

AN ANALYSIS OF LITIGATION AGAINST NORTH CAROLINA
EDUCATORS AND SCHOOL DISTRICTS UNDER THE
NORTH CAROLINA TORT CLAIMS ACT

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This dissertation discussed the impact of the North Carolina Tort Claims Act and the history of governmental immunity that has protected school districts and school employees in North Carolina. The research question addressed was: how have North Carolina state courts interpreted the North Carolina Tort Claims Act in litigation against North Carolina school districts and their employees? The North Carolina Tort Claims Act provided citizens with a vehicle to sue local governmental agencies and their employees, such as school employees. The act also provided immunity for schools, especially for excessive damages in the case of negligence by an employee. The study examined how state courts have responded to different plaintiffs since the passage of the North Carolina Tort Claims Act in 1951. The decisions in the cases analyzed have been mostly favorable to schools, which has strengthened immunity for school employees. There were four legal aspects addressed by the courts after the passage of the North Carolina Tort Claims Act either most frequently or were unique to the case law of North Carolina. Those legal aspects were tests of school districts' governmental immunity; contributory negligence on the part of the plaintiff; the official capacity of school employees in lawsuits; and the scope of the Industrial Commission in North Carolina to hear lawsuits. The case law analysis in this study explained the background of those legal aspects, and when school leaders and teachers were vulnerable to lawsuits due to negligence.

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CHAPTER 1

INTRODUCTION TO THE STUDY

Aesop, the Greek storyteller, once said, “Every truth has two sides; it is as well to look at both, before we commit ourselves to either” (Small, 2018, p. 10). In education, Aesop’s opinion of truth was frequently proven true. For every teacher perceived as unfairly targeted by litigious parents, there was a family that saw no recourse for their child’s justice through the normal channels of the school district. Every citizen in the United States could instigate litigation, and while controversial, it provided a means of change in schools. The civil legal system offered an opportunity for all families to seek justice, damages, and a way to ultimately change the system of education for other students as well as their own.

Sovereign immunity, and its younger sibling governmental immunity, protected hard-working public servants from litigation; by allowing them to focus on helping the public. Conversely, it could be argued that immunity stagnated the work of government by never forcing the disruption that allows the private sector to innovate. Judges and lawmakers in the United States and in the state of North Carolina continued the struggle between protecting the employees of the state and local government entities and the citizens of the state who sought recourse to alleged wrongs against the government (Aiken, 1989). As Zirkel and Clark (2008) noted in their review of tort liability in education throughout the United States, there exists amongst educators a “general perception that school negligence is a major and increasing source of liability, invoking fear among educators” (p. 7).

They also called for an in-depth study of tort liability, saying: “Thus, school

negligence is a staple that merits more careful and complete study and training, tempered by the need for objective and specific knowledge customized to the particular state jurisdiction and school situation” (p. 11). School administrators know of the litigation that could affect their school, the district, and employees. Zirkel and Clark continued by saying:

Moreover, the literature reveals the need for more systematic study of governmental and official immunity, including a comprehensive canvassing of state legislation rather than merely selected case law. In sum, legal liability should contribute to, but not be confused with, best practice. (p. 11)

Thus, based on what Zirkel and Clark suggested, this study focused on the unique framework of liability in the state of North Carolina.

Throughout the course of legal history in the United States and in the state of North Carolina, citizens have sought redress from the government by filing tort suits against the government. Subsequently, governmental entities have shielded the use of public funds, needed for improvements that will help the many, from awarding the needs of the few. Thus, a pendulum has swung back and forth in the laws and court cases, at times focused on protecting the government, and at other times focused on the rights of the individual.

This dissertation analyzed the swing of the pendulum in the federal government and in the state of North Carolina through case analysis of litigation against North Carolina educators and schools before and under the North Carolina Tort Claims Act. This case analysis included negligent cases heard and decisions rendered in negligence cases against schools before and after the enactment of the North Carolina Tort Claims Act in 1951.

Statement of the Problem

The protection of the individual has been a long-held belief in the United States. A family that has been wronged by a school or an educator who was negligent in their duties should be able to seek redress from the school district. However, schools and educators seek to improve the public good, funded by taxes as a governmental function. Plaintiffs who sued school districts or school employees did not recover damages or compensation as suing another individual or private company, even if the negligence was proven true. Schools were funded by public money, so compensation would be paid out of the taxes collected from the public. To avoid negligence, educators and school leaders should be knowledgeable about what they could be liable for and not work in fear of being brought to court by an angry parent seeking to settle a vindictive claim.

Overall, a teacher who lived in different states in their career, or teachers from differing states, had different types of liability, though the primary person in the school district who had thorough knowledge of state and federal law in educational liability would be the district's lawyer. Maher et al. (2010) found that the "current literature reflects insufficient knowledge about the topics of governmental and official immunity within the context of public schools, contributing to a skewed perception of its present extent" (p. 247). School districts and administrators needed to ensure they had the best knowledge to perform within the latest best practices as well as current knowledge of court cases and laws to ensure they were not negligent in their duties to the public.

For a tort claim to meet the standard of negligence, the claim must reach four elements to qualify for a plaintiff to bring suit against an educational entity. First, the

school or school employee failed in its duty to protect the student or students. Secondly, the school or school employee failed to exercise a reasonable standard of care to ensure the safety of students. Third, a proximate cause existed by connecting the employee's breach of duty and the student's injury. Fourth, an actual injury existed (Smale et al., 2014).

This study examined the pitfalls other schools and employees of schools have fallen into to be considered by courts to be negligent in the care of students. North Carolina courts reflected a lower standard of negligence to meet for plaintiffs in a suit against teachers than do other public professions in the state, like police officers or superintendents of schools (Allen, 2015). Therefore, the problem of practice for this study was that educators, in North Carolina and elsewhere, should understand the duty they required toward their students and how to exercise a reasonable standard of care in their duties. Every school administrator should understand negligence elements to ensure the safety of all students and avoid the legal hazards of lawsuit for negligence.

Significance of the Study

The intent in conducting this dissertation was to add to the collection of studies completed regarding states and the immunity that school districts and employees have when involved in litigation. Carman (2009), Lacefield (2010), Kriesel Hall (2013), Herauf (2014), McDaniel (2014), and Perry (2017) analyzed several states in the United States for tort liability that exists for educators, including Texas, Oklahoma, Mississippi, New Mexico, Georgia, Louisiana, Virginia, and Kansas. To add to those studies, this research reviewed the liability educators and schools face in North Carolina. This study analyzed the changes of court decisions and laws over time in the immunity protecting

schools and educators, between favoring education entities and favoring individuals and their right to bring a school or school employee to court.

The research in this study showed the best practices of schools and school employees to ensure all students and employees are safe. This study also detailed liability and immunity for school leaders and teachers. School district employees might not be aware of the extent of immunity they are entitled to, as well as the cases where immunity does not exist at all. As Dougherty (2004) described: “Teachers have a duty to provide reasonable supervision of their students. Administrators are expected to have developed rules and regulations that guide teachers in providing for student safety” (p. 16).

Research Question

How have North Carolina state courts interpreted the North Carolina Tort Claims Act in litigation against North Carolina school districts and their employees?

Definitions of Important Terms

- *Administrative discretion* – Such discretion was the freedom to choose among potential courses of action in the administration of an office or in the duty of that office (Black’s Law Dictionary, 2010).

- *Claim* – For this study, any claim for demand for damages from a governmental entity as compensation in a suit as compensation for injuries. As stated in the North Carolina Tort Claims Act,

The Industrial Commission shall determine whether or not each individual claim arose as a result of the negligence of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North

Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. (North Carolina Tort Claims Act, 1951, para. 1)

- *Claimant* – In this study, a claimant was a person seeking compensation under North Carolina Tort Claims Act (North Carolina Tort Claims Act).
- *Discretionary act* – Such an act was exercised by personal judgement and conscience, reaching a decision in carrying out one’s duty (Black’s Law Dictionary, 2010).
- *Governmental entity* - State and local governments, like towns, school districts and school boards, that received immunity as extensions of the government and their service to the public were considered governmental entities.
- *Government immunity* - “Governmental immunity bars tort claims against local governments for injuries caused by their employees or agents acting within the scope of their duties in the performance of governmental functions” (Allen, 2015, p. 3).
- *Government tort* – A government tort was begun by an employee or official of the government against a government (Black’s Law Dictionary, 2010).
- *Law* - For this study, law referred to all rules of conduct including statutes, constitutions, and case law at the federal, state, and local levels.
- *Liability* - A liability was an obligation or accountable action, or legal responsibility to another or to society, that was enforceable by civil remedy or criminal punishment, or a financial obligation (Black’s Law Dictionary, 2010).
- *Ministerial powers* - Powers of a public officer that did not require the exercise of judgement or discretion are considered ministerial (Black’s Law Dictionary, 2010)
- *Motion for Summary Judgement* - Any motion for a summary judgement found the plaintiffs’ claim so insubstantial that the claim should not be heard in court.

Once the plaintiff provided facts in a claim that is worthy to be heard in court, then the judge would deny the summary judgement and hear the claim (Ballentine's Law Dictionary, 2010)

- *Negligence* – This included any failure to exercise the same standard of care that a prudent person would have exercised in a similar situation; or was conduct that fails the legal standard to protect others from unreasonable risk of harm, excepting conduct that was intentionally disregarding of others' rights (Black's Law Dictionary, 2010).

- *Public employee* - "Teachers are public employees, not public officials, and therefore are not entitled to public official immunity" (Allen, 2015, p. 11).

- *Public official* - "Generally public officials occupy offices created by statute, take an oath of office, and exercise discretion in the performance of their duties" (Allen, 2015, p. 11). Compared to public employees, public officials were shielded by public official immunity in North Carolina.

- *Sovereign immunity (1857)* - A government was immune to being sued unless it agreed to the suit; a state was immune to being sued in a federal court by the citizens of the state (Black's Law Dictionary, 2010).

- *Scope of liability* - "The TCA (North Carolina Tort Claims Act) permitted recovery for injuries caused by the negligence of state officers, employees, or agents acting within the scope of their duties under circumstances that would expose the state to liability if it were a private individual" (Allen, 2015, p. 3).

- *State* – For this study, the state of North Carolina and the "...State Board of Education, the Board of Transportation, and all other departments, institutions and

agencies of the State” (North Carolina Tort Claims Act, 1951, para. 1).

- *Tort* – A tort involved a civil wrong, not breach of contract, where a remedy might be obtained; it was a breach of duty that the law imposes on persons who stood in relation to another (Black’s Law Dictionary, 2010).

Organization of the Study

This dissertation is organized into five chapters, plus a list of references. Chapter 1 includes an overview of the study and includes the topics of the statement of the problem, the significance of the study, and definitions of terms as they related to the study.

Chapter 2 provides a comprehensive review of literature over federal immunity for schools, such as sovereign immunity, a review of the immunity received by schools in North Carolina, and a review of other methods through which schools could receive or be denied immunity. Specifically, Chapter 2 includes a review of sovereign immunity, the United States Federal Tort Claims Act and the North Carolina Tort Claims Act. Cases before and after the Federal Tort Claims Act and the North Carolina Tort Claims Act are examined to observe the context in which schools have had to work with liability at the beginning of federal and state history through the present day.

Chapter 3 focuses on the methodology chosen for answering the research question. Court cases are examined that were brought against North Carolina school districts and North Carolina school employees through the North Carolina Tort Claims Act. Search engines, like Nexis Uni™, were used to analyze court cases decided upon under the North Carolina Tort Claims Act.

Chapter 4 provides detailed analysis of 19 tort cases from North Carolina courts relevant to the North Carolina Tort Claims Act and school districts and their employees. The IRAC method of analyzing case law is used to complete a thorough examination of important cases related to tort law. Case law is broken down between four aspects that are crucial to understanding school education law in North Carolina: (a) jurisdiction of the Industrial Commission, (b) local governmental immunity, (c) contributory negligence, and (d) school employees and their official capacity when being sued.

Chapter 5 provides an overview of the student, a discussion of the key findings from the analyses of case law as presented in Chapter 4, especially in the legal aspects most relevant to school employees in North Carolina. These aspects include local governmental immunity, the scope of jurisdiction of the Industrial Commission, contributory negligence, and school employees and their official capacity. The chapter concludes with implications for educational leaders and recommendations for future studies.

Summary

This chapter covered basic information about the problem of practice that led to the need for this study, as well as how the findings of the study were significant to educational leaders. Chapter 2 provides an in-depth review of published studies related to tort case laws, particularly in North Carolina.

CHAPTER 2

REVIEW OF LITERATURE

This study was an analysis of the immunity that is enjoyed or denied to schools and their employees, including the North Carolina Tort Claims Act and federal protection through sovereign immunity. This study followed the general template of previous dissertations students completed at the University of North Texas who reviewed immunity for educators and schools in specific states, specifically Texas by Carman (2009); Oklahoma by Lacefield (2010); Mississippi by Kriesel Hall (2013); New Mexico by Herauf (2014); Georgia by McDaniel (2014); and Kansas by Perry (2017). All studies have served as a guide for educators to ensure they know what immunity they and their school employees enjoyed as they work to serve the public. This chapter reviewed the elements of Tort Law, the Eleventh Amendment, the history of torts prior to and after the passage of the Federal Tort Claims Act, immunity for local governments, tort law in North Carolina, the North Carolina Tort Claims Act, violations under the North Carolina Constitution, the Public Duty Doctrine, public official immunity, and public officials versus public employees.

Tort Law

A tort is a wrong that loosely defined, is not a crime against the public at large; rather, it was wrong to an individual. Keeton et al. (1984) defined a tort, in general, as “Broadly speaking, a tort is a civil wrong, other than breach of contract, for which the court will provide a remedy in the form of an action for damages” (p. 2). These authors go on to described the word tort, which in English came from the French *tortus* and came to mean in English a wrong. A victim in a tort brought their claim to a court to seek

redress for the wrong done, whether it was through action or inaction. If there was not an adequate defense against the claims of the plaintiff, then a court would award damages. Such damages would come from an individual, a corporation, or a governmental entity. All of tort law was based on consequences when an action or lack of action injures a person.

Alexander and Alexander (2009) described torts in the context of education law. In education, a tort was incurred when a civil wrong against a person is caused by malicious intent or negligence and the overall disregard for human rights. Dougherty (2004) defined them as “Torts related to schools are wrongful acts committed by school personnel that result in injury to another person’s property, person, or reputation” (p. 8). Employees of schools could be found wrong in the act of a tort but might be defended through immunity enjoyed by governmental entities and their employees. An individual could also sue the government in a breach of contract; however, this was not considered part of tort law, falling instead under contract law. A breach in contract made by a governmental entity could still be cause for action if the contract is valid. A governmental entity waived its immunity upon entering a contract with a person or vendor, and a victim could sue and recover damages.

The strongest and oldest immunity defense was sovereign immunity. Described in Mittal (2015), sovereign immunity was defined as the following:

Deriving from the ancient common-law principle of *rex non potest peccare* (the king can do no wrong), this doctrine is well established in American law—indeed, it was officially recognized by the Supreme Court in the early nineteenth century, and it is referenced in cases stretching back to the Founding era. (p. 2173)

Historically, school employees, like other governmental entities, have been protected by immunity from claims by citizens. Immunity first came to the United States from the

United Kingdom. Sovereign immunity was an established part of the English courts and laws, and although the United States was a new country and completely separate from the United Kingdom, sovereign immunity was established as a matter of course due to the strong influence English law had on American courts.

Under sovereign immunity, in general, citizens could not sue the government, even if those citizens had been wronged by the government. Government immunity extended to local governments as an extension of sovereign immunity. The principle of sovereign immunity is that governments cannot be sued in courts they have established (Florey, 2015).

The Eleventh Amendment

In *Chisolm v. Georgia* in 1793, the Supreme Court ruled in favor of a merchant who sued the state of Georgia. The ruling allowed, temporarily, citizens to sue states, much as they would another private citizen. The Eleventh Amendment to the United States Constitution passed in 1795 and reinstated sovereign immunity for states, though it was now in the Constitution as opposed to case law. The Eleventh Amendment provided protection for the federal government and state governments against torts from citizens in the United States or foreign citizens. The doctrine of sovereign immunity was formalized into law, and citizens could not sue the federal government and state governments in federal court (*Harvard Law Review*, 2015).

In 1792, Alexander Chisholm attempted to sue the state of Georgia for payment of goods that were supplied to the state during the American War of Independence. The case, *Chisholm v. Georgia* (1793), was the first case law related to immunity enjoyed by governmental entities. The state of Georgia declined to take part in the case, finding

that as a government, it could not be sued unless it consented to the suit. The judges ruled in favor of the plaintiff, allowing citizens to sue governmental entities. The one dissenting opinion, written by Judge James Iredell, reasoned that each state was sovereign under Common Law, and precluded the state from being sued in federal court with the state's consent.

The dissenting opinion became the source of the Eleventh Amendment. Passed in 1794, the Eleventh Amendment overruled the decision from *Chiselm v. Georgia* (1793) and ensured the sovereign immunity of states. *The Harvard Law Review* (2015) reported that "By its text, the amendment barred several types of suits, including the one at issue in *Chisholm*" (p. 1071).

North Carolina and the Eleventh Amendment

There were two notable cases from the state of North Carolina that were heard in federal court where defendants pleaded for immunity under the Eleventh Amendment. *Harter v. Vernon* (1996) was a case from North Carolina that was tried in federal court, first in United States District Court for the Middle District of North Carolina and then in the United States Court of Appeals for the Fourth Circuit. At its heart, *Harter v. Vernon* (1996) established a precedent for the immunity not provided to local governmental entities, like school districts, by the Eleventh Amendment.

In 1994, C.D. Vernon was a sheriff in Rockingham County, North Carolina and faced a reelection campaign in a primary with another candidate. Wayne Harter and Robert Payne were employees of the sheriff's office at that time. Sheriff Vernon allegedly encouraged staff in the sheriff's office to not only vote for him, but actively campaigned for him and donated money to the campaign funds. After the reelection,

which Sheriff Vernon won, he fired seven people in the sheriff's office, including Mr. Harter and Mr. Payne. Mr. Harter and Mr. Payne then sued the Rockingham County Sheriff's Office and Sheriff Vernon, in his official and personal capacity (*Harter v. Vernon*, 1996).

The Court of Appeals ruled in favor of the plaintiff, finding that the sheriff did not have immunity under the Eleventh Amendment. The Eleventh Amendment granted immunity to the states and to governmental entities strongly connected to the state. Judge Diana Gribbon Motz found that a local sheriff did not have that connection to the state of North Carolina, since the sheriff's role was local in nature and damages from the lawsuit would not be paid from the treasury of the state (*Harter v. Vernon*, 1996).

The *Cash v. Granville* case (2000) was another case involving the Eleventh Amendment that was tried and decided in federal court. It was first tried in United States District Court for the Eastern District of North Carolina, Western Division in March of 2000, where the court decided in favor of the defendant, the Granville County Board of Education. The school board appealed, and the case was tried a year later, March of 2001, in the United States Court of Appeals for the Fourth Circuit.

In 1999, Mary Cash was a secretary who worked at Webb High School, which was part of the Granville County Board of Education. Mary Cash had worked at the high school for over 20 years and had previously been paid overtime for times that she came in early and called substitutes in for each day. Under a new principal, Ms. Cash was denied the overtime, which happened for a period of three years, 1996 through 1999. Ms. Cash argued that she should have been paid for working over 40 hours in a week. The Granville County Board of Education's policy did state that employees working over

40 hours a week should be paid time and half for each hour worked. Mary Cash filed suit in June 1999 against the Granville County Board of Education under the Fair Labor Standards Act (*Cash v. Granville County Board of Education*, 2001).

The defendant, the Granville County Board of Education, argued that they were protected by sovereign immunity by the Eleventh Amendment. The plaintiff argued that local governmental agencies were not covered by the sovereign immunity found in the Eleventh Amendment. Judge Paul Niemeyer, of the United States Court of Appeals for the Fourth Circuit, stated in his opinion: "It appears almost without exception that State law treats local school boards as local entities, that is, more as counties than as arms of the State." (*Cash v. Granville County Board of Education*, 2001, p. 226). The court also ensured that the local school boards do not fall under the North Carolina Tort Claims Act in adding in their ruling that "North Carolina Supreme Court decisions have recognized school boards as local entities that are autonomous from the State" (*Cash v. Granville County Board of Education*, 2001, p. 226). The North Carolina Supreme Court found the Granville County Board of Education was not entitled to the protections of the Eleventh Amendment. The case was remanded back to the district court for the damages of the plaintiff.

Sovereign Immunity

In an extensive analysis of sovereign immunity, Florey (2008) showed that sovereign immunity was different because it was a "judge made doctrine" (p. 767). Florey described how sovereign immunity was a rare precedent in American law, as it was first established not by law but by judges in case law. This precedent was based on the sensibility of previous legal doctrines that found it was impractical to sue a king in a

court that the king created. Florey described it as the following: “Thus, the King’s immunity rested primarily on the structure of the feudal system and secondarily on a fiction that the King could do no wrong” (p. 771).

In his legal review, Krause (1984) succinctly explained the origins of sovereign immunity, stretching to Massachusetts in 1812 in the case of *Mower v. the Inhabitants of Leicester* (1812), which used the English case of *Russell v. Men of Devon* (1788) to successfully provide immunity for the municipality of Leicester.

The *Russell* (1788) case weighed heavily in the Supreme Court’s decision in *Mower* (1812), the biggest test to sovereign immunity since *Chisholm v. Georgia* (1793) and the subsequent Eleventh Amendment. In England, in the case of *Russell* (1788), a wagon was injured crossing a bridge maintained by the town. The plaintiff sued and lost, with the English court ruling that a city could not pay for damages for an individual if they had not reserved money for that expense prior to that event.

Back in the United States, in *Mower* (1812) Ephraim Mower’s horse was injured while crossing a bridge. The incident was similar to the incident in *Russell* (1788). In *Mower* (1812), a stage-coach owner’s (Ephraim Mower) horse was injured as it stepped into a hole in a bridge that was owned and maintained by the town, Leicester. The stage-coach crushed and killed the horse when the horse fell. Mr. Mower filed an action against the town for his loss, alleging that the town’s failure to maintain the bridge caused the death of his horse. The complaint did not include any allegations of prior notice of defects to the bridge. The trial court found in favor of Mr. Mower and awarded damages for the loss of his property. When the town appealed, the Massachusetts Supreme Court arrested the judgement, finding that Mr. Mower did not have common

law action against the town, which was a quasi-corporation. The court stated that the town could only have been liable if Mr. Mower had action by right of statute and only then if the town had prior notice of the defect that caused the death of the horse.

Leicester was incorporated, while Devon was not, and Leicester had a public treasury available where damages could be paid out of for plaintiffs. However, the Massachusetts Supreme Court ruled that Mr. Mower could not recover damages from Leicester unless a statute was passed by law and if the town had received prior notice that the bridge was in disrepair. *Mower* (1812) was the first case to establish sovereign immunity of states in the United States, a tradition which was strengthened in the coming years.

The case *Kawananakoa v. Polyblank* (1907) strengthened sovereign immunity in the United States. The heart of this issue was an argument over the sale of land in the territory of Hawaii. The Territory of Hawaii demurred from taking part in the suit, and the Supreme Court ruled that they were exempt. The *Kawananakoa* ruling showed that a sovereign was not exempt because of a traditional idea or a relic of the English monarchy, but because as Justice Holmes stated: "...there can be no legal right as against the authority that makes the law on which the right depends" (p. 353). Justice Holmes described the idea this way: "As the ground is thus logical and practical, the doctrine is not confined to powers that are sovereign in the full sense of juridical theory" (p. 353). Sovereign immunity, especially at the federal level, has remained intact and well-defended throughout the 20th century and into the 21st century. While the concept of sovereign immunity remained unchallenged, the federal government struggled with suits where plaintiffs were in need of remedy.

Torts Prior to the Federal Tort Claims Act

Prior to the Federal Tort Claims Act, the only way available for individuals to sue a federal government was through the passing of a private bill through Congress.

Alexander Holtzoff (1942) described the process for citizens in his review of tort claims against the federal government by stating, "Presumably for want of any other remedy, it became the customary practice to handle claims against the Government by special legislation" (p. 311). The amount of private bills brought before congress in the early 1800s overloaded the members of congress, who had other pressing work in legislature (Holtzoff, 1942).

Prominent congressmen and politicians saw the value of having a specific court to hold claims, including Presidents John Quincy Adams and Millard Fillmore. In 1855, Congress established the Court of Claims, an apparent major step forward for the efficient resolution of tort claims brought against the federal government. However, the Court of Claims was very nearly the opposite of efficient. The Court of Claims would hear a case and rule whether it had merit, but the Congress still voted upon the rulings of the Court. Holtzoff (1942) showed how the system vexed President Abraham Lincoln, even on the eve of the Civil War:

In spite of the stress and strain attendant upon the great internecine conflict then raging, Abraham Lincoln, in his Annual Message to the Congress, submitted on December 3, 1861, alluded to this subject and recommended that more convenient means be provided for the adjustment of claims against the Government. (p.312)

President Lincoln maintained that the Court of Claims had achieved its goal, though Congress was still hampered by voting on issues that could be determined by other entities or courts. Holtzoff continued by stating that the Court of Claims "... failed

in a great degree to effect the object of its creation, for want of power to make its judgments final” (p. 312).

Two years later, the Court of Claims was transformed into a real court with power behind its rulings by the Act of March 3, 1863. However, the Court of Claims still required substantial intervention from the United States Congress. Figley (2010) discussed the frustration that Congressmen were experiencing, as Congressman Celler said here: “The process was subject to inordinate delays and arbitrary actions. Congressional procedures were inadequate to the task of promptly and effectively resolving tort claims on their merits” (Figley, 2010, p. 350).

Clearly, litigation in the burgeoning United States in the 1920s had exhausted the system that had been created in the previous century. By the early 20th century, change was needed. Most of Congress agreed that the change should come in the form of legislation and a tort claims act for the whole nation, but the bills would die as factions argued over details. Figley (2010) explained that in 1929 a bill was passed by both houses of Congress, but the bill was vetoed by President Coolidge because the Comptroller General would represent the United States in cases before the court. In 1942, President Franklin Roosevelt sent a message to Congress that a tort claims act bill must be passed as tort claims were taking up too much of his and the Congress’s time. The Federal Tort Claims Act would become law in only four short years.

The Federal Tort Claims Act

For the first time, the Federal Tort Claims Act of 1946 gave United States citizens the right to sue the government. The first test case of The Federal Tort Claims Act came in 1953 in the case of *Dalehite v. United States*. In *Dalehite v. United States* (1953), the

Supreme Court found the Federal Tort Claims Act could not allow plaintiffs to file suit against actions of the government and negligence. In this case against the United States, under the Federal Tort Claims Act, the plaintiffs sought to recover damages for a death resulting from the disastrous explosion at Texas City, Texas. The entire process of producing fertilizer was under government control. The ammonium nitrate fertilizer was produced at a government facility, according to the specifications, and under the control of the United States government, to export food to supply areas under military occupation following World War II. The District Court found that the explosion resulted from negligence on the part of the government in the management of the plant, but not in the overarching control of the plant.

The Supreme Court found that “discretionary function or duty” could not be the reason for suit against the government under the Federal Tort Claims Act. In the *Dalehite v. United States* (1953) the Supreme Court explained the reason behind the discretionary function as follows:

A highly important exception, intended to preclude any possibility that the bill might be construed to authorize suit for damages against the Government growing out of authorized activity, such as a flood control or irrigation project, where no negligence on the part of any government agent is shown and the only ground for the suit is the contention that the same conduct by a private individual would be tortious. (p. 28)

The Supreme Court argued that a governmental entity has immunity even if a private company could be sued in the same instance. The Supreme Court further stated: “The bill is not intended to authorize a suit for damages to test the validity of or provide a remedy on account of such discretionary acts, even though negligently performed and involving an abuse of discretion” (*Dalehite v. United States*, 1953, p. 30). The government argued, successfully, that if the managers of the plant had followed the

procedures and guidelines of the government, then the explosion would not have happened. The fact the government made errors of omission in communication about the explosive nature of the products is a by-product of a “discretionary function” of the government.

Immunity for Municipalities and Local Governments

Despite the strong historical precedence, there exist exceptions for sovereign immunity, especially regarding state and municipal governments. As Guernsey (1989) pointed out, civil rights attorneys will typically use 42 U.S.C. § to bring state and local governments to suit in federal courts. The 42 U.S.C. § 1983 was passed in 1871 and was known as the Ku Klux Klan Act because it allowed persons who had suffered civil rights abuses to sue local governmental agencies in federal courts in states that were unwilling to prosecute violations of civil rights. In his summary of the complexity of the 42 U.S.C. § 1983 in federal courts, Allen (2015) wrote “Although the Eleventh Amendment to the United States Constitution generally bars federal lawsuits against the states, local governments in most instances are not considered part of the state and are therefore not entitled to immunity from § 1983 actions” (Allen 2015, p. 2).

Throughout legal history in the United States, suits brought against local municipalities and government entities, like school districts, have been more successful than their federal counterparts. In *Monell v. New York City Department of Social Services* (1978), a class of female employees sued their governmental employers (the Department of Social Services and the Board of Education of the City of New York). The employers required pregnant women to take leaves of absence without pay, even if there was no medical justification. The plaintiffs sought to stop the forced leaves of

absence and sued for back pay. The district court and the Court of Appeals ruled in favor of the governmental entity, even though they found the policies unconstitutional. The Supreme Court overturned the case, ruling in favor of the plaintiffs and established a more consistent stance of the liability of municipal governments.

North Carolina

Early in North Carolina's history, sovereign immunity for local governmental entities was rejected by courts. The decision against immunity was an early separation from the United Kingdom. In *Meares v. Commissioners of Wilmington* in 1848 and *Wright v. Wilmington* in 1885, the North Carolina Supreme Court decidedly established that municipalities can be sued for negligence by their employees.

In the latter part of the 19th century, the courts reversed course and sided on the part of local governments. Sovereign immunity was first protected in a case from 1889, that of *Moffitt v. City of Asheville*, where the court ruled that a municipality is protected from the negligence of its officers because of sovereign immunity. The opinion in the case ruled that when a local governmental agency is "... exercising the judicial, discretionary or legislative authority, conferred by its charter, or is discharging a duty, imposed solely for the benefit of the public, it incurs no liability for the negligence of its officers" (*Moffitt v. City of Asheville*, 1889, p. 255).

In 2018, the North Carolina Supreme Court was specific in the clarification of sovereign immunity in the *Irving v. Charlotte-Mecklenburg Board of Education* case. "Here '[defendant] is a county agency. As such, the immunity it possesses is more precisely identified as governmental immunity, while sovereign immunity applies to the State and its agencies'" (*Irving v. Charlotte-Mecklenburg Board of Education*, 2016, p.

611). The court created a clear distinction between the level of sovereign immunity and what was under its umbrella, that was the government of the State of North Carolina. For school districts in North Carolina, they fell clearly under a county agency. Furthermore, the defendant in *Irving v. Charlotte-Mecklenburg Board of Education* was a school district, providing clarity as to where school districts fall in sovereign immunity versus governmental immunity.

The North Carolina Tort Claims Act

In 1951, the North Carolina Legislature passed the Tort Claims Act. Under that act, lawsuits against governmental entities were brought before a commission of judges called the Industrial Commission. The statute specifically named the North Carolina State Board of Education as one of the entities that could have a suit brought against it through the Tort Claims Act. To protect the public, governmental entities can purchase liability insurance. As Price (2006) described, this acted as a partial waiver: “Under these statutes, the purchase of insurance operates as a waiver of the local government’s sovereign immunity up to the amount of insurance acquired” (p. 274). The North Carolina Tort Claims Act limited the total amount of damages to \$1,000,000.

The state of North Carolina waived its immunity against being sued in the North Carolina Tort Claims Act. The North Carolina Tort Claims Act created an avenue for individuals to seek redress of wrongs committed by a North Carolina governmental entity, whether state or local. Under that act, citizens could bring a claim to the Industrial Commission first, which assigned a hearing commissioner to hear the evidence of both sides. The decision could be appealed by both sides and was heard by the entire Commission. The Commission’s decision bypassed the District and Superior

Court systems and was appealable to the North Carolina Court of Appeals. As stated in the North Carolina Tort Claims Act (1951):

The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State. (North Carolina Tort Claims Act, 1951, para. 1)

General tort principles still applied to claims filed under the North Carolina Tort Claims Act, which meant that contributory negligence resulted in a complete bar to recovery. The North Carolina Tort Claims Act also places a limit of \$1,000,000 on the amount that the state may pay in damages. Allen (2015) explained this in depth: “By statute, boards of county commissioners, city councils and local school boards waive governmental immunity by the purchase of liability insurance, but only to the extent of coverage” (p. 5). The North Carolina Tort Claims Act allowed a governmental entity to be held liable if it purchased liability insurance, but only to the amount of coverage purchased. Allen provided an example:

For instance, if a school district’s insurance policy expressly excludes injuries arising from athletic events, a student who slips and breaks his arm on a wet gym floor during basketball practice has no negligence claim against the district. Similarly, if a county’s insurance policy covers a particular type of negligence claim but only up to \$50,000, the most a plaintiff may recover is \$50,000. (p. 5)

The principle of the North Carolina Tort Claims Act appeared contrary and unfair, as it benefited the governmental entity that did not purchase insurance in the event that an unfortunate accident occurs. However, this sentiment was not as important, in the eyes of North Carolina lawmakers, as the governmental immunity of municipalities. The purpose of governmental immunity, of course, was to ensure that the dollars of taxpayers were not spent in litigation.

In 1983, the Supreme Court of North Carolina ruled on *Guthrie v. North Carolina*

State Ports Authority (1983), which established that the Industrial Commission had exclusive, original jurisdiction over claims covered by the North Carolina Tort Claims Act. Fred Guthrie, Jr. was a longshoreman assigned to work a forklift at the port in Morehead City in North Carolina. Mr. Guthrie was using the forklift to move large bundles of lumber from a warehouse owned and operated by the Ports Authority. As he was doing so, a large bundle of lumber crashed from a stack on top of the forklift, severely injuring Mr. Guthrie. The plaintiff was left a paraplegic in a wheelchair. Guthrie argued he should not be limited to the North Carolina Tort Claims Act and attempted to appeal to the North Carolina Supreme Court to be allowed to sue the North Carolina Ports Authority. However, the Supreme Court found in favor of the defendant and held that the Ports Authority had sovereign immunity except where liable under the limitations of the North Carolina Tort Claims Act. *Guthrie v. North Carolina State Ports Authority* (1983) ensured that state and local government agencies, like the Ports Authority could not be sued in a court other than the Industrial Commission if the case qualified under the North Carolina Tort Claims Act. While the Ports Authority waived its immunity under the North Carolina Tort Claims Act, the "... statutes of waiving immunity are to be strictly construed" (Allen, 2015, p. 7). The advantage for state and local governmental entities, like school districts, was that the damages for plaintiffs were limited under the North Carolina Tort Claims Act to \$1,000,000.

School boards also were protected from waiving immunity by participating in the North Carolina School Boards Trust or a similar risk pool. In *Hallman v. Charlotte-Mecklenburg* (1996), a citizen of Charlotte injured her ankle while walking across an elementary school campus. She sued the Charlotte-Mecklenburg Board of Education for

\$45,000 for negligence in maintaining the school grounds. The plaintiff stated that since the school board had purchased “liability insurance” in amount of \$1,000,000, they had waived their governmental immunity. The defendants, the Charlotte-Mecklenburg Board of Education, stated that they had participated in a risk pool, not purchased liability insurance. This risk pool would provide for compensation of up to \$1,000,000, the same amount that school districts can be liable for under the North Carolina Tort Claims Act. The Court of Appeals of North Carolina ruled that the school board did not have liability insurance coverage for the plaintiff’s claim, and that participation in a risk pool did not equal having insurance and did not operate as a waiver of the school board’s immunity.

In 1959, the Supreme Court of North Carolina ruled on the *Turner v. Gastonia City Board of Education* (1959) case. A student was injured by a wire thrown from a power mower cutting grass on the lawn of Abernathy Primary School. The parents sued the local board of education and the state board of education. The Supreme Court decided on the case considering the recently passed North Carolina Tort Claims Act. In part of their decision, they considered what was included under the Tort Claims Act. “The Tort Claims Act, applicable to the State Board of Education and to the State departments and agencies, did not include local units such as county and city boards of education” (*Turner v. Gastonia City Board of Education*, 1959, p. 463).

The court did rule in favor of the local school board and the state board, but for different reasons. The local school board maintained their immunity since they did not fall under the North Carolina Tort Claims Act as a state entity. The court explained: “In this case, the claim against the Gastonia School Trustees and their successors could not be maintained for an injury caused by a negligent employee on May 11, 1955,

because of their governmental immunity” (*Turner v. Gastonia City Board of Education*, 1959, p. 464). The court also ruled in favor of the state board since the plaintiff was an employee of the local municipality, not with the state. Overall, the North Carolina Supreme Court put into place a clear line between state and local governments when plaintiffs sued governments.

Violations Under the North Carolina Constitution

In *Corum v. University of North Carolina* (1992), a professor sued his university after he was removed as dean of his department after a public argument regarding a collection in a library. The key finding in this case was the strong opposition of the courts to sovereign immunity in relationship to the rights of citizens. The court was expansive in its view and in its language:

... in determining the rights of citizens under the Declaration of Rights of our Constitution, it is the judiciary’s responsibility to guard and protect those rights. The doctrine of sovereign immunity cannot stand as a barrier to North Carolina citizens who seek to remedy violations of their rights guaranteed by the Declaration of Rights. (*Corum v. University of North Carolina*, 1992, pp. 785-786)

The *Corum v. the University of North Carolina* (1992) case formed the basis of a swing toward the rights of citizens and away from the rights of the government. This swing has continued, as North Carolina courts became more protective of the rights of citizens and were wary of granting immunity to governmental entities. The North Carolina Supreme Court further solidified their stance when they stated in *Corum v. the University of North Carolina* (1992) that: “It is also to be noted that individual rights protected under the Declaration of Rights from violation by the State are constitutional rights. Such constitutional rights are a part of the supreme law of the State” (*Corum v. University of North Carolina*, 1992, p. 786).

A school board was successfully sued in in the *Craig v. New Hanover* case since an alternative remedy was barred by sovereign immunity. The governmental immunity claimed by the school board was superseded by state constitutional claims because of the negligence of the school. In 2004, the plaintiff Jon-Paul alleged that he was sexually assaulted due to the negligence of the defendants, the New Hanover County Board of Education. The district court and the appeals court both ruled in favor of the school board, finding that governmental immunity defeated the plaintiff's avenue to adequate remedy at the state law level. However, the North Carolina Supreme Court reversed their ruling, finding that "... to allow the doctrine of sovereign immunity to 'stand as a barrier to North Carolina citizens who seek to remedy violations of their rights guaranteed by the Declaration of Rights,' exactly contrary to our prior holding in *Corum*" (*Craig v. New Hanover*, 2009, p.338).

The bar of governmental immunity was too much of a barrier for the North Carolina Supreme Court, which found that citizens must be able to find a remedy if they have been wronged by a local government. This ruling drastically changed the onus of responsibility in North Carolina for local governmental entities. School districts in North Carolina now must be aware that the long-held immunity from negligence claims could be waived by the court if no other remedy could be found by the plaintiff. The North Carolina Supreme Court explained it this way:

Instead, individuals may seek to redress all constitutional violations, in keeping with the 'fundamental purpose' of the Declaration of Rights to "ensure that the violation of [constitutional] rights is never permitted by anyone who might be invested under the Constitution with the powers of the State. (*Craig v. New Hanover*, 2009, p. 342)

In 2016, the Supreme Court of North Carolina decided on *Irving v. Charlotte-*

Mecklenburg Board of Education (2016), a case that further defined governmental immunity in the state. Tyki Sakwan Irving was struck by a school bus transporting kids to a school activity in Mecklenburg County in October of 2007. The bus was driven by an employee of the Charlotte-Mecklenburg School District and the plaintiff did receive serious injuries. Tyki Irving sued the school district for negligence and sought compensation for the injuries.

Specifically, the plaintiff sued pursuant to a statute, section 143-300.1., of the North Carolina Tort Claims Act that addressed negligence in school transportation. In the opinion, the justice provided insight in this specific statute, saying “This statute establishes a limited waiver of local governmental immunity by authorizing lawsuits against county and city boards of education for the negligent operation of ‘school buses’ and ‘school transportation service vehicles’” (*Irving v. Charlotte-Mecklenburg*, 2016, p. 610). The Industrial Commission agreed with the defendant, the school district, and granted summary judgement in dismissing the suit. On Supreme Court affirmed the ruling of the Industrial Commission, noting that a “school activity bus” should be considered similar to a “public school bus or school transportation service vehicle” (*Irving v. Charlotte-Mecklenburg*, 2016, p. 616).

The decision of the Supreme Court to grant judgement in the school district’s favor rested on this deciding principle: “We conclude that public school buses, school transportation service vehicles, and school activity buses are distinct categories of vehicles, and that school activity buses were not incorporated into the waiver of immunity contemplated by the Tort Claims Act” (*Irving v. Charlotte-Mecklenburg*, 2016, p. 615). While the scope of this case might seem insignificant, it was important as

negligence in school transportation was a frequent reason plaintiffs sued school districts.

Governmental Functions Versus Proprietary Functions

As Allen noted in *Local Governmental Immunity to Lawsuits in North Carolina*, “Because governmental immunity covers governmental functions but not proprietary functions, many of the cases focus on distinguishing between the two categories” (2018, p. 4). Allen categorized these two functions as governmental functions and proprietary functions to distinguish that a governmental function is undertaken for the “public good” (p. 4). Proprietary functions are “...chiefly commercial or undertaken for the private advantage of the compact community” (p.4). The vast majority of work administrators and educators carried out in schools included governmental functions, from the transportation of students to the care and education they receive each day. This distinction was important in case law, as liability was significantly expanded in cases where an organization operated for profit. In his research of local governmental immunity in North Carolina, Allen wrote “It appears that there are no appellate court decisions in North Carolina classifying any public school activity as a proprietary function” (2018, p. 162).

The *Estate of Williams v. Pasquotank County Parks & Rec. Dep’t* case (2012), Erik Dominic Williams drowned in a public park, Fun Junktion, in June of 2007. The deceased drowned in an area called the Swimming Hole, which was rented out to private parties at the park. The family of the deceased sued the Pasquotank County Parks & Recreation Department, which owned and operated the park. Since the Pasquotank County Parks and Recreation Department operated the Fun Junktion public

park as a proprietary function, it was excluded from governmental immunity. The Supreme Court of North Carolina stated as such: "Governmental immunity does not, however, apply when the municipality engages in a proprietary function" (*Estate of Williams v. Pasquotank County Parks & Rec. Dep't*, 2012, p. 199). Even if the service was for the public, the key factor in determining a proprietary function was whether the service was for profit. As the Supreme Court of North Carolina made clear, once a municipality went beyond serving the community, it could be sued like a corporation. The Supreme Court ruled in favor of the plaintiff and remanded the case back to the appellate court.

Public Duty Doctrine

In 1991, the North Carolina Supreme Court first recognized the Public Duty Doctrine, which in general, protects law enforcement from suits by citizens in cases of negligence. In ruling in *Braswell v. Braswell* (1991), the case in which the Public Duty Doctrine first surfaced, the court stated:

The general common law rule, known as the public duty doctrine, is that a municipality and its agents act for the benefit of the public, and therefore, there is no liability for the failure to furnish police protection to specific individuals. (*Braswell v. Braswell*, 1991, p. 370)

In *Braswell v. Braswell* (1991), a son sued his father, a sheriff's deputy, and the sheriff, Ralph Tyson, in Pitt County, North Carolina. The father, Billy Braswell, shot and killed the plaintiff's mother, Lily Braswell, and shortly after attempted to take his own life. Sheriff Tyson had been warned numerous times that Lily Braswell was in danger from Billy Braswell, and he assured her protection. The Supreme Court of North Carolina ruled that the failure to protect Lily Braswell was not an offense for which the plaintiff could sue Sheriff Tyson. Instead, the court created a shield to protect law enforcement

officers from liability for failure to prevent a criminal act, even after they had prior knowledge of said act.

In comparison, teachers had a much narrower margin of error in ensuring they are shielded from liability. The North Carolina Courts showed that police officers in North Carolina should be shielded from civil suits that erupted after a crime happened in which they had some sort of warning. The Public Duty Doctrine, limited to police officers in *Braswell* (1991), was expanded to other governmental officers like inspectors in two other cases, but was finally restricted again *Lovelace v. City of Shelby* in 2000 to only police officers. In *Inevitable Inequities* (2006), legal scholar G. Braxton Price noted the inconsistency of the Public Duty Doctrine, which protected the rights of some governmental employees, yet ignored others, such as teachers. The Public Duty Doctrine could not protect educators or schools but was a part of the unique patchwork that became North Carolina's civil liability framework (Price, 2006).

Public Official Immunity

As Trey Allen pointed out in *Immunity of The State and Local Governments from Lawsuits In North Carolina* (2015), North Carolina courts protected public officials from suits unless their actions were malicious and corrupt. The courts also distinguished between public officials and public employees, as public employees were not protected by immunity. Teachers were public employees and did not have public official immunity. The North Carolina General Assembly created immunity by statute for school personnel in using reasonable force to protect others from injury in a disturbance. North Carolina also has statutes authorizing local governments, such as counties, cities and public schools, to provide for the defense of current and former board members against civil or

criminal lawsuits. The defense of actions made by public school board members would be based on acts made from within the scope of employment. However, the statute does not require school districts to pay for the defense, only authorizing the ability to pay for it if the district made this choice (Allen, 2015).

Public Officials Versus Public Employees

The case of *Daniel v. City of Morgantown* (1997), outlined the separation of teachers as either public officials or public employees. In the case, a softball player sued the Burke County Board of Education and the city of Morgantown, where the entities owned or leased a practice field for the high school team. On March 19, 1990, a coach for the Freedom High softball team, Deborah Gober, had the softball team taking grounders on an uneven and rough field for practice. The team had practiced on the field several times before, and many of the players, including the plaintiff, had complained about the unsafe conditions. On that day, the plaintiff was struck in the face by an errant bounce from a softball, losing a tooth and loosening another in the process.

The North Carolina Supreme Court ruled that the board would have governmental immunity, but not Coach Gober. The Court decision included this statement: "However, defendant Gober is an employee and not an officer and is therefore not entitled to governmental immunity as her duties are purely ministerial and do not, in the instant case, involve the exercise of sovereign power" (*Daniel v. City of Morganton*, 1997, p. 55).

The Supreme Court of North Carolina ruled in favor of the defendant, even after finding Coach Gober negligent. The court found that the plaintiff was contributorily negligent in playing on a field she knew to be unsafe, which was a bar to recovery for

the plaintiff. However, the key takeaway was provided when the court stated: “As a schoolteacher, defendant Gober is not immune from acts of negligence. She can be held personally liable for negligent acts in the performance of her duties” (*Daniel v. City of Morganton*, 1997, p. 55). Educators and school leaders in North Carolina should know that teachers can be held personally liable for negligent acts while performing their duties. While school boards and schools were protected by strong immunity laws, teachers should take pains to ensure the safety of students and others in their care while carrying out their duty.

The *Mullis v. Sechrest* case (1998) also examined the divide between teachers as public officials and employees. In 1990, Blaine Mullis left a school assembly without permission and went into a locked shop classroom. He used a table saw without the guard and subsequently suffered a horrific accident resulting in a severed thumb and fingers. The father of Blaine Mullis sued the school and the teacher for damages, stating that both “..negligently failed to give adequate instructions regarding the proper use of the table saw and failed to adequately warn of the inherent dangers of its use” (*Mullis v. Sechrest*, 1998, p. 550).

In *Mullis v. Sechrest* (1998), the North Carolina Supreme Court defined the threshold of public officer immunity as this: “However, the threshold issue to be determined in this case is whether defendant Sechrest is being sued in his official capacity, individual capacity, or both” (p. 551). The court reversed the trial court’s decision and decided that it depended on the suit brought against the teacher. The court decided that “Defendant Sechrest notes that if the plaintiffs sued him ‘in his official capacity, he is entitled to governmental immunity to the same extent as the Board.’ We

agree with defendant Sechrest and, accordingly, reverse the Court of Appeals” (*Mullis v. Sechrest*, 1998, p. 551).

Allen (2015) reviewed how North Carolina statutes viewed public officials versus public employees. Public officials are entitled to public official immunity. Some examples were elected board members, police officers, and jailors. Teachers were public employees, and statutes and case law ensured that teachers were not entitled to public official immunity.

In contrast to teachers, superintendents and principals were considered public officials in North Carolina. In *Beatty v. Charlotte-Mecklenburg Board of Education* (1990), the Court of Appeals of North Carolina concluded that principals were considered public officials in the eyes of the law. In 1986, Anthony Beatty, 11 years old, was struck by a car on his way to the bus stop. He suffered a severe head injury and was permanently disabled. The family sued the Charlotte-Mecklenburg Board of Education; Thomas Bridges, principal of the plaintiff’s elementary school; and the driver of the truck that hit the student. The plaintiff argued that the school board and principal were negligent in the design of the school bus route. The Court of Appeals of North Carolina disagreed thus dismissed the suit against the school board and the principal as they were protected by governmental immunity. The importance of *Beatty v. Charlotte-Mecklenburg Board of Education* (1990) is that the principal was covered under the same governmental immunity as the school board. The school board had always been considered as public officials in North Carolina, as they were elected, took an oath of office, and represented the public. The principal in this case was protected as a public

official, giving principals a layer of immunity in the work they do for the public in North Carolina.

In *Gunter v. Anders* (1994), both the superintendent and the principal were protected by governmental immunity. Charles Brian Gunter was struck by a car as he crossed a school parking lot for a physical education class. As a result, his left arm was amputated. Charles Brian Gunter sued the driver of the car and his family, the Surry County Board of Education, principal Allen Edwards, and superintendent David A. Martin. The Court of Appeals of North Carolina affirmed the dismissal of claims against the superintendent as he had immunity as a public official of a governmental entity. The court case placed importance on the fact that the superintendent took an oath of office, which is required by statute in North Carolina. In *Gunter v. Anders* (1994), the court found the superintendent to be immune to torts like these in stating: “Clearly, the superintendent of a school system must perform discretionary acts requiring personal deliberation, decision and judgment” (p. 67).

The *Gunter v. Anders* case (1994) continued with the suit against the principal. Though the principal did not take an oath, he was still regarded as a public official. The opinion in *Gunter v. Anders* (1994) stated: “... because plaintiffs failed to plead that defendant Edwards’ acts or failure to act were corrupt, malicious, in bad faith or outside the scope of his authority, plaintiffs’ claim as to defendant Edwards was properly dismissed” (p. 68). In North Carolina, superintendents and principals were entitled to immunity as public officials, while in courts teachers were public employees. Judges would see teachers perform “ministerial functions involving little or no discretion” (Allen 2015, p. 11). If a student under the care of a teacher was injured by negligence in the

performance of a duty, then the teacher could be held personally liable in North Carolina. Teachers in North Carolina should take measures to ensure the safety of students in their care.

Summary

This chapter included a review of literature related to the historical context of the immunity of government entities in the United States and in North Carolina. Through case law and in Congress, after the federal government adopted sovereign immunity, states and local governments worked to have similar immunity. The federal government also led the way for states in adopting a national Tort Claims Act, allowing citizens to seek damages against governmental entities that had supposedly wronged them. North Carolina and other states followed suit, providing their citizens with an avenue for citizens to sue the state and local governments.

Cases in North Carolina before and after the North Carolina Tort Claims Act were analyzed within this study. North Carolina was relatively early in establishing their own version of the Court of Claims and passing a tort claims act (the North Carolina Tort Claims Act in 1951). The Industrial Commission has been able to hear cases from plaintiffs against the government for over 60 years, and the case law from the court has influenced generations of governmental entities, including schools and their employers.

This review showed the differences in immunity for public officials and public employees in North Carolina. The profession of an individual in North Carolina entitles that person to a substantially different amount of immunity within the state. For example, the negligent actions of a police officer were not regarded as liable in the way the negligent actions of a teacher or coach were liable. A coach who was negligent in the

use of a poor practice field could be found personally liable and be brought to court and sued, as happened in the *Daniel v. City of Morgantown* (1997) case. On the other hand, a police officer who was negligent in their duty to prevent a crime, even as the offender of the crime was in their own employment as sheriff and sheriff's deputy, was entitled to immunity, as in the case of *Braswell v. Braswell* (1991).

This chapter serves as a guide for school boards members and all educators as they create rules, guidelines and procedures to protect employees and students in schools. Chapter 3 provides details about the methodology chosen for conducting the research study.

CHAPTER 3

METHOD

The purpose of this dissertation was to provide an analysis of the North Carolina courts and how they have applied the North Carolina Tort Claims Act in cases brought against schools and educators. This analysis was conducted to answer the research question: how have North Carolina state courts interpreted the North Carolina Tort Claims Act in litigation against North Carolina school districts and their employees?

This chapter includes the following topics for the purpose of providing details about the aspects of the study: rationale for the research design, data sources, data analysis, issues of reliability and trustworthiness, limitations and delimitations, and anticipated findings.

Legal research, while certainly not new, was not a common method of analysis in educational research. However, that methodology was appropriate for conducting this study. Sughrue and Driscoll (2012) found that “The narrow corridor of opportunity for learning how to understand or conduct legal research is sometimes and unnecessarily disconcerting to graduate students and practitioners because they fear this line of inquiry is too obscure” (p. 2). However, if done properly and with great care, legal research provided clarity in many of the great questions in education, ranging in topics as varied as equity for all students to the liability a regular teacher had in the everyday line of work. Sughrue and Driscoll highlighted the importance of legal research by stating: “Legal research offers insights to practitioners and graduate students who are committed to improving educational opportunity for all children and to shining a bright light on laws and policies that exacerbate inequities and deny children a high quality

education” (p. 14). While legal research was not a common avenue of research for educators, it was imperative that educators continued to expand on their skills in this area and build better practices. An improved collection of best practices in avoiding litigation will benefit school employees and the families that the school district serves.

Rationale for the Research Design

The review of literature in Chapter 2 provided an analysis of sovereign immunity at the federal and state levels. The review also included an analysis of the Federal Tort Claims Act as well as the North Carolina Tort Claims Act. Both were reviewed in detail to provide an understanding of the liability every educator should understand. Going back to Zirkel and Clark (2008), in their review of school negligence in case law trends, the authors concluded that a “...more systematic study of governmental and official immunity, including a comprehensive canvassing of state legislation rather than merely selected case law” was necessary (p. 11-12). In the spirit of this finding, other doctoral students analyzed the tort claims acts of the following states as shown in Table 1:

Table 1

Former Dissertations about Tort Laws

Author	Date	Title
Carman	2009	Analysis of Qualified Immunity for Texas Public School Professional Employees as Interpreted by the Texas Courts
Lacefield	2010	A Legal Analysis of Litigation Against Oklahoma Educators and School Districts Under the Oklahoma Governmental Tort Claims Act
Kriesal-Hall	2013	A Legal Analysis of Litigation Against Mississippi Educators and School Systems Under the Mississippi Tort Claims Act
Herauf	2014	Immunity for New Mexico Public School Districts and the 1978 Tort Claims Act

(table continues)

Author	Date	Title
McDaniel	2014	A Legal Analysis of Litigation Against Georgia Educators and School Systems Under the Georgia Governmental Tort Claims
Perry	2017	A Legal Analysis of Litigation Against Kansas Educators and School Districts Under the Kansas Tort Claims Act
Price	2018	A Legal Analysis of Litigation Against Louisiana Educators and School Districts, Before and After the Louisiana Governmental Claims Act
Johnson	2019	An analysis of legal liability of Virginia educators and school systems

Data Sources

The sources for the data in this dissertation were collected from primary and secondary sources of law. Primary sources included federal and state Tort Claims Acts, state and local statutes, and case law. The case laws ranged from federal cases to cases in North Carolina, which involved local municipalities and governments in North Carolina. In order to analyze court decisions in detail, court cases and opinions were obtained from Nexis Uni and Westlaw databases from the University of North Texas library website. Nexis Uni was particularly helpful in cases involving federal and state courts. Using the Shepard© citation system was helpful in finding the most recent decisions. The Shepard system also tracked the history of decisions from the original ruling, then the appellate court, the Supreme Court (of the United States or the state), and often back to down to the appellate court. With the different rulings in one case, it was useful to use the Shepard system to keep score of what decision was soundest for referencing in my dissertation.

Also found in Nexis Unit and Westlaw were legal interpretations and law review articles, which were secondary sources of data. Other secondary data sources were interpretation of laws and statutes from legal scholars, dissertations, law books, and

publications from educational scholars. Secondary sources allowed perspective on legal cases, granting perspective on trends throughout liability and education. Also, secondary sources were vital in reading state statutes and general laws. Governmental scholars, such as Trey Allen from the University of North Carolina's School of Government, specialized in subjects like local government and provided clarity in difficult legal language that was found in local laws. In searching for both primary and secondary sources, Boolean searches were used to ensure specific results rather than combing through a wide variety of unnecessary texts. In specific searches, search terms were used to find case law before and after the North Carolina Tort Claims Act of 1951.

Data Analysis

For the legal analysis in chapter 4, cases were reviewed that were decided before and after the North Carolina Tort Claims Act of 1951. Studying cases prior to the North Carolina Tort Claims act provided context about the place schools have had in the state of North Carolina. Analyzing cases after the North Carolina Tort Claims Act provided educators guidelines to prevent lawsuits and practical lessons that helped ensure the safety of their students and others in the school setting. Nineteen cases were analyzed for the legal research analysis of liability in North Carolina. The IRAC method of legal research as described in Burton (2016) was used in analyzing case law. IRAC analyzed the issue, rule, application/analysis, and conclusion. Burton created a grid with four steps (IRAC) that guided me in analyzing specific cases, whether they were large, federal cases or local cases reinforcing a previous ruling. Within each of the four steps, Burton identified points for the legal researcher to consider when writing about the case. Burton listed these following steps to analyze court cases:

Issue - Identify the legal issues based on relevant rules of law. Frame the relevant legal issues in the factual problem as questions using material facts, party name and elements of the relevant rules of law.

Rule - Identify the relevant rules of law. Break down the relevant rules of law into elements. Include definitions from statute and case law. Include the facts of the cases that are similar to factual problem.

Application - Make a linkage between the elements of the law and the factual problem. Make analogies between the factual problem and the case law. Distinguish the factual problem from the case law. Make assumptions clear. Identify additional facts required.

Conclusion - Reach a convincing conclusion on all of the legal issues in the factual problem, based on strong support from statute and case law. Justify why alternative conclusions were not reached. (Burton, 2016, p. 7)

Burton stated that the “IRAC is a rational approach to thinking and problem-solving” (p. 6). Burton found that it was a reliable method for translating over to other disciplines by allowing scholars who were not in law school to break down complex and often confusing information. Using the IRAC grid provided a consistent, dependable method for analyzing information in case law.

Issues of Reliability and Trustworthiness

In the data collection for this dissertation, all considered cases were published and referenced from an educational database (e.g. Eric), legal database (e.g. Nexus Uni), or a governmental collection (e.g. The State of North Carolina). All references and texts came from databases from published authors, so there is a low risk regarding reliability and trustworthiness of considered sources.

Limitations and Delimitations

The scope of this dissertation was limited to the state of North Carolina and the subject of torts, liability and immunity as they affected schools and school employees.

Occasionally, the research delved into liability case law that involved other public entities and their employees. Research into other public entities was with a perspective of how the case law influenced educators.

Anticipated Findings

This study focused on best practices for educators in areas where negligence could be found by a court, which exposed the educator and the school district to liability. Also, the research found issues in North Carolina where governmental immunity, the smaller version of sovereign immunity, does not protect school districts and their employees. Court cases involving transportation, such as bus accidents, were especially important given the inherent implication of danger in such an event. Bus accidents are natural sources of litigation for citizens against school districts. The high costs of transportation and increasingly crowded roads were reasons to look at how school districts could be protected while transporting students. Chapter 4 reviews the case studies in North Carolina by analyzing different legal aspects that cases share; including local governmental immunity, contributory negligence, the capacity in which school employees were sued, and the scope of the Industrial Commission.

CHAPTER 4

FINDINGS

North Carolina school leaders were protected from lawsuits in several ways. Strong local governmental immunity, contributory negligence, school employees official capacity in lawsuits, and the restricted scope of the Industrial Commission are all important aspects of lawsuits affecting educators and school districts in North Carolina.

The Scope of Governmental Immunity in North Carolina

In one of the first cases involving a school district after the North Carolina Tort Claims Act was passed, a school district infringed on the property rights of a private landowner. In the case *Eller v. Board of Education* (1955) H.S. Eller and Maude Eller lived on land that had a natural spring in Buncombe County, North Carolina. Their property was next to land owned by the Board of Education of Buncombe County, which had a school building on it.

The school district constructed a sewage disposal device near the dividing line of their land and the property of the Ellers. The device was constructed so that the sewage flowed from the land of the school district into the property of the Ellers and into their natural spring. The sewage created a situation where, according to the Ellers, "...the noxious and offensive odors therefrom have contaminated the spring and rendered it unfit for use and have rendered plaintiffs' dwelling uninhabitable" (*Eller v. Board of Education*, 1955, p. 585).

The Ellers sued the Board of Education of Buncombe County for \$4,000. The plaintiff argued that the installation of the sewage disposal device constituted a taking of their property. The \$4,000 would be compensation for the appropriation of the Ellers

property by the school district. The defendant, the Board of Education of Buncombe County, argued that the school district was immune from the lawsuit due to governmental immunity from the North Carolina Tort Claims Act. The defendant also contended the school district had not taken action to possess the property for a school purpose, so there was no taking of the property that would qualify for eminent domain. (*Eller v. Board of Education*, 1955).

In his opinion, Judge Bobbit found that the plaintiffs, the Ellers did not allege a cause of action to bring suit as a tort for negligence. Instead, the plaintiffs alleged that the local government agency, the school district, took their land for public use. Judge Bobbit found that compensation must be paid when private property is taken for the use of the government, as in a case of eminent domain. The North Carolina Supreme Court found that the relevant factor in the case was the public use of private property by a governmental entity rather than negligence in the construction of a sewage disposal device.

Judge Bobbit added that if "... plaintiffs' spring was rendered unfit for use and their dwelling was rendered unfit for habitation, as alleged, such would constitute a taking to the extent of the impairment in value of plaintiffs' land caused thereby" (*Eller v. Board of Education*, 1955, p. 586). The creation of a government project that impaired the owner of the land to use the land was a principle of eminent domain. The government did not have to seize the land to constitute eminent domain, only to prevent or impair the owners of the land from using it in the way the owners intended. In this way, the Board of Education of Buncombe County took land from the Ellers without paying for it. Judge Bobbitt and the North Carolina Supreme Court ruled in favor of the

plaintiffs and ordered the school district to pay the \$4,000.

Eller v. Board of Education (1955) showed that the governmental immunity for school districts in North Carolina could not protect the school district from taking a right away from a private citizen. A school district could be immune from lawsuits due to negligence, but not from the principle of eminent domain. A school district's careless planning with buildings and maintenance had consequences, especially if it infringed on the rights of private property owners.

In another early case after the State Tort Claims Act was enacted in North Carolina, *Bradshaw v. State Board of Education* (1956) centered on the death of a child. On January 24, 1952, Herbert Atwater was driving a bus on Church Street and turned onto McMaster Street. He rounded the curve and drove over a mud pit by the side of the road and continued to drive for about 75 feet. Mr. Atwater only stopped because children were telling him that a child was lying in the drive behind him. A doctor pronounced Jimmy Bradshaw dead only a few minutes later, stating the reason for the death was a concussion due to the bus hitting him.

Since Herbert Atwater was an employee of the State Board of Education, the family sued the State Board for negligence on the part of the driver. The Industrial Commission ruled in favor of the defendant, finding that there was not enough evidence to determine negligence. The plaintiff appealed to the Orange County Superior Court in North Carolina, who affirmed the ruling of the Industrial Commission. The plaintiffs then appealed to the Supreme Court of North Carolina.

In the Supreme Court, Judge S. Pretlow Winborne reviewed the argument from the plaintiff (*Bradshaw v. State Board of Education*, 1956). The plaintiff alleged that the

bus driver, Herbert Atwater, was in a position to see Jimmie Bradshaw playing next to the street. The plaintiff argued further, alleging that "...the driver failed to keep a proper lookout and did not see him" (*Bradshaw v. State Board of Education*, 1956).

In the dissenting opinion, Judge Bobbit noted that the many drivers would drive on this same dirt area on the inside of the curve to round off the sharp turn of the curve. The roads in question were both made of dirt or dirt and gravel. The court discussed that many drivers rounded off the turn in this way, likely being part of the reason that the mud pit developed. However, the dissenting opinion noted that it was still not what drivers were supposed to do in driving a vehicle. Judge Bobbit notes: "Can the fact that motorists were accustomed to do as the bus driver did set at naught statutory provisions otherwise applicable? I think not" (*Bradshaw v. State Board of Education*, 1956, p. 397). Judge Bobbit opined in his dissent that the bus driver operated the bus driver in violation of state law and the case should be remanded to lower court to determine negligence.

The Supreme Court of North Carolina decided there was not enough evidence on the part of the plaintiff to provide negligence. The judge in the affirming opinion, Judge S. Pretlow Winborne, concluded that "Applying these provisions of the statutes to the case in hand, the Industrial Commission has found as a fact and concluded as a matter of law that there was no negligence on the part of the employee" (*Bradshaw v. State Board of Education*, 1956, p. 395).

The events of the case happened on January 24, 1952, and the amendment that waived liability for school districts and boards of education took effect on May 25, 1955. After that date, the Industrial Commission could waive liability for injuries and deaths

that happened on campus or through school employees. However, the plaintiff would still need to overcome governmental immunity to recover damages. *Bradshaw v. State Board of Education* outlines the role of the Industrial Commission in resolving liability for schools and school districts. The case also provided a glimpse of the high bar set for plaintiffs to completely overcome governmental immunity before the amendment allowing for the purchase of liability insurance for school districts. Negligence on the part of a school employee would have to be proven by the plaintiff with evidence to recover damages.

Fields v. Durham City Board of Education (1960) specified further how immunity affected local governmental functions, like school boards, in the Tort Claims Act in North Carolina. On May 29, 1958, Paulette Fields, an 11-year-old student at Burton School, was injured by stepping through an iron grate during school hours. Burton School, part of the Durham City School System, constructed the grate as part of a drainage system for the school. The Fields sued the Durham City Board of Education, claiming the student was injured because of negligence on part of the school.

The defendant, the Durham City Board of Education demurred, as they claimed that the evidence did not show a reason to waive immunity. In his opinion, Judge Denny agreed, finding that:

On the other hand, such board, unless it has duly waived immunity from tort liability, as authorized in G.S. 115-53, is not liable in a tort action or proceeding involving a tort except such liability as may be established under our Tort Claims Act. (*Fields v Durham City Board of Education*, 1960, p. 700)

Judge Denny ruled that a governmental entity, such as a school system like the Durham City Board of Education, was protected by governmental immunity under the Tort Claims Act of North Carolina for injuries on campus attributed to negligence. Judge

Denny expressly discussed the Tort Claims Act and the purpose of governmental entities like school districts to secure insurance for liability. In this case, a school district waived their liability, but only to the extent that the school district was indemnified through the insurance for negligence. A school board in North Carolina is indemnified, or vulnerable to damages, only to the extent that the school board has purchased insurance.

Judge Denny specified in saying, "Except as hereinbefore expressly provided, nothing in this section shall be construed to deprive any county or city board of education of any defense whatsoever to any such action for damages" (*Fields v. Durham City Board of Education*, 1960, p. 701). The demurrer of the defense was upheld, and the Supreme Court of North Carolina ruled in favor of the defendant. *Fields v. Durham City Board of Education* (1960) was a strong support for school districts and employees and local governmental immunity. This case further strengthened the protection against lawsuits targeting schools for negligence in the state of North Carolina.

Another strong defense for local government immunity was decided in *Overcash v. Statesville* (1986). In April 1983, Martin Overcash played in a baseball game at Statesville High School for the visiting team, Mooresville Senior High. Martin Overcash was walked by the opposing pitcher, and as he jogged to first base, he tripped on a metal stake in the ground and broke his leg. The metal stake was covered in dirt and white chalk, like it was part of the base path. Martin's father, Harold Overcash, and Martin sued the Statesville Board of Education, alleging negligence on the part of the district's employees in maintenance of the ball field. The family sought to recover

damages for Martin's injury and the medical expenses incurred by Harold Overcash.

The Statesville Board of Education asserted governmental immunity as their defense. The Statesville Board of Education had purchased a general liability insurance policy to cover damage caused by negligence of employees. However, this policy had a specific exclusion for injuries sustained by participants in athletic contests sponsored by the school district. The plaintiffs reasoned that the Statesville Board of Education had waived all governmental immunity when purchasing this insurance, and so were liable for the hole left open in their coverage for athlete's injuries. The defendants argued that the school district still maintained governmental immunity for anything not covered by the insurance policy. Therefore, in the case of an injury at an athletic event by the participants, it would be as if the school district had not purchased insurance at all, thus leaving them fully protected by governmental immunity through the North Carolina Tort Claims Act (*Overcash v. Statesville City Bd. of Education*, 1986).

The trial court heard the case and ruled in favor of the defendant as a summary judgement. The Court of Appeals of North Carolina found that the sole question for review is whether a board of education waived all governmental immunity under the North Carolina Tort Claims Act when purchasing general liability insurance coverage, even liability for injuries that were excluded from the coverage on purpose. Judge Charles L. Becton and the Court of Appeals of North Carolina denied the plaintiffs argument for a loose interpretation of the coverage of governmental immunity. In reviewing the North Carolina Tort Claims Act, the court found no interpretation that would allow the plaintiffs to recover damages in this case. First, the court found that the North Carolina Tort Claims Act did not require governmental entities, like school

districts, to purchase insurance to cover tort liability. Also, there is no remedy or consequence found in the North Carolina Tort Claims Act for any kind of governmental agency that chose not to purchase insurance. The court clarified the North Carolina Tort Claims Act by finding no intent by the legislature to have school districts insure themselves completely (with no loopholes) or for the legislature to impose any waiver of immunity upon the school district. In his opinion, Judge Becton cited *Guthrie v. State Ports Authority* (1983), a landmark case in North Carolina that solidified immunity for local governmental entities: “Waiver of sovereign immunity may not be lightly inferred and State statutes waiving this immunity, being in derogation of the right to sovereign immunity, must be strictly construed” (*Guthrie v. State Ports Authority*, 1983, p. 537-538).

Overcash v. Statesville (1986) strengthened the governmental immunity enjoyed by school districts in blocking a possible loophole where a lawsuit might find grounds. School districts were protected from torts even in areas where the district administrators chose not to purchase liability insurance, such as athletic events. Accordingly, school personnel had more room to make decisions based on the needs of constituents.

Soon after the ruling of *Overcash v. Statesville* (1986), a similar suit was brought against the Charlotte-Mecklenburg Board of Education in another test of governmental immunity. On the morning of December 1, 1986, Anthony Beatty, an 11-year-old student in the Charlotte-Mecklenburg school district, was struck and killed by a vehicle on the way to a bus stop. The student had attempted to cross Delta Road to reach a bus stop but was hit by oncoming traffic. Delta Road was a busy four-lane road in the city of Charlotte. Anthony was severely injured and suffered permanent brain damage.

Anthony was not hit by a bus driver, a school bus, or anyone within the school system but by a truck driver. The plaintiff, the family of Anthony Beatty, sued the Charlotte-Mecklenberg school district and principal for damages, claiming negligence in the design of the bus route and the bus stop. In August 1989, the trial court, the Mecklenburg County Superior Court, entered a summary judgement in favor of the school board, finding that the school district and principal were not liable for the design and placement of a bus route along a busy street. The plaintiff appealed to the Court of Appeals in North Carolina, which heard the case in August 1990 (*Beatty v Charlotte-Mecklenburg Bd. of Educ*, 1990).

The school board claimed it could only be sued for damages in cases where it waived immunity. The liability coverage provided by the school system did not include negligence in transportation route design. Specifically, the defendant, the Charlotte-Mecklenburg school system, provided a “self-funded risk management program” for general liability coverage that was the same as the coverage previously purchased through Nationwide (*Beatty v Charlotte-Mecklenburg Bd. of Educ*, 1990, p 755). In the purchase of the insurance, the school board administrators said that it would cover for the schools the “...same risks and to the same extent as had been provided by the commercial policy” (*Beatty v Charlotte-Mecklenburg Bd. of Educ*, 1990, p 755). The insurance stipulated that the coverage excluded liability for bus transportation and boarding or disembarking from the bus. In his opinion, Judge Hugh Wells stated:

Strictly construing the exclusionary clause in this case, it is inconceivable to us that defendant Board intended to exclude liability for injuries suffered by pupils while being transported by a school bus or in the process of boarding or disembarking from a school bus, but intended to waive immunity for injuries associated with the design of a bus route or the location of a bus stop. (*Beatty v Charlotte-Mecklenburg Bd. of Educ*, 1990, p. 756)

Judge Hugh A. Wells of the North Carolina Court of Appeals noted in his opinion that the decision followed the strict interpretation of governmental immunity specified in *Overcash v. Statesville Board of Education* (1986). *Beatty v. Charlotte-Mecklenburg* (1990) ensured a strict interpretation of governmental immunity for school districts in North Carolina. The plaintiffs attempted to find a loophole, yet the governmental immunity for school districts that had been established in *Turner v. Gastonia City Board of Education* (1959) and *Overcash v. Statesville Board of Education* (1986) was upheld. Plaintiffs attempted to establish a difference in the transportation of students versus the design and planning of bus routes and bus stops as a way to hold the district liable. However, the court ruled firmly in favor of governmental immunity for the Charlotte-Mecklenburg Board of Education.

In 1996, the North Carolina Court of Appeals heard another case that challenged the strict interpretation of governmental immunity that school districts had enjoyed so far. When school districts, or any governmental agency, partially waived their immunity, the area not covered still maintained protection under governmental immunity and the North Carolina Tort Claims Act. In *Hallman v. Charlotte-Mecklenburg Board of Education* (1996), this protection was only further strengthened.

The plaintiff, Betty Hallman, injured her ankle while walking on the grounds of Devonshire Elementary School in Charlotte, North Carolina. The plaintiff alleged that the injury was the result of negligence on the part of the Charlotte-Mecklenburg Board of Education. She sought \$45,000 in damages from the school district. The defendant school board sought a summary judgement from the court in dismissing the suit as argued that it was protected by governmental immunity. The plaintiff argued that the

Charlotte-Mecklenburg Board of Education waived its immunity in purchasing insurance coverage. The school district had purchased liability insurance, but only for an amount exceeding \$1,000,000. The school district argued that the area not covered by the insurance policy, for amounts under \$1,000,000, was protected under governmental immunity (*Hallman v. Charlotte-Mecklenburg Board of Education*, 1996).

The plaintiff argued that the school district waived its immunity, not only for \$1,000,000, but for all liability due to negligence, purportedly as it was intended for liability and waiving one part then waived it all. The Court of Appeals of North Carolina disagreed, finding that a strict interpretation of waiving governmental immunity was required. Judge John C. Martin referenced *Overcash v. Statesville* (1986) in his opinion of the case. In that case, the school district purchased liability insurance that covered all liability except one part: participants at athletic events. The parallel was clear here: the Charlotte-Mecklenburg Board of Education also purchased liability insurance and purposefully left a hole. Judge Martin ruled that areas left uninsured were not open to lawsuits by plaintiffs when stating: "Thus, we hold that defendant Board's participation in the City of Charlotte's risk management agreement is not tantamount to the purchase of liability insurance" (*Hallman v. Charlotte-Mecklenburg Bd. of Educ.*, 1996, p. 439).

On March 9, 1998, Nicole Ripellino, a student, left Clayton High School in Johnson County, North Carolina after school ended. A traffic control gate swung closed and hit the car driven by Nicole, causing damage to the car. Nicole was also harmed and required medical care. The school and the traffic gate were both part of the Johnston County Board of Education. The board agreed to pay property damages in the amount of \$2,153.18, but not medical expenses or any other compensation (*Ripellino v.*

N.C. Sch. Bds. Ass'n, 2003).

The Ripellinos sued the school district, the North Carolina School Board Association, and the North Carolina School Board trust. The plaintiffs argued that since the board agreed to pay property damages, the governmental entity waived all immunity protecting the district. Accordingly, the Ripellinos filed suit for a personal injury claim and for medical expenses. The plaintiffs made several claims, for which the trial court divided the claims in order to address in order. The trial court ruled in a summary judgement in favor of the defendants that they retained immunity after purchasing insurance. The Johnson County Board of Education purchased insurance coverage for general claims greater than \$100,000 and totaling no more than \$1,000,000 all together. The appellate court affirmed the trial court's ruling that the board was immune for amounts not covered by the insurance coverage compensation. The plaintiffs argued that the defendants had waived immunity and were prevented from claiming immunity for other expenses. The North Carolina Court of Appeals disagreed and ruled in favor of the defendant school board. The summary judgement furthered a long-standing line of case law that strengthened governmental immunity for school districts when purchasing insurance for general liability coverage. The Johnson County School Board and the North Carolina School Boards Association were still covered under the North Carolina Tort Claims Act in regard to compensation (*Ripellino v. N.C. Sch. Bds. Ass'n, 2003*).

The plaintiffs argued that the trial court could not rule in favor of the defendants based on the Eleventh Amendment. The North Carolina Court of Appeals agreed, finding that the Eleventh Amendment was not immunity for counties or county-level

governments. As noted above, the governmental immunity for local school boards in North Carolina was spelled out in the North Carolina Tort Claims Act.

Finally, the appellate court ruled that the school board and the school board association could not be held liable for punitive damages. Judge John Tyson of the North Carolina Court of Appeals stated as such while referencing the Supreme Court of North Carolina, "... our Supreme Court held that public policy, in the absence of statutory provisions to the contrary, provides that municipal corporations are immune from punitive damages (*Ripellino v. N.C. Sch. Bds. Ass'n*, 2003, p. 431).

The last case involving the local governmental immunity of school districts ruled in favor of the plaintiff since school leaders took a constitutional right away from a student. On January 6, 2009, an assistant principal from Roland Grise Middle School in New Hanover County called the parent of Jon-Paul Craig to tell his mother that "some sexual experimentation" had occurred in between the plaintiff and another boy (*Craig v. New Hanover County Bd. of Educ.*, 2009, p. 336). In the case heard in the Court of Appeals, the factual background demonstrated that the assistant principal called back: "The following day, the same assistant principal informed Ms. Craig that plaintiff was being suspended for ten days; eventually, defendant decided to deny him placement at Roland Grise for the remainder of the school year" (*Craig v. New Hanover County Bd. of Educ.*, 2007, p. 652). The plaintiffs, Jon-Paul Craig and his mother, alleged that Jon-Paul did not consent to the incident and that New Hanover Board of Education and the principal of Roland Grise Middle School, Annette Register, failed in their duty to protect Jon-Paul from sexual assault.

The defendant school district moved for a summary judgement, claiming

governmental immunity. The Court of Appeals of North Carolina ruled in favor of the of the school district, finding governmental immunity defeated the claims of the plaintiff because the school district did not purchase insurance that covered claims of concerning sexual assault. In the opinion, Judge Robin Hudson of Supreme Court of North Carolina cited *Corum v. University of North Carolina* (1992) as a deciding factor in ruling on the side of the plaintiff. In *Corum*, a dean at the University of North Carolina, Dr. Alvis Corum, was demoted in retaliation for speaking out against the actions of his immediate supervisor. He sued the university, and though the university held governmental immunity, the Supreme Court of North Carolina ruled in favor of Dr. Corum. Judge Hudson explains in *Craig v. New Hanover County Board of Education*:

The practical effect of the Court of Appeals' holding otherwise would be to allow the doctrine of sovereign immunity to "stand as a barrier to North Carolina citizens who seek to remedy violations of their rights guaranteed by the Declaration of Rights," exactly contrary to our prior holding in *Corum*. (2009, p. 338)

The Supreme Court of North Carolina established a precedent in *Craig v. New Hanover County Board of Education* (2009) that the constitutional rights of citizens were more important than the immunity of the government that served the citizens. Jon-Paul Craig was not kept safe from sexual assault and denied his right to attend the school; which the court found were violations on the part the government. Judge Hudson emphasized the point "Thus, when there is a clash between these constitutional rights and sovereign immunity, the constitutional rights must prevail" (*Craig v. New Hanover County Bd. of Educ.*, 2009, p. 339).

In the analysis of the *Craig v. New Hanover*, the court was specific regarding the immunity of a governmental entity was overruled by a redress of constitutional violation.

There can be no other redress for the plaintiff in order to find remedy. The court found that the exclusion of sexual assault in the board's insurance policy could not set a precedent of ensuring governmental immunity for all governments no matter what type of insurance was purchased. Judge Hudson said:

Allowing sovereign immunity to bar this type of constitutional claim would lead to inconsistent results across this State, as persons in some counties would find themselves in plaintiff's position, with no remedy at all for this type of injury, while others would be compensated. (*Craig v. New Hanover County Bd. of Educ.*, 2009, p. 342)

In this way, the Supreme Court of North Carolina draws a clear line for plaintiffs against school districts whose constitutional right have been violated.

School districts seeking liability insurance in North Carolina were assured strict governmental immunity protected by case law that repeatedly ruled in favor of the school district. In repeated instances of case law in North Carolina, judges have interpreted the North Carolina Tort Claims Act with a strict interpretation. In cases that involved an attempt by the plaintiff to find a loophole in the North Carolina Tort Claims Act, the state courts of North Carolina repeatedly ruled in favor of the school boards. In the two cases not ruling in favor of the school board, a constitutional right of a citizen was violated.

Contributory Negligence

North Carolina was different from most states in that it allowed a plaintiff's contributory negligence to prevent rulings that favor a plaintiff. "North Carolina is one of only four states that continues to adhere to the contributory negligence doctrine" (Gardner, 1996). Contributory negligence was negligence on behalf of the plaintiff that causes, even partially, the injury sustained by the plaintiff. *Adams v. State Board of*

Education (1958) was one of the first cases to rule on the aspect of contributory negligence, though the courts decided in favor of the plaintiff.

In *Adams v. State Board of Education* (1958), a plaintiff sought damages after being injured by a lawn mower operated by a janitor. On September 22, 1954, a fifth grader, George Adams, at Sumner School in Guilford Count, ran out of the school to play with friends on the school grounds. The janitor, Eugene Evans, was operating a power mower to cut the grass in the morning as students were arriving at school. Mr. Evans did not normally cut the grass in the morning but did that day as it had been hot and dry, and he wanted to cut it while it was wet with dew. Additionally, the power mower was being operated without a guard surrounding the blade of the mower, which had been removed. The guard prevented things the mower went over from flying out, as well as preventing objects from outside of the mower from going into the blades. The guard had been removed in the repair of the mower and never put back on.

George Adams and two other friends arrived at school that morning and dropped off their belongings inside the building. Then they went to play outside, which was normal for the students. George Adams heard the mower but did not see it as it was mowing down in the bottom of an embankment. When George first saw the mower, he was running only about three feet away. At this time, he turned, but his planting foot slipped on the wet grass. His foot then skidded underneath the mower, and he was seriously injured. The injury was severe enough to cause “a 35 percent permanent physical disability to said foot” (*Adams v. State Board of Education*, 1958, p. 511).

The family of George Adams sued the State Board of Education, which had hired Mr. Evans and charged him with duties like maintaining the school grounds. The plaintiff

argued that Mr. Evans was negligent in operating the mower at a time when students would be on the playgrounds of the school. The mower was also being operated without the guard on, exposing the blades of the mower. The defendant alleged that the plaintiff, who was twelve at the time, was negligent in not maintaining a proper lookout for the mower and in failing to reduce his speed. The defense argued the contributory negligence on the part of the child superseded any negligence on the part of the janitor, or the State Board of Education, in operating the power mower (*Adams v. State Board of Education*, 1958).

The Industrial Commission ruled that George Adams was contributorily negligent and denied the attempt from the plaintiff to recover damages. The hearing commissioner in the Industrial Commission stated:

That the infant plaintiff, George Lindsay Adams, was negligent in failing to keep a proper lookout so he could observe said lawn mower after he had been warned of its presence by the noise of its motor, and in failing to reduce the speed at which he was running at the time and under the circumstances herein described, and that such negligence was one of the proximate causes of said accident and the resulting damages suffered by him. (*Adams v. State Board of Education*, 1958, p. 513)

The plaintiff appealed and the Superior Court of Greensboro in North Carolina reversed the decision of the commission, finding that the plaintiff was not negligent. The State Board of Education then appealed to the Supreme Court of North Carolina. In 1958, Judge Johnson affirmed the ruling of the superior court, awarding the plaintiff damages. In reaching his decision, Judge Johnson ruled that playing with friends in the lawn of a school was a normal and expected activity for a child. The judge stated: "... that the plaintiff was an average boy having normal capacity and experience of a child of his age" (*Adams v. State Board of Education*, 1958, p. 516). The judge ruled that there was

insufficient evidence to show that there was contributory negligence on the part of the child.

Judge Johnson stated in the case that “The rule obtains in this jurisdiction that in determining whether a child is contributorily negligent in any given situation a prima facie presumption exists that an infant between the ages of seven and fourteen is incapable of contributory negligence” (*Adams v. State Board of Education*, 1958, p. 511). Judge Johnson established a precedent in finding that a child was not capable of contributory negligence and it was a prima facie presumption. This ruling meant that schools should expect children to act like children and would not be contributory negligent in accidents that involved their play. However, Judge Johnson allowed that the presumption can be overcome with the right evidence if the child was between the ages of seven to fourteen. Judge Johnson, in his opinion, said there was a test in determining whether a child was capable of contributory negligence in a case. Judge Johnson stated, “The test in determining whether the child is contributorily negligent is whether it acted as a child of its age, capacity, discretion, knowledge and experience would ordinarily have acted under similar circumstances” (*Adams v. State Board of Education*, 1958, p. 512).

Accordingly, the defendant would have to prove that George Adams behaved in a manner that was not typical of an 11-year-old student. The judge found that a boy playing on the playground of a school and not paying attention to a mower that he could not see was normal for that age. Since the defendant could not provide any evidence to show George Adams was negligent in any other way, the court affirmed the damages be awarded to the plaintiff.

Adams v. State Board of Education (1958) was significant as it established a boundary of contributory negligence on the part of youth, which was important when looking at the implications of school law. Schools and their employees were required to expect children to behave as children, not as small adults. This regard forced school employees to look at safety and school regulations as substantially different than the safety of a workplace for adults, such as an office. Children should be expected to run and play; it was incumbent upon the school employee to provide a safe environment.

Clary v. the County Board of Education (1975) showed how the strong protections of immunity for local governmental entities could be overcome. Roger Clary was a 17-year-old senior at Stony Point High School in North Carolina. On October 8, 1968, Roger was running wind sprints in the gym at Stony Point, when he collided with and broke a wire glass window that was located at the end of the court. The window broke into large shards of glass which cut and injured Roger. The lacerations from the large shards of glass caused physical disfigurement for Roger Clary. Roger's father, Fred Clary, sued the Alexander County Board of Education on March 23, 1971, for damages to compensate for the medical bills and physical therapy needed after the accident. By the time the Supreme Court ruled in 1975, after both the trial court and the Court of Appeals, Fred Clary had passed away and Phyllis Clary was appointed the administrator of the suit.

Roger Clary was a member of the Stony Point basketball team and was running sprints under the direction of the team coach. At one end of the court, underneath the basketball goal, was a brick wall and a mat. The mat was there to protect players who would run into the wall. On the other side of the court was a double-sided door, along

with large glass windows next to the doors that went up to the top of the door. The windows were wire glass windows, with chicken wire embedded inside the window. There was no mat hanging down on this side of the court. The trial court and the court of appeals decided in favor of the defendant, finding that the plaintiff was contributorily negligent in his actions.

The first decision from the Supreme Court of North Carolina, in April 1974, affirmed the ruling of the lower court in favor of the defendant. Their decision did not rest on negligence of the defendant or the plaintiff, rather it was determined that the plaintiff was unable to present any evidence of damages because of the incident. In March 1975, the Supreme Court of North Carolina agreed to hear the case again after evidence of damages was provided for the court.

The defendant, the Alexander Board of Education, asked the court for the claim to be dismissed for two reasons:

... for the reason that plaintiff had failed to offer sufficient evidence of actionable negligence on the part of the defendant upon which to submit the case to the jury and upon the further ground that the plaintiff was negligent as a matter of law so as to bar any claim that he had for damages against the defendant. (*Clary v. Alexander County Bd. Of Education*, 1975, p. 528)

The Alexander Board of Education first argued that there was not sufficient evidence of actionable negligence. The plaintiff would need to show evidence that negligence was proven to be the proximate cause of Roger Clary's injuries. The opinion of the judge outlined several factors that played a role in the injury of the student. First, the large glass window in which Roger Clary ran into was right next to the basketball court. Secondly, the team ran sprints under the supervision of the school's coaches in the direction of the windows. Finally, Roger Clary running into the windows was not an

isolated event. Basketball players would often run into the windows when running sprints. In her opinion, Judge Susie Sharp found that the glass had been replaced previously by the school, but only with the same wire glass windows. The wire glass windows would break into large, jagged sections when broken and was weaker than tempered glass, which was available and had been available for some time when replacements had been made. If the glass had been replaced with tempered windows, it would have broken into small fragments instead of the large sections of sharp glass. The injuries suffered by the plaintiff were caused by the jagged pieces of wire glass from the windows (*Clary v. Alexander County Bd. Of Education, 1975*).

The Alexander County Board of Education argued that Roger Clary was contributorily negligent in the incident; that he was to blame for running into the windows and causing the injuries to himself. Judge Susie Sharp found that Roger had run wind sprints at the Stony Point gym for three years and had not witnessed an incident where a player running into the windows had caused injury. The school had windows right at the end of the court, and this was not the only time that Roger or others had ran into the windows. Running into the windows had been a common occurrence: "... on prior occasions, he and others, including the coaches, had collided with these glass windows" (*Clary v. Alexander County Bd. Of Education, 1975, p. 532-533*). Further, there was evidence that glass had cracked when struck by a basketball, but no evidence of it breaking into large, dangerous sections. In summary, there was no evidence that could show that Roger Clary could have expected the glass to break, or that he had knowledge of the composition of the glass. In reviewing the decisions of the previous courts, Judge Susie Sharp did not find any evidence of contributory negligence

on the part of the plaintiff, Roger Clary. The Supreme Court of North Carolina found that the Alexander County Board of Education to be negligent on its part to provide a safe practice area for students.

In *Izard v. Hickory City* (1984), the defendants, the school employee and the school district, were aided by the plaintiff's contributory negligence. On February 17, 1982, Michael Izard was a student at College Park Intermediate in Hickory, North Carolina. In an accident using a power saw in shop class, Michael severed several fingers on his left hand. Michael and his mother sued the school board and many members of the school district, including the principal and teacher at College Park Intermediate. The plaintiffs alleged that Boyce Roberts, the industrial arts teacher, was negligent in failing to instruct and warn the student properly.

The defendants argued that the teacher conducted twenty-minute review session warning students of the dangers in using a power saw and all necessary safety precautions. They argued further that the student, Michael Izard, was successful in using a power saw safely on other occasions. Mr. Roberts also spent another twenty minutes modeling for students on how to cut pieces of wood for the project with the saw. Finally, he offered to cut the pieces of wood for students if they did not wish to use the power saw.

The trial court ruled in favor of the defendant, finding the plaintiff was contributory negligent in operating the power saw. The plaintiffs appealed the trial court's decision, and asked the appellate court to review the plaintiff's contributory negligence. They did not argue over whether there was contributory negligence, rather that the contributory negligence was not the proximate cause of the injury. The plaintiff's argued still that the

student had not received appropriate instruction in the use of the power saw, and that caused the injury (*Izard v. Hickory City Schools Bd. of Education*, 1984).

The North Carolina Court of Appeals affirmed the ruling of the trial court, finding that the plaintiff's contributory negligence did lead to the injury. Judge Gerald Arnold found that a statement by the student discussing a mistake he made in his hand placement while using the saw was a critical mistake that led to the injury. Michael Izard stated, "I knew I was supposed to take a board and sweep the other board away so I wouldn't cut my hand but I moved my hand across there and got it up into the blade" (*Izard v. Hickory City Schools Bd. of Education*, 1984, p. 628). Judge Arnold found that there was not enough evidence to find negligence on the part of the teacher, and that the student was negligent in his actions, which ultimately caused the injury.

In a concurring opinion, Judge Eugene H. Phillips agreed with his counterpart in that the evidence did not show that there was negligence on the part of the teacher. However, he disagreed with the finding of contributory negligence. Judge Phillips argued that Michael Izard's actions were the typical actions of a person who did not know how to operate a power saw. The student did fail in operating the power saw as the teacher had directed, but Judge Phillips said that was to be expected due to his lack of experience. Judge Phillips opinion was a reminder of the challenges schools face in working with students, who will be inexperienced as a matter of course (*Izard v. Hickory City Schools Bd. of Education*, 1984).

In *Daniel v. Morganton* (1997), contributory negligence on behalf of the plaintiff was more pertinent to the injury than the negligence of the school employee. Kristen S. Daniel was a student and member of the varsity softball team at Freedom High School

on March 19, 1990. On that date, Assistant Coach Deborah Gober directed the softball team and Ms. Daniel in a practice on a softball field that was leased to the Burke County Board of Education by the City of Morganton. The City of Morganton was in the process of constructing the softball field on this particular field, so it was rough and the grassy playing surface only grew in patches. Also, the field contained numerous bare patches and rocks in the outfield.

At practice, Coach Gober hit grounders to players from the infield to players in the outfield about seventy yards away. Coach Gober was known to prefer the rough field as she believed it helped the players to learn how to field erratic hops from the ball. Kristen attempted to field one such grounder, but it took an erratic hop after it hit a rough spot and struck Kristen in the mouth. As a result, Kristen lost a tooth and another one was loosened. As a result, she needed dental treatment to repair the broken and damaged teeth (*Daniel v. City of Morganton*, 1997).

The plaintiffs sued the school district: the Burke County Board of Education. The board had purchased insurance coverage for negligent acts that took place on school property. The insurance did contain an exclusion regarding athletic events, excluding athletic participants and, specifically, bodily injury that took place during athletic events. This exclusion of athletics from the liability insurance purchased by the school district is similar to *Overcash v. Statesville* (1986), where the district had purchased similar insurance. Like *Overcash v. Statesville*, the court ruled in favor of the school district, finding that the school district did not waive its immunity entirely when waiving its immunity to protect itself against other types of negligence. Judge Donald L. Smith of the North Carolina Court of Appeals succinctly explained the North Carolina Tort Claims

Act when he stated: “The primary purpose of the statute is to encourage local school boards to waive immunity by obtaining insurance protection while, at the same time, giving such boards the discretion to determine whether and to what extent to waive immunity” (*Daniel v. City of Morganton*, 1997, p. 53). This interpretation of the North Carolina Tort Claims Act ensured that district boards and officials were given leeway to make decisions based on the needs of the district.

The student also sued the coach who led the practice, Deborah Gober; the school district, the Burke County Board of Education; and owner of the fields, the City of Morganton. The case turned on the point of contributory negligence on the part of the plaintiff. In the opinion, Judge Smith noted “When asked if she considered the field to be unsafe before she was hurt, plaintiff responded ‘yes’” (*Daniel v. City of Morganton*, 1997, p. 50). Since the plaintiff was aware that the playing surface was dangerous, yet still chose to play on the field, the plaintiff was contributory negligent in the incident. Even if the defendant was found negligent in her duty, contributory negligence could offset the negligence of a defendant.

The plaintiff’s knowledge of the playing field also absolved the school board of negligence, as it meant that school leaders did not have a duty to warn the student of the condition of the field. The judge suggested that the district could have erred in not warning the plaintiff that the playing surface was dangerous to practice on. However, since the plaintiff acknowledged that she believed the surface was dangerous to practice on, her decision to play anyway absolved the school district of responsibility in warning students (*Daniel v. City of Morganton*, 1997).

The coach in charge of the practice had a duty to care for the students under her

supervision. The court found that Coach Gober was negligent in her duties in practicing on an unfinished playing ground where a student could end up getting hurt, as Kristen Daniel did. Judge Smith stated:

In the present case, we believe defendant Gober breached her duty owed to plaintiff by holding practice on the rough field and advising students that it would improve their game if they practiced on the rough field. A person of ordinary prudence would not have conducted softball practice on the instant playing field. Thus, Gober was negligent. (*Daniel v. City of Morganton*, 1997, p. 54)

Coach Gober never should have brought students out to the playing field, much less, to practice on the field on purpose since it would cause the ball to hop errantly. Despite the negligence of the school district employee, the student's prior knowledge of the playing field prevented her from recovery.

As a side note, Judge Smith ruled that Coach Gober did not have governmental immunity, as enjoyed by the school district, since she was not a public officer. The school district and Coach Gober argued that Coach Gober was a public officer and covered by governmental immunity. "However, defendant Gober is an employee and not an officer and is therefore not entitled to governmental immunity as her duties are purely ministerial and do not, in the instant case, involve the exercise of sovereign power. (*Daniel v. City of Morganton*, 1997, p. 55). Judge Smith's opinion was notable for school districts and teachers as it set a precedent for teachers to waive immunity if working outside of the guidelines of the school district.

The team practiced at Freedom Park in the city of Morganton, which was owned by the city and leased to the school board. The plaintiff included the city of Morganton in the suit and argued that the city was negligent in providing a dangerous playing surface. However, the city was unaware that the softball team was using that particular field. The

city believed that the school was using a different field, the Ralph Edwards Nursery Field, for practices. Judge Smith found that the plaintiff failed to make a claim for actionable negligence against the city as the city had no responsibility in ensuring this field was ready for playing softball. Even if the plaintiff had a reasonable claim, her own contributory negligence in playing on a previously acknowledged dangerous field would have barred her from recovery.

The plaintiff's actions in *Daniel v. City of Morganton* (1997) showed how high the bar was for recovery for plaintiff's suing governmental entities in North Carolina. School districts could find defense in contributory negligence, which was not a strategy to rely upon, but another layer of protection that helped schools in defending against lawsuits involving negligence.

Government Employees and Official Capacity

Turner v. Gastonia (1959) was one of the first cases under the North Carolina Tort Claims Act to decide on the official capacity of a school employee. *Turner v. Gastonia* (1959) was also similar to *Adams v. State Board of Education* (1958) as both cases involved incidents on school grounds with a power mower. Beverlyan Turner was a student at Abernathy Primary School, a school operated by the Gastonia City Board of Education. On May 11th, 1955, Beverlyan Turner was walking up to school when she was struck by a heavy cable thrown by a power mower being operated by an employee of the school. The injury suffered by the student was severe enough to "...to break her left ankle and do serious and permanent injury to the bones, muscle and nerve tissues in her ankle (*Turner v. Gastonia City Bd. of Education*, 1959, p. 459). The family of Beverlyan Turner sought damages in the amount of \$10,000.

Houston D. Tolbert was employed by the Gastonia City Board of Education for work on school grounds. The power mower he was operating ran over a heavy cable, and it was thrown into Beverlylan's direction. The defendant, the Gastonia City Board of Education, agreed to the facts of the case, but argued they could not be sued as they were a governmental entity and fell under governmental immunity. The plaintiff, the family of Beverlylan Turner, also sued the North Carolina State Board of Education.

In 1955, the general assembly of North Carolina amended their general statute to provide school districts the ability to waive their immunity in order to purchase insurance in case of injury or death on the grounds of the school. From the North Carolina Tort Claims Act:

Any county or city board of education, by securing liability insurance as hereinafter provided, is hereby authorized and empowered to waive its governmental immunity from liability for damage by reason of death or injury to person or property caused by the negligence or tort of any agent or employee of such board of education when acting within the scope of his authority or within the course of his employment. (North Carolina Tort Claims Act, 1951, para. 7)

The amendment went into effect on May 25, 1955, after the events of *Turner v. Gastonia* (1959). The waiver of liability would not affect the case, effectively ensuring that the plaintiff was not able to recover damages from the suit against the city board of education. Judge Higgins, the judge who wrote the opinion of the Industrial Commission, stated: "In this case the claim against the Gastonia School Trustees and their successors could not be maintained for an injury caused by a negligent employee on May 11, 1955, because of their governmental immunity" (*Turner v. Gastonia City Bd. of Education*, 1959, p.464).

In his opinion, Judge Carlisle W. Higgins, discussed the state of employment of the employee, Houston D. Tolbert. He was employed by the City Board of Education for

work on the school grounds. Judge Wiggins asked: "Is he, thereby, an employee of the State? The question was not decided in *Adams v. Board of Education*" (*Turner v. Gastonia City Bd. of Education*, 1959, p. 463). *Adams v. Board of Education* (1958) had a similar type of employee in a similar situation yet did not discuss specifically which organization was responsible for the alleged negligence of the worker. Judge Wiggins went on in his opinion to clearly separate the workers employed by the State of North Carolina and workers in local governments. Justice Tolbert stated: "County and city boards of education serve very important, though purely local functions. The State contributes to the school fund, but the local boards select and hire the teachers, other employees and operating personnel" (*Turner v. Gastonia City Bd. of Education*, 1959, p. 463). Judge Tolber declared that the school board, a local governmental agency, oversaw the administration of the schools. The Supreme Court of North Carolina was able to dismiss the claim of the plaintiff because they found Houston Tolbert was not an employee of the state. The Supreme Court affirmed the ruling of the Superior Court of Gaston County and dismissed the claim of the plaintiff.

Thirty years after the *Turner v. Gastonia* (1959) case, the courts in North Carolina interpreted the role of school employees again in *Gunter v. Anders* (1994). In December of 1988, Charles Gunter was a student at North Surry High School when he was struck by a car while crossing a driveway. Charles Gunter had dressed out with other students in the locker room and ran toward the field for his physical education class. Charles was then struck by a car driven by Anthony Anders, a defendant in the case. At the time, the principal, Allen Edwards (also a defendant), had asked students to move their cars from a parking lot so that the lot could be paved. Anthony Anders, a

student, was moving his car at the request of the principal.

Charles crossed the driveway that ran along a wall, which obscured the view drivers had of pedestrians. Two months earlier, another student had been struck by an automobile in the same location at the high school. The school had not taken any measures to prevent a similar accident from occurring after the first accident. Charles's left arm was amputated because of this accident. The plaintiffs, Charles Gunter and his mother Martina Anderson, sued five defendants: Anthony Anders, the driver; Allen Edwards, the principal of the school; David A. Martin, superintendent of the Surry County Board of Education; Terri Mosley, physical education teacher; and the Surry County Board of Education. The suit alleged that the defendants were negligent in the incident surrounding Charles's accident (*Gunter v. Anders*, 1994).

In the case against the school district and its employees, the plaintiffs failed to allege the school district had waived its liability by purchasing insurance. Accordingly, the complaint failed to state a cause of action as to the school board, since the cause of action would be different since the school district had purchased insurance. The cause of action allowed the plaintiff to seek judicial relief and the legal right to seek a remedy because of the alleged negligence of the defendant towards the plaintiff. The case was dismissed by the trial court due to the lack of a cause of action. The plaintiffs attempted to file a motion to amend; however, the court denied it since it was proven that the plaintiffs knew about the district's purchasing of insurance yet delayed in filing the motion.

The trial court also dismissed the case against the principal and the superintendent. In North Carolina, the court was required to consider the superintendent

and principal as public officers. The court found that there were two differences between public officers and governmental employees. First, the positions that public officers hold were created by the constitution of the state. Secondly, public officers hold positions that are discretionary, meaning that the officer took an oath to hold office and the individual in the office had the discretion to choose how to carry out the duties of the office. A governmental employee's work was "ministerial," as was stated in *Daniel v. Morganton* (1997, p. 55). For a public officer to be found negligent in their duty, they must be malicious or corrupt in their actions. The plaintiffs did not argue that the principal's or the superintendent's actions were corrupt or malicious. The trial court then had no other option than to dismiss the case against the principal and superintendent (*Gunter v. Anders*, 1994).

The plaintiffs also sued the PE teacher, Terri Mosley. However, the plaintiffs did not state as to how the teacher contributed to the accident. From Judge Johnson, "In fact, as plaintiffs point out in their brief, Mosley was not even on notice that cars were being moved on campus at the time the accident occurred" (*Gunter v. Anders*, 1994, p. 68). The court dismissed the case in summary judgement in favor of the teacher.

The North Carolina Court of Appeals upheld the dismissal of the suit against the Surry County Board of Education. Judge Johnson also upheld the denial of the motion to amend the plaintiff's suit to include language correcting the suit with school district's purchase of liability coverage. The case was reheard in 1994 again in the North Carolina Court of Appeals, and Judge Johnson again ruled in favor of the school district.

The trial court found that case was properly dismissed as the board of education was a governmental agency and could not be held liable except where the agency

waived its immunity. In the appeal, Judge Johnson noted the argument from the plaintiff that the dismissal stood on a technicality, "Plaintiffs knew of the Board's purchase of insurance for nearly two and a half years, and failed to amend their complaint to allege this" (*Gunter v. Anders*, 1994, p. 334). For a court in North Carolina to rule in favor of a plaintiff in a case against a governmental agency, the plaintiff must cross a high bar to overcome the immunity held by governmental agencies. In *Gunter v. Anders* (1994) the plaintiff was unprepared for the challenge; failed to argue that the school district had waived immunity; failed to timely file motions upon discovery; and included in the suit a teacher that had nothing to do with the case.

Mullis v. Sechrest was decided by the North Carolina Supreme Court in 1998. This case challenged the notion set forth in *Daniel v. City of Morgantown* (1997) that attempted to categorize some school district employees as public officers. *Mullis v. Sechrest* (1998) also further defined the official capacity of school employees.

On October 18, 1990, Blaine Mullis was sixteen years old and a junior at Garinger High School. On that day, Blaine attended a student assembly with the rest of his industrial arts (or shop) class, and his teacher, Harry Sechrest. Blaine left the assembly without permission and returned to the shop classroom. The door was locked, but another student let Blaine into the classroom. Blaine went to work on his project, using a Rockwell tilting arbor saw, similar to a table saw. Blaine failed to secure the safety guard in place while operating the saw and it bucked and cut Blaine's hand. In the accident, Blaine severed fingers and his thumb on his left hand (*Mullis v. Sechrest*, 1998).

Blaine's fingers were able to be reattached, but the thumb was amputated. Blaine

underwent a procedure in 1991 at Duke University to attach a toe from his foot to serve as his thumb. Blaine's father and Blaine sued Harry Sechrest and the Charlotte-Mecklenburg School District to recover medical expenses for the procedures. The plaintiffs filed against the teacher, Harry Sechrest, because they argued that he failed to properly instruct the student in the use of the saw and failed to warn about the dangers of using the saw. The plaintiffs also alleged that the defendants provided an unsafe saw. The board of the Charlotte-Mecklenburg School District did not elect to purchase liability insurance for claims under \$1,000,000. The school board did have coverage for claims over \$1,000,000. The school district argued they were protected as the governmental immunity was not waived through the purchase of insurance. The court agreed with the school district and found that it was protected through governmental immunity (*Mullis v. Sechrest*, 1998).

The plaintiffs failed to choose which capacity to sue Harry Sechrest in, whether it was individually or in his official capacity. As the plaintiffs failed to specify, the court was left to determine what type of relief was being sought and in what capacity to find Mr. Sechrest. The court examined the proceedings of the case and reasoned that the plaintiffs' allegation of Mr. Sechrest and the school district of providing a dangerous table saw to the student in shop class was the one claim of relief specified in the plaintiff's suit. The court found that providing the saw and instruction in using the saw were a function of an industrial arts teacher. Accordingly, since the suit involved an action of the defendant, Harry Sechrest, in his official capacity, the court determined that he was sued in his official capacity, not as an individual. Both the trial court and the court of appeals focused on whether the teacher was entitled to immunity as a public

officer. However, the North Carolina Supreme Court found the issue of public officer statutes to be irrelevant next to the concern as to what capacity the teacher acted in this accident. Since the teacher was acting in his official capacity, he was entitled to the same immunity as the board of education and school district also found in the suit. Judge Bobby Orr of the North Carolina Supreme Court stated “Defendant Sechrest notes that if the plaintiffs sued him ‘in his official capacity, he is entitled to governmental immunity to the same extent as the Board.’ We agree with defendant Sechrest and, accordingly, reverse the Court of Appeals” (*Mullis v. Sechrest*, 1998, p. 551).

Mullis v. Sechrest (1998) provided a direct contrast to *Daniel v. City of Morgantown* (1997) that was decided a year earlier by the Court of Appeals. The North Carolina Supreme Court found that teachers working in their official capacity deserved the same immunity as the school district, the school board, or the principal. For the Supreme Court, it was not a test of being a public officer, rather an extension of the same agency that enjoyed governmental immunity.

The Scope of the Industrial Commission in School Transportation

In the 2000s, plaintiffs in North Carolina expanded lawsuits to include school boards and administration as defendants. Instead of lawsuits against bus drivers under the strict guidelines of the North Carolina Tort Claims Act, plaintiffs attempted to expand the jurisdiction of the Industrial Commission through allowing a greater scope of defendants. For the most part, North Carolina courts remained consistent in keeping the scope of the Industrial Commission narrow and focused on strict language with the North Carolina Tort Claims Act.

On August 20, 2004, a student at Andrews Elementary School, Quentin Stacy,

left school with his two brothers, Zachary and Jacob. All three students left on bikes. While still on school property, Quentin fell from his bicycle into the path of an oncoming bus. As both brothers witnessed the incident, Quentin was struck and killed by the bus.

Timothy Stacy filed suit against the superintendent of the school district, James G. Merrill and the Alamance-Burlington Board of Education. He also included in the suit the director of transportation for the school board and the principal of Andrews Elementary School. The suit was wide-ranging, including six separate complaints on the part of school board or the people named in the suit. The plaintiff alleged that (1) there were no clear pedestrian or bicycle lanes on school property; (2) that staff did not properly supervise children leaving campus; (3) that the school board failed to train and supervise bus drivers; (4) the staff failed to provide a safe exit leaving Andrews Elementary; (5) the school board failed to provide a safe exit for students leaving the school who were not provided transportation to their home; and finally (6) the staff failed to teach children to safely walk, ride and travel to ensure they leave school safely (*Stacy v. Merrill, 2008*).

Furthermore, the Stacy family filed two claims on the same day with the Industrial Commission of North Carolina. The plaintiffs claimed that Quentin Stacy was killed because of negligence on behalf of the bus driver and were seeking damages for medical expenses and emotional distress. The Stacy family argued that the bus driver was negligent in driving the bus, as he failed to slow down when the student fell into the road on school property (*Stacy v. Merrill, 2008*).

The trial court hearing the case filed against the superintendent and the school board dismissed the case as it was determined that the death of the student was due to

negligence of the bus driver and was within the jurisdiction of the Industrial Commission. All the plaintiff's claims filed in trial court are "inseparably connected" to the negligence claim and fall under the guidelines found in the North Carolina Tort Claims Act (*Stacy v. Merrill*, 2008, p. 136). Judge Sanford Steelman in the Court of Appeals noted, "We hold that the Industrial Commission had exclusive jurisdiction over plaintiffs' claims, and the trial court did not err in dismissing plaintiffs' claims. This argument is without merit" (*Stacy v. Merrill*, 2008, p. 136). *Stacy v. Merrill* (2008) ensured that claims of negligence were properly routed to the Industrial Commission. This opinion further strengthened the guidelines outlined by the North Carolina Tort Claims Act.

Burns v. Union County Board of Education (2014) allowed for the Industrial Commission to interpret more loosely the claims of a plaintiff to allow jurisdiction. While the case expanded the scope of the Industrial Commission, it did not allow the Commission to hear cases against school districts or administration within the school district for negligence in transportation planning. Rather, the Appeals Court of North Carolina ensured that the Commission keep the scope within the North Carolina Tort Claims Act.

On the morning of April 23, 2010, 7-year-old Jonathan Beegle waited for a bus to pick him up in Union County, North Carolina. The road he waited on the side of was Medlin Road, which had a speed limit of 55 miles per hour. The bus, driven by Union County Board of Education employee Henry Collins, stopped on the other side of the road to pick up Jonathan. As Jonathan crossed the road, he was struck by a car. The car was driven by Dwayne Thomas, who was not named in this lawsuit. Jonathan

Beegle later died as a result of the injuries sustained in the accident (*Burns v. Union County Bd. of Educ.*, 2014).

The administrator of Johnathon Beegle's estate filed a tort claim affidavit on February 8, 2012, with the Industrial Commission. The affidavit alleged that the Union County Board of Education was directly responsible for the negligence of the employees who drew the route and located the bus stop on a highway. The only named employees in the suit were Ed Davis, superintendent, and Denise Patterson, assistant superintendent (*Burns v. Union County Bd. of Educ.*, 2014).

After a hearing, the Deputy Commissioner, J. Brad Donovan, filed an order to dismiss the plaintiff's claims due to lack of jurisdiction of the Industrial Commission. The Full Commission then reviewed the case and held a hearing, coming to the same conclusion after finding two reasons for dismissing. First, without a named employee, the Industrial Commission interpreted the North Carolina Tort Claims Act as to limiting their jurisdiction. The court found that the North Carolina Tort Claims Act limits the liability of the school board to certain employees, such as the bus driver, maintenance workers, or bus workers. Judge Robert Hunter of the Court of Appeals of North Carolina states, "Because plaintiff's claim did not allege negligence by any of these specific employees, the Industrial Commission lacked jurisdiction" (*Burns v. Union County Bd. of Educ.*, 2014, p. 4). Secondly, the plaintiff included no mention of mechanical concerns in the affidavit, which the Industrial Commission had interpreted as part of its jurisdiction in working with school board transportation.

The Appeals Court of North Carolina ruled that the Industrial Commission erred in dismissing the suit over lack of jurisdiction. While most of the suit did deal with the

design and planning of routes, the Industrial Commission skipped over a concern brought by the plaintiff that included negligence. The plaintiff argued that Mr. Collins, the bus driver, failed to turn his flashing lights on 300 feet before the stop, which is a requirement for bus drivers. Judge Hunter ruled that the negligence of the bus driver allows the Industrial Commission jurisdiction, "Therefore, plaintiff's alleged claims arose out of and were connected to events at the time of the accident" (*Burns v. Union County Bd. of Educ.*, 2014, p. 9). The evidence provided by the plaintiff showed negligence on the part of the bus driver, which granted the Industrial Commission jurisdiction over this case. While the plaintiffs were allowed to proceed with the suit against the bus driver, the school board and district leaders were dropped when the case was remanded back to the Industrial Commission.

Burns v. Union County Board of Education (2014) enlarged the scope of jurisdiction for the Industrial Commission in North Carolina, allowing the commission to find negligence within the case to rule upon. The court cited the previous case, *Stacy v. Merrill* (2008) and showed a continuation of case law that supported a larger scope of jurisdiction for the Industrial Commission to act under the North Carolina Tort Claims Act.

Irving v. the Charlotte-Mecklenburg Board of Education (2016) offered a different perspective of the Industrial Commission than previous cases. Where previous case law focused on expanding the scope of the Industrial Commission, *Irving v. Charlotte-Mecklenburg Bd. of Educ.*(2016) reduced the role in a specific area. In October 2007, Tyki Sakwan Irving's car was struck by a bus transporting student athletes to a football game. The plaintiff filed suit against the Charlotte -Mecklenburg Board of Education for

compensation for serious personal injuries she suffered because of the accident.

The plaintiff filed suit pursuant to the North Carolina Tort Claims Act, citing specifically section 143-300.1. Judge Barbara Jackson of the Supreme Court of North Carolina explained “This statute establishes a limited waiver of local governmental immunity by authorizing lawsuits against county and city boards of education for the negligent operation of ‘school buses’ and ‘school transportation service vehicles’ when certain criteria are met” (*Irving v. Charlotte-Mecklenburg Bd. of Educ.*, 2016, p. 610). If the bus transporting the athletes met the definition of a school bus, the plaintiff then could have the Industrial Commission hear the case.

The Industrial Commission ruled in summary judgement in favor of the defendant in August of 2012. The Commission found that the court did not have jurisdiction over the matter as the bus did not meet the required criteria. The plaintiff appealed and the Court of Appeals reversed the decision of the Industrial Commission. The Court of Appeals found that the bus did meet the definition of a school bus. The defendant, the Charlotte-Mecklenburg Board of Education, appealed and the case went to the Supreme Court.

An important factor in the case was the definition of school bus. The bus transporting athletes to the game was not a school bus in the definition of taking students to school. The defendant argued that it was a school activity bus, as it took schools to an activity rather than school. Judge Jackson detailed the exact nature of what a school bus entailed: “Every use of a school bus that the General Assembly has authorized that involves schools and the transport of students is for a purpose that is

fundamentally curricular in nature” (*Irving v. Charlotte-Mecklenburg Bd. of Educ.*, 2016, p. 612).

Students riding a bus to a game were not, according to the courts, “fundamentally curricular” (*Irving v. Charlotte-Mecklenburg Bd. of Educ.*, 2016, p. 612). The bus in question was defined as a school activity bus, which did not fall under the guidelines specified in the North Carolina Tort Claims Act. Furthermore, since activity buses did not fall under the North Carolina Tort Claims Act, the Industrial Commission had no jurisdiction in this case. The Supreme Court of North Carolina ruled that the Commission properly granted the defendant’s motion for summary judgement.

Martinez v. Wake City Board of Education (2018) reinforced a key precedent within the North Carolina Tort Claims Act: plaintiffs were limited in who they sued through the Industrial Commission in bus accidents, namely bus drivers and those responsible for the maintenance and operations of buses. The courts in North Carolina strictly interpreted the North Carolina Tort Claims act and have not allowed claims against school districts and administrators to go forward. When plaintiffs have sued school districts and administrators, it has been due to the location of bus stops and bus routes, especially on busy streets.

On March 25, 2013, Maria Fernandez Jimenez was a student at Garner Magnet School, a school within the Wake City Board of Education. On that morning, Maria attempted to cross a road to her waiting bus. Maria was struck and killed by an oncoming vehicle, driven by a third party, as she crossed the street. The family of Maria Fernandez Jimenez sued the driver of the bus, Gloria Smith, and stated she was negligent in several duties. The plaintiffs alleged that the bus driver failed to warn the

student of the oncoming vehicle, failed to warn administration of the dangerous bus stop, failed to use flashers, and failed to conduct a proper inspection of the bus. The family also sued the Wake City Board of Education for negligence in the design of the bus stop; the staffing of the transportation department; failure to ensure proper, working warning systems on buses; failure to train bus drivers properly; failure to instruct Maria's family in the safest way to board the bus; and the failure to ensure a safe boarding for Maria onto the bus.

The Industrial Commission decided that it had jurisdiction to hear claims of negligence against the bus driver and maintenance personnel, and also had jurisdiction to hear claims against various administrators in the design of bus routes as well as staffing decisions in transportation. The Industrial Commission's decision to hear the case against school administration was a distinct change in the jurisdiction the court had exercised previously. The Wake City Board of Education appealed the decision to the Court of Appeals of North Carolina.

Judge Mark Davis and the Court of Appeals in North Carolina concluded that the Industrial Commission lacked the jurisdiction to hear claims against the school board and school administration. Judge Davis discussed the limitations of the North Carolina Tort Claims Act when he stated there was no "... indication that claims based on separate theories of negligence relating to administrative matters such as the design of bus routes or staffing decisions within the school system are meant to be included therein" (*Martinez v. Wake Cty. Bd. of Educ.*, 2018, p.480). Courts in North Carolina were consistent and clear in the jurisdiction of tort claims in transportation: plaintiffs can

sue bus drivers and maintenance personnel but could not sue administration because of the design of routes and bus stops.

The North Carolina Tort Claims Act, the practice of contributory negligence in North Carolina, and consistent case law favoring strong governmental immunity provided considerable protection for schools and school employees. The cases analyzed in this chapter examined several different legal aspects of North Carolina tort law that were important for educators: including the extent of local governmental immunity, contributory negligence, the role of school employees in lawsuits, and the scope of the Industrial Commission under the North Carolina Tort Claims Act. Additionally, the role of waiving immunity through purchasing insurance at the school board or district level was analyzed through many different cases. Plaintiffs in North Carolina attempted several methods to bring lawsuits against school boards and school employees outside of the Industrial Commission; however, the courts resolutely ruled in favor of the defendants. Chapter 5 examines the results of the case analysis and findings important for practitioners.

CHAPTER 5

CONCLUSIONS AND IMPLICATIONS

North Carolina had a long history of immunity for local government agencies, which was made stronger by the North Carolina Tort Claims Act in 1951. Since its passage, plaintiffs have attempted to circumvent the Tort Claims Act and the Industrial Commission it created in a variety of methods. Schools district leaders have enjoyed a shield of governmental immunity even when employees have been negligent due to factors like the contributory negligence of plaintiffs.

Research Design

Nineteen cases from North Carolina Courts were analyzed for this study. Of the nineteen cases studied, 79% of the cases were granted immunity in favor of the school district and employees. Cases were analyzed using the Issue, Rule, Application, Conclusion (IRAC) from Burton (2016) method to analyze rules, precedents, consistency between cases, and themes that emerged over time. These legal aspects of cases allowed this study to further inform educators and school leaders in North Carolina of important legal trends. The following research question directed the case studies of relevant aspects of law in North Carolina: how have North Carolina state courts interpreted the North Carolina Tort Claims Act in litigation against North Carolina school districts and their employees?

North Carolina school districts and educators have found the courts in North Carolina favorable in strict rulings regarding liability from negligence. Plaintiffs have attempted to circumvent the immunity that shields schools and its employees in North Carolina, but only a few notable exemptions have found success.

Conclusion

One of the cases successful in suing a school board was *Eller v. Board of Education* (1955), a case heard soon after the passage of the North Carolina Tort Claims Act in 1951. The plaintiffs in *Eller v. Board of Education* (1955) were not able to successfully sue the local school district for negligence, even though the school district had irresponsibly directed raw sewage onto the Ellers' property. However, the plaintiffs were successful in their argument that the school district had inadvertently taken their land in a case of eminent domain. The shield of immunity was strong enough in North Carolina for local government entities that *Eller v. Board of Education* (1955) was notable for being able to hold a school district liable for compensation.

Other cases heard early after the creation of the North Carolina Tort Claims Act tested the scope governmental immunity under the new act. *Bradshaw v. State Board of Education* (1955) and *Fields v. Durham City Board of Education* (1960) exhibited the challenges plaintiffs faced in overcoming the governmental immunity school districts enjoy in North Carolina. Early case law from the courts encouraged a strict interpretation of the North Carolina Tort Claims Act and to only waive immunity where the school district chose to purchase insurance against claims of negligence. Thus, the school district and its administration were in control of what liability they are exposed to, purchasing insurance to protect against the unforeseeable.

In the 1980s, plaintiffs in North Carolina attempted to recover damages from school districts by finding loopholes in the insurance policies the school districts purchased. The North Carolina Tort Claims Act allowed school districts to purchase insurance and to waive immunity to cover for negligence. However, the act did not

specify situations where schools elected not to purchase insurance, which would allow governmental immunity to shield the district and its employees.

One of the first cases that sued a district for a loophole was *Overcash v. Statesville* (1986), where the school district's insurance policy did not cover negligence causing injury to participants at athletic events. The plaintiffs attempted to argue that the school district had waived part of their immunity in purchasing insurance, so all immunity was waived. The courts disagreed and established a precedent of dismissing claims brought to the courts on the basis of waived immunity through a loophole, which was similar in *Hallman v. Charlotte-Mecklenburg Board of Education* (1996) and *Ripellino v. North Carolina School Boards Association* (2003). In each case the plaintiff would argue that the school district (or school board association) had waived immunity completely through the purchase of liability insurance in part. The case law was clear and school districts in North Carolina had the discretion to purchase insurance based on the needs and the resources of the district.

Craig v. New Hanover County (2009) was a notable exception where the court ruled in favor of the plaintiff. The key difference in *Craig* from the other cases was that the constitutional rights of the students were violated. A student, in special education nonetheless, who was not allowed to return to school for the rest of the year was denied his constitutional right to attend school. When constitutional rights and governmental immunity were matched against each other, North Carolina courts had ruled consistently in favor of constitutional rights.

A crucial aspect of negligence cases in North Carolina for schools has been contributory negligence. North Carolina was different, as it was one of the few states in

the United States that still recognizes contributory negligence on behalf of the plaintiff as a defense against the negligence of the defendant. Contributory negligence on behalf of the plaintiff can cause a dismissal in favor of the defendant, so school districts seek to use it as a defense when available. In *Adams v. State Board of Education* (1958), the defendant school district argued that an 11-year-old was negligent when he fell into a lawn mower when running on school grounds. The court disagreed and ruled in favor of the plaintiff. *Adams* (1958) established a clear boundary of contributory negligence for children. From the perspective of the courts in North Carolina, schools and their employees should expect children to behave as children and could not considered contributory negligent when acting as children.

Clary v. Alexander County Board of Education (1975) was another case that a school district lost while it argued contributory negligence on behalf of the plaintiff. Unlike *Adams v. State Board of Education* (1958), the plaintiff in *Clary* (1975) was a senior in high school and could be reasonably expected to behave like an adult. The plaintiff had run into windows that were positioned at the end of a gymnasium, and the school district argued that contributory negligence on behalf of the senior student should lead to dismissal of the claims. However, the negligence of the school in continuing to replace the windows with a cheap and dangerous material, coupled with their close proximity to a playing surface resulted in the courts ruling in favor of the plaintiff.

In *Izard v. Hickory Schools Board of Education* (1984), the defendant school district did argue that the contributory negligence of the student was the proximate cause of injury (when severing several fingers from his hand). The courts agreed and dismissed the suit of the plaintiff. *Izard v. Hickory Schools Board of Education* (1984)

showed that when school employees acted in good faith and took appropriate precautions, contributory negligence could be ruled in favor of school employees. *Daniel v. City of Morganton* (1997) was different than *Izard* (1984) in that the school employee, a softball coach, was found by the courts to be negligent in her actions. However, the contributory negligence of the student in choosing to play on the dangerous playing surface allowed for the courts to dismiss the suit against the school employee.

School employees should expect children to be inexperienced and naïve about dangers that might be present in a school or on school property. While *Daniel* (1997) ultimately ruled in favor of the school district, the softball coach was careless in her care of the players on her team. The discernable standard in the courts of North Carolina was that students who were older were more likely to be ruled contributory negligent, as seen in *Daniel* (1997). While in *Adams* (1958), the judge found that an eleven-year-old child would not be contributory negligent, as he was a child.

When suing a school employee in North Carolina, the plaintiff must specify how they were suing the defendant: in their individual capacity, official capacity, or both. In *Mullis v. Sechrest* (1998), the plaintiffs failed to identify the capacity they were suing a shop teacher in. The court determined from the evidence that the teacher was sued in his official capacity, which granted the teacher the same governmental immunity as the school district. A key factor for educators to ensure immunity from lawsuit in North Carolina relied on working within the official capacity of the school district, which was a local governmental entity. Failing to follow guidance from the district could lead to a teacher being sued in an individual capacity without the shield of governmental immunity.

In *Gunter v. Anders* (1994), the court found that the defendant superintendent was a public officer. Since the superintendent was hired by an elected school board and took an oath of office, the court found the position to be a public officer, as opposed to a governmental employee. A public officer in North Carolina could be sued but the plaintiff must show that the public officer's actions were malicious or corrupt. While public officer immunity did not affect all school employees, it was a notable aspect of defense for the school district leader.

The North Carolina Tort Claims Act established the Industrial Commission, a court established to hear torts of general negligence against local governments and government employees. In the 2000s, plaintiffs bringing cases to the Industrial Commission began to expand the scope of their lawsuits. In *Stacy v. Merrill* (2008) the family of the plaintiffs sued the district in the state court and the bus driver in the Industrial Commission. The trial court and the court of appeals dismissed the suit, finding that the cases were connected and that the bus driver's negligence from the Industrial Commission could not be held against the school district in the other case. *Stacy* (2008) ensured that claims filed against schools and school employees must follow the guidelines laid out in the North Carolina Tort Claims Act and that the claim followed the requirements of the Industrial Commission. A plaintiff could appeal a decision to the Court of Appeals from the Industrial Commission, but the same lawsuit could not be brought in the Industrial Commission and a state court separately.

In 2014, the Court of Appeals in North Carolina heard *Burns v County Board of Education*. The Industrial Commission ruled previously that they lacked the jurisdiction to hear the case, since it seemingly involved only school district administration. The

court sent the case back to the Industrial Commission, as they found the commission overlooked evidence that found the negligence was due to a bus driver. The North Carolina Tort Claims Act had been clear in that plaintiffs could bring suit against bus drivers and transportation maintenance in the Industrial Commission. However, the Industrial Commission did not have jurisdiction over cases where the plaintiffs sue school and district administration over the design and layout of bus stops and routes. Furthermore, when plaintiffs have sued school districts and school employees over bus routes, the courts have ruled in favor of the defendants, finding that they were shielded by the governmental immunity that protects schools.

The plaintiffs in *Martinez v. Wake City* (2018) sued school administrators who designed a bus stop. The bus stop was located on a highway where the student crossed the over the highway. The student was struck by an oncoming car and was killed. The judges in the Industrial Commission had ruled initially that they did have the jurisdiction in hearing the lawsuit against school administration. The defendants appealed, and the Court of Appeals in North Carolina reversed the decision of the Industrial Commission. The courts in North Carolina have repeatedly ruled in favor of a strict interpretation of the North Carolina Tort Claims Act, which protected school and district administration with governmental immunity.

Implications for Practitioners

In North Carolina, educators and school leaders have strong immunity from the threat of lawsuits. However, for school personnel, this immunity is weaker than the immunity enjoyed by the district as a whole and by district leaders, such as the school superintendent. School employees should operate under the guidelines set forth by

district and school leadership, otherwise they could leave themselves open to the threat of a lawsuit. Coach Gober in *Daniel v. Morganton* (1997) was found negligent for practicing on a dangerous playing field but was saved by the contributory negligence of the softball player who sued her. Since North Carolina was only one of a few states that still found contributory negligence invalidates the negligence of a defendant, it was possible that this aspect of law could change in the state. Following the direction of district and school leadership allowed immunity to shield teacher and school employees.

For district leaders and school board members, immunity was strong in the state of North Carolina. District leaders had the discretion to make decisions based on the needs of campuses. The legal environment was well-suited to providing direction and guidance to school employees to ensure they were immune from lawsuits.

Recommendations for Further Study

The conclusions drawn from this research provided a basis for further study in comparative states to help educators understand liability at state and local levels. The case analysis of North Carolina showed how North Carolina courts have interpreted the North Carolina Tort Claims Act and the case law that has supported the immunity of school employees. Educators would be further helped by research in comparative states, namely Tennessee, South Carolina and Florida to determine important legal trends for the region.

Another area of recommended research would examine professional development for educators on a continual basis in the study of legal issues. A focus on an educator's legal rights and liability provided an important part of a teacher's capacity to face the variety of issues that arise daily. As the research in Chapter 4 shows, school

employees were safer from lawsuit if they worked within the guidelines and direction of the school district and school leaders. Teachers should understand the immunity that protects them, but also the pitfalls that exist for all educators.

Summary

Of the nineteen cases studied in the legal analysis of this dissertation, more than three-fourths of the decisions ruled in favor of the school district. Schools and school employees in North Carolina have been favored by the courts and enjoyed strong governmental immunity. The consistent rulings favoring governmental immunity have created consistent case law that protected school employees. This protection ensured district leaders could make decisions without unreasonable fear of liability. Those decisions included purchasing insurance that did not cover areas, like athletic events, because leaders knew immunity would stand up in court. This longstanding case law allowed district leaders to focus resources on the needs of students. While school districts were covered by strong governmental immunity, the courts established a clear boundary when the constitutional rights of citizens were violated. In *Eller v. Board of Education* (1955) and in *Craig v. New Hanover County Board of Education* (2007), the constitutional rights of citizens were violated by the school district or a school employee. In these cases, the courts did not allow governmental immunity to protect the school or school employees from being held liable in court.

Practitioners in North Carolina have a need to know that strong governmental immunity protects them. Also, educators benefitted from working within the guidelines of district and school leaders. The protection that shielded school districts and schools also shielded school employees if they followed the parameters and recommendations

set forth from district and school leadership. Professional development in training teachers regarding the pitfalls of liability in not following the guidelines of school leadership would be beneficial. Practitioners would also benefit from professional development in knowing the rights and governmental immunity that supports them.

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