

Nos. A05-1377 and A05-1378

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State of Minnesota  
**In Court of Appeals**

David Granville and Marlyss Granville, as parents and natural  
 guardians of Kailynn Granville, a minor,  
*Respondents (A05-1377),*  
 Jacqueline Johnson, as parent and natural  
 guardian of Shanel Andrews, a minor,  
*Respondent (A05-1378),*

vs.

Minneapolis Public Schools,  
 Special School District No. 1,

*Appellant.*

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**AMICUS CURIAE BRIEF OF  
 THE MINNESOTA TRIAL LAWYERS ASSOCIATION**

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## INTRODUCTION

Pursuant to this Court's Order of July 29, 2005, and Rule 129.03 of the Minnesota Rules of Appellate Procedure, The Minnesota Trial Lawyers Association hereby submits the following *amicus curiae* brief in support of affirming the May 13, 2005 decision of Judge Heidi S. Schellhas.<sup>1</sup>

Counsel for The Amici Minnesota Trial Lawyers Association indicates no party, or counsel for any party, assisted in the preparation of this brief. Similarly, no monetary contributions were received from any person or entity, other than *amicus curiae*, for the preparation or submission of this brief. Also mindful of the detailed brief filed by Respondents, and the Court's admonition that the Amici Minnesota Trial Lawyers Association, should not repeat or emphasize arguments already put forth by a party, we will confine our service to the Court to the following argument.

## ARGUMENT

### **BECAUSE SCHOOL CHILDREN HAVE SPECIAL STATUS IN THE EYES OF THE LAW, SCHOOL DISTRICT IMMUNITY SHOULD BE PRESUMED INVALID**

The analysis applied to standard governmental immunity claims should not be applied to cases involving school children. Unlike victims in standard municipal cases, school children are required to place themselves under the care and in the custody of a governmental entity. The Supreme Court recognized this important distinction in, *Spanel*

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<sup>1</sup>Appellate's Appendix (A.A.) 5-16

v. *Mounds View School Dist. No. 621*, 264 Minn. 279, 291, 118 N.W.2d 795, 802

(1962) when it observed:

*School children have a special status in the eyes of the law, and in view of the compulsory attendance statute deserve more than ordinary protection. (citation omitted)*

This means that a rigorous test must be applied whenever a school district claims immunity. Indeed, this dicta from *Spanel* suggests that there be a presumption against immunity in such cases and that district fault be presumptively forgiven only when a district can provide strong proof of justification which outweighs the public policy against immunity for school districts.

The only proof of justification offered by the Minneapolis School District is Minn. Stat. § 466.12, which even the District admits it "stumbled" upon, and which for the reasons set forth by the trial court and Respondents' is arbitrary and no longer reflective of current conditions. Simply put, this is not sufficient to overcome the presumption against immunity in this context, especially in light of the reasons which support such presumption.

1. **The Legislature Acted to Abrogate  
Accidental Historical Immunity For School  
Districts**

After the *Spanel* decision, the legislature clearly meant to abrogate the history of prior immunity for school districts. This history of immunity, as explained by the *Spanel* Court, was accidental and characterized by expediency. It had continued solely from

inertia. *Id.* at 802

Before *Spanel*, school districts merely moved for dismissal of all civil suits for negligence. No adjudication of coverage issues or fault was addressed. The doctrine embodied the opposite of strict liability—a blanket immunity. The doctrine was attributed by the Supreme Court to the common law of England (“The King can do no wrong”). See *Spanel*, 118 N.W.2d 795, 796 (1962) (citing *Mower v. Leicester*, 9 Mass. 247 (1812); *Russel v. The Men of Devon*, 100 Eng. Rep. 359, 2 T.R. 667 (1788))

Prior to the *Spanel* decision, the Court had recognized common law limitations on immunity, but never benefitting school children. In 1871, the Court held that one who was injured by a defective bridge had a cause of action. *Shartle v. City of Minneapolis*, 17 Minn. 308, 313 (1871). This case was decided on the basis that the defendant was a municipal corporation. Nevertheless, consistently school districts had been given the same tort immunity as counties and towns. See *Bank v. Brainerd School Dist.*, 49 Minn. 106, 109 (1892) (denying recovery for the loss of a leg due to injury on school grounds). Indeed, in the decades preceding *Spanel*, tortured distinctions based on corporate and private functions became paramount in adjudging the extent of sovereign immunity. Yet, again, school districts were afforded complete immunity. *Spanel* at 798. (citing *Finch v. Bd. of Educ.*, 30 Ohio St. 47 (1876))

Given the Supreme Court’s call for action in *Spanel*, however, the legislature finally enacted Minn.Stat. ch. 466, the Municipal Tort Liability Act, which imposes liability--subject to the limitations set out in the other sections of the Act--on every

municipality for its torts [.]" *Doyle v. City of Roseville*, 524 N.W.2d 461, 462 (Minn.1994). The provisions of chapter 466 include school districts. *See* Minn.Stat. § 466.01, subd. 1 (including a school district in the definition of "municipality"). By mentioning school districts directly, there can be no doubt that the legislature intended a presumption against immunity with respect to school districts.

## **2. The Potential For Claims Does Not Justify Immunity from Duty.**

The Supreme Court commented in *Spanel* that the simple fact a school district might face claims if immunity was abolished, was not sufficient to support blanket immunity for school districts. *Id.* at 802. It pointed out that school districts are big business and in today's economy should be able to adequately and expeditiously plan for and dispose of claims. Moreover, it stressed the fact that private schools have succeeded despite the imposition of a legal duty to protect their students from negligence.

Other jurisdictions reached the same conclusion. The Illinois Supreme Court, in *Molitor v Kaneland Community Unit Dist.* 18 Ill 2d 11, 163 NE2d 89, (1959), cert den 362 US 968, 4 L Ed 2d 900, 80 S Ct 955, expressly abolished the doctrine of immunity for school districts. It rejected the various reasons advanced in favor of the immunity doctrine, including the claim being made in the present case, the "protection-of-public-funds theory," on the basis that the rule of school-district tort immunity was unjust, unsupported by any valid reason, and had no rightful place in modern society.

In addition, several courts have recognized the need to encourage schools to act to

protect students, by not affording blanket immunity. For example, the Indiana high court cautioned that blanket immunity should not be conferred to a school that fails to take reasonable precautions for the safety of persons or their facilities. *King v. Northeast Security, Inc.*, 790 N.E.2d 474 (Ind. 2003). Likewise, Kansas has recognized that schools are not entitled to immunity for failure to comply with the legal duty to properly supervise students and to take reasonable steps to protect student safety. *Greider v Shawnee Mission Unified School Dist.* 710 F Supp 296 (1989, DC Kan).

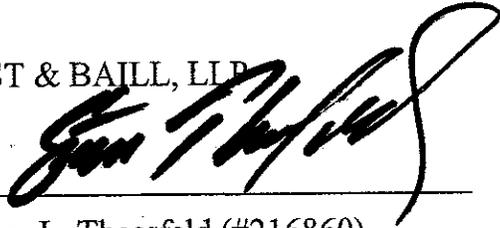
Accordingly, when considering arguments offered by Minneapolis Public Schools, this Court should strictly analyze claims of budget woes or other justification for abdicating its duty to protect students by allowing something so inherently dangerous as flashlight tag. The presumption is that immunity for such negligence has been abrogated and none of the arguments offered by Minneapolis Public Schools are sufficient to rebut this presumption.

CONCLUSION

For the forgoing reasons, the trial court must be affirmed.

Dated: 11/7/05

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