immunity for simple negligence. The court concluded
that “the facts alleged were insufficient to state causes of action for gross negligence, assault, or
battery because the instruction and playing of football are inherently dangerous and always
potentially violent” (Court Listener, 2009, para. 6). The Supreme Court of Virginia reversed the
trial court’s decision and offered a definition of gross negligence from *Ferguson v. Ferguson* (1971).

The degree of negligence which show indifference to others as constitutes an utter disregard of prudence amounting to a complete neglect of the safety of the guest. It must be such a degree of negligence as would shock minded men although something less than willful recklessness. (Justia US Law, 1971, para. 26)

In *Gagnon v. Burns* (2009), the plaintiff alleged gross negligent behavior of his assistant principal because the assistant principal did not heed the warning of a potential fight that resulted in the injury of the plaintiff (FindLaw, 2009a). The circuit court applied the four-factor test and determined that the administrator’s duty to report or investigate the information about the potential fight did not require any judgment or discretion on his part. The courts asserted this investigation or report to the security guard at the school was a ministerial task and that according to VTCA §8.01-220.1:2 (Virginia Law, 1997), civil immunity for teachers would not apply to Mr. Burns. The defendant, Mr. Burns, appealed the verdict to the Supreme Court of Virginia. In *Burns v. Gagnon* (2012), Burns challenged the Circuit Court’s decision that ruled on the issue of his entitlement to sovereign immunity. The Supreme Court of Virginia did not uphold the decision of the Circuit Court. The Virginia Supreme Court stated Mr. Burns’ actions related to the information that he received involved a great deal of discretion. Therefore, the Supreme Court of Virginia asserted that the Circuit Court erred in their decision that Burns was not entitled to the protection of sovereign immunity under the common law of Virginia (*Burns v. Gagnon*, 2012).

**Implications**

Landmark cases in Virginia such as *James v. Jane* (1980) and *Messina v. Burden* (1984) provided rationale for the Supreme Court related to the importance of the doctrine of sovereign immunity. The Court noted that the function of the government and its agencies were only as
strong as the individuals that served in it and operations would be crippled should these individuals be held liable to suit (Lentz v. Morris, 1988). The purpose for the doctrine included protecting the public purse, providing for smooth operation of government, eliminating public inconvenience and danger that might spring from officials being fearful to act, assuring that citizens will be willing to take public jobs, and preventing citizens from improperly influencing the conduct of governmental affairs through the threat or use of vexatious litigation. (Justia US Law, 1984, para. 19)

The vitality of the state sovereign immunity has always been the state’s ability to provide a cloak of security to state workers as they have carried out their duties within the scope of their employment. The application of the four-factor test, created in James v. Jane (1980) and refined in Messina v. Burden (1984), started in the courts prior to the Virginia Tort Claims Act (1981a) and continued after enactment. The Virginia Tort Claims Act did not have a direct impact on the sovereignty of the school board because the Virginia Tort Claims Act provided a waiver of immunity for state agencies related to tort claims. The Virginia Tort Claims Act (1981c) outlined the definition of state agencies and Code §8.01-195.2 clearly stated school boards were not considered state agencies which allowed for common law “absolute immunity” for school boards related to simple negligence. Additionally, the courts interpretation of the term teacher has resulted in an in-depth analysis of the duties related to that term. If the language were changed from teacher to educator, the courts might be able to easily provide justification for all employees of the school board.

Recommendations for Further Study

Based on the research presented in this study, the conclusions drawn from the review of the literature, and the analysis of Virginia litigation related to tort claims in the public education setting, I recommend the following for further study.

1. Continue this comparative research regarding education tort claims in the
surrounding southern states of Tennessee, North Carolina, South Carolina, and Florida. This in-depth comparison of southern states can add depth to the understanding of sovereign immunity.

2. There is a growing uncertainty of what is allowable in classrooms involving teacher and student actions and behaviors. Most educators have a rudimentary awareness of the application of legal concepts in educational settings; however, the ever-changing legislation and judicial decisions that impact educator practice continue to foster the confusion of legal application to teacher behaviors and actions (Wagner, 2007). Research should continue to assess the legal knowledge of teachers and administrators and the impact of this data to guide the program requirements of traditional college teacher education programs and alternative certification programs.
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