

PA Supreme Court Issues Unanimous Ruling Modifying Tort Claims Act

By Lisa M. Colautti, Esq.

The Pennsylvania Supreme Court recently issued a unanimous decision modifying the Political Subdivision Tort Claims Act, and how school districts and municipalities must interpret the real estate exception under the Act.



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In *Brewington v. City of Philadelphia*, 199 A.3d 348 (Pa. 2018), Justice Todd delivered the unanimous opinion of the Court, which conducted a thorough review of the Tort Claims Act and the real estate exception under the Act. The Court concluded the absence of padding on a concrete gym wall, into which a student ran during gym class, causing injury, falls within the real property exception under the Act. Therefore, the School District of Philadelphia could be found liable for negligence in the care, custody and control of real property and was not immune from suit under the Act. The Court affirmed the unanimous en banc opinion authored by Judge Wojcik of the Commonwealth Court below, 149 A.2d 901 (Pa. Cmwlth. 2016), and which disapproved a 2001 Commonwealth Court decision outlining the real property exception under the Act entitled *Rieger v. Altoona Area S.D.*

The facts underlying this case are as follows, as summarized in the Commonwealth Court opinion. In 2012 a nine-year-old student was injured during gym class, when he and other children were engaged in a relay race whose boundaries were concrete walls at either end of the school's gym. The student was running too fast, could not stop, tripped, fell and hit his head against the wall. He fell and blacked out, ultimately suffering from a concussion that caused him to miss several weeks of school. His concussion symptoms lingered for months, if not years, following the incident. *Brewington v. City of Philadelphia*, 149 A.3d at 903. The student and his family sued the School District for causing the student's injury. The District filed a motion for summary judgment, claiming immunity under the Tort Claims Act, arguing the absence of mats in the gym which caused the injury was an item of personalty and not real estate. The Trial Court agreed, and the student appealed to the Commonwealth Court.

The Commonwealth Court held that the gym wall, not the absence of the mat, caused the student's injury. Because the wall is "real property" falling under the real property exception of the Act, the School District was not immune for its negligent care, custody or control of the concrete gym wall. The Supreme Court agreed, and in doing so, evaluated several decisions interpreting the real property exception under the Act, including *Rieger*, which it agreed, had misapplied the Act and should be disapproved.

This decision may require reevaluation of the real property exception and how it may apply to your facility.

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Truancy – The Legal Landscape

By Lynne P. Sherry, Esq.

Governor Wolf's Act 138 of 2016 went into effect during the 2017-18 school year, providing clear guidelines for truancy standards. Pursuant to Act 138, a student is "truant" after 3 unexcused absences and "habitually truant" after 6 unexcused absences.



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After the sixth unexcused absence, schools must invite parents to attend a "Student Attendance Improvement Conference" (SAIC) resulting in a written "Student Attendance Improvement Plan" (SAIP) to prevent further truancy. Schools cannot file a truancy citation until after the SAIC convenes. In November 2018, the Pennsylvania Department of Education released a Basic Education Circular (BEC) providing an overview of compulsory attendance and truancy laws in Pennsylvania. See <https://www.education.pa.gov/Documents/Codes%20and%20Regulations/Basic%20Education%20Circulars/Purdons%20Statutes/Truancy.pdf>.

Truancy Citations – Confidentiality Updates

The Administrative Office of Pennsylvania Courts (AOPC) has implemented a new confidentiality policy requiring Districts to file additional documents with Truancy Citations in certain circumstances. The purpose of the policy is to protect the confidential information of minors. See <http://www.pacourts.us/assets/files/setting-5891/file-6395.pdf>.

Truancy Citations Filed Against a Minor/Student

When a student is over age fifteen (15) and habitually truant, the District may choose to file a truancy citation against the parent or child. If the citation is filed against the child, no additional action is required. The citation will be automatically barred from public access.

Truancy Citations Filed Against a Parent/Legal Guardian

When a student is younger than age 15, a Truancy Citation must be filed against the student's parents/legal guardian. If a District uses a "Non-Traffic (NT) Citation" form to file truancy citations, the NT citations contain a section for "Confidential Information," so no further action is needed to protect a minor student's confidential information.

If a District uses a "Private Criminal Complaint" form, the District must attach additional forms to the Private

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It is Safe2Say Something, Unless it is False!

By Jocelyn Kramer, Esq.

The Safe2Say program has been up and running for a couple of months now. Established by legislation, this program provides for methods of anonymous reporting concerning unsafe, potentially harmful, dangerous, violent, or criminal activities in schools or the threat of the activities.

School districts are receiving and responding to reports on a daily basis. As anticipated, some of the reports are fake – either a blatant joke or after a simple investigation, determined to be false. Many school districts are asking when and how they should be pursuing these false reporters and are finding out that the process is a bit of a challenge.

Under Safe2Say a person commits a misdemeanor of the third degree if the person knowingly or intentionally makes a false report to the program. 24 P.S. § 13-1305-D (a). Generally, a report will be anonymous and the identity of the reporter will be kept confidential, unless a court order is obtained to compel the production of the record. 24 P.S. § 13-1304-D (a). In order to obtain a court order, the Commonwealth or a criminal defendant may file

a motion with the court for release of the record. 24 P.S. § 13-1306-D (a). The motion must be accompanied by an affidavit establishing why the record should be produced. Id. The Attorney General has standing in any action to support or oppose the disclosure of the record. 24 P.S. § 13-1306-D (f).

So you receive a report and determine that it is false, now what? An important early step in the process is to file a police report, but even more importantly, you must contact the Office of the Attorney General and request that they preserve the Safe2Say record that you will need to prosecute the anonymous false reporter. The Attorney General is required to administer the Safe2Say program, including the creation and adoption of regulations and guidelines for the program. 24 P.S. § 13-1303-D (b). In the event you would like to start the process to pursue a false report, you must send a preservation notice to the Office of the Attorney General within 72 hours of receiving notice of the false report. Contact our office for a sample notice or further assistance in pursuing false reports under the Safe2Say program.

PA Supreme Court Ruling, *continued*

The Court was careful to limit its ruling as follows: “...our approach will not ‘open the proverbial floodgates to unbounded [local agency] liability’ as applying this exception is no guarantee of recovery: a plaintiff must plead and prove negligence to obtain relief. Cagey, 179 A.3d at 474 (Wecht, J., concurring). Indeed, we take comfort in the express limitation in the standard we apply: it is only the acts, or failure to act, which make property unsafe for ‘the activities for which it is regularly used, for which it is intended to be used, or for which it may reasonably be foreseen to be used,’ which subject the local agency to suit. Mascaro, 523 A.2d at 1124. Brewington at 358.

Although this decision modifies the real property exception under the Tort Claims Act, it does not require school districts or municipalities to pad every wall, water fountain or hard surface in their facilities to prevent risk of harm or liability. This decision may require reevaluation of the real property exception and how it may apply to your facility and how it is routinely used.

Truancy, *continued*

Complaint to protect the student’s confidential information. The District must attach a “Confidential Information Form” to the Truancy Citation to protect a student’s names and birthdate. See <http://www.pacourts.us/assets/files/page-1089/file-6574.pdf>.

The District must also attach a “Confidential Document Form” if educational records are included with the Complaint, such as attendance records, transcripts, and Student Attendance Improvement Plans. See <http://www.pacourts.us/assets/files/page-1089/file-6575.pdf>.

This is the time of year when Districts are filing citations for students with excessive unlawful absences. If your District has questions about truancy, the mandated “SAIC,” or compliance with the AOPC’s confidentiality policy, attorneys at WBK are available to consult on these issues.

We’re Speaking...

- Attorney M. Janet Burkardt will present “Preparing for Real Estate Litigation” on May 3 at The Assessors’ Association of Pennsylvania’s 71st Annual Conference at the Sheraton Pittsburgh Hotel at Station Square.
- Attorney Jocelyn Kramer will deliver two presentations at the LRP’s National Institute on Legal Issues of Educating Individuals with Disabilities in Orlando, FL; the first on May 6, “Addressing Employee Misconduct: Your Responsibilities When Special Educators Misbehave,” and on May 7, the second presentation on “Leading the Investigation Into Allegations of Discriminatory Harassment.” Also, at the LRP’s National Institute, on May 7 and 8, Attorney Rebecca Heaton Hall will co-present with Dr. Jessica Dirsmith on “What’s Trending in Emotional Disturbance Identification?”
- Attorney Aimee Zundel will be speaking at the Lehigh University Special Education Law Conference on May 10, 2019, on the topic of Disaster Preparedness and Response for Students with Disabilities.
- Attorney Megan Turnbull will be delivering a presentation on “Ethics - The Role of the Solicitor” on June 7 at the Pennsylvania Bar Institute’s Municipal Law Colloquium in Mechanicsburg, PA.
- Attorney Rebecca Hall will co-present with Dr. Jessica Dirsmith and Dr. Eric Bieniek on “Educational Psychology and Law: Emotional and Behavioral Case Law” at the Annual Convention of the American Psychological Association in Chicago on August 8 -11.

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This issue of In Brief: School Law Update is meant to be informational and does not constitute legal advice. Should districts wish legal advice on any matter, they should contact their legal counsel or request a legal opinion from Weiss Burkardt Kramer LLC.

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