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Reining in field-trip immunity for schools

THE RECENT DECISION IN JANE DOE V. MOUNT PLEASANT ELEMENTARY SCHOOL DISTRICT AND THE CONTOURS OF LIABILITY FOR INJURIES SUSTAINED BY A CHILD ON A FIELD TRIP

Field trips are a staple of childhood. Whether it's a kindergarten trip to a local farm or an overnight outdoor science camp for fifth graders, the memories and educational experiences last a lifetime. In an effort to encourage the use of field trips by schools, the Legislature long ago created what is commonly referred to as "field trip immunity" – Education Code section 35330.

In pertinent part, section 35330, subdivision (d) states: "All persons making the field trip or excursion *shall be deemed to have waived all claims* against the district, a charter school, or the State of California for injury, accident, illness, or death occurring during or by reason of the field trip or excursion."

While perhaps well-intentioned, public entities across the State have asserted the so-called field-trip immunity to avoid liability for injuries suffered by students on field trips *regardless* of the misconduct causing such injuries. According to these entities, if a child is injured on a field trip, there is and can be no liability against the school district. Period.

Thankfully, this is not the law and the recent decision by the Sixth District Court of Appeal in *Jane Doe v. Mount Pleasant Elementary School District* (2025) 113 Cal.App.5th 1208 ("*Mount Pleasant*") clarifies the reach of field-trip immunity and its "deemed waiver" provision.

First, summary judgment for school district

At just 10 years old, Plaintiff Jane Doe, a student within the Defendant Mount Pleasant Elementary School District, attended Walden West outdoor science camp with her classmates and teachers. The District contracted with the Santa Clara County Office of Education (SCCOE) for District students to spend four days during the school term in residence at Walden West Outdoor Science School. Plaintiff alleged that, although her parents were told that she would be

supervised at all times by the District employees attending the camp, the reality was that after 9 p.m. the District employees retreated to a different building from the students and the students were left alone with Walden West's high school- or college-aged volunteer camp leaders and the camp's "night supervisor," Edgar Covarrubias-Padilla.

After talking in her sleep, Plaintiff's cabin leader sent her to "the hub," a separate and secluded area of the camp that was supervised exclusively by Covarrubias-Padilla. As alleged, Covarrubias-Padilla violently raped and sexually assaulted Plaintiff. She pleaded to call her mother but was not allowed. Covarrubias-Padilla threatened her not to tell anyone. The next night, when Plaintiff was again awoken by the cabin leader because of talking in her sleep, Plaintiff begged the cabin leader not to send her to "the hub." The cabin leader ignored the request and again sent her to "the hub," where she was again violently raped by Covarrubias-Padilla. And again on a third night, Plaintiff was awoken, sent to "the hub" and assaulted by Covarrubias-Padilla.

Plaintiff sued both the District and SCCOE. As alleged by Plaintiff, this was not the first time a child had claimed to be sexually assaulted by a Walden West employee. Plaintiff alleged a disturbing lack of any reasonable care by the District in its selection of Walden West, its supervision of students during the camp and its delegation of supervisory authority of young students to uncredentialed, untrained and unvetted camp staff.

Further, it was alleged that the District and SCCOE knew or should have known that Covarrubias-Padilla had previously engaged in sexual abuse and misconduct of children. The District moved for summary judgment. The District argued that the action was barred by the immunity afforded public school districts for injuries occurring on field trips under

Education Code section 35330. The trial court agreed and granted summary judgment. Plaintiff appealed.

Appeal: The opinion in *Jane Doe v. Mount Pleasant Elementary School District*

On appeal, Plaintiff highlighted that section 35330 is not a true "immunity" but rather a "deemed waiver" provision. Section 35330 provides that students participating in a school field trip "shall be deemed to have waived all claims against the district . . ." for injuries occurring on the field trip. (Ed. Code, § 35330.) The deemed-waiver provision of section 35330 necessarily embraces only those risks contemplated by a parent before permitting the child to participate in the field trip.

Under no analysis does a parent contemplate that their 10-year-old child would be violently raped and sexually assaulted during an overnight science camp such as this one. As such, the deemed-waiver provision of section 35330 did not apply to bar Plaintiff's action. Furthermore, Plaintiff argued that even assuming *arguendo* that claims based on sexual abuse can be "deemed waived" by a parent permitting a child to participate in a school field trip, the claim of negligence here cannot be waived in light of the fact that Plaintiff's rape was a result of the District's gross negligence. A voluntary waiver of rights cannot absolve a party from liability for gross negligence. (*Jimenez v. 24 Hour Fitness USA, Inc.* (2015) 237 Cal.App.4th 546, 554–555, citing *City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 750–751, 776–777.)

Alternatively, Plaintiff argued that questions of fact exist as to whether the outdoor science camp was a field trip at all. A reasonable juror could conclude that the camp was not a "field trip" or

Field Trip Immunity *continues*

“excursion” falling within the ambit of section 35330, but rather a school-sponsored event under Education Code section 44808. Under those circumstances, negligence liability may exist against the District for its failure to supervise students during the school-sponsored event. In its published decision, the Court of Appeal reversed the trial court’s order granting summary judgment and found that the District failed to carry its burden to show (1) that the outdoor science school was a “field trip” or “excursion” subject to section 35330’s deemed waiver provision, or (2) that section 44808 applied to immunize the District under the District’s theory that no District employee should have had immediate and direct supervision of Doe at the time she was sexually assaulted.

Justice Wilson concurred, noting that while he agreed with the result, he would have reversed on the basis that the school district failed to carry its initial burden on summary judgment to demonstrate that Plaintiff’s claim was “deemed waived” as a matter of law. The majority and concurring opinions provide a helpful outline to practitioners navigating public-entity liability for injuries suffered by students on field trips or other off-campus events.

Section 35330’s “deemed waiver” provision

While the majority opinion focused on the issue of whether Walden West was indeed a “field trip” under section 35330, throughout its discussion the court majority referred to section 35330 as a “deemed waiver” provision – not an absolute immunity as it had been previously described in appellate opinions. This is important. As detailed in the concurrence, the choice of language used by the Legislature in section 35330 matters.

The concurrence explained that the Legislature’s use of the term “waived” is significant and sets section 35330 apart from other provisions insulating public entities from *all* liability. Section 35330, subdivision (d), does *not* state that a school district “shall not be liable” or other similar variation as found in other immunity statutes.



In considering the legislative intent of 35330, the concurrence makes a firm distinction between the “deemed to have waived” language of 35330 and immunity or limitation on liability afforded by other statutes. As explained by Justice Wilson: “In section 35330, subdivision (d), though, the Legislature elected to use different language. I do not presume that the Legislature’s use of ‘deemed to have waived’ in one statute, and ‘shall not be liable’ in another, was careless or meaningless. I presume instead that the Legislature intended the terms to have different meanings, rather than be considered interchangeable.” (*Mount Pleasant*, 113 Cal.App.5th at 1228 (conc. opn. of J. Wilson).)

On appeal Plaintiff argued that the “deemed waiver” afforded by section 35330 does not apply to insulate the district from liability where the alleged injury is a rape and sexual assault. Rather the “deemed waiver” only serves to insulate from liability for known or contemplated risks. No parent sends their child to an overnight camp contemplating that they will be sexually abused by a camp employee. The Legislature’s use of the word “waived” is deliberate and meaningful; in fact, in *In re S.B.* (2004) 32 Cal.4th 1287, 1293 the California Supreme Court made clear that “a waiver is the intentional relinquishment or abandonment of a known right.” Under no factual scenario does a parent contemplate that a ten-year-old will be repeatedly raped at an outdoor science camp. In ultimately concurring in the reversal of summary

judgment, Justice Wilson stated that the District failed to meet its initial burden to demonstrate that the sexual abuse of plaintiff was the type of claim the Legislature intended to be “deemed waived.”

The concurrence further highlighted that “[i]n light of the law regarding ‘waivers,’ and the public policies regarding liability for gross negligence enumerated by the California Supreme Court in *City of Santa Barbara*, Section 35330’s waiver of rights cannot absolve a party from gross negligence or intentional misconduct.” (*Mount Pleasant*, 113 Cal.App.5th 1208, 1230-1233 (conc. Opn. of J. Wilson).)

Justice Wilson explained: “by using the phrase ‘deemed to have waived,’ the Legislature intended to limit the liability of school districts to a lesser degree – one that does not include claims for gross negligence or intentional torts.” (*Ibid.*) The concurrence continued: “In my view, a statutory scheme that allows elementary school children to be ‘effectively on their own’ at a week-long off-campus outdoor science camp, with no potential legal recourse against a school district, for even grossly negligent or intentionally tortious conduct related to the children under their care, would be absurd. I do not believe that providing absolute immunity to a school district, even in the face of evidence which might undisputably demonstrate a want of even scant care or an extreme departure from the ordinary standard of conduct, is what the Legislature intended.” (*Id.* at 1233 (conc. opn. of J. Wilson).)

Ultimately, the concurrence seems

to get to the heart of the issue: The California Legislature never intended the deemed-waiver provision of 35330 to extend to conduct as egregious as that alleged by the Plaintiff, and since Plaintiff asserted sufficient fact to create a triable issue on gross-negligence, the deemed waiver provision did not insulate the District from all liability.

While a concurrence is not binding authority, Justice Wilson's concurrence here provides a useful roadmap to the analysis of the "deemed waiver" provision in section 35330. As Justice Wilson noted, "there does not appear to any published authority which has expressly considered the scope of the 'deemed waiver' provision of section 35330, subdivision (d), or which has dealt with facts similar to those at issue here." (*Mount Pleasant*, 113 Cal.App.5th at 1235 (conc. opn. of J. Wilson).)

Thus, while the majority did not analyze the scope of the "deemed waiver" provision here because it held that the District failed to prove that Walden West was a field trip falling within section 35330 as a matter of law, the concurrence did engage in such an analysis and its reasoning will no doubt shape how future cases involving injuries to students while on field trips will be litigated.

As argued by Plaintiff and detailed in the concurrence, the "deemed waiver" provision in section 35330, subdivision (d), does not confer absolute immunity on school districts, but instead "limits the liability of school districts to a lesser degree" – and one that does not include claims for gross negligence or intentional torts. (*Ibid.* (emphasis added).)

The definition of a "field trip" falling within the deemed waiver provision

In addition to the insight provided by the concurrence in *Mount Pleasant*, the majority opinion itself proves useful in avoiding the so-called field-trip immunity defense. The majority focused on the definition of a "field trip" and explained that the analysis is not simply whether the "field trip" is voluntary or not, as has been argued by public entities for years.

Though the Education Code leaves the term "field-trip" undefined, courts have relied on the ordinary and usual

meaning of the terms in their statutory context. "'Field trip' is defined as a visit made by students and usually a teacher for purposes of first hand observation (as to a factory, farm, clinic, museum). 'Excursion' means a journey chiefly for recreation, a usual brief pleasure trip, departure from a direct or proper course, or deviation from a definite path." (*Castro v. Los Angeles Board of Education* (1976) 54 Cal.App.3d 234, 236 fn. 1; see also *Ramirez v. Long Beach Unified School Dist.* (2002) 105 Cal.App.4th 182, 189, fn. 4; *Wolfe v. Dublin Unified School Dist.* (1997) 56 Cal.App.4th 126, 134 [applying same definition of "field trip" in holding visit to a farm was a field trip].)

Unlike students who travel for the observational or recreational purposes served by field trips or excursions, "[s]tudents who are off of the school's property for required school purposes are entitled to the same safeguards as those who are on school property, within supervisorial limits." (*Castro, supra*, 54 Cal.App.3d at p. 236.) A determination of whether an activity is a field trip under section 35330 or a school-sponsored activity under section 44808 thus requires an analysis of the purpose of the activity. As held by the majority here: "So the hallmark of a field trip or excursion under section 35330 is that its observational or recreational purpose represents a departure from a school's curriculum and required school purposes." (*Mount Pleasant*, 113 Cal. App.5th at 1219, citing *Barnhart, supra*, 76 Cal.App.4th at p. 827 ["under *Castro*, the test is not really whether the student's participation was voluntary ..., but whether the off-premises activity was part of the school curriculum"].)

The majority opinion confirms that the alleged voluntary nature of the trip or excursion is *not* dispositive of the determination of whether the activity is a "field trip" falling within the ambit of section 35330. The majority distinguished a passage from *Castro*, often cited by public entities, stating that "students who participate in nonrequired trips or excursions, though possibly in furtherance of their education but not as required attendance, are effectively on their own; the voluntary nature of the event absolves the district

of liability." (*Castro, supra*, 54 Cal.App.3d at 236.)

The majority explained that the inquiry is whether the activity served a "required school purpose" and it did not matter whether the student chose to attend the science camp voluntarily for this science education or chose to remain at school where they received similar curriculum. Either way, the underlying curriculum was a "required purpose" and thus the Walden West camp was not a field trip or excursion under section 35330's deemed waiver provision.

Reading the relevant case law, it is clear that an overnight science camp that spans several days is not the type of "visit" or "brief pleasure trip" that courts have determined to fall within the protection of section 35330. Notably, Education Code section 8760 governs the provision of "outdoor science camps," separate and apart from section 35330's authorization of "field-trips," further distinguishing this type of school trip from the "field-trip" contemplated in section 35330. And indeed section 8760 contains no deemed waiver or other limitation of liability as compared to section 35330.

In a secondary analysis, the majority addressed section 44808, and it ultimately concluded that triable issues of fact existed as to whether or not District employees should have been immediately and directly supervising Jane Doe and other students overnight.

As high as 17% of students suffers sexual abuse

An estimated 10% of K–12 students will experience sexual misconduct by a school employee by the time they graduate from high school. (See Grant et al., *A Case Study of K–12 School Employee Sexual Misconduct: Lessons Learned from Title IX Policy Implementation* (2017) National Institute of Justice, Office of Justice Programs, award No. 2015-CK-BX-0009.) And based on more recent research, some experts believe that number to be as high as 17%. (See Shakeshaft, *Organizational Betrayal: How Schools Enable Sexual Misconduct* (2024).)

Sexual abuse of students is an un-

fortunate reality and the idea that young students participating in a field trip are “‘effectively on their own,’ with no legal recourse against a school district under any and all circumstances for failing to appropriately protect the safety of those children, would likely discourage parents from allowing their children to participate.” (*Mount Pleasant*, at 1232 (conc. Opn. J. Wilson).)

No parent would permit a child to attend a field trip, let alone an overnight field trip, if aware they would be waiving claims against a school district negligently contributed to their child’s rape or sexual assault. Section 35330 cannot be stretched to insulate school districts from liability for any injury suffered by a

student. The consequence of such a holding would undermine the very purpose of section 35330 – which is to encourage the use of field trips in the educational development of students.

Furthermore, providing absolute immunity to a school district for egregious misconduct in causing or contributing to the rape of a child defies California’s unwavering interest to protect children from sexual abuse. For many reasons, the opinion and concurrence in *Mount Pleasant* help rein in the supposed absolute immunity public entities have sought in cases concerning injuries to students on field trips. ♦

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