



**IN THE SUPREME COURT OF APPEALS OF
WEST VIRGINIA**

**APPELLANT'S REPLY TO APPELLEE'S BRIEF
No. 33038**

**SUSAN M. JACKSON, Administratrix
of the Estate of Timothy J. Jackson,**

Appellant/Plaintiff

vs.

THE PUTNAM COUNTY BOARD OF EDUCATION

Appellee/Defendant

Bernard E. Layne, III
LORD, LORD & LAYNE, PLLC
P.O. Box 3601
Charleston, WV 25336
(304) 345-3232

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LAW AND ARGUMENT

I. THE APPELLEE ERRONEOUSLY ASSERTS THAT THE PUTNAM COUNTY BOARD OF EDUCATION POLICY MANUAL, WHICH CLEARLY ESTABLISHES THE APPLICABLE STANDARD OF CARE REGARDING THE TRANSPORTATION OF PUTNAM COUNTY CHILDREN TO CURRICULAR AND EXTRACURRICULAR EVENTS, CANNOT BE CONSIDERED IN THE APPEAL OF THIS MATTER BECAUSE IT WAS STRUCK AS A SUPPLEMENTAL ATTACHMENT TO THE RECORD

On April 5, 2006, Appellant Susan M. Jackson as Administratrix of the Estate of Timothy J. Jackson, filed a *Motion for Leave* to exceed the page limit designated by the Rules of this Court for Appellate briefs. Within that motion, the Appellant requested that she be granted permission to attach, as exhibits to her brief, several documents, including the *Policy Manual of the Board of Education of Putnam County* (hereinafter the Policy Manual) and a *Memo from Jeffrey Haught to Dr. Sentell Putnam County Superintendent of Schools* (hereinafter the statement).

On April 13, 2006, the Appellee, Putnam County Board of Education, filed its *Response to Appellant's Motion for Leave and Motion to Strike*. As a basis for its motion to strike the attached exhibits, the Appellee stated that the Policy Manual and the statement were not adequately preserved in the record below.

On May 24, 2006, by Order of this Court, the Appellant's motion to exceed the page limit was granted while Appellee's motion to strike the statement and the Policy Manual was also granted. Subsequent to that Order, the Appellant filed a *Motion to Reconsider and Motion for Judicial Notice of the Putnam County Board of Education Policy Manual*. That motion is currently pending before the Court.

Even though her motion is still pending before the Court, it is Appellant's contention that the Court's Order on May 24, 2006, which struck the policy manual and statement of Jeffrey Haught as exhibits or attachments to Appellant's brief, was not intended to prohibit or completely bar the Appellant from citing to or referencing the manual in either the brief or in oral argument. After all, the policy manual is available in the public domain and may be freely accessed and viewed on the internet via the Putnam County Schools web page which can be found at <http://www.putnamschools.com> under the administration drop down menu. [Http://www.putnamschools.com/admin/documents/policy-1-23-06](http://www.putnamschools.com/admin/documents/policy-1-23-06). Additionally, one can easily receive a copy of these regulations by simply visiting the Putnam County Board of Education. (Putnam County Board of Education Policy Manual, *Introduction*; <http://www.putnamschools.com>).

Therefore, pending a decision regarding the Appellant's June 30, 2006, motion or further clarification of the Court's May 24, 2006, Order, the Appellant will respectfully continue to cite to the policy manual's regulations, without attaching them, to establish the Board's duty to provide transportation to the deceased, Timothy Jackson, in this matter.

II. THE APPELLEE COMPLETELY FAILS TO ADDRESS ITS LEGAL DUTY, AS STATED WITHIN THE PUTNAM COUNTY BOARD OF EDUCATION POLICY MANUAL, TO PROVIDE SCHOOL BUS OR CHARTER BUS TRANSPORTATION FOR ALL STUDENT TRIPS INVOLVING TEN (10) OR MORE STUDENTS

The *Appellee's Brief* fails to challenge the Appellant's assertion that the Policy Manual sets forth the applicable standard of care for the transportation of its students to curricular and extracurricular activities. While the Appellee states that the Putnam County Board of Education had no duty which would give rise to a negligence action in this case, it is only able to maintain that position by

completely ignoring the existence and applicability of the Policy Manual to the facts before this Court. Specifically, the Appellee does not challenge, nor attempt to address in any way, the following sources of legal duty that were identified by the Appellant and which were breaches by the Appellee:

- (1) All trips taken by students in Putnam County which involve ten (10) or more students must be made on school buses or charter buses. *Board Policy Manual*, § T.3.4, p. 265.
- (2) Under no circumstances may a student or anyone under twenty-one (21) years old be allowed to serve as a driver for a student trip unless they are a regular or substitute bus operator employed by the Board of Education. All drivers, other than regular or substitute operators, must have approval of the trip sponsors and the school principal. *Id.*
- (3) During extracurricular trips, students are not permitted to drive their own automobiles; nor are they permitted to drive an automobile owned by another person...to transport themselves and others to an athletic event or any other extracurricular event. *Id.* at T.3.9, p. 272.
- (4) Overnight student trips to any destination must be approved by the Putnam County Superintendent of Schools and the Board of Education. *Id.* at T.3.4, p. 265.
- (5) Non-school day trips taken within the state must have the approval of the Superintendent of Schools. *Id.*
- (6) All "longer trips," defined as those trips which require crossing the county line, must receive prior approval of the Superintendent of Schools. *Id.* at T.3.8

Curiously, none of these regulations are discussed by the Appellee. Based upon the Appellee's decision not to address these regulations, it should be determined that the Appellee is unable to offer any set of facts or legal theories which nullify or offset their application to the case at hand.

Further, the Appellee did not challenge the Appellant's application of the facts in this case to the stated policy manual regulations. For instance, the Appellee does not deny that Choir Director, Jeffrey Haught, testified in his deposition that approximately "forty" (40) students were involved in the

Show Choir retreat. *Depo. Haught* 14:5. Despite the fact that approximately “forty” (40) students attended the retreat, Jeffrey Haught did not seek to requisition either school or charter buses for the trip as mandated by Policy Manual regulations T.3.4. Of course, since Haught admitted under oath that he **did not** read the Policy Manual, although it was provided to him, it is not surprising that he breached regulations which he had never taken time to consider. *Depo. Haught*, 22: 4-5.

By ignoring transportation regulation T.3.4, the Appellee blankly asserts that no legal duty exists which would require it to provide buses to the Show Choir annual retreat. *Appellee’s Brief*, p. 11. The Appellee points to *West Virginia Code*, §18-5-13(6)(a), which does not require the Appellee to provide transportation to students participating in curricular or extracurricular activities. However, the Appellee conveniently fails to inform this Court that §18-5-13(6)(a), does empower local school boards with the authority to:

...provide at public expense and according to such rules as the board may establish, adequate means of transportation for school children participating in board-approved curricular and extracurricular activities...

West Virginia Code, § 18-5-13(6)(a); *Board Policy Manual*, Subsection “T”: *Transportation and Other Support Services*,” § T.3.1, p. 262 (July 25, 1995, with all changes through May 20, 2002).

Once local school boards enact more specific transportation regulations, they then have the responsibility to manage any system established for the transportation of school children. *W.Va. Code Ann.*, §18-5-13(6); *Cox v. Board of Educ. Of Hampshire County*, 177 W.Va. 576, 355 S.E.2d 365, 370 (1987). Here, the Board acted on the authority granted to it by the *West Virginia Code*, when it adopted the following responsibility clause in the Policy Manual:

...service is provided and shall be provided by the Putnam County Board of Education according to the policies, rules, and regulations established by the West Virginia Board of Education and those enumerated in the following sections...

Board Policy Manual, § T.3.1, p. 262-263.

The Policy Manual then sets forth a regulatory scheme for the transportation of students during “student trips.” Student trips are defined by the Board to include but are not limited to:

...extracurricular trips, curricular trips and recreational trips. Extracurricular trips are those associated with extracurricular activities such as athletics, bands, clubs and so forth. Curricular trips are those which supplement and extend classroom instruction. Such trips must be closely tied to cognitive instructional learning outcomes and should provide students with experiences and opportunities that are an extension of topics being studied in the classroom.

Recreational trips are those to recreational parks or areas not associated with extracurricular or curricular school activities. Recreational trips include but are not limited to amusement parks, senior trips, ski trips, and so on...

Board Policy Manual, § T.3.4, p. 264-265.

The Board adopted the above-cited transportation regulations, T.3.4, T.3.8, and T.3.9, to provide for the safe transportation of children during extracurricular, curricular and recreational trips. It is clear that this regulatory scheme sets forth a child transportation standard of care for all Putnam County Schools. It is also clear from a plain textual reading of regulation T.3.4 that all trips taken by students in Putnam County that involve more than ten (10) students must be taken on school buses or charter buses. Since the Appellee failed to order such transportation, it must necessarily be determined that it breached the established duty to provide transportation to Timothy Jackson.

Next, the Appellee fails to provide any legal or factual theory for why transportation regulation T.3.4 (mandating that any overnight student trips must be approved by the Putnam County

Superintendent of Schools and the Board of Education) and T.3.8 (requires that all trips which cross the county line, must receive prior approval of the Superintendent of Schools) would be insufficient to create a duty upon the Appellee to act in accordance with those rules. The Appellee cannot, and does not, deny that the Show Choir trip in question lasted from Friday evening to Sunday afternoon at the Rippling Waters campground and that this trip required students to cross the county line from Putnam County to Kanawha County, WV.

Further, the Appellee does not deny that Jeffrey Haught, in his deposition, admitted that he only sought schedule clearance for the suggested date of the retreat from his school principal, and such dates were approved, provided there were no scheduling conflicts. *Depo. Haught, 9:1 - 10:4.*

Remarkably, in his deposition, Mr. Haught was asked whether the Board of Education has to approve trips that the Show Choir made out of county and he responded by saying:

I am not aware of that either. In other words, it has not been the practice over the past years. I can't speak to the legality of whether it is or not, but it has not been my practice to run my schedule through the Board office.

Depo Haught, 7:16 - 10:4.

The Appellee's brief fails to counter the Appellant's assertion that these regulations were in force at the time of Timothy Jackson's death. The Appellee does not explain why Mr. Haught did not request buses for the Show Choir students and nor does it explain why Haught and Winfield High School (hereinafter WHS) did not seek prior approval of the trip from the Superintendent of Schools nor the Board. Even if Haught sought permission from the WHS Principal, the Principal failed to inform Mr. Haught that buses were required for the trip. Regulation T.3.4 and T.3.8 clearly set a standard of care for the transportation of Putnam County children to curricular, extracurricular and recreational

trips. It is also clear that the Appellee breached the duty of care that it owed to Timothy Jackson, during the Show Choir retreat. The Appellee's brief is devoid of any argument to counter these regulations or the facts applied to them herein.

Next, the Appellee offers no discussion of the Policy Manual transportation regulation T.3.4 (Under no circumstances may a student or anyone under twenty-one (21) be allowed to serve as a driver for a student trip) and T.3.9 (During extracurricular trips, students are not permitted to drive their own automobiles nor the automobiles of others to transport themselves or other students to any athletic event or any other extracurricular event). These rules also further establish the standard of care for the transportation of school children for the specified events.

The Appellee had a duty to prevent Brian Ramsburg from driving himself and Timothy Jackson to the Show Choir retreat. Rules T.3.4 and T.3.9 indicate that Brian Ramsburg should not have been allowed to drive himself to the retreat. Mr. Ramsburg was:

- a. A student at Winfield High School
- b. He was under twenty-one (21) years old
- c. He was not a regular or substitute bus driver
- d. Allowed to drive his own automobile or an automobile owned by another person.

Board Policy Manual, T.3.4, p. 265, and T.3.9, p.272.

By allowing Brian Ramsburg to drive himself to the Show Choir retreat, the Appellee created a circumstance where Mr. Ramsburg could transport other Show Choir members, such as Timothy Jackson, who needed transportation to the mandatory retreat. Choir Director Haught testified that he was informed, through a note from Brian Ramsburg's parents that Brian would be driving himself to the retreat. *Depo Haught*, at 17:4. Despite Board regulations banning this method of transportation for

students traveling to school events, Haught failed to stop Ramsburg from driving.

It is likely that Haught did not know he was violating the Board Policy Manual since he never read it. *Id.* 22: 4-5. His lack of knowledge regarding the Board's mandates on student travel is fully demonstrated through the *GA Handbook* that he compiled. The *GA Handbook* is a loose collection of internal Show Choir directives on matters from travel to retreats, practices and events, conduct, attendance, participation, etc... *GA Handbook*, generally. This handbook sets forth travel policies which are in direct contradiction to those mandated by the Policy Manual. *Id.* at 25. For instance, the handbook does not incorporate the Policy Manual rule which mandates that trips involving ten (10) students or more must be made on school or charter buses. *Id.* Instead, it states:

From time to time, GA members will travel individually to an event. This usually occurs when the distance is small enough to allow day trips, when GA is performing in the immediate area, or when the cost of renting a bus is prohibitive.

Id. at 25.

Further, the *GA Handbook* allows Show Choir members to:

"...present to the Director IN WRITING PRIOR TO THE TRIP how they will arrive at the event, who will be driving and who will be riding with them.

Id.

The Appellee did not address the conflict between the *GA Handbook* and the Policy Manual. By comparing the two, it is obvious that the Policy Manual makes no exceptions for student trips even when "distances are small enough to allow day trips," or when "the GA is performing in the immediate area," or "when the cost of renting a bus is prohibitive." *Board Policy Manual*. T.3.4, p. 265. The Policy Manual is absolute in that it states that **all trips** involving ten (10) or more students **must** be made on school or charter buses. *Id.* The language is mandatory and is without exception.

The Policy Manual does not allow for individual travel when a group of ten (10) or more students are traveling to a location "in the immediate area." Additionally, the Policy Manual states that "under no circumstances" may a student or anyone under 21 years old be allowed to serve as a driver for a student trip, while the GA Handbook apparently sanctions such mode of transportation provided the Director receives a written note letting him know who is driving and who will be passengers in such cars. Lastly, and perhaps most alarmingly, is that the GA Handbook calls for "individual" travel when "the cost of renting a bus is prohibitive." *GA Handbook*, at 25. The Policy Manual does not allow for an exception such as this, which would obviously place cost efficiency over student safety.

The travel policies found within the GA Handbook, which directly contradict the Board Policy Manual, demonstrate Jeffrey Haught's incredible lack of knowledge regarding Board of Education policy and procedure. Haught's failure to properly implement the Board's transportation policies and his failure to incorporate them into his handbook directly caused a student driver, Brian Ramsburg, to transport another student, Timothy Jackson, which resulted in Mr. Jackson's death.

Finally, it is necessary to note that the Appellee violated the less stringent GA Handbook travel policies as well. It breached the GA Handbook by allowing individual travel to and from the Show Choir retreat although the retreat was not a day trip (it lasted an entire weekend), the Show Choir was not performing in the immediate area (they traveled forty (40) miles and across county lines to reach Rippling Waters campground), and it is not known whether the cost of the bus was prohibitive since Jeffrey Haught failed to even consider bus travel as an option. It is obvious that Jeffrey Haught followed neither the Policy Manual nor his own GA Handbook rules governing student transportation to the retreat.

To conclude this issue, the Appellee fails to recognize or appreciate the duty, that was placed upon it by the Policy Manual, to transport Timothy Jackson and other Show Choir members to the Rippling Waters retreat. The multiple breaches of these duties by the Appellee proximately caused the death of Timothy Jackson.

III. THE PUTNAM COUNTY BOARD OF EDUCATION SHOULD HAVE REASONABLY FORESEEN THAT IT WAS PLACING SHOW CHOIR STUDENTS AT RISK OF INJURY OR DEATH BY MAKING ATTENDANCE MANDATORY AT A LOCATION ACROSS COUNTY LINES, OVERNIGHT, DURING A WEEKEND WHILE NOT PROVIDING GROUP TRANSPORTATION TO THE PARTICIPATING STUDENTS

A. Foreseeability

In the case at hand, the Appellee wrongly argues that the Board did not have any information that “would have lead it to believe that a passenger in Brian Ramsburg’s automobile was any more or less likely to be injured traveling from the retreat than with any other licensed driver on a public highway at any other time for any other reason, including a bus driver.” *Appellee’s Brief*, p. 18.

This assertion by the Appellee is blatantly false, misleading and made without properly researching the facts. According to 2003 National Highway Traffic Safety Administration statistics, in 2002, 8,984 people were killed in crashes involving young drivers, ages 16-20. *National Highway Traffic Safety Administration Statistics*, 2003. In 2001, approximately 3,723 young drivers, ages 16-20, were killed. *NHTSA*, 2003. Based on estimated miles traveled annually, teen drivers ages 16-19 have a fatality rate four times the rate of drivers ages 25-69. *NHTSA*, 2001. Simply put, teenage drivers are four (4) times more likely to die on the road than are older drivers. *Id.* And, as was sadly the instance in this case, more than any age group, teens are likely to be involved in a single vehicle

crash. *Drivehomesafe.com*

Moreover, a shocking statistic that is directly applicable to the facts in this case, illustrates that two out of every three teens who die as passengers are in a vehicle driven by another teenager.

http://www.realworlddriver.com/teen_facts.asp. Further, according to the Insurance Institute for Highway Safety, per mile traveled, teenagers have the highest involvement rates in all types of crashes, from those involving only property damage to those that are fatal. *Id.* (referring to the Insurance Institute for Highway Safety statistics). And, about half of the crashes involving teens are the result of bad judgment, inexperience and risk-taking by the teenage driver. *Id.*

In light of these statistics, the Appellee's assertion that the Board did not have any information that "would have lead it to believe that a passenger in Brian Ramsburg's automobile was any more or less likely to be injured traveling from the retreat than with any other licensed driver on a public highway at any other time for any other reason, including a bus driver," is nothing short of ridiculous and made without any basis in fact. Obviously, insurance companies are able to foresee the possibility that teenagers will suffer injurious or fatal crashes at a higher rate than non-teens because it is reflected in their research and in the higher rates for car insurance that is charged to the parents of teen drivers.

Significantly, these statistics were acquired by the Appellant through online web sites and other vehicle crash data found on the internet. These statistics were readily available to the Appellee on or before September 28, 2001. These statistics make it impossible for the Board which is charged with protecting the safety of thousands of teenagers each day, to deny that it could not foresee that a teenager, who is required to travel forty (40) miles from school, across county lines, on a weekend, and in a car, could be injured or die in an automobile crash.

In fact, there is no doubt that the Board foresaw tremendous risk in school children transporting themselves to school events as it enacted specific transportation policies which required that trips involving more than ten (10) children should be made on school buses or charter buses. *Board Policy Manual*, § T.3.4, p. 265. By drafting a transportation safety rule such as this, the board acknowledged that it is dangerous for multiple school children to be scattered in multiple cars, with unknown drivers, on numerous roadways and subjected to various weather elements while traveling to the same school-related event. It is disingenuous for the Appellee to assert that the Board couldn't have foreseen that a high school student would be any greater risk on the road than a trained adult bus driver.

Further, the myriad of other transportation safety rules adopted by the Board serve to bolster the notion that the Board did in fact foresee the risk of individual children transporting themselves to school events. Most pertinent to this discussion is the Policy Manual prohibition which states that "under no circumstances" may a student or anyone under twenty-one (21) years old be allowed to serve as a driver for a student trip." *Board Policy Manual*, T.3.4, p. 265. Additionally, the policy manual forbids students from driving any automobile during an extracurricular trip and from transporting other students to such events. *Id.* at T.3.9, p. 272. Undeniably, these rules were adopted by the Board because it felt that there is a tremendous risk of injury where students are transporting themselves or others during student trips or where groups of students are traveling together to a particular school sanctioned event.

The case of *Elliott v. Schoolcraft*, cited by the Appellee for the proposition that the Board of Education could not be held liable for injuries received by a student at a post-football game "victory party" is inopposite to the facts of the case before this Court and can be easily distinguished based upon

the drastically different facts offered by the two cases. First, this case involves a death that occurred while a student was traveling home from a mandatory Show Choir retreat. *Elliott*, on the other hand, involves an injury that occurred at a non-school event that was social in nature and for which there was no mandatory attendance policy set in place by the school.

Second, the Board's transportation policies are implicated in this case because the retreat was planned and sanctioned by WHS. In fact, the Show Choir retreat is intended as "intense learning experiences, both from the aspect of our competition show, and from learning with each other in close quarters." *GA Handbook*, p. 18 In *Elliott*, school officials did not sanction the event, it did not choose the sight of the event, the school board in question had no rules mandating that students be bused to private post-game celebrations and the event was not connected to any sort of "intense learning experience."

Lastly, in this case, there were teachers and student chaperones provided by WHS who were charged with protecting the safety and well-being of the student participants and with being familiar with Board policies and procedures. In *Elliott*, the school did not provide teachers or chaperones for the party and there were no school board rules which regulated post-game "victory parties." For these reasons, *Elliott* has no application to the facts at hand.

Likewise, the *Thompson* and *Wickey* cases, emanating from New York and Indiana Courts respectively, can be distinguished most easily by the fact that neither case involved a statute or regulation, as we have here, which mandated that either of those students should be transported by public or private bus transportation to the events to which they were traveling. Furthermore, neither case involved forty (40) or more children, involved school program, who were required to attend an

out of county, overnight retreat that was held more than forty (40) miles from their campus. In this case, Timothy Jackson was required to attend a retreat under these circumstances and he was not given the transportation that was to have been provided to him under the Appellee's own regulations.

This Court has previously held, children are prone to do foolish things and take unnecessary risks, therefore, others who are chargeable with a duty of care and caution toward them, must calculate upon this and take precautions accordingly. *Moore v. Wood County Board of Education*, 200 W.Va. 252, 489 S.E.2d 1,6, quoting *Deputy v. Kimmell*, 73 W.Va 595, 603-04, 80 S.E. 919, 923 (1914). Here, it is abundantly clear that the Board should have reasonably expected that school children may act foolishly in transporting themselves during a mandatory, out of county, overnight trip, where school children are left to their own device in transporting themselves to a Show Choir retreat.

B. Causation

The Appellee erroneously asserts that even if a duty did exist on the part of the Board, the negligence of Brian Ramsburg and Larry Jackson were superseding/intervening acts which break any chain of causation in this case. To support its position, the Appellee argues that Ramsburg and Jackson performed independent acts of negligence that constitute new and effective causes, which operate independently of their own acts of negligence, thus breaking the chain of causation.

The Appellee's position is poorly conceived and based upon the notion that its own actions were not negligent. The Appellant believes that the Appellee's analysis of this issue fails to account for the fact that its negligent acts started the chain of events that caused Timothy Jackson's death. Simply put, the question of intervening cause does not even enter into the analysis of this case, if the Appellee had provided bus transportation to the forty (40) Show Choir members who attended the retreat. If

WHS had followed the Policy Manual, which prohibited students from driving to extracurricular activities, Brian Ramsburg would have been banned from driving his own car and there would be no reason to examine the actions as a superseding/intervening cause.

The chain of events which lead to Timothy Jackson's death was placed in motion by Choir Director Haught, who testified in his deposition that he did not read nor implement the transportation policies that were in force at the time of Timothy's death. *Depo. Haught 22:5*. In fact, Haught testified, despite the language of the Policy Manual, "we weren't responsible for how they [the students] got there." (Parenthetical Added) *Id* at 16:5. And even after they arrived at the retreat, Haught apparently felt that he had no duty or responsibility to the children to insure that they were abiding by the Policy Manual upon their departure. In his deposition, he testified that he had no idea how or when Timothy Jackson and Brian Ramsburg left. *Depo. Haught, 17:9 - 19:19*.

Had WHS and Haught complied with Transportation Rule T.3.4, of the Policy Manual, by transporting the approximately forty (40) students to the out-of-county, weekend, overnight trip, by bus, Larry Jackson would not have been faced with the decision to allow his son to ride with Brian Ramsburg. Choir Director Haught testified that the only paper he ever received from Timothy, which informed him of how the student was getting to the retreat, was a "yellow Post It note," which informed him that Timothy's father would take him to the retreat. *Id.* at 16:9.

Haught never informed Larry Jackson, or any other Show Choir parent, that the students were supposed to be provided with bus transportation to the retreat. Of course, Haught could not inform parents of that option since, as he testified, he was not familiar with the rules because he never read them. *Depo. Haught, 22:5*. Since Larry Jackson was not given the option of bus transportation for his

son and since he never waived his son's right to such bus transportation, Larry Jackson's actions could not be said to be negligent.

As the Appellant has previously asserted, this Court has long held that all questions pertaining to negligence, due care, **proximate cause and concurrent negligence**, present issues of fact for jury determination when the evidence pertaining to such issues is conflicting or where the facts, even though undisputed, are such that reasonable men may draw different conclusions from them. *Ralief v. Yokum*, 167 W.Va. 779, 280 S.E.2d 584, 585 (1981).

Furthermore, in order to relieve a person charged with the negligent injury of another, through the defense of intervening cause, there must be a negligent act, or omission, which constitutes, a new effective cause and operates independently of any other act, **making it and it only, the proximate cause of the injury**. [Emphasis Added] *Syllabus Point 1 of Perry v. Melton*, 171 W.Va 397, 299 S.E.2d 8 (1982). Also, noteworthy is the fact that this Court has previously held that a tortfeasor whose negligence is a substantial factor in bringing about injuries is not relieved from liability by the intervening acts of third persons if those acts were reasonably foreseeable by the original tortfeasor at the time of his negligent conduct. *Harbaugh v. Coffinbarger*, 209 W.Va. 60, 543 S.E.2d 341, 345 (2000).

Many times, this Court has stated its strong preference that juries, rather than Circuit Court judges, should resolve issues of proximate cause and intervening cause. As cited in Appellant's brief, the cases of *Wehner v. Weinstein* and *Peak v. Patliff*, demonstrate this preference. *Wehner v. Weinstein*, 191 W.Va. 153, 444 S.E. 2d 31,32, *Peak v. Patliff*, 185 W.Va 548, 408 S.E. 2d 300, (1991). Both cases held that liability may attach to a defendant's negligent actions so long as the

negligence of that defendant contributes in any degree to the injury. *Syl. Pt. 2 Peak*, at 185 W.Va. 548.

Therefore, by applying the law to the facts at hand, it is clear that the Appellee's failure to request bus transportation for the students traveling to the Show Choir retreat was an express breach of Board policy and was a substantial contributing factor to Timothy Jackson's death. Further, by allowing Brian Ramsburg to transport himself to the retreat as a driver of a vehicle, the Appellee blatantly violated Board Policy. Both of these acts by the Appellee were substantial contributing factors to the death of Timothy Jackson. Even on the day of Jackson's death, the Appellee had the ability to implement the Board policy rules by preventing Ramsburg, who was under twenty-one (21), driving his own car and transporting a student passenger in his car, from leaving the Rippling Waters retreat. However, he failed to stop Ramsburg because he felt he had no obligation to provide safe transportation. No doubt, the Appellee's total disregard for Board Policy is negligent, if not reckless. But for the negligence of the Appellee, Larry Jackson would not have been asked to find transportation for his child to the retreat and Brian Ramsburg would not have been allowed to drive.

In closing, the Appellee acted negligently and perhaps recklessly in this matter in light of the fact that he did not even read the transportation regulations. And, since questions pertaining to proximate cause exist which could lead reasonable men to draw different conclusions, these facts should be remanded to the Circuit Court for a jury trial.

IV. NEITHER THE "HEALTH AND INSURANCE INFORMATION FORM" NOR THE "HANDBOOK OF POLICIES OF GENERAL ADMISSION" OPERATE AS VALID EXPRESS AGREEMENTS TO ASSUME THE RISK BECAUSE NEITHER AGREEMENT WAS INTENDED BY BOTH PARTIES TO APPLY TO THE DEFENDANT'S PARTICULAR CONDUCT WHICH CAUSED THE HARM IN THIS CASE.

Both parties agree that *Murphy v. North American River Runners, Inc.*, 186 W.Va. 310, S.E.2d 504, 508-09 (1991), applies to the facts of this case. However, that is where the agreement between the parties on this issue end.

The Appellee conveniently fails to cite to, discuss, or distinguish what is perhaps the most important and critical language in the *Murphy* case as it is applied to the facts before this Court. Specifically, the Court held that in order for an express agreement to assume the risk to be valid, it must appear that its terms were intended by both parties to apply to the particular conduct of the defendant which has caused the harm. *Id.* To determine whether there was such intent, when the agreement is prepared by the defendant, its terms will be construed strictly against the defendant. *Id.* These rules of anticipatory release construction are specifically related to the general rule that "[a] release ordinarily covers only such matters as may fairly be said to have been within the contemplation of the parties at the time of its execution." *Id.*

In the case at hand, both the *Health and Insurance Information* form and the *Handbook of General Admission* permission slip, were forms that were drafted by the Appellee with no specific trip and no specific date for such trip in mind. In fact, Jeffrey Haught testified in his deposition that there were no specific forms required for the Rippling Waters retreat. *Depo. Haught*, 14:23-15:16. Both forms were sent home as part of the Show Choir handbook during the "first week of school" to be

signed by the parent before the parent knew or was informed of any particular Show Choir trips, locations or transportation arrangements. *Id.* at 20:5. The Appellee does not, and cannot deny that these forms were generic, in that neither form was designed to inform the parent of the trip to Rippling Waters and the particularities of the travel arrangements, lodging situation, chaperones, date of departure, date of return, or any inherent risks that may be involved in the trip that the parent is asked to waive. None of this information can be found in either of the above-cited forms that the Appellee relies upon to suggest Larry Jackson waived his right to civil damages in this case.

The Appellant reasserts that it would be entirely impossible for a parent to knowingly and intelligently waive all of a child's rights as to all situations, involving all people, all acts, during all trips throughout the year, prior to being informed of the specific travel destination and prior to knowing who will chaperone the event or when and by what method the child would leave and return from the trip.

In asking this Court to construe the *Health and Insurance Information* form or the *GA Handbook* permission statement as release documents, the Appellee is effectively asking this Court to overturn its prior holding in *Murphy* that the release must have been intended to apply to the particular conduct of the defendant which caused the harm.

The forms in this case are vastly different than the releases of liability that are offered to white water rafters and skiers who are getting ready to embark upon an inherently dangerous activity. Releases for rafting and skiing activities outline the inherent dangers of participation that are very specific to the event for which they are immediately ready to participate. For instance, the release that one would sign before white water rafting on the Gauley River in March would not also have application to a trip that one might take on the same river in June. This is because the release's terms

must be intended by both parties to apply to the particular conduct of the defendant which has caused the harm. *Murphy*, at 186 W.Va. 310, 316-17. Under *Murphy*, blanket releases which purport to cover unknown hazards involving unknown events on unknown dates with yet-to-be determined chaperones, necessarily fail to meet the *Murphy* test.

It is also critically important to notice that the Appellee never alleges that either of these forms ever informed Larry Jackson that his son had the right to be transported by either school or charter bus transport to the mandatory Show Choir retreat. Neither form cites to the Policy Manual transportation regulations, either generally or specifically, and could not be said to be intended to release the Appellee from its duties outlined within that manual. For the form to act as a valid waiver of the Appellant's rights to receive bus transportation to and from the mandatory event, the form would have had to inform Mr. Jackson that his child had a right to such bus transportation, and by signing such form, he would thereby assume the risk for his child's private transportation to and from the event.

Further, as discussed above, the *GA Handbook* and its section entitled, *Other Travel*, which is relied upon by the Appellee, is in direct derogation of the transportation rules and regulations promulgated by the Board in its Policy Manual. Therefore, by signing an attestation that he read and understood the *Handbook of Policies of General Admission*, certainly did not mean that he had read a true and accurate representation of the rules and regulations for student travel within the Putnam County school system. Specifically, the "travel policies" found within the *GA Handbook* did not inform Larry Jackson or any other parent that:

- (a) All trips taken by students in Putnam County which involve ten (10) or more students must be made on school buses or charter buses. *Policy Manual*, T.3.4, p. 265

- (b) Under no circumstances may a student or anyone under twenty-one (21) years old be allowed to serve as a driver for a student trip...*Id.*
- (3) During extracurricular trips, students are not permitted to drive their own automobiles; nor are they permitted to drive an automobile owned by another person.....T.3.9, p.72.

These regulations, along with many others, are not included in the *GA Handbook* because Choir Director Haught never read the Policy Manual and therefore he could not have possibly known to include these regulations in the *GA Handbook*. *Depo. Haught, 22:4-5*. Thus, even by signing the *GA Handbook* permission slip, Mr. Jackson could not possibly have made a knowing and intelligent waiver of his true and accurate rights as outlined by the Putnam County Board of Education.

Next, the Appellee fails to challenge the Appellant's assertion that the *Health and Insurance Information* form is not clear as to its intent or purpose. *Health and Insurance Information* form, Exhibit A. As previously stated, the form requests that parents "attest" that a laundry list of health and insurance information provided by the parent about the child is correct and current. *Id.* Also, there is an authorization clause within the same paragraph that gives parental consent to "Mr. Haught or other chaperones" to give permission for medical treatment in the parent's absence. *Id.* Further, the Appellee placed a release and indemnification clause within the same paragraph that contains the authorization for medical treatment and the attestation as to the truth and accuracy of the information requested about the child's health. *Id.*

Interestingly, there is only one signature line at the end of this document. No separate signature lines for each individual section is provided. *Murphy* held that it must appear that the plaintiff has given his assent to the terms of the agreement. *Murphy*, at 316. Especially, where the agreement is

prepared by the defendant, it must appear that the terms were in fact brought home to, and understood by the plaintiff, before it may be found that the plaintiff has agreed to them. *Id.* Here, by signing this form, a signee could not possibly know whether he was providing true and accurate information, agreeing to allow Mr. Haught and his chosen chaperones to make emergency medical decisions, or waiving one's right to hold the Appellee responsible for its civil liability.

For all of these reasons, the Appellant respectfully requests that this Court find the release invalid as a matter of law and remand this case to the Circuit Court for further proceedings.

V. CONTRARY TO THE APPELLEE'S ASSERTIONS, A TEACHER STANDS IN THE PLACE OF THE PARENT, GUARDIAN OR CUSTODIAN IN EXERCISING AUTHORITY AND CONTROL OVER ALL PUPILS WHO ARE ENROLLED IN THE SCHOOL FROM THE TIME THEY REACH THE SCHOOL UNTIL THEY HAVE RETURNED TO THEIR RESPECTIVE HOMES

The Appellee's assertion that the deceased, Timothy Jackson, was in the custody and control of his father, at the time of the accident is absurd. The evidence demonstrates that Timothy Jackson was returning home from a mandatory Show Choir retreat at Rippling Waters Campground in Kanawha County at the time of the accident. By statute, Timothy had not returned "home" from the retreat and was therefore still in the custody and control of the Board.

A plain textual reading of *West Virginia Code* § 18A-5-1, which governs a teacher's authority in this state provides:

(a) The teacher shall stand in the place of the parent(s), guardian(s) or custodian(s) in exercising authority over the school and shall have control of all pupils enrolled in the school from the time they reach the school until they have returned to their respective homes, except that where transportation of pupils is provided, the driver in charge of the school bus or other mode of transportation shall exercise such authority and control over the children while they are in transit to and from the school.

West Virginia Code §18A-5-1(a)

According to the Constitution of the State of West Virginia, Art. 12, § 1, the “control” that a teacher is charged with maintaining over his pupils is, in part, given to that teacher so that he can provide a “safe and secure environment” for the student. *West Virginia Constitution Article 12, § 1*. This Court has stated in previous decisions that, “The state has a compelling interest in providing a safe and secure environment to the school children of this state.” *Syl Pt. 3, J.M. v. Webster County Bd. Of Educ.*, 207 W.Va 496, 534 S.E.2d 50 (2000).

In cases discussing school discipline, this Court has held that *WV Code* § 18A-5-1, not only places the teacher in the shoes of the parent, but also arguably requires the teacher to impose appropriate discipline when and where needed. *Cobb v. West Virginia Human Rights Commission*, 217 W.Va. 761, 775, 619 S.E.2d 274, 289.

The gravamen of the Appellant’s argument in this case is located in its allegation that the Appellee had a duty, emanating from the Putnam County Board of Education Policy Manual, to provide school or private bus transportation to a group of ten (10) students or more, who were required to travel to a Show Choir retreat, located outside the county in which they lived, that extended through the weekend. Also, as stated the Policy Manual forbids students and other people under the age of 21 from driving during student trips. *Board Policy Manual*, T.3.4, T.3.8, and T.3.9.

By statute, Jeffrey Haight had control of his students from the time they reach the school until they have return to their respective homes. In this case, the Policy Manual mandates that bus transportation be provided for all student trips of ten (10) children or more *Policy Manual, T.3.4*. Hypothetically, if a bus had been properly ordered by Haight, at the moment that those students would

have arrived at the school to meet the bus, Jeffrey Haught would have had control and authority over those children. He would have stepped into the shoes of their parents and had responsibility over them until they "returned to their respective homes."

However, since Haught did not abide by his duty to order bus transportation for Timothy Jackson and his Show Choir classmates, at the moment these children began traveling toward the out-of-county Show Choir retreat, and until they "returned to their respective homes," the Appellee was responsible for their "safety and security." By adopting Rule T.3.4, the Putnam County Board of Education placed a duty upon Jeffrey Haught to provide safe passage for Show Choir class members to and from the retreat.

As noted in Appellant's brief, the Show Choir retreat was both a curricular and extracurricular event. An extracurricular trip is associated with activities such as athletics, bands, clubs, etc. *Board Policy Manual*, T.3.4, p. 264. While curricular trips are those which supplement and extend classroom instruction. *Id.* Curricular trips must be closely tied to cognitive and instructional learning outcomes and should provide students with experiences and opportunities that are an extension of topics being studied in the classroom. *Id.* The General Admission Show Choir was both curricular and extracurricular due to its "cognitive and instructional" component" coupled with its competition and travel component.

Membership in the Show Choir class at WHS, which meets everyday, and/or extracurricular voluntary involvement in the class can be accomplished by the student without credit. *GA Handbook*, p. 5. The Show Choir held two retreats per calendar year and performed at many competitions and events inside and outside the state of West Virginia. *Id.* at 18.

Timothy Jackson was enrolled in the Show Choir class and attendance at the Rippling Waters retreat was mandatory. *GA Handbook*, p. 18, Depo. Haught, 12:13-14. In the *GA Handbook* Haught specifically refers to the retreats as "intense learning experiences." *GA Handbook*, p. 18. This description leaves no doubt that the retreat was a classroom experience and the Rippling Waters campground was an extension of the classroom.

As an extension of the classroom at Rippling Waters, Haught is charged with the duty to enforce laws and regulations of the state legislature, the state board of education, and the Putnam County Board of Education as they pertain to student education, safety and discipline. So, beyond failing to request bus transportation for his students, Haught should have disciplined students who showed up in their own cars, or those who drove other students in their cars. By Board Policy rules, students should have been warned against driving themselves or others, but were not. And, those who did arrive at Rippling Waters by such means, should have been approached, their parents should have been contacted, and they should have been picked up by their parents. The above-cited statute and accompanying case law clearly indicates that Jeffrey Haught was required to utilize his authority to protect the safety of his students.

In closing, the Appellee's theory that Timothy Jackson was under the authority and control of his father at the time of his accident is incorrect. Based upon this state's constitution, its statutes, and case law, this Court should hold that the Appellee, through its teachers and school administrators, stood *in loco parentis* to Timothy Jackson at the time of his accident and subsequent death.

VI. THE ISSUANCE OF A WRIT OF MANDAMUS WOULD BE AN INADEQUATE REMEDY AT LAW TO THE APPELLANT IN THIS CASE

Contrary to the Appellee's assertion, the issuance of a writ of mandamus would be an inadequate remedy at law to the appellant in this case. To support its proposition the Appellee misleadingly states:

Appellant's Complaint specifically requested the remedy of "[t]he institution of countywide, irrevocable policy by the Board that bus service be provided to ALL curricular and extracurricular groups (including, but not limited to, show choir, all boys sports, all girls sports, band, etc.) to all Board approved events.

Appellee's Brief, p. 29.

This statement is wholly misleading because it fails to also reveal that the Appellant requested relief in the following way:

...judgment against the defendant, compensatory damages for any medical expenses, funeral and burial expenses and the wrongful death of Timothy Jackson...

For such other and further general relief to which the plaintiff may be entitled.

Complaint, P.2.

It appears that the sole basis of the Appellee's plea for mandamus relief to this Court centered on Appellant's prayer for non-monetary damages in the Complaint. *Appellee's Brief, p. 30.* A brief review of the Appellant's prayer for relief shows that she specifically requested monetary damages, along with the non-monetary relief highlighted by the Appellee. Therefore, Appellant's prayer for damages cannot be the basis for mandamus relief alone.

Additionally, as asserted in *Appellant's Brief*, the issuance of a writ of mandamus in this case would be an inadequate remedy at law where negligence and wrongful death have been plead. The

general rule in West Virginia is that a writ of mandamus will not issue unless three elements coexist: (1) the existence of a clear right in the appellant to the relief sought; (2) the existence of a legal duty on the part of the appellee to do the thing which the appellant seeks to compel; and (3) **the absence of another adequate remedy** at law. *State ex rel. Cooper v. Board of Education of Summers County*, 197 W.Va 668, 478 S.E.2d 341, 343 (1996), Syl. Pt. 1.

In the case at hand, there are certainly other adequate remedies at law. There are common law and statutory causes of action for negligence and wrongful death, respectively, that are available to the Appellant in this case. As indicated, both negligence and wrongful death were plead by the Appellant in her complaint in this action. *Pl's Comp.* In *Cox*, this Court held that a writ of mandamus shall not be issued where unnecessary or where, if used, a writ would prove unavailing, fruitless, or nugatory. *Cox*, 355 S.E.2d at 369.

As applied to the facts of this case, any attempt to retrospectively enforce the Board's duty to provide transportation to Timothy Jackson after Timothy Jackson's death, would be wholly inadequate as well as unavailing, fruitless, and nugatory. A large portion of the Appellant's plea for damages is rooted in wrongful death and therefore, the wrongful death statute and the damages available under that statute should apply along with those damages typically granted for common law negligence. The negligence of the Board and the resulting death of Timothy Jackson can be adequately pursued under *West Virginia Code Annotated § 55-7-6* (2005).

Therefore, the Appellant respectfully requests that this Court hold that the issuance of a writ of mandamus would prove to be inadequate, unavailing, fruitless, and nugatory and that the adequate remedy at law and the proper measure of damages are those which are typically awarded in negligence

claims and those which can be found in W.Va. Code § 55-7-6. The Appellant requests that this Court reverse the Circuit Court's holding on this matter and remand this case to that Court for further proceedings.

CONCLUSION

Contrary to the Appellee's assertions, *West Virginia Code*, § 18-5-13(6)(a), empowers local school boards to establish its own regulations regarding the transportation of school children to and from board approved curricular and extracurricular activities. Given this mandate by the state legislature, the Board established such rules and regulations regarding the transportation of students to those events. Through its enactment of transportation rules and regulations, the Board created a duty or a 'standard of care,' for its schools to follow in the transportation of school children. The Appellee chose not to discuss any of these transportation rules in its brief, despite the fact the rules are designed for each public school in Putnam County to follow or face the prospect of claims of negligence when it fails to do so.

Specifically, the Appellee breached five Board transportation regulations which proximately caused Timothy Jackson's death. As noted previously, the five breaches are as follows:

- (a) Board policy mandates that any trip in which ten (10) or more students are involved shall utilize school or charter bus transportation.

The Appellee failed to requisition either school or charter buses for the Show Choir retreat.

- (b) Board Policy mandates that "under no circumstances" may a student or anyone under twenty-one (21) years old be allowed to serve as a driver for a student trip unless they are a regular or substitute bus operator employed by the Board of Education.

The Appellee allowed Brian Ramsburg, who was a student enrolled at Winfield High School and under the age of twenty-one (21), to drive to and from the retreat.

- (c) Board policy mandates that Putnam County Board of Education approval is necessary for any student trip which crossed the Putnam County line.

The Appellee failed to seek Board approval for the Show Choir retreat at Rippling Waters.

- (d) Board policy mandates that any overnight trip involving students must receive approval from the Putnam County Board of Education and the Superintendent of Schools.

The Appellee failed to seek the approval of either of these entities prior to the Show Choir retreat.

- (e) Board policy mandates that students are not permitted to drive their own automobiles or transport themselves and others to an extracurricular event.

The Appellee allowed Brian Ramsburg to transport himself to the Show Choir retreat and then transport himself and Timothy Jackson from the Show Choir retreat.

These regulations are the basis of the Appellant's assertions that the Appellee was under a legal duty to provide transportation and to stop Brian Ramsburg from driving to or from the retreat and by not doing so, the Appellee breached its duties and thereby caused harm to the Appellant.

Next, the Appellee absurdly argues that the Board did not have any information that would have lead it to believe that a passenger in Brian Ramsburg's automobile was any more or less likely to be injured while traveling on a public highway than he would have been with any other licensed driver, including a bus driver. This assertion, made by the Appellee in an attempt to defeat foreseeability in this case, is false, misleading, and made without researching the facts. The actual truth of the matter is:

- (a) Based on estimated miles traveled annually, teen drivers, ages 16-9 have a fatality rate four times the rate of drivers ages 25-69.
- (b) In 2001, approximately 3, 723 young drivers, ages 16-20, were killed.
- (c) Teenage drivers are four (4) times more likely to die on the road than are older drivers.

- (d) Teens are more likely to be involved in a single vehicle accident; and
- (e) Two out of every three teens who die as passengers are in a vehicle driven by another teenager.

These statistics show that students 16-20 years of age, such as Brian Ramsburg, are more likely to die in single vehicle accidents each year. Further, these statistics show more teenagers than not, who die as passengers, such as Timothy Jackson, are in a vehicle driven by another teenager, such as Brian Ramsburg. With statistics such as these available, the Appellee cannot claim that wrecks by high school students are not more likely or foreseeable than wrecks by non-high school aged individuals. Further, the Board obviously foresaw the risk in school children transporting themselves and others to student trips and extracurricular events because it drafted a very thorough set of transportation safety rules which were designed to regulate when transportation should be provided for students and when they shouldn't be allowed to drive. And, quite frankly, the Appellee is in a distinct position to observe the daily immaturity, foolishness and the propensity of teenage children to take unnecessary risks. According to *Moore*, the Appellee is charged with a duty to "calculate upon this" type of behavior and "take precautions accordingly."

The Appellee's additional assertion that even if a duty did exist on behalf of the Appellee, the negligence of Brian Ramsburg and Larry Jackson were superseding/intervening acts which break any chain of causation in this case. Counter to this theory, the Appellant asserts that the Appellee's negligent breach of its duty to transport the Show Choir members to Rippling Waters actually started the chain of events which lead to Timothy Jackson's death. There is no doubt that the Board's negligence was foreseeable and was a "substantial factor" in bringing about Jackson's death.

Alternatively, as held in *Ratlief*, any questions regarding a person's negligence and whether that negligence constitutes an intervening cause is a question for the jury. When evidence is conflicting, or the facts are such that reasonable men may draw different conclusions, such conflict is a question for the jury. Therefore, an issuance of summary judgment based upon the question of intervening or superseding cause is entirely inappropriate and the Circuit Court should be so instructed is remand is granted in this case.

Next, neither the *Health and Insurance Information* form, nor the *Handbook of Policies of General Admission* operate as valid releases because neither agreement was intended by both parties to apply to the defendant's particular conduct which caused the harm in this case. Here, both the *Health and Insurance Information* form and the *Handbook of General Admission* permission slip, were forms that were drafted by the Appellee with no specific trip and no specific date for such trip in mind. Both forms were signed at the beginning of the school year and intended to apply to any and all circumstances that should arise, rather than to any specific event. Jeffrey Haught admitted that there were no specific forms required for the Rippling Waters retreat. Neither form mentions the trip to Rippling Waters, the specific date of the Rippling Waters retreat, any particularities regarding travel arrangements, lodging, chaperones, nor the date of departure or return. These vagaries can hardly be said to meet the *Murphy* requirements because it is clear that neither form was intended by both parties to apply to the particular conduct of the defendant which has caused the harm. Therefore, the Appellant respectfully requests that this Court hold that both forms do not operate as valid releases as a matter of law.

Next, contrary to the Appellee's assertion, a teacher does stand in the place of the parent in

exercising authority and control over all pupils who are enrolled in the school from the time they reach the school until they have returned to their respective homes. A plain textual reading of *West Virginia Code* § 18A-5-1, grants authority over students “from the time they reach the school until they have returned to their respective homes.” This state’s Constitution declares that a teacher is charged with maintaining a “safe and secure environment for the students.”

Such safety must necessarily include overseeing the transportation for a group of approximately forty (40) students during an out of county, overnight, retreat. If Jeffrey Haught had secured proper bus transportation for the students, he would have been charged with their safety and security from the time they arrived at the school to meet the bus until the time they arrived home. However, since he breached this duty, he still had a duty to prevent student Brian Ramsburg from driving his car to the retreat and he also had a duty to prevent him from driving away from the retreat with or without Timothy Jackson in his car. Therefore, based upon this state’s constitution, its statutes, and case law, this Court should hold that the Appellee, through its teachers and school administrators, stood in *loco parentis* to Timothy Jackson at the time of his accident.

Lastly, the Appellee wrongly asserts that the Appellant’s prayer for relief in its Complaint requires the issuance of a writ of mandamus. It is clear that the Appellant requested compensatory damages, funeral and burial expenses, and other relief provided by common law or the wrongful death statute of this state. Further, because there are other adequate remedies at law, which are found in the *West Virginia Code* § 55-7-6 (2005) and in the common law of this state, the Appellant respectfully requests that this Court hold that the issuance of a writ of mandamus would prove to be inadequate,

unavailing, fruitless, and nugatory and thereby reverse the Circuit Court's holding on this matter and remand this case to that Court for further proceedings.

Respectfully Submitted,

SUSAN M. JACKSON,
Administratrix of the Estate of
Timothy J. Jackson
By Counsel



Bernard E. Layne, III, WWSB #7991

Greg R. Lord, WWSB #5422

LORD, LORD & LAYNE, PLLC

P.O. Box 3601

Charleston, WV 25336

(304) 345-3232

(304) 345-3256-facsimile

Counsel for Appellant/Plaintiff

Health and Insurance Information

I hereby release and agree to indemnify Mr. Jeffrey A. Haught, teacher, Winfield High School and its employees; the Putnam County Board of Education and its employees; and all adult chaperones from any and all claims or responsibilities of my child while rehearsing, performing, or traveling with the Winfield High School Show Choir, General Admission. In the event of a medical emergency, I authorize Mr. Jeff Haught or the other chaperones to give permission for medical treatment.

I also attest that the following information is correct and current to the date listed below.

Student name: Tim Jackson

Student SS# 291-88-3213

Allergies: Grass, dust, molds

Medical Problems: ADD

Medications: Perkote, Effexor, Allogra, Adderall

Special dietary needs: _____

Insurance Carrier CIGNA

Policy Number 00273790, 11500

Person responsible for payment LARRY J JACKSON

Parent signature: Larry J Jackson Date: 9-28-01

Address: PO Box 386 Scott Depot WV 25560

Emergency Numbers: 757-2897 Day
415-0162 Evening
586-2324 415-5222 In case you can't be reached



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

SUSAN M. JACKSON, Administratrix
of the Estate of Timothy J. Jackson,

Appellant/Plaintiff,

v.

Case No. 33038

THE PUTNAM COUNTY BOARD
OF EDUCATION,

Appellee/Defendant.

CERTIFICATE OF SERVICE

I, Bernard E. Layne, III, do hereby certify that **APPELLANT'S BRIEF** was served upon
counsel of record for Appellee by depositing such in the U.S. Mail, first class, this 10th day of April,
2006, as follows:

Stephen M. Fowler, Esquire
PULLIN, FOWLER & FLANAGAN
901 Quarrier Street
Charleston, WV 25301



Bernard E. Layne, III, Esquire
LORD, LORD & LAYNE, PLLC
P.O. Box 3601
Charleston, WV 25336
(304) 345-3232