

**IN THE SUPREME COURT  
OF THE STATE OF FLORIDA**

JULIE WINSLOW,

Petitioner,

v.

SCHOOL BOARD OF ALACHUA COUNTY,

Respondent.

**Case No.:** SC10-2459  
L.T. Case Nos.: 1D10-1046  
01-09-CA-3590  
(Alachua County)

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**RESPONDENT'S BRIEF ON JURISDICTION**

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On Review from the District Court of Appeal, First District of Florida

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## STATEMENT OF THE CASE AND OF THE FACTS

Petitioner's Statement of the Case and Facts contains references to the record and other allegations beyond the First District Court of Appeal's opinion. For that reason, Respondent School Board ("School Board") submits this Statement of the Case and of the Facts.

Petitioner's complaint sought damages for injuries sustained by her daughter, a fourteen year old student, when she walked out into traffic and "into the roadway (apparently to see a student not yet at the [school bus] stop)" and was struck by a car. *See* Pet'r Juris. Br. at 1; *Winslow v. School Bd. of Alachua County*, 48 So. 3d 81, 81 (Fla. 1st DCA 2010), reh'g denied (Nov. 19, 2010). The Circuit Court of Alachua County dismissed the second amended complaint with prejudice, and the First District Court of Appeal issued a "per curiam affirm" opinion. *Id.* It stated in its entirety:

Julie Winslow appeals a final order dismissing with prejudice her second amended complaint seeking damages from the School Board of Alachua County, appellee, for injuries suffered by her daughter, Tiffany Chancey, when she walked into traffic at a school bus stop and was struck by a motor vehicle. Because the School Board did not have control over this student at the time of the accident, the School Board had no duty to the student. *Francis v. School Bd. of Palm Beach County*, 29 So. 3d 441, 444-45 (Fla. 4th DCA 2010); *Harrison v. Escambia County School Bd.*, 434 So. 2d 316, 319-20 (Fla. 1983). Accordingly, we affirm.

*Winslow*, 48 So. 3d at 81.

## **SUMMARY OF THE ARGUMENT**

There is no direct and express conflict between the opinion below and any Florida opinion. The succinct First DCA opinion simply states that the student was outside of the school board's control, and therefore owed no duty. Other courts, including this Court, have consistently agreed.

*Rupp*, *Surette*, and *Commercial Carrier* provide no conflict because they are factually distinguishable or inapplicable to the instant case. In *Rupp*, the court determined that a school board owes a duty to students during school-sanctioned activities. No such activity occurred here. In *Surette*, the school board failed to maintain the physical condition of a bus stop, creating a dangerous condition that forced physically displaced students to stand in the road. No such danger was involved here. In *Commercial Carrier*, the Court addressed sovereign immunity. The First DCA in *Winslow* was not required to, and did not, address that question.

*Harrison* and additional Florida authority do not conflict with the opinion below but rather support it. This Court should decline to exercise its discretionary jurisdiction because there exists no conflict.

## **ARGUMENT**

This Court lacks discretion to review the per curiam affirmed decision in *Winslow*, 48 So. 3d 81 (First DCA 2010), because there is no conflict. The court's

two-sentence opinion with citations neither expressly nor directly conflicts with the decision of any other Florida court. *See* Art. V, § 3(b)(3), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(iv); *Times Publ'g Co. v. Russell*, 615 So. 2d 158, 159 (Fla.1993).

Petitioner cannot point to any express conflict between *Winslow* and another court opinion. In fact, any argument regarding express conflict is notably absent from Petitioner's brief on jurisdiction. Lack of express conflict is fatal to Petitioner's request for conflict review. *See Tippens v. State*, 897 So. 2d 1278, 1280 (Fla. 2005) (quoting the Florida Constitution and stating that "in order to meet jurisdictional requirements, the decisional conflict must be both express and direct..."); *Jenkins v. State*, 385 So. 2d 1356, 1359 (Fla. 1980) (stating that this "Court may only review a decision of a district court of appeal that expressly and directly conflicts" with another decision by representing the conflicting point of law "in words"); *see also Aravena v. Miami-Dade County*, 928 So. 2d 1163, 1166-67 (Fla. 2006) (stating that one of the tests for conflict jurisdiction is to determine whether the District Courts of Appeal reached opposite results after considering virtually identical controlling facts, creating "irreconcilable" decisions).

Petitioner incorrectly argues that *Winslow* "directly" (but not expressly) conflicts with *Rupp v. Bryant*, 417 So. 2d 658 (Fla. 1982); *School Board of Broward County v. Surette*, 394 So. 2d 147 (Fla. 4th DCA 1981); *Commercial*

*Carrier Corporation v. Indian River County*, 371 So. 2d 1010 (Fla. 1979); and *Harrison v. Escambia County School Board*, 434 So. 2d 316 (Fla. 1983). To the contrary, *Rupp*, *Surette*, and *Commercial Carrier* are distinguishable because they did not involve similar controlling facts or are entirely inapplicable. *Harrison* expressly supports the decision in *Winslow* and was even cited by the First DCA.

The First DCA's *Winslow* opinion is quite concise. Petitioner's daughter "walked into traffic at a school bus stop and was struck by a motor vehicle." *Winslow*, 48 So. 3d at 81. The court held "the School Board had no duty to the student" because "the School Board did not have control over this student at the time of the accident." *Id.* The court cited the Florida Supreme Court's *Harrison* opinion and the recent Fourth DCA opinion in *Francis* based upon nearly identical controlling facts to support its identical holding. *Id.*; *see infra* Section II, III.

On the other hand, Petitioner seeks relief not provided by any Florida court. No court has held that a school board has a duty to prevent a student from leaving the safety of her bus stop before her bus arrives or owes a duty to a student entirely outside of its control.

**I. *Rupp*, *Surette*, and *Commercial Carrier* are distinguishable or inapplicable, creating no conflict.**

*Rupp*, *Surette*, and *Commercial Carrier* provide no conflict because they are distinguishable or inapplicable. First, in *Rupp*, a student was injured during an

unsupervised hazing for a school-sponsored club. *Rupp*, 417 So. 2d at 660. The Florida Supreme Court held that the school owed a duty of general supervision to students within its care, including those who participated in school-sponsored activities held off school premises, if the school exercises authority over the students' activities and parents can reasonably assume students will be supervised. *Id.* at 666-67. The Court explained that the “genesis of this supervisory duty is based on the school employee standing partially in place of the student's parents” because “[m]andatory schooling has forced parents into relying on teachers to protect children **during school activity.**” *Id.* at 666 (emphasis added).

*Rupp* is inapplicable to the instant case because Petitioner's student was not involved in a school-sponsored activity. She was waiting to be picked up by the bus. No School Board supervision was expected at the bus stop. As the First DCA stated, “the School Board did not have control over this student at the time of the accident” and therefore “had no duty to the student.” *Winslow*, 48 So. 3d at 81.

*Surette* is similarly distinguishable. In *Surette*, the Fourth District Court of Appeal held that the record contained “substantial competent evidence” of negligence by the school board because it maintained the bus stop such that it created an unsafe condition. *Surette*, 394 So. 2d at 153. The bus stop became so overgrown with weeds and strewn with debris that the students were physically

displaced and forced to stand in the road. *Id.* A car struck the student while she was standing at the designated bus stop, which effectively had been moved onto the road itself. *Id.* at 152-53.

The instant case is entirely distinguishable. Petitioner does not dispute that the bus stop involved here was physically maintained in safe manner. The students were not forced to stand in the road, quite unlike the student in *Surette*. Instead, Petitioner's student chose to run into the road and away from the safety of the bus stop because she wanted to socialize with a friend en route on the other side of a busy street. The controlling facts in these two cases are completely different.

Third, Petitioner asserts that *Commercial Carrier Corporation* directly conflicts with the decision below. 371 So. 2d at 1012. The Court in *Commercial Carrier* held that the state sovereign is immune from suit for "planning level" governmental functions as opposed to "operational level" governmental functions, which require implementation of that policy. *Id.* at 1020, 1021.

The *Winslow* opinion never even addressed sovereign immunity. The court stated only that School Board owed no duty to the student. *See Pollock v. Fla. Dep't of Hwy. Patrol*, 882 So. 2d 928 (Fla. 2004) (holding that the court should first consider whether any duty is owed before determining whether sovereign immunity applies). Certainly, *Winslow* cannot directly and expressly conflict with

*Commercial Carrier* if the *Winslow* court did not reach the issue of sovereign immunity. This is not the direct and express conflict as required for review.

**II. *Harrison* does not conflict with but rather supports the First DCA opinion below because a school board has no duty to a student outside of its control.**

Petitioner states that the First DCA’s *Winslow* opinion conflicts with *Harrison*, which is interesting because the court cites *Harrison* in support of its holding. 434 So. 2d at 316. Petitioner explains that the “language in *Harrison* . . . directly conflicts with the other language in *Harrison*.” (Pet’r Juris. Br. at 1.) This is not the “direct and express conflict” with the case below required for this Court to exercise its discretionary jurisdiction.

In *Harrison*, the Florida Supreme Court held that the school board did not owe a duty to a student outside of its care and en route to a bus stop when the student was struck and killed by a passing car. *Harrison*, 434 So. 2d at 317, 319. The Court explained that “a **school board's control** over its students regarding transportation extends **from when a school bus picks up a student at a bus stop to the school door.**” *Id.* at 319 (emphasis added). “When a student is injured **before reaching a designated bus stop, or after leaving one**, that student is **outside the board's duty of care** because the board's duty stems from the fact of **the school board's physical custody of its students.**” *Id.* (emphasis added).

The Court's opinion in *Harrison* not only fails to conflict with *Winslow*, but it is entirely consistent with the First DCA opinion below. Pursuant to *Harrison*, School Board owed no duty to Petitioner's student because the bus was not present and School Board had no physical custody or control over the student. In addition, Petitioner's student chose to leave the safety of her designated bus stop. As stated in *Harrison*, a student who leaves the bus stop “is outside of the board's duty of care.” *Id.* There is no direct and express conflict here.

### **III. Additional authority supports rather than conflicts with the opinion below.**

Additional authority ignored by Petitioner is on all fours with the First DCA opinion in *Winslow*. In *Francis v. School Board of Palm Beach County*, a student was instructed by a school employee to cross a busy road to wait at the bus stop on the other side of the street. 29 So. 3d 441, 443 (Fla. 4th DCA 2010). While crossing the road as instructed she was struck by a car and killed. *Id.* The Fourth DCA held that the school board owed no duty to the student because she was en route to her bus stop and therefore outside of the school board’s custody or control, despite the school employee’s instruction that she cross the street. *Id.* at 444. The First DCA analyzed nearly identical controlling facts, except that School Board told Petitioner’s student not to cross the street and she disobeyed. Just like the Fourth DCA, the court below held that School Board owed no duty to Petitioner’s

student when she was outside of its custody or control. The First DCA would have created a conflict with *Francis* by holding as Petitioner suggests.

Furthermore, the Florida Statutes and the Florida Administrative Code state that a school board's control over a student begins when the bus and the bus driver are physically present. "During the time she or he is being transported to or from the school at public expense," a student is "under the control and direction of the... bus driver[.]" § 1003.31(1)(a), Fla. Stat. (2008). It is the parent's responsibility to "ensure students are aware of and follow the district's adopted code of student conduct while the students are at school bus stops and **to provide necessary supervision during times when the bus is not present.**" Fla. Admin. Code R. 6A-3.0121(2)(c)(3) (emphasis added). Again, the First DCA opinion below is consistent. If the *Winslow* court had held as Petitioner suggests, the court would have ignored the legislature's plain language in a controlling statute.

Petitioner asks, in reality, for this Court to accept jurisdiction and to determine that every school board in the state of Florida has a duty to monitor the activities of school children, including those about to enter high school such as Petitioner's student, at every bus stop throughout the state. The only way to accomplish the "exercise of authority and control" Petitioner requests is to place school personnel at each of these thousands of bus stops every morning to monitor

students who arrive and to prevent them from leaving the safety of the bus stop. The legislature has determined that this duty belongs to parents who best know the supervisory needs of their children, and this Court has determined that the school board's duty begins only after students are within the school board's control.

### **CONCLUSION**

To require schools to add supervisory personnel at bus stops for even high-school age students would create an extreme and unnecessary burden. In Florida, a school board owes no duty to a student outside of its control, just as the First DCA held in *Winslow*. For sound policy reasons, and because Petitioner fails to demonstrate any conflict, this Court should decline to exercise its discretionary jurisdiction.

**CERTIFICATE OF COMPLIANCE**

**I HEREBY CERTIFY** that this brief complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy hereof has been furnished to Terence J. Kann, Terence J. Kann, P.A., 2790 N.W. 43rd Street, Suite 100, Gainesville, Florida, 32606, by mail on the 7th day of March, 2011.

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