THINKING OUTSIDE THE BUS: REVITALIZING THE ROLE OF A TEACHER'S STANDARD OF CARE DURING AFTER-SCHOOL HOURS

Comment

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I. INTRODUCTION: FOR WHOM THE BELL TOLLS

More than a quarter of America's schoolchildren—roughly fourteen million elementary, middle, and high school students—are left unattended by adults during after-school hours.[1] Of that number, over 40,000 kindergarteners are left without teacher or parent supervision upon the close of every school day.[2] To little surprise, these staggering numbers account for the weekday hours between 3 p.m. and 6 p.m. being the peak routine time for juvenile crime, experimentation with drugs, underage drinking, and sexual activity among America's youth.[3] Students left unaccompanied on campus following the conclusion of extracurricular activities, or simply those children struggling to find family transportation, all further contribute to a rash of ongoing student injuries, destruction of property, and even death.[4]

Despite the passionate solutions and due diligence offered on behalf of a community's overworked teaching staff, such supervisory negligence continues to pit school districts and parents against each other in a game of finger pointing that does little to help an injured child. The modern family—often composed of parents and guardians holding down long work hours in hopes of getting back to their unaccompanied children as soon as possible—have few legal remedies available and an unclear understanding of what custodial expectations are in play after the final bell of a school day.[5]

Such inconsistent liability standards involving the custodial transfer of a child from teacher to parent have fueled litigation in this country for the better half of a century.[6] Stories of unsupervised students during after-hours

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1. *The Afterschool Hours in America*, AFTERSCHOOL ALLIANCE, http://www.afterschoolalliance.org/Fact%20Sheet_Afterschool%20Essential%20stats%2004_08%20FINAL.pdf (last visited Apr. 24, 2020).

2. *Id.*

3. *Id.*

4. *See, e.g.*, Bartell v. Palos Verdes Sch. Dist., 147 Cal. Rptr. 898, 899 (Ct. App. 1978); Susanna Pradhan, *This Is Afterschool*, AFTERSCHOOL ALLIANCE (Apr. 2018), http://www.afterschoolalliance.org/documents/factsResearch/This_Is_Afterschool_2018.pdf (noting juvenile crime and victimization peak from 3 p.m. to 6 p.m.).

5. Interview with Lauren Snow, Sch. Teacher, Monterey High Sch., Lubbock Indep. Sch. Dist., in Lubbock, Tex. (Nov. 1, 2018).

6. *See, e.g.*, Guerrero v. South Bay Union Sch. Dist., 7 Cal. Rptr. 3d 509 (Ct. App. 2003); Schumate v. Thompson, 580 S.W.2d 47 (Tex. App.—Houston [1st Dist.] 1979, writ ref'd n.r.e.); Glaspell v. Taylor

abound, such as that of a twelve-year-old from California that managed to accidentally kill himself while performing skateboard stunts on the school's vacant playground,[7] or a student—despite desperately trying to warn school administrators—dying from a gunshot wound during an after-school fight just a few hundred yards from campus.[8]

Whether a student walking home unaccompanied gets struck by a car[9] or a child suffers serious burns after playing with matches on school grounds after school,[10] America's children deserve legislators that step in to provide a bright-line understanding of custodial and supervisory obligations. Model statutory revision must provide a better standardization of negligence law if schoolchildren are to benefit from the supervisory instruction and guidance they deserve. The legal framework of this issue itself provides a heightened standard of accountability for all involved: We simply must choose to raise our collective expectations regarding child injury liability.

This Comment will feature four separate parts—Parts II and IV serving as the main source of background and analysis, respectively. Part II will provide a historical perspective of how Western ideals have shaped the notion of compulsory education alongside the ever-evolving roles of teacher and parent custody.[11] In addition, Part III will provide information on the current status of various immunity doctrines and an original catalogue of some of the most comprehensive education codes enforced among the fifty states.[12]

Part IV argues the need for a stronger child-centered solution to these liability concerns by challenging educators, school districts, and parents to elevate their collective standards and further try to define specific supervisory transfer points at the end of a school day.[13] Next, Part IV presents model legislation that more clearly defines a set of bright-line rules clarifying when and how a school district should carefully perform such a transfer of child liability.[14] That standardized statutory language helps further resolve some of the murky law that currently exists on record and helps build the argument that statewide standardization is important in maintaining accountability at the community level.[15] The analysis finishes with a frank set of considerations a state must consider after such model legislation is adopted,

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Cty. Bd. of Educ., No. 14-0175, 2014 WL 5546480 (W.Va. Nov. 3, 2014). While a wealth of relatable school liability cases exist nationwide, an even more compelling number of incidents likely never make it to court in the first place. The scope of argument within this Comment addresses why clarifying existing statutes will help reduce such grievances.

7. *Bartell*, 147 Cal. Rptr. at 899.
8. Matallana v. Sch. Bd. of Miami–Dade Cty., 838 So. 2d 1191, 1192 (Fla. Dist. Ct. App. 2003).
9. *Guerrero*, 7 Cal. Rptr. 3d at 511.
10. Collomy v. Sch. Admin. Dist. No. 55, 710 A.2d 893, 894 (Me. 1998).
11. *See infra* Part II (describing the historical and cultural considerations regarding custody roles).
12. *See infra* Part III (examining immunity doctrines and various education codes).
13. *See infra* Part IV.A (arguing for child-centered solutions to unclear liability problems).
14. *See infra* Part IV.B.3 (proposing model legislation as guidance to state legislatures).
15. *See infra* Part IV.B (analyzing the need for statewide standardization).

including the roles of after-school programs, alternative transportation, and financial considerations.[16]

II. LEGAL MECHANICS WITHIN THE AMERICAN EDUCATION SYSTEM

Understanding the evolutionary history of fifty separate state education systems and their complex relationship between both federal and local administrative structures makes examining American education a wholly difficult venture.[17] One way of appreciating a macroscopic view of such a complex nationwide tradition involves understanding how professional educators, parents, school districts, education statutes, and case law precedent blend together in a way that uniquely defines how a child receives support throughout his or her school experience.

A. Teacher Versus Parental Duties in General

How a child receives an education ultimately provides a framework as to the delicate and essential bonds between the state legislature, local school district, and parent-guardian. Understanding such complexity helps to put modern-day negligence law on school campuses into helpful perspective.

1. Who's the Boss? Traditional Roles and Expectations of Teachers

Massachusetts became the first state to pass a compulsory education law in 1852, having already passed similar legislation as far back as 1647 while it was a colony of the British Crown.[18] The immigration boom of the nineteenth and twentieth centuries would find America shifting away from earlier notions of church-centered schooling to that of statewide educational programs.[19] Fear of the Catholic Church in an ever-growing Protestant America helped spur such separation from church bodies, and eventually, Mississippi became the last state to pass statutory language requiring school attendance in 1917.[20] Although the early twentieth century industrial complex fought hard against compulsory attendance laws as it struggled to retain child labor, better labor laws eventually helped students avoid this harsher undereducated childhood.[21]

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16. *See infra* Part IV.C (acknowledging the concerns and considerations state legislatures must examine).

17. *See generally* MICHAEL W. LA MORTE, SCHOOL LAW: CASES AND CONCEPTS 3–16 (Jeffery W. Johnston et al., eds., 10th ed. 2012) (discussing sources of education law).

18. *Compulsory Education Laws: Background*, FIND LAW, http://education.findlaw.com/education-options/compulsory-education-laws-background.html (last visited Apr. 24, 2020).

19. *Id.*

20. *Id.*

21. *Id.*

An understanding of the maturation of school teaching as a profession helps to clarify today's largely state-mandated instructional expectations. While contemporary education focuses strongly on legal constructs, statewide licensure mandates, and standardized testing practices, the beginning of school teaching in America began with the question of an instructor's modesty.[22] In fact, a large majority of them required new instructors to persuade their local school board of their moral character and general knowledge of classroom topics.[23] Indeed, some of the very first school teachers available were selected on character and morality traits alone.[24] No doubt safety and supervisory duties would have been forthright in the minds of those expecting these teachers to teach and lead early American youth.

It was not until 1867 that most states required educators to pass locally administered tests in hopes of earning statewide teaching certification.[25] Such licensure tests evolved to eventually include questions on U.S. history, geography, spelling, and grammar alongside the more classical subjects of reading, writing, and mathematics.[26] The focus on morality and character would eventually narrow towards a sophisticated focus on teachers as classroom managers.[27] Indeed, the twentieth century saw more and more states focusing on the art of teaching as something of a skilled and technical-driven workforce.[28] An example of newfound professionalism and accountability standards included scholar David Angus, Professor of Education History at the University of Michigan, and his monograph Professionalism and the Public Good.[29] Such treatises would help shape the education sector towards one of teacher as skilled manager, moral leader, and civil servant.[30]

While teachers operating within nineteenth- and early-twentieth-century America typically held liberal arts degrees in history, English, or mathematics, modern K–12 educators would eventually use "normal

22. Diane Ravitch, *A Brief History of Teacher Professionalism*, U.S. DEP'T EDUC. (Aug. 23, 2003), https://www2.ed.gov/admins/tchrqual/learn/preparingteachersconference/ravitch.html.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Classroom Management Introduction*, PROJECT IDEAL, http://www.projectidealonline.org/v/classroom-management-introduction (last visited Mar. 10, 2020) (indicating that above all, a teacher's classroom management style is "developed from values, commitments, ethics, how they were treated at home, motivations, experiences, and, hopefully, university field experiences").

28. Jordan Catapano, *The Teaching Profession as an Art Form*, TEACHHUB, http://www.teachhub.com/teaching-profession-art-form (last visited Mar. 10, 2020).

29. DAVID L. ANGUS, PROFESSIONALISM AND THE PUBLIC GOOD: A BRIEF HISTORY OF TEACHER CERTIFICATION (Jeffrey Mirel ed., Thomas B. Fordam Found. 2001) http://edex.s3-us-west-2.amazonaws.com/publication/pdfs/angus_7.pdf.

30. *Id.* at 30–31.

schools" and other pedagogy-driven institutions to turn undergraduate teaching certification into a legitimate degree field.[31]

Today, a "standards movement" has been a theme among many within the education profession, focusing more on overcoming child poverty, a chance for greater teacher autonomy, and providing more meaningful campus safety protocols.[32] Such a standardization comes at a time when teaching grows more as a logistical and data driven science than in its traditional role as a liberal arts caretaker.[33]

2. Natural Rights: The Inherent Power of Parents

The delicate balance of keeping children safe in a mandated educational environment inevitably teeters between the powers of both professional school teachers and parent-guardians. While much of the legal discussion has focused on teachers and school districts, the natural rights of the parents themselves form the foundation for all liability and supervisory concerns.[34] The Supreme Court first recognized constitutional protection to the parent–child relationship in 1923 when it explained that "although no exact definition of the liberty guaranteed by the [F]ourteenth [A]mendment existed, '[w]ithout doubt, it denotes . . . the right of the individual to . . . establish a home and *bring up children*.'"[35] Yet, the Court would later recognize that society has an interest in protecting child welfare as a whole.[36] Justice Rutledge exclaimed that "[i]t is the interest of youth itself, and of the whole community, that children be both safeguarded from abuses and given opportunities for growth into free and independent well-developed men and citizens."[37] Later, in 1974, the Court held that it "has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment."[38] In short, the natural rights of parents to that of their children—and all the nurturing and responsibility that comes with those rights—are seldom literally stated within state family codes and regulations.[39] While the Fourteenth Amendment provides a point of

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31. *Id.* at 3–6.

32. *Id.* at 22.

33. *Id.* at 3–6.

34. *The Supreme Court's Parental Rights Doctrine*, PARENTALRIGHTS, https://parentalrights.org/understand_the_issue/supreme-court (last visited Mar. 10, 2020).

35. Suzette M. Haynie, *Biological Parents v. Third Parties: Whose Rights to Child Custody Is Constitutionally Protected?*, 20 GA. L. REV. 705, 726 n.74 (1986) (alteration in original) (quoting Meyer v. Nebraska, 262 U.S. 390, 399 (1923)).

36. Prince v. Massachusetts, 321 U.S. 158, 165 (1944).

37. *Id.*

38. Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 639–40 (1974).

39. *See, e.g.*, TEX. FAM. CODE ANN. § 41.001 (concerning itself almost exclusively with pragmatic distinctions involving property damage as opposed to expressly stating a parent's natural rights to their child).

orientation regarding due process in general, the specifics of how a parent should protect his or her children are seldom discussed within American legal systems.[40]

B. The School District's Role in Managing Employee Liability

The doctrine of sovereign immunity has long played a defensive role in shielding a school district's employees from student-injury liability.[41] While this broad governmental shield has shrunk considerably within the past few decades due to various immunity reform measures, the "knee jerk" reaction to a child being injured on school grounds is still for a district to immediately prove why it was not the district's duty to foresee such harm in the first place.[42]

1. The Great Shield of District Immunity

A school district's potential liability on behalf of its employees involves a legal landscape littered with regional norms, broad government defense mechanisms, and nuanced case precedent that plays out in widely differing ways. The common law tort of negligence (duty, breach, causation, and injury) offers the typical foundation for a parent to sue on behalf of their injured child, but the immunity that a school district may or may not responsively exhibit is the focus of a tremendous amount of statutory thought.[43] Furthermore, other peripheral legal issues include a district's vicarious liability for employee conduct, contributory/comparative negligence law, and an assumption of the risk—often difficult to assess given the immature nature of a child's decision-making processes.[44] To make

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40. *See, e.g.*, *Child Custody in Florida*, AYO & IKEN ATTORNEYS & ADVOCATES, https://www.formydivorce.com/child-custody-law (last visited Apr. 24, 2020). The Florida State Government, like many other states around the country, is more concerned with codifying how a parent must provide physical needs to a child than ultimately defining how to raise and protect that child from external harm. *Id.*

41. *Public School District Immunity Status in the United States*, KEMPER INS. GRP. (June 1968) https://files.eric.ed.gov/fulltext/ED049524.pdf.

42. Daniel J.T. Sciano, *"The King Can Do No Wrong" and How It Protects Grossly Negligent Bus Drivers in Texas: A Reality Check*, TINSMAN & SCIANO, https://www.tsslawyers.com/%E2%80%9C-king-can-do-no-wrong%E2%80%9D-and-how-it-protects-grossly-negligent-bus-drivers-texas (last visited Mar. 10, 2020).

43. Phillip Buckley, *Barriers to Justice, Limits to Deterrence: Tort Law and State Approaches to Shielding School Districts and Their Employees from Liability for Negligent Supervision*, 48 LOY. UNIV. CHI. L.J. 1015, 1020–22 (2017).

44. *Id.*; *see* James McCue, *A Parent's Guide to Why Teens Make Bad Decisions*, CONVERSATION (Jan. 21, 2018, 9:30 PM), http://theconversation.com/a-parents-guide-to-why-teens-make-bad-decisions-88246. A tremendous amount of neuroscience has started to focus on the decision-making processes of children and adolescents. *Id.* "Research has shown youth ages 12 to 17 years are significantly less psychosocially mature than 18 to 23 years who are also less . . . mature than adults (24 and older)." *Id.* When it comes to assumption of the risk, a teenager might willfully try to seek excitement, make impulse choices, focus on short-term gains, and have difficulty delaying gratification. *Id.* The frontal lobe of the brain does not finish developing until a person's early-to-mid 20s. *Id.*

matters even more complex, every state defines these issues of liability, immunity, and related doctrines in its own way.[45] The result is a nationwide inconsistency on just how a child seeks remedy on account of negligent supervision during after-school hours.

As previously mentioned, sovereign immunity itself has long been under attack for failing to provide any protection for families trying to file claims against their child's school or teachers. In one example, the Illinois Supreme Court applied sovereign immunity to all government entities (including public schools) back in 1898 via *Kinnare v. City of Chicago*,[46] only to severely limit such immunity in 1959.[47] There, the court stated that "the rule of school district tort immunity is unjust, unsupported by any valid reason, and has no rightful place in modern day society."[48] In response to such reform, state legislatures across the nation either did away with immunity entirely for school districts or severely curtailed it. Even so, immunity is alive and well among various states, including Texas (in the form of widely empowering "discretionary immunity," which will be discussed in Part III of this Comment).[49]

2. A Nationwide Sample of Student Injury Case Law

One of the largest challenges facing the question of custodial care during after-school hours involves the dizzying array of legal precedent. Not only do fifty different states choose to operate independently regarding primary and secondary education, but the custodial traditions within each state also hide within a wide gamut of education and family codes.[50] Such a massive pool of data is best approached by highlighting select sample cases from various states in order to show many of the different approaches to jurisprudence in play.

Many after-school child injury cases involve an analysis of whether the school district had a duty to supervise the student in the first place. In

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45. Buckley, *supra* note 43, at 1015, 1020–21.

46. *See* Kinnare v. City of Chicago, 49 N.E. 536 (Ill. 1898).

47. Molitor v. Kaneland Cmty. Unit Dist., 163 N.E.2d 89, 96 (Ill. 1959).

48. *Id.*

49. TEX. EDUC. CODE ANN. § 22.051; *see infra* Part III (discussing the immunity scheme currently in place in Texas).

50. *See, e.g.*, U.S. CONST. amend. X (providing that powers not delegated to the states—such as the entirety of education law—are reserved exclusively for either the States or the people). Although the federal government has maintained a tighter budgetary influence on state education funding through the likes of the Elementary and Secondary Education Act of 1965, it is still largely up to each state to determine specificity among its individual education codes. Brendan Pelsue, *When It Comes to Education, the Federal Government Is in Charge of . . . Um, What?*, HARV. ED. MAG. (Fall 2017), https://gse.harvard.edu/news/ed/17/08/when-it-comes-education-federal-government-charge-um-what. Other familiar federal funding statutes include Title I, Title VI, and Title VII provisions for low-income, disability, and bilingual education funding, respectively. *Id.* Even with all these funding provisions available, the case law discussed is entirely state-focused and largely devoid of federal influence. *Id.*

Matallana v. School Board of Miami–Dade County, a Florida appellate court determined that the high school in question was under no duty to supervise students who were involved in an incident off school premises that was deemed unrelated to any school-sponsored activity.[51] There, two students of G. Holmes Braddock High School met after school behind a nearby shopping area to fight each other.[52] One of the two students pulled a gun (which he was carrying around at school the entire day) and fatally wounded the opposing student.[53] Despite the victim's reaching out for help by way of a campus security guard earlier in the day, the court found that the killing "occurred at a time when the school had no duty to supervise the students."[54]

In stark contrast to the case above, other courts have ruled that school authorities indeed have a duty to supervise the conduct of children on school grounds, and that school districts are vicariously liable for injuries even only proximately caused by negligent student supervision.[55] In a California Supreme Court decision, the court held that a wrongful death action arising out of a student's death during a game of "slap boxing" was evidence that a failure of supervisory care on behalf of the campus administration was to blame for such dangerous adolescent behavior.[56] The accused gym teacher in that case confessed during trial that, despite his department being responsible for monitoring the areas around the school's athletic field, there was "no set procedure for determining who was to supervise on particular days or what their duties were in regard to supervision."[57]

Still other case law focuses on the weight of attractive nuisance doctrine.[58] In *Collomy v. School Administrative District No. 55*, the Supreme Judicial Court of Maine determined that a school district owed no duty of supervisory care due to a lack of substantial wanton, willful, or reckless behavior on behalf of the teaching staff.[59] In that case, the court found that a twelve-year-old child was a trespasser when he sustained severe burns after starting a fire in an unlocked shed on campus.[60] Not even a failure of warning signs placed around the area—in close proximity to a playground, no doubt—was enough for the court to find the school district and its faculty liable for negligence.[61]

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51. Matallana v. Sch. Bd. of Miami–Dade Cty., 838 So. 2d 1191, 1192 (Fla. Dist. Ct. App. 2003).
52. *Id.*
53. *Id.*
54. *Id.*
55. *See* Dailey v. L.A. Unified Sch. Dist., 470 P.2d 360, 364 (Cal. 1970).
56. *See id.* at 361–62. A cursory internet search will highlight a wealth of information on slap boxing as both a quasi-martial art and a trendy game of physical violence among adolescents. Elizabeth Saab, *Parents Angry About "Slap Boxing" Game Going On at School*, FOX 7 AUSTIN (Dec. 16, 2015), fox7austin.com/news/parents-angry-about-slap-boxing-game-going-on-at-school.
57. *Dailey*, 470 P.2d at 362.
58. Collomy v. Sch. Admin. Dist. No. 55, 710 A.2d 893, 89–97 (Me. 1998).
59. *Id.* at 897.
60. *Id.* at 895.
61. *Id.* at 897.

A large section of student negligence suits involve a child getting hit by a car while walking home from school.[62] A case out of a California appellate court found that the school district was not liable for two students hit by a car at an intersection near campus after walking home from an extracurricular activity.[63] "If plaintiffs' injuries had occurred as a result of being kept after school for several hours so that they had to walk home in the dark," the court opined, "there would be no question that the conduct of the school in keeping them late would constitute negligence."[64] The court there did not cite to any factors test discussing how dark it would have to be to alter its holding.[65]

Lastly, immunity measures become a strong focus in states where the education code still maintains vestiges of sovereign immunity.[66] In a case out of the Texas Supreme Court, a junior high school student who faced years of relentless bullying was unable to win a judgment against the Lubbock Independent School District.[67] The court used this case to again clarify that immunity was available to teachers who acted in a "discretionary" capacity.[68] In short, the court decided that "LISD's policy [did] not define teachers' responsibilities with such precision to leave nothing to the exercise of a teacher's judgment or discretion. . . . Each of [the discretionary factors in question], which Texas schools routinely leave to its teachers, require the use of professional judgment."[69] Many immunity statutes in these circumstances provide a liability shield for faculty and staff, provided that they have not directly violated a specific ministerial expectation.[70] Such ministerial expectations include specifically outlined duties, such as procedural instructions during state testing, in which a teacher has no room to operate in a discretionary fashion.[71]

III. ORIGINAL CATALOGUE OF NOTABLE STATE EDUCATION LIABILITY CODE

The question remains ambiguous regarding the specific factors that define foreseeability, causation, and general discretionary immunity in these instances and many others. Only three states clearly define such liability

62. *See, e.g.*, Perna v. Conejo Valley Unified Sch. Dist., 192 Cal. Rptr. 10, 10–11 (Ct. App. 1983).
63. *Id.*
64. *Id.* at 12.
65. *Id.*
66. *See* Downing v. Brown, 935 S.W.2d 112, 114 (Tex. 1996).
67. *Id.* at 113–14.
68. *Id.*
69. *Id.* at 114.
70. *See infra* notes 123–24 and accompanying text (noting how immunity statutes protect teachers).
71. *See infra* notes 123–24 and accompanying text (noting that very few states define discretionary duties like they do for ministerial duties).

expectations within their respective education codes, and the rest of the states leave the problem to education agencies in hopes of finding clarity.[72]

A. Texas: A Robust Immunity for Public Schools

The primary safety mechanisms for both teachers and their students within Texas schools involve an emphasis on safe school provisions, as well as the immunity defenses previously mentioned.[73] In a subchapter of the Texas Education Code appropriately titled "Law and Order," the statute speaks at length as to how a school district *may* employ the use of security personnel around a school campus to aid in the safety and security of a campus.[74] In what is typical for the broad and generalized statutory language within codes nationwide, security personnel or "peacekeepers" are only told statutorily to follow duties as outlined by the individual school district that hired them.[75] "Those duties must include protecting . . . the safety and welfare of any person in the jurisdiction of the peace officer; and . . . the property of the school district."[76] Aside from those general provisions, the only other mention regarding student liability concerns is § 22.0511 under "Immunity from Liability."[77]

> A professional employee of a school district is not personally liable for any act that is incident to or within the scope of the duties of the employee's position of employment and that involves the exercise of judgment or discretion on the part of the employee, except in circumstances in which a professional employee uses excessive force in the discipline of students or negligence resulting in bodily injury to students.[78]

Despite supporting robust statutory language regarding such immunity, the Texas Education Code does not lay out the specific supervisory duties owed to students remaining unsupervised on campus after-hours.[79] The state seems to show deference to local school districts and administrators in the implementation of such safety protocols.

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72. *See* CAL. EDUC. CODE § 44808 (West, Westlaw through ch. 1 of 2020); FLA. STAT. ANN. § 1003.31 (West, Westlaw through 2019 1st Reg. Sess.); TEX. EDUC. CODE ANN. § 33.210.

73. *See, e.g.*, TEX. EDUC. CODE ANN. §§ 37.001–.085. Subtitle G of Chapter 37 is appropriately labeled "Safe Schools." *Id.*

74. *See id.* § 37.081.

75. *Id.*

76. *Id.* § 37.081(d)(1)–(2).

77. *Id.* § 22.0511.

78. *Id.* § 22.0511(a).

79. *See id.* While after-school hours are left unspecified in the code, notable subchapters include "Alternative Settings for Behavior Management," "Protection of Buildings and Grounds," and "Hazing." *Id.* §§ 37.001–.085.

B. California: On-Campus Liability Law

The California Tort Claims Act provides some exceptions to immunity provisions for public schools due to grossly negligent supervision, but fails to directly contain immunity language within their education code.[80] Instead, this state chooses to focus on the distinction of on-campus versus off-campus student injury.[81]

> [N]o school district . . . shall be responsible or in any way liable for the conduct of safety of any pupil of the public schools at any time when such pupil is not on school property, unless such district, board, or person has undertaken to provide transportation for such pupil to and from the school premises, has undertaken a school-sponsored activity off the premises of such school, has otherwise specifically assumed such responsibility or liability or has failed to exercise reasonable care under the circumstances.[82]

In addition to such geographically-bound legislation, § 44807 of the California Education Code clarifies that "[e]very teacher in the public schools shall hold pupils to a strict account for their conduct on the way to and from school, on the playgrounds, or during recess."[83] The statute goes on to state that no school employee will be criminally prosecuted under the heightened standards of control in which a parent must be responsible for their child.[84] Like so many other statutory provisions across the country, the California Code stresses universal properties such as order, protection of property, and the "safety of pupils" without articulating standardized liability language at the statewide level.[85]

C. Florida: The Beginnings of a Clearer Approach

Florida's K–20 Education Code contains some of the most concise language in the country for determining when and how specific custodial parameters play out during the transfer of liability between teacher and parent.[86] Rather than deferring to local school administrators in hopes of filling in procedural gaps at the community level, the Florida Legislature chooses to carefully spell out some basic tenants of student liability through the use of § 1003.31.[87] Here, a student is statutorily "under the control and

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80. *Does Sovereign Immunity Prevent a Lawsuit Against the School?*, PANISH SHEA & BOYLE LLP (Mar. 16, 2017), www.schoolinjuryattorneys.com/sovereign-immunity-school-lawsuit.

81. CAL. EDUC. CODE § 44808 (West, Westlaw through ch. 1 of 2020).

82. *Id.*

83. *Id.* § 44807.

84. *Id.*

85. *Id.*

86. FLA. STAT. ANN. § 1003.31 (West, Westlaw through 2019 1st Reg. Sess.).

87. *Id.*

direction of the principal or teacher in charge of the school, and under the immediate control and direction of the teacher or other member of the instructional staff or of the bus driver to whom such responsibility may be assigned by the principal."[88] Furthermore, the Florida Legislature determined set blocks of time in which a student is definitively under custodial control: during transportation on a school bus, "[d]uring the time he or she is attending school," while the child is on campus participating in a school-sponsored activity, and during a "reasonable time" before and after school.[89]

Florida's reasonable time standard exists as the only education statute in the United States to specifically clarify a bright-line set of liability standards based on timing.[90] The law goes on to define reasonable time to mean "30 minutes before or after the activity is scheduled or actually begins or ends, whichever period is longer."[91] A Florida public school may also "assume a longer period of supervision" via local administrative deference.[92] As if to leave nothing to chance, the code then adds that "incidental contact" between school district personnel and students on school property outside of the thirty-minute reasonable time window will not result in any supervisory expectations.[93] Furthermore, "[t]he duty of supervision shall not extend to anyone other than students attending school and students authorized to participate in school-sponsored activities."[94]

Adding further clarity to § 1003.31 is a related administrative code entitled "Principles of Professional Conduct for the Education Profession in Florida."[95] In the Code, educators across the state hold an "obligation" to students by way of teachers making a "reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety."[96] While this language falls more in line with much of the other education statutes nationwide, the fact that supervisory expectations have already been laid out in such thorough detail makes for a more succinct level of expectation for teacher, child, and parent.

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88. *Id.* § 1003.31(1)(d).

89. *Id.* § 1003.31(1)(b), (d).

90. *See id.* § 1003.31. While many local school districts outside of Florida may choose to implement safety practices that change from school to school or principal to principal, Florida is unique when compared to education codes elsewhere across the country because the standard is spelled out at a statewide level. *Id.*

91. *Id.* § 1003.31(2).

92. *Id.* This allows school districts to weigh in at the local level in hopes of exercising a more intimate level of autonomy. *Id.*

93. *Id.*

94. *Id.* While outside the scope of this Comment, § 1003.31 then goes on to recommend a literal student pledge that involves being respectful, kind to others, truthful, and drug free. *Id.* Such language within a statewide code is, again, virtually unheard of within America's education statutes.

95. FLA. ADMIN. CODE ANN. r. 6A-10.081 (LEXIS through Apr. 15, 2020).

96. *Id.* r. 6A-10.081(2)(a)(1).

D. Other Notable State Distinctions

There are, of course, forty-seven other education codes across the country—many with less statutory specificity as to how they approach after-school custodial care. While a wide variety of states use either generic supervisory language or, in some cases, no instructional language at all, a couple other notable trends do exist.[97]

1. Passing the Responsibility off to State Departments of Education

While Texas, California, and Florida are all unique in their heightened level of statewide supervisory language, far more states rely on a Department of Education to help make sense of child liability concerns.[98] One such example, the "Licensure Code of Professional Conduct for Ohio Educators," is representative of many states in that the document uses very broad language regarding teacher and student recommendations.[99] Guidelines address topics such as "professional behavior," "professional relationship with students," and "commitment to contract."[100]

Still others, like the "North Carolina Professional Teaching Standards"—as approved through that state's board of education—encourage general themes such as "teachers demonstrate leadership" and "teachers establish a respectful environment for a diverse population of students."[101] Most, if not all, of these kinds of state education handbooks fail to mention anything about specific supervisory duties, time windows, or transportation instructions, preferring instead to have local administrations handle the problem in its entirety.

2. Statutes Requiring Parents as Part of the Solution

A novel approach practiced by few states involves an effort on behalf of a legislature to involve parents in a child's education through the use of statutory guardian requirements.[102] For example, Title 22.1 of the Virginia Education Code states that "[e]ach parent of a student enrolled in a public school has a duty to assist the school in enforcing the standards of student conduct . . . in order that education may be conducted in an atmosphere free of disruption and threat to persons or property."[103] The section goes on to

97. *See, e.g.*, OHIO DEP'T OF EDUC., LICENSUR CODE OF PROFESSIONAL CONDUCT FOR OHIO EDUCATORS (Mar. 11, 2008) (discussing teacher and student recommendations for child liability concerns in broad language).

98. *See id.*

99. *Id.*

100. *Id.* at 2–12.

101. PUB. SCHS. OF N. C., NORTH CAROLINA PROFESSIONAL TEACHING STANDARDS (May 2, 2013).

102. VA. CODE ANN. § 22.1-279.3 (West, Westlaw through 2019 Reg. Sess.).

103. *Id.*

give a recommendation to local school boards in providing "opportunities for parental and community involvement in every school in the school division."[104] In many respects, custodial care and the accountability expectations that come with it are aided by such cause-and-effect provisions.

Finally, South Carolina has also written a provision in its state code requesting the State Superintendent of Education to "design parental involvement and best practices training programs in conjunction with . . . the pre-K through grade 12 education community," which includes a focus on establishing and maintaining "parent-friendly school settings" that pave the way for a heightened accountability role on behalf of the parent-guardian.[105] These additional statewide parental duties help to share liability by fostering stronger and more open communication between a child's school district and family. The outcome is an environment where adults are working together to avoid liability hazards on behalf of entire student populations.

IV. STANDARDIZING ACCOUNTABILITY STANDARDS TO PROTECT STUDENTS

Sound law and policy considerations do no good without placing the well-being of children at the focal point of discussion. Children deserve to be at the forefront of custodial reform, particularly in a compulsory education setting in which they have no choice but to attend school in a presumably safe and healthy manner. Statutory reform and its accompanying practical effect on kid-centered policy making is desperately needed to curb preventable child injury and death. The discussion that follows hopes to curtail the glaring gap of custodial accountability among America's school children.

A. Kid-Centered Standard of Care for School Districts Everywhere

Finding a meaningful solution to quell the safety concerns plaguing vulnerable students during after-school hours involves a difficult look into the ambiguous transfer of child custody traditions.[106] The conventional caretaker role that many state educators assume over a child has often been a standard in which campus staff "exercise only the amount of care that 'a person of ordinary prudence charged with [the officials' duties of supervision], would exercise under the same circumstances.'"[107] Even if

104. *Id.*

105. S.C. CODE ANN. § 59-28-140 (West, Westlaw through 2019 Sess.).

106. Interview with Lauren Snow, *supra* note 5.

107. Stuart Biegel, *The Safe Schools Provision: Can a Nebulous Constitutional Right Be a Vehicle for Change?*, 14 HASTINGS CONST. L.Q. 789, 820 (1987); *see also* Pirkle v. Oakdale Union Grammar Sch. Dist., 253 P.2d 1, 2 (Cal. 1953) (stating that the standard of care imposed upon school personnel in carrying out their duties is that degree of care "which a person of ordinary prudence, charged with (comparable) duties, would exercise under the same circumstances").

those standards were eventually elevated by state legislatures, the question still remains of just how willing school districts would be to carry out a reformed education code in hopes of finding solutions beyond the limited reactionary scope of employee immunity.[108] Furthermore, a frank discussion on compulsory education requirements will help frame such legal mandates in a way that advocate for a child's rights while waiting for after-school transport.[109]

1. Elevating a Higher Professional Standard Among Educators

Perhaps one of the most overlooked components within the teacher-student liability discussion involves state legislatures failing to demand a higher standard of professional care for their K–12 educators.[110] The idea that school safety mostly requires a state-licensed teacher to demonstrate nothing more than the reasonableness standard of a parent sets the bar alarmingly low.[111] Across the nation, states like California have struggled with a higher standard of care that reflects an educator's "superior learning and experience, . . . special skills, knowledge or training [that teachers and administrators] may personally have over and above what is normally possessed."[112] General concerns for a higher standard of care seem to be a weariness for both an override of local district-based education custom and the fear of being forced to define "education malpractice" in general.[113]

But why not enforce a higher sense of expectation from these educators? Domestic child custody cases have long since balanced parental rights with that of "long-term caregivers" by placing the best interest of the child as the foremost framework for policy making.[114] In similar fashion, the doctrine of compulsory education exists on the premise that cognitively immature minors must be controlled externally by the state in hopes of generating a uniform and prosperous society.[115] Despite the fear that teachers or administrators be "trained to be policemen,"[116] public education in the twenty-first century is a place where the state must intervene far beyond the

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108. *But see* TEX. EDUC. CODE ANN. § 22.0511.

109. *See* James Easterly, Comment, "*Parent v. State": The Challenge to Compulsory School Attendance Laws*, 11 HAMLINE J. PUB. L. & POL'Y 83, 101 (1990).

110. *See, e.g.*, Biegel, *supra* note 107, at 820 (describing the difficulty in adopting a higher professional standard for public educators).

111. *Id.*

112. WILLIAM L. PROSSER, THE LAW OF TORTS § 32, at 185 (5th ed. 1984).

113. *Id.* at 821. "[A] cause for action for 'educational malpractice' would require the courts not merely to make judgments as to the validity of broader educational policies . . . [but also] to sit in review of the day-to-day implementation of [those] policies." Donohue v. Copiague Union Free Sch. Dist., 391 N.E.2d 1352, 1354 (N.Y. 1979).

114. Natalie Clark, *Parents Patriae and a Modest Proposal for the Twenty-First Century: Legal Philosophy and a New Look at Children's Welfare*, 6 MICH. J. GENDER & L. 381, 412 (2000).

115. *Id.* at 417.

116. Biegel, *supra* note 107, at 821.

singular limits of curriculum and classroom management. Rather, a *campus management* mindset is needed to elevate the ordinary prudence of educators to a higher professional expectation in hopes of being able to monitor and control students far outside the confines of a typical classroom setting. If studies indicate that low-quality teachers have dramatically compounding effects on a child's education, would not a lower ordinary prudence standard produce similarly compounding effects on a child's safety?[117]

Finally, a "special relationship" theory gives rise to educators needing greater latitude in helping to control students beyond the ordinary standards of parental care.[118] While many parents have the opportunity to influence a student's scholarly behavior from home through close mentorship of homework assignments and support of extracurricular obligations, such a guardian will never have the ability (or likely *want* the ability) to exercise a management skill set necessary to monitor and control potentially hundreds of students waiting after school hours for a ride.[119] K–12 educators trained and expected to operate at a higher professional standard of care in both academics *and* school safety protocol help foster a more cohesive environment to prevent liability concerns after the school day has ended. Although case law like *Mirand v. City of New York* is quick to dismiss licensed teachers as having the ability to monitor the comprehensive nature of an after-school dismissal process, schools can certainly act as "insurers of [students'] safety" given special undergraduate licensure training that a parent will seldom be in a position to need or exercise.[120] No one is expecting educators to be perfect, but instead merely accountable at a professional level. They should be capable of handling and controlling liability concerns after school. Many of these same teachers would gladly take on a more robust supervisory role if properly instructed to do so by their administrations.[121]

2. Shifting from Reactive to Proactive Policy Platforms

The traditional common law remedies available to a family pursuing a claim against a school district for negligent oversight have long been exacerbated by robust immunity statutes protecting both districts and their

117. Derek W. Black, *Taking Teacher Quality Seriously*, 57 WM. & MARY L. REV. 1597, 1608–09 (2015).

118. Frank D. Aquila, *Educational Malpractice: A Tort En Ventre*, 39 CLEV. ST. L. REV. 323, 333 (1991).

119. *See, e.g.*, *id.* at 334 (analogizing that parents, when it comes to academic performance, do not always recognize the best path forward for their child—something of which a trained educator would likely have greater success).

120. *See* Mirand v. City of New York, 637 N.E.2d 263, 266 (N.Y. 1994) (holding that schools are *not* the insurers of a student's safety, "for they cannot reasonably be expected to continuously supervise and control all movements and activities of students").

121. Interview with Lauren Snow, *supra* note 5.

employees.[122] States like Texas, harboring one of the more comprehensive immunity statutes nationwide, allow for any and all "discretionary duties" of an educator to be reasonably immune to suit.[123] A litany of cases have further defined this affirmative defense as a shield within Texas school districts where employees "are entitled to official immunity from suit arising from the performance of their . . . discretionary duties in . . . good faith long as they are . . . acting within the scope of their authority."[124] But this very understanding of discretionary duties becomes far less helpful when determining the specific roles of teachers supervising students waiting around campus during after-school hours. While some administrations might have local rules for teachers assuming duty stations to monitor children after school, very few write these expectations down and even fewer offer guidance from a statewide perspective.[125] In short, the immunity statutes available provide a reactive mentality that shields teachers without providing a suitable set of expectations for supervising children during non-traditional hours.

Other states, like California, have adopted a form of ad hoc immunity by shielding district employees based almost purely on the location of the student's injury.[126] Again, the reactionary mindset that these state education codes offer a student are quite limited. Far too many cases exist of students waiting for a ride unsupervised, making the decision to simply walk home instead, and then being hit by a car on a busy street—conveniently off-campus.[127] In those situations, very few remedies exist to pursue negligence claims against a district that is happy to use government immunity as a shield.[128]

Florida currently holds the most comprehensive and bright-line statutory expectations for its teachers, parents, and pupils.[129] The statute centers on "authorization in a school-sponsored activity" under the control of a licensed professional and liability of campus staff for "30 minutes before

122. Buckley, *supra* note 43, at 1020–21 (lamenting that the common law theories of negligence, vicarious liability, and assumption of the risk are all severely limited when filing an injury suit against a state school employee).

123. *See* TEX. EDUC. CODE ANN. § 22.0511; City of Lancaster v. Chambers, 883 S.W.2d 650, 653 (Tex. 1994).

124. *Chambers*, 883 S.W.2d at 653 (first citing Baker v. Story, 621 S.W.2d 639, 644 (Tex. App.—San Antonio 1981, writ ref'd n.r.e.); and then citing Wyse v. Dep't of Pub. Safety, 733 S.W.2d 224, 227 (Tex. App.—Waco 1986, writ ref'd n.r.e.)).

125. *See, e.g.*, LUBBOCK INDEP. SCH. DISTRICT, EMPLOYEE HANDBOOK 2018–2019 (offering no specific duty expectations at either a state or district level).

126. CAL. EDUC. CODE § 44808 (West, Westlaw through 2019 Reg. Sess.) ("No school district . . . employee . . . shall be responsible or in any way liable for the conduct or safety of any pupil of the public schools at any time when such pupil is not on school property . . . .").

127. *See, e.g.*, Guerrero v. South Bay Union Sch. Dist., 7 Cal. Rptr. 3d 509, 512 (Ct. App. 2003) (providing one of the numerous examples of a child being hit by a vehicle while walking home from school in which a district is entirely immune from suit).

128. *Id.*

129. *See* FLA. STAT. ANN. § 1003.31 (West, Westlaw through 2019 1st Reg. Sess.).

or after an activity is scheduled or actually begins or ends."[130] Florida serves as the only example of a state using *time and duration* instead of strictly location-based liability, further educating teachers and parents as to what is expected of them in their respective custodial roles. While additional bright-line statutory language is needed to involve parental accountability before and after those thirty minutes, this current statewide Florida law provides a stronger basis beyond the simple necessities of district immunity.

These immunity defenses, although often cited as necessities in a world where public education operates under ever-shrinking budgetary constraints, simply do not offer enough practical solutions allowing for child-centered accountability. Until teachers are better instructed regarding their roles during after-school dismissal and until children are given better statutory leverage when it comes to adult negligence, far too many students will suffer at the hands of educational law that does too much to shield a school district and not enough to protect student safety. School districts and their respective state legislatures need to shift from a reactive approach of "can't touch me" to a more proactive approach that asks "what can we do to make sure these students make it to their parents safely?"

3. Compulsory Education and All That Comes with It

The United States' compulsory education system provides further reason to clarify custodial expectations after children have been dismissed from school. Given the Supreme Court's longstanding jurisprudence in the matter, there is no doubt that the state has willfully exercised its right to be the primary educator of all citizens within its jurisdiction.[131] In addition, many within the education field acknowledge that the state and the parent "should have concurrent interests in the protection and education of [the child]."[132] With so much focus on compulsory state education, a logical connection exists between a mandated responsibility by the state to keep its students safe during that educational experience. In short, the liability gap that exists is an issue that exists concurrently between a school district and a parent-guardian. The two entities must work together to clarify when and how a child is protected during such a fragile after-school transition. Furthermore, if states have no problem exercising such police power in hopes of educating a student population, that same police power should require an open dialogue with parents in hopes of providing a kid-focused, safety environment after a day's education has ended.[133]

While school districts are quick to cite a litany of cases stating the obvious limitations of their state-endowed police powers, the sheer fact that

130. *Id.*
131. Easterly, *supra* note 109, at 89–90.
132. *Id*. at 101.
133. *Id*.

compulsory education requires a difficult look at a child's due process rights is nevertheless an important step in advocating and clarifying child safety after school.[134] Despite state immunity proponents often shrugging their collective shoulders and somberly exclaiming that they are doing the best they can, a more sophisticated discussion needs to take place examining a student's due process upon being injured after-school hours in which the state could intervene with a simple custodial protocol.[135] A state presumes control over a student's education from "bell to bell."[136] So why not take the simple step of defining the period after said bell?[137]

Many states have taken steps to require school districts to develop written policies related to employee job responsibilities, but few have chosen to clarify such compulsory education mandates at a more conventional statewide level.[138] A disconnect exists between state-level compulsory education and the deference to local school districts in making their own policies (or lack thereof). Until a state articulates liability expectations for teachers during all hours, an unnecessary gap will continue to exist between a teacher and parent's role in making sure that compulsory education is handled in an organized and predictable manner.[139]

B. Statutory Reform: Articulating a Brighter Line for Teachers and Parents

Although raising professional standards among educators within the realm of state-mandated education provides a far more proactive approach than simple immunity measures, the murky question remains as to how teachers and parents can specifically clarify their roles during the transfer of child custody. While common law precedent using general negligence and liability doctrines have been in play for years, little effort exists within local administrations to outline any bright-line expectations on this delicate

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134. *See, e.g.*, Jackson v. Madison Parish Sch. Bd., 34,228 (La. App. 2 Cir. 1/24/01) 779 So. 2d 59, 65 ("[C]onstant supervision of all students is not possible, nor is it required, for educators to discharge their duty to provide adequate supervision.").

135. *Cf.* Cecelia M. Espenoza, *Good Kids, Bad Kids: About the Due Process Rights of Children*, 23 HASTINGS CONST. L. Q. 407, 424 (1996) ("Although the Court was sympathetic to Joshua[] . . . the parental authority of his father, accompanied by a presumption that he acted in the best interest of Joshua, precluded state responsibility."). Is this not yet another reactive blame game between district and parent when it comes to a school's presumed liability during student injury?

136. Interview with Lauren Snow, *supra* note 5.

137. *See* Perry A. Zirkel, *Liability for Off-Campus Nonschool Activity*, PRINCIPAL, Jan./Feb. 2007, at 10–11, http://naesp.org/sites/default/files/resources/2/Principal/2007/J-Fp10.pdf ("The key is what school officials do or fail to do at school, rather than the location or timing of the student's injury.").

138. TEX. ADMIN. CODE ANN. § 744.201(2)–(3) ("Developing written personnel policies, . . . job responsibilities, . . . requirements[, and] making provisions for training.").

139. *See* U.S. CONST. amend. X (giving statewide authority to regulate anything not specifically encompassed within the Constitution itself). Such deep-seated responsibility should include a broader statewide expectation of specific safety protocols by both teachers and parents in accommodating children before and after-school hours.

topic.[140] Given the lack of predictability for young students to make good choices by themselves after school, a model legislative effort to standardize how teachers and parents work together during dismissal hours would greatly benefit a kid-centered effort in reducing injury, destruction of property, and general mischief while waiting for a child's transportation needs.[141]

1. Drawing Clearer Expectations for Teachers

While some of the more populous states such as California, Texas, and Florida all attempt to provide general statutory language within their respective education codes, still others rely on state department of education handbooks to style teacher responsibilities during duty hours.[142] Such resources provide a wealth of generalized guidelines for a teacher to follow, but very little specificity exists explaining how licensed instructors are expected to monitor children after school.[143] While the next logical step may lead some readers to suspect that *local* school districts outline specific duties in detail, such readers would be surprised to discover that these local instructions are often just as over-generalized as their state counterparts.[144] In short, state departments and local school districts often ignore specifics entirely—perhaps hoping that an administrator has the patience to implement unwritten policy.

Barring any obvious procedural guidelines associated with fire or inclement weather, a campus usually receives few official safety guidelines beyond instructions provided by principals and related administrators.[145] Such existing protocol for after-school dismissal often comes via the concept of "duty stations" in which a teacher must monitor an indoor or outdoor location for a few minutes upon a final bell ringing.[146] Furthermore, campus police or even local law enforcement support may provide some sort of safety

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140. *See, e.g.*, John G. Fleming, *The Role of Negligence in Modern Tort Law*, 53 VA. L. REV. 815, 815–19 (1967) (providing a historical survey on the common law tort of negligence and how such claims have served as substantial vehicles for litigation over hundreds of years).

141. *Teen Brain: Behavior, Problem Solving, and Decision Making*, AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, (Sept. 2016), http://www.aacap.org/aacap/families_and_youth_facts_for_families/FFF-Guide/The-Teen-Brain-Behavior-Problem-Solving-and-Decision-Making-095.aspx. Long-standing scientific studies have concluded that the frontal cortex of adolescent brains, responsible for controlling reasoning, develops far later into adulthood than brain function such as that generating emotional behavior. *Id.* In short, a student's own responsibility to stay out of trouble, despite such expectations being a healthy part of after-school liability reform, is outside the scope of this Comment. Model legislation must focus on those adults that can consistently raise standards for students regardless of whether that student population has the ability to help themselves.

142. *See, e.g.*, CAL. EDUC. CODE § 44808 (West, Westlaw through 2019 Reg. Sess.); FLA. EDUC. CODE ANN. § 1003.31 (West, Westlaw through 2019 1st Reg. Sess.); TEX. EDUC. CODE ANN. § 37.081.

143. *See, e.g.*, PUB. SCHS. OF N.C., *supra* note 101 (providing a number of generic statewide teacher expectations such as "leadership," "respect," and "content [mastery]").

144. Interview with Lauren Snow, *supra* note 5.

145. *Id.*

146. *Id.*

net for teachers to report suspicious behavior after-hours.[147] While this is a solid start, very few states have any further guidance addressing exactly just *what* these teachers should be doing while monitoring, the length of time they must stay at such duty stations, or what a professional should do when they need to go home after duty hours only to witness multiple students still waiting nearby for rides.[148]

Whether specific procedures and expectations arrive from the state or local level, teachers deserve to have a better understanding of after-school procedure and ultimately what is expected of them. While administrations are quick to say that teachers must "provide appropriate supervision of students, within the scope of the educator's official capacity," just what exactly does such an instruction entail?[149] Using relatable case law such as *Mirand v. City of New York* as a starting point, issues of "*foreseeable* injuries proximately related to the absence of adequate supervision" can be used to require licensed educators to actively monitor their respective duty stations immediately upon the bell ringing for dismissal.[150] Florida is the only state nationwide that chooses to give any type of objective timeframe whatsoever.[151] That state's desire to define "reasonable time" as a thirty minute window before and after school (or after a scheduled activity actually begins or ends) is a remarkable effort to define duty obligations through objective statutory language—language that needs to be present nationwide in order to give educators an understanding of what is expected of them.[152]

Defining foreseeability and reasonable time windows for child monitoring is, however, a moot point when students refuse to leave campus after such statutory windows have expired. What should happen for a teacher that has abided by his professional expectations only to be met with students unsupervised and at potential risk as daylight draws to a close? Many teachers, given the lack of clarity among state and local law, choose to stay with those students long into the evening—often at the expense of their own families and non-professional commitments.[153] States like California attempt to blend the foreseeability of injury with a general totality of the circumstances that would allow a teacher to use discretion in such instances.[154] That state's code, alongside the similar Texas Education Code,

147. *Id.*

148. *See, e.g.*, FLA. STAT. ANN. § 1003.31 (West, Westlaw through 2019 1st Reg. Sess.).

149. OHIO DEP'T OF EDUC., *supra* note 97, at 4.

150. *See* Mirand v. City of New York, 637 N.E.2d 263, 266 (N.Y. 1994) (emphasis added).

151. FLA. STAT. ANN. § 1003.31(1)(d)–(2) (West, Westlaw through 2019 1st Reg. Sess.).

152. *See id.* Better yet, the statute provides flexibility for local administration to "assume a longer period of supervision" beyond the minimum thirty-minute requirement. *Id.* Such language honors the tradition of deference to local school communities.

153. Interview with Lauren Snow, *supra* note 5.

154. *See, e.g.*, Perna v. Conejo Valley Unified Sch. Dist., 192 Cal. Rptr. 10, 11–12 (Dist. Ct. App. 1983) (holding that school districts should not be legally responsible for accidents occurring once students are released from school, but a teacher should still exercise "reasonable care" while taking into account the general welfare of the abandoned students).

tries to use binary circumstances such as "on campus" and "off campus" or "student" and "non-student" to further define reasonable care.[155] A glaring gap in the law exists between all these variables, and yet, the parent soon to take custody is left out of the equation. Parents, just like the teachers they rely upon to actively monitor their children, deserve to be held to ordinary standards of care that are outlined by state law in hopes of making sure a child is accounted for at all times.

2. Drawing Clearer Expectations for Parents

Given the historical legal recognition of parenthood as an exclusive status between guardian and child, school districts are often hesitant to outline hardline procedural expectations for how parents should pick up their children after school or how parents coordinate with students that walk home unattended.[156] Experts quietly admit that "[c]urrent law provides virtually no satisfactory means" to balance both exclusive parental control and a state's interest in a child.[157] While some districts have taken it upon themselves to provide general guidelines for parents during dismissal procedures, even more simply rely on common law remedies and police enforcement to take care of neglectful guardians.[158] In exploring a clearer mandate for parent expectations during school dismissal times, both South Carolina and Virginia support subtle guardian demands within their state education codes that may serve as a foundation to further involve parents.[159] Notable among these two codes, the states forthrightly exclaim that "[e]ach parent of a student enrolled in a public school has a duty to assist the school in enforcing the standards of student conduct . . . in order that education may be conducted in an atmosphere free of disruption and threat to person or property."[160] The idea that a school district may require a parent to attend some sort of "best practices training" in hopes of maintaining a "parent-friendly school setting[]" serves as a courageous step in directly informing parents as to how they are expected to coordinate with their children in developing safe school-dismissal family plans.[161]

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155. *See* CAL. EDUC. CODE § 44808 (West, Westlaw through 2019 Reg. Sess.).

156. *See* Katherine T. Bartlett, *Rethinking Parenthood as an Exclusive Status: The Need for Legal Alternatives When the Premise of the Nuclear Family Has Failed*, 70 VA. L. REV. 879, 881 (1984).

157. *Id.*

158. *E.g.*, INDIANAPOLIS PUB. SCHS., *Student Code of Conduct* 1, 16, https://www.myips.org/wp-content/uploads/2019/08/2019_20_Code_of_Conduct.pdf (last visited Mar. 10, 2020). ("Parents are responsible for the safety and supervision of their children from the time the children leave home in the morning until they board the bus, and at the end of the day from the time the school bus departs the unloading area . . . .").

159. S.C. CODE ANN. § 59-28-140 (West, Westlaw through 2019 Sess.); VA. CODE ANN. § 22.1-279.3 (West, Westlaw through 2019 Reg. Sess.).

160. VA. CODE § 22.1-279.3.

161. S.C. CODE § 59-28-140 (providing the title of the statute: "Design of parental involvement and best practices training programs; incorporation into teacher and principal preparation programs").

If, as is often the case among state jurisprudence, a school district must admit vicarious liability for injuries proximately caused by negligent supervision of a student, should not a parent be equally liable, as indicated within state code, for failing to follow bright-line procedural obligations?[162] Instead of focusing on immunity measures or splitting hairs by way of narrowly tailored custody definitions, a parent ought to know the state's concise expectation for when a child is released from school-supervised instruction. This includes elements such as a definitive time window for child pick-up, informed liability language for students walking home after school, and a description of fines or criminal charges that will be brought upon a parent who refuses to pick up a child after a reasonable statutory time window. These recommendations have the potential not to serve as a punishment to either school district or parent, but rather a narrowly defined vehicle to foster communication needs so vital in saving children's lives.

Despite ancient perceptions of natural law presuming that parental rights are inherently intimate, such pre-political law does little to serve the needs of some of the nation's most vulnerable and impoverished school children.[163] In a twenty-first century world complicated by nonparent caretakers, step-parents, single-home guardians, and parents working long hours to make ends meet, stronger statutory language in hopes of aiding a parent in making healthy after-school decisions on behalf of their child is no longer an excessive overreach.[164] Many families desperately need further instruction to safely allow a student to leave school custody and make it home without damage to property, fear of injury, or worse.

Instead of looking at statutory reform as an exhausting battle between school district and parent, a more pressing focus exists in helping parents avoid trouble with current child advocacy laws.[165] Instead of school districts and parents wasting precious resources on battling negligence claims in court, a simple statutory clarification could reduce litigation, empower parents to make healthier decisions, and ultimately foster a stronger school-community relationship between teachers, school administrators, and the parents of their young pupils.[166] In a legal construct that favors children first, equal oversight needs to exist between a child's school and a child's parent in hopes of safely dismissing that child from school custody.

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162. *See* Dailey v. L.A. Unified Sch. Dist., 470 P.2d 360 (Cal. 1970).

163. Bartlett, *supra* note 156, at 887–90.

164. *Id.* at 911–27.

165. Toni Weinstein, *Visiting the Sins of the Child on the Parent: The Legality of Criminal Parental Liability Statutes*, 64 S. CAL. L. REV. 859, 862 (1991). Parental liability law often subjects a guardian to three conceivable common law interpretations of negligence: (1) courts can interpret existing law "as forms of vicarious liability that punish parents for the acts of their children"; (2) courts can interpret parental acts "as true crimes of omission that punish parents for failing to properly supervise their children"; and (3) "courts can interpret them as strict liability offenses." *Id.*

166. *See, e.g.*, Bartell v. Palos Verdes Peninsula Sch. Dist., 147 Cal. Rptr. 898, 900–02 (Ct. App. 1978).

3. Original Proposal for Model Legislation

Any proposed model legislation in hopes of better defining after-school student custody standards will need to focus on a blend of bright-line expectations mixed with a sensible factor-based analysis test. While autonomy and deference to local campus administrations will always be a logical priority, the ambiguity that exists throughout the nation's current education code will never be enough to truly recognize the best our society can offer regarding child safety.[167] In order to bring about a real sense of reform in this arena, "the law must reflect a transformative shift; a broadening of the concept of the family, one that links families to the community."[168] Such a transformative shift includes going beyond simple immunity standards and common-law-negligence precedent to find a twenty-first century solution to a diverse set of school and family needs on behalf of the student.[169]

In a best-case scenario, the most effective elements of code and regulation nationwide can serve as a basis to further reform child safety expectations. As previously mentioned, Florida's bright-line rule with concrete *timing* of child custody before and after school can serve universal legislation well.[170] A model statute would keep that state's "reasonable time" standard of thirty-minute windows before and after school in which a student is clearly "under the control and direction of the principal or teacher in charge of the school, and under the immediate control and direction of the teacher . . . to whom such responsibility may be assigned by the principal."[171] Upon that window expiring, the model legislation would directly describe parent-guardians as being responsible for student injury or property damage.

In addition to that standard, further expectations should exist. Teachers, operating with a heightened standard of care beyond that of an ordinary parent, would have their duty station during this time window defined as follows:

> *Teachers are insurers of student safety for all reasonably foreseeable events.*[172] *During such time, a teacher must actively*

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167. *See supra* notes 50–71 and accompanying text (discussing ambiguity in states' case law).

168. Andrés Acebo, *When a Nation Argues with Its Conscience: A Call for a Universal Educational Neglect Standard*, 12 RUTGERS RACE & L. REV. 143, 184 (2011).

169. *Id.* at 187. Studies have revealed that a number of strong predictors of educational neglect include family income, single parent status, and family size. *Id.* For instance, children from households earning $15,000 or less are 78 to 97 times "more likely to suffer from educational neglect than children from families earning $30,000 or more." *Id.* (quoting PHILLIP KELLY ET AL., BOISE STATE UNIV. EDUCATIONAL NEGLECT & COMPULSORY SCHOOLING: A STATUS REPORT 12 (2004–2005)).

170. *See supra* notes 86–95 and accompanying text (discussing Florida's education code and the use of a reasonable time standard).

171. FLA. STAT. ANN. § 1003.31 (West, Westlaw through 2019 1st Reg. Sess.).

172. *Cf.* Mirand v. City of New York, 637 N.E.2d 263, 266 (N.Y. 1994) (stating implicitly the opposite standard: professional educators are not insurers of students' safety).

> *monitor from his or her designated post by using professional knowledge of classroom management skills to supervise children waiting on or near the campus premises.*[173] *Active monitoring includes, but is not limited to, being within reasonable visual sight-lines of congregating students, actively engaging both students and their guardians during custodial transfer, and maintaining a heightened diligence in hopes of promoting a safe transition environment during after-campus hours.*

Likewise, this model legislation would make it abundantly clear that parent-guardians are responsible for ordinary care of their children after that thirty-minute window has expired.[174] The language would state that *any child injured on or near campus outside of such thirty-minute professionally monitored windows will be subject to state-determined applicable fines or criminal charges*.[175]

Although immunity laws, such as those in Texas, still have an important role in model legislation, they cannot serve as impenetrable shields devoid of the best interests of protecting a child's life.[176] An educator would still not be "personally liable for any act that is . . . within the scope of the duties of the employee's position of employment."[177] But, this immunity would be *exempt in circumstances in which a professional employee fails to reasonably and actively monitor minors during moments of student autonomy, including, but not limited to, class period transitions, recess, field trips, and before and after-school time windows*. This additional language would emphasize that teachers and administrators are professionally licensed instructors that have an ability to exercise their skill sets when a child needs them most—unstructured time on campus.[178]

Regarding some of California's existing statutory language, an off-campus versus on-campus and even student versus non-student determination should be replaced with a more sensible factors-based analysis.[179] When it comes to *location* and *classification* of the child, these immunity provisions would cease to exist. Instead, model legislation would propose the following:

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173. *See supra* Part IV.A.1 (explaining that state legislatures should impose a higher standard of professional care on teachers).

174. *See supra* Part IV.A.2 (analyzing statutory expectations for teachers, parents, and pupils).

175. This, in a very literal sense, would parallel the court's wishes in a case like *Prancik v. Oak Hill United Sch. Corp.*, 997 N.E.2d 401, 406 (Ind. Ct. App. 2013) ("[S]chools are not required to constantly observe all students at all times . . . in order to discharge their duty of adequate supervision.").

176. *See* TEX. EDUC. CODE ANN. § 22.0511.

177. *Id.*

178. This also mirrors language in cases like *Gonzalez v. Grimm*, 353 S.W.3d 270, 273 (Tex. App.—El Paso 2011, no pet.) ("[I]njury . . . was in furtherance of the employer's business and for the accomplishment of the object for which the employee was employed."). This language is ripe for application during heightened moments of after-school duty station monitoring. *Id.*

179. *See* CAL. EDUC. CODE ANN. § 44808 (West, Westlaw through 2019 Reg. Sess.).

> *Whether a child is considered "on-campus" and a "student" for immunity purposes is determined by factors that include, but are not limited to, location of the student in conjunction with vehicle traffic, proximity to assigned professional duty stations, heavily used paths leading towards or away from the campus grounds, and whether a parent-guardian had a reasonable duty to supervise the child after a school related activity.*

In short, the thirty-minute time windows before and after school dismissal (or dismissal of a related school activity) would facilitate much of the legislative discussion. Immunity during that window would be a much more difficult defense to achieve, and yet its use could steadily escalate outside the scope of that window. By focusing on objective timing alongside a reasonable factors test, a parent's custodial duties are realized. The presence of model legislation that brightly defines custodial duty and parallels compulsory education with that of compulsory professional *safety* is necessary to accommodate the ever-diversifying trend of unique socioeconomic family circumstances at home. While a higher level of state paternity is evident through this model law, few can argue that from a morality standard, the lives of children will be enhanced through more concise understanding of legal consequences. Any number of student injuries or death, while not entirely preventable, can always be reduced by shifting away from standards of defense and towards proactive measures of child-centered safety. The next generation of young student learners deserve these common sense and low-impact solutions to help better their learning environments.

While Department of Education handbooks across the nation are well suited to outline broad themes of professional conduct, this legislation deserves to be drafted into a state's education code in order to clarify a legal framework at its most beneficial legal epicenter. A teacher can finally have a firm grasp as to what is expected at any given time after the bell—and, just as importantly, when a police officer or child protective service may need to intervene due to parental neglect.[180]

C. Practical Considerations Going Forward

With so many existing expectations resting heavily upon the shoulders of overworked and understaffed teacher populations, a higher accountability for after-school child custody protocol requires that numerous third-party

180. This is not to say, of course, that such extreme measures against a parent-guardian should be activated immediately upon expiration of a thirty-minute professional duty window. A parent can always use their own judgment regarding the mode and method a child will arrive home once child custody has clearly transferred to that adult. Contacting law enforcement or CPS would only be necessary under extreme circumstances that, given model legislation, would be far clearer for educators and parents alike to assess.

support groups—many of which are already available to the local community—assist in eliminating child negligence during after-school hours. Those existing solutions include taking a closer look at the role that after-school programs play in fostering adult supervisory support,[181] a reexamination of student transportation needs once those after-school programs and other extracurriculars conclude, and a reevaluation of the financial engines—many already in place—in hopes of tightening accountability standards.

1. A Stronger Collaboration with After-School Programs

After-school programs (sometimes referred to as "out-of-school time" programs) provide a wealth of positive gains for a young child learner after the completion of the school day.[182] Of those numerous benefits, one of the most important continues to be that of professional supervision which helps students stay out of trouble and make wise decisions during their less-structured down time.[183] Both publicly and privately sanctioned after-school programs alike prove essential to lower-income families in search of additional supervisory support while parents are away from home.[184] Such parents are often at a loss with what to do with their children during after-school hours before they arrive home from work.[185] A Quinnipiac University poll found that 83% of those surveyed favored the programs as indispensable elements to their family routines.[186]

Knowing this, an accessible after-school program open and available to assigned students on their respective campuses can serve as one of the first-line defenses against any potentially negligent behavior. Such behavior, often the result of unsupervised students loitering on campus after school, includes "risky behaviors, such as drug use and unsafe sexual activity, and to become victims or perpetrators of violence."[187] While local school districts deserve discretion to determine what these programs look like, it is in the best interest of state legislators to standardize the need for accessible after-school programs by requiring districts to form relationships with existing community-outreach opportunities and nonprofit groups, and ultimately

181. *See* Jennifer McCombs, Ana Marie Whitaker & Paul Yoo, *The Value of Out-of-School Time Programs* 3, RAND CORP. (2017), https://rand.org/content/dam/rand/pubs/perspectives/PE200/PE267/RAND_PE267.pdf.

182. *See id.* at 1–5.

183. *See id.*

184. *See id.*

185. *See id.* at 3.

186. *Id.* (stating that three key factors motivate public support for these after-school programs and acknowledging that (1) "After school, unsupervised kids may engage in risky behaviors"; (2) "Youth access to enrichment activities is highly dependent on family income"; and (3) "Low-income students trail substantially behind more-affluent peers, in terms of academic achievement").

187. *Id.*

bring the community together in providing reasonable on-campus support for vulnerable children.[188]

While over 10.2 million students already benefit from enrollment in after-school programs throughout the country, another 19.4 million children are eagerly seeking such assistance.[189] "Across America, 1 in 5 kids are alone and unsupervised from 3 to 6 p.m. These are the hours when juvenile crime and victimization peak—and many parents are still at work. When kids have no place to go after school, . . . businesses lose up to $300 billion a year."[190]

From a morality standpoint, we owe it as parents, voters, and communities to statutorily require every school district to have a reasonably mandated opportunity for students after the final bell has rung. While some older students may not need an after-school club due to traditional high school extracurricular activities, younger children would benefit in a tremendous way by being instructed to remain on campus if a school bus was unable to transport them home to a parent or older sibling.[191] Legislators should include factors in the education code that take into account (1) the number of students on campus that are not actively engaged in a pre-existing after-school activity, (2) the number of students that have guardianship resources at home and appropriate transportation to arrive home from school, and (3) a special emphasis on problem children that have had disciplinary problems in and around school within the past school year. Identifying which students need support would involve data that often is already a large part of a district's records and deference to local administrators in implementing these program expectations in a reasonable and practical manner.

2. Alternative Transportation Solutions

While traditional after-school bussing has remedied transportation needs for many decades, school districts nationwide tend to use "late bussing" solutions in widely inconsistent ways.[192] Late buses, when utilized in a concise and consistent manner, provide a vital state-sanctioned resource to allow districts to safely transport students to their homes after a band

188. Some examples of existing after-school program success include campus clubs that serve a specialty group (like arts, science, or athletics), multipurpose groups that cater to anyone in a specific age range, and academic-focus groups helping students with homework. *Id.* at 6. Regardless of the flavor of after-school programs, administrators can band together in an obligatory and communicative manner to help offer these resources to existing students.

189. Pradhan, *supra* note 4.

190. *Id.*

191. Interview with Chris Jorns, Sch. Teacher, Lubbock High Sch., Lubbock Indep. Sch. Dist., in Lubbock, Tex. (Oct. 15, 2018).

192. *See, e.g.*, *Activities and Clubs*, MCCARTHY MIDDLE SCH., https://www.chelmsford.k12.ma.us/Page/306 (last visited Mar. 10, 2020); *Extra-Curricular Clubs and Activities*, WISSAHICKON SCH. DIST., https://www.wsdweb.org/schools/wissahickon-middle-school/activities (last visited Mar. 10, 2020); *Late Bus Sign Up*, MOUNTAIN POINTE HIGH SCH., https://www.tempeunion.org/Page/2506 (last visited Mar. 10, 2020).

rehearsal or football practice has concluded.[193] The National Highway Traffic Safety Administration (NHTSA) has concluded that children are "50 times more likely to arrive at school alive if they take the bus than if they drive themselves or ride with friends," meaning that the more free bussing solutions a state provides, the greater the chance that students are safe during vital transition hours to and from a child's home.[194] While many of the details regarding late bussing may reasonably exist at the local administrative level, statutory language requiring late bussing to be addressed in a reasonable capacity can save lives and enhance the supervising teachers trying to monitor these children.[195]

Additional late bussing solutions also mean less of a temptation for parents to use ride sharing programs for their kids. Although services such as Uber and Lyft are legally required to have an adult present during such ride usage, there are many cases in which parents, students, and ride-share drivers ignore this policy for the sake of convenience or necessity.[196] Fortunately, school-centered solutions do exist in an ever-growing cross-section of metropolitan America.[197] Although Uber and Lyft occupy a strong majority of the ridesharing industry, up-and-coming companies such as Shuddle and HopSkipDrive are attempting to slowly offer comparable services specifically geared towards children.[198] These programs expect their employees to undertake more rigorous training and background checks in hopes of offering a higher standard of "childcare experience" with an emphasis on caregiving.[199] As ride sharing continues to increase in popularity with the rise of mobile app usage, such kid-centered solutions can be paired with late bussing to ensure that fewer kids are left stranded after hours on their school campus. In the meantime, it again falls to the monitoring teachers at duty posts to often identify such ridesharing abuse.[200] Stronger state-codified language helping to bolster approved transportation opportunities will only ease local resources and put more of a responsibility

193. Telephone Interview with Melissa Strickland, Sch. Teacher, Fulton Cty. Schs. in Atlanta, Ga. (Oct. 8, 2018) (stating that as conventional wisdom across the State of Georgia, many after-school activities would simply cease to function without the aid of late busses to bring students home in the evening).

194. *NHTSA Unveils School Bus Promotional Posters*, SCH. BUS FLEET (Oct. 27, 2011), http://www.schoolbusfleet.com/news/683352/nhtsa-unveils-school-bus-promotional-posters.

195. *See supra* Part IV.B (explaining that statutory language can provide clearer expectations for teachers and parents).

196. *"Ubering" Children to and from School: What Is a School's Responsibility?*, JULES HALPERN ASSOCIATES, LLC (Oct. 25, 2016), https://www.halpernadvisors.com/ubering-children-school-schools-responsibility/.

197. *Id.*

198. *Id.*

199. *Id.*

200. Telephone Interview with Melissa Strickland, *supra* note 193.

on third-party entities—a welcome move for overworked educators and support staff.[201]

A focus on additional state-certified transportation remedies will leave fewer kids with the opportunities to make poor decisions without the help of teacher or parent support. Incidences like the one in *Bartell v. Palos Verdes Peninsula School District* show the far-too-often consequences of children loitering on school grounds without supervision of a parent or licensed educator.[202] There, parent-plaintiffs filed a wrongful death suit against their child's school district after their 12-year-old son fatally injured himself on his school's playground after hours while unaccompanied by any adults.[203] Despite the court eventually ruling in favor of the school district on grounds of reasonable foreseeability, the death could have been prevented with a more robust set of transportation resources home from school.[204] From a policy standpoint, the clarity such transport provides will help put both parents and school administrators more at ease, spend less money enacting or defending against litigation, and better confine school children to a set of procedural parameters after the bell.[205]

3. Financial Considerations

Inevitably, a major criticism for state-mandated after-school custodial support is the money that a state and local school district would need to provide in order to offer these additional levels of accountability to students. "Allocating resources efficiently and equitably in public primary and secondary schools has been an elusive goal" as districts continue to grapple with the reality of tighter budgets across the country.[206] States like Texas, catering to more than a staggering 2.4 million school-aged children, are forced to implement pragmatic and cost-adverse solutions whenever possible.[207] While revamping and tightening procedure for any system as large as public education, it is encouraging to know that most change comes

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201. *Id.*

202. *See, e.g.*, Bartell v. Palos Verdes Peninsula Sch. Dist., 147 Cal. Rptr. 898 (Ct. App. 1978).

203. *Id.* at 899.

204. *See id.* at 902; *"Ubering" Children to and from School: What Is a School's Responsibility?*, *supra* note 196.

205. The typical rates for both Shuddle and HopSkipDrive are around fifteen percent higher than Uber or Lyft, which may pose some issues for parents looking for financially savvy alternatives. Robert Channick, *Would You Let a Service Drive Your Kids? Some Parents Already Do*, CHI. TRIB. (Aug. 7, 2015, 11:32 AM), http://www.chicagotribune.com/business/ct-back-to-school-uber-0807-biz-20150807-story.html. Although how parents come up with the necessary money for such rideshare services on behalf of their children is beyond the scope of this Comment, the fact that late buses can be mandated to provide a free, albeit less flexible alternative, is a solution for families at any socioeconomic level.

206. Ronald F. Ferguson, *Paying for Public Education: New Evidence on How and Why Money Matters*, 28 HARV. J. ON LEGIS. 465, 465 (1991).

207. *Id.* at 470.

from a more thoughtful articulation of existing practices.[208] State legislators and education agencies drafting more comprehensive protocol do not add any substantial expense to a state's education budget.[209] Nor does training teachers regarding a unified custodial and monitoring plan require much more money to be reserved for existing professional development hours.[210] From a cost-benefit point of view, the majority of the cost to such revision would likely involve some financial demand regarding third-party daycare and transportation resources.[211]

Tighter custodial care would involve less of a budgetary overhaul and more of a reform of existing cost-neutral procedural elements. Make no mistake, this child-centered approach to after-school safety concerns is not fueled by an interest in stripping away state resources or immunity practices, but rather by an interest in clarifying when and how a district transfers custody to a parent. If anything, such state standardization will drive costs *lower* by way of eliminating needless litigation.

V. CONCLUSION (A HOMEWORK ASSIGNMENT FOR THE READER)

The call to clarify and heighten standards of accountability for child safety during after-school hours will not be an easy one. Immunity statutes help maintain a comfortable status quo among many of the country's local school districts, and the effort to further interrupt a school district's discretion might be met with suspicion, cries of overreach, and general disdain for a statewide standard of expectation. To be sure, the current patchwork model is a convenient one for simply being just that: A patchwork collection of inconsistent standards that fail to truly address and codify what we owe our nation's school children. Such inconsistency is easy to implement, but is it the best we can do for our kids?

Yet, there is hope. Compulsory education, state-mandated education funding, and even heightened ADA standards among our public schools were once met with the same level of skepticism and reservation.[212] Those movements to provide greater resources for America's youth were not easy either, and yet today we benefit from the courageous constituents and legislators who decided that good was simply not good enough when it comes to teaching the future of our society. Model legislation, and all the reform that goes with it, provides a healthy step towards a more codified set of safety and guidance standards—standards that impact children on a real, profoundly life-saving level of supervision.

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208. Interview with Chris Jorns, *supra* note 191.

209. *Id.*

210. *Id.*

211. *Id.*

212. Arlene Mayerson, *The History of the Americans with Disabilities Act*, DISABILITY RIGHTS EDUC. & DEF. FUND (1992), https://dredf.org/about-us/publications/the-history-of-the-ada.

Although such liability standards will never be perfect, we can always improve for the sake of saving a child's life. At the end of the day—at the end of the school day's final bell—do our school children not deserve the best guidance possible? The answer to that question is a homework assignment to the American People due very soon if we are to justly elevate our standards both inside and outside of the classroom.