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THE CHICAGO PUBLIC SCHOOLS AND ITS VIOLENT STUDENTS: HOW CAN THE LAW PROTECT TEACHERS?

INTRODUCTION

Mrs. Smith was a writing teacher at the Sumner Elementary School in the West Lawndale neighborhood in Chicago. She taught there because she felt that kids from a bad neighborhood deserved the kind of academic attention that most suburban kids received. On the morning of February 7, 1997, she was leaning over a student’s desk, answering a question about the composition lesson. She heard Thomas, age fourteen, call out her name from behind her. He said “white bitch,” raised a steel hammer in his hand, and smashed her eye socket. He then yanked it out, with the claws of the hammer digging into Mrs. Smith’s cheekbones. He swung the hammer again, shattering Mrs. Smith’s face.

As a result of Thomas’ brutal attack, Mrs. Smith now has five metal plates in her head, and her left eye is held in place by surgical mesh under her skin. At times she experiences short-term memory loss.

Hours before the assault, Thomas had bragged to his friends about what he was going to do to Mrs. Smith because she had threatened to suspend him for flashing gang signs in class. After the assault, the state’s attorney’s office refused to try Thomas as an adult, and kept Thomas’ case in Juvenile Court. He was charged with aggravated battery and aggravated assault; he would be back out on the street the next year.

2. Id.
3. Id.
4. Id.
5. Id.
6. Id.
9. Id.
10. Id.
11. Id.
12. Id.
This tragedy could have been avoided. Three days before the assault, Chicago police picked up Thomas on the street. In his pocket, Thomas had a clip of bullets. Although no charges were pressed, a police report was filed; yet no one informed Mrs. Smith.

Mrs. Smith's experience, although tragic, is far from uncommon. Sadly, the number of such assaults on Chicago public school teachers is growing.

For better or for worse, statistics reveal that the Chicago school district is in the unique position of educating a large number of students that it knows has the propensity to commit violent acts. For example, in the 1993-94 school year alone, eighty-two students were arrested for gun possession within 1,000 feet of school, yet only five were expelled. Additionally, during the school years 1990-91, 1991-92, 1992-93, and 1993-94, the following number of arrests took place of students in Chicago caught with guns: 153, 168, 95, and 83, respectively. All the students were suspended, but only the following number were expelled during those respective years: 0, 5, 5, and 5. During the next three years, the following number of students were suspended: 21,810, 22,070, and 28,671, respectively. Of those numbers, the following number of students were suspended more than once: 6,738, 6,088, and 10,253. During those years, however, only the following number of students were expelled: 21, 80, and 172.

While these latter statistics show that the Chicago school district is clamping down on repeat offenders, the number of violent acts involving assaults on teachers reveals that the school district is still too tolerant. In the school year 1995-96, there were 978 physical assaults on teachers by students; in 1996-97, there were 1,198. This means that

13. Id.
15. Id.
16. Id.
19. Id.
20. Chicago Pub. Sch., Office of Communications, Chicago School District Report (1998) (requested pursuant to the Freedom of Information Act). The statistics should be presented with a caveat. The information provided did not present a break down for those students who may have been suspended for violent acts such as assault. Therefore, of these numbers, some students may have been suspended for non-violent acts, such as drug violations.
21. Id.
22. Id.
23. Kass, supra note 8, at 1.
during the school years 1995-96 and 1996-97, 898 and 1,026 students were reinstated into the school system after assaulting teachers.\textsuperscript{24}

These numbers raise troubling questions about teacher safety in the Chicago public school system. Increasingly, teachers are being exposed to students who have a propensity to commit violent acts. Yet, the Chicago school district continues to reinstate these students into its schools, exposing teachers to potential sources of danger without adequate notice.\textsuperscript{25} By doing this, the Chicago school district fails to utilize its own legal procedures currently in place which are designed to protect teachers from student assaults.\textsuperscript{26} That failure, in turn, increases the exposure to liability the Chicago school district faces (through workers' compensation and other statutes) as a result of student assaults.\textsuperscript{27}

The primary goal of this Comment is to offer suggestions—for both the Chicago school district and the legal system—to solve the growing problem of teachers who are exposed to students with known propensities for violence. In Part I, this Comment explains what the law is currently doing to compensate employees injured while on the job.\textsuperscript{28} This begins with a cursory look at employees' principal means of recovery for work-related injury: the Illinois Workers' Occupational Diseases Act\textsuperscript{29} and the Workers' Compensation Act.\textsuperscript{30} It also includes a look at circumstances through which an employer may recover in tort from his employer when he is a victim of a third party criminal assault. Because Chicago teachers are employed by a governmental entity, Part I then examines the main obstacle (and its exceptions) for plaintiffs suing a municipality: governmental immunity. Part I next views the legal responsibility the Chicago school district has for keeping students like Thomas enrolled in its schools. The section concludes by examining the procedures the Chicago school district currently has in place to protect its teachers, and the policies driving student attendance.

\textsuperscript{24} Id.; see supra note 20. This is assuming that each separate assault was committed by a separate student.

These numbers are not unique to Chicago. Across the country, it appears to be open season on teachers. "Each month, approximately 5,200 teachers report being physically attacked, and are five times as likely as students to be seriously injured by those attacks." JAMES A. RAPP ET AL., SCHOOL CRIME AND VIOLENCE: VICTIMS' RIGHTS 2 (1986) (citations omitted).

\textsuperscript{25} See supra notes 17-24 and accompanying text.

\textsuperscript{26} See infra notes 154-55.

\textsuperscript{27} See infra Parts I.A.1, I.A.2.

\textsuperscript{28} See infra Part I.

\textsuperscript{29} 820 ILL. COMP. STAT. 310/1 (West 1996).

\textsuperscript{30} Id. 305/1.
In Part II, this Comment suggests how the law should change to protect Chicago's teachers. First, this section criticizes the courts' indulgence of unruly students and the difficulties facing teachers attempting recovery under the Illinois Workers' Occupational Diseases Act for work-related psychological trauma. Part II then addresses the two obstacles that would face teachers if they wanted to sue the school district in tort after an assault by a student with a known propensity for violence: the exclusivity provisions of workers' compensation and governmental immunity. Part II provides arguments as to why these two obstacles should be overcome when a teacher suffers injury at the hands of a student who has been reinstated into the classroom without notification after a violent act.

Part II concludes by offering suggestions for protecting teachers from students who have shown a propensity to commit violent acts. First, school districts should enforce the Chicago Uniform Discipline Code more stringently. Second, the city must develop a system of notifying teachers when their students are reinstated into the school after committing violent acts. Third, courts should lighten the burden for teachers attempting recovery under the Illinois Workers' Occupational Diseases Act for work-related psychological trauma. Finally, courts should reexamine the policies behind the exclusivity provisions of the Workers' Compensation Act and the Tort Immunity Act and permit teachers common law tort recovery if they are assaulted by a student who was reinstated into the school without notification of the student's propensity for violence.

I. BACKGROUND

A. Employee Remedies: Statutory and Common Law

The logical starting point for an argument which suggests that the courts should do more to protect teachers begins with an examination of what remedies are currently available for teachers injured while on the job. As an employer of teachers and other staff, school districts are subject to liability for employee injury through three separate avenues. The first two are statutory in nature: the Illinois Workers' Occupational Diseases Act and the Workers' Compensation Act. The third arises from common law and applies when the injury occurs outside the scope of employment: employer liability to the employee

31. See infra Part II.
32. 820 ILL. COMP. STAT. 310/1; see Board of Educ. v. Industrial Comm'n, 538 N.E.2d 830 (Ill. App. Ct. 1989) [hereinafter Stice].
33. 820 ILL. COMP. STAT. 305/1; see Pathfinder Co. v. Industrial Comm'n, 343 N.E.2d 913 (Ill. 1976).
for injury or death resulting from assault or criminal attack by a third person.34

1. *The Illinois Workers’ Occupational Diseases Act*

The Illinois Workers’ Occupational Diseases Act enables an employee to obtain relief for any disease “arising out of and in the course of employment or which has become aggravated and rendered disabling as a result of the exposure of the employment.”35 Such aggravation “shall arise out of a risk peculiar to or increased by the employment” (i.e., not common to the general public) and such disease “shall be deemed to arise out of the employment if there is . . . a causal connection between the conditions under which the work is performed and the occupational disease.”36 The disease does not have to be foreseen or expected, but it must appear to have as its origin a risk connected with the employment.37

Recovery under the Occupational Diseases Act is not limited to physical illness, however, as revealed by *Pathfinder Co. v. Industrial Commission.*38 In *Pathfinder,* the claimant experienced emotional trauma after she witnessed a punch press sever a co-worker’s hand at the wrist.39 The court concluded that “an employee who . . . suffers a sudden, severe emotional shock traceable to a definite time, place and cause which causes psychological injury or harm has suffered an accident within the meaning of the Act, though no physical trauma or

35. 820 ILL. COMP. STAT. 310/1(d); see Stice, 538 N.E.2d at 832.
36. 820 ILL. COMP. STAT. 310/1(d); see Stice, 538 N.E.2d at 832.
37. 820 ILL. COMP. STAT. 310/1(d).
38. 343 N.E.2d 913. The *Pathfinder* court actually presented two methods of recovery for psychological trauma: “physical-mental” trauma and “mental-mental” trauma (the court’s present case). *Id.* at 917; *see* City of Springfield v. Industrial Comm’n, 685 N.E.2d 12, 14 (Ill. App. Ct. 1997). “Physical-mental” trauma occurs where the mental injuries are related to and caused by a physical injury, while “mental-mental” trauma occurs where the mental injuries are traceable to an event. *Id.* Because Part I.A.2 of this Comment is concerned with employee compensation for physical injury, the focus here remains on recovery for psychological injury induced through the “mental-mental” model. In any event, the arguments presented in Part II of this Comment—to reduce the burdens facing teachers attempting recovery under the Illinois Workers’ Occupational Diseases Act—apply to recovery under either the “mental-mental” or “physical-mental” models.
injury was sustained.” Under such circumstances, a plaintiff may obtain recovery under the Illinois Workers’ Occupational Diseases Act for not only physical trauma, but also psychological trauma.

2. The Illinois Workers’ Compensation Act

To the extent that the school district is an employer of teachers and other personnel, the main remedy available to its staff for work-related injury is the Illinois Workers’ Compensation statute. Under this statute, the school district must compensate its employees who are victims of assaults while on the job. The Chicago school district’s unique role as a municipality does nothing to limit the responsibilities the school district has to its employees as an employer.

The Workers’ Compensation Act is remedial in nature; it is intended to provide financial protection for the injured worker as the

40. Pathfinder, 343 N.E.2d at 917. Subsequent caselaw has confirmed the three required elements for such a recovery:

(1) the mental disorder arose in a situation of greater dimensions than the day-to-day emotional strain and tension which all employees must experience; (2) the conditions exist in reality, from an objective standpoint; and (3) the employment conditions, when compared with the nonemployment conditions, were the “major contributing cause” of the mental disorder.


41. See Runion, 615 N.E.2d at 10; Pathfinder, 343 N.E.2d at 917.

42. 820 ILL. COMP. STAT. 305/1.

43. Id. 305/8. In order to obtain recovery, the employee must be injured in an accident which arises out of and occurs in the course of employment. Id. 305/2; see Best Foods v. Industrial Comm’n, 596 N.E.2d 834, 836 (Ill. App. Ct. 1992). The injury is said to arise out of employment if there is a causal connection between the injury and the employment, see Robert B. Ulrich & Matthew B. Schiff, Survey of Illinois Law: Workers’ Compensation, 19 S. ILL. U. L.J. 999, 1006 (1995) (citing McField v. Lincoln Hotel, 182 N.E.2d 905 (Ill. App. Ct. 1962)), and this connection can be established if the employee shows that the origin of the injury lies in a risk related to the employment. Id. (citing Lubin Management Co. v. Industrial Comm’n, 558 N.E.2d 189, 191 (Ill. App. Ct. 1990)). Recovery is possible for assaults while on the job, for example, if the court determines that the employee was found to be exposed to a greater risk of assault than the general public. See, e.g., Rush-Presbyterian-St. Luke’s Med. Ctr. v. Industrial Comm’n, 630 N.E.2d 1175, 1179 (Ill. App. Ct. 1994) (finding that claimant nurse was exposed to a greater risk of sexual assault than the general public because of doctor’s testimony that nurses symbolize a strong maternal element, making them more prone to sexual assault).

Since every jurisdiction now accepts, at the minimum, the principle that a harm is compensable if its risk is increased by the employment, the clearest ground of compensability in the assault category is a showing that the probability of assault was augmented either because of the particular character of claimant’s job or because of the special liability to assault associated with the environment in which he or she must work.

1 ARTHUR LARSON, THE LAW OF WORKMEN’S COMPENSATION § 11.11(a) (1998). This includes those jobs that expose the employee to lawless or irresponsible members of the public. Id.

44. 820 ILL. COMP. STAT. 305/1(a) (“The term ‘employer’ as used in this Act means: 1. The State and each county, city, town, township, incorporated village, school district, body politic, or municipal corporation therein.”).
costs are borne by the employer. Through the Workers' Compensation Act, the employee may receive an award of compensation "without having to show negligence on the part of the employer, and he need not show he was free from any contributory negligence." Significantly, the employee forfeits a great deal in exchange for this certain recovery. The employee cannot invoke common law tort remedies against the employer. In fact, recovery under the Workers' Compensation Act expressly precludes an employee from obtaining any other common law or statutory remedies for a work-related injury. Although there are exceptions to this general rule, only one

45. Id. 305/2. The amount of compensation awarded under workers' compensation may not be expected to get much higher than is necessary to keep the worker from destitution. "Up to a certain point, the amount of compensation depends upon the worker's previous earning level." 1 Larson, supra note 43, § 2.50.

46. Pathfinder, 343 N.E.2d at 916-17. It is often said that the policy driving workers' compensation is the same that drives strict liability in tort: "When a person carries on a hazardous undertaking which has sufficient social utility to prevent the law from forbidding it altogether, the law will permit the person to carry it on only on condition that he or she assumes liability without fault for any consequent injuries." 1 Larson, supra note 43, § 2.20. Put in a more straight-forward manner:

Under workers' compensation, employees may recover for injuries without proving the employer was at fault, and they are to be provided swift and certain recovery. In exchange, workers' compensation becomes the exclusive remedy because employees give up the right to pursue a potentially larger judgment in a common law action.


47. 820 Ill. Comp. Stat. 305/5(a).

No common law or statutory right to recover damages from the employer ... for injury or death sustained by any employee while engaged in the line of his duty as such employee, other than the compensation herein provided, is available to any employee who is covered by the provisions of this Act, to any one wholly or partially dependent upon him, the legal representatives of his estate, or any one otherwise entitled to recover damages for such injury.

Id.

The compensation remedy is exclusive of all other remedies by the employee or his dependents against the employer and insurance carrier for the same injury, if the injury falls within the coverage formula of the act. If it does not, as in the case where occupational diseases were deemed omitted because not within the concept of accidental injury, the compensation act does not disturb any existing remedy. However, if the injury itself comes within the coverage formula, an action for damages is barred even although the particular element of damage is not compensated for, as in the case of disfigurement in some states, impotency, or pain and suffering.

6 Larson, supra note 43, § 65.00.


These sections bar an employee from bringing a common law cause of action against his or her employer unless the employee-plaintiff proves: (1) that the injury was not accidental; (2) that the injury did not arise from his or her employment; (3) that the injury was not received during the course of employment; or (4) that the injury was not compensable under the Act.
deserves mentioning here. The exclusive remedy does not preclude common law actions against co-employees for intentional torts.\textsuperscript{50}

The ultimate social philosophy behind this statutory compensation system for work-related injury is two-fold. First, victims receive efficient and dignified benefits for work-connected injuries which the community would feel obliged to compensate anyway (and probably in some less satisfactory form).\textsuperscript{51} Second, the burden of these payments is allocated to the most appropriate source of payment, the consumer of the product.\textsuperscript{52} The exclusivity of the typical workers’ compensation statute is part of the quid pro quo in which the sacrifices and gains of employees and employers are to some extent put in balance: While the employer assumes a new liability without fault, he is relieved of the prospect of large damage verdicts.\textsuperscript{53}


When the injury occurs outside of the scope of employment, the employer may nonetheless be exposed to liability to the employee for injury or death resulting from an assault or criminal attack by a third person.\textsuperscript{54} Such recovery is, however, quite limited. Specifically, the employer is liable under only three exceptions: (1) when the employer knows there exists an unusual risk of assault and fails to warn the employee; (2) when the employer expressly agrees to protect the employee; (3) when the employer has committed other miscellaneous torts, see id. at 1005.

\textsuperscript{50} See Ulrich & Schiff, supra note 43, at 1005 (citing Bercaw, 630 N.E.2d at 167; Vance v. Wentling, 619 N.E.2d 902, 905 (Ill. App. Ct. 1993)). In Vance v. Wentling, the plaintiff alleged that an injury he sustained during work was aggravated when the defendant, a nurse employed by the plaintiff's employer, ordered him to return to work. 619 N.E.2d at 902. The court held that an employee who commits an intentional tort may not raise the Act as a bar to an action for damages by a fellow worker. Id. at 903 (quoting Jablonski v. Multack, 380 N.E.2d 924, 928 (Ill. App. Ct. 1978)); see Meerbrey, 564 N.E.2d at 1230. However, the individual who is injured as a result of a co-employee's intentional conduct is "bound to an election of remedies upon receiving compensation under the Act." Vance, 619 N.E.2d at 904. This prevents the plaintiff from obtaining a double-recovery. Id. at 903-04 (following reasoning from Collier, 408 N.E.2d at 198, 203-04).

\textsuperscript{51} 1 Larson, supra note 43, § 2.20.

\textsuperscript{52} Id.

\textsuperscript{53} 5 id. § 61.11. The key fact in establishing exclusiveness is actual coverage, not of election to claim compensation in a particular case. The employee's right to sue the employer at common law is barred by the existence of the compensation remedy. 6 id. § 65.14.

\textsuperscript{54} See Linda A. Sharp, Annotation, Employer's Liability to Employee or Agent for Injury or Death Resulting from Assault or Criminal Attack by Third Person, 40 A.L.R.5TH 1 (1996).
ployee from assault by a third person; or (3) when the employer impliedly agrees to protect the employee from an assault by a third person.

a. Special Knowledge of Danger and Failure to Warn

First, an employer may be liable to his employee for injuries resulting from an assault by a third person where the employer had knowledge or notice of an unusual risk of assault by third persons and the employer failed to warn the employee of that danger. This exception—and its limitations—is demonstrated in Petersen v. United States Reduction Co. In Petersen, the decedent was driving a truck for the defendant company when he was shot and killed by a sniper. The plaintiff filed a wrongful death action against the defendant, arguing that the defendant failed to warn the decedent that it received threats to shoot the replacement drivers that the defendant hired to work during the strike. The jury found the defendant guilty of negligence in failing to warn the decedent of the known threats and dangers and awarded the plaintiff $2.25 million in damages. The defendant appealed.

Although the appellate court reversed the jury award of $2.25 million in damages, it outlined the circumstances in which an employer could be liable for the tortious acts of third parties causing injuries to its employees. The court noted that ordinarily a party owes no duty of care to protect another from the harmful or criminal acts of third persons. The court noted four exceptions, however, one of which is when the parties are in a special relationship and the harm is foresee-
able. The court observed that Restatement (Second) of Agency, section 512(1) imposed a duty upon an employer to exercise reasonable care to protect an employee who comes into a position of imminent danger or serious harm that is known to the employer. The court observed that if the decedent faced an "unreasonable risk of harm known to USR [his employer], but unknown to him, USR owed a duty to warn him of such danger." Unfortunately for the plaintiff in Petersen, the court concluded that this exception did not apply to an inchoate threat of an unidentified assailant made to an unspecified person at an unspecified time and location.

b. Employer's Express Agreement to Protect

The second possible exception to the general rule that an employer is not liable to its employees for the injuries caused by the criminal acts of third parties is when the employer expressly agrees to protect an employee from assaults by third persons and subsequently fails to do so. This second exception is seen in Slager v. Commonwealth Edison Co. In Slager, a wrongful death action, the decedent was a member of the pipefitters' union who was crossing the picket lines and working at the defendant's site during a strike. In a hasty effort to avoid a confrontation with the strikers while leaving work in his car,

64. Petersen, 641 N.E.2d at 848.
65. Id. at 849. The court acknowledged that section 314(A) in Restatement (Second) of Torts does not specifically enumerate the employer-employee relationship as one of the four possible relationships in this "special relationship" exception. Id.
66. Id. at 850.
67. Id. For a more successful attempt at recovery under this exception, see Hefele v. New York, 267 N.Y.S.2d 946 (App. Div. 1966). In Hefele, the plaintiff, a social investigator employed by the city, brought an action against the city for injuries sustained in an assault by a client. Id. at 948. The day of the assault, the client was requested to attend a meeting at the department office so that the plaintiff could meet with the client's wife at their apartment. Id. Instead of attending the meeting, however, the client ambushed the plaintiff at her apartment. Id. The plaintiff sued the city for failing to warn her that the client was not absent from his apartment as planned. Id. The appellate court held that the plaintiff should be allowed to establish that her supervisors had the opportunity to advise her of the whereabouts of the client and failed to do so. Id. at 949.
68. Sharp, supra note 54, at 32.
69. 595 N.E.2d 1097 (Ill. App. Ct. 1992). The decedent was employed as a quality control inspector for a construction company that was constructing the defendant's power plant. Id. at 1098. The plaintiff's tort suit was based on the defendant's promise to provide the decedent a safe work environment. Id. at 1101. Though the court never addressed the issue, the decedent's status as a non-employer, along with the plaintiff's ability to show the employer's affirmative duty, meant that the workers' compensation exclusivity provisions did not apply. Id. at 1098. This same pattern was seen in Petersen. See supra note 57.
70. Slager, 595 N.E.2d at 1098-99.
the decedent accelerated into the path of an oncoming truck and was killed.\textsuperscript{71}

The \textit{Slager} court affirmed the jury verdict for the plaintiff, holding that the defendant's duty to the decedent arose from the defendant's \textit{express} statements, actions, and intent to provide for the safety of the workers during the strike.\textsuperscript{72} With such a duty undertaken, the fact that there was no history of violence in prior strikes was of limited significance.\textsuperscript{73} Furthermore, the court observed that the precise pattern of events need not be foreseeable; but rather the risk of harm or danger to whom the duty is owed.\textsuperscript{74} The foreseeability to the decedent was indicated by the fact that the defendant called the police earlier in the day.\textsuperscript{75} In fact, the decedent's reliance on the police for assistance did not extinguish the defendant's own responsibility for the safety of the decedent.\textsuperscript{76}

c. Employer's Implied Agreement to Protect

Third, an employer may be liable to its employees for the criminal acts of third parties when the employer impliedly agrees to protect an employee from assaults by third persons and subsequently fails to do so.\textsuperscript{77} This third and final exception to employer liability is illustrated in \textit{Vaughn v. Granite City Steel Division of National Steel Corp.}\textsuperscript{78} In \textit{Vaughn}, another wrongful death action, the decedent was shot to death in a parking lot provided by the defendant.\textsuperscript{79} The lot had no fence, but was monitored by one security guard who patrolled all of the defendant's numerous parking areas.\textsuperscript{80} Although there had been previous incidents of property damage reported in the parking areas,

\textsuperscript{71} \textit{Id.} at 1100.
\textsuperscript{72} \textit{Id.} at 1104.
\textsuperscript{73} \textit{Id.}
\textsuperscript{74} \textit{Id.} at 1103.
\textsuperscript{75} \textit{Id.} at 1104.
\textsuperscript{76} \textit{Slager}, 595 N.E.2d at 1104.
\textsuperscript{77} \textit{Sharp}, \textit{supra} note 54, at 36.
\textsuperscript{79} \textit{Id.} at 876. Though the court never addressed the issue, presumably the exclusivity provisions of the Workers' Compensation Act did not apply here because the plaintiff brought the action under the Wrongful Death Act, the elements of which include "a duty of defendant toward the decedent, a breach of that duty, and pecuniary damages resulting therefrom to persons designated by the Act." \textit{Id.} at 877 (citing Old Second Nat'l Bank v. Aurora Township, 509 N.E.2d 692, 695 (Ill. App. Ct. 1987)). Unlike \textit{Petersen} and \textit{Slager}, however, the decedent was clearly an employee, and the plaintiff was only required to meet the aforementioned duties under the Wrongful Death Act. \textit{See supra} notes 57, 69. If those elements of an employer's duty cannot be met, the Workers' Compensation Act still compensates surviving spouses and children at the death of the employee. \textit{See} 805 ILL. COMP. STAT. 305/7 (West 1996).
\textsuperscript{80} \textit{Vaughn}, 576 N.E.2d at 876-77.
there were no previous acts of personal violence of any kind. The plaintiff alleged that the defendant had violated its duty to protect against the criminal conduct of third persons, a duty which arose from the voluntary undertaking by the defendant to perform its own guard services.

Relying on the proposition that liability can arise from the negligent performance of a voluntary undertaking, the court affirmed the jury verdict for the plaintiff. The court reasoned that the defendant assumed the duty through its company-initiated manual, which outlined as its goal to maintain the peace and protect all employees and their property while they were on the defendant's property. The court also noted that the union's labor contract stated that it was the responsibility of the defendant's guards to protect the employees while on the defendant's property. Furthermore, the court noted that while there were other possible theories of the cause of the decedent's death, the defendant could still be liable, as the alleged proximate cause need not be the only cause involved.

81. Id. at 877. The court's reasoning here is a reminder of the importance of the foreseeability issue. See, e.g., Petersen v. United States Reduction Co., 641 N.E.2d 845, 850 (Ill. App. Ct. 1994) (denying the plaintiff recovery, in part, because foreseeability could not be established with an inchoate threat of an unidentified assailant made to an unspecified person at an unspecified time and location); see also infra note 86 (discussing foreseeability problem when patrons of defendant hotel sexually assaulted the plaintiff).

82. Vaughn, 576 N.E.2d at 877-78.

83. Id. at 878, 882 (citing Nelson v. Union Wire Rope Corp., 199 N.E.2d 769, 773 (Ill. 1964) and quoting RESTATEMENT (SECOND) OF TORTS § 324A, at 142 (1965)).

84. Id. at 879. The Standard Operating Procedures for the Plant Protection Department stated as its objectives:

—To protect the property of the Company against all acts which would tend to deny the Company the use of said property.
—To maintain the peace and protect all employees and their property while they are on the Company's premises.
—To deny access to all persons not specifically authorized or properly invited.
—To provide a readily available, trained, and responsive force to function in emergencies.

Id. (quotations omitted).

85. Id. at 880. The labor contract stated, under a provision entitled "Responsibility," the following: "The Union recognizes that it is the responsibility of the Plant Guards to guard and protect the employees and their property while on plant property; and to guard and protect the plants, premises, materials, facilities and the property of the company at all times and under all circumstances." Id.

86. Id. at 880-81. The Vaughn decision can be a bit misleading, as many other cases failed to find employer liability using the same argument. In Ozment v. Lance, 437 N.E.2d 930 (Ill. App. Ct. 1982), for instance, the employer was not liable for the employee's injuries that allegedly resulted from the employer's failure to provide a safe place to work. Id. at 936. In Ozment, a minor busboy filed suit to recover against his employer after he was sexually assaulted by two male patrons of the motel for which he worked. Id. at 932. In affirming a summary judgment for the employer, the Ozment court recognized that the special relation of employer-employee could
B. The Chicago School District's Conditional Immunity Through the Tort Immunity Act

As shown, an employee may receive compensation for on-the-job injury through both statutory provisions and the common law. An employee's ability to achieve the latter remedy, however, is limited not only by the aforementioned narrow categories of foreseeable third party assaults, but also by the requirement that the employer is a private entity. Because the Chicago school district is a public entity, this Comment now turns to the principles of governmental immunity.

Under the doctrine of the sovereign immunity of the state, the theory that "the King can do no wrong," a governmental unit was immune from tort liability. In Illinois, however, this general rule was abolished in 1959, with Molitor v. Kaneland Community Unit District No. 302. As a result of Molitor, the Illinois General Assembly enacted the Local Governmental and Governmental Employees Tort Immunity Act ("Tort Immunity Act"). Although the Tort Immunity Act adopted the general principle that local governmental units are liable in tort, it "limited this [principle] with an extensive list of immunities based on specific government functions."

As a governmental unit, a school district can claim immunity under at least four separate sections of the Tort Immunity Act. Specifically, § 2-103 immunizes the school district from liability for injury resulting from the failure to enforce any law. Second, § 2-104 immunizes the school district from liability for injury resulting from the issuance, denial, suspension or revocation of permits, licenses, and other documents. Third, § 2-109 immunizes the school district from liability for impose a duty of care to protect an employee against the criminal activity of others, provided that the criminal act be reasonably foreseeable. Id. at 934 (citing RESTATEMENT (SECOND) OF TORTS §§ 302B cmt. e B, 214A, 314B). In this case, however, there was nothing in the record to put the defendant employer on notice that the guests who assaulted the plaintiff presented a special risk or danger to the plaintiff in delivering a room service order. Id. at 935.

To avoid the workers' compensation exclusivity provisions, the plaintiff argued that because his injuries occurred outside the scope of employment (they occurred while he was illegally serving liquor as a minor), the exclusivity rules did not apply. Id. at 932. But the trial court granted the defendant's motion for summary judgment, asserting that the plaintiff's exclusive remedy was under workers' compensation. Id. The appellate court declined to address the issue, and instead ruled on the merits of the case. Id. at 933.

88. 163 N.E.2d 89, 98 (Ill. 1959).
89. 745 ILL. COMP. STAT. 10/1-101 (West 1996); see Burdinie, 565 N.E.2d at 658.
90. Burdinie, 565 N.E.2d at 658; see, e.g., 745 ILL. COMP. STAT. 10/2-103 (providing immunity for injury caused by adopting or failing to adopt an enactment or failing to enforce the law).
91. 745 ILL. COMP. STAT. 10/2-103 ("A local public entity is not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law.").
92. Id. 10/2-104.
"injury resulting from an act or omission of [an] employee where the employee is not liable." 93 Finally, § 2-201 immunizes the school district from liability for injuries resulting from exercise of discretionary authority. 94 These four respective immunities, however, are subject to at least two exceptions: the "special duty" exception 95 and violation of a statutorily imposed duty exception. 96

1. The "Special Duty" Exception

The "special duty" exception is described in detail in Thames v. Board of Education. 97 In Thames, the plaintiff instituted an action against the Chicago Board of Education on behalf of her minor daughter, who sustained injuries when a handgun concealed in the book bag of a fellow high school student accidently discharged. 98 The plaintiff alleged that the Board of Education failed to install metal detectors, or to adopt other means of weapons interdiction, despite knowledge that guns and other weapons had been brought into some of the Board's schools, including her daughter's school. 99 The court granted the Board of Education's motion to dismiss, concluding that the Board of Education owed the plaintiff's daughter no "special duty" to protect the student from a gunshot. 100

The "special duty" doctrine is invoked if circumstances arise whereby care or custody is exercised over a specific individual by a...
municipality or public official so that a duty to act on behalf of that individual comes into existence. The affirmative exercise of care or custody over the individual elevates that person's status beyond that of a member of the public at large.

The "special duty" exception has four elements. First, the municipality must be uniquely aware of the particular danger or risk to which the plaintiff is exposed. Second, there must be allegations of specific acts or omissions on the part of the municipality. Third, the specific acts or omissions must be either affirmative or willful in nature. Finally, "the injury must occur while the plaintiff is under the direct and immediate control of employees or agents of the municipality."  

101. Id. at 448 (citing Fryman v. JMK/Skewer, Inc., 484 N.E.2d 909 (Ill. App. Ct. 1985)).  
102. Id. (citing Burdinie v. Village of Glendale Heights, 565 N.E.2d 654 (Ill. 1990)). Put another way, the municipality's undertaking transforms the general citizen into an object of special concern. Id. (citing Santy v. Bresee, 473 N.E.2d 69 (Ill. App. Ct. 1984)).

103. Thames, 645 N.E.2d at 448 (finding all four elements in Bell v. Village of Midlothian, 414 N.E.2d 104 (Ill. App. Ct. 1980)).

104. Id. at 448-49. This element requires knowledge of a particular danger to a particular plaintiff. Id. at 449. The requirement is not satisfied with an allegation that a public employee had superior knowledge and experience and that the public employee was in a better position than the public to prevent the potential harm. Id. The Thames court concluded that the cases interpreting the unique awareness element provided a narrow interpretation of that requirement. Id. at 450. Specifically, the court stated that for a plaintiff to meet the requirement successfully, "facts must be alleged that the defendant had actual knowledge of a particular risk to the particular plaintiff." Id. The court concluded that because the plaintiff failed to allege facts showing that the Board had specific knowledge that the particular student who had the gun had brought it to school on the date of the shooting, the plaintiff failed to establish the unique awareness element. Id.

105. Id. at 449.
106. Id.
107. Id. This fourth element of the "special duty" exception requires the plaintiff to show that she was under the control of the municipality when the injury occurred. Id. at 450. This is a high standard:

[Test] the public employee creates a position of peril ultimately injurious to a plaintiff, as opposed to situations where a plaintiff merely seeks protection from the public employee that is not normally provided. We interpret this to mean that the control element arises when the public employee initiates the circumstances which create the dangerous situation. Id. (quoting Burdinie, 565 N.E.2d at 667) (emphasis added).

The determinative factor here is whether the public official or public entity was responsible for the occurrence which gave rise to the need for protection. Id. at 451. In the Thames decision, for instance, the court concluded that the plaintiff's argument—that the Board exercised control over her because her presence in school was required by law—failed to satisfy the control element because it did not establish a special duty for a specific individual. Id. The Thames court explained, "[a] pivotal factor in the control analysis is whether the public entity or its employees were responsible for the occurrence which gave rise to the need for protection." Id. at 452. The court concluded that the Board of Education did not create the dangerous situation; rather, that situation was created by the student bringing the handgun to school. Id.
2. "Failure to Comply with a Statute" Exception

_Mueller v. Community Consolidated School District 54_\(^{108}\) reveals that the "special duty" exception is not the only method of penetrating the Tort Immunity Act and making school districts liable in tort.\(^{109}\) In _Mueller_, the student plaintiff filed suit against the school district after Robinson, the school's wrestling coach, sexually assaulted the student.\(^{110}\) The plaintiff's complaint alleged that the defendant violated four distinct duties, the first of which was the duty imposed by the Illinois School Code to conduct a background check on Robinson.\(^{111}\)

In _Mueller_, the defendant's failure to conduct the background check on Robinson pursuant to statute destroyed the immunity it would have had under two separate provisions of the Tort Immunity Act.\(^{112}\) In regards to the first count, the _Mueller_ court concluded that because this count was concerned with compliance with the law, it was not subject to § 2-103 of the Tort Immunity Act, which granted governmental entities immunity for the failure to enforce any law.\(^{113}\) Additionally, the defendant's failure to comply with the statute "fettered" the immunity it would have enjoyed under a separate provision of the Tort Immunity Act—immunity from liability for injuries resulting from the exercise of discretionary authority.\(^{114}\)

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109. _Id._ at 666-67.
110. _Id._ at 662.
111. _Id._ at 663; see 105 ILL. COMP. STAT. 5/34-18.5(d) (West Supp. 1996) ("The board of education shall not knowingly employ a person for whom a criminal background investigation has not been initiated."). The plaintiff's other three counts alleged that the defendant owed the plaintiff the duty of reasonable care in the hiring and investigation of Robinson; the defendant owed the plaintiff the duty of reasonable care and caution in the supervision of Robinson; and the defendant owed the plaintiff the nondelegable duty to refrain from causing injury to the plaintiff. _Mueller_, 678 N.E.2d at 663.
112. _Mueller_, 678 N.E.2d at 666.
113. _Id._ (citing Filipetto v. Village of Wilmette, 627 N.E.2d 60, 66 (Ill. App. Ct. 1993)); see 745 ILL. COMP. STAT. 10/2-103 (West 1996). The court explained: This case is not concerned with enforcement of a law, but, rather, the violation of a state statute. The plaintiff is not suing the state for failing to make sure the School District abided by its statute (enforcement); the plaintiff is suing School District 54 because it violated a state statute intended to protect persons such as herself from the type of injury she received. _Mueller_, 678 N.E.2d at 666.
114. _Mueller_, 678 N.E.2d at 666; see 745 ILL. COMP. STAT. 10/2-201. The court explained: Finally, section 2-201 gives governmental entities immunity from liability for injuries resulting from exercise of discretionary authority. Here the School District's discretion is fettered by the criminal-background-check statute. The statute provides that the School District "shall not knowingly employ a person for whom a criminal background investigation has not been initiated." Given the statute's mandatory language, we find that it requires the School District to at least commence an investigation of employ-
Fortunately for the plaintiff in *Mueller*, the court's analysis enabled the plaintiff to prevail on the first count. The court held that the first count should not have been dismissed and remanded the judgment to the trial court.

**C. The Chicago School District's Conditional Immunity Through the School Code**

Besides the possible immunity a school district may enjoy through the Tort Immunity Act as a municipality, the Illinois School Code provides a degree of immunity as well. While the School Code provides immunity from suits arising out of the negligent acts of teachers, it does not provide immunity when a school district's liability arises out of a condition separate from the acts of a teacher or other employee.

*Sidwell v. Griggsville Community School Unit School District No. 4* describes the means through which a school district may be vulnerable to tort liability despite the Illinois School Code's provisions. In *Sidwell*, the plaintiff brought an action against the school district on behalf of her minor son after he was injured on the playground of the school he was attending. The plaintiff's complaint alleged that her son's injury occurred when he fell in a rut on the playground—a rut...
which the defendant knew about for months and should have repaired.\textsuperscript{121}

The defendant moved to dismiss, arguing that § 24-24 of the School Code, which granted immunity to teachers for claims based on ordinary negligence, applied to school districts as well.\textsuperscript{122} With the plaintiff arguing that the school district itself was negligent and not its employees, the issue became "whether a school district benefits from section 24-24 immunity when a complaint alleges a claim which is based on the negligence of the school district itself, and not based on the negligence of a teacher."\textsuperscript{123} The court concluded that § 24-24 provides immunity for teachers and other certified educational employees, but not for school districts.\textsuperscript{124} Although the school district could benefit vicariously from a teacher's immunity when the cause of action is predicated on the negligence of a teacher,\textsuperscript{125} the court concluded that when a complaint alleges the independent negligence of the school district rather than liability through the acts of a teacher, the school district is not entitled to vicarious immunity.\textsuperscript{126}

\section{D. Compulsory School Attendance}

As shown, a school district is subject to liability for injuries to non-employees (e.g., students) through exceptions in the Tort Immunity Act\textsuperscript{127} and the Illinois School Code.\textsuperscript{128} Additionally, a school district is subject to liability for injuries to its employees: for injuries occurring

\textsuperscript{121} Id.
\textsuperscript{122} Id. at 1187 (current provision at 105 ILL. COMP. STAT. 5/10-20.20).
\textsuperscript{123} Id.
\textsuperscript{124} Id. at 1188. The court explained:
\textquote{We believe that sections 24-24 and 34-84a provide immunity to "teachers and other certificated educational employees," not to school districts. The language of the statute is clear: "Teachers and other certificated educational employees . . . stand in the relation of parents and guardians to the pupils." The statutes say nothing about school districts.}
\textsuperscript{125} Sidwell, 588 N.E.2d at 1188 (citing Jastram v. Lake Villa Sch. Dist. 41, 549 N.E.2d 9, 12 (Ill. App. Ct. 1989)).
\textsuperscript{126} Id. In these situations, however, the plaintiff is the student—not the teacher/employer—who is able to recover in tort for the independent negligence of the school district. See id. at 1186. Naturally, a teacher's recovery in tort for the independent negligence of the school district would have the recovery precluded by the workers' compensation statutes. See 820 ILL. COMP. STAT. 305/5(a) (West 1996); see also supra Part I.A.2 (discussing how the workers' compensation statutes preclude an employee's recovery).
\textsuperscript{127} See supra Parts I.B.1, I.B.2. Two principal means through which a school district may be exposed to liability despite the Tort Immunity Act are through the "special duty" and the "failure to comply with a statute" exceptions.
\textsuperscript{128} See supra Part I.C. The Illinois School Code fails to immunize a school district for its independent negligent acts outside of those negligent acts of its teachers and other employees.
while on the job,\textsuperscript{129} or for foreseeable, tortious acts by third parties independent of employment.\textsuperscript{130} All of these provisions should compel a school district to take steps to protect its teachers from assaults by students. When confronted with a student with a known propensity for violence, perhaps a school district's safest solution would be the immediate expulsion of the student. A school district confronted with such a student, however, cannot simply deny the student an education at will.\textsuperscript{131}

The Illinois School Code compels children under the age of eighteen to attend school.\textsuperscript{132} The compulsory attendance rule is subject to a number of exceptions, but none of these permit children of school age to excuse themselves without cause.\textsuperscript{133} The purpose of the compulsory attendance laws is to assure that all children receive a minimum education.\textsuperscript{134}

The compulsory education laws are designed to meet the educational goals outlined in the Illinois Constitution.\textsuperscript{135} In fact, the Illinois Constitution mandates a right to an education.\textsuperscript{136} These provisions in the Illinois Constitution mean that, although education is not a funda-
mental constitutional right under the United States Constitution, Illinois must provide each student with the service of education because it has promised that service in its own Constitution.

1. Due Process Required for Suspension and Expulsion

Considering the legal provisions in Illinois assuring a free education for all students, a school district cannot suspend or expel a student at will. Specifically, pupils guilty of gross disobedience or misconduct may be expelled only after they have received proper due process. If due process is provided, however, school officials may exercise their authority under the school board regulations and suspend or expel students guilty of gross disobedience or misconduct. As may be expected, the more serious violations of school policies, such as bringing a weapon to school, result in lengthier suspensions.

137. San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 35 (1973) ("Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected.").
138. See Lewis E., 679 N.E.2d at 838.
139. See supra note 135.
140. See 105 ILL. COMP. STAT. 5/10-22.6(a) (West Supp. 1996).

Expulsion shall take place only after the parents have been requested to appear at a meeting of the board, or with a hearing officer appointed by it, to discuss their child’s behavior. Such request shall be made by registered or certified mail and shall state the time, place and purpose of the meeting. The board, or a hearing officer appointed by it, at such meeting shall state the reasons for dismissal and the date on which the expulsion is to become effective. If a hearing officer is appointed by the board he shall report to the board a written summary of the evidence heard at the meeting and the board may take such action thereon as it finds appropriate.

Id.

141. See id. 5/10-22.6(b).

The board may by regulation authorize the superintendent of the district or the principal, assistant principal, or dean of students of any school to suspend pupils guilty of such acts for a period not to exceed 10 school days. If a pupil is suspended due to gross disobedience or misconduct on a school bus, the board may suspend the pupil in excess of 10 school days for safety reasons. Any suspension shall be reported immediately to the parents or guardian of such pupil along with a full statement of the reasons for such suspension and a notice of their right to a review, a copy of which shall be given to the school board. Upon request of the parents or guardian the school board or a hearing officer appointed by it shall review such action of the superintendent or principal, assistant principal, or dean of students. At such review the parents or guardian of the pupil may appear and discuss the suspension with the board or its hearing officer. If a hearing officer is appointed by the board he shall report to the board a written summary of the evidence heard at the meeting. After its hearing or upon receipt of the written report of its hearing officer, the board may take such action as finds appropriate.

Id.

142. See id. 5/10-22.6(d).

A student who is determined to have brought a weapon to school, any school-sponsored activity or event, or any activity or event which bears a reasonable relationship to
In short, although students have due process rights, school officials may still suspend or expel them without violating their constitutional rights. Both suspension and expulsion remain not only a constitutionally acceptable means of punishment, but also forms of punishment that fall within the limited discretion of the local school board. Suspension or expulsion of students violates neither the Illinois Constitution nor the United States Constitution: The legislative provisions permitting suspension or expulsion of students guilty of gross disobedience or misconduct are neither void for vagueness and overbreadth, nor do they run afoul of the Due Process Clause of the Fourteenth Amendment. Finally, the requirement that a student receive notice before suspension or expulsion can be satisfied rather easily by school officials.

school shall be expelled for a period of not less than one year, except that the expulsion period may be modified by the board on a case by case basis. 

Id. Longer suspensions, expulsions or other substantial disciplinary actions require more formal due process procedures. Though these may vary depending upon the circumstances, they usually require that the student be given: (1) written notice of the charges against him; (2) the names of the witnesses against him and an oral or written report of the facts to which each witness will testify, and perhaps the opportunity to cross-examine them; (3) the opportunity to present evidence; (4) a reasonable opportunity to prepare for the hearing; and (5) the right to be represented by counsel. 3 RAPP, supra note 131, § 9.05 [3] [b].

But even those students who are guilty of these most egregious violations (e.g., bringing a weapon to school) are eligible for transfer into alternative schools. See 105 ILL. COMP. STAT. 5/13A-4.

A student who is determined to be subject to suspension or expulsion in the manner provided by Section 10-22.6 may be immediately transferred to the alternative program. At the earliest time following that transfer appropriate personnel from the sending school district and appropriate personnel of the alternative program shall meet to develop an alternative education plan for the student. The student's parent or guardian shall be invited to this meeting. The student may be invited. 

Id. The alternative educational plan shall include a duration, "including a date after which the student may be returned to a regular educational program." Id.

A recent Chicago public school policy calls for the automatic expulsion of students who carry weapons or commit other dangerous acts during school hours on school property. Jacquelyn Heard, Off-Campus Crime Spells Expulsion from School, CHI. TRIB, Mar. 11, 1997, § 2, at 1. The new policy even calls for the expulsion of students who commit violent acts on weekends away from school grounds. Id. While this new policy seems encouraging, the rising number of assaults on teachers and relatively low number of student expulsions suggest that it is not being strictly followed. See supra notes 17-24 and accompanying text.

143. See supra note 131.

144. See Linwood v. Board of Educ., 463 F.2d 763, 768 (7th Cir. 1972) (holding that the legislative provisions authorizing local school boards to utilize suspension or expulsion as disciplinary measures for gross disobedience is a constitutionally acceptable means for imposition of such sanctions for conduct defined by local school code governing student conduct).

145. See Washington v. Smith, 618 N.E.2d 561, 562 (Ill. App. Ct. 1993) (holding that expulsion of student is within discretion of the school board, but the discretion does have limits).


147. See, e.g., Baxter v. Round Lake Area Sch., 856 F. Supp. 438, 445 (N.D. Ill. 1994) (holding that the notice requirement was satisfied and a high school student's due process rights were not
2. *Chicago School District Policy Regarding Suspension and Expulsion*

Like all school districts in Illinois, the Chicago school district has its own guidelines for disciplining students who have committed violent acts. These guidelines for suspension and expulsion of those students who are found guilty of gross disobedience or misconduct are found in the Chicago Public Schools Uniform Discipline Code ("UDC"). The UDC attempts to establish a "Zero Tolerance Policy" for those students who seriously disrupt the educational process. The UDC's goals include the codification of penalties for students and the establishment of zero tolerance for certain acts of misconduct. The UDC further outlines the rights and responsibilities of students, parents, teachers, and principals. Teacher rights include the right to "free from any physical or verbal threats while carrying out teaching and other duties." Principal responsibilities include establishing "a discipline committee and work[ing] with staff to

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violated when a student was taken to the dean's office immediately after a fight and given a chance to tell his side of the story).

Rudimentary due process does not require that a student be afforded the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge, or to call his own witnesses to verify his version of the incident. Instead, it requires only that a person do what a fairminded person would impose upon himself in order to avoid unfair suspensions.

3 *RAPP, supra* note 131, § 9.05 [2] [b].


Uniform procedures and understanding must be established throughout the district regarding expectations in dealing with school crime. Aggressive behavior, intimidation, extortion, assault, sexual harassment, and other common forms of school crime cannot be tolerated, denied, or ignored. If these acts are allowed, the frequency and magnitude of crime will continue to increase. Consistently enforcing policy is labor-intensive, but it is critical that procedures are followed.

The superintendent and school board should sponsor development of a code of conduct for the entire system, with student rights and responsibilities carefully outlined. The code should be developed by a representative group of principals, teachers, students, parents, and community members. The final policy must contain clearly defined consequences for unacceptable behavior. Policy created with input from each school will assist in consistent enforcement. Annual reviews of the code are important to amend identified ambiguity or changing needs.

_Id._


150. *Id.* at 3 ("A Zero Tolerance Policy will be enforced for students who commit acts of misconduct which seriously disrupt the orderly educational process. Those who are found to possess illegal drugs, firearms, or other dangerous weapons will be suspended immediately and face possible expulsion.").

151. *Id.*

152. *Id.* at 8 (emphasis added).
develop and enforce school regulations, relating them to systemwide policies."\textsuperscript{153}

Significantly, the UDC outlines six separate groups of misconduct, ranging from "inappropriate" conduct to that conduct which "most seriously" disrupts the school.\textsuperscript{154} A disciplinary action is recommended for each group of misconduct, including minimum and maximum penalties for first and repeated violations, respectively.\textsuperscript{155}

\begin{footnotesize}
\begin{enumerate}
\item Group 1 acts of misconduct "include inappropriate student behaviors in the classroom or on the school grounds, such as the following:" "[l]eaving the classroom without permission," etc. \textit{Id.} at 12.
\item Group 2 acts of misconduct "include those student behaviors that disrupt the orderly educational process in the school or on the school grounds, such as the following:" "Exhibiting any hostile physical actions," “[d]isobeying the authority of school personnel,” etc. \textit{Id.}
\item Group 3 acts of misconduct "include those student behaviors that seriously disrupt the orderly educational process in the classroom, in the school, and/or on the school grounds, such as the following:" "[p]ersisting acts of disobedience or misconduct," “[a]ny behavior that is seriously disruptive,” etc. \textit{Id.} at 13.
\item Group 4 acts of misconduct "include those student behaviors that very seriously disrupt the orderly educational process in the classroom, in the school, and/or on the school grounds." \textit{Id.}
\item Group 5 acts of misconduct "include those illegal student behaviors that most seriously disrupt the orderly educational process in the Chicago Public Schools, such as the following:" "[a]ggravated assault," “[u]se of intimidation, coercion, or force,” “[d]isorderly conduct,” “[e]ngaging in any other illegal behavior which interferes with the school’s educational process,” “[g]ang activity which interferes with the school’s educational process,” “[g]ross disobedience,” etc. \textit{Id.} at 14.
\item Group 6 acts of misconduct "include the illegal student behaviors that not only most seriously disrupt the orderly educational process in the Chicago Public Schools but also mandate" specific disciplinary action: “Use, possession, and/or concealment of a firearm/destructive device or other weapon,” “[s]ex violations,” “[a]gravated battery,” “[m]urder,” “[a]ttempted murder,” “[k]idnapping,” etc. \textit{Id.}
\end{enumerate}
\end{footnotesize}
literally, the UDC could potentially permit students who have repeatedly committed violent acts to be reinstated into the classroom.\textsuperscript{156}

3. A School District’s Interest in Reinstating Students

If the Chicago school district can rightfully expel problem students through a due process procedure that is easily met by following its own codified guidelines, then why does the Chicago school district consistently reinstate those students who have shown a propensity to commit violent acts? Perhaps the answer lies in funding. “Public schools receive funds from various federal, state, and local sources.”\textsuperscript{157} First, “school districts are authorized to levy property taxes for various school purposes up to specified maximum rates.”\textsuperscript{158} Second, the state provides assistance to school districts through either categorical grants\textsuperscript{159} or general state aid from the state’s common school fund pursuant to the formula set forth in the School Code.\textsuperscript{160}

This general state aid is distributed based on the weighted average daily attendance (“ADA”) at schools within a particular district and on the equalized assessed valuation of property (“EAV”) in the district.\textsuperscript{161} “The amount of general state aid per pupil that a particular district receives is calculated by subtracting the district’s EAV per weighted ADA pupil from the guaranteed EAV and multiplying the difference by the foundation rate.”\textsuperscript{162}

Though the computations for funding are complex and vary greatly, the general provision common to all computations is that school fund-
ing is based on student attendance. The conclusion is simple: The more students a school enrolls, and the better the attendance rates of those students, the more money a school district will receive.

II. Analysis

This article has discussed the statutory and common law remedies available to teachers injured on the job, as well as the basic principles of both tort immunity and school attendance. What remains now is to determine the effectiveness of the statutory remedies for teachers who are injured by violent students. Part II will examine the extent to which these remedies are ineffective and, in some cases, inappropriate. Part II then presents arguments for abandoning the Workers' Compensation Act exclusivity provisions, penetrating the Illinois Tort Immunity Act, and permitting teachers to recover in tort from the Chicago school district. The section concludes by offering suggestions to protect teachers from violent students who are reinstated into the school system.

A. The Illinois Workers' Occupational Diseases Act

As the current law now stands, the Chicago school district could face liability through the Illinois Workers' Occupational Diseases Act, yet the courts need to take a more active role in compensating teachers. The Act compensates employees for mental illness that results from a traumatic event experienced while on the job. Any one of the number of assaults on teachers in the past years, or even the large number of student-on-student assaults of which any teacher could be a witness, could be such a traumatic event which triggers psychological injury.

In the past, teachers have failed to recover for emotional illness under the Illinois Workers' Occupational Diseases Act because they had a prior history of psychological illness, and there was no event

163. See generally 105 Ill. Comp. Stat. 5/18-8.05 (providing a complete formula for determining state aid to public schools).
164. See infra Part II.A.
165. See infra Part II.B.
166. See infra Part II.C.
167. See supra Part I.A.1.
168. See supra notes 23-24 and accompanying text. Recovery for psychological trauma under these circumstances would be under the "mental-physical" paradigm. See supra note 38.
169. See supra notes 17-24 and accompanying text. Recovery for psychological trauma under these circumstances would be under the "mental-mental" paradigm. See supra note 38.
significant enough to trigger a mental illness. In *Moore*, the plaintiff was a teacher who sought compensation for depression that resulted from a series of on-the-job incidents: kicked and scratched by a female student while breaking up a fight; kicked and bitten by another student who was engaged in a fight; chased from the schoolyard by twelve to fifteen students and struck by a rock. The court, however, denied the plaintiff recovery because he was unable to establish a causal connection between the work conditions and the occupational disease, and further, because his emotional disorders resulted from trauma that was no more than a part of the day-to-day emotional strain and tension that all employees experience. The court noted, "Unruly students, an unresponsive administration, and the burdens of paperwork and record keeping are not unusual." Also, the court observed that the plaintiff's breakdown did not occur until after the plaintiff left his employment, and that the plaintiff had other sources of his emotional problems besides his employment.

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170. *See, e.g.*, *Stice*, 538 N.E.2d 830 (Ill. App. Ct. 1989). In *Stice*, the plaintiff was a teacher who tried to obtain recovery under the Illinois Workers' Occupational Diseases Act for deepening depression resulting from frustration over his job. *Id.* at 832. The plaintiff's depression resulted from an incident in which a student slapped him in the face. *Id.* at 831. The plaintiff had been depressed for most of his life, and that the slap on the face was not an extraordinary event which could be said to trigger the plaintiff's depression. *Id.* at 833.


172. *Id.* at 914.

173. *Id.* at 917.

The causal connection between claimant's mental disability and the gradual mental stimuli which allegedly produced the disease is not readily apparent. Whereas the rational mind can perceive a clear connection between exposure to asbestos and the subsequent contraction of asbestosis, for instance, there is a much more tenuous link in a situation where a person suffers a gradually developing mental disability which, in retrospect, is attributed to factors such as worry, anxiety, tension, pressure, and overwork without proof of a specific time, place, and event producing the disability. *Id.*

174. *Id.* at 918 ("Stated differently, mental disorders not resulting from trauma must arise from a situation of greater dimensions than the day to day emotional strain and tension which all employees must experience.").

175. *Id.* (emphasis added).

176. *Id.*

Although claimant expressed fear for his safety, we find it significant that none of the events he described occurring over an extended period of years produced any demonstrable symptoms of mental disturbance coextensive with the events allegedly precipitating the fear. In fact, claimant's breakdown did not occur while in the course of employment with the Board. Rather, the first evidence of mental disability surfaced at the conclusion of summer vacation prior to the start of a new school year. *Id.*
Cases such as the Moore decision show that courts should ease their standard for what they refer to as a traumatic event.\textsuperscript{177} The cases show that the courts are out of touch with the current public education climate,\textsuperscript{178} and need to be less indulgent of student conduct towards teachers. The courts are too tolerant of dangerous conditions created by unruly students and the district that reinstates them.\textsuperscript{179}

Psychological harm, if clearly traceable to incidents which surpass the degree of abuse that the teacher experienced in Moore, should meet the standard for compensation under the Illinois Workers' Occupational Diseases Act. In any event, the Chicago school district could be liable to teachers if the facts follow the standard implied by these decisions: If a teacher, who does not have a history of mental illness, experiences emotional trauma as a result of a single, traumatic event.\textsuperscript{180}

\textbf{B. Penetrating the Illinois Workers' Compensation Act Exclusivity Provisions and Tort Immunity}

The mere existence of the Workers' Compensation Act—and the Occupational Diseases Act—means that an employee is limited to only that statutory recovery.\textsuperscript{181} Despite the costs arising out of these statutory schemes, the Chicago school district continues to place its

\textsuperscript{177} The courts' reluctance to compensate teachers under these circumstances stems from the belief that allowing teachers to recover would enable any employee to obtain compensation for stress experienced at work. As the Moore court reasoned, "To recognize that our occupational disease law would allow compensation for any mental diseases and disorders caused by on-the-job stressful events or conditions would, in the words of one court, open a floodgate for workers who succumb to the everyday pressures of life." 523 N.E.2d at 917.

To these concerns, this Comment poses two considerations. First, a teacher unfortunate enough to be either the victim of an assault or the witness to a student's violent act is experiencing something closer to the claimant in Pathfinder Co. v. Industrial Comm'n, 343 N.E.2d 913, 915 (Ill. 1976), than the claimant in Moore, 523 N.E.2d at 914. Second, increasing the number of short-term claims under the Illinois Workers' Occupational Diseases Act for teachers assaulted by students would have the same deterrence effect of a large damage verdict. A school district would be compelled to adopt procedures to protect teachers (e.g., expelling violent students and notifying teachers if those students are reinstated into the classroom), thereby reducing, in the long-term, the number of assaults on teachers and subsequent claims.

\textsuperscript{178} See supra notes 17-24 and accompanying text.

\textsuperscript{179} See supra notes 23-27 and accompanying text. For instance, the Moore court described the students who mistreated the teachers as merely "unruly" and not unusual. Moore, 523 N.E.2d at 914.

\textsuperscript{180} See supra notes 170-76 and accompanying text. Under this proposed set of circumstances, recovery should be obtained because the two obstacles which prevented recovery for the teachers in Moore and Stice were a prior history of mental illness and the absence of a single, traumatic event. Considering the number of violent incidents that occur daily in the Chicago school district, such recovery is inevitable.

\textsuperscript{181} See supra Part I.A.2. Besides these exclusivity provisions, the Chicago school district enjoys additional immunity from tort suits through the Tort Immunity Act and the Illinois School Code. See supra Parts I.B.1, I.B.2, I.C.
teachers in peril by reinstating violent students into the classrooms.\textsuperscript{182} With this in mind, teachers should not have their liability limited to workers' compensation statutes. In situations where the school has the unique knowledge that a student has shown a propensity to commit violence, and the school still reinstates that student into the classroom without giving the teacher notice, the teacher should be able to obtain a large damage verdict in tort from the school district.

1. \textit{Penetrating the Workers' Compensation Exclusivity Rule}

Despite the courts' tolerance for unruly students in the Illinois Workers' Occupational Diseases Act cases,\textsuperscript{183} the Chicago school district still faces large costs through the Workers' Compensation Act.\textsuperscript{184} Yet, compensation to a teacher who has been injured by a student while in school simply does not fit neatly behind the social policy driving the exclusivity provisions of the Workers' Compensation Act.\textsuperscript{185} Workers' compensation—and more importantly, its exclusivity provisions—are driven by a specific social philosophy: that the employee receive efficient and reliable compensation.\textsuperscript{186} The burden of this compensation is justified because the payments are allocated to the most appropriate source of payment, the consumer of the product.\textsuperscript{187}

These social policy principles weaken when applied to the case where a teacher is assaulted by a student. The school district does not produce a product that could alter the market in such a way to shoulder the burden of the workers' compensation system. Furthermore,

\begin{itemize}
\item \textsuperscript{182} See supra notes 23-27 and accompanying text. In the school years 1995-96 and 1996-97, 898 and 1,026 students were reinstated into the school system after assaulting teachers. Kass, supra note 8, at 1.
\item \textsuperscript{183} See supra Part II.A.
\item \textsuperscript{184} See supra Part I.A.2 (stating that the Chicago school district must compensate its employees for injuries occurring while on the job).
\item \textsuperscript{185} See supra Part I.A.2. The Illinois Workers' Compensation Act compensates employees for work-related injuries. The existence of this statutory compensation—and not the employee's election to seek remedy pursuant to its provision—means that it is the exclusive remedy for employees injured while on the job.
\item \textsuperscript{186} See supra Part I.A.2. Part of the logic of this policy follows the logic of strict liability in tort, that when a person carries on a hazardous undertaking with enough social utility to prevent the law from prohibiting it altogether, the law will allow the person to carry on the activity only if the person assumes all liability without fault for any consequent injuries. See supra note 46 and accompanying text. Nothing in this policy, however, suggests that the person carrying on the activity should blindly perpetuate a dangerous, hazardous activity without caution simply because he or she would be liable anyway. By analogy, therefore, no policy driving workers' compensation suggests that the employer maintain unsafe work conditions simply because the employer would be liable anyway.
\item \textsuperscript{187} See supra Part I.A.2. The liability created by workers' compensation is meant to help the employee while protecting the employer: The compensation provides the route whereby the cost of the system is passed on to the consumer public in an "orderly fashion."
\end{itemize}
the consumer in this situation, who ultimately pays the higher price for the consistent reliance on the workers' compensation system, is the taxpayer. As teachers experience injuries at the hands of students who are consistently reinstated into the school district after showing a propensity for violence, the taxpayer shoulders an increasing burden of a system that does little to protect its teachers.

Extending teacher recovery beyond the workers' compensation statutes also follows the general rule which states that workers' compensation does not preclude common law actions against co-employees or others for their intentional torts. In fact, when a teacher is assaulted by a student, nothing prevents the teacher from electing common law recovery from the student, as opposed to the workers' compensation remedy. More often than not, however, the teacher will not opt for such a recovery because the student will be judgment-proof. The law and the courts should acknowledge the limitations on a teacher's common law recovery for the intentional torts committed by these students and permit recovery from the school district beyond workers' compensation statutes.

Additionally, teachers should not have their recovery limited to workers' compensation alone, because the system has done little to compel practical solutions to protecting teachers. In past years, Chicago schools have floundered in a number of ineffective attempts at protecting teachers: using street gangs to monitor security; the law and the courts should acknowledge the limitations on a teacher's common law recovery for the intentional torts committed by these students and permit recovery from the school district beyond workers' compensation statutes.

188. See supra Part I.D.3 (finding that public schools receive state assistance from the state's common school fund, which is generated, in part, from local property taxes).
189. See supra notes 23-27 and accompanying text.
190. The strong counter-argument here is that the teacher is already receiving compensation through an efficient workers' compensation statute. Yet, as this Comment suggests, this system is doing nothing to lower the number of assaults on teachers. The very efficiency and low cost to the employer, in fact, have done nothing to compel the Chicago school district to take action to protect its teachers from students with a history of violence.
192. See Vance, 619 N.E.2d at 904 ("Thus, while the Act does not provide the exclusive remedy for an individual injured as a result of a co-employee's intentional conduct, the injured individual is, in effect, bound to an election of remedies upon receiving compensation under the Act.") (citations omitted).
193. The statutory scheme for funding, after all, indicates a recognition that many students come from low income families. 105 ILL. COMP. STAT. 5/18-8.05 (West Supp. 1996).
194. This belief is supported by the fact that, while statutory compensation has been available to teachers assaulted on the job, the number of assaults on teachers has been increasing.
195. At Englewood Technical Preparatory Academy, a system was in place in which local gangs monitored and disciplined gang-affiliated students with corporal punishment. Jerry Thomas & Andrew Martin, Some Hint Gang Links Lead to Coach's Killing, CHI. TRIB., Dec. 16, 1996, § 1, at 1. The program was dismantled when Chicago Public Schools Chief Executive Officer Paul Vallas replaced the Principal. Id.
menting general security plans;¹⁹⁶ and instituting alternative schools.¹⁹⁷ Some outsiders have even suggested corporal punishment.¹⁹⁸ Then again, perhaps the Chicago school district has abandoned their efforts at protecting teachers. In July, 1997, the Chicago public school system began developing a general fund to offset medical and other expenses incurred when teachers and students are victims of violent crimes.¹⁹⁹ The fund’s existence alone suggests that the Chicago school district’s reliance on workers’ compensation is not only an ineffective impetus for developing procedures to protect teachers, but also an insufficient means of compensating victims.


Permitting teachers to recover from the school district after being assaulted by a student with a known history of violence involves a second hurdle beyond the exclusivity provisions of workers’ compensation: immunity through the Tort Immunity Act and the Illinois School Code. The following subsections, however, suggest why this

¹⁹⁶ At first blush, the solution may appear simple, as one principal noted: Increased adult visibility prevents students from even thinking of doing anything wrong. V. Dion Hayes, Keeping Schools Cool: More Security, Police and Metal Detectors Help Make Classrooms in Chicago a lot Safer, CHI. TRIB., Dec. 11, 1994, § 2, at 2.

However, the presence of a teacher does not prevent student violence, an obvious observation considering the growing number of student assaults on teachers. Additionally, cost of security equipment is prohibitive: At Farragut High School alone, $200,000 was spent on surveillance cameras, TV monitors, walkie-talkies, and security guards. Id.

¹⁹⁷ Alternative schools are a popular method of alleviating the problem of teachers exposed to student violence. The schools would instruct chronically disruptive students, providing them with a structured environment and innovative teaching methods, and exposing them to only one or two teachers a day instead of seven. However, no one is sure where the additional money will come from for the new schools, and the schools by their very nature still imply that teachers will be exposed to potentially violent students. Casey Banas, Alternative Schools for Unruly Kids Look Good—on Paper, CHI. TRIB., Nov. 29, 1995, § 2, at 4.

¹⁹⁸ Most agree that this is probably not a realistic, or even desirable, alternative. As one Chicago teacher poignantly remarked:

You think I’d be crazy enough to paddle some overgrown kid who’s liable to pick up my chair and break it over my head? I had one guy threaten to bring his gang around and blow me away if I gave him a failing grade . . . [W]e’re smart enough not to provoke [students]. That’s the secret. Don’t get them mad at you.

Mike Royko, Spare the Rod, Save Your Hide, CHI. TRIB., Nov. 3, 1987, § 1, at 2.

Besides, the UDC explicitly reminds teachers: “Staff are reminded that Board of Trustees Rule 6-21 states: ‘No employee of the Board of Education may inflict corporal punishment of any kind upon persons attending the public school in the City of Chicago.’” CHICAGO SCH. REFORM BD. OF TRUSTEES, supra note 149, at 8.

¹⁹⁹ Ka Vang, School Fund to Help Ease Pain of Violent Crimes, CHI. TRIB., Aug. 13, 1997, § 2, at 4. A seven-member committee of teachers, principals and community members will oversee the crisis support fund which, ironically enough, will be supported by school employees who choose to have donations deducted from their paychecks. Id.
immunity should be overcome so that teachers can recover from the school district in tort.

a. The School District’s Failure to Comply with the Law

Although the Chicago school district's immunity from tort actions is difficult to overcome, it can be penetrated when the school district fails to comply with the law. A provision of the Juvenile Court Act of 1987 provides for a reciprocal reporting system concerning a minor enrolled within the school district. Under this statute, law enforcement records are to be transmitted to the appropriate school official by a local law enforcement agency when a student has been arrested or taken into custody. This includes arrest for the following offenses:

- (1) the unlawful use of weapons under § 24-1 of the Criminal Code of 1961;
- (2) a violation of the Illinois Controlled Substances Act;
- (3) a violation of the Cannabis Control Act; and
- (4) a forcible felony as defined in § 2-8 of the Criminal Code of 1961.

The reciprocal reporting system provides appropriate school officials with access to records which indicate which students have a propensity for violence. Notwithstanding the fact that the statute does not require that the teacher receive the information, it is of little use if the school official does nothing to inform the teacher of the violent propensities of certain students. In any event, the statute's language requires that a parent-teacher advisory committee and the school board, in cooperation with local law enforcement agencies, establish

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200. See supra Part I.B.2. While the Tort Immunity Act immunizes a governmental entity for the failure to enforce a law, it does not immunize a governmental entity for the failure to comply with a law.

201. 705 ILL. COMP. STAT. 405/1-7(A)(8) (West 1996); see 105 ILL. COMP. STAT. 5/10-20.14 (West 1996). The main provision requires, "The [parent-teacher advisory] committee in cooperation with local law enforcement agencies shall develop, with the school board, policy guideline procedures to establish and maintain a reciprocal reporting system between the school district and local law enforcement agencies regarding criminal offenses committed by students." Id. The reciprocal reporting system is one of the rare exceptions to the confidentiality provisions of the Juvenile Court Act. See generally 705 ILL. COMP. STAT. 405/1-7 (defining the confidentiality to law enforcement records).

202. See 705 ILL. COMP. STAT. 405/1-7(A)(8).

203. See id.

204. 720 ILL. COMP. STAT. 5/24-1 (West 1996).

205. Id. 570/100.

206. Id. 550/1.

207. Id. 5/2-8.

208. 105 ILL. COMP. STAT. 5/10-20.14(b) (West 1996).

209. Id. (referring only to a system that must be developed between the school board, parent-teacher advisory committee, and local law enforcement agency).
and maintain a reciprocal reporting system.  The absence of such a system between local police precincts and local schools suggests a failure to comply with the law.

b. The Special Relationship Between the School District and its Teachers

The immunity that the Chicago school district enjoys as a municipality should not be a factor because there is a special relationship between it and the teachers it employs. In fact, the four elements that make up a special duty—awareness of a particular danger to the plaintiff, allegations of acts or omissions on the part of the municipality, the acts or omissions are either affirmative or willful in nature, and the injury must occur while the plaintiff is under the direct and immediate control of agents of the municipality—could be met by teacher-plaintiffs suing the district after an assault by a student.

Once the school district disciplines a student for a violent act, the school district is in a unique position to know that the student presents a particular risk, and the limited number of teachers that the student faces each day represent particular plaintiffs. The act or omission on behalf of the school district is two-fold: The district acts to cause the teacher's injury by reinstating the student into the classroom without providing notice, and the district fails to prevent the harm by expelling a violent student. Finally, the teacher is under control of the

210. Id.

211. See supra Part I.B.2; cf. Mueller v. Community Consol. Sch. Dist. 54, 678 N.E.2d 660, 666 (Ill. App. Ct. 1997) (concluding that the school district's failure to comply with a law requiring criminal background checks on all employees "vitiates" the immunity the school district might otherwise have claimed for the exercise of discretionary authority). Because this would be a failure to comply with the law, the school district would not receive immunity on the basis of § 2-103, which grants immunity from liability for injury resulting from the failure to enforce a law. See 745 ILL. COMP. STAT. 10/2-103 (West 1996); Mueller, 678 N.E.2d at 666.

212. See supra Part I.B.1.

213. Admittedly, this "unique awareness" element is difficult to establish and requires knowledge of a particular risk to a particular plaintiff. See supra Part I.B.1. But cf. Thames v. Board of Educ., 645 N.E.2d 445, 450 (Ill. App. Ct. 1994) (failing to meet element because the school had no knowledge that the particular student with gun had a history of violence, and furthermore the plaintiff was one of hundreds of fellow students).

214. Clearly, the Chicago school district—not the teacher—is responsible for enrolling students back in school. See supra Part I.D. In effect, this sets up a self-serving system, in which the school district re-enrolls students to keep enrollment numbers up so that it receives more money. See supra Part I.D.3. Teachers' interests in a safe work environment must outweigh student due process rights. This is especially true in light of the consistent caselaw which reveals the minimal difficulty in expelling students. See supra Part I.D.1. This effectively shows that for the Chicago school district, interests in teacher safety are outweighed by the interest in obtaining more money.
school district because the school district is the party which causes the need for protection by reinstating violent students.\textsuperscript{215}

c. The School District Is Liable for Acts Outside the Negligence of its Own Employees

Holding the school district liable as a result of the "special duty" it owes teachers would follow cases like \textit{Sidwell}, which hold the district liable for acts outside the negligence of teachers.\textsuperscript{216} In \textit{Sidwell}, the school district was held liable for its negligence in ignoring a rut in the playground;\textsuperscript{217} likewise, the Chicago school district should be held liable for its negligence in ignoring the problem posed by a violent student consistently reinstated into the classroom. In \textit{Sidwell}, the injury the student received was said to result from the school district's failure to deal with the problem posed by the playground conditions;\textsuperscript{218} likewise, the injury a teacher receives from a violent student could be said to result from the Chicago school district's failure to deny the student reinstatement into the school, or at least warn the teacher of the student's violent propensities.

\textsuperscript{215} See, e.g., Moore, 523 N.E.2d 912, 914 (Ill. App. Ct. 1988) (complaining that student who had earlier broken another teacher's leg was placed in claimant's classroom, but there was nothing claimant could do about it). The obstacle here may be that the courts could follow the reasoning of \textit{Thames} and argue that this element is met only when the public employee initiates the circumstances which create the dangerous situation. 645 N.E.2d at 452 (concluding that the student, not the school district defendant, initiated the dangerous situation). However, the \textit{Thames} court also observed that a "pivotal fact" is whether the public entity or its employees were responsible for the occurrence which gave rise to the need for protection. \textit{Id.} Following this analysis, under circumstances where a student is known as having a history of violence, the school officials' consistent reinstatement of that student into the classroom without notifying the teacher surely makes the officials responsible for the occurrence which gives rise to the need for protection.

\textsuperscript{216} Sidwell v. Griggsville Community Sch. Dist. No. 4, 588 N.E.2d 1185, 1189 (Ill. 1992) (concluding that Illinois School Code does not immunize a school district for negligence outside the acts of a teacher).

In at least one important respect, those cases are distinguishable: The plaintiff is not an employee of the school district. Because of this, the plaintiff, unlike the teacher, cannot recover from the school district through workers' compensation statutes. While the argument here is that teachers should have recovery beyond workers' compensation, the school district liability to non-employees shows other means—besides workers' compensation—that it can be held liable. \textit{See supra} Part I.C.

\textsuperscript{217} \textit{Sidwell}, 588 N.E.2d at 1186.

\textsuperscript{218} \textit{Id.}

Plaintiff alleged that the defendant knew or should have known about the rut in time to repair it, and that the defendant had been negligent in one or more of three ways: allowing the rut to be formed and to deepen, failing to fill in the rut, and allowing the plaintiff to use the part of the playground where the rut was located.

\textit{Id.}
d. School District Liability Follows the Line of Cases Where Employers Are Liable for Third-Party Assaults

Extending teacher recovery beyond statutory compensation in cases where teachers are injured by a student the school district knows has a propensity for violence follows the courts' reasoning in the three sets of cases where an employer is liable for the foreseeable criminal acts of third parties.219

First, the situation between the Chicago school district, its teachers, and the student follows the caselaw which finds employer liability when the employer knows of a danger and fails to warn the employee.220 In Petersen, the court refused to make the employer liable for inchoate threats to unspecified persons, made by an unidentifiable assailant.221 In the case of the Chicago school district, however, the

219. See supra Part I.A.3. In these cases, recovery was not limited to workers' compensation, because the defendant was not clearly the employer, or the injuries did not occur while the employee was on the job. However, the argument presented here is that the Chicago school district should not be permitted to hide behind the fortuitous exclusivity provisions of workers' compensation, simply because the persisting problem just happens to occur in the course of employment. See supra Part I.A.3.


A principal is subject to liability in an action of tort for failing to use care to warn an agent of an unreasonable risk involved in the employment, if the principal should realize that it exists and that the agent is likely not to become aware of it, thereby suffering harm.

Id. at 850 (quotations omitted) (quoting RESTATEMENT (SECOND) OF AGENCY § 471 (1958)).

The fact pattern presented here with the school district and its students is distinguishable from those cases in which the court determined that the employer was not liable under these circumstances. See supra Part I.A.3. The one case in which the plaintiff-employee was able to recover, Hefele v. New York, 267 N.Y.S.2d 946 (App. Div. 1966), is under New York law. As such, it deserves brief mention here, but employee recovery for third party assaults that the employer knew of will best be illustrated by Petersen, 641 N.E.2d 845.

In Hefele, the plaintiff was attacked by her client, who had a known history of belligerent behavior. 267 N.Y.S.2d at 948. Like the client in Hefele, the student enrolled in the school district is known by the district as having a history of violence. The plaintiff in Hefele sued her employer for its failure to warn her that the client was not away from the residence the plaintiff was visiting at the time the assault took place. Id. at 949. The employer in Hefele may have been in a position to warn the plaintiff, just as the school district is in a position to warn teachers when students with a history of violence are being reinstated into their classrooms. The Hefele court noted that in light of the violent propensities of the assailant, and the plaintiff's required attendance at the residence, the foreseeability of the plaintiff's injuries was a question of fact that the plaintiff could have settled by a jury. Id. Finally, as the plaintiff in Hefele was required to report to the apartment in which the assault took place, id., so also are teachers required to teach any students the district desires to put before them.

221. Petersen, 641 N.E.2d at 850. Foreseeability is often a large hurdle for the plaintiff in these cases; yet, on even this important point, the caselaw can be distinguished. Like the Petersen court, the Ozment court denied the plaintiff-employee recovery on the basis of lack of foreseeability. Ozment v. Lance, 437 N.E.2d 930, 934 (Ill. App. Ct. 1982). In Ozment, foreseeability was not shown because the plaintiff was a motel bus boy who was assaulted by guests that the
student is an identifiable potential assailant, and the small number of teachers that the student sees on a daily basis are identifiable people. Furthermore, in *Petersen*, the plaintiff was precluded from recovery on the additional ground that both the employer and the decedent were aware of the danger.\(^{222}\) In the case of the Chicago school district, however, students with prior violent acts are currently reinstated into the classroom without notice to teachers; as such, the danger they represent is known to the school district but unknown to the teacher.

Second, the Chicago school district should be liable for the student assaults because it *expressly* agreed to protect its employees through the UDC. In *Slager*, employer liability arose with the employer’s express statements, actions and intent to provide for the safety of the workers who were crossing a picket line.\(^{223}\) The employer was liable even though both the picketers responsible for the plaintiff’s injuries and the plaintiff’s own negligence could be considered as intervening acts which could break the chain of causation.\(^{224}\) The jury could find the employer liable despite the fact that there were other causes for the plaintiff’s injuries.\(^{225}\)

Similar to the employer’s promise in *Slager*, the Chicago school district’s own UDC expressly promises that teachers “[b]e free from any physical or verbal threats while carrying out teaching and other duties.”\(^{226}\) Furthermore, the employer in *Slager* was liable even though the decedent’s accident was caused by picketers who attacked his

employer had never come into contact with before. *Id.* In the situation between the district, teacher, and student, the school district has an on-going relationship with the student. In fact, that relationship puts the district in the unique position of knowledge unlike that of the employer in *Ozment*. By virtue of handling the student’s suspension and reinstatement, the school district—not the teacher—knows that the student is a source of danger for its employees. Finally, the *Ozment* court admitted that the employer-employee relationship may impose a duty on the employer to protect the employee against the criminal acts of others, if the possibility of some criminal act, though not necessarily the precise act, is reasonably foreseeable. *Id.* at 935. \(^{222}\) *Petersen*, 641 N.E.2d at 850.

\(^{223}\) *Slager* v. Commonwealth Edison Co., 595 N.E.2d 1097, 1104 (Ill. App. Ct. 1992) (reasoning that where the employer expressly intends to provide for the safety of employees, the lack of a history of violence was of no significance).

\(^{224}\) *Id.*

If a party’s negligence does nothing more than furnish a condition by which an injury is made possible, and a subsequent act by a third party breaks the causal connection between the original wrong and the injury, the court may be able to determine proximate cause as a question of law. However, the test in determining the question of proximate cause “is whether the first wrong doer might have reasonably anticipated the intervening cause as a natural and probable result of the first party’s own negligence.” *Id.* (quoting Merlo v. Public Service Co., 45 N.E.2d 665, 675 (Ill. 1942)).

\(^{225}\) *Id.* at 1105 (“The jury is not, moreover, bound to find one sole proximate cause and indeed, there may be more than one proximate cause for an injury.”) (citing Nelson v. Union Wire Rope Corp., 199 N.E.2d 769 (Ill. 1964)).

\(^{226}\) CHICAGO SCH. REFORM BD. OF TRUSTEES, *supra* note 149, at 8.
likewise, the school district should be liable despite the fact that the actual assault is by a student. Finally, unlike the employer in Slager, there is no basis for the school district to argue that the injuries to the plaintiff are due to the teacher’s negligence.

Finally, and perhaps most importantly, the Chicago school district should be liable because it has impliedly offered its employees a safe work environment. In Vaughn, the employer was held liable for an attack on its employee that happened in the employer’s parking lot. The duty to the employee arose in part from the employer’s standard operating procedures, which stated the following objective: “To maintain the peace and protect all employees and their property while they are on the Company’s premises.” The Vaughn court reasoned that the employer’s liability arose because the “defendant voluntarily undertook the task of protecting its employees while on defendant’s property, including the parking lots.” Quoting the Restatement (Second) of Torts, the Vaughn court added, “‘Where the reliance of the other, or of the third person, has induced him to forgo other remedies or precautions against such a risk, the harm results from the negligence as fully as if the actor had created the risk.’” The court even noted that although there were no prior acts of physical violence at the parking lot, the prior reports of criminal damage to property at the lot made the attack on the decedent reasonably foreseeable.

The situation involving the school district, its teachers, and violent students is much like the facts from Vaughn. In Vaughn, the employer was put on notice because an area was open to crime; here, the district is on notice that a particular student has a propensity to commit violent acts. In Vaughn, the employer’s own manual promised a safe premises for work; the Chicago’s own UDC promises that teachers be free from physical or verbal threats. Like the decedent

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227. Slager, 595 N.E.2d at 1100 (attacking decedent’s car and forcing decedent onto highway, where his car was subsequently hit by a semi-trailer).
228. Id. at 1105 (arguing that decedent’s own lack of prudence in driving onto highway to escape the picketers was the proximate cause of death).
230. Id. at 879. The court observed, “Plaintiff’s theory was that, to perform the duty it had undertaken by virtue of these documents, defendant was obligated to use reasonable care to anticipate and to protect the decedent from criminal activity by third persons while the decedent was on the defendant’s parking lot.” Id. at 878.
231. Id.
232. Id. at 879 (quoting RESTATEMENT (SECOND) OF TORTS § 324A (1965)).
233. Id. at 881.
234. Id.
236. CHICAGO SCH. REFORM BD. OF TRUSTEES, supra note 149, at 8.
in *Vaughn* relied on the employer's promise for a safe work premises,\(^{237}\) so also do teachers rely on the school district's promise to keep them free from physical or verbal threats. This promise is even supported by the Chicago school district's actions: The metal detectors, the security guards, and the police officers at the school all express an intent on behalf of the school district to maintain a safe work environment for its employees.\(^{238}\)

### 3. Why a Narrow Exception to Tort Immunity Should be Provided

Penetrating tort immunity would inevitably result in large damage verdicts for teachers assaulted by violent students who were reinstated into the school system. Although these penalties may increase the costs for the taxpayer over the short term, the long-term costs to the taxpayer would decrease by developing a system of protecting teachers, ultimately reducing the number of assaults on them by their students.

In the early 1970s, tort scholars began arguing that deterrence is a primary objective of tort law.\(^{239}\) The theory holds that, "[s]o long as the defendant can anticipate bearing liability for the range of injuries his tortious conduct foreseeably can produce, this prospect can induce in him an appropriate deterrence response."\(^{240}\) Such deterrence theory is justified in both a negligence, fault-based system\(^{241}\) and a strict

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\(^{237}\) *Vaughn*, 576 N.E.2d at 878.

\(^{238}\) See supra notes 195-96 and accompanying text.


\(^{240}\) Schwartz, supra note 239, at 1816-17; see Jonathan T. Molot, *How U.S. Procedure Skews Tort Law Incentives*, 73 Ind. L.J. 59, 68 (1997) ("By ensuring a sufficient connection between the defendant's conduct and the plaintiff's injury, tort law provides an economically, and morally, coherent deterrent message: a person can anticipate being held liable for a risky activity only if that activity actually results in a concrete harm to someone else.").

\(^{241}\) Molot, supra note 240, at 64.

In addition to defending this negligence standard as efficient, legal scholars have sought to defend it as fair. Because a rational individual would accept only reasonable risks for himself, a rational individual may only ethically impose reasonable risks upon other persons. To expose another person to risks that we would not rationally accept for ourselves—that is, to expose another to risks that outweigh potential rewards—is to use that other person to our own end. It therefore seems just that the creator of an unreasonable risk should compensate his or her victim, but that the costs of reasonable risks can be left where they fall (i.e., on the accident victim).

*Id.*
liability system.\textsuperscript{242} 

The goal here would be that the school district facing large damage verdicts would be deterred from perpetuating a system which does little to reduce the number of assaults on teachers. As explained in \textit{School Crime and Violence: Victims' Rights}:

The preventive aspect of third-party litigation has become one of the more interesting and important features of this class of cases, at least from a social point of view. The theory of tort law rests on the view that a defendant has a duty to refrain from certain actions or to take certain action to prevent criminal injury to the plaintiff; and, if third-party lawsuits by crime victims are successful, then these cases will put other potential defendants, similarly situated, on notice that they too may be held liable. This, in turn, might stimulate potential defendants to conduct themselves in such a manner that future victimization in like cases will be prevented, or at least reduced.\textsuperscript{243}

In short, the school district would feel compelled to take action in order to protect its teachers, thereby reducing the number of assaults on teachers and hence the long term cost of statutory compensation.

\textbf{C. Suggestions to Protect Chicago's Teachers}

In light of this discussion, this author proposes realistic guidelines for the Chicago Board of Education and courts to follow in order to protect teachers from the criminal acts of students. First, the Chicago Uniform Discipline Code establishes a "zero tolerance" policy for disruptive students,\textsuperscript{244} but this is not happening.\textsuperscript{245} The rules in the UDC need to be more strictly enforced. Students who have committed repeated violent acts or assaulted teachers should not be reinstated into the school system. Simply put, "zero tolerance" should mean no tolerance.

Second, the Chicago Board of Education needs to develop a simple system through which teachers are notified that a student's prior suspension was due to a violent act. Currently, teachers are only notified that a student has been suspended, but they do not know what caused that suspension. Furthermore, the law now provides that school officials must be notified when a student has been arrested for, among

\begin{itemize}
\item \textsuperscript{242} See \textit{id.} at 65 ("Given that the person who controls an activity (e.g., the manufacturer of a product) is in the best position to minimize accident costs (i.e., is the 'cheapest cost avoider'), it makes sense to impose the costs of accidents upon him.").
\item \textsuperscript{243} \textit{Rapp etc.}, \textit{supra} note 24, at 37.
\item \textsuperscript{244} See \textit{supra} Part I.D.3.
\item \textsuperscript{245} See \textit{supra} notes 17-24 and accompanying text. The growing number of assaults on teachers, along with evidence that many students who have assaulted teachers are not expelled, suggest that there is no such thing as "zero tolerance" in the Chicago public schools.
\end{itemize}
other things, violent acts. The Chicago school district needs to use this law so that if a student has been suspended for a violent act, the teacher is notified.

Third, the Illinois courts need to take an active role to protect teachers. These courts also need to be less tolerant of unruly students and permit teachers to recover more easily under the Illinois Workers' Occupational Diseases Act. Finally, Illinois courts should also re-examine the policies behind the exclusivity provisions of Workers' Compensation and the Illinois Tort Immunity Act. There is little excuse for reinstating violent students into the school without notifying the appropriate teachers. If a teacher is injured by such a student and did not receive notification that the student could be a potential source of danger, then the Illinois courts should be willing to pierce the school district's immunity and permit the teacher to recover a large verdict under common law. A jury award like the Petersen case—$2.25 million—may be what is needed to compel real changes to protect teachers in Chicago.

III. IMPACT

Initially, this Comment's goal was to offer suggestions—to both the Chicago school district and the legal system—to solve the problem of teachers who are exposed to students with propensities for violence.

246. See 705 ILL. COMP. STAT. 405/1-7(A)(8) (West 1996).

247. Both the Illinois courts and the Juvenile Court Act have expressed the same policy arguments for juvenile confidentiality—rehabilitation. See, e.g., In re Minor, 595 N.E.2d 1052, 1052-55 (Ill. 1992) (holding that the juvenile victims of child abuse are clearly entitled to privacy). But the Illinois supreme court has not stated that juvenile offenders, as opposed to juvenile victims, are necessarily entitled to the same privacy rights:

The alarming increase in juvenile involvement in major crimes has created a more vocal opposition to rehabilitation and a call for retribution and deterrence as an effective technique for controlling antisocial behavior. . . . It is argued that publicizing the names of juvenile offenders would deter the criminal activity by other juveniles and cause parents to place greater controls on the behavior of their children.

Id. at 1053 (citing Diane Geraghty & Alan Raphael, Reporter's Privilege and Juvenile Anonymity: Two Confidentiality Policies on a Collision Course, 16 Loy. U. Chi. L.J. 43, 76 (1984)).

As an exception to the confidentiality provisions of the Juvenile Court Act, the reciprocal reporting provision follows this reasoning. Its existence alone should quiet concerns about juvenile confidentiality. In fact, merely extending the reporting system to teachers, the safety of whom ultimately assists in the rehabilitation of juvenile offenders, would be entirely within the spirit of the reciprocal reporting provision. Such notification can occur by placing the student's name at the bottom of the school's daily attendance bulletin, with a brief indication as to why the student is suspended: "assault," or "weapon's possession," or "burglary." At the very least, this knowledge could put the teacher on notice that the student is capable of violence and the teacher can adjust her approach to that student accordingly.

Unfortunately, a few (if not all) of these suggestions will be unpopular.

Enforcing the Chicago school district's Uniform Discipline Code more stringently will inevitably lead to higher expulsion rates— but hopefully for only a brief period of time. At the outset, quicker expulsion appears to create more problems than it solves. What, for example, will those students do if they no longer have the opportunity to receive an education? While this Comment offers no answer, it suggests that the alternative is worse. Keeping these students in school inevitably devalues the quality of education offered to all students.

Chicago public school students consistently achieve at a level well below their peers in other school districts throughout Illinois.

249. See Heard, supra note 142, § 2, at 1.

250. As noted earlier, alternative school programs appear to offer a potential solution to this problem. Yet, no one is sure where the money will come from for the alternative school solution. Moreover, the schools still expose teachers to violent students, and there is no suggestion that these schools will do a better job of notifying teachers which students have a propensity for violence. Banas, supra note 197, § 2, at 4.


Violence or the threat of violence has a direct impact on the quality of education provided and on the way teachers and students work together in the classroom. Students are very perceptive. They may not be able to articulate their perceptions, but most of them know whether they are receiving a good education, an education that will prepare them to compete in the job market, college, or anywhere else. . . .

Students frequently act out their hostility by being disruptive. This, in turn, creates an atmosphere in the classroom and the school that militates against constructive teaching and learning. For example, teachers are less apt to teach at their full potential, the class assignments are less creative and challenging, and the ethos in the school is less motivating if tension constantly permeates the environment. In addition, teachers, like students, are less eager to go to school every day. Thus, students in these schools are much more likely . . . to be taught by a "revolving door" of substitutes.


252. Based on the results of statewide standardized tests, the Chicago public schools "made some scattered gains in the test scores, but overall, student achievement remained low or declined. About 75 percent of Chicago's students scored below the national norms in reading and math. " Patricia Tennison, Northwest Suburban Schools Take Some Seats Upfront on Tests, Chi. Trib., Nov. 15, 1994, at 1. In fact, 42% of Chicago public school students had scores that put them in the bottom quarter of all students taking the reading tests, and 47% were in the bottom quarter of all the math scores. Michael Briggs, Report Finds No Letup in Big-City School Problems, Chi. Sun-Times, Sept. 28, 1994, at 22.

In the first-ever comparison of the nation's largest school systems— during the school year 1990-91— Chicago had the highest dropout rate and the lowest test scores. Maribeth Vander Weele, Failing Grades for City Schools: Chicago Rated as Worst on Dropouts, Test Scores, Chi. Sun-Times, Sept. 23, 1992, at 1. Chicago's drop out rate was nearly 46% in 1990. Id.
doubtedly, one of the contributing factors to this low achievement is the disrupted classroom created by the violent student.\textsuperscript{253} One would hope that by expelling the students whose consistent violence devalues the education for all students, the quality of education would eventually rise for the vast majority of nonviolent Chicago public school students. As public education changes from a \textit{right} to a \textit{privilege}, perhaps students would start treating it as such and take learning more seriously.

Second, teachers should be notified when the school district has knowledge of a student's propensity for violence. This is yet another suggestion that will meet much resistance: Juveniles are, after all, protected with a number of privacy rights.\textsuperscript{254} Besides, it is hard to say how a teacher would treat a student once she knows that student has a propensity for violence. But while there is an inevitable risk that the quality of the student's education may be affected, at the very least a system of notification would let teachers know which students are prone to (in the students' own vernacular) "snap."

The impact of the third suggestion would obviously provide teachers with financial recovery (through the Illinois Workers' Occupational Diseases Act) for psychological harm induced by unruly students. This is compensation which would normally not be available to a teacher through workers' compensation because of the absence of a physical injury. The increased costs to the taxpayer would serve as impetus for the Chicago school district to expel violent students more readily and develop a system of notifying teachers of the students which have a propensity for violence.

Finally, and most importantly, the final suggestion means that some teachers may obtain large damage verdicts from the school district. Eventually these costs would be borne by the taxpayer. The increased short-term costs, however, would inevitably lead to a more cautious school district that is more willing to expel violent students and develop a system of notifying teachers.\textsuperscript{255} Both actions would have the result of lowering the alarmingly high number of assaults on teachers.\textsuperscript{256} This, in turn, would lead to a long-term savings by fewer claims

\textsuperscript{253} A lack of money is the popular scapegoat for the poor performance of Chicago's schools, as the more affluent suburban school systems traditionally have more money for per-pupil expenditures. Tennison, supra note 252. During the school year 1993-94, however, while the average cost per pupil at the high school level was $5,579 statewide, Chicago spent $6,596 per pupil. \textit{Id.} This obviously suggests that perhaps other factors—besides a lack of funding—are affecting student achievement in Chicago.

\textsuperscript{254} See supra note 247.

\textsuperscript{255} See supra Part II.B.3.

\textsuperscript{256} See supra notes 17-24 and accompanying text.
filed under the Workers' Compensation Act and the Illinois Workers' Occupational Diseases Act. As an added bonus, perhaps the number of incidents involving violent students would drop, helping to restore much-needed order to a chaotic and under-achieving school system.

IV. CONCLUSION

It is obviously too late to help Mrs. Smith. Nothing can be done to take back what Thomas did to her in their writing workshop at Sumner Elementary School on February 7, 1997.

But if Mrs. Smith's story offers anything, it should shed light on a growing problem in our urban schools today. Teachers are being asked to go forth blindly and teach the masses. The masses appear to be growing more aggressive and violent.

This Comment has tried to take a cue from Mrs. Smith and, once again, draw attention to a large problem. Some of its suggestions will undoubtedly be unpopular to many—probably even to Mrs. Smith. Yet, they are offered with the hope that the discussion about the problem continues so that a solution can eventually be found.

Noel M. Johnston*

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