

**IN THE SUPREME COURT OF FLORIDA**

CASE NO.: SC13-932

ABEL LIMONES, SR. and SANJUANA CASTILLO,  
individually and as parents and next friend of  
ABEL LIMONES, JR.,

Petitioners,

v.

SCHOOL DISTRICT OF LEE COUNTY, FLORIDA and  
SCHOOL BOARD OF LEE COUNTY,

Respondents.

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On Appeal from the District Court of Appeal  
Second District, State of Florida  
(Case No. 2D11-5191)

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FLORIDA HIGH SCHOOL ATHLETIC ASSOCIATION, INC.  
AS AMICUS CURIAE  
IN SUPPORT OF RESPONDENTS

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**PRELIMINARY STATEMENT**

Petitioner ABEL LIMONES, SR. and Petitioner SANJUANA CASTILLO shall be collectively referred to as Petitioners.

Petitioner ABEL LIMONES, JR. will be referred to as Abel Limones or Petitioner.

The Second District Court of Appeals decision in *Limonos v. School District of Lee County*, Case No. 2D11-5191 (Fla. 2d DCA 2013) will be referred to as *Limonos*.

Petitioners' Brief on the Merits will be referred to as "Pet. Br. on Merits", followed by the relevant page number.

Respondents SCHOOL DISTRICT OF LEE COUNTY and SCHOOL BOARD OF LEE COUNTY shall be referred to collectively as School Board or Respondent.

FLORIDA HIGH SCHOOL ATHLETIC ASSOCIATION, INC., Amicus Curiae, shall be referred to as FHSAA.

## INTEREST OF AMICUS CURIAE

FHSAA is designated by Florida Statutes § 1006.20 as the governing non-profit organization of athletics in Florida public schools. Private schools that wish to engage in high school athletic competition with public high schools may also be members of FHSAA. FHSAA's membership is made up of 778 member schools. Of those 778 member schools, 550 are public schools and 228 are private schools. This year 243,427 student athletes attending the member schools participated in 32 different sports. At the end of each sport season FHSAA conducts state championship series to determine the state champions in the various sports.

FHSAA is vitally concerned about the potential tort liability for its member schools, including Respondent, and for itself, particularly as related to this case and the Petitioners' contention that "an AED is required to be available (along with personnel familiar with and trained in its use) during FHSAA sanctioned interscholastic sports competitions by Section 1006.165, Fla. Stat. . . ". (Pet. Br. on Merits, page 10). FHSAA is likewise concerned about the expansion of the member school's and FHSAA's common law duties to students, which expansion appears to be urged on this Court by the Petitioners in their Initial Brief, and Petitioners' contention that schools who acquire AEDs and make them available for

use are not protected by the immunity provided by Fla. Stat. § 768.1325, the "Cardiac Arrest Survival Act" (CASA). (Pet. Br. on Merits, passim).

### SUMMARY OF ARGUMENT

Petitioners have asked this Court to expand the legal duties of FHSAA member schools to student athletes during contests and, therefore, during practice, to an extent that would violate what should be the public policy of this State, and which exceeds the logical duties imposed by Fla. Stat. § 1006.165. This expansion of the legal duty of schools to student athletes should not be allowed. In addition, Petitioners ask this Court to deny FHSAA member schools the immunity provided by Fla. Stat. § 768.1325 (CASA) contrary to the legislative intent recognized by Petitioners in their Brief. (Pet. Br. on Merits, pp. 32, 33). This likewise should not be allowed.

### ARGUMENT

#### **I. THE PUBLIC POLICY OF THIS STATE SHOULD NOT ALLOW AN EXPANSION OF THE DUTY OF SCHOOLS TO STUDENT ATHLETES URGED ON THIS COURT BY PETITIONERS.**

The issues in this case revolve around the duty of schools to student athletes while participating in interscholastic athletics. Naturally that duty would be the same for students while practicing interscholastic athletics. Petitioners urge this Court to

find that pursuant to Fla. Stat. § 1006.165, member schools of FHSAA have a legal duty to have an Automated External Defibrillator (AED) available, and to have personnel familiar with and trained in its use, during all FHSAA sanctioned interscholastic sports competitions. The logical extension of such a holding would be that an AED and personnel familiar with and trained in its use must also be available at all interscholastic sports practices. Because of public policy reasons set forth hereafter this Court should decline to find as a matter of law that Florida schools have such a legal duty. See *Knight v. Merhige*, 133 So.3d 1140, 1147 (Fla. 4<sup>th</sup> DCA 2014) *reh'g denied* March 26, 2014. In *Knight* the Court stated:

The issue of legal duty in a negligent case asks "whether the plaintiff's interest are entitled to legal protection against the defendant's conduct." *Prosser & Keeton on the Law of Torts* § 53, at 357. A court's decision as to whether a duty in negligence exists necessarily involves questions of public policy. As the Florida Supreme Court recognized pre-*McCain*, the duty inquiry in a negligence case involves weighing "' the sum total of those considerations of policy which lead the law to say that the particular plaintiff is entitled to protection.' " (Citations omitted).

\* \* \*

It is highly unlikely that, in *McCain*, the Supreme Court silently abandoned the common law function of a court to consider public policy in deciding whether a legal duty in negligence exists. See *Puryear v. State*, 810 So.2d 901, 905 (Fla. 2002) (holding that the Supreme Court "does not intentionally overrule itself sub silentio").

The Court is respectfully requested to consider the following facts as to the issue of public policy related to a FHSAA's member school's duty to protect student athletes. FHSAA recognizes that those facts do not appear in the record. However, in the past this Court has considered non-record evidence from Amicus Curiae if the facts assist the Court in reaching a decision. *See Krischer v. McIver*, 697 So.2d 97, 103, 104 (Fla. 1997).

As set forth in its "Interest of Amicus Curiae" above, FHSAA is designated by Fla. Stat. § 1006.20 as the governing non-profit organization of athletics in Florida public schools. Private schools may also be members of FHSAA. FHSAA's membership is made up of 778 member schools. Of those 778 member schools, 550 are public schools and 228 are private schools. During the 2013-2014 school year 243,427 student athletes attending the 778 member schools participated in 32 different sports. Those sports by seasons are:

FALL (August – December)

Bowling – Boys

Bowling – Girls

Cross Country – Boys

Cross Country – Girls

Football

Golf – Boys

Golf – Girls

Swimming & Diving – Boys

Swimming & Diving – Girls

Volleyball - Girls



WINTER (October – March)

Basketball – Boys  
Basketball – Girls  
Competitive Cheerleading – CoEd  
Soccer – Boys  
Soccer – Girls  
Weightlifting – Girls  
Wrestling

SPRING (February – May)

Baseball – Boys  
Flag Football – Girls  
LaCrosse – Boys  
LaCrosse – Girls  
Softball – Girls  
Tennis – Boys  
Tennis – Girls  
Track & Field – Boys  
Track & Field – Girls  
Track & Field (Adaptive)  
Volleyball – Boys  
Water Polo – Boys  
Water Polo – Girls  
Weightlifting - Boys

There are ten different sports occurring in the fall, seven different sports occurring in the winter, and fourteen different sports occurring in the spring. To further show the magnitude of the number of sports in which the FHSAA member schools are involved, most schools have multiple levels of sports. For example, a typical high school in the fall will have varsity, junior varsity, and freshman football, as well as varsity and junior varsity cross country for both girls and boys, and varsity

and junior varsity volleyball. Even though there are ten different sports, on any given day there may be 14 or 15 different activities occurring at various sites all over the school's campus or while in competition with another school's team at that other schools' campus or facility, or in practice at different locations. The same is true for winter and spring sports.

When the Courts consider 243,427 student athletes from 778 different member schools participating in 32 different sports at the varsity, junior varsity, and freshman levels over a period of 10 months, the Court can easily see that it would be virtually impossible as well as cost prohibitive, and therefore against public policy, to hold that each FHSAA member school has a legal duty to have an AED available, along with personnel familiar with and trained in its use, during each FHSAA sanctioned interscholastic sports competition. If the Court were to accept Petitioners' interpretation of Fla. Stat. § 1006.165, the logical extension would be that an AED along with trained personnel must also be available at practices.

In fact that is not what Fla. Stat. § 1006.165 requires. Sections 1006.165 requires (1) each public school that is a member of Florida High School Athletic Association to have an operational AED on the school grounds . . . , (2) to have all employees or volunteers who are reasonably expected to use the device obtain appropriate training, including completion of a course in cardiopulmonary

resuscitation or a basic first aid course that includes cardiopulmonary resuscitation training, and (3) to register the location of each operational AED with a local emergency medical services director. Nothing else. There is no requirement, and it is respectfully suggested that this Court should not add a requirement, that an AED be available with personnel familiar with and trained in the use of the AED during each FHSAA sanctioned interscholastic sports competition and practice.

**II. FLA. STAT. § 768.1325 (CASA) PROVIDES IMMUNITY FOR FHSAA MEMBER SCHOOLS WHO ACQUIRE AND MAKE AVAILABLE AN AED FOR USE.**

Fla. Stat. § 768.1325(3) (CASA) provides in pertinent parts, "notwithstanding any other provisions of law to the contrary, and except as provided in subsection (4) [which is not applicable in this case] any person who acquired the device and makes it available for use . . . is immune from such liability". FHSAA member schools are required by Fla. Stat. § 1006.165 to have an operational AED on the school grounds and to insure that all employees or volunteers who are reasonably expected to use the device obtain appropriate training. FHSAA member schools who obtain the AEDs and make them available for use should not be subjected to additional liability as a result of complying with the requirements of Fla. Stat. § 1006.165. In fact, they should be protected by the immunity from liability provided under the CASA.

The Petitioners correctly recognize "There can be no doubt that the legislature intended to promote the use of AEDs at Florida high school sporting events through its enactment of § 1006.165. It also makes sense that to further promote the use of AEDs, the legislature would extend the immunity it has long provided to those rendering aid in emergency situations to those using (or attempting to use) an AED in an emergency situation, by enacting § 768.1325 and referencing same within § 1006.165." (Pet. Br. on Merits, pps. 32, 33). However, Petitioners' argument that ". . . the plain language of § 768.1325 and the limitations on its applicability set by § 1006.165 show that there is no § 768.1325 immunity here." is without merit. (Pet. Br. on Merits, p. 33). The immunity provided by CASA is not related to the use of the AED, the immunity is provided to one who acquires the AED and makes it available for use. Any FHSAA member school who acquired a device (AED) and who made it available for use, as did Respondent in this case, is immune from liability unless they fall within the exceptions provided by the CASA. To find otherwise would be to ignore the clear legislative intent set forth by Petitioners.

## CONCLUSION

FHSAA respectfully submits that, based on public policy, this Court should decline to expand the legal duties of FHSAA member schools to student athletes beyond the clear requirements of Fla. Stat. § 1006.165 and affirm the immunity provided by CASA to schools that comply with Fla. Stat. § 1006.165.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished via electronic mail through e-portal transmission this 9<sup>th</sup> day of June 2014 to:

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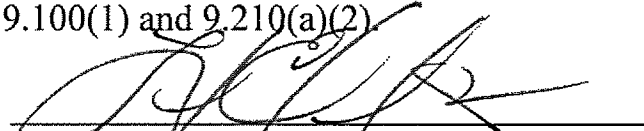


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**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this brief was typed in Times Roman 14 point font  
in compliance with Fla. R. App. P. 9.100(1) and 9.210(a)(2).

  
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