Liability Risks for After-Hours Use of Public School Property to Reduce Obesity: TENNESSEE

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This memorandum summarizes Tennessee law governing liability for after-hours recreational use of school facilities. It should be read with this project's overview memorandum, which can be found at *www.changelabsolutions.org/publications/liability-schools-50-states*. It does not provide the kind of detailed analysis necessary to support the defense of a liability action, nor is it a substitute for consultation with a lawyer. If there are important cases, statutes, or analyses that we have overlooked, please inform us by sending an email to *info@changelabsolutions.org*.

Note that in 2011, Tennessee enacted a law that specifically addressed the recreational use of school property.[1] We address the implication of this legislation below and in a separate publication entitled "Tennessee's Shared Use Law."

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Introduction

For a negligence action in the state of Tennessee, a plaintiff must prove three elements: (1) a duty of care between the plaintiff and the defendant, (2) a breach of that duty, and (3) a causal relationship between the injury and the defendant's breach.[2] For purposes of evaluating the legal rules that affect the liability risk involved in opening up schools to after-hours recreational use, the crucial issues involve the duty of the school system, in particular the potential application of governmental immunity.

Part A of this memorandum addresses the duty of the school system and the ways in which Tennessee law reduces that duty. Part B addresses issues relating to limits on damages. Part C addresses two risk management issues that involve legal questions that are susceptible to a generalized legal analysis: (1) whether a school district could avoid liability arising out of recreational programs by requiring the participants, or their parents or legal guardians, to sign liability waivers; and (2) whether a third party providing the recreational programming on school facilities would have the same duty of care as a school district.

A. Public Schools, the Duty Element, and After-Hours Use

Absent special liability protection, school districts and other providers of recreational facilities have the legal duty to take *reasonable* precautions to prevent injury. What is reasonable is very context specific and depends on many things, most importantly, the nature of the harm, the difficulty of preventing it, and generally accepted standards in the management of recreational facilities.

As any lawyer who has tried to explain the concept of negligence to a layperson knows, the standard of reasonable care can seem frustratingly vague and imprecise. Yet it is the standard that generally governs liability risk for organizations and individuals in the United States. On the whole, it is a flexible standard that does a good job of balancing the competing interests of the providers and users of many kinds of services.

This section explains the ways that Tennessee law limits the legal duty of school districts. As we explain in subsection 1, Tennessee law will likely insulate school districts from liability so that school districts that take reasonable precautions may avoid legal responsibility for any injuries. Tennessee law does this through its general retention of government immunity, a new statute specifically governing use of school property outside of school hours, and the various means by which it will re-impose immunity if stripped through a statutory mechanism.

Subsection 2 discusses the liability and indemnification of school employees, a topic closely related to schools districts' overall liability risk.

Subsection 3 discusses Tennessee's statutory provision setting forth the powers and duties of local school boards. Boards of education have the power to permit public access to school property and buildings for recreational purposes. This provision grants individual school board members and officials an absolute waiver of liability for injuries arising from the use of school property. This provision does not provide immunity to the school board entity, although as we discuss in section 1, other provisions of law do.

Subsection 4 discusses recreational user statutes. Tennessee may offer liability protection to school districts under a recreational user statute. Tennessee's recreational user statute applies to governmental entities, including school districts. It's not clear, however, whether the types of recreational activities that after-school users of school property engage in fall within the scope of the statute.

Subsection 5 discusses the impact of the court decisions to use a hybrid approach to the traditional distinctions among different categories of entrants on land. Section 6 compares the legal duties that a school already faces for activity during the school day with the legal duties that the school would face if it permitted after-hours use of its facilities.

1. Limited Duty Due to Governmental Immunity and the Public Duty Doctrine

Tennessee regulates the liability of government entities under the Tennessee Government Tort Liability Act (Act).[3] While Tennessee also retains sovereign immunity, it applies only to state entities and would be unlikely to apply to school districts.[4] The Act explicitly applies to school districts.[5]

(a) After-School Recreational Activities Immunity

In 2011, the Tennessee legislature enacted a new section of the Act to provide immunity to school districts that allow after-school use of school premises and facilities for recreational activities outside of regularly scheduled school activities.[6] It provides that school boards and officials do not owe a duty of care to keep the premises of a public school safe for public use outside of regularly scheduled school activities or to warn of unknown dangerous

or hazardous conditions, uses, structures, or activities on the premises.[7] If no duty of care is owed to a member of the public who uses the recreational facilities at a school after school hours, the school district is, essentially, immune from liability. This protection does not apply, however, if a district or an official causes an injury or damage by gross negligence, or willful, wanton, or malicious conduct.[8]

The statute also addresses liability when school property is opened to public recreational use through the operation of a "recreational joint use agreement," which is defined as "written authorization by a local board of education or a school official permitting a public or private entity to access the premises of a public school for the purpose of conducting or engaging in recreational activity and addressing conditions under which the permission is granted."[9] Under the statute, the liability protections described above also apply to school boards and their officials that authorize public recreational use under a recreational joint use agreement.[10] And, similarly, the protection does not apply if an injury or damage was caused by gross negligence, or willful, wanton, or malicious conduct.[11] But the statute does allow a school board and its officials, only if specified in the agreement, to choose to impose upon itself a greater duty of care toward those who use the property than provided in the statute.[12] In other words, a school board or official could opt out of the statute's protection. Finally, the statute also provides added protection to boards and officials by prohibiting a joint use agreement from being interpreted as waiving other types of legal protections to which a school or its officials may be entitled.[13]

(b) Immunity under Other Provisions of the Act

In the event the new section of the Act does not provide protection for a school district, other provisions of the Act would likely do so. The Act provides immunity for government entities when "engaged in the exercise and discharge of any of their functions, governmental or proprietary."[14]

The Act provides four exceptions to government immunity, two of which could apply to a school district. The first exception provides that immunity is removed for any injury caused by a dangerous or defective condition of any public building, structure, or other public improvement owned and controlled by the government.[15] This exception does not apply for latent defective conditions, nor does the exception apply unless the injured party proves that the government entity had actual or constructive notice of the defect.[16] Courts appear to base the application of the exception on whether the government entity had actual or constructive notice of the condition. One Tennessee court held a school liable for injuries caused by a defect in a high school kitchen's electrical system, because the school was aware of the possibility of shock from the kitchen appliances and previously had attempted to repair the appliances.[17] Another court held a volunteer fire department liable for injuries caused by a defect in a children's slide because the volunteer fire department was on notice of the slide's defect due to having constructed, operated, and maintained the slide.[18] Another court held that a town retained immunity in a lawsuit where a landowner was struck by a baseball from a nearby field in a town-owned park.[19] The court reasoned that because the plaintiff was the first known person to have been struck by a stray baseball in this manner, and the field had been properly maintained, the town lacked actual and constructive notice of the danger.[20]

The second exception provides that a governmental entity is liable for the negligent acts or omissions of governmental employees acting within the scope of their employment, unless the acts of the employees fall into one of nine enumerated categories.[21] The category most likely to apply in this context allows a government entity to retain immunity when a government employee exercises or performs a discretionary function.[22] Tennessee courts use a "planning-operational test" to determine whether a government employee's action was discretionary.[23] Generally, planning or policymaking decisions are discretionary (and therefore subject to immunity) while operational decisions do not give rise to immunity.[24] "[A] planning decision is most likely to reflect a course of conduct that was determined after consideration or debate by those in charge of formulating plans or policies."[25] "[D]ecisions that merely implement pre-existing policies and regulations are considered to be operational in nature and require the decision-maker to act reasonably in implementing the established policy."[26]

The Tennessee Supreme Court provided three factors for courts to consider in determining whether an employee decision is discretionary: (1) whether the course of conduct was determined after consideration or debate by an individual or group charged with the formulation of plans or policies; (2) whether the decision resulted from an assessment of priorities by an individual or group responsible for formulating plans or policies; and (3) whether the decision is *not* of the type properly reviewable by courts, which are typically ill-equipped to investigate and balance numerous factors that go into executive or legislative decisions.[27] Tennessee courts have found decisions regarding school building security[28] and gym class supervision to be discretionary.[29]

(c) Immunity under the Public Duty Doctrine

If a government entity is not entitled to immunity under the Act, courts in Tennessee next consider immunity under the common law public duty doctrine:[30] "If a government entity loses its immunity under the Tort Liability Act we [courts] must turn our attention to the applicability of the public duty doctrine."[31] The public duty doctrine has been applied to shield government entities from liability.[32]

Under the public duty doctrine, "private citizens cannot maintain an action against public officials or entities unless they are able to allege a special duty not owed to the public generally."[33] Where a special relationship exists between a person and a public employee, so does a special duty.[34] A special relationship creating the special duty exception to the public duty doctrine exists when:

1) officials, by their actions, affirmatively undertake to protect the plaintiff, and the plaintiff relies upon the undertaking;

2) a statute specifically provides for a cause of action against an official or municipality for injuries resulting to a particular class of individuals, of which the plaintiff is a member, from failure to enforce certain laws; or

3) the plaintiff alleges a cause of action involving intent, malice, or reckless misconduct.[35]

If one of the listed situations exists, courts will remove the immunity afforded to a government entity by the public duty doctrine. It's unclear whether and how the public duty doctrine would apply to after-school users of school recreational facilities. Tennessee schools have a duty to use reasonable care to supervise students and protect them during the school day.[36] In an unpublished 2008 case, the Tennessee Court of Appeals held that the public duty doctrine did not apply to a school coach or the school board because they "did not simply have a 'duty to the public at large'; rather, they had a duty to the students placed in their charge to exercise reasonable care to supervise and protect them."[37] But, given the Act's new immunity provision for after-school use of school property, a strong argument may be made that the legislature did not intend that a special duty extends to after-school users of school property. As a result, a court could find that public duty immunity applies to protect a school district from liability.

In summary, the Act gives to school districts a broad grant of immunity, including for after-school use of its property. Tennessee, however, qualifies the general immunity by imposing liability on school districts and other government entities for their employees' negligent acts, unless the employee's exercise of a discretionary function led to the injury. A school district may also be liable for injury caused by a dangerous condition, but only if the district was aware or should have been aware of the condition.

2. Duties and Indemnification of Public School Employees

The Act also governs claims against and indemnification of public employees. Under the Act, "no claim may be brought against an employee or judgment entered against an employee for damages for which the immunity of the governmental entity is removed by this chapter" except in regards to medical malpractice.[38] The Act provides that in cases where a government entity retains immunity, a "claim may be brought against an employee or judgment entered against an employee for injury proximately caused by an act or omission of the employee within the scope of the employee's employment" but not for more than the amounts for damages set forth under the Act.[39] Claims or judgments can be brought for more than the established limits if the act or omission was "willful, malicious, criminal, or performed for personal financial gain" or was one of medical malpractice.[40] Also, as noted above in section A1, public employees are subject to the public duty doctrine as well as the special duty doctrine that can remove or impose a duty and thus liability.[41]

Government entities may also indemnify public employees and volunteers. Government entities "shall have the right, as a matter of local option" to insure or indemnify employees for claims when the government entity is immune.[42] Any indemnification cannot exceed the limits of liability established by the Act, discussed below.[43] A government entity "may elect" to insure or indemnify volunteers for claims where the government entity is immune.[44] If a government entity provides indemnity, to either employees or volunteers, it is not to exceed the limits set forth in the damages section of the Act.[45] The monies paid by a government entity to provide indemnification to employees can be paid from tax funds.[46]

3. Education Boards' Powers and Liabilities for Recreational Use of School Property

Tennessee addresses the public recreational use of school property under the laws establishing the powers and duties of local school boards. Section 49-2-203 provides that boards of education may "permit school buildings and school property to be used for public, community or recreational purposes under rules, regulations and conditions as prescribed from time to time by the board of education."[47] This statute grants absolute immunity to members of the school board or other school officials for injuries resulting from use of school property.[48]

The Act also provides immunity for all members of boards, commissions, authorities, and other governing agencies from liability for the conduct of the affairs of the entity.[49] Immunity from liability is removed if conduct of these employees and officers is willful, wanton, or grossly negligent.[50]

In an opinion letter from 2002, the Tennessee Attorney General's Office clarified which statutes control liability of school boards and individual officials.[51] The opinion distinguished the broad immunity given to members of the school board or other school officials from the immunity available to the school board as a governmental entity under the Act. The attorney general concluded that section 49-2-203(b)(4) gives individual school board members and school officials absolute immunity from suit in state court for damages arising out of a personal injury resulting from the use of school property. That statute, however, does not give immunity to the school board, as an entity. The attorney general concluded that the Act governs the board's immunity.[52] Research into Tennessee case law did not indicate any court cases further clarifying school board liability.

4. Limited Duty under Recreational User Statute

Tennessee limits the liability of land possessors who open their land, free of charge, for recreational use.[53] The statute provides immunity by providing that the land possessor has no duty to keep his land safe for use or entry for recreational activities or to provide a warning of hazardous conditions, structures, or activities.[54] If a land possessor gives permission to a person to enter premises for activities such as hunting, fishing, or nature and historical studies, the permission does not include an assurance the land is safe for such activities, give the entrant invitee status, or assume responsibility for injury to the entrant.[55] The statute applies to real property, waters, private ways, trees, and any building or structure on the land or premises owned by any government entity.[56] It does not apply to a landowner's principal place of residence and any improvements erected for recreational purposes that immediately surround such residence, including objects such as swimming pools, tennis courts, or horse show pits.[57] The statute does not expressly define "recreational activity," but applies to "such recreational activities as hunting, fishing, trapping, camping, water sports, white water rafting, canoeing, hiking, sightseeing, animal riding, bird watching, dog training, boating, caving, fruit and vegetable picking for the participant's own use, nature and historical studies and research, rock climbing, skeet and trap shooting, skiing, off-road vehicle riding, and cutting or removing wood for the participant's own use . . .."[58]

The statute also removes the immunity under certain circumstances. The statute does not grant immunity from liability for gross negligence, or willful or wanton conduct.[59] Immunity also does not extend to injuries of third parties, other entrants the land possessor permitted to use her land, or other persons to whom the land possessor

owed a duty, where such injuries were caused by other entrants permitted to use the land.[60] Visitors over 18 years old entering for activities such as camping, fishing, or hunting can waive liability for injuries as long as the waiver does not limit liability for gross negligence, willful conduct, or failure to guard or warn against dangerous conditions.[61]

The statute applies to school districts because the statute includes government entities in its definition of landowners subject to the Act.[62] But it's unclear whether the type of recreational activities that occur on school grounds fall within the statute's protection. Typical after-school activities are not included on the list. In *Parent v. State*, the Tennessee Supreme Court considered whether bicycling was a recreational activity as contemplated by the statute.[63] The court found that the list of recreational activities listed in the statute "is neither exclusive nor exhaustive" and that "activities similar to those explicitly enumerated in [the statute] may also fall within the purview of the recreational use statute." The court concluded that "bicycling is by its very nature a recreational activity" and therefore held that it fell within the statute's protection. Thus, a school district might successfully argue that other types of recreational activities occurring on school premises should receive protection under that statute.

Finally, Tennessee has an additional statute that limits the liability of property owners who lease their land to the state, county, or municipality for recreational purposes.[64] This statue explicitly protects the property owner, rather than the governmental entity. Therefore, it does not offer any protection to a school district.

5. Limited Duty Due to the Historical Distinctions among Entrants on Land

Tennessee uses a hybrid approach to the three traditional classifications of entrants. Tennessee retains the traditional category of trespasser. A trespasser is a person who enters property without permission.[65] A "landowner owe[s] only the duty to refrain from willfully injuring…a trespasser."[66] Tennessee retains trespasser doctrines tailored specifically for children. Tennessee retains the attractive nuisance[67] and the playground doctrine,[68] which, if applicable, cause a possessor of land a duty to "exercise reasonable care to eliminate the danger or otherwise to protect the children."[69]

Tennessee abolished the distinction between licensee and invitee in a premises liability analysis.[70] "[T]he duty owed is one of reasonable care under all of the attendant circumstances, foreseeability of the presence of the visitor and the likelihood of harm to him being one of the principal factors in assessing liability."[71] The duty of reasonable care extends to all persons who enter the property, either with express or implied consent.[72] Generally, then, a school district would owe a duty of reasonable care to entrants onto school property. The new provision of the Act, described in section 1, provides that school districts have no duty of care to after-school users of school property. While no case law yet exists interpreting the provision, a strong argument may be made that the specific provision would control in the after-school context.

6. Duty during the School Day and After: A Comparison

When deciding whether to open up school facilities for recreational use, it is useful to evaluate how the legal risk arising out of opening the school grounds for recreational use compares with the legal risk arising out of the use of school grounds for programs that the school already runs.

Schools have specific supervisory duties to students. In Tennessee, school officials are charged with providing a safe environment for students.[73] School systems and schoolteachers have a "duty to exercise reasonable care for the safety of [their] students . . .."[74] This responsibility does not make a school the insurer of a student's safety.[75] "Tennessee does not impose upon teachers the duty to anticipate or foresee the hundreds of unexpected student acts that occur in our public schools."[76] Teachers and local school systems, however, have a duty to safeguard students from reasonably foreseeable dangerous conditions, including acts of fellow students.[77]

Under the new provision of the Act, the legislature has indicated that this duty of care should not apply to after-school users of school recreation facilities. In that case, the risk of liability for an injury that occurs after school would be less than the risk if the injury occurred during the school day. But even if a court concluded that the new statute did not apply, a court would likely conclude that a district owes a reasonable duty of care to visitors as entrants on to its property. If so, the district would be held to the same – but no higher standard – than the district is held to throughout the school day. As a result, the liability risk for an injury that occurs after school would be no greater than one that occurs during the school day.

B. Limits on Damages

1. Damages Limits under Government Tort Liability Act

The Act limits the amounts of damages for tort claims against government entities.[78] The minimum amount of insurance required is broken into four time frames.[79] If an injury or a death occurs before July 1, 1987, the minimum coverage is $40,000 for one person in one accident and not less than $80,000 for any two or more people in one accident.[80] If an injury or a death occurs between July 1, 1987 and July 1, 2002, the minimum would be not less than $130,000 for one person in one accident and not less than $350,000 for injury or death to all persons in any one accident.[81] If an injury or a death occurs between July 1, 2002, and July 1, 2007, the minimum limits are not less than $250,000 for injury or death to any one person in any one accident and not less than $600,000 for injury or death of all people in any one accident.[82] If an injury or a death occurs on or after July 1, 2007, the minimum limits cannot be less than $300,000 for any one person in any one accident and not less than $700,000 for all people in any one accident.[83] A judgment or an award can exceed the minimum limits, but it is limited to the insurance amount the government entity has purchased in excess of the statutory minimum.[84]

2. General Damages Limits for Tort Claims

Because all claims against a governmental entity must be brought under the Act, the Act's limitation on damages would govern a claim against a school district. Outside of the Act, Tennessee has a variety of laws regulating the

limits on general damages. Tennessee follows the collateral source rule, which prohibits reduction of a plaintiff's recovery by deducting money paid to the plaintiff for medical expenses or other benefits by sources collateral to the defendant.[85] Damages for loss of enjoyment of life are not recoverable.[86] Punitive damages are allowed where the defendant has acted intentionally, fraudulently, maliciously, or recklessly.[87]

C. Selected Risk Management Issues

In this section we consider two risk management issues that involve legal questions that are susceptible to a generalized legal analysis: (1) whether a school district could avoid liability arising out of recreational programs by requiring the participants, or their parents or legal guardians, to sign liability waivers; and (2) whether a third party providing the recreational programming on school facilities would have the same duty of care as a school district. In brief, we conclude that Tennessee courts would be unlikely to enforce liability waivers purporting to release the rights of children signed on their behalf by their parents or guardians. We further conclude that a third party providing recreational programming would likely have higher liability risk than a school district because a school district would be subject to the Tort Liability Act and the third party, unless a government entity, would not be.

1. Liability Waivers

Tennessee recognizes express assumption of risk as an affirmative defense. Express assumption of risk is an absolute bar to recovery.[88] "Express assumption of risk occurs when a party specifically agrees, prior to the time of injury, to accept a particular risk of harm resulting from another party's conduct."[89] Stated otherwise, "express assumption of the risk . . . is an express release, waiver or exculpatory clause, by which one party agrees to assume the risk of harm arising from another party's negligence. . . . [It] is of a contractual nature."[90]

An exculpatory contract is enforced unless two conditions exist. First, an exculpatory contract is void if it extends to willful or gross negligence.[91] Second, an exculpatory contract is enforced unless it is against public policy.[92] Some of the factors courts consider when determining whether a contract implicates public policy include whether: 1) the contract concerns a business of a type generally thought suitable for public regulation, 2) the party seeking enforcement of the clause is engaged in a public service, 3) the party seeking enforcement is willing to perform the service for any member of the public, and 4) the contract is one of adhesion.[93]

Tennessee courts are unlikely to enforce exculpatory agreements signed by parents on behalf of children. In *Childress by and through Childress v. Madison County*,[94] the Tennessee Court of Appeals stated that plaintiff-parent could not "execute a valid release or exculpatory clause as to the rights of her son against the Special Olympics or anyone else."[95] A later decision by the Tennessee Court of Appeals liberally quoted *Childress* and stated, "'[t]he law is clear that a guardian cannot on behalf of an infant or incompetent, exculpate or indemnify against liability those organizations which sponsor activities for children and the mentally disabled."[96] The proposition has been further bolstered in succeeding cases; the Eastern District Court of Tennessee stated in an unpublished case, "[i]t is Tennessee's stated public policy to protect minors and prohibit exculpatory releases for them . . . [and] to the extent the parties to the release attempted and intended to [release the rights of the plaintiff's son] . . . the release is void."[97]

Interestingly, where a parent does sign a release on behalf of a child, Tennessee courts appear to enforce the exculpatory contract against the signing parent.[98]

2. Providing Access through Third Parties

Research did not indicate any legal authority that would give a third party a comparative advantage over a school district, at least with regard to the liability risk posed by running a recreational program on school grounds. Tennessee does allow government entities to indemnify or insure volunteers, as was discussed in section A2 above, but this does not appear to equalize the potential liability a third party would incur compared with a government entity. This is an important question that will be addressed in future research on joint agreements for public schools.

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[1] 2011 Tennessee Laws Pub. Ch. 368 (H.B. 1151), codified at Tenn. Code Ann. § 29-20-112 (Public school premise safety; recreational joint use agreement, local board of education, school official, duty to warn).

[2] TENN. JUR. *Negligence* § 4 (2004) [hereinafter TENN. JUR.]. The Tennessee Supreme Court has described the elements as (1) a duty of care owned by the defendant to the plaintiff, (2) conduct falling below the standard of care amounting to a breach of that duty, (3) injury or loss, (4) causation in fact, and (5) proximate or legal cause. *Bradshaw v. Daniel*, 854 S.W.2d 865, 869 (Tenn. 1993).

[3] TENN. CODE ANN. § 29-20-101 et seq. (West 2012).

[4] *See Id.* § 20-13-102.

[5] *Id.* § 29-20-102(3)(A).

[6] *Id.* § 29-20-112.

[7] *Id.* § 29-20-112 (b)(1).

[8] *Id.* § 29-20-112 (b)(3).

[9] *Id.* § 29-20-112 (a)(3).

[10] *Id.* § 29-20-112 (b)(2).

[11] *Id.* § 29-20-112 (b)(3).

[12] *Id.* § 29-20-112 (b)(2).

[13] *Id.* § 29-20-112 (c).

[14] *Id.* § 29-20-201(a).

[15] TENN. CODE ANN. § 29-20-204(a) (West 2012).

[16] *Id.* § 29-20-204(b).

[17] *Keaton v. Hancock County Bd. of Educ*., 119 S.W.3d 218 (Tenn. Ct. App. 2003).

[18] *Burton v. Carroll County,* 60 S.W.3d 829 (Tenn. Ct. App. 2001).

[19] *Halliburton v. Town of Halls*, 295 S.W.3d 636 (Tenn. Ct. App. 2008).

[20] *Id.* at 639.

[21] TENN. CODE ANN. § 29-20-205 (West 2012).

[22] *Id.* § 29-20-205(1).

[23] *Bowers by Bowers v. City of Chattanooga*, 826 S.W.2d 427 (Tenn. 1992).

[24] *Id.* at 430.

[25] *Limbaugh v. Coffee Med. Ctr*., 59 S.W.3d 73, 85 (Tenn. 2001).

[26] *Id.* at 85.

[27] *Chase v. City of Memphis*, 971 S.W.2d 380, 384 (Tenn. 1998).

[28] *Doe v. Bd. of Educ. of Memphis City Schs.,* 799 S.W.2d 246 (Tenn. Ct. App. 1990).

[29] *Chudasama v. Metro. Gov't of Nashville & Davidson County*, 914 S.W.2d 922 (Tenn. Ct. App. 1995).

[30] Courts have three possible steps in a government immunity analysis:

> If immunity is found under the Act, a court need not inquire as to whether the public duty doctrine also provides immunity. If, however, the Act does not provide immunity, courts may look to the general rule of immunity under the public duty doctrine. If immunity is then found under the public duty doctrine, the next inquiry is whether the special duty exception removes the immunity afforded under the public duty doctrine.

Chase, 971 S.W.2d at 385 (analyzing the conduct of an employee and a government entity simultaneously under the public duty exception).

[31] *Hurd v. Flores*, 221 S.W.3d 14, 27 (Tenn. Ct. App. 2006). The Act did not abolish the public duty. *Id.*

[32] *Hurd*, 221 S.W.3d at 27 n.4.

[33] *Id.* at 28.

[34] *Id.*

[35] *Id.*

[36] *Roberts v. Robertson County Bd. of Educ*., 692 S.W.2d 863, 870 (Tenn. Ct. App 1985).

[37] *Dean v. Weakley County Bd. of Educ*., 2008 WL 948882, at *11 (Tenn. Ct. App. Apr. 9, 2008) (slip copy).

[38] *Id.* § 29-20-310(b).

[39] *Id*. § 29-20-310(c).

[40] *Id.*

[41] *See* section A1 above.
[42] *Id.* § 29-20-310(d).
[43] *Id.*
[44] *Id.* § 29-20-310(e).
[45] *Id.* § 29-20-310(d), (e)(2).
[46] *Id.* § 29-20-406(a).
[47] *Id.* § 49-2-203(b)(4).
[48] *Id.* § 49-2-203(b)(4)(A) ("No member of the board or other school official shall be held liable in damages for any injury to person or property resulting from the use of school buildings or property.").
[49] TENN. CODE ANN. § 29-20-201(b)(2) (West 2012).
[50] *Id.*
[51] "Use of School Building and School Property By Private Entities," Tenn. Op. Atty. Gen. No. 02-085 (Tenn. A.G.).
[52] *Id*.
[53] *Id.* § 70-7-101 et seq.
[54] *Id.* § 70-7-102.
[55] *Id.* § 70-7-103.
[56] *Id.* § 70-7-101(1).
[57] *Id.* § 70-7-101(1).
[58] *Id.* § 70-7-102(a).
[59] *Id.* § 70-7-104.
[60] *Id.*
[61] *Id.* § 70-7-105.
[62] *Id.* § 70-7-101(2)(B).
[63] *Parent v. State*, 991 S.W.2d 240,243 (Tenn. 1999).
[64] TENN. CODE ANN. § 11-10-102 (West 2012).
[65] *Carson v. Headrick,* 900 S.W.2d 685 (Tenn. 1995).
[66] *Id.* at 687.
[67] *Metropolitan Government of Nashville and Davidson County v. Counts*, 541 S.W.2d 133, 136 (Tenn. 1976) (the attractive nuisance doctrine applies when a child has been "enticed or lured onto defendant's premises by the instrumentality or condition causing the harm").
[68] *Id.* (the playground doctrine applies if "the landowner knows or… should know that children…are habitually trespassing upon his land to use it as a playground").
[69] *Id.*
[70] *Hudson v. Gaitan*, 675 S.W.2d 699, 703 (Tenn. 1984) (stating "[t]he common law classifications of one injured on land of another as an 'invitee' or 'licensee' are no longer determinative in this jurisdiction in assessing the duty of care owed by the landowner to the person injured").
[71] *Id.*
[72] TENN. JUR., *supra* note 1, at *Negligence* § 7.
[73] *Mason ex rel. Mason v. Metro. Gov't of Nashville & Davidson County*, 189 S.W.3d 217, 221 (Tenn. Ct. App. 2005).
[74] *Haney v. Bradley County Bd. Of Educ*., 160 S.W.3d 886, 899 (Tenn. Ct. App. 2004).
[75] *Mason*, 189 S.W.2d at 221.
[76] *Id.*
[77] *Id.* at 224.
[78] *Id.* § 29-20-311 (West 2012).
[79] *Id.* § 29-20-403. Only insurance minimums for accidents are mentioned, and no mention is made for injury arising out of motor vehicle incidents, government entities without insurance, or destruction of property, all of which carry different minimums. *Id.* It does not matter if the government entity has purchased insurance or is self-insured. *Id.* § 29-20-403(d).
[80] *Id.* § 29-20-403(b)(1).
[81] *Id.* § 29-20-403(b)(2).
[82] *Id.* § 29-20-403(b)(3).
[83] *Id.* § 29-20-403(b)(4).
[84] *Id.* § 29-20-311.
[85] TENNESSEE HANDBOOK SERIES *Damages* § 1:1 (2012).
[86] *Id.*
[87] *Id.*
[88] TENNESSEE PRACTICE SERIES *Tennessee Law of Comparative Fault* § 7:3 (2012) [hereinafter TENN. PRAC.].
[89] *Perez v. McConkey,* 872 S.W.2d 897, 904 (Tenn. 1994).

[90] *Baggett v. Bedford County*, 270 S.W.3d 550, 556 (Tenn. Ct. App. 2008), *citing Perez,* 872 S.W.2d at 900.

[91] TENN. PRAC., *supra* note 80, at § 7:3.

[92] *Id.*; *Perez*, 872 S.W.2d at 900.

[93] TENN. PRAC., *supra* note 80, at § 7:3. An adhesion contract is a contract that does not provide the ability for the signer to obtain protection from negligence. *Childress by and through Childress v. Madison County*, 777 S.W.2d 1, 4 (Tenn. Ct. App. 1989).

[94] 777 S.W.2d 1 (Tenn. Ct. App. 1989).

[95] *Id.* at 7. It is important to note that in *Childress*, the child was a mentally disabled student. *Id.* at 1.

[96] *Rogers v. Donelson-Hermitage Chamber of Commerce*, 807 S.W.2d 242, 245 (Tenn. Ct. App. 1990) (quoting *Childress*, 777 S.W.2d at 7–8).

[97] *Bonne v. Premier Athletics*, LLC, 2006 WL 3030776, at *5 (E.D. Tenn. Oct. 23, 2006).

[98] *E.g.*, *Childress*, 777 S.W.2d at 6; *Rogers v. Donelson-Hermitage Chamber of Commerce*, 807 S.W.2d 242, 245–247 (Tenn. Ct. App. 1990).