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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0688**

Leon Bond, III, by and through Crystal Bond,
his mother and natural guardian,
Appellant,

vs.

Independent School District #191 and Joseph Meyer,
in his individual capacity as a teacher at Burnsville High School,
Respondents.

**Filed January 10, 2022
Affirmed in part, reversed in part, and remanded
Segal, Chief Judge
Concurring specially, Ross, Judge
Dissenting, Smith, John, Judge***

Dakota County District Court
File No. 19HA-CV-20-2565

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Considered and decided by Ross, Presiding Judge; Segal, Chief Judge; and Smith,
John, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

Appellant, a high-school student, challenges the district court's grant of summary judgment in this personal-injury case against respondent-school district and a district employee. Appellant argues that the district court erred by determining that respondents are entitled to common-law official immunity. Because we conclude that there is a genuine issue of material fact whether a prohibition on hyperextension of a body part was a discretionary policy of respondent-school district, one of the elements of official immunity, we reverse summary judgment with respect to that part of appellant's claim and remand, but affirm summary judgment with regard to the remaining elements of respondents' official-immunity defense.

FACTS

This case arises from an altercation that occurred in May 2018 at Burnsville High School. Appellant Leon Bond III was a student at the school, along with his two sisters. Respondent Joseph Meyer was a dean of students. Respondent Independent School District #191 (the school district) includes Burnsville High School. The applicable facts summarized below are not in dispute and much of the incident involving Bond was captured on the school's surveillance video.

On the morning of May 3, 2018, Meyer learned of a fight outside the main office between one of Bond's sisters and another student, Student P. The school's practice was to take students involved in a fight into the main office to calm them down. Meyer arrived outside the main office shortly after the fight ended and saw school staff go into the office

with Bond's sister. Meyer did not see Student P but assumed that staff had taken her into the office as well.

At that point, Meyer and a colleague tried to keep other students out of the main office by standing in the doorway. Bond's second sister, however, slipped past the two school officials and entered the office. Bond then also tried to enter the office. Meyer was familiar with Bond because of office referrals for misbehavior. Meyer believed that Bond wanted to enter the main office in order to fight Student P because Student P had been in a fight with his sister. Meyer knew that, when one of the Bond siblings had become involved in a fight in the past, all three Bond siblings had become involved.

Although Meyer told Bond to stay out of the office, Bond swore at Meyer and said that he was going in. Eventually, Bond pushed past Meyer and started to enter the office. Meyer grabbed Bond's arm and pulled it, thereby pulling Bond out of the doorway. Unknown to Meyer, Bond's second sister, who was already inside the office doorway, was simultaneously pulling Bond's other arm in the opposite direction, trying to pull Bond into the office. After Meyer moved Bond away from the office door, Bond said that his arm hurt. Bond went to the school nurse, who determined that Bond's shoulder had become dislocated. Bond had a history of previous shoulder dislocations.

The school district has a policy relating to the use of force in restraining students (policy 507) that is virtually the same as a provision in Minn. Stat. § 121A.582, subd. 1(b) (2020), which states that school employees "may use reasonable force when it is necessary under the circumstances to restrain a student or prevent bodily harm or death to another." The school district also provides annual training on de-escalation and the use of force to

physically restrain students known as the Mandt System. Meyer attended this training most recently in August 2017 and was certified in the Mandt System at the time of the altercation.

Bond, by and through his mother, commenced this action against respondents in August 2019. He brought claims for negligence and “intentional tort” against Meyer and claims of vicarious liability and negligent hiring against the school district. Respondents moved for summary judgment asserting that Meyer was immune from suit under the common-law doctrine of official immunity and that the school district had vicarious official immunity. The district court granted respondents’ summary-judgment motion, and Bond now appeals.

DECISION

The sole issue in this appeal is whether the district court erred in granting summary judgment to Meyer and the school district on the grounds that they were immune from suit under the doctrines of common-law official immunity and vicarious official immunity, respectively. On appeal from a grant of summary judgment, we must determine whether there are genuine issues of material fact and whether the district court erred in applying the law. *Anderson v. Anoka Hennepin Indep. Sch. Dist. 11*, 678 N.W.2d 651, 655 (Minn. 2004). In doing so, “we consider the evidence in the light most favorable to the nonmoving party.” *Schroeder v. St. Louis County*, 708 N.W.2d 497, 503 (Minn. 2006). “Immunity is a legal question reviewed de novo.” *Anderson*, 678 N.W.2d at 655.

“Official immunity is a common law doctrine that protects government officials from suit for discretionary actions taken by them in the course of their official duties.”

Sletten v. Ramsey County, 675 N.W.2d 291, 299 (Minn. 2004). The purpose of official immunity is “to protect public officials from the fear of personal liability, which might deter independent action and impair effective performance of their duties.” *Id.* “Consistent with this purpose, common law official immunity does not protect officials when they are charged with the execution of ministerial, rather than discretionary, functions, that is, where ‘independent action’ is neither required nor desired.” *Anderson*, 678 N.W.2d at 655.

There are two steps in analyzing official immunity claims. The first step is to identify the alleged tortious conduct—“the precise governmental conduct at issue.” *Mumm v. Mornson*, 708 N.W.2d 475, 490 (Minn. 2006). The second step is to determine whether that conduct involves a discretionary or ministerial function. *Id.* A public official is not immune when “the allegation is that a ministerial duty was either not performed or was performed negligently.” *Anderson*, 678 N.W.2d at 660. If the conduct is discretionary, the public official is immune from suit unless he is “guilty of a willful or malicious wrong.” *Kariniemi v. City of Rockford*, 882 N.W.2d 593, 600 (Minn. 2016). “Some degree of judgment or discretion will not necessarily confer discretionary immunity on an official; the crucial focus is upon the nature of the act.” *Elwood v. Rice County*, 423 N.W.2d 671, 677 (Minn. 1988).

The analysis in *Schroeder* provides a useful illustration of the differences between discretionary and ministerial decision-making. *Schroeder* involved a wrongful-death action against the county and a road grader operator for allegedly causing a fatal, head-on collision. 708 N.W.2d at 500. The plaintiffs alleged that the operator negligently

performed ministerial duties by operating the grader against the flow of traffic and by operating it without turning on the grader's lights at dusk on a cloudy night. *Id.* at 505.

The evidence demonstrated that the county had an unwritten policy allowing operators to grade against traffic. *Id.* at 504-05. A memorandum provided to employees stated, "If you are operating your equipment with routine care and the normally accepted safety protections are taken . . . , you may operate on any part of the roadway." *Id.* at 502. Reasoning that the policy left the decision whether to grade with or against traffic to the discretion of the operators, the court held that the operator was protected by official immunity from the claim that the operator was negligent in grading against the flow of traffic. *Id.* at 506.

But with regard to the claim of negligence for failing to turn on the grader's lights when it was dark, the court determined that "the nature, quality, and complexity of the road grader operator's decision related to the activation of vehicle lights is clearly ministerial" and that official immunity did not apply. *Id.* at 507-08.

With this framework in mind, we turn to an analysis of official immunity in the context of this case. Meyer and the school district maintain here, and the district court agreed, that whether and how to restrain a student is a discretionary function. Respondents, in support of their argument, cite the language in Minn. Stat. § 121A.582, subd. 1(b), and policy 507, which provide that school employees may use reasonable force when it is "necessary under the circumstances to restrain a student or prevent bodily harm or death to

another.”¹ Meyer and the school district argue that because the statute and policy use words such as “may,” “reasonable,” and “when necessary,” decisions related to the use of force to restrain a student involve a discretionary function, requiring employees to exercise their own judgment and decision-making.

Meyer and the school district stress that this was an unpredictable, evolving situation where Meyer’s focus was on preventing harm to Student P and others. They point to cases affirming the defense of official immunity involving law enforcement when faced with emergency situations. *See, e.g., Pletan v. Gaines*, 494 N.W.2d 38, 41 (Minn. 1992) (determining that police officer was entitled to official immunity from suit for injuries caused during a high-speed car chase because “[t]he decision to engage in a car chase and to continue the chase involves the weighing of many factors”); *Elwood*, 423 N.W.2d at 678 (concluding that official immunity protected police officers who entered home and restrained two people when responding to a call that a man had a gun and may be suicidal because “[t]he law . . . calls for police in emergency situations to exercise significant independent judgment based on the facts before them”). They argue that Meyer was similarly required to use discretion in responding to the situation presented in this case and that respondents are thus entitled to immunity.

¹ Meyer and the school district also point to a similar provision in the student handbook:

As allowed by Minnesota state law, there are some instances when reasonable force may be used This includes when a parent/guardian, teacher or other caretaker needs to restrain or correct the student, to keep the student from injuring himself/herself or others, or to prevent the student from damaging property.

Bond counters that the district court focused on the wrong issue—the decision to use force. Bond states that he does not dispute that Meyer had discretion whether to use force to restrain Bond. He argues that, once Meyer decided to use force, however, Meyer had to follow his training with regard to which method of restraint he could use on the student. Bond asserts that Meyer used a technique—hyperextension of a body part—that is specifically prohibited by the school district’s de-escalation and physical-restraint training, the Mandt System training.

While the training itself was not recorded, Bond submitted into the record the slides used during the training. Bond points to one in a series of slides in the training, which states:

Prohibited Practices

Pain compliance, trigger points, pressure points

Hyperextension of any part of the body

A second slide in the series with the same “Prohibited Practices” title states in the body of the slide: “Potential risk of hyperextension of any body part beyond normal limits.” Bond also points to two other slides that show restraint techniques, including standing in front of a student to block them and holding the student in a bear hug. Bond argues that the training should be treated as a policy of the school district that restricted Meyer’s discretion about the type of force to be used in this situation. Bond claims that Meyer’s actions thereby constituted a ministerial function not protected by official immunity. Bond further maintains that the training both prohibited Meyer from pulling Bond’s arm to the point of

hyperextension and restricted the permissible forms of restraint to standing in the doorway to block entry into the office and the bear-hug restraint.

Meyer and the school district contend that the training provided mere guidance and left Meyer with discretion to decide which type of restraint was appropriate in any given situation depending on the nature of the emergency and the specific facts. In support of their argument, they quote the deposition testimony of the school principal that the “purpose of the training” was to teach school personnel “that they should employ the training in their interactions,” and that, while decisions on use of force must be “based on every situation,” it is all “within the context of their training.”

Duties typically, whether discretionary or ministerial, derive from written policy or other official standard, but a practice or protocol that governs employee conduct may also impose a duty for purposes of determining the existence of official immunity. *See, e.g., Schroeder*, 708 N.W.2d at 504-05 (concluding that an unwritten policy or practice granted road grader operator the discretion to grade against the flow of traffic); *Anderson*, 678 N.W.2d at 657-59 (determining that a teacher following an unwritten protocol engaged in a ministerial duty when the protocol was discussed in safety meetings throughout the school year). Moreover, “governmental entities have the authority to eliminate by policy the discretion of their employees in emergency situations.” *Vassallo ex rel. Brown v. Majeski*, 842 N.W.2d 456, 462-63 (Minn. 2014) (quotation omitted). “The existence of a government policy that sets a sufficiently narrow standard of conduct will make a public employee’s conduct ministerial if he is bound to follow the policy.” *Id.* at 463 (quotation omitted).

Thus, for example, in *Mumm*, the Minnesota Supreme Court held that a police department policy related to car chases restricted a police officer's discretion such that the decision whether to engage in a car chase under circumstances proscribed by the policy was ministerial and not discretionary. 708 N.W.2d at 491. The police department policy stated that "[o]fficers shall not initiate a pursuit or shall discontinue a pursuit in progress" when "the officer can establish the identification of the offender so that an apprehension can be made at another time," unless the crime was one of the violent felonies listed in the policy. *Id.* The court noted that the department policy "impose[d] a narrow and definite duty on an officer facing a particular set of circumstances, rendering that officer's duty ministerial." *Id.* at 492. The court recognized that, although "police pursuits by definition are emergency situations, . . . governmental entities have the authority to eliminate by policy the discretion of their employees" and that the proscription in the police department's policies turned what might have been a discretionary decision into a ministerial act. *Id.* at 493.

Similarly here, the prohibition in the Mandt System training against hyperextending a body part might serve to restrict Meyer's discretion in deciding how to restrain Bond, if the prohibition constitutes a policy of the school district. In granting summary judgment to Meyer and the school district, the district court reasoned that "nothing in the record suggests that the Mandt training program is meant to supplement the policy laid out in the handbook." We disagree. We conclude that there is sufficient evidence in the record to create a genuine issue of material fact on whether the statements reflected in the "hyperextension" slides rose to the level of a school policy.

The evidence supporting this conclusion includes the fact that the language in the two slides is clear and directive, carrying the title “Prohibited Practices” and identifying “Hyperextension of any part of the body” and “Potential risk of hyperextension of any body part beyond normal limits.” The two slides are also part of a series of “Prohibited Practices” slides, that include such actions as: “Any type of choking, hand chokes, arm chokes”; “Any technique that obstructs or restricts circulation of blood, and/or airway”; and “Pressure or weight on chest, lungs, sternum, diaphragm, back, or upper abdomen.”² And the “Prohibited Practices” slides follow slides that make clear that the “prohibited practices” can result not only in the risk of emotional harm, but serious physical injury or death. Thus it would seem logical that these are practices that the school district would want to restrict.

The record also shows that the school district approved the Mandt System training, district personnel conducted the training, and the training was provided every year. And the school principal acknowledged in his deposition that school employees were taught that they should employ the training in their interactions.

The above evidence could support a finding, as Bond argues, that the training—at least with respect to the hyperextension slides—rose to the level of policy and restricted school employee discretion in choosing methods of restraining students. As a result, there

² We note that one of the slides in the “Prohibited Practices” series appears to require the use of discretionary decision-making: “Any lifting or carrying of a person who is actively combative unless an extreme hazard or emergency exists.” But the rest of the “Prohibited Practices” slides do not leave room for discretion and appear to be ministerial directives, much like the policy found to be ministerial in *Mumm*.

is a genuine issue of material fact on whether the hyperextension prohibition constituted a policy of the school district that restricted employee discretion on the use of force. *See, e.g., Staub as Tr. of Weeks v. Myrtle Lake Resort, LLC*, 964 N.W.2d 613, 620 (Minn. 2021) (stressing that, “on a motion for summary judgment, the facts *and the reasonable inferences to be drawn from those facts* must be resolved in . . . favor [of the nonmoving party]”). Because we conclude that Meyer is not entitled to summary judgment on the issue of official immunity on the hyperextension claim, the school district is also not entitled to summary judgment on the issue of vicarious official immunity based on that claim.

We are not, however, persuaded that a genuine issue of material fact exists with respect to Bond’s claim that the training restricted the available methods of restraint to only standing in front of the office door to block Bond or to deploying a bear hug. The evidence presented by Bond related to these allegations is lacking. Nothing that Bond submitted on this part of his claim uses the same type of directive language as in the hyperextension slides, and we affirm the district court’s grant of summary judgment on this portion of Bond’s claim against Meyer and the school district.

We also discern no genuine issue of material fact on whether Meyer is “guilty of a willful or malicious wrong” and affirm the district court’s summary judgment on that portion of the official-immunity defense. *See, e.g., Kariniemi*, 882 N.W.2d at 600.

Finally, we express no opinion on the merits of whether Meyer and the school district are immune from suit under the doctrine of official immunity; we conclude only that there is a genuine issue of material fact that prevents summary judgment on official

immunity. We also note that the ultimate question of whether Meyer's actions were negligent or constitute an "intentional tort" is not before us, and we likewise express no opinion on that question.

Affirmed in part, reversed in part, and remanded.

ROSS, Judge (concurring specially)

I agree with the opinion of the court that a genuine issue of fact prevents summary judgment favoring Joseph Meyer based on official immunity. This is because the evidence might allow a fact-finder to conclude three things: that the school district's trainer was serving as an agent with authority to limit the use-of-force discretion the school district affords teachers; that the trainer's repeated use of the phrase "prohibited practices" imposed such a limit; and that Meyer's behavior in attempting to curtail Leon Bond's violence included one of those "prohibited practices." I do not suggest that any of those findings is certain on these facts, but the evidence is at least in dispute. I disagree with the dissenting opinion, which appears to rest on the improper conflating of the distinct questions of legal immunity (which is our only question) and of legal liability (which is not yet before the court). Contrary to the dissent's implied understanding, Meyer might both fail on the immunity question and succeed on the liability question; this is the result if his conduct was objectively reasonable even if it involved a technique that the school district actually prohibits him from using.

But I write separately to express my concern that the alleged "prohibited practices," taken literally, arguably represent such an extensive range of no-noes that the school district's purported grant of discretion to use force might serve only as a litigation-inspiring (or litigation-complicating) illusion. It is impossible for me to imagine how any teacher could effectively stop any noncooperative, violent student's harmful conduct in the throes of a fracas while avoiding everything on the "prohibited practices" list. The training lists the following "prohibited" behavior: any pain compliance technique; any use of

pressure-point techniques; hyperextension of any body part; potential risk of hypertension of any body part; any pressure on the chest, lungs, sternum, diaphragm, back, or upper abdomen; any technique that restricts circulation of blood or air; any straddling or sitting on any body part; any form of choking; any technique that involves pushing against a mouth, or nose, or eye, or any other part of the face; any covering of the face; any covering of the body; any technique substantially risking any injury; any technique that forces the offending person to the floor, or into a chair, or against a wall; any holding the offending person on the floor; any technique that *puts* the person off balance; any technique that *keeps* the person off balance; any shoving; any tripping; any pushing against the back of the knees; any punching, hitting, biting, or hair pulling; any poking; any pinching; and, except in a case of “an extreme hazard or emergency,” no lifting or carrying the person. Professing to give teachers the discretion to protect themselves and others while possibly withholding from them the discretion to engage in any conduct that could realistically serve a protective purpose only complicates questions of immunity and indemnification.

SMITH, JOHN, Judge (dissenting)

I respectfully dissent because I conclude that the district court correctly reasoned that the acts of the dean of students, respondent Joseph Meyer, in restraining the appellant, Leon Bond III, were discretionary and not a “willful or malicious wrong” and therefore is entitled to official immunity.

“Official immunity is a common law doctrine that protects government officials from suit for discretionary actions taken by them in the course of their official duties.” *Sletten v. Ramsey County*, 675 N.W.2d 291, 299 (Minn. 2004). There is no question that Meyer was acting in his official duties as a school employee in trying to restrain Bond from attacking another student.

Minn. Stat. § 121A.582, subd. 1(b) (2020), provides: “A school employee, school bus driver, or other agent of a district, in exercising the person’s lawful authority, *may use reasonable force* when it is necessary under the circumstances to restrain a student or prevent bodily harm or death to another.” (Emphasis added.) This is essentially embedded in the district’s policy 507 and the district’s 2017-18 student handbook. Here there is no question that Meyer was restraining Bond from doing bodily harm to another student at the school.

Therefore, the sole question is whether the actions were discretionary. To determine whether conduct is discretionary or ministerial, courts “focus on the nature of the act.” *Vassallo ex rel. Brown v. Majeski*, 842 N.W.2d 456, 462 (Minn. 2014) (quotation omitted). “A discretionary duty involves individual professional judgment that necessarily reflects the professional goal and factors of a situation.” *Id.* (quotation omitted). “By contrast, a

ministerial duty is one that is absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts.” *Id.* (quotations omitted).

While Bond concedes that Meyer had discretion to use force to restrain him, he argues that Meyer was limited to only use methods of restraint that Meyer had learned during the annual training with the school district and that the training limited his discretion. Bond claims essentially that hyperextension, beyond normal limits, is always prohibited by Meyer’s training and that any such action makes the action ministerial and not discretionary.

However, in this case, Meyer’s act of pulling Bond’s arm to prevent him from attacking another student was a split-second decision. Generally, officials’ actions taken in response to an emergency are discretionary. *Kari v. City of Maplewood*, 582 N.W.2d 921, 923 (Minn. 1998). In emergency situations, for example, the police must “exercise significant independent judgment based on the facts before them” and therefore “are afforded a wide degree of discretion precisely because a more stringent standard could inhibit action.” *Elwood v. Rice County*, 423 N.W.2d 671, 678 (Minn. 1988). “[A]n official who is responding to an emergency must weigh [a] myriad [of] factors in making virtually instantaneous decisions about how to respond.” *Kari*, 582 N.W.2d at 923. Although emergencies typically involve the police, the same principles should apply to situations involving school employees and students.

Conduct is more likely to be discretionary when it involves an emergency such as in this case. Police officers engaged in discretionary conduct when they temporarily

restrained occupants of a home while responding to reports of a possibly armed man who had threatened another person. *Elwood*, 423 N.W.2d at 678-79. In situations where there is no emergency, such as a teacher's failure to spot a student when teaching gymnastics, the failure was deemed to be ministerial. *Larson v. Indep. Sch. Dist. No. 314*, 289 N.W.2d 112, 120 (Minn. 1979). Also, a bus driver's harassing comments to a disabled passenger, refusal to allow her to disembark the bus, and refusal to secure her wheelchair, were ministerial acts. *Gleason v. Metro. Council Transit Operations*, 582 N.W.2d 216, 219-21 (Minn. 1998). In that case, "the only remotely discretionary act called for was the driver's attempt to secure the wheelchair appropriately," and "[n]othing about that decision requires the kind of split-second decision-making" that was present in the cases involving police emergencies. *Id.* at 220. Everything about Meyer's actions required the split-second decision-making that is typically discretionary.

I agree that not all conduct during emergencies is discretionary. *Mumm v. Mornson*, 708 N.W.2d 475, 492 (Minn. 2006). Government policy can mandate certain conduct by public officials that impact whether a duty is ministerial or discretionary. *Id.* at 491. But here, the training on restraining students was led by trainers who used PowerPoint slides providing guidance primarily through bullet-point lists and photographs, and then demonstrated and modeled the guidance before the class. The slides discuss numerous situations that school employees may encounter and list the tactics that they should and should not use to address those situations. The training does not contemplate every situation that could arise and does not in my opinion alter the statute and school policy, which allow the use of reasonable force when necessary to prevent harm to another student.

If a student had a gun or a knife and was about to use the weapon against another student, would the Mandt training prohibit the use of any reasonable force necessary, including the hyperextension of a limb to prevent the harm? The Mandt training and common sense call for the exercise of independent judgment in situations such as Meyer faced in this case. Absent willful or malicious conduct as rejected in the majority opinion, I would affirm the district court in granting official immunity to Meyer and vicarious immunity to the school district.