A LEGAL ANALYSIS OF LITIGATION AGAINST OKLAHOMA EDUCATORS AND SCHOOL DISTRICTS UNDER THE OKLAHOMA GOVERNMENTAL TORT CLAIMS ACT

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This dissertation analyzed public court decisions in cases against Oklahoma school districts and their employees involving sovereign immunity claims filed under Oklahoma’s Governmental Tort Claims Act. The questions addressed were: (1) How have the Oklahoma courts interpreted the Governmental Tort Claims Act, (Okla. Stat. tit. 51 § 151 et seq.) in litigation against school districts and their employees? (2) What are the limits of immunity protection for Oklahoma school districts and their employees? (3) How has the statute of limitations in Okla. Stat. tit. 51 § 156 and Okla. Stat. tit. 51 § 157 been applied to Oklahoma educators in tort litigation?

This dissertation utilized legal research as the methodology to answer the research questions. Chapter II provides a review of existing literature regarding sovereign immunity in the United States. Chapter III is a comprehensive study of Oklahoma sovereign immunity cases filed against Oklahoma school districts and educators under the Governmental Tort Claims Act with regard to negligence, corporal punishment and the statute of limitations. Chapter IV discusses the findings of the analysis of cases in Oklahoma and the amount of protection afforded to Oklahoma school districts and educators.
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CHAPTER I
INTRODUCTION

Oklahoma school districts and their employees enjoy significant protection from tort liability suits. School districts are recognized as political subdivisions of the State of Oklahoma and are eligible for qualified immunity protection under the Oklahoma Governmental Tort Claims Act, Okla. Stat. tit. 51 § 151, which was enacted by the Oklahoma legislature in 1978. The Act defines a political subdivision as, “a municipality, a school district, a county, [or] a public trust where the sole beneficiary or beneficiaries are a city, town, school district or county” (Okla. Stat. tit. 51 § 151 (2009)).

As is more fully explained in Chapter II, the Oklahoma Supreme Court formally adopted sovereign immunity as an element of the common law in 1907, the year Oklahoma became a state (James v. Trustees of Wellston Township, 1907). The state’s Supreme Court noted that the vast majority of states had recognized the principle of sovereign immunity, whereby state and local governments enjoyed substantial protection from being sued. Later, the Oklahoma Supreme Court decided that sovereign immunity should no longer be recognized as a court-created concept and invited the Oklahoma legislature to pass legislation that would clearly define the protections from liability that Oklahoma state government and local governmental units should enjoy (Vanderpool v. State of Oklahoma, 1983). Accepting this invitation, the Oklahoma legislature formally adopted sovereign immunity protection for all governmental entities and their employees through legislation stating, “The state, its political subdivisions, and all of their employees acting within the scope of their employment, whether performing governmental or proprietary functions, shall be immune from liability for torts” (Okla. Stat. tit. 51 § 152.1 (2009)). The State of Oklahoma only allows a tort claim to be brought against governmental
agencies and officials in a state court under the Governmental Tort Claims Act, and the types of
cases that can brought are severely restricted by the language of the Act. Because school
districts and their employees are considered political subdivisions of the state, by law they are
immune from tort liability under the state’s Governmental Tort Claims Act with very few
exceptions.

Throughout the history of Oklahoma, the state courts have been very sympathetic to
school districts and their employees. The purpose of this dissertation is to analyze how the
Oklahoma courts have interpreted and applied the Governmental Tort Claims Act in tort suits
related to public education. Applications of the law by the courts reveal the scope of immunity
that Oklahoma school districts enjoy. In addition, this dissertation analyzed the immunity that
individual school district employees have been afforded by the state’s Governmental Tort Claims
Act as it has been interpreted by Oklahoma courts.

Statement of the Problem

Public educators all over the United States are concerned about their exposure to liability
for damages or injuries that pertain to their job duties, and they are also concerned about their
school districts’ exposure to liability from lawsuits brought by various parties for damages and
injuries. As one commentator observed, “[T]he threat of lawsuits has become so commonplace
that elementary school children have been heard to say that they are going to sue the teacher or
the principal” (DeMitchell, 2007, p. 23). Most education administration programs require
students in principal-preparation programs to take a school law course; and a number of treatises
and books have been written about legal liability issues that pertain to educators and school
districts (DeMitchell, 2007; Alexander & Alexander, 2006).
Nevertheless, in spite of the public education community’s concern about liability issues, school districts and school officials in many states enjoy substantial protection from being sued (Zirkel & Jones, 2009). In most instances, this protection stems from the application of sovereign immunity principles that shield public officials from liability for performing their official duties. As Zirkel and Jones (2009) pointed out in a recent article, no comprehensive state-by-state study of sovereign immunity has been conducted as it applies to public education. Thus the public education community is unclear about the extent to which educators are protected from suit or the limitations of the sovereign immunity concept.

In terms of the focus of this study, which is the analysis of published court decisions in cases against Oklahoma school districts and educators, no published legal analysis or law review article exists that analyzes the way Oklahoma courts have dealt with lawsuits against Oklahoma school districts and public educators. This situation stands in stark contrast to Texas, where two comprehensive books have been published on Texas education law (Walsh, Kemerer, & Manasotis, 2005; Frels, Horner, & Camp, 2004); and several law review articles have analyzed legal issues pertaining to Texas school districts and school officials (Carman & Fossey, 2009; Frels & Horner, 1985; Horner, 1995; Peebles & Horner, 1997).

Significance of the Study

This dissertation is a contribution to a better understanding of sovereign immunity (or governmental immunity as the concept is sometimes titled) as a legal concept that protects school districts and their employees from lawsuits. In their law review article, Zirkel and Clark (2009) noted that state courts across America have provided substantial protection from tort suits against school districts and their employees under the concept of sovereign immunity. However, the authors noted that the issue of sovereign immunity for educators has received little attention in
the school law community, and they identified a need for a “systematic state-by-state study of governmental immunity” (Zirkel & Clark, 2009, p. 360).

This research analyzed how one state, the State of Oklahoma, applies the statutory concept of governmental immunity in cases involving Oklahoma school districts or their employees as defendants. As the analysis in Chapter III shows, Oklahoma school districts and educators enjoy significant protection from liability arising from accidents or injuries under the Oklahoma Governmental Tort Claims Act.

It is important to note that some Oklahoma personal injury cases have been filed in federal courts, where plaintiffs have accused school employees of violating their constitutional rights under the U.S. Constitution. Usually these suits are brought in federal court because of the perception, which is accurate, that the suit would be dismissed in a state court under the provisions of the state’s Governmental Tort Claims Act. The primary focus of this dissertation were cases that were brought in the Oklahoma state courts in which plaintiffs have brought tort claims.

Research Questions

The following research questions guided this study:

1) How have the Oklahoma courts interpreted the Governmental Tort Claims Act, (Okla. Stat. tit. 51 § 151 et seq.) in litigation against school districts and their employees?

2) What are the limits of immunity protection for Oklahoma school districts and their employees?

3) How has the statute of limitations in Okla. Stat. tit. 51 § 156 and Okla. Stat. tit. 51 § 157 been applied to Oklahoma educators in tort litigation?
Definitions of Important Terms

Demurrer. A demurrer is “[a] pleading stating that although the facts alleged in a complaint may be true, they are insufficient to state a claim for relief” and thus the plaintiff’s complaint should be dismissed (Black’s Law Dictionary, 2009, p. 468). In most jurisdictions, a demurrer is now called a motion to dismiss.

Estoppel. Estoppel is an affirmative defense in a lawsuit that alleges that a party has relied on a misleading representation by an adverse party in a lawsuit and that the party making the misleading representation should be barred from asserting a contradictory position. (Black’s Law Dictionary, 2009, p. 629).

Governmental function. At common law, a governmental function is an activity carried out by a governmental entity for the benefit of the general public and that is expressly or implicitly authorized by law. “Generally, a governmental entity is immune from tort liability for governmental acts” (Black’s Law Dictionary, 2009, p. 765).

Negligence. Negligence “is conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm” (Restatement of the Law (Second) of Torts § 282, 1965). Unless an individual is a child, “the standard of conduct to which [an individual] must conform to avoid being negligent is that of a reasonable [person] under like circumstances” (Restatement of the Law (Second) of Torts § 283, 1965).

Proprietary function. A proprietary function is a governmental activity that is performed to benefit or profit the governmental agency and not for the good of the general public. At common law, governmental entities were not immune from tort liability for their proprietary acts. (Black’s Law Dictionary, 2009, p. 1339).
Summary judgment. Summary judgment is a judgment granted by a court based on a finding that there are no genuine issues of material fact and thus the moving party is entitled to judgment as a matter of law. Summary judgment is a process for speedy adjudication of claims without the need of a trial. (Black’s Law Dictionary, 2009, p. 1573).

Trial de novo. A trial de novo is a "new trial on the entire case" on both questions of fact and issues of law, which is "conducted as if there had been no trial in the first instance" (Black’s Law Dictionary, 2009, p. 1645).

Summary of Chapters

Chapter II provides a review of the literature surrounding the development of sovereign immunity in the United States. The concept of sovereign immunity appears in early American case law, as American courts adopted the concept from the British common law. This chapter reviews legislation and case law to reveal how the concept of sovereign immunity, which was originally created in Britain, was adopted, adapted and applied in America over the past 250 years.

Chapter III is a comprehensive study of published court decisions in cases brought against Oklahoma educators and their employees arising from various types of injuries, including injuries arising from negligence and excessive corporal punishment, or some other wrongful act. This chapter begins with a brief history of how the doctrine of sovereign immunity first came to the State of Oklahoma, and how it was applied by the courts prior to legislation. Vanderpool v. State of Oklahoma (1983), is a particularly important case in the history of sovereign immunity in Oklahoma, and this case is analyzed to provide details about how governmental immunity emerged as a statutory principle in Oklahoma with the passage of the Governmental Tort Claims Act. The chapter then examines the way the courts have interpreted the Governmental Tort
Claims Act in lawsuits brought against Oklahoma educators and school districts. This examination includes a legal analysis of all education-related cases brought under the Act, including cases involving negligent supervision, corporal punishment and the statute of limitations (a statute that prohibits suits from being filed under the Governmental Tort Claims Act unless filed before a statutorily defined deadline).

Chapter IV discusses the implications that can be drawn from the legal analysis conducted in the previous chapter. This chapter provides insight and guidance to school districts and their employees about how much sovereign immunity protection is afforded to them in the State of Oklahoma. It also discusses the limitations and parameters of the immunity provided to educators as articulated by the courts. In addition, Chapter IV discusses the policy implications of a statutory scheme that provides extraordinary protection for public educators from liability, even in circumstances in which an educator’s negligence was the major cause of a student’s injury. Finally, Chapter IV provides recommendations for additional research.

Brief Overview of Methodology

Just as judges, attorneys, and legal scholars use legal research methods to analyze the law and answer legal questions, this dissertation utilizes legal research as the methodology to answer the research questions that were stated earlier in the introduction. The main focus of this dissertation is a legal analysis of the way Oklahoma courts have applied the Governmental Tort Claims Act in court cases brought against school districts and public school educators. As more fully explained in the literature review, the Governmental Tort Claims Act was passed by the Oklahoma legislature after the Oklahoma Supreme Court expressed dissatisfaction with the common law doctrine of governmental immunity as that principle had evolved in the jurisprudence of the Oklahoma courts (Vanderpool v. State of Oklahoma, 1983).
There are a number of ways to approach legal research, but legal scholars commonly consult general treatises, law review articles, and other secondary sources as a way of becoming generally familiar with a specific legal topic. This research examines the way in which the Oklahoma Governmental Torts Claims Act has been applied to lawsuits against educators and school districts. This law developed as an evolution of the concept of sovereign immunity in Oklahoma and was adopted by the Oklahoma legislature after the Oklahoma Supreme Court ruled that the doctrine of sovereign immunity should be defined in the future by the legislature and not Oklahoma judges.

To better understand the broad concept of sovereign immunity, I consulted several key texts in order to trace the development of the doctrine of sovereign immunity in the United States. As is more fully explained in the literature review, the doctrine originated in Great Britain as an element of British common law and was later adopted as a core legal principle by state courts across the United States.

These foundational texts were critical to understanding the broad concept of sovereign immunity: *Prosser and Keeton on Torts* (Keeton, 1984), Nowak and Rotunda’s *Constitutional Law* (1991), and *Restatement (Second) of the Law of Torts* (1979), a compendium of the common law principles of tort law as it has developed in the United States. In addition, I consulted Walsh, Kemerer & Maniotis (2005), the most respected and current treatise on Texas school law, which provided a good overview of the way in which the principle of governmental immunity had developed in the state of Texas through the common law, the passage of legislation, and case law in which Texas courts interpreted the immunity provisions that apply to Texas educators and school districts. No comprehensive overview of Oklahoma education law exists that is comparable to Walsh, Kemerer & Marisotis’s work, and thus it was consulted
merely to examine the way governmental immunity has been applied in a state that borders the State of Oklahoma. Also by way of background, I reviewed the dissertation of Nate Carman (2009), a detailed examination of governmental immunity for Texas educators, and the published article that developed from the dissertation (Carman & Fossey, 2009).

As the research focused specifically on Oklahoma, I searched for law review articles that expounded on the doctrine of sovereign immunity or governmental immunity as it developed in the State of Oklahoma. A series of searches were conducted on the Lexis/Nexis database using the standard strategies of a computerized data search such as the strategies used to conduct Google searches. Such searches, often referred to as “Boolean” searches (named for British-born mathematician George Boole), can be defined as searches that “allow [researcher] to combine words and phrases using words AND, OR, NOT and NEAR, otherwise known as Boolean operators) to limit, widen, or define your search” (Boswell, n.d.). As a tool of legal methodology, a Boolean search can assist the researcher in finding documents that are helpful in answering the research question (Internet Tutorials, n.d. http://www.internettutorials.net/boolean.asp).

The Boolean search of the Lexis/Nexis law review database only turned up one law review article that was useful for understanding the development of governmental immunity in the State of Oklahoma (Britton, 1996). The search turned up no law journal articles on the application of tort law or governmental immunity to Oklahoma educators or school districts.

Aided by the information learned from consulting secondary sources and the law review that was identified in a Boolean search of the Lexis/Nexis law review data base, I then began searching the Lexis/Nexis Oklahoma cases data base, which contains all the published decisions in the state and federal courts that were decided in Oklahoma or that originated in Oklahoma. In addition, I searched the Lexis/Nexis Oklahoma statutes data base, containing all the Oklahoma
To answer the research questions of this study, I identified and analyzed all published Oklahoma court decisions that interpreted how the Oklahoma Governmental Tort Claims Act had been applied in lawsuits against Oklahoma educators and school districts. I conducted a series of Boolean searches in the Oklahoma statutes and Oklahoma case law databases of Lexis/Nexis. For example, one search was constructed using these search terms: [name(school!) and “tort claim!”]. Other searches were conducted to find cases involving specific torts or claims of wrong doing against Oklahoma educators or school districts. Such search terms as these were devised: [“corporal punish!”], [defama!], [“negligen!”] and [“negligent supervis!”].

Through a series of Boolean search in the Lexis/Nexis databases, all published Oklahoma court decisions that applied the Oklahoma Governmental Tort Claims Act to Oklahoma teachers, administrators, and school districts were identified. I then reviewed each case individually, discarding cases that did not directly relate to the relevant research question. I am confident that the legal research process described above identified all published Oklahoma court decisions that are relevant to answering the three research questions of this study.

Once all the relevant cases were identified, I analyzed each case individually to determine the outcome of the case and the manner in which the court applied the Oklahoma Governmental Tort Claims Act to the facts of the case. The analysis of the individual cases is set forth in Chapter III of the study.
CHAPTER II

REVIEW OF LITERATURE

This dissertation analyzes court decisions involving Oklahoma school districts and their employees under the Oklahoma Governmental Tort Claims Act, which was adopted by the Oklahoma legislature in 1983 after the Oklahoma Supreme Court abrogated the doctrine of sovereign immunity for Oklahoma’s governmental entities in the Vanderpool decision of 1983. This series of events took place in a larger historical context, in which the doctrine of sovereign immunity as an element of English common law was transported to the United States no later than the early nineteenth century and then slowly eroded in the twentieth century as state courts and legislatures began recognizing the rights of injured parties to sue the various state and local governmental agencies in the state courts.

This chapter constitutes a review of the literature on the topic of sovereign immunity as it has been adopted and modified by state courts and legislatures in the United States. This review does not explore the application of sovereign immunity in the context of the Eleventh Amendment of the United States Constitution, which prohibits suits from being brought against a state in the federal courts. In addition, the review does not discuss the application of Section 1983 of the Civil Rights of 1871, which is the primary vehicle by which private parties have sued state and local governments for violations of federal law and the U.S. Constitution. Finally, this review provides only a cursory discussion of the concept of sovereign immunity as it has been applied to the federal government.

Sovereign Immunity, an Element of English Common Law, Makes Its Way to the United States

Sovereign immunity is the legal principle that governments are immune from being sued in the courts that they themselves have established. As articulated by the United States Supreme
Court, “A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends” (Kawananakoa v. Polyblank, 1907, p. 353).

As explained by Alexander and Alexander (2009, p. 731), scholars believe the concept of sovereign immunity “was a product of the Dark Ages, when custom established that the lord of the fief was also the lawmaker and judge.” Since the lord “was singly responsible for all laws and justice, and since he made and implemented the laws, he could not be sued without his permission.” Gradually, this concept became formalized in English law, so that by sometime in the thirteenth century, it was an established principle that “the king could not be sued in his own courts” (p. 731). The concept is often summarized by the phrase, “[T]he King can do no wrong” (Keeton, 1984, p. 1033).

As noted in the commentary of the Second Restatement of Torts § 895A (1979, p. 396), the acceptance of the “feudal and monarchistic doctrine of sovereign immunity [in the United States] is obscure.” Nevertheless, it should not be surprising that the concept of sovereign immunity was adopted in the United States, since the American legal system is largely based on English common law. In 1821, Chief Justice John Marshall, writing for the Supreme Court in Cohens v. Virginia, recognized the principle of sovereign immunity, when he wrote that suits brought against the United States could not proceed without the consent of the government. In a 1869 decision, Nichols v. United States, the Supreme Court reaffirmed the principle of sovereign immunity, when it declared that “[i]t is a familiar doctrine of the common law, that the sovereign cannot be sued in his own courts without his consent” (p. 629).
Nevertheless, although the federal government enjoyed great protection from tort claims under sovereign immunity principles throughout the nineteenth century, Congress created a court of claims in 1855 for hearing contract claims against the government, and it adopted the Tucker Act in 1887, which conferred jurisdiction on a federal Court of Claims to resolve various claims against the United States. In 1946, Congress passed the Federal Tort Claims Act, whereby Congress permitted suits to be brought against the federal government for personal injury claims based on negligence (Second Restatement of Torts § 895A, 1979, pp. 896-897).

Sovereign Immunity Enjoyed by State and Local Governments

According to one commentator (Hill, 2001), there was a general perception among state government leaders at the time the Constitution was ratified that the states could not be sued in the federal courts without their consent. In 1793, however, the United Supreme Court decided Chisholm v. Georgia by a 4 to 1 vote, ruling that a North Carolina resident could sue the state of Georgia in a federal court.

Hill described the political reaction to the Chisholm decision as “speedy and angry” (p. 497). In Georgia, the House of Representatives “adopted a bill making it a capital offense to attempt to levy a judgment in the [Chisholm] case.” In at least two states—Massachusetts and Virginia—state legislatures called for a constitutional decision to reverse the decision; “and such a call was soon under consideration by the legislatures of eight additional states, where it had strong support” (p. 497, internal quotations omitted).

Congress quickly proposed an amendment to the United States Constitution, which stated, “The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” The amendment was ratified by the
necessary number of states within two years of the *Chisholm* decision, and the provision was adopted as the Eleventh Amendment to the United States Constitution in 1798.

As one commentary (Nowak & Rotunda, 1991, p. 45) has noted: “[The Eleventh Amendment] does not grant the states true immunity, for it does not exempt them from the restrictions of federal law; it only means that some types of suits must be initially brought in state rather than federal court.” In addition, the Eleventh Amendment does not prohibit a state from being sued in the courts of a sister state; nor does the Amendment protect governmental officers from being sued. As Nowak and Rotunda also noted, judicial interpretations of the Eleventh Amendment raise many complex issues (p. 45), which are beyond the scope of this literature review.

More pertinent to this study is the fact that state courts began adopting the principle of sovereign immunity to bar suits against state and local government. One of the early decisions adopting this principle is *Mower v. Inhabitants of Leicester* (1812), in which a Massachusetts court, relying on the precedent of *Russell v. The Men Dwelling in the Town of Devon* (1788), an eighteenth century English case, ruled that suit could not be brought against a Massachusetts town. However, as Alexander and Alexander (2009) noted, application of sovereign immunity principles to state and local governments cannot be traced to a single precedent. Rather it seems likely that sovereign immunity was adopted in the United States by judges who relied on English books and materials, such as *Blackstone’s Commentaries*, as the basis for endorsing the concept that governmental entities could not be sued in the state courts without their consent (p. 731).

In any event, scholars have had difficulty tracing the development of sovereign immunity as the doctrine came to be adopted in the courts of the various states. Regarding sovereign immunity in Kentucky, one commentator wrote that “[t]he progression of sovereign immunity in
Kentucky is difficult, if not impossible, to trace with any amount of accuracy” (Fetcher, 2003, p. 963). One Kentucky appellate court admitted that the origin of the doctrine “contains some elements of the mysterious” and that it was “hard to determine how this doctrine became imbedded in the law of our Commonwealth” (Haney v. City of Lexington, 1964, p. 739).

By the early twentieth century, sovereign immunity was recognized almost universally by state courts, and thus it is not surprising that the Oklahoma Supreme Court recognized sovereign immunity as a principle of Oklahoma’s common law in 1907, the year Oklahoma achieved statehood. In James v. Trustees of Wellston Township (1907), a plaintiff had sued the small town of Wellston, Oklahoma, for damages sustained due to a negligently maintained highway. After surveying the decisions in other states, the Oklahoma Supreme Court ruled that the town was not liable as a matter of law. “From the earliest history of the country to the present time,” the court noted, “the decisions of the courts have been almost unanimous in holding that counties and townships and other quasi municipal corporations are not liable at common law for injuries sustained by reason of a failure to repair highways or bridges, and are only held liable when the liability is created by statute” (p. 101). Since no Oklahoma statute had created municipal liability for such incidents, the court concluded, the town could not be held liable for the condition of its roads. The Oklahoma court noted that only three states—Iowa, Maryland, and Pennsylvania—took a contrary view. (James will be discussed in greater detail in the following chapter.)

Of course the application of sovereign immunity varies somewhat from state to state based on the language of state court decisions and state legislation that recognize the principle. Nevertheless, a general expression of sovereign immunity as it applies to the states is articulated in the Second Restatement of Torts § 895B (1979), which serves as useful definition of the concept:
§ 895B States:

1) A State and its governmental agencies are not subject to suit without the consent of the State.

2) Except to the extent that a State declines to give consent to tort liability, it and its governmental agencies are subject to the liability.

3) Even when a State is subject to tort liability, it and its governmental agencies are immune to the liability for acts and omissions constituting
   (a) the exercise of a judicial or legislative function,
   or
   (b) the exercise of an administrative function involving the determination of fundamental governmental policy.

4) Consent to suit and repudiation of general tort immunity do not establish liability for an act or omission that is otherwise privileged or is not tortuous.

States Begin Qualifying the Scope of Sovereign Immunity

As an unqualified doctrine, sovereign immunity is a harsh principle whereby state and local governments and their employees can avoid financial responsibility for negligent acts that would have led to a damages award if committed by a private party. Thus, by the middle of the twentieth century, states began qualifying the immunity protection from suit that was available to state and local governments, either through legislative action or through decisions by the courts.

For example, in Molitor v. Kaneland Community Unit School district No. 302 (1959), the Illinois Supreme Court considered a case in which a public school student was injured when “the school bus in which he was riding left the road, allegedly due to the driver’s negligence, hit a culvert, exploded, and burned . . .” (p. 429). As the Illinois Supreme Court acknowledged, it had adopted the doctrine of sovereign immunity for Illinois towns and counties in 1870. In 1898, the
court had extended the protection of sovereign immunity to Illinois school districts in a case titled *Kinnare v. City of Chicago* (1898). In that case, the court extended the doctrine of sovereign immunity from state government to local entities such as school districts. As the *Kinnare* court explained:

> The state acts in its sovereign capacity, and does not submit its action to the judgment of the courts, and is not liable for the torts or negligence of its agents, and a corporation created by the state as a mere agency for more efficient exercise of governmental functions is likewise exempted from the obligation to respond in damages, as master, for negligent acts of its servants to the same extent as the state itself, unless such liability is expressly provided by statute creating such agency.” (p. 536)

Sixty years later, however, the Illinois Supreme Court reconsidered its holding in *Kinnare*. “We are of the opinion,” the court said in its 1959 ruling, “that school district immunity cannot be justified on [sovereign immunity]. The court quoted approvingly from a New Mexico Supreme Court opinion, which severely criticized the doctrine (*Barker v. City of Santa Fe*, p. 482):

> The whole doctrine of governmental immunity from liability for tort rests upon a rotten foundation. It is almost incredible that in this modern age of comparative sociological enlightenment, and in a republic, the medieval absolutism supposed to be implicit in the maxim, ‘the King can do no wrong’ should exempt the various branches of the government from liability for their torts, and that the entire burden of damage resulting from the wrongful acts of the government should be imposed upon the single individual who suffers the injury, rather than distributed among the entire community constituting
the government, where it could be borne without hardship upon any individual, and where it justly belongs.

The Illinois Supreme Court noted that the doctrine of sovereign immunity for local governmental agencies had been justified as a necessary means of preserving public funds from being depleted by damages awards in the courts. “This reasoning,” the court observed, “seems to follow the line that it is better for the individual to suffer than for the public to be inconvenienced” (p. 482). In fact, the defendant school district had argued that school districts would go bankrupt and “education impeded” if they were forced to compensate students who were injured though the negligence of a school employee.

In its 1959 decision, the Illinois Supreme Court was not persuaded that school districts should be insulated from lawsuits based on an argument that allowing negligence suits to proceed would diminish public funds. “We do not believe that in this present day and age, when public education constitutes one of the biggest businesses in the country, that school immunity can be justified on the protection-of-public-funds theory” (Molitor v. Kaneland Community Unit District No. 302, 1959, p. 429). The court noted that other states had abandoned the doctrine of sovereign immunity and that their schools had not been compelled to shut down.

In conclusion, the Illinois Supreme Court ruled, none of the reasons advanced for preserving sovereign immunity for school districts remain valid. “Further,” the court observed, “the abolition of such immunity may tend to decrease the frequency of school bus accidents by coupling the power to transport pupils with the responsibility of exercising care in the selection and supervision of the drivers” (p. 436). Abolishing the doctrine would encourage districts to exercise greater care in transporting pupils and to carry adequate insurance to spread the risk of an accident.
Thus, the Illinois Supreme Court abolished governmental immunity for Illinois school
districts on the grounds that the principle was unjust and had “no rightful place in modern day
society” (p. 439). Although the defendant school district in the *Molitor* case argued that the state
legislature, not the court, should be the governmental body that decides whether sovereign
immunity should be abolished, the Illinois Supreme Court disagreed.

“The doctrine of school district immunity was created by this court alone. Having found that
document to be unsound and unjust under present conditions, we consider that we have not only
the power, but the duty, to abolish that immunity” (*Molitor v. Kaneland Community Unit District
No. 302*, 1959, p. 469).

Not all state courts have adopted the view of the Illinois Supreme Court. As late as 2001,
the Kentucky Supreme Court affirmed the principle of governmental immunity for Kentucky
school districts in a case involving a student who was injured by a thrown baseball during batting
practice (*Yanero v. Davis*, 2001). The injured student was not wearing a batting helmet when he
was injured. The student argued that the school board and school employees were negligent in
not requiring him to wear a helmet during batting practice and in failing to develop proper rules
and regulations for hiring coaches and athletic directors who were qualified to provide for
students’ safety. The student also argued that school employees were negligent in the way they
treated his head wound after his injury.

On appeal, the Kentucky Supreme Court observed that the state of Kentucky had
recognized the doctrine of sovereign immunity as early as 1828. The defendant school board, as
an agency of state government, was performing a governmental function when it organized and
supervised school athletic teams and was entitled to the protection of governmental immunity.
Thus, the school district could not be sued in tort for negligence by players who might be injured
during practices or ballgames. In addition, it could not be sued for failing to promulgate a rule about students wearing batting helmets or for negligence in providing emergency medical treatment.

Likewise, Texas courts have upheld the doctrine of governmental immunity for Texas educators against challenges that the doctrine is outdated. In *Stout v. Grand Prairie Independent School District* (1987), a cheerleader sued the Grand Prairie Independent School District for serious injuries that she suffered during cheerleading practice. A trial court granted summary judgment in the case to the cheerleading sponsor and the school district. The parents appealed, and asked a Texas intermediate appellate court to abolish the law of governmental immunity for school districts, which they argued was unconstitutional under the Texas constitution as well as being “antiquated, anachronistic and unjust” (p. 292).

Unlike the Illinois Supreme Court in the *Yanero* case, however, the Texas Court of Appeals found no reason to abolish governmental immunity for Texas school districts or their professional employees. The court ruled that the legislative justification for the Texas statute protecting school districts’ professional employees from lawsuits, “is rationally related to the goals sought to be achieved by the legislature” and was not unconstitutional (p. 295). In addition, the school district was exercising a governmental function when the cheerleader was injured, and the school district was entitled to rely on the common law doctrine of governmental immunity (p. 296; Carman, 2009).

**Abrogation of Governmental Immunity for Governmental Entities That Have Liability Insurance**

As noted in *Keeton* (1984), some state legislatures have modified their governmental immunity doctrine by allowing lawsuits against governmental units that have procured liability insurance to
cover judgments against them for negligence. North Carolina is an example of a state that has adopted this policy by statute. Section 115C-42 of North Carolina General Statutes provides:

Any local 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 course of his employment. Such immunity shall be deemed to have been waived by the act of obtaining insurance, but such immunity is waived only to the extent that said board of education is indemnified by insurance for such negligence or tort.

As the statutory language indicates, a North Carolina school district will only be deemed to have waived its governmental immunity if the liability insurance that it purchased actually provides coverage for the claim that was brought against the school district. For example, in Craig v. New Hanover County Board of Education (2009), a school district was sued by a mentally disabled student who alleged that he had been sexually assaulted by another student while he was at school. The school district’s liability policy explicitly provided that it did not provide coverage for sexual abuse claims, and the liability insurance carrier refused to pay any money on the student’s claim. Under those circumstances, the school district had not waived its governmental immunity (Fossey & Carman, 2009).

Conclusion

As the Yanero case and the Stout case demonstrate, the states are not in total agreement about whether school districts or other governmental entities are entitled to immunity from suit under the doctrine of sovereign immunity or about the scope of the immunity if governmental immunity is recognized. According to Alexander and Alexander (2009), most states, have taken
some sort of legislative action to limit the scope of the sovereign immunity and define limits of its qualifications, in order to consent to some liability for tort claims. As summarized by the authors:

Only two states have retained what may be classified as total sovereign immunity, while seven or eight other states technically retain immunity in the courts but have statutorily established administrative tribunals to hear and ascertain whether the state should be held liable. Another group of states has waived tort immunity in certain classes of cases, usually those in which the state or locality has secured liability insurance that will pay for judgments against the governmental entity, or have adopted specified waivers of immunity for particular functions, such as injuries caused by motor vehicles or by negligence in the upkeep or oversight of real property owned by the school. (Alexander and Alexander, 2009, p. 742)

In the following chapter, the doctrine of sovereign immunity will be described as it developed in Oklahoma until it was abrogated by the Oklahoma Supreme Court’s Vanderpool decision in 1983. As a result of the Vanderpool decision, the Oklahoma legislature passed the Governmental Tort Claims Act, which permitted lawsuits to be filed against governmental agencies in the State of Oklahoma, including school districts. This analysis will show that the Oklahoma legislature adopted a tort claims law that included a long list of qualifications that make it very difficult for plaintiffs to prevail in lawsuits for negligence brought against the State of Oklahoma or one of its governmental subdivisions. The chapter will then analyze all the claims against school districts and public educators under the Oklahoma Governmental Tort Claims Act. The analysis will show that Oklahoma educators and school districts enjoy strong protection against being sued for their actions under the Governmental Tort Claims Act, perhaps
as strong as if the judicial doctrine of sovereign immunity had never been abrogated by the Oklahoma Supreme Court in the *Vanderpool* decision.
CHAPTER III
OKLAHOMA SOVEREIGN IMMUNITY

This chapter provides an overview of sovereign immunity in Oklahoma. It begins by outlining the history of sovereign immunity from statehood, specifically focusing on how Oklahoma first adopted the concept of sovereign immunity for governmental employees and political subdivisions, and how it has legislated and enforced the concept throughout its history. The Vanderpool case is reviewed in a separate section because of its importance to the state’s formal adoption of the concept of sovereign immunity and the evolution and legislation of the Governmental Tort Claims Act (Okla. Stat. tit. 51 et seq.). All Oklahoma tort cases, including those that address the governmental immunity of educators and school districts, are filed under the Act. The chapter then analyzes all sovereign immunity tort cases involving educators and school districts that have been brought in Oklahoma under the Act. The review of case law is categorized into three topics: negligent supervision, corporal punishment, and the statute of limitations.

The purpose of this chapter is to analyze how the State of Oklahoma adopted the concept of sovereign immunity and how it has applied the concept to school districts and their employees. The information brought in this chapter will be used in the discussion in Chapter IV to identify and predict trends pertaining to sovereign immunity in the State of Oklahoma. The information will also be used to examine the strength of protection, as well as the limitations, afforded to educators and school districts. The information can then be used in additional studies to compare Oklahoma to other states with regard to the sovereign immunity of educators and school districts.
History of Sovereign Immunity in Oklahoma

The concept of sovereign immunity for governmental entities has existed in the State of Oklahoma since its confirmation of statehood in 1907. Sovereign immunity has been affirmed and re-shaped throughout the years by case law and legislation, but has remained a strong protection against tort liability for governmental entities and their employees.

The concept of sovereign immunity first appeared in Oklahoma in 1907 in *James v. Trustees of Wellston Township* (Britton, 1996). In *James*, an individual sued the township of Wellston for failure to maintain the township’s roads and bridges. The complainant alleged the township was responsible for damages he sustained from a runaway car because the officers of the township had negligently failed to repair the roads and bridges involved in the accident. The complainant filed a tort suit to recover damages for injuries sustained as a result of the accident.

The trial court sustained a demurrer on the grounds that the petition stated no cause of action. The court held that governmental entities were not liable for injuries sustained due to a lack of maintenance or repair of roadways because no law had been enacted by the legislature to provide an avenue for such liability. “The court further held that there was no liability under common law” (*James v. Trustees of Wellston Township*, 1907, p. 100).

On appeal, the Supreme Court of Oklahoma affirmed the trial court’s decision, agreeing with the lower court that the complainant had stated no cause of action. The court wrote, “From the earliest history of the country to the present time the decisions of the courts have been almost unanimous in holding that counties and townships and other quasi municipal corporations are not liable at common law for injuries sustained by reason of a failure to repair highways or bridges, and are only held liable when the liability is created by statute” (*James v. Trustees of Wellston Township*, 1907, p. 101).
The court also cited similar decisions from courts in other states. In 1878, in *Eikenberry v. Bazaar Township*, the Supreme Court of Kansas upheld the immunity of governmental agencies by stating:

> The principal question presented is whether a township in this state is liable for injuries caused by unsafe and defective highways? In the absence of an express statute imposing a liability, the authorities uniformly hold that organizations such as counties, townships, school districts, road districts, and the like, though possessing corporate capacity and power to levy taxes and raise money, have been considered not to be liable for neglect of public duty. (*James v. Trustees of Wellston Township*, 1907, p. 101, quoting *Eikenberg v. Bazaar Township*)

The *James* court also cited the Colorado Supreme Court’s decision in *Board of County Commissioners of El Paso County v. Bish* (1900). That court held:

> The rule that counties are not liable for torts, in the absence of statute, is universally acknowledged; and the great weight of authority is in favor of the conclusion that even when a duty is imposed by statute the county is not liable for failure to perform it, in the absence of express provision creating such liability. The cases sustaining the latter conclusion are so numerous that space will not permit of their citation in this opinion. (*Board of County Commissioners of El Paso County v. Bish*, 1900, p. 184)

The *James* ruling provided a solid platform for sovereign immunity as a principle of the common law in Oklahoma. The decision seemed to be heavily influenced by decisions from other states that relied on the universal acceptance of governmental immunity without the provision of statute. The *James* decision of 1907 defined Oklahoma’s stance on sovereign
immunity from its inception. Oklahoma had adopted the concept through common law based on the fact that it was a commonly accepted principle throughout the country.

The next significant case involving sovereign immunity in Oklahoma came in *Mott v. Hull* (1915). The *Mott* case furthered Oklahoma’s acknowledgement of sovereign immunity by noting a distinction between the ministerial functions and discretionary functions of governmental employees, as it relates to immunity from tort liability. In *Mott*, a township trustee and a treasurer were building a culvert across a roadway. They left the work incomplete one evening, obstructing the roadway without sufficient barriers or warning signs. A driver of a car ran into the obstruction at night and wrecked his car as a result of insufficient warning signs. The driver suffered damages from what the plaintiff described as, “negligent performance of a ministerial act, not involving the exercise of an official discretion” (*Mott v. Hull*, 1915, p. 92).

The plaintiff alleged that the discretionary power of the trustee and treasurer was to construct the culvert, and the ministerial function was to make the culvert safe and usable.

The trial court ruled in favor of the plaintiff and awarded him damages based on the fact that the trustee and treasurer were found to be negligent on a purely ministerial task. The Supreme Court of Oklahoma affirmed the trial court’s decision. It stated:

> On the question of negligence, the evidence is weak, exceedingly weak, and if the writer of the opinion had to decide the point, he would hold that it had not been established. Yet it cannot be said that there is no evidence tending to prove negligence; and, as it cannot be so said, it was a jury question, and the jury, upon instructions not criticized or open to serious criticism, has found negligence. We have no right to set the verdict aside in this situation, and substitute our own views on the weight of the evidence. (*Mott v. Hull*, 1915, p. 94)
The *Mott* court refused to overturn the trial court’s decision, citing the policy grounds for supporting the jury’s decision, instead of invoking its own opinion and interpretation of the law. The *Mott* case was a landmark case concerning sovereign immunity in Oklahoma because for the first time, the court found governmental employees liable for negligence. This case defined ministerial and discretionary duties with regard to sovereign immunity. The court stated, “So it seems that the township officers are individually liable to a person who may suffer special damages because of the negligent performance by such officers of a purely ministerial act, not involving the exercise of an official discretion” (*Mott v. Hull*, 1915, p. 95). The court made a clear distinction between the ministerial and discretionary acts of governmental employees. The court also made an important decision to uphold the decision of the trial court, although it admitted that it disagreed with its decision. The court acknowledged the fact that the people of Oklahoma were not in favor of unlimited immunity for governmental entities that displayed clear negligence through ministerial actions.

The Supreme Court of Oklahoma made another important sovereign immunity distinction in *Oklahoma v. Baldwin* (1928). In this case, an automobile driver was hit by a city garbage truck while driving on a road. The driver suffered a broken arm and damage to her car as a result of the collision. The driver brought a tort suit against the city in an effort to recover damages for her arm and her car.

The district court ruled in favor of the automobile driver, based on the fact that the garbage truck was working in a corporate capacity for the city. The automobile driver claimed the garbage truck was working in a corporate capacity because the city charged a fee for trash collection. Private, corporate entities did not enjoy the same immunity protection as governmental agencies and their subdivisions. On appeal, the court held that the fact that the city
charged a fee for the garbage collection did not necessarily make it a corporate function. The appellate court overturned the district court and ruled in favor of the city. On further appeal, the Oklahoma Supreme Court held that the main issue in the case was whether or not the garbage truck was working in a governmental or corporate capacity for the city. The court considered similar decisions made in other states and upheld the intermediate appellate court’s decision, freeing the city from liability.

The court cited *James v. City of Charlotte* (1922), in which the North Carolina Supreme Court held that trash collection and removal by the city was a governmental function. The court also cited the Supreme Court of California’s decision in *Manning v. Pasadena* (1922), where the court held that trash collection remained a governmental function even though the city sold the garbage after it had been incinerated, thereby recouping some of its cost to collect the garbage. The Supreme Court of Kentucky also upheld the governmental function of trash collection in *City of Louisville v. Hehemann* (1914), by finding that garbage collection acts in the best interest of the commonwealth and is absolved from liability. In *Condict v. Jersey City* (1884), the Supreme Court of New Jersey held that the city was acting to improve the cleanliness of the city by removing the garbage waste, and that alone should impose its exemption from liability. The *Baldwin* court determined that the city was acting for the good of public health through garbage collection, and therefore, its actions constituted a governmental function.

In ruling in favor of the city, the Oklahoma Supreme Court ruled the city was not liable for the negligence of the garbage truck driver. It made a distinction between governmental and proprietary functions, which helped determine the scope of sovereign immunity enjoyed by governmental entities in Oklahoma. The court determined:
It is fundamental that the acts of a municipality are divided into two divisions, one governmental and the other corporate. If the acts of the agents of the municipality are performed while acting in a governmental capacity for said city, the city is not liable for the negligent acts of its agents, but the city is liable for such acts of its officers or agents when acting in a corporate capacity. (*Oklahoma v. Baldwin*, 1928, p. 455)

The ruling of the *Baldwin* court made it necessary for Oklahoma courts to determine the function a municipality was performing in order to determine the extent of its liability in tort litigation. This decision mirrored the decisions of other states regarding the issue of governmental versus proprietary functions of governmental bodies.

Although Oklahoma governmental entities continued to enjoy immunity from tort claims throughout the early twentieth century, the structure in which the claims were brought had changed. Tort claim decisions were made regarding governmental or proprietary functions, and discretionary or ministerial functions. Limits began to emerge around sovereign immunity. However, the fact that governmental entities continued to enjoy extreme amounts of freedom from tort liability, did not change. Although limits were beginning to help define legitimate tort claim actions, governmental defendants continued to receive immunity from the courts until the *Vanderpool* case of 1983.


*Vanderpool v. State of Oklahoma and the Oklahoma Historical Society* (1983), was a landmark case for sovereign immunity in Oklahoma. It served as the catalyst for the Oklahoma legislature to provide statutory exceptions from sovereign immunity. In this case, an office worker was walking to another building on the grounds of Fort Washita, when she was struck in the eye by a rock from a nearby tractor mower. As part of her job duties and responsibilities, she
was walking to the other building to deliver a phone message at the time the injury occurred. Fort Washita was owned by the Oklahoma Historical Society, and both the injured worker and the operator of the tractor mower were employees of the Historical Society, a political subdivision of Oklahoma state government. The injured person sustained the permanent loss of sight in her right eye as a result of being struck by the rock.

The injured plaintiff alleged negligence because the protective chain guard covering the outside of the brush hog had been removed by a state employee. The purpose of the guard was to prevent the large mower blade from throwing grass, rocks and other objects out from underneath the mowing deck. Since the guard was removed, nothing prevented the mower from slinging the rock out from under the mowing deck and striking the worker.

The district court granted summary judgment to the Oklahoma Historical Society, holding that it was protected by sovereign immunity, and any claim against a governmental entity was barred. On appeal, the Supreme Court of Oklahoma reversed the judgment and remanded the matter to the district court. “The court held that the former employee was entitled to bring her cause of action against appellees, as the judicially recognized doctrine of governmental immunity in its present state under case law was no longer supportable in reasonable justice, or in light of the overwhelming trend against its recognition” (Vanderpool v. State of Oklahoma and the Oklahoma Historical Society, 1983, p. 672). This was the first Oklahoma Supreme Court decision to challenge the trend of unwavering sovereign immunity protection for political subdivisions and their employees since Mott v. Hull (1915).

The Vanderpool court recognized that subdivisions of the state functioned both as governmental entities and as corporate bodies, and that the court had attempted to categorize the functions of the subdivisions in Oklahoma v. Baldwin in 1928. “This duality resulted in the
attempted differentiation between governmental and proprietary functions, the first generally protected by immunity, the second generally not” (Vanderpool v. State of Oklahoma and the Oklahoma Historical Society, 1983, p. 677). The court also considered the fact that the size of the government and its subdivisions had changed significantly over the years. The government had expanded the functions of its agencies and had become far more complex, working in both governmental and proprietary ways. This dual role, coupled with defining the functioning purpose behind each incident, caused the Oklahoma courts to struggle with the concept of sovereign immunity. The Vanderpool court wrote, “Judicial attempts to grapple with what has become a multi-adding medusa has resulted in confusion and uncertainty all too painfully apparent to legal scholars, and an inability on the part of the courts to evolve any definitive guidelines for the demarcation between governmental and proprietary functions” (Vanderpool v. State of Oklahoma and the Oklahoma Historical Society, 1983, p. 677). The concept of sovereign immunity was found to be too complicated for the courts to determine. “Reexamination of the soundness of the concept of governmental immunity in the light of the expanded role of government in today’s society has, for various reasons, the enumeration of which would unduly lengthen this opinion, resulted in a retreat from the concept both legislatively and by case law” (p. 677). The Vanderpool court determined that sovereign immunity was too complex to understand and apply without legislation to set parameters and serve as a guide.

The Vanderpool court responded by abandoning the practice of defining the function of the government, as being either governmental or proprietary, with regard to the concept of sovereign immunity. In a reversal of Oklahoma v. Baldwin (1928) the Vanderpool court stated:

We hold that the governmental-proprietary-function inquiry shall no longer be determinative in assessing the liability for tort as to all levels of government in this state.
The doctrine of sovereign immunity is hereby modified to bring it in line with what we perceive to be the more just and equitable view, and that which is in conformity with the generally prevailing view determined by the highest courts of our sister states. (p. 672)

The *Vanderpool* case is significant because the court altered the way tort claims involving sovereign immunity were handled in the State of Oklahoma. The court felt that the concept of sovereign immunity was losing popularity with the public and should no longer be a generally accepted principle of common law. The court stated, “The judicially recognized doctrine of governmental immunity under the case law is no longer supportable in reason, justice or in light of the overwhelming trend against its recognition. Where the reason for the rule no longer exists, that alone should toll its death knell” (p. 674). The *Vanderpool* court determined the issue of sovereign immunity should be dictated by statute, and not by common law. This decision was very similar to the decision of the court in *Mott v. Hull* (1915), in which the Oklahoma Supreme Court followed the wishes of the trial court, and the general public consensus, by finding a political subdivision liable for the negligent actions of its employees. The *Vanderpool* court also recognized the need for legislation to provide parameters for sovereign immunity and an avenue for bringing tort claims against the state and its political subdivisions. The Oklahoma Supreme Court had recommended legislation for tort claims involving the sovereign immunity of governmental entities in the very first Oklahoma sovereign immunity case, *James v. Trustees of Wellston Township* (1907).

The *Vanderpool* Court cited the fact that states had enacted statutes that limit or place conditions and restrictions on governmental immunity. In light of the contrast in the court’s view of sovereign immunity, the Supreme Court of Oklahoma called on the Oklahoma legislature to enact a statute to specify the terms and conditions of tort liability:
We are aware of and sensitive to the effect that the immediate application of the rules of
law herein enunciated would have upon the various governmental entities affected
thereby. These are matters which lie within the sphere of the Legislature alone. We
invoke its consideration of the many problems presented, including whether some of all
of the governmental entities should be insulated from unlimited tort liability through the
enactment of comprehensive of specific Torts Claims Acts which limit or prescribe
conditions of liability, their insurance against loss, the maximum monetary liability to be
allowed, or, indeed, whether it is the will of the People of the State of Oklahoma, as
expressed by statute, and the terms and conditions thereof. Ample time for consideration
of these matters must be afforded. (p. 672)

The Vanderpool Court issued an opinion that its decision was effective only to those
cases that entered the courts after October 1, 1985. Although this was a 4-3 decision, the
Oklahoma Supreme Court made it clear that it would no longer recognize the doctrine of
governmental immunity simply on the premise of traditionally inherited common law. This
decision changed the way the State of Oklahoma dealt with tort claims involving governmental
entities and their political subdivisions.

Justice Irwin wrote the dissenting opinion in the Vanderpool case. Irwin recognized the
need for a statute concerning governmental immunity, but maintained the concept should be
further defined by the legislature and not abandoned by the courts. In his dissent, Justice Irwin
stated, “In my opinion if sovereign immunity is to be abrogated, it should be done by the
Legislature and not by the courts. If the Legislature had wanted to abrogate sovereign immunity,
it would have done so” (p. 677). Although the dissenting opinion was not in agreement with the
majority regarding the abandonment of sovereign immunity, it did agree that the legislature
should enact statutes to deal with this issue. The Oklahoma Legislature responded to the
*Vanderpool* court in 1985 by enacting the Governmental Tort Claims Act, Okla. Stat. tit. 51 et seq.

**Governmental Tort Claims Act**

Moves to limit the scope of protection enjoyed by the United States government and its political subdivisions began in 1946 with the passing of the Federal Tort Claims Act. The Federal Tort Claims Act allows states to be sued in federal court for damages under certain circumstances. The exemptions include:

- Injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. (28 U.S.C.A. § 1346(b))

The introduction of the Federal Tort Claims Act limited the sovereign immunity of the United States government.

Many states followed suit by passing their own versions of the Federal Tort Claims Act in order to limit the scope of immunity enjoyed by their governmental entities, including school districts. Among those was the State of Oklahoma. In 1978, the Oklahoma legislature enacted the Political Subdivisions Tort Claims Act (Okla. Stat. 1981 tit. 51 § 151 et seq.). The law became the sole method by which an action could be pursued to recover damages from a political subdivision or its employee, but it provided a seemingly impenetrable amount of sovereign immunity protection to the governmental entity. The Act placed limits on the amount for claims. The maximum liability of a political subdivision or its employee under Okla. Stat. tit. 51 §
154(A) was: $25,000 for damage to property, $50,000 for all other claims resulting from an accident, and $300,000 for all combined claims from a single accident. Until 1985, the State of Oklahoma had no statutory means by which a political subdivision or its employees could be exempted from sovereign immunity in a state court.

In 1985, following the landmark *Vanderpool* decision, the Oklahoma legislature renamed the Political Subdivision Tort Claims Act as the Governmental Tort Claims Act (Okla. Stat. tit. 51 § 151 et seq.). The new Oklahoma Act defined the specific circumstances under which the state and its entities could be held liable, thereby waiving immunity rights in all other situations. The Act legislatively affirmed the traditionally accepted concept of sovereign immunity of the government and its entities, arising from British common law, by stating:

The State of Oklahoma does hereby adopt the doctrine of sovereign immunity. The state, its political subdivisions, and all of their employees acting within the scope of their employment, whether performing governmental or proprietary functions, shall be immune from liability for torts. The liability of the state or political subdivision under this act shall be exclusive and in place of all other liability of the state, a political subdivision or employee at common law or otherwise. (Okla. Stat. tit. 51 § 151)

While the Governmental Tort Claims Act affirmed the concept of sovereign immunity for the State of Oklahoma and its political subdivisions, it also sought to limit its scope by providing 33 specific exemptions from liability. These exemptions define the instances in which a governmental entity of the State of Oklahoma could not be held liable. All other circumstances could be subject to tort claims and liability. Specifically:

A state or political subdivision shall not be liable if a loss of claim results from:

1. Legislative functions;
2. Judicial, quasi-judicial, or prosecutorial functions;

3. Execution or enforcement of the lawful orders of any court;

4. Adoption or enforcement of or failure to adopt or enforce a law, whether valid or invalid, including, but not limited to, any statute, charter provision, ordinance, resolution, rule, regulation or written policy;

5. Performance of or the failure to exercise or perform any act or service which is in the discretion of the state or political subdivision or its employees;

6. Civil disobedience, riot, insurrection or rebellion or the failure to provide, or the method of providing, police, law enforcement or fire protection;

7. Any claim based on the theory of attractive nuisance;

8. Snow or ice conditions or temporary or natural conditions on any public way or other public place due to weather conditions, unless the condition is affirmatively caused by the negligent act of the state or a political subdivision;

9. Entry upon any property where that entry is expressly or implied authorized by law;

10. Natural conditions of property of the state or political subdivision;

11. Assessment or collection of taxes or special assessments, license or registration fees, or other fees or charges imposed by law;

12. Licensing powers or functions including, but not limited to, the issuance, denial, suspension or revocation of or failure or refusal to issue, deny, suspend or revoke any permit, license, certificate, approval, order or similar authority;

13. Inspection powers or functions, including failure to make an inspection, review or approval, or making an inadequate or negligent inspection, review or approval of
14. Any loss to any person covered by any workers’ compensation act or any employer’s liability act;

15. Absence, condition, location or malfunction of any traffic or road sign, signal or warning device unless the absence, condition, location or malfunction is not corrected by the state or political subdivision responsible within a reasonable time after actual or constructive notice or the removal or destruction of such signs, signals or warning devices by third parties, action of weather elements or as a result of traffic collision except on failure of the state or political subdivision to correct the same within a reasonable time after actual or constructive notice. Nothing herein shall give rise to liability arising from the failure of the state or any political subdivision to initially place any of the above signs, signals or warning devices. The signs, signals and warning devices referred to herein are those used in connection with hazards normally connected with the use of roadways or public ways and do not apply to the duty to warn of special defects such as excavations or roadway obstructions;

16. Any claim which is limited or barred by any other law;

17. Misrepresentation, if unintentional;

18. An act or omission of an independent contractor or consultant or his employees, agents, subcontractors or suppliers or of a person other than an employee of the state or political subdivision at the time the act or omission occurred;
19. Theft by a third person of money in the custody of an employee unless the loss was sustained because of the negligence or wrongful act or omission of the employee; 

20. Participation in or practice for any interscholastic or other athletic contest sponsored or conducted by or on the property of the state or a political subdivision; 

21. Participation in any activity approved by a local board of education and held within a building or on the grounds of the school district served by that local board of education before or after normal school hours or on weekends; 

22. Any court-ordered or Department of Corrections approved work release program; provided, however, this provision shall not apply to claims from individuals not in the custody of the Department of Corrections based on accidents involving motor vehicles owned or operated by the Department of Corrections; 

23. The activities of the National Guard, the militia or other military organization administered by the Military Department of the state when on duty pursuant to the lawful orders of competent authority: 
   a. in an effort to quell a riot, 
   b. in response to a natural disaster or military attack, or 
   c. if participating in a military mentor program ordered by the court; 

24. Provision, equipping, operation or maintenance of any prison, jail or correctional facility, or injuries resulting from the parole or escape of a prisoner or injuries by a prisoner to any other prisoner; provided, however, this provision shall not apply
to claims from individuals not in the custody of the Department of Corrections
based on accidents involving motor vehicles owned or operated by the
Department of Corrections;

25. Provision, equipping, operation or maintenance of any juvenile detention facility,
or injuries resulting from the escape of a juvenile detainee, or injuries by a
juvenile detainee to any other juvenile detainee;

26. Any claim or action based on the theory of manufacturer’s products liability or
breach of warranty, either expressed or implied;

27. Any claim or action based on the theory of indemnification or subrogation;

28. Any claim based upon an act or omission of an employee in the placement of
children;

29. Acts or omissions done in conformance with then current recognized standards;

30. Maintenance of the state highway system or any portion thereof unless the
claimant presents evidence which establishes either that the state failed to warn of
the unsafe condition or that the loss would not have occurred but for a negligent
affirmative act of the state;

31. Any confirmation of the existence or nonexistence of any effective financing
statement on file in the office of the Secretary of State made in good faith by an
employee of the office of the Secretary of State as required by the provisions of
Section 1-9-320.6 of Title 12A of the Oklahoma Statutes;

32. Any court-ordered community sentence; or

33. Remedial action and any subsequent related maintenance of property pursuant to
and in compliance with an authorized environmental remediation program, order,
or requirement of a federal or state environmental agency. (OKLA STAT tit. 51 § 155 (2009))

The Act includes exceptions for liability that cover almost all tort cases that deal with sovereign immunity. Therefore, it is very difficult to seek a remedy for tort claims in the Oklahoma state courts. As will be shown later in this chapter, in the analysis of Oklahoma court cases dealing with sovereign immunity for educators, almost every person, entity, and subdivision affiliated with the Oklahoma government enjoys extreme freedom from liability. The 33 exceptions cover almost every situation where a school district or its employees could be held liable for wrongful action or negligence, so long as they are acting within their scope of employment.

The Governmental Tort Claims Act is the only avenue by which a person can bring a tort claim to seek monetary damages for injuries against a political subdivision of Oklahoma. As the Oklahoma Supreme Court stated in a 1987 decision, “The Oklahoma Governmental Tort Claims Act is the exclusive remedy by which an injured individual plaintiff may recover against a governmental entity for its negligence” (Fuller v. Odom, 1987, p. 741).

Negligent Supervision

On June 25, 1993, Oklahoma adopted the Standards of Performance and Conduct for Teachers contained in Oklahoma Administrative Code, Okla. Admin. Code § 210:20-29-3. The standards are communicated through three principles: Commitment to the students, commitment to the profession, and Okla. Stat. tit. 70 § 101.22. Principle I(4) states, “In the fulfillment of the obligation to the student, the teacher shall make reasonable effort to protect the student from conditions harmful to learning or to health and safety” (Okla. Admin. Code § 210:20-29-3). Oklahoma educators are charged by statute to protect the safety and well-being of their students.
A case that affirms the limits set on tort claim damages for school districts and their employees under the Political Subdivision Tort Claims Act (Okla. Stat. tit. 51 § 143) is *Wilson v. Gipson* (1988). In January of 1982, students were eating lunch in the cafeteria at Star Elementary School in Spencer, Oklahoma. At approximately 12:15 P.M. a hot water heater located in the cafeteria exploded, killing five children and one teacher, and injuring several other children.

The parents of the children who were killed or injured in the explosion sued the school district, three school district employees, and several manufacturers of hot water heater parts for damages. The school district and its employees filed a petition for interpleader and gave $300,000 to the district court. The $300,000 was the maximum amount the school’s insurance carrier would pay under the Political Subdivision Tort Claims Act. The district court held that the school district and its employees were immune from the claim after the tendering of the $300,000. The parents of the children then appealed, arguing that the Political Subdivisions Tort Claims Act was unconstitutional on both federal and state constitutional grounds.

The appellate court upheld the ruling of the district court ruling that the Political Subdivision Tort Claims Act limited recovery against political subdivisions. In the appellate court’s view, the Act had a rational basis in fact and bore a reasonable relationship to a legitimate governmental goal, and thus, did it not violate the Equal Protection Clause of the Fourteenth Amendment in the United States Constitution. In addition, the maintenance of a hot water heater in a public school building was a purely governmental function, and therefore the Act did not conflict with a provision in the Oklahoma Constitution (Okla. Const., art. 23 § 7) which embodied the statutory right of action for wrongful death” (*Wilson v. Gipson*, 1988, p. 753). Thus, the appellate court held that the school district was not liable for damages beyond the $300,000 tendered to the district court.
A case that exemplifies the sovereign immunity granted to school districts and their employees by the Governmental Tort Claims Act is *Hull v. Wellston Independent School District* (2000). Ty, a high school football student at Wellston High School in Oklahoma, suffered a brain injury, a broken collar bone, and a punctured lung during a practice football game against Bethel High School. He became permanently disabled as a result of his injuries. Ty’s mother filed suit against the school district and its Board of Education on his behalf claiming the coaches knew Ty did not have parental consent to play in the game and that he had not received the required medical examination. She also claimed Ty did not have a suitable helmet that was safe and that the coaches knew Ty had been experiencing undiagnosed medical problems in the month prior to the incident. Her final claim was that the coaches were not provided sufficient training to recognize and treat head injuries of the students, including knowing the procedure for transporting the injured student to the hospital.

The school district filed a motion to dismiss the claim based on that fact that relief could not be granted for her claim according to Section 155(20) of the Governmental Tort Claims Act, which prohibits suits against political subdivisions of the State of Oklahoma relating to any “interscholastic or other athletic contest.” Although Hull’s attorney claimed the school district exercised “willful and wanton” negligence when they hired the football coaches, her suit was dismissed by the trial court because the Act prohibited Deborah’s claims.

In December of 2001, the appellate court affirmed the judgment of the trial court, stating, “Section 155(20) excluded any claim resulting from participation in or practice for athletic contests sponsored or conducted by, or on the property of, the school district” (*Hull v. Wellston Independent School District*, 2000, p. 46). This case is an example of how the 33 exceptions
from liability contained in the Governmental Tort Claims Act serve to protect a school district from liability.

Another Oklahoma case that granted immunity to a school district in a negligence claim came was *Ochoa v. Taylor* (1981). Sylvia Ochoa was struck by a car while crossing the street after a football game at the Bethany High School Stadium. The driver of the automobile, Matthew Taylor, was speeding and was driving left of the center median. Ochoa filed a suit against Taylor, the City of Bethany, and the Putnam City School District. The city was named in the suit because the stadium was owned by the city, which leased the stadium to the school district. Ochoa claimed the city and the school district were negligent because of the lack of traffic control at the location of the accident. Ochoa also claimed the school district failed to provide adequate lighting and the necessary guard service to safely help the students and spectators cross the busy street.

The city and school district both filed demurrers (motions to dismiss the claims). The district court sustained the demurrers and dismissed the lawsuits. The district court justified its ruling by stating, “First, the Cities and School Districts did not owe a duty to Ochoa. Second, the Cities’ and School Districts’ actions could not be the proximate cause of Ochoa’s injuries. Third, the Cities and School Districts are immune from suit under the provisions of the Political Subdivision Tort Claims Act” (*Ochoa v. Taylor*, 1981, p. 1132). Thus the trial court ruled that the city and school district were not liable for negligence under the Political Subdivisions Tort Claims Act. On appeal, the appellate court affirmed the trial court’s decision and held that Ochoa failed to state a cause of action. This case further defined the scope of sovereign immunity for Oklahoma governmental entities and their subdivisions by affirming the protection afforded to school districts and their employees.
In another Oklahoma tort case, *Curtis v. Board of Education of Sayre Public Schools* (1995), Clifton Curtis, a 12 year-old student in the Sayre public school system, sustained injuries to the head while participating in a physical education class at school. One day in physical education class, Clifton’s teacher instructed him to play the position of catcher. The teacher allegedly did not provide Clifton with a catcher’s mask, and Clifton was struck in the mouth with a baseball bat. Clifton was severely injured as a result of the hit.

The school district moved to dismiss the case, claiming it was protected from liability under the Governmental Tort Claims Act. The district court granted the dismissal and found that the district was immune from liability under the Act. Later, the appellate court reversed the district court’s ruling. “It held that competitive activities in which student participation is required as part of the educational curriculum do not fall within the immunity protection of §155(20)” (*Curtis v. Board of Education of Sayre Public Schools*, 1995, p. 454).

The intermediate appellate court’s ruling was then appealed to the Oklahoma Supreme Court. The Supreme Court overturned the court of appeals, affirming the district court’s decision for dismissal. The Supreme Court stated, “When the legislature expanded the Oklahoma Governmental Tort Claims Act to include ‘other contest(s) sponsored or conducted by or on’ school property, it intended to include athletic contests other than those between schools” (*Curtis v. Board of Education of Sayre Public Schools*, 1995, p. 420). The Oklahoma Supreme Court interpreted the exceptions from immunity contained in the Governmental Tort Claims Act to include all sports activities held on a school campus, whether or not they are competitive. The Oklahoma Supreme Court expanded the scope of school district and educator immunity by broadly interpreting the exemption for sports activities contained in the Act.
A similar Oklahoma negligence decision was brought forth in *Herweg v. Board of Education of the Lawton Public Schools* (1982). Gregory Herweg was a junior high football player in the Lawton Public Schools. He broke his leg during a practice at school while no teachers or coaches were supervising the students. The athletes were at school waiting for practice to begin. Herweg brought a suit against the school district and the coaches seeking punitive damages on the following claims: The coaches “failed to keep a proper lookout for the safety of the students, failed to maintain proper supervision and control, allowed reckless and dangerous activity, failed to act when altered to the unsafe, failed to use reasonable judgment in directing the course, acted with total, utter, and reckless disregard for the right and safety of this minor and in a grossly negligent manner” (*Herweg v. Board of Education of Lawton Public Schools*, 1982, p. 673).

The school district filed a demurrer to dismiss the case on the grounds that it was not liable under the Political Subdivision Tort Claims Act. The trial court agreed with the school district and dismissed the case by sustaining the school district’s general demurrer. The appellate court overturned the trial courts’ dismissal of the case holding that, “The dismissal implied that there were no circumstances involving interscholastic high school athletics giving rise to a legal right of action against a school board and its employees. The court held that the Political Subdivision Tort Claims Act, Okla. Stat. tit. 51 § 151 et seq. (1978 Supp.), had not superseded the pre-Act exceptions to the immunity doctrine” (*Herweg v. Board of Education of the Lawton Public Schools*, 1982, p. 673). On further appeal, the Oklahoma Supreme Court determined that the accepted method of raising the issue of sovereign immunity came in the form of a general demurrer, Okla. Stat. tit. 12, § 267 (1981), and reversed the decision of the appellate court, thereby affirming the decision of the trial court.
Evans v. Oaks Mission Public School (1997), dealt with another student injury from participation in a physical activity in school. Raymond Evans had been an athlete during his sophomore year of high school. During that year, he participated in football, basketball, and baseball. He received several injuries from his involvement in those sports that year, including two shoulder separations and a jammed shoulder. Although Raymond wanted to continue playing sports in his junior year, his parents convinced him to sit out a year and rejoin the teams when he was a senior. Evans complied with his parents’ wishes and enrolled in a physical education class in place of competition athletics for his junior year. The physical education class included lifting weights four days a week and playing competitive sports on Fridays.

Evans was participating in a wrestling match during physical education class for one of the competitive sports. As a result of his participation in the match, he dislocated his shoulder. Evans’s mother filed a lawsuit against the school district alleging gross negligence on the part of the school district and three of his coaches. The suit alleged that the coaches failed to properly supervise and protect Evans and had encouraged him to harm himself. The suit included punitive claims against the coaches.

The school district and its employees sought to dismiss the case on the grounds that it was immune from liability under the Governmental Tort Claims Act because the plaintiff student was participating in an athletic contest on school property when the injury occurred. Summary judgment was granted to the teachers. Only the negligence claim against the school district went to trial. The trial court entered a verdict against Evans and in favor of the school district.

The appellate court and the Oklahoma Supreme Court affirmed the judgment of the trial court against the Evans. The Oklahoma Supreme Court cited its reference to the Governmental Tort Claims Act made in its recent decision in Curtis v. Board of Education of Sayre Public
Schools (1995). In that case, the court stated, “The state or a political subdivision shall not be liable if a loss or claim results from…participation in or practice for any interscholastic or other athletic contest sponsored or conducted by or on the property of the state or a political subdivision,” (citing Okla. Stat. tit. 51 § 155(20)). The court concluded that the provision of the Governmental Tort Claims Act barring suit against school districts arising from athletic contests applied to participation in all athletic sports and competitions, whether interscholastic or extra-curricular.

Cooper v. Millwood Independent School District No. 37 (1994), involved a claim of negligent transportation of Darshaun Cooper, a student in Millwood Independent School District. Cooper was injured while riding the bus home from school when he was attacked by another student. Cooper sustained a fractured skull and permanent injury to his left eye as a result of the attack. Cooper brought a claim against the bus driver, Neal, and the Millwood Independent School District on the grounds that, due to the rowdy conditions of the bus, it might have been foreseen that a conflict between students could occur that would result in students being injured.

The trial court dismissed the case for failure to state a cause of action. Cooper appealed, claiming the bus driver was negligent for allowing the injury to occur. The court of appeals affirmed the lower court’s decision and held that the bus driver’s primary responsibility was the safe operation of the bus while it was on the road. The court stated, “School bus drivers are required to transport children safely between the school and home and it is a necessary corollary to this duty that they be accorded the concomitant authority to maintain safety on the school bus. The degree of care imposed on school bus drivers, and their authority to maintain safety on the bus, however, is for obvious reasons to be consistent with the practical operation of the bus” (Cooper v. Millwood Independent School District No. 37, 1994, p. 555). Additionally, the court
determined that the bus driver was acting within the “scope of employment” while operating the bus during the assault. The primary responsibility of the driver was held by the court to ultimately be the operation of the bus while driving down the road. The court determined that the bus driver and the school district were both immune from liability under the Governmental Tort Claims Act.

In *Wetsel v. Independent School District I-1* (1983), the parents of a kindergarten student brought a negligence claim against a school district, principal, and teacher for injuries he received in the classroom. Linda Parton, a kindergarten teacher, brought an electric deep fryer to class to make donuts in the shape of the letter “D”. Parton used the donuts to teach the alphabet to her kindergarten students. During the lesson, one of the students tripped on the power cord to the deep fryer and the fryer flipped off of the table. The contents of the fryer spilled onto students and the floor. Parton tried to rescue several of the students, but she slipped on the floor and fell. Bradley Wetsel, a kindergarten student in the classroom, was burned when he came in contact with the hot spilled grease.

The trial court sustained the principal’s claim for demurrer to the evidence. The trial court also returned a verdict in favor of the school district and the teacher, finding that the student failed to establish a cause of action and that the district and the teacher enjoyed sovereign immunity from tortuous claims. The appellate court reversed the judgment on the principal’s demurrer, and ordered a verdict against the teacher and school district on the issue of liability because it found that the teacher and school were negligent in this matter. However, on further appeal, The Oklahoma Supreme Court overturned the appellate court and affirmed the decision of the trial court to dismiss the action, holding that the students’ exposure to a deep fryer could not be regarded as negligent and that the teacher took safety precaution measures. Under the
Governmental Tort Claims Act, both the teacher and school district enjoyed sovereign immunity for the negligent action of the teacher.

A strikingly similar case arose in Texas seven years after Wetsel v. Independent School District I-1 (1983). In Chesshir v. Sharp (1990), another kindergarten student was burned during a lesson that involved frying donuts in a kindergarten classroom. Becky Sharp was an elementary teacher at Duncan Elementary School. The students had previously been making a mock bakery and studying the letters of the alphabet. Sharp brought a deep fryer to class to cook donuts for the kids while they were studying the letter “D”. After reading a book about donuts, Sharp began to fry the donuts. Dillon Chesshir, a five year old student in the class, tripped over the power cord while walking across the room and splattered hot grease on his face, neck and back. His injuries required medical attention.

A Texas intermediate appellate court responded to Chesshir’s lawsuit much like the Oklahoma courts had responded to Wetsel. Sharp filed for summary judgment claiming she was immune from suit. The trial court agreed with Sharp and granted the motion to dismiss, claiming Sharp was not acting outside of the scope of duty and was entitled to statutory immunity as an educator. The appellate court affirmed the trial courts’ decision on the basis that Sharp was shown to be acting within the scope of her employment at the time the child was burned and was immune from suit under the Texas educator immunity statute.

Another Oklahoma negligence case was brought in Franks v. Union City Public Schools (1997). Douglas Franks, a student at Union City High School, was struck in the face and assaulted near a vending machine outside of the activity room at his school. The high school had regularly scheduled duty assignments for its teachers, but no teachers were assigned for duty at the time and place of the assault. The assault occurred at 11:50 a.m., and no teachers were
scheduled for hall duty until 12:15 p.m. The school’s principal was patrolling the grounds at the
time of the assault, but was not in the area and was unaware of the assault.

A suit was brought by the Franks alleging negligence of the school to provide adequate
supervision of the students. The school district moved for summary judgment based on the
Governmental Tort Claims Act. “The school first argued that, under Title 51 O.S. 1991, §
155(5), the decision on whether to provide security was a discretionary function, and thus, the
school was exempt. Next, the school argued that it was exempt from liability, under Title 51 O.S.
1991, §155(6), for the manner in which it provided or failed to provide police protection”
*Franks v. Union City Public Schools*, 1997, p. 945). The trial court granted the school district’s
motion for summary judgment. The Oklahoma Supreme Court affirmed the decision of the trial
court and held that the school district was not liable under the Governmental Tort Claims Act.

The concept of sovereign immunity was applied in all of the afore-mentioned cases. Each
case was resolved with the school defendant being granted sovereign immunity at some level of
the court system. Although Oklahoma’s intermediate appeals court sometimes permitted cases to
go forward based on finding that the Governmental Tort Claims Act did not bar a particular
lawsuit, the Oklahoma Supreme Court has consistently granted sovereign immunity rights to
school districts and their employees.

**Corporal Punishment: State Court Decisions**

The use of corporal punishment in public schools has seen a sharp decline during the past
twenty years (US Department of Education, 2009). In 1976, 3.5% of students in American public
schools were disciplined by corporal punishment, approximately 1,521,896 students. The rate
has fallen nationally to .46% of students receiving corporal punishment in 2006. Only 223,190
students in United Stated public schools were disciplined with corporal punishment in 2006 (US Department of Education, 2009).

Figure 1. This chart shows the percentage of students who received corporal punishment in public schools in the United States from 1976 to 2006.


Corporal punishment in public schools is currently legal in only twenty states. The states are: Alabama, Arkansas, Arizona, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, Tennessee, Texas, and Wyoming (US Department of Education, 2006). All other states have passed statutes prohibiting corporal punishment in schools. Ohio is the most recent state to
legislate a ban on corporal punishment with the July 17, 2009 adoption of the Ohio Education Reform Plan (Ohio Rev. Code Ann. § 3319.41(A) (West 2010)).

In 2006, Oklahoma was ranked number 4 in the nation for the highest percentage of students receiving corporal punishment in schools. According to the US Department of Education (2006), 2.3% of Oklahoma students, 14,868 students, received corporal punishment in 2006. The 3 states that used corporal punishment on a higher percentage of students in 2006 were Mississippi, Arkansas, and Alabama (US Department of Education, 2006). The chart below represents the top 10 states ranked in descending order of the percentage of students who received corporal punishment in public schools in 2006.

Figure 2. This chart compares the percentage of students who received corporal punishment in public school in 2006 by state.
In spite of the fact that Oklahoma is one of the twenty states that still permits corporal punishment in the public schools, and ranks fourth among those twenty states in the percentage of students who received corporal punishment, litigation by Oklahoma parents against school districts and school officials for excessive corporal punishment is extremely rare. In fact, during the 103 years that Oklahoma has been a state, only two published state court opinions have dealt with parents’ claims of excessive corporal punishment in the public schools. One of those cases, *Reirdon v. Wilburton Board of Education* (1980), dealt with the purely procedural issue of whether the parents had filed a timely notice of claim. The *Reirdon* case will be discussed more extensively in the section of this dissertation that analyzes statute-of-limitation rulings in tort suits against Oklahoma public school defendants.

One reason for the dearth of litigation in Oklahoma over corporal punishment in the public schools may have to do with specific legislation that gives Oklahoma educators the same right to discipline students in the schools that the students’ parents have in the home. The Oklahoma School Security Act, Okla. Stat. tit. 70 § 24-100.4(A), states:

*Provided, the teacher of a child attending a public school shall have the same right as a parent or guardian to control and discipline such child according to district policies during the time the child is in attendance or in transit to or from the school or any other school function authorized by the school district or classroom presided over by the teacher.*
Oklahoma law specifically permits both parents and teachers to use “ordinary force as a means of discipline, including “switching, spanking, or paddling” (Okla. Stat. tit. 21 § 844 (2009).

*Holman v. Wheeler*, a 1983 case, is the only published Oklahoma state court decision that addressed the merits of a claim of excessive corporal punishment against an Oklahoma public school employee. In that case, David Holman, a ten year old student, was involved in “minor scuffling” with another student on school grounds outside of the school building (p. 646). The incident occurred on a Saturday, not a district school day. Apparently, a teacher was on the premises, who punished both children.

Later, according to Holman’s lawsuit, Bob Wheeler, the school superintendent, punished the two boys a second time. Specifically, the plaintiffs (Holman and his guardian) claimed that Wheeler spanked David Holman in “a violent manner” while “in a fit of intoxicated rage” (p. 646). The Holman child began to cry, whereupon Wheeler allegedly threatened to hit him “between the eyes with the paddle” (p. 646). As a result of this incident, the plaintiffs charged that David Holman received medical treatment at a nearby clinic “for bruises and for pain, anguish, extreme anxiety and nervousness” (p. 646).

Holman brought a tort action claim against Wheeler to recover damages for injuries he received, which he described as “willful assault and battery” (p. 646). Wheeler filed a demurrer, in which he sought to dismiss the lawsuit. Wheeler claimed that he was acting within the scope of his employment when he spanked David Holman, and thus he was immune from suit under the Political Subdivision Tort Claims Act. An Oklahoma trial court sustained Wheeler’s demurrer and dismissed the suit, ruling that the Act applied to the incident and that Wheeler was immune from liability.
On appeal, the Oklahoma Supreme Court reversed the trial court’s decision, ruling that Holman had alleged facts indicating that Wheeler had not been acting within the scope of his authority as a school employee when he administered the corporal punishment. While governmental employees are protected from tort liability while performing discretionary functions within the scope of their employment, the Oklahoma Supreme Court observed, they are not immune from liability “for willful and wanton negligence or conduct which places the employees outside the scope of their employment” (p. 647). Thus, the trial court had erred when it had dismissed Holman’s suit on the grounds that Wheeler’s conduct was protected from suit by the Political Subdivisions Tort Claims Act.

In addition to the Holman case, one published Oklahoma state court opinion has been issued involving the propriety of a school district’s action in dismissing a teacher for excessive corporal punishment. In Hagen v. Watts Public Schools (2007), Jerry Hagen, a special education teacher at Watts Public Schools, admittedly slapped K. H., a special education student, two times on the cheek in Watts’ class after K.H. attempted to leave the classroom without permission. K. H. had a history of violence in the school and was reportedly clinching his fists together in anger just prior to the incident. Hagen reported the incident immediately, and he was terminated by the school district for “alleged physical or mental abuse of a child,” a lawful ground for dismissing a career teacher (Okla. Stat. tit. 70 § 6-101.22(A)(3)).

Hagen sued the school district under the Oklahoma Teacher Due Process Act of 1990 (Okla. Stat. tit. 70 § 6-101.20), arguing that the school board erred when it dismissed him for the slapping incident. Under Oklahoma law, a career teacher who appeals a school board’s dismissal decision is entitled to a trial de novo by an Oklahoma trial court, in which the school board must show by the preponderance of the evidence that the dismissal was justified. The trial court then
hears the case without a jury in a trial de novo and independently determines whether the facts justify termination (p. 739).

In Hagen’s case, a trial judge listened to the school board’s evidence and determined that the board was not justified in firing Hagen for the slapping incident. Apparently, at least some school authorities were ambivalent about the firing decision because the superintendent testified at trial that she was still undecided about whether Hagen should be dismissed. Additionally, several teachers testified that Hagen had not abused K. H., but only used necessary actions to control his behavior. Teachers also testified that K. H. was a serious discipline problem in the school. During the trial, the district judge noted that K. H. was not intimidated or afraid of Hagen, and that even the student’s brother and grandmother did not want to see Hagen fired. In the trial court’s view, the slapping incident was an isolated event in an otherwise unblemished record. Viewing the totality of the evidence, the trial concluded that the school board had not established by a preponderance of the evidence that Hagan had engaged in “physical or mental abuse of a child” (p. 743).

On appeal, the Oklahoma Supreme Court reviewed the trial court’s decision and upheld it without qualification. The state’s highest court noted in its decision that under Oklahoma law, a teacher is allowed to use “ordinary force as a means of discipline, including but not limited to spanking, switching or paddling” (p. 740). In addition, the court upheld the trial court’s award of attorney fees to Hagen. One Oklahoma Supreme Court justice dissented, arguing that the case was about “an assault and battery” upon a sixth-grade special education student and that the trial court’s findings in favor of Hagen were clearly erroneous (p. 743).

Although the Hagen case involved a school board’s dismissal action against a teacher based on an accusation of excessive corporal punishment and not a lawsuit by a parent, the case
illustrates how corporal punishment in the schools is apparently viewed in Oklahoma. When Hagen appealed his dismissal to an Oklahoma trial court, he benefited from sympathetic testimony from teachers, the school superintendent, and even the slapped child’s relatives. It seems likely that corporal punishment is viewed so positively in Oklahoma that few parents dare to sue school authorities for excessive corporal punishment in the courts. School officials not only enjoy substantial protection from suit under the Oklahoma Governmental Tort Claims Act, they also enjoy substantial support for corporal punishment by the public in general.

Corporal Punishment: Federal Court Decisions

Although only one published state court decision exists that addresses the substantive issues about excessive corporal punishment by an Oklahoma public educator (Holman v. Wheeler, 2007), three federal court decisions have reviewed parents’ claims that corporal punishment was administered by school officials against their children that was so excessive that the incidents constituted violations of the children’s constitutional rights. It seems likely that parents sued school officials in federal court, alleging constitutional infractions, because they knew that their chances of prevailing in a lawsuit filed in state court were miniscule due to the protection that Oklahoma educators enjoy under the Oklahoma Governmental Tort Claims Act.

Before discussing these three federal court decisions in detail, it will be helpful to review what the United States Supreme Court and the federal appellate courts have said about the constitutionality of corporal punishment in the public schools. Ingraham v. Wright (1977) is the only Supreme Court pronouncement on corporal punishment and public education. In that case, Florida high school students challenged the constitutionality of corporal punishment they received on two grounds. First, the students maintained that corporal punishment violated the Eighth Amendment to the United States Constitution, which prohibits “cruel and unusual
punishments.” Second, the students claimed that the corporal punishment they received violated the due process clause of the Fourteenth Amendment because they were not afforded a hearing before the corporal punishment was administered.

Regarding the students’ first argument, the Supreme Court ruled that the Eighth Amendment was intended to restrict criminal punishments and was not applicable to the schools. “The schoolchild has little need for the protection of the Eighth Amendment,” the Supreme Court observed (p. 651). The openness of the public schools and their governance by local communities provided students with significant protection against the kinds of abuses that the Eighth Amendment was intended to constrain. After all, the Court noted, school authorities are privileged to inflict reasonable corporal punishment on school children, and teachers or administrators who exceed the scope of that privilege through the use of excessive force could be sued for their excesses or even prosecuted in the criminal courts.

As for the Florida students’ due process argument, the Supreme Court acknowledged that corporal punishment in public schools implicates students’ constitutional right to “liberty” under the Fourteenth Amendment. Nevertheless, the court concluded, the traditional remedies of the common law provide sufficient due process for students who are the victims of excessive corporal punishment; even though these remedies are available only after the corporal punishment was administered. Thus the court ruled that school officials are not required to offer hearings to students before corporal punishment is inflicted, even though the act of administering corporal punishment—involving “appreciable physical pain”—implicated a school child’s constitutionally protected interest in liberty.

Since the Supreme Court’s decision in *Ingraham v. Wright*, several federal appellate courts have opined on the question of whether an incident of corporal punishment can be so
shockingly excessive that it constitutes a violation of substantive due process. The federal courts are split on this issue. The Fifth Circuit Court of Appeals, for example (with jurisdiction over Louisiana, Mississippi, and Texas), has refused to recognize a constitutional challenge for excessive corporal punishment (Moore v. Willis Independent School District, 2000).

The Tenth Circuit, however, with jurisdiction over six western states, including Oklahoma, specifically recognized a constitutional cause of action against school authorities for excessive corporal punishment in the case of Garcia v. Miera (1987). The court made clear, however, that corporal punishment must be so excessive as to be conscience shocking before it would recognize the act as a constitutional violation.

In Garcia, the parents of Teresa Garcia, sued several school officials based on two acts of corporal punishment inflicted on their daughter, who was nine years old when the incidents occurred. According to the Garcias, Theresa Miera, the principal at Teresa’s elementary school, summoned Teresa to the principal’s office for hitting a boy who had kicked her. Teresa apparently refused to be paddled and told the principal that her father had said that “Mrs. Miera had better shape up” (p. 652).

Miera allegedly responded to Teresa’s defiance by calling J. D. Sanchez, a teacher at the school, for assistance. The court described Teresa Garcias’ version of events as follows:

Sanchez held Garcia upside down by her ankles while Miera struck Garcia with a wooden paddle. . . . The paddle “was split right down the middle, so it was in two pieces, and when it hit, it clapped [and] grabbed. Miera hit Garcia five times on the front of the leg between the knee and the waist. After the beating, Garcia’s teacher, Ruth Dominez, “noticed blood coming through [Garcia’s] clothes,” and, on taking Garcia to the
restroom, was shocked to see a “welt” on Garcia’s leg. The beating made a two-inch cut on her leg that left a permanent scar. (p. 653, internal citations omitted)

Shortly after this incident, Teresa’s mother told principal Miera not to spank Teresa again unless she was notified, and Miera allegedly agreed.

A few months later, however, Miera reportedly paddled Teresa Garcia a second time for spreading rumors about an incident on a school bus. As described by the court, this punishment was also quite severe.

Miera proceeded to strike Garcia two times with the paddle on the buttocks. Garcia then refused to be hit again. Miera responded by calling Edward Leyba, an administrative associate at the school. Leyba pushed Garcia toward a chair over which she was to bend, and receive three additional blows. Garcia and Leyba struggled and Garcia hit her back on Miera’s desk, from which she suffered back pains for several weeks. Garcia then submitted to the last three blows. The beating caused severe bruises on Garcia’s buttocks, which did not stop hurting for two or three weeks. (p. 653)

A doctor who treated Teresa said that he had not seen such extensive bruising from routine spankings. A nurse who examined Garcia’s injuries stated that if she had seen such injuries inflicted by a parent, she “would have called [the police department’s] Protective Services” (p. 653).

Teresa Garcia’s lawsuit was dismissed by a federal trial court, who ruled that the school defendants were immune from a constitutional suit because the law was unclear with regard to whether the conduct that Teresa Garcia alleged was a constitutional violation. The Tenth Circuit reversed, however, ruling that corporal punishment could be a violation of a child’s right to substantive due process if it reached some level of excessiveness or brutality. More specifically,
corporal punishment is actionable as a constitutional violation if it is “so grossly excessive as to be shocking to the conscience” (p. 656).

The Tenth Circuit cautioned that the threshold for recovery on a constitutional claim for excessive corporal punishment was high.

But the allegations with respect to the first beating, that this nine-year-old girl was held up by her ankles and hit several times with a split board of substantial size on the front of her legs until they bled—supported by evidence of a substantial scar—are sufficient. The allegations with respect to the second beating, that the punishment was severe enough to cause pain for three weeks—supported by pictures of the injured buttocks, an affidavit from an examining doctor that in his long experience he had not seen bruises like that from routine spankings, and an affidavit from an examining nurse that if a child had received this type of injury at home she would have reported it as child abuse—are also sufficient. (p. 658)

Based on the precedent set by the Tenth Circuit in *Garcia v. Miera*, Oklahoma parents who believe their children have received corporal punishment so excessive as to be conscience shocking may sue school authorities in federal court charging a violation of their child’s constitutional rights.

Since the *Garcia* decision was rendered, three suits alleging excessive corporal punishment have been brought in the federal courts of Oklahoma. *Gerks v. Deathe* (1993), the first of these three suits, involved Kristi Gerks, an elementary school child in Putnam City, Oklahoma, who suffered from a mental disability and cerebral palsy. On September 24, 1991, teacher Tracey Deathe instructed Kristi to go to the bathroom before class was to start. In additional to her physical disabilities, Kristi also had a documented fear of bathrooms. When she
did not return from the bathroom in a reasonable amount of time, Deathe went in the bathroom to check on the situation.

When Deathe entered the bathroom she found Kristi sitting next to three piles of excrement on the floor. Deathe left the bathroom and returned with paper towels for Kristi to clean up her mess. Deathe confined Kristi to the bathroom against her will for more than two hours, until she had cleaned up the mess. Deathe then helped Kristi clean herself and change clothes. She took Kristi to the principal’s office where Principal Nancy Krodel allegedly showed Kristi a paddle “to let her know what happened when children did not obey school rules” (p. 1452). As described by the Gerks family, the entire incident lasted nearly three hours.

As a result of this incident, Kristi’s parents filed a lawsuit in federal court against Deathe, the teaching assistant, principal Krodel, and the superintendent of schools. The Gerks alleged violations of Kristi’s constitutional right to substantive due process under the Fourteenth Amendment and her right to procedural due process as well. In addition, Kristi’s parent sued school officials for the torts of outrage and false imprisonment, causes of action recognized under Oklahoma common law.

Responding to the defendants’ motion for summary judgment, a federal court ruled that a jury was entitled to hear Kristi Gerks’s substantive due process claim, reasoning “that a rational jury could find that Deathe’s actions were so demeaning and harmful to Kristi that they might have violated her substantive due process rights” (p. 1454). Regarding Kristi’s tort claims, the federal court ruled that Kristi’s parents had alleged sufficient facts to allow both the false imprisonment claim and the tort of outrage claim to be decided by a jury. However, the court sustained the defendants’ motion to dismiss Kristi’s procedural due process claim.
In 2001, the Tenth Circuit Court of Appeals decided a case with facts somewhat similar to Gerks v. Deathe, but ruled in favor of the school defendants. In Harris v. Robinson (2001), a moderately retarded ten year old student was allegedly forced by a teacher to clean out a toilet with his bare hands. The student, Ricky Harris, stopped up a toilet with toilet paper and then flushed it, spilling water onto the floor. He claimed he did not stop up the toilet on purpose, but his teacher, Vicki Robinson, still made him reach into the toilet and pull out the toilet paper with his bare hands, some of which was stained. Ricky’s mother sued the teacher and the school district, claiming Robinson’s action was demeaning, inhumane and a violation of his Fourteenth Amendment rights. An Oklahoma federal trial court granted the school defendants’ motion for summary judgment, and Ricky’s mother appealed.

On appeal, the Tenth Circuit upheld the trial court’s decision. In the Tenth Circuit’s view, Ricky’s alleged injuries did not rise to the same conscience shocking level as the allegations that were raised in the Garcia and Gerks cases.

Ms. Robinson’s actions were not so excessively cruel that Ricky was subjected to “appreciable pain.” Additionally, Ms. Robinson’s actions were not “inspired by malice or sadism.” At most, Ms. Robinson exercised poor judgment and was careless in having Ricky clean out the toilet without first inspecting it herself and failing to provide Ricky with appropriate tools or gloves. (p. 931)

Even if Ricky had a valid substantive due process claim, the Tenth Circuit added, Ms. Robinson would still be entitled to qualified immunity because she did not violate a “clearly established law of which a reasonable teacher should have known” (pp. 931-932).

Finally, in Muskrat v. Deer Creek Public Schools (2009), an unpublished federal court decision, the parents of a special needs student (identified as “J.M.”) sued an Oklahoma school
district and several school employees for alleged mistreatment of their son while he was at school. According to their complaint, school employees punished J.M. by “isolating, confining, and restraining him in a dark room or subjecting him to ‘time out’ denying him social interaction and classroom instruction, [and] imprisoning him against his will” (p. *5). The parents also charged school officials with slapping and hitting their son and utilizing inappropriate restraint techniques. According to the parents’ allegation, J.M.’s teacher was arrested for assault and battery in connection with his treatment of J.M. (p. *7). The parents sued the defendants for violating J.M.’s constitutional right to substantive due process and for committing the torts of battery, assault, false imprisonment, intentional infliction of emotional distress, negligent supervision, negligent hiring, and fraud.

Ruling on the defendants’ motion to dismiss the Muskrats’ case, a federal trial court ruled that the plaintiffs had stated a “plausible claim” for violations of J.M.’s constitutional right to substantive due process under the Fourteenth Amendment. However, the court dismissed the fraud claim, the claim for punitive damages, and many of the tort claims.

Summary of Oklahoma Corporal and Excessive Punishment Cases

Oklahoma educators and school districts enjoy strong protection from being sued for excessive corporal punishment by the Oklahoma Governmental Tort Claims Act. Even before passage of that Act, common-law sovereign immunity undoubtedly insulated Oklahoma educators from being sued for excessive corporal punishment. State law gives public educators the same right to inflict corporal punishment on students that parents have, including the right to spank children or to use switches and paddles to administer corporal punishment. Thus, it is not surprising that over a period of more than 100 years, only one published Oklahoma state court opinion, Holman v. Wheeler (1983) dealt with the substance of an excessive corporal punishment
claim brought by parents; and that case involved the highly unusual factual allegation that the
school administrator who administered the corporal punishment did so while in a state of
intoxication.

Based on the precedent of Garcia v. Miera (1987), three cases have been filed by
Oklahoma parents against Oklahoma public-school authorities alleging corporal punishment so
excessive that it violated the students’ right to substantive due process under the Fourteenth
Amendment. In two of those cases, Gerks v. Deathe (1993) and Muskrat v. Deer Creek Public
Schools (2009), federal district courts concluded that the factual allegations described conduct
that was sufficiently egregious that a constitutional claim had been stated. In the third case,
Harris v. Robinson (2001), the Tenth Circuit ruled that the claims made against an elementary
school teacher amounted to no more than allegations of negligence and would not support a
claim that the student’s constitutional rights had been violated.

The fact that more published court cases concerning corporal punishment in Oklahoma
have been decided by the federal courts than in the state courts is a strong indication that
plaintiffs have realized that the protections offered by the Oklahoma Governmental Tort Claims
Act and the sovereign immunity protection that the Oklahoma state courts afforded prior to
passage of the Act are almost insurmountable impediments to filing lawsuits for excessive
corporal punishment in the state courts of Oklahoma.

Statute of Limitations

The statute of limitations for filing a tort claim under the Governmental Tort Claims Act
is covered by Okla. Stat. tit. 51, Sections 156 and 157. While the statute of limitations for filing a
private claim is two years, and requires no written notice of provision, the time limitations and
requirements for filing a claim against a school district or its employee are significantly shorter,
and require specific written notification of the claim. Prior to the 1984 amendment of Section
156, “A claim against a political subdivision or employee shall be forever barred unless notice
thereof is filed with the clerk of the governing body of the political subdivision within one
hundred twenty (120) days after the loss occurs” (Okla. Stat. tit. 51 § 156, 1983, p. 1). The
statute has always required tort claims against school districts or their employees to be made in
writing, but prior to the 1984 amendment the claim had to be made within four months of the
date the incident occurred. The claim must include, “the date, time, place and circumstances of
the claim, the identity of the state agency or agencies involved, the amount of compensation or
other relief demanded, the name, address and telephone number of the claimant, and the name,
address and telephone number of any agent authorized to settle the claim” (Okla. Stat. 51. § 156,
2009, p. 1). The statute of limitations is referenced in many court cases involving educator
immunity in the State of Oklahoma. Each of these cases will be analyzed later in this section.

The 1984 amendment of Okla. Stat. tit. 51 § 156, extended the time to file a claim in
writing from four months to one year from the date the loss occurs. This amendment tripled the
allotted time to make a claim after a loss. “A claim against the state shall be in writing and filed
with the Office of the Risk Management Administrator of the Department of Central Services
who shall immediately notify the Attorney General and the agency concerned and conduct a
diligent investigation of the validity of the claim within the time specified for approval or denial
of claims by Section 157 of this title” (Okla. Stat. tit. 51 § 156, 2009, p. 1). The Risk
Management Administrator then has 90 days to approve or deny the claim. Before a suit against
the state or a political subdivision is initiated, the claim must first be denied (Okla. Stat. tit. 51 §
157). “A person may not initiate a suit against the state or a political subdivision unless the claim
has been denied in whole or in part. A claim is deemed denied if the state or political subdivision
fails to approve the claim in its entirety within ninety (90) days, unless the state or political subdivision has denied the claim or reached a settlement with the claimant before the expiration of that period” (Okla. Stat. tit. 51 § 157, 2009, p. 1). Claims not responded to or addressed within 90 days are deemed denied by legislation.

After a claim has been denied, or deemed denied because the claim was not approved within the 90 day time allotment, action against a school district or its employee may be initiated (Okla. Stat. tit. 51 § 157). However, the suit must be commenced within one hundred eighty (180) days after the denial of the claim (Okla. Stat. 51 § 157).

Two statues of limitations exist in the State of Oklahoma when filing a tortuous suit against a school district or its employee under the Governmental Tort Claims Act. Section 156 of the Act contains the one-year time line to file a claim after a loss occurs, and Section 157 contains the six-month time line to bring action after a claim has been denied. It is important to note that the limitation for other civil litigation against private parties pertaining to action for injury to the rights of another is two years (Okla. Stat. tit. 12 § 95 (2009)). The following cases reference the statute of limitations contained in Okla. Stat. tit. 51, Sections 156 and 157.

A case that was filed prior to the 1983 amendment of Okla. Stat. tit. 51 § 156, was Reirdon v. Wilburton Board of Education (1980). J. Patrick Reirdon was a twelve year old student in the Wilburton School District. Allegedly, he was negligently paddled by his teacher, resulting in physical injury. Reirdon brought a claim against the school district, the teacher, and the superintendent. Reirdon claimed he was negligently paddled with excessive force and malice.

Reirdon’s mother notified the President of the Wilburton School Board and the teacher or her intent to bring a suit within 30 days after the date the injury occurred. However, at the trial, the Wilburton School Board filed a demurrer alleging the Board did not receive proper notice of
the claim. At that time, the current pre-1984 amendment statute required notice to be sent to the clerk of the school board within four months of the injury and to contain specific information about the claim, as well as a cause of action. Reirdon’s mother failed to bring the claim in the proper manner and within the allotted time frame. The district court dismissed Reirdon’s suit because she failed to give written notice of the claim to the school board and the teacher within four months of the injury, as required by the Political Subdivision Tort Claims Act, Okla. Stat. tit. 51 § 156 (1980).

The mother appealed, arguing that the statute favored public tortfeasors over private tortfeasors by shortening the time period in which a citizen may sue a public tortfeasor, thereby denying equal protection under the law. She also argued that there had been substantial compliance with the statute, and that the school defendants were estopped from invoking the notice provision of the Act” (*Reirdon v. Wilburton Board of Education*, 1980, p. 233). The mother also claimed she did follow the specific notice provisions contained in the Act.

On appeal, the Supreme Court of Oklahoma responded by reversing the decision of the lower court. The court stated, “The court found that the mother had sent a letter to the board president. Although the notice did not state the relief sought or amount of damages requested, such failure did not invalidate the notice given. The court found that the board and teacher were on notice of the claim at an early date to enable them the opportunity to prepare a defense” (*Reirdon v. Wilburton Board of Education*, 1980, p. 611). The court also acknowledged the fact that a statute of limitations was in place for citizens to bring tort claims against political subdivisions that was shorter than those brought against private institutions. The Oklahoma legislature responded to this ruling by invoking the 1984 amendment to Section 156 of the Act,
extending the timeline to bring a governmental tort claim from four months to one year, but it still failed to equalize the time limitations for private and governmental tort claims.

Another case filed prior to the 1983 amendment of Okla. Stat. tit. 51 § 156, was Maxwell v. Independent School District Number Thirty-two of Okfuskee County (1983). David Bosler was a teacher at Graham School. He negligently overturned a desk in his classroom, striking and injuring student Kelly Joe Maxwell. The school district filed for summary judgment on the grounds that the Maxwell failed to meet the deadline for making a claim defined in the Political Subdivision Tort Claims Act, Okla. Stat. tit. § 156(B)(1981). The 1981 version of the statute required written notice of the claim within 120 days of the loss (Okla. Stat. tit. 51 §156 (1981)). The date of the incident was in early March of 1981, but the written claim was not submitted until September 15, 1981.

The request for summary judgment in favor of the school district was granted by the district court because the court determined that Maxwell failed to comply with the statute of limitations contained in Okla. Stat. tit. 51 §156 (1981) for submitting a claim.

Maxwell appealed on the grounds that he had informed his school counselor and the district’s superintendent of the injury on the day it occurred, and his mother had informed the school principal of the incident within 120 days. Even though the school officials were found to have been informed of the incident and injury, the appellate court affirmed the judgment of the district court stating, “on the grounds that there was no actual notice of the claim for monetary redress until about five and one-half months after the incident” (Maxwell v. Independent School District Number Thirty-two of Okfuskee County, 1983, p. 672). The court held, “although school officials may have had actual knowledge of the injury, such knowledge was not notice of a claim for monetary relief as a result of the incident, and thus the school district was denied the
opportunity to promptly investigate and quickly settle the claim (*Maxwell v. Independent School District Number Thirty-two of Okfuskee County*, 1983, p. 672). The appellate court acknowledged, “The fact that a defendant was aware of an injury does not supplant the formal notice provisions of Okla. Stat. tit. 51, § 156(B) (1981) of the Political Subdivision Tort Claims Act inasmuch as actual knowledge of the injury inflicted is not notice of the incident. The court determined that notice of an accident must be distinguished from notice of a claim for relief” (*Maxwell v. Independent School District Number Thirty-two of Okfuskee County*, 1983, p. 673). The fact that proper notice was not provided in a specified manner effectively prohibited Maxwell from pursuing his claim against the school district.

The issue of whether or not the statute of limitations contained in the Governmental Tort Claims Act applies to minors was brought in *Johns v. Wynnewood School Board of Education* (1982). On September 18, 1979, Shawna Gay Johns was injured by a blow to the head from another student at Central Elementary School of Wynnewood, Oklahoma. Notice of action for alleged negligence was given to the clerk of the Wynnewood School Board on September 10, 1981. At this point in time, the statute of limitations of Okla. Stat. tit. 51 § 156 (1981) was 120 days to bring a claim. Johns brought the suit after the 120 day limit had passed, but claimed the statute did not begin until Shawna was no longer a minor, and therefore, the statute of limitations had not expired.

A motion to dismiss was filed by the Wynnewood School Board on the grounds that the statute of limitations contained in Okla. Stat. tit. 51 § 156 (1981) did not specify that it did not apply to minors until they became legal adults. The district court granted the dismissal through summary judgment and held that notice of the claim was not given within the 120 day statute of limitations contained in Okla. Stat. tit 51 § 156 and that the Act did not discriminate between
minors and adults. The Oklahoma Supreme Court affirmed the decision of the lower court. The Supreme Court recognized and noted the exemption contained in Section 156 for people who are incapacitated, but found no mention for minors. The Oklahoma Supreme Court held that the statute of limitations contained in Section 156 does apply to minors, and it contains no provision for delaying the application of the statute of limitations until a minor becomes an adult.

A case that dealt with the statute of limitations contained in the Governmental Tort Claims Act as it relates to parental guardianship was Calvert v. Tulsa Public Schools (1996). A ten year old student, LaQuita Calvert, died as the result of a severe asthma attack while at school. Shortly after her death, LaQuita Calvert’s parents brought a suit against the Tulsa Public Schools, claiming that LaQuita had requested assistance just prior to her death, but that this assistance had been denied. The Calvert’s brought the suit before they were appointed by the court as the “personal representatives” for LaQuita’s estate. This meant that they were not authorized under the Act to bring a tort suit. Under the Governmental Tort Claims Act, “a claimant means the person or his authorized representative who files notice of a claim in accordance with this act. Only the following persons and no others may be claimants: c. in the case of death, an administrator, special administrator or a personal representative who shall aggregate in his claim all losses of all persons which are derivative of the death” (Okla. Stat. tit 51 § 152(4)(c)).

The Tulsa Public School District filed a motion to dismiss based on the fact that the Calverts had not been LaQuita’s “personal representative” at the time the suit was brought. The Calverts were not appointed LaQuita’s “personal representatives” until one and a half years after her death, the date the loss occurred. By the time they were appointed the “personal representatives,” the one year statute of limitations for bringing a claim under the Governmental
Tort Claims Act had lapsed. The Calverts moved to amend their suit based on the fact that at the
time of the initial claim they were considered LaQuita’s guardians and parents, although they
had not received the official appointment from the court to pursue a claim.

The district court granted summary judgment in favor of the school district, agreeing that
the Calverts were unable to bring a tort claim on behalf of LaQuita because they were not her
“personal representatives” at the time the initial claim was brought. The appellate court affirmed
the district court’s decision, holding that the parents had not become the “personal
representatives” until after the statute of limitations contained in Section 156 had expired.

However, on appeal, the Oklahoma Supreme Court reversed the decision and remanded
the proceedings to the trial court. The Supreme Court held that the term “personal
representative” is not defined in the Act. The Supreme Court wrote:

> Because the Act itself does not define the term ‘personal representative’ as used in
> Section 154(4)(c), we look to other statutes for guidance in light of Section 164’s
> mandate that other laws apply as long as they are not inconsistent. Title 58 O.S. 1991 §
> 11 defines ‘personal representative’ to include not only persons serving as executors,
> administrators, conservators, administrators with will annexed and guardians, but also
> persons who perform substantially the same function under the law governing their
> status. Thus, ‘personal representative’ includes court-appointed representatives, but it
> also embraces those persons serving in a similar function under the law as those who
> were court-appointed. (Calvert v. Tulsa Public Schools, 1996, p. 1088)

There was no dispute that the Calverts were LaQuita’s parents and legal guardians, and the
Supreme Court made its ruling based on the fact that their function as parents had not changed
since the time before LaQuita’s death. Therefore, the original suit against the Tulsa Public
Schools was brought by proper claimants in a timely manner with regards to Okla. Stat. tit. 51 § 156.

A transportation case was brought against a school district in Oklahoma in *Whitley v. Oologah Independent School District No. 1-4* (1987). Harold and Norma Jean Whitley sustained injuries and property damage to their vehicle on June 18, 1982, when an Oologah Independent School District bus caused a chain reaction accident. The Whitleys notified the school district’s superintendent of their claim against the school district on July 13, 1982. On October 2, 1982, the district’s automobile insurance agency, State Farm, settled the claim with the Whitleys on the matter of the property damage relating to the vehicle. Negotiations continued on the matter of personal injury.

Negotiations with State Farm and the Oologah Independent School District ended on July 7, 1983, and the Whitleys decided to file suit. The school district and State Farm objected to the suit because it was not filed within six months after the denial of the claim, as required by Okla. Stat. tit. 51 § 157. The district court dismissed the suit because it was not filed within the six month limit set forth in Okla. Stat. 51 tit. § 157). The issue brought forth in this case was when the six month period began for the Whitleys because this case was partially settled.

The statute states, “A claim is denied if the political subdivision fails to approve the claim in its entirety within ninety (90) days, unless the interested parties have reached a settlement before the expiration of that period. A person may not initiate a suit against a political subdivision of employee whose conduct gave rise to the claim unless the claim has been denied in whole or in part” (Okla. Stat. tit. 51 § 157). The Whitleys claimed that the 6 month time limit began April 13, 1983, which was the appointed date for negotiations. The Oklahoma Supreme Court agreed and overturned the district court’s dismissal of the case. The supreme court held,
“One cannot equitably lull an adversary into a false sense of security, thereby subjecting his claim to the bar of limitations, and then be heard to plead that very delay as a defense to the action. The action filed within six months of April 13, 1983, the appointed date for negotiations, was hence timely” (Whitley v. Oologah Independent School District No. I-4, 1980, p. 1172). The supreme court set precedence with its ruling that defined the point at which the timeline for the statute of limitations contained in Okla. Stat. tit. 51 § 157 would begin. The court held that all negotiations for settlement must conclude before the timeline will commence.

A ruling that upheld the statute of limitations contained in Okla. Stat. tit. 51 § 156 was Doe v. Independent School District No. I-89 (1988). On April 3, 1981, bus driver Jose Rideout abducted and raped Sally Doe, a fourteen year old mentally retarded student. Rideout was convicted of the crime and sentenced through criminal proceedings. Jane Doe, the mother of Sally Doe, sent notice of a claim to the school board on July 17, 1981, after it was revealed that Rideout had prior convictions of sexual crimes. The school district’s insurance investigator informed the Does that he could not consider the claim or a settlement until his investigation was complete. On several occasions, he encouraged the Doe’s attorney not to file a suit until he had completed his investigation. At one point, the investigator even stated that a claim would be paid, but by another insurance company. On December 3, 1981, the investigator from the school board’s insurance company denied the claim and ceased all negotiations for settlement. The Does received a letter confirming the denial of the claim on December 11, 1981. The Does did not file the lawsuit until June 3, 1982.

The school district filed a motion for summary judgment to dismiss the claim because the suit was not filed within the 6 month statute of limitations contained in Okla. Stat. tit. 51 § 157. The district court granted summary judgment in favor of the school district. The intermediate
appellate court affirmed the decision of the district court and found that it properly interpreted the statute of limitations in question. The Oklahoma Supreme Court also affirmed the decision of the lower court, although it was a 4-3 decision. The four judges that ruled in favor of the school district did so entirely based on the timeline for bringing a suit as is mandated in Section 157. The three dissenting judges found that the school district could not use the statute of limitations contained in Section 157 as a defense because their insurance investigator encouraged the Does not to file a suit. The dissenting judge wrote:

The alleged facts which I find persuasive are that the plaintiff’s attorney was told that there was no need to file a lawsuit when he contacted the investigator, and that the matter could not be settled until the investigator had finished his report, leading the plaintiff’s attorney to believe that the settlement would be made as soon as the investigation was complete. In fact, the insurance company never denied that the school board was liable for its employee’s tortuous conduct, only that there is no coverage under their policy for this loss. In his December 3, 1981, telephone conversation with the insurance investigator, the plaintiff’s attorney was led to believe that another insurance company would pay the claim. (Doe v. Independent School District No. I-89, 1988, p. 660)

Although an alleged promise was made for settlement, the Oklahoma Supreme Court cited its decision in Whitley v. Oologah Independent School District No. I-4 (1987), which held that the statute of limitations would begin after all efforts to settle had been exhausted. However, this court did not consider the school district’s insurance investigator’s verbal encouragement to not file a law suit as a legitimate form of negotiations for the claim. Therefore, the court approved the dismissal of the suit against the school district.
A recent transportation case was brought in *Davis v. Independent School District No. 89 of Oklahoma County* (2006). This case was similar to *Doe v. Independent School District No. I-89* (1988), with regard to the statute of limitations potentially being affected by an ongoing insurance investigation. Robert Davis was involved in a motor vehicle collision with a bus owned and operated by Oklahoma City Public Schools. He sustained injuries as a result of the accident and brought a suit against the school district for recovery of damages.

The trial court found the defendant school district liable and awarded damages to Davis in the amount of $98,000. On appeal, the court affirmed the decision of the trial court. The school district argued that the original claim was denied on December 31, 2000, and the suit by Davis was not brought until February 20, 2002. However, the school district’s insurance investigator requested information from Davis’ attorney on December 29, 2000. Davis’ attorney stalled and did not respond to the request until October 5, 2001. Davis relied on case law that states, “The claim does not recommence until the claimant responds to the request” (*Davis v. Independent School District No. 89 of Oklahoma County*, 2006, p. 1059). The court found that Davis had filed his suit within the 180 days required by Okla. Stat. tit. 51 § 157, and the statute of limitations was not in question.

Another transportation case was brought in *Williams v. Independent School District No. 7 of Harrah, Oklahoma County* (1994). Ruth Williams was injured on December 17, 1991, when a school bus owned and operated by Independent School District No. 7 of Harrah backed into her car. Williams notified the school district of the claim against the school district and John Childers, the driver of the bus, on January 10 or January 13, 1992. The claim was denied 90 days later.
Williams filed her suit several days after the 180 day statute of limitations contained in Okla. Stat. tit. 51 § 157 had expired. The school district filed a motion to dismiss on the grounds that the suit was not filed within the 6 month limit contained in Section 157. The school district also filed a motion to dismiss on the grounds that Childers was immune from liability under the Governmental Tort Claims Act because he was acting within the “scope of employment” at the time of the collision.

Williams relied on the Oklahoma Supreme Court’s ruling in *Whitney v. Oolagah Independent School District No. I-4 of Rogers County* (1987), in which the court held that “partial settlement of a claim and continuing negotiations can estop a municipality from relying on the Act’s statute of limitations provided in Section 157(B)” (*Williams v. Independent School District No. 7 of Harrah, Oklahoma County*, 1994, p. 455). The Oklahoma Supreme Court noted that the ruling brought in *Whitley* was not controlling in the present case because Section 157 had been amended after 1991 to state, “Neither the claimant nor the state or political subdivision may extend the time to commence an action by continuing to attempt settlement of the claim” (Okla. Stat. 51 § 157(B) (1991)). The Oklahoma Supreme Court affirmed the judgment of the trial court to dismiss the claim and held that the action was not brought within the time limitation contained in Section 157 of the Governmental Tort Claims Act.

A similar transportation case was brought in *Strong v. Oklahoma City Public Schools* (1997). This case involved another incident where a bus backed into a car. Strong brought a claim against the Oklahoma City Public Schools for personal injuries and property damage she and her daughter received on January 6, 1995, when they were involved in a motor vehicle accident with a bus owned and operated by Oklahoma City Public Schools. According to Strong, the bus was stopped in front of her car at an intersection. It then pulled forward as if it were
pulling away, when it unexpectedly backed up and collided with her car. Strong and her daughter sustained injuries as a result of the collision.

Strong gave written notice of her claim to the school district on July 3, 1995. The claim was denied on October 1, 1995. The Governmental Tort Claims Act requires the written claim to be made to the clerk of the political subdivision. Her initial claim was not sent to the clerk of the school board, as required by the Act. Strong filed a second written notice of claim on December 29, 1995, with the clerk of the school board and commenced her action on May 1, 1996. The school district moved for summary judgment to dismiss on the fact that the suit was not brought within six months, or 180 days, as required by the statute of limitations contained in Okla. Stat. tit. 51 § 157. Strong argued that the original claim was null and void because it was not submitted to the clerk of the school board, which is required in Section 156 of the Act. The trial court found the suit had not been brought within the 180 day time limit allowed by Section 157 and dismissed the action by summary judgment because it was held to be time-barred.

Strong appealed, claiming summary judgment should not have been granted because the claim was resubmitted properly, and she should have been given another 90 day period for review and approval or dismissal of the claim. On appeal, the appellate court wrote, “The court held that the victims did not have a legitimate expectation that they would have a new 90-day period for consideration of their claims” (Strong v. Oklahoma City Public Schools, 1997, p. 1478). The court affirmed the decision of the trial court and held that the statute of limitations began at the time the first claim was denied, and the suit was brought after the 180 day time allowance contained in Section 157.

A case filed in federal court that dealt with the issue of the statute of limitations was Pointer v. Western Heights Independent School District (1996). Benjamin Pointer was a student
at Western Heights High School in Oklahoma. He was injured as the result of a stabbing that took place on February 11, 1991, in the school restroom. Pointer filed an action in state court against the boy who allegedly stabbed him and the Western Heights School District.

Pointer voluntarily dismissed her suit against the school district on January 7, 1993, after the 180 day limit for filing a suit under Section 157 of the Governmental Tort Claims Act had passed. Pointer then refiled her suit in federal court on February 19, 1993. The federal court dismissed the claim with prejudice and dismissed the supplemental state claim without prejudice. Pointer then refiled her claim once again in state court on March 24, 1993. The school district filed a motion to dismiss the suit on the grounds that the 180 day statute of limitations contained in Okla. Stat. tit. 51 § 157 had expired. The trial court found held that the claim was time-barred by Section 157 of the Act and granted the school district’s motion to dismiss. On appeal, both the appellate court and the Oklahoma Supreme Court affirmed the decision of the trial court, holding that the time to bring a suit against the school district under the Governmental Tort Claims Act was 180 days, and Pointer did not file the suit within that time limit. All action against the school district was dismissed.

A recent case that brought forth the issue of extending the time to investigate and settle a claim was *Floyd v. Quinton Public Schools* (2006). The Governmental Tort Claims Act allows a provision for extending the 180 day limit to file a suit after a claim has been denied. Okla. Stat. tit. 51 § 157(B) states:

No action for any cause arising under this act, Section 151 et seq. of this title, shall be maintained unless valid notice has been given and the action is commenced within one hundred eighty (180) days after denial of the claim as set forth in this section. The claimant and the state or political subdivision may agree in writing to extend the time to
commence an action for the purpose of continuing to attempt settlement of the claim except no such extension shall be for longer than two (2) years from the date of the loss.

The *Floyd* case involved a claim brought by the mother of a minor against the Quinton Public Schools. Floyd notified the school district of the claim against them on January 28, 2005. On February 2, 2005, Floyd received a letter from the school district regarding subsequent negotiations. Floyd alleged that since she received the letter on February 2, 2005, the claim was not considered denied until 90 days after the February 2nd date, in accordance with Okla. Stat. tit. 51 § 157(A). This would make June 16, 2005 the date to begin the 180 day time period to bring a suit. On June 16, 2005, the Floyds rejected the settlement offered by the school district. Floyd did not bring file her suit until after October 25, 2005.

The trial court held that the 180 day timeline to file a suit in accordance with Okla. Stat. tit. 51 § 157 began 90 days after the time the claim was initially brought, when it was deemed denied. The date of denial was April 28, 2005. Floyd appealed, claiming the initial claim was not considered denied until June 16, 2005, because negotiations were continuing during the initial 90 day time period. However, on appeal the appellate court found that according to Okla. Stat. tit. 51 § 157(B), unless the agreement to extend the time for bringing the suit was agreed upon in writing, no extension would be granted. The appellate court also held that Floyd had received notice that the time for filing the suit would not be extended because of a letter sent to them on February 2, 2005. The letter was from the school district’s insurance adjuster and stated, “My attempt to meet with you and your client and to investigate this matter are not intended to waive any of the statutory exemptions from liability or time limitations imposed by the Oklahoma Tort Claims Act” (*Floyd v. Quinton Public Schools*, 2006, p. 1319). The appellate court held that the
Floyds were given sufficient notice that the time limitations for their claim would not be extended, even though negotiations were taking place at the time.

Conclusion

The concept of sovereign immunity for school districts, considered political subdivisions of the state, and their employees has existed in Oklahoma since it became a state in 1907. In fact, this concept was one of the first cases heard by the Oklahoma Supreme Court. Although the concept has changed over time from common law to statute, and parameters have been added and defined by case law and statute, the fact remains that school districts and their employees in Oklahoma retain a high level of protection from liability arising from tort claims. Although the manner in which sovereign immunity is legislated has changed since its inception, the outcome for school districts and their employees has remained consistent over time.

Chapter IV provides a discussion of the trends and parameters that emerged from the court decisions reviewed in this chapter. In addition, it will use the above case law analysis to answer the research questions contained in Chapter I. Only one case reviewed in this chapter did not grant the political subdivision of Oklahoma or its employees sovereign immunity from a tort claim. That case was *Holman v. Wheeler* (1983), involving a superintendent who paddled a student while allegedly intoxicated.

In addition, the timelines to bring a tort claim and file a suit legislated in the Governmental Tort Claims Act, Sections 156 and 157 seem to further enhance the liability protection of school districts and their employees by time-barring cases from being tried that could potentially hold them liable. Even as amended, the Governmental Tort Claims Act gives a plaintiff half as much time to file a lawsuit for negligence against an Oklahoma school district or its employees as the plaintiff would have if the suit were filed against a private person or private
entity. Interestingly, more published decisions involving school districts concerned the
procedural issue of the statute of limitations than the substantive issue of negligence. By and
large, the Oklahoma courts have interpreted the statute of limitations in the Governmental Tort
Claims Act to benefit school districts and other Oklahoma political subdivisions.

The Oklahoma courts have consistently struggled with the issue of sovereign immunity.
Oklahoma seems to lack a remedy for educator negligence through the state courts unless the
defendant can clearly be shown to be working outside of the scope of employment at the time of
the incident.
CHAPTER IV
DISCUSSION

This study analyzed Oklahoma court cases involving the application of the Governmental Tort Claims Act and its predecessor, the Political Subdivision Tort Claims Act, to Oklahoma school districts and educators. Nine cases were examined relating to negligent supervision claims against Oklahoma school districts or their employees. In all of these cases, the suits were ultimately dismissed on immunity grounds.

Six cases involving corporal and excessive punishment in Oklahoma school districts were examined. Three of these cases were decided in Oklahoma state courts: Holman v. Wheeler (1983); Hagan v. Independent School District No. I-004 of Adair County (2007); and Reirdon v. Wilburton Board of Education (1980). In Hagan, a teacher who was dismissed for excessive corporal punishment successfully challenged his dismissal on appeal to the Oklahoma Supreme Court. That case did not involve the issue of governmental immunity. The Reirdon case addressed a statute of limitations issue and did not deal with the application of immunity principles to a claim of excessive corporal punishment.

Only the Holman case dealt with the issue of whether a public school educator was immune from suit for excessive corporal punishment. The factual allegations of the Holman case are striking—a charge that an intoxicated school superintendent excessively beat a student during a day that school was not in session. These allegations, the Oklahoma Supreme Court concluded, were sufficient to allegation that the superintendent was acting outside the scope of his duties and thus was not immune from suit. And even in this case, the lower court ruled that the superintendent was immune from suit under the Political Subdivision Tort Claims Act. It took an appeal to a higher court to reinstate the lawsuit. The Holman case portrays the extreme nature of
the circumstances that would lead an Oklahoma court to finding that a school district employee is not immune from a tort suit based on his actions in the school environment.

*Holman* is the only case examined in this study in which an Oklahoma educator was found not to be immune from a tort lawsuit under the Oklahoma Governmental Tort Claims Act or its predecessor, the Political Subdivision Tort Claims Act. In all other cases in which Oklahoma school districts or school employees invoked an immunity defense to a tort claim, their immunity defense was successful.

![Figure 3](image)

*Figure 3.* This chart shows the number of cases in which immunity was granted or not granted to school districts or their employees.

As discussed in Chapter III, three federal court cases (two published and one unpublished) have been decided in which plaintiffs charged Oklahoma educators with corporal punishment so excessive as to be violations of substantive due process under the Fourteenth Amendment.
Amendment of the U.S. Constitution. It seems likely that plaintiffs chose to sue in federal court based on the realization that their chances of prevailing on a tort claim in the state courts were miniscule due to the immunity protection Oklahoma educators enjoy. It is noteworthy that more federal cases have been decided involving excessive corporal punishment in Oklahoma schools than state cases—undoubtedly because of the great protection from tort suits that Oklahoma educators enjoy. Additionally, the Oklahoma School Security Act explicitly gives public school educators the same right to administer corporal punishment upon children that the children’s parents or guardians have and that this right includes paddling and spanking.

As discussed in Chapter III, Oklahoma ranks fourth in the nation in the percentage of students who receive corporal punishment. According to one study, almost 15,000 students received corporal punishment in Oklahoma public schools during 2006. Thus, it is noteworthy that there are so few published state court cases involving claims of excessive corporal punishment in Oklahoma schools.

Additionally, I found that school districts and their employees enjoy additional protection from liability through the statute of limitations contained in Sections 156 and 157 of the Governmental Tort Claims Act. These two sections of the Act limit the time allotted for bringing a tort suit. The sections also define specific methods for filing a claim against a school district or its employee. These sections have provided a significant amount of protection to school districts and their employees because several tort cases were dismissed due to a failure to adhere to the guidelines of these sections of the Act. Not only are school districts and their employees protected through sovereign immunity in almost all cases, but several tort cases were not permitted to go to trial purely on technical grounds relating to the statute of limitations.
I found that although the time line to bring a claim was extended by the 1984 amendment of the Governmental Tort Claims Act from four months to one year, it is still one half of the two-year limit to bring a private claim against a non-political subdivision under Okla. Stat. tit. 12 § 95. The State of Oklahoma favors public claims over private claims by requiring public claims to be brought in a shorter time frame. In *Reirdon v. Wilburton Board of Education* (1980), the fact that private claims not against political subdivisions enjoyed a greater time limitation for bringing a claim was brought forth. In *Reirdon*, the Oklahoma Supreme Court overturned the district court’s decision to dismiss the suit based upon failure to comply with the statute of limitations contained in Okla. Stat. tit. 51 § 156. At this time, the deadline for notifying the Board Secretary of a claim was four months (120 days). The plaintiff pointed out that public suits are held to a different standard than private suits with regards to the statute of limitations for filing a claim. In a similar case three years later, *Maxwell v. Independent School District Number Thirty-two of Okfuskee County* (1983), the Oklahoma Supreme Court denied the claim made by a plaintiff because, although notice of the claim was verbally provided, it was not provided in writing. The courts made an important distinction in the way they dealt with these two cases. Notice of claims provided in writing would be considered, even if they did not contain all of the specific elements required in the Act. Exceptions would not be made for claims not made in writing. In addition, the claim must include a request for monetary relief. The Oklahoma legislature responded with the 1984 amendment of Section 156, which extended the time for notification to one year, but still failed to equalize the time limitations for private and governmental tort claims.

I found that of the 10 cases involving the statute of limitations, the suit was barred from trial seven times.
Figure 4. This chart shows the number of cases in which suits were held to be time-barred under Sections 156 and 157 of the Governmental Tort Claims Act.

An important fact revealed in this study is that there are more cases involving the statute of limitations in the State of Oklahoma than cases involving the substantive issue of educator negligence. This speaks of the strength of protection the statute of limitations provides to Oklahoma educators and school districts. Not only do school districts and employees enjoy strong immunity protection from the courts, they are also afforded additional protection from liability through a narrow timeline for filing a claim and bringing a suit.

In conclusion, the Oklahoma state courts seem to struggle with the concept of sovereign immunity. One of the first cases brought before the Oklahoma Supreme Court in 1907 dealt with sovereign immunity, and cases continue to be brought today. As early as Mott v. Hull (1915), the Oklahoma Supreme Court struggled to uphold the decision of the lower court, noting in its decision that it did not agree with the trial court, and only upheld its decision because it felt that
doing so was the will of the people. Although sovereign immunity has existed in Oklahoma through common law, case law, and statute, the courts have struggled with how to apply the principle. A major conclusion of this study is that the Oklahoma state courts have consistently provided school districts and their employees with strong protection from liability. In addition, the Oklahoma legislators have established a time period for filing a suit against a school district or school employee that is shorter than the time period for filing a suit against a private defendant. This is an indication that schools and school employees are favored in the state.

Further research could compare the findings in this study with those of other states, as recommended by Zirkel & Clark (2009), in order to determine how the State of Oklahoma compares to other states in regards to the application of sovereign immunity. The methodology used in this research study could be used to analyze sovereign immunity in other states. For example, New Mexico tort cases against school districts and their employees that reference the New Mexico Tort Claims Act (N.M. Stat. 41-4-1) could be analyzed. Additional research could also analyze the perception of Oklahoma educators’ knowledge of sovereign immunity in order to determine if it plays a role in educator recruitment and retention. This study suggests that university programs in the State of Oklahoma should familiarize their students with the significant amount of immunity protection afforded to them as educators.
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