IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

CAITLYN HUGHES, a Minor, by her Next Friend, Daphne Hughes Plaintiff, v. THE CHRISTINA SCHOOL DISTRICT, An Agency of the State of Delaware; DR. JOSEPH WISE, Individually and in his capacity as Superintendent; DR. LILLIAN LOWERY, Individually and in his capacity as Superintendent; VERONICA HOLMES, Individually and in her capacity as School Nurse; DONALD B. PATTON, Individually and in his capacity as Principal; and LAURIE DAVIS, Individually and in her capacity as an employee, Defendants.	)	C.A. No. 06C-03-194 PLA

Submitted: October 11, 2007
Decided: January 7, 2008

ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
GRANTED

This 7th day of January, 2008, upon consideration of the Motion for Summary Judgment filed by Defendants The Christina School District, Dr.

Joseph Wise, Dr. Lillian Lowery, Veronica Holmes, Donald B. Patton, and Laurie Davis (collectively "Defendants"), it appears to the Court that:

1. Plaintiff Caitlyn Hughes ("Caitlyn") was in the seventh grade at Kirk Middle School during the 2003-2004 school year. Before entering seventh grade, Caitlyn had a history of fainting spells and seizures associated with the beginning of her menstrual cycle. When she began to feel a stomach ache that usually preceded the fainting and seizures, Caitlyn knew that she was supposed to sit down on the floor and inform an adult.[1]

2. In the beginning of the school year, Caitlyn and her mother met with the school nurse, Veronica Holmes, to advise her of this problem. Ms. Holmes recommended that if Caitlyn felt symptomatic, she should sit on the floor, contact an adult, and wait for a wheelchair to bring her to the nurse's office.[2] Holmes also spoke with Caitlyn's teachers to make them aware of her condition.[3] Caitlyn felt understandably embarrassed about having to be brought to the nurse's office by wheelchair.[4]

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[1] Docket 21, Ex. A, p. 18-19.

[2] *Id.*, Ex. A, p. 53-55.

[3] Docket 24, Ex. 8, p. 59.

[4] Docket 21, Ex. A, p. 54-55.

3. On March 17, 2004, the first day of her menstrual cycle, Caitlyn informed her teacher that she had a stomach ache and wanted to go to the nurse's office. A friend then escorted her to see the nurse. After lying down, she soon felt better and went to her next class on her own.

4. At her next class, Caitlyn felt another stomach ache coming on, was nauseous, and began feeling "very sick and faint and weak."[5] She notified the teacher of her desire to go to the nurse's office, but she intentionally refrained from advising her teacher that she felt faint. Because she looked pale, the teacher sent Caitlyn to the nurse. Caitlyn left on foot without an escort and did not wait for a wheelchair, despite the fact that she was aware that she was to be taken by wheelchair under these same circumstances.[6] While walking to the nurse's office, Caitlyn suffered a fainting spell, resulting in physical injury.

5. On March 17, 2006. Caitlyn filed a complaint on against Defendants alleging that they were grossly negligent.

6. Defendants have filed the instant motion for summary judgment arguing that they are immune from liability under the State Tort Claims Act, 10 *Del. C.* §§ 4001-4005, 4010-4013 (the "Act"). Specifically, Defendants

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[5] *Id.*, Ex. A, p. 27.

[6] *Id.*, Ex. A, p. 29-30.

argue that, viewing the facts in the light most favorable to Caitlyn, the teacher's decision to allow Caitlyn to walk to the nurse's office, rather than be escorted by a wheelchair, was not made in bad faith or with willful or wanton disregard for her safety.

7. In response, Hughes claims that the State of Delaware has waived its sovereign immunity because it has exercised its power to sue by carrying liability insurance under the State Insurance Coverage program. Hughes further argues that the teacher's decision to send her to the nurse's office without a wheelchair was a ministerial, rather than a discretionary, act, allowing Hughes to bring suit against the State and its employees.

8. When considering a motion for summary judgment, the Court's function is to examine the record to ascertain whether genuine issues of material fact exist and to determine whether the moving party is entitled to judgment as a matter of law.[7] The court must "view the evidence in the light most favorable to the non-moving party."[8] "The moving party bears the initial burden of demonstrating that the undisputed facts support his legal claims."[9] If the proponent properly supports his claims, the burden "shifts to the non-moving party to demonstrate that there are material issues of fact for

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[7] Super Ct. Civ. R. 56(c).

[8] *Storm v. NSL Rockland Place, LLC*, 898 A.2d 874, 880 (Del. Super. Ct. 2005).

[9] *Id.* at 879.

resolution by the ultimate fact-finder."[10] Summary judgment will not be granted if, after viewing the record in a light most favorable to the non-moving party, there are material facts in dispute or if judgment as a matter of law is not appropriate.[11] If, however, the record reveals that there are no material facts in dispute and judgment as a matter of law is appropriate, then summary judgment will be granted.[12]

9. As explained by this Court, "[t]he doctrine of sovereign immunity is written into the Delaware Constitution by Article I, § 8. This immunity is an absolute bar to all suits against the State and extends to all state agencies, unless waived by the General Assembly."[13] In *Rogers*, this Court determined that a state university was not immune from suit because the university had "complete autonomy within its statutory framework" to be "sufficiently independent of State control."[14] Moreover, the fact that the university was incorporated, and thus had the power to sue and be sued, led this Court to conclude that the General Assembly had waived sovereign

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[10] *Id.* at 880.

[11] *Id.* at 879.

[12] *Id.*

[13] Rogers v. Del. State Univ., 2005 WL 2462271, at *2 (Del. Super. Ct. Oct. 5, 2005), *rev'd on other grounds*, 905 A.2d 747 (Del. Jul 25, 2006) (Table).

[14] *Id.*

immunity for the institution under the State Tort Claims Act.[15] Finally, because the university purchased liability insurance, "the purchase of insurance waives sovereign immunity to the extent coverage is available."[16]

10. In this case, there is no dispute that Defendants own liability insurance.[17] Moreover, school districts have exercised their power to sue and be sued throughout the State of Delaware.[18] Accordingly, the Court finds that the General Assembly has waived sovereign immunity against the Defendants under the State Tort Claims Act.

11. Under the State Tort Claims Act, no one may bring a suit against the State of Delaware, a public employee, or a State agency, unless either (1) another statute permits such a claim, or (2) the defendant establishes that at least one of the following elements is missing:

> (1) The act or omission complained of arose out of and in connection with the performance of an official duty requiring a determination of policy, the interpretation or enforcement of statutes, rules or regulations, the granting or withholding of publicly created or regulated entitlement or privilege or any

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[15] *Id.* at *2-4.

[16] *Id.* at *3 (citing *Kennerly v. State,* 580 A.2d 561, 566 (Del. 1990)).

[17] *See* Docket 24, Ex. 2.

[18] *See, e.g., Mount Pleasant Sch. Dist. v. Warder*, 375 A.2d 478 (Del. Super. Ct. 1977) (addressing two actions brought by a school district to prohibit one order and set aside another order of the Family Court); *Beck v. Claymont Sch. Dist.*, 407 A.2d 478 (Del. Super. Ct. 1979) (permitting plaintiffs to bring a negligence action against a school district for medical expenses).

> other official duty involving the exercise of discretion on the part of the public officer, employee or member, or anyone over whom the public officer, employee or member shall have supervisory authority;
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> (2) The act or omission complained of was done in good faith and in the belief that the public interest would best be served thereby; and
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> (3) The act or omission complained of was done without gross or wanton negligence[.][19]

In other words, "[w]here, as here, the defendant is a public school district or the employee of a school district, the State Tort Claims Act grants immunity from liability for acts done in good faith which involve the exercise of discretion, unless the act is done with gross or wanton negligence."[20]

12. "Discretionary acts are those which require some determination or implementation which allows a choice of methods, or, differently stated, those where there is no hard and fast rule as to a course of conduct."[21] In contrast, a person performs a ministerial act where he "performs in a prescribed manner without regard to his own judgment concerning the act to

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[19] 10 *Del. C.* § 4001.

[20] *Simms v. Christina School District*, 2004 WL 344015, at *8 (Del. Super. Ct. Jan. 30, 2004).

[21] *Id.* (citing *Scarborough v. Alexis I. DuPont High Sch.,* 1986 WL 10507, at *2 (Del. Super. Ct. Sept. 17, 1986).

be done."[22] Put another way, an act is ministerial if the "act of the official involves less in the way of personal decision or judgment or the matter for which judgment is required has little bearing of importance upon the validity of the act. . . ."[23] Though a person may be permitted to exercise discretion generally, a particular act may still be ministerial.[24] As a result, the focus of the discretionary/ministerial analysis is the activity rather than the position, and is always one of degree.[25] Moreover, the determination of whether a particular act is discretionary or ministerial is a question of law for the Court to decide.[26]

13. For example, in *Simms v. Christina School District*, where a plaintiff brought a negligent supervision claim against the school district for failing to supervise a residential advisor who molested a student, the Court determined that the employer's supervision was discretionary, and not ministerial, because there was not "any hard and fast rule concerning the manner in which [the supervisor] was to supervise . . . a residential

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[22] *Id.*

[23] *Sussex County v. Morris*, 610 A.2d 1354, 1359 (Del. 1992) (citing Restatement (Second) of Torts § 895D cmt. h (1979)).

[24] *Simms*, 2004 WL 344015 at *8.

[25] *Scarborough,* 1986 WL 10507 at *3; *Morris*, 610 A.2d at 1359.

[26] *Id.* (citing *Martin v. State,* 2001 WL 112100, at *5 (Del. Super. Ct. Jan. 17, 2001)).

advisor."[27] In contrast, a school district employee's duty to inspect bleachers to ensure reasonably safety was ministerial because the duty to inspect was operational and required no discretion.[28] Other courts have found that, while the *duty* to do something pursuant to statute may be ministerial, the *manner* in which it is accomplished may be discretionary.[29]

14. While a teacher's decision to permit a student to go to the nurse's office is arguably ministerial, the special circumstances of Caitlyn's illness and Caitlyn's intentional failure to inform her teacher of her symptoms persuade this Court that the teacher's decision to permit Caitlyn to walk without an escort was discretionary. Had Caitlyn informed her teacher that she was feeling faint, the teacher's decision requiring her to be escorted or not would be ministerial, because the teacher would have either followed or disregarded a "hard and fast rule" established by her mother and the school nurse for Caitlyn's safety. Importantly, however, the nurse explicitly informed Caitlyn and her mother that an escort and wheelchair would be provided for Caitlyn only in the event she informed the teacher

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[27] *Simms*, 2004 WL 344015 at *8.

[28] *Scarborough,* 1986 WL 10507 at *3.

[29] *See Martin,* 2001 WL 112100 at *6 ("[T]he ministerial act that was required of the State employees was the act of conducting an investigation . . . . The actions complained of by the Plaintiff however, concern the *manner* in which the State employees carried out their duty to investigate. . . . How it was done involved an exercise of judgment and therefore, discretion.").

that she felt like she was going to faint.[30] Specifically, the nurse explained, "I told Caitlyn if you feel like you are going to faint in your classroom and you're sitting down raise your hand and *let your teacher know* that you feel like you're going to faint and to get the nurse and I'll come down with a wheelchair."[31] Rather than tell the teacher about the possibility that she might faint, Caitlyn made the unilateral decision to refrain from telling her about her symptoms because "[she] thought [she] could make it [to the nurse's office]" without any help.[32]

15. As a result of Caitlyn's intentional choice not to disclose vital information to her teacher, as was required when she felt faint, her teacher was not given the operational choice of following the "hard and fast rule" implemented by the nurse on Caitlyn's behalf. Like the supervisor in *Simms*, the teacher here necessarily had to exercise her discretion to make a "choice of methods" and determine whether Caitlyn could walk alone or not.[33] Without this crucial knowledge, the activity of sending Caitlyn to the nurse's office with an escort became a discretionary activity that required the

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[30] Docket 24, Ex. 1, p. 58-59.

[31] *Id.*, Ex. 1, at p. 58 (emphasis added).

[32] *Id.*, Ex. 1, at p. 30.

[33] *Simms*, 2004 WL 344015 at *8.

teacher to make a conscious decision about Caitlyn's ability to go to the nurse alone.

15. The Court further finds a complete lack of evidence that the teacher's decision exhibited gross negligence or wanton and willful disregard for Caitlyn's safety. An allegation of gross negligence requires a showing of negligence that "is a higher level of negligence representing 'an extreme departure from the ordinary standard of care.'"[34] Similarly, "[w]anton conduct occurs when a person, with no intent to cause harm, performs an act so unreasonable and dangerous that he knows or should know that there is an eminent likelihood of harm which can result. It is the 'I don't care attitude'."[35] As a result, the plaintiff must show behavior "beyond inadvertence, momentary thoughtlessness, or mere negligence";[36] such conduct "is more egregious than conduct constituting gross negligence."[37]

16. Based on the evidence of record, there is simply no showing of any conduct amounting to simple negligence, let alone gross negligence.

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[34] *Browne v. Robb*, 583 A.2d 949, 953 (Del. 1990).

[35] *Morris v. Blake*, 552 A.2d 844, 847-48 (Del. Super. Ct. 1988), *aff'd sub nom.*, *Sussex County. v. Morris*, 610 A.2d 1354 (Del. 1992) [hereinafter *Blake*].

[36] *Blake*, 552 A.2d at 847 (citing *Treco v. Bosick,* 199 A.2d 752, 754 (Del. Super. Ct. 1964)).

[37] *Id.*

Plaintiff has provided no evidence that the teacher's decision to send Caitlyn to the nurse's office without an escort and without a wheelchair was an "extreme departure from the standard of care" or was done with an "I don't care" attitude. In fact, the evidence indicates that it was the teacher who independently recognized that Caitlyn looked pale after she raised her hand and instructed her to go to the nurse's office.[38] The Court therefore concludes that no reasonable juror could find gross negligence or conduct amounting to a wanton and willful disregard of harm to Caitlyn.

17. Accordingly, Defendants' Motion for Summary Judgment is **GRANTED**.

IT IS SO ORDERED.

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Peggy L. Ableman, Judge

Original to Prothonotary

[38] Docket 21, Ex. A, p. 29-30.