

**SUPREME COURT  
STATE OF FLORIDA**

**Case No. SC10-2459**

**JULIE WINSLOW,**

**Petitioner,**

**vs.**

**SCHOOL BOARD OF ALACHUA COUNTY,**

**Respondent.**

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**REPLY BRIEF OF PETITIONER WINSLOW**

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**ON APPEAL FROM THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT OF FLORIDA**

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## **INTRODUCTORY STATEMENT**

The following references are used in this Reply Brief:

Petitioner/Plaintiff, Julie Winslow, is referred to as “Winslow,” “Plaintiff” or “Petitioner,” but usually as “Winslow.” Winslow’s daughter, Tiffany Chancey, is referred to as “Miss Chancey,” or “Chancey.”

Respondent/Defendant, School Board of Alachua County, is referred to as “SBAC,” “Respondent,” or “Defendant,” but usually as “SBAC.”

References to Petitioner's Appendix, which accompanied the Initial Brief and includes the key papers from the Record on Appeal which had already been assembled and considered by the First District Court of Appeal, as well as the subsequent rulings in motions filed in the First District, will be by the symbol “A” followed by the tab and page number (for example: A 1, 1).

References to Petitioner’s Initial Brief in this Court will be by the symbol “IB” followed by the page number(s) (for example: IB 1). References to Respondent's Answer Brief will be by the symbol “AB” followed by the page number(s) (for example: AB 1).

All emphasis in this Reply Brief is that of the scrivener, except as otherwise indicated.

## **SUMMARY OF ARGUMENT**

SBAC owes a duty to transport its students with maximum regard for their safety. Contrary to SBAC's arguments, that duty begins when the student arrives at a designated bus stop, because at that moment he or she becomes subject to the authority and control of SBAC. Petitioner sufficiently pled the issue of SBAC's control, and her Second Amended Complaint should not have been dismissed with prejudice.

Petitioner recognizes that under Florida law, a school board is not an insurer of student safety, and SBAC is immune from liability for its planning level activities, including selecting and designing a bus stop. However, having selected and designed the bus stop, and enacted procedures to implement its design (including monitoring and enforcement procedures), SBAC became liable for its failure to operate its bus stop as designed, whether by monitoring and enforcing compliance with its procedures, or in carrying out its other operational-level duties.

Additionally, a school board has the authority and ability to control how its students board the school bus (regardless of whether a representative of the school board is present before the bus arrives). SBAC had the authority to adopt its crossing/boarding rule to control how students boarded the bus. Through its bus driver, SBAC had the ability to monitor daily student compliance with its crossing/boarding rule. Since SBAC had the authority and ability to control how its

students board the bus, it owed its students an operational duty to take reasonable and available steps to assure compliance with the crossing/boarding rule.

While SBAC has immunity for selecting the location and design of the Lyons bus stop, it has no immunity for its failure to operate the bus stop as designed. SBAC selected a bus stop location and design which required students living on the south side of the subject roadway to cross to the north side to catch a westbound bus. Without the presence of the school bus' temporary traffic signals (which operated to stop traffic and warn of the presence of school children), there was no safe way to cross the street. Thus, the bus stop had the potential to unnecessarily expose children to a hazard. This potential hazard was eliminated by SBAC's design (which utilized two gathering areas), and the crossing/boarding rule and enforcement procedures which implemented the design. Had SBAC ensured compliance with its own operational rules, this tragic accident would not have happened.

SBAC is not immune from liability for its failure to communicate, monitor or enforce its own crossing boarding rule. SBAC had the continuous capacity to act through its bus driver, and Petitioner alleged the school bus driver was fully aware that SBAC's rule was being violated virtually every day. Nonetheless, SBAC's driver took no steps to effectively communicate the existence of the SBAC rule or enforce compliance. SBAC is not immune from this breach of its operational duty,

because under Florida law the implementation of a pre-existing policy, plan or design is an operational function, and is not protected by sovereign immunity.

### ARGUMENT

#### **I. THE SCHOOL BOARD OF ALACHUA COUNTY (SBAC) OWED A DUTY TO TRANSPORT ITS STUDENTS WITH MAXIMUM REGARD FOR THEIR SAFETY, SAID DUTY BEGINNING FROM THE MOMENT A STUDENT ARRIVES AT A DESIGNATED BUS STOP AND IS SUBJECT TO THE AUTHORITY AND CONTROL OF SBAC (REGARDLESS OF THE FACT THAT NEITHER THE SCHOOL BUS NOR A MONITOR/SUPERVISOR IS PRESENT AT THE BUS STOP)**

SBAC argues that a school board is not liable for injuries sustained by students who are outside of its custody or control, and contends that in *Harrison v. Escambia County*, 434 So.2d 316, 319 (Fla. 1983) this Court held that a school board's control over its students is factually and legally linked to having physical custody of those students (AB 8). Contrary to SBAC's contentions, the opinions in *Harrison*; *Duval County School Board v. Dutko*, 483 So.2d 492, 495 (Fla. 1<sup>st</sup> DCA 1986); *School Board of Broward County v. Surette*, 394 So.2d at 153 (Fla. 4<sup>th</sup> DCA) *rev. dismissed*, 399 So. 2d 1146 (Fla. 1981); and *Francis v. School Board of Palm Beach County*, 29 So.3d 441 (Fla. 4<sup>th</sup> DCA 2010) all contain language either holding or acknowledging that while a school board does not owe a duty to students who are en route to a bus stop, the board's duty to students arises once they arrive at the bus stop. This is because the students are then subject to the school board's authority and control. In both *Dutko* and *Surette*, the courts held

that a school board owed a duty to a student waiting at a bus stop, even though the school bus was not present at the time the student was injured and no school board supervisor was monitoring student behavior at the bus stop. SBAC's contention that Winslow's pleadings were deficient because they did not contain this explicit allegation (AB 2-3) is incorrect. In *Harrison*, this Court held that no duty existed because the student was injured before reaching the bus stop. In *Francis*, the Fourth District reached the same result for the same reason (no duty existed because the student was injured before reaching the bus stop). That is not what happened in the case at bar.

Petitioner acknowledges that some of the language in *Harrison* might be viewed as less than clear on this subject or mere dicta; however, it is absolutely clear that its holding was based on the fact that the student was injured before arriving at the bus stop. Additionally, this Court in *Harrison* specifically addressed the *Surette* holding, but did not overrule it. *Surette* was factually distinguishable, because in *Surette* the student was injured while at the bus stop.

## **II. SBAC HAD CUSTODY OF, AND CONTROL OVER, STUDENTS AT ITS DESIGNATED LYONS BUS STOP BECAUSE IT HAD THE AUTHORITY AND CAPABILITY TO ENACT, MONITOR AND ENFORCE BOARDING PROCEDURES TO CONTROL STUDENT BEHAVIOR**

SBAC argues that Winslow's pleadings had only alleged in "a conclusory fashion" that SBAC had control over students once they arrived at the designated bus stop (AB 3). SBAC also raises a conflicting argument that Winslow did not allege that Miss Chancey was under SBAC's control at the time of she was struck by a passing motorist (AB 1). SBAC further claims it cannot afford to provide supervision (i.e., a monitor) at every bus stop (AB 9). These first two conflicting contentions are clearly erroneous, and the last one is a strawman because SBAC had the ability, through its bus driver, to effectively monitor and enforce the crossing/boarding rule on a daily basis.

Winslow's Second Amended Complaint specifically and sufficiently alleged that "SBAC had 'control' over students transported on SBAC's transportation system from the moment students (including Tiffany Chancey) arrived at the Lyons school bus stop (at either gathering area)" (A5, 5 ¶13). Winslow alleged that SBAC had control over its students because it had the authority to enact (and had in fact enacted) the crossing/boarding rule and enforcement procedures to implement the bus stop's design (A 5, 3-5 ¶¶ 10, 1213). Winslow further alleged

that through its bus driver, SBAC was able to communicate, monitor and enforce its rule on a daily basis (A 5, 4-6 at ¶¶ 12-15). These allegations were more than sufficient to survive a dismissal with prejudice.

SBAC argues that a school board owes no duty to its students unless it has physical custody of them, and claims that *Rupp v. Bryant*, 417 So. 2d 658 (Fla. 1982) is factually distinguishable from the instant case. Although the facts are different in *Rupp*, its holding clearly applies. In *Rupp*, this Court held that a school board owes a duty to students to the extent it has the authority to control their behavior. Thus, in *Rupp* this Court found a duty existed even though the student was injured outside school hours and while off school grounds, and although no school board representative was present supervising the students' actions.

The holding in *Rupp* simply cannot be reconciled with the dismissal with prejudice of Petitioner's Second Amended Complaint. SBAC argues that the holding in *Rupp* stems from the fact that mandatory schooling has forced parents into relying upon teachers to protect their children during school activities (AB 18). SBAC acknowledges the student in *Rupp* was not injured while attending mandatory classes, but while participating in an off-campus, outside of school hours, school sponsored activity, but it erroneously attaches no significance to that key fact. In the instant case, Tiffany Chancey was seriously injured while she was at her designated bus stop, at a time and location when she was under SBAC's

authority and control, which was being exercised through enactment of the crossing/boarding rule and enforcement procedures. SBAC enacted its crossing/boarding rule to implement the design of its designated Lyons bus stop, which it operated in compliance with its mandated operational duty to safely transport students to school.

**III. IT WAS CLEARLY FORESEEABLE TO SBAC THAT STUDENTS CROSSING SW 20TH AVENUE AT THE LYONS BUS STOP LOCATION (WHERE NO CROSSWALK OR TRAFFIC SIGNALS WERE PRESENT), WITHOUT THE PROTECTION OFFERED BY A STOPPED SCHOOL BUS DISPLAYING ITS FLASHING LIGHTS AND STOP SIGNS, AND THE GUIDANCE OF THE BUS DRIVER, MIGHT BE STRUCK BY A MOTORIST**

Rather than addressing Winslow's third appellate issue, which was initially stated as above, SBAC constructs another strawman argument by claiming it had no duty to warn of the open and obvious danger of crossing a street mid-block (AB 31). Quite simply, Petitioner did not allege that SBAC was negligent for failing to warn her or her daughter, Miss Chancey, about the dangers of crossing a main municipal artery in mid-block. Instead, Ms. Winslow alleged that SBAC had addressed the hazard of crossing a main municipal artery midblock by (a) designing its Lyons bus stop to include both north and south gathering areas; and (b) enacting its crossing/boarding rule. However, SBAC still owed a duty to operate its bus stop as designed. Specifically, in order to implement its design, SBAC enacted a crossing/boarding operational rule, along with enforcement

procedures. Ms. Winslow alleged that SBAC was negligent because it failed to take reasonable and available steps to communicate, monitor and enforce its own existing crossing/boarding rule.

In opposition, SBAC argues that even if it owed a duty, its failure to warn was not the proximate cause of Miss Chancey's injuries (AB 34-36). However, Petitioner had not alleged any failure to warn. In order to advance this argument, SBAC has to try to change Petitioner's pleadings, which clearly alleged there was a single designated Lyons bus stop with two separate gathering areas. In place of that allegation, SBAC substitutes its own contrary allegation that there were actually two separate and distinct Lyons bus stops – "twin bus stops" (on opposite sides of SW 20<sup>th</sup> Avenue), and that Ms. Chancey left the protection of the bus stop when she took one step into the street (AB 34-36).

As SBAC acknowledges, this Court's review is exclusively limited to the allegations within the four corners of Petitioner's Second Amended Complaint (AB 8). Petitioner clearly alleged that there was one single Lyons bus stop, which was composed of two gathering areas (A 5 2-3). Petitioner alleged that Ms. Chancey safely arrived at SBAC's bus stop when she arrived at the south gathering area. She further alleged that her daughter was injured when she was struck by a motor vehicle, while she was awaiting the arrival of the school bus at her

designated school bus stop (A 5 2). Her allegations were sufficient to survive dismissal.

Petitioner also alleged that Ms. Chancey was injured after she left the safety of the south gathering area, contrary to SBAC's crossing/boarding rule (about which she was unaware), and crossed to the north gathering area (A 5 2-4). Thus, common sense and Petitioner's own pleadings confirm that had Ms. Chancey been informed about the crossing/boarding rule (and complied with it), she never would have been struck and injured. SBAC's contention that it had no duty to warn of an "open and obvious" hazard at its bus stop is a "red herring argument" which should be rejected.

Like the student in *Surette* who was struck and killed while standing in the road at the designated bus stop, due to the negligence of the school board, Ms. Chancey was in the roadway solely as a result of SBAC's failure to operate its bus stop as designed, by failing to communicate, monitor and enforce the crossing/boarding rule. Had she complied with the rule, she never would have left the south gathering area or entered the roadway.

**IV. SBAC HAS NO SOVEREIGN IMMUNITY PROTECTION FOR ITS FAILURE TO MONITOR, COMMUNICATE AND ENFORCE CROSSING/BOARDING PROCEDURES WHICH MERELY IMPLEMENTED ITS DESIGN OF THE LYONS BUS STOP**

To support its argument that Petitioner was improperly trying to hold it liable for a planning level decision, SBAC's Answer Brief again both ignores and

tries to change the actual allegations of the Second Amended Complaint. Contrary to SBAC's contention, Petitioner did not challenge the planning level decision to locate a bus stop where the Lyons bus stop was situated. Similarly, she did not challenge SBAC's design of the Lyons bus stop or its decision to have a bus stop requiring students living on the south side of SW 20th Avenue to cross over to the north side before boarding the bus. Instead, Ms. Winslow alleged that having exercised its planning level discretion to locate and design the Lyons bus stop, SBAC had an operational duty to manage and operate its bus stop according to its design, by communicating, monitoring and enforcing the crossing/boarding rule.

SBAC's decision to locate a bus stop to be serviced by a westbound bus only, thereby requiring students waiting on the south side of the street to cross to the north side before boarding the bus, was a "planning level" decision. Furthermore, the design implemented by the SBAC, which included two gathering areas and required that students living on the south side of the roadway remain at the south gathering area until the school bus stopped, arguably involved at least some policy considerations. On the other hand, SBAC's duty to effectively communicate, monitor, and enforce its crossing/boarding rule (and hence its bus stop design) is indisputably "operational." SBAC's failure to effectively communicate, monitor, and enforce a rule adopted to implement the bus stop design, and control how students boarded its bus is undeniably an "operational"

failure. See *Commercial Carrier Corp. v. Indian River County*, 371 So.2d 1010 (Fla. 1979); *Wallace v. Dean, supra*, 3 So.3d at 1046.

Petitioner specifically alleged that neither she nor Miss Chancey were aware of the bus stop crossing/boarding procedures, and that had they been aware of them, Miss Chancey would have used the bus stop as designed, and followed SBAC's procedures. Factually, it is indisputable that had Miss Chancey waited at the south gathering point for the arrival of the bus, this accident would never have happened.

Winslow did not allege that SBAC was negligent for failing to warn of the dangers of crossing a street mid-block where there is no crosswalk or traffic signals. Rather, she alleged that knowing of the danger posed by locating a bus stop which required students to cross a main municipal artery mid-block, where there was no crosswalk or traffic signals, and having adopted a design to ameliorate those dangers, SBAC owed a duty to clearly communicate its design and intended boarding procedures to students, parents and bus drivers. It also had an operational duty to monitor compliance, and, if necessary, to take reasonable and available steps to assure student compliance with the boarding procedures. Those allegations were sufficient to establish SBAC's liability, and Petitioner should have been allowed to try her case to a jury.

**V. SBAC OWES A DUTY TO STUDENTS AT BUS STOPS, WHO ARE UNDER ITS AUTHORITY AND CONTROL; THUS, IT OWES A DUTY TO TRAIN AND SUPERVISE BUS DRIVERS WHEN IT HAS ACTUAL KNOWLEDGE (VIA COMPLAINTS) THAT THE BUS STOP, AS OPERATED, IS UNSAFE**

SBAC argues that Petitioner had failed to allege that she (or Ms. Chancey) knew or should have known about SBAC's bus driver's alleged failure to enforce the crossing/boarding rule, citing *Department of Environmental Protection v. Hardy*, 907 So.2d 655, 660 (Fla. 5<sup>th</sup> DCA 2005). However, at the hearing on SBAC's motion to dismiss, Winslow acknowledged that Count II of her amended papers had mistakenly failed to reallege Paragraph 16 (which specifically stated that "the SBAC received complaints ... that the Lyons bus stop was not safe as operated"). In response, the trial court amended Count II by interlineation to correct that scrivener's error (A 5, 10).

Had SBAC completed even a cursory investigation of the complaints it had received (or ridden along with bus driver Jones just one time), it would have learned that the school bus driver was aware that students were not using the school bus stop as designed and were not complying with the crossing/boarding rule (thereby making the bus stop unsafe in the opinion of parents and concerned citizens). SBAC would also have learned that its driver was doing nothing to

implement SBAC's own design, and was not requiring operational compliance with SBAC's own rule.

The only remaining grounds asserted by SBAC in support of the dismissal of Count II are the same it asserted as to Count I; i.e., that it owed Miss Chancey no duty and that her negligence action was barred by sovereign immunity. Those issues have already been addressed above.

### **CONCLUSION**

SBAC owed a duty to its middle school student, Miss Chancey, to transport her to school and back with maximum regard for her safety. That duty began as soon as she arrived at the designated bus stop and was subject to the SBAC's authority and control. Having designated a bus stop which created a foreseeable zone of risk for students like Miss Chancey, and having designed a plan and policy to ameliorate the zone of risk it created, SBAC is not immune for negligently failing to implement its plan, and for breaching its operational duty. Nor is SBAC immune for negligently failing to operate its bus stop as designed because of its operational failure to communicate, monitor and enforce its established boarding procedures.

Petitioner respectfully requests that this Honorable Court reverse the ruling of the trial court and the First District Court of Appeal, reinstate her Second Amended Complaint, remand this case to the Circuit Court for further proceedings

consistent with the Court's ruling, and for such further relief as may be appropriate under the existing facts and applicable law.

Respectfully submitted this \_\_\_\_ day of October, 2011.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by regular U.S. Mail to David M. Delaney, Esquire and Elizabeth S. McKillop, Esquire, Dell Graham, P.O. Box 850, Gainesville, FL 32601, counsel for Respondent, this \_\_\_\_ day of October, 2011.

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Attorney

**CERTIFICATE OF COMPLIANCE**

In accordance with Rule 9.210(a)(2), Florida Rules of Appellate Procedure,  
Petitioner has used 14 point times New Roman throughout this Reply Brief.

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Attorney