

COMMONWEALTH COURT OF PENNSYLVANIA

L.F.V., a minor, by her legal guardians Kimberly Varano and Joseph Varano, and Kimberly Varano and Joseph Varano in their own right  
v. South Philadelphia High School and Philadelphia School District

No. 218 C.D. 2023 (Commonwealth Court of Pennsylvania 2025) · No. 218 C.D. 2023 · Decided June 9, 2025

SUMMARY

The Pennsylvania Commonwealth Court affirmed an order overruling the Philadelphia School District’s preliminary objections in a negligence action arising from the alleged sexual assault of a minor student by two other students. The court held that the Political Subdivision Tort Claims Act does not categorically immunize a local agency from liability for injuries caused by third parties where the agency is alleged to have been jointly negligent. The court further concluded that the complaint sufficiently alleged facts falling within the Act’s sexual-abuse exception to governmental immunity.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                            |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Commonwealth Court of Pennsylvania                                                                                                                                                                                                                                                                                         |
| WRITING FOR THE COURT | Lori A. Dumas; Renée Cohn Jubelirer, President Judge; Patricia A. McCullough, Judge; Anne E. Covey, Judge; Michael H. Wojcik, Judge; Lori A. Dumas, Judge; Stacy Wallace, Judge; Matthew S. Wolf, Judge                                                                                                                    |
| JURISDICTION          | Commonwealth Court of Pennsylvania                                                                                                                                                                                                                                                                                         |
| DECIDED               | June 9, 2025                                                                                                                                                                                                                                                                                                               |
| DOCKET                | 218 C.D. 2023                                                                                                                                                                                                                                                                                                              |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Interlocutory appeal by permission from an order overruling the Philadelphia School District's preliminary objections asserting governmental immunity.                                                                                                                                                                     |
| STANDARD OF REVIEW    | Statutory interpretation is reviewed de novo. On review of an order resolving preliminary objections, the court accepts as true all well-pleaded, material, and relevant facts and reasonable inferences, but disregards legal conclusions, unwarranted inferences, argumentative allegations, and expressions of opinion. |
| PRECEDENTIAL VALUE    | published and precedential                                                                                                                                                                                                                                                                                                 |

## PARTIES

South Philadelphia High School, Philadelphia School District v. L.F.V., a minor, by her legal guardians Kimberly Varano and Joseph Varano, Kimberly Varano and Joseph Varano in their own right

## TOPICS

municipal liability

negligence

statutory interpretation

appellate procedure

standard of review

## PRACTICE AREAS

torts

municipal law

governmental immunity

statutory interpretation

appellate procedure

## QUESTIONS PRESENTED

1. Whether the Philadelphia School District is immune under the Political Subdivision Tort Claims Act from negligence claims based on injuries caused by the criminal acts of third-party minor students.
2. Whether the sexual-abuse exception to governmental immunity, 42 Pa.C.S. § 8542(b)(9), requires that a local-agency employee commit the sexual abuse or instead permits liability where the local agency's negligent acts or omissions enabled the abuse and caused the plaintiff's injuries.
3. Whether the alleged facts sufficiently pleaded potential joint negligence falling within an exception to governmental immunity to survive preliminary objections.

## HOLDINGS

1. A local agency is not absolutely immune merely because a third party caused the injury. Under *Crowell and Jones*, the 'any other person' language in 42 Pa.C.S. § 8541 bars vicarious or secondary liability but does not preclude potential joint liability for the agency's own negligence when the alleged facts fall squarely within an enumerated exception.
2. The sexual-abuse exception in 42 Pa.C.S. § 8542(b)(9) does not require that a local-agency employee be the person who committed the sexual abuse. A plaintiff may proceed where the alleged sexual-abuse conduct involved a minor victim and the plaintiff alleges that actions or omissions of the local agency constituted negligence that caused the injuries.
3. The complaint alleged sufficient specific facts to support a potential claim of the District's joint negligence within the sexual-abuse exception, including allegations that the District failed to monitor the students and relevant school areas and failed to supervise the employees responsible for the class.

## KEY QUOTATIONS

*“A local agency thus does not have immunity if the specific, alleged facts “squarely” fall within one of the enumerated exceptions<sup>17</sup> and advance a claim of joint—not vicarious or secondary—liability.”* (11)

*“As the lead sponsor, he asserted that the intent of the legislation was to hold municipalities—like the District—accountable for negligently enabling sexual abuse.”* (23)

## FACTUAL BACKGROUND

In October 2021, L.F.V. and two other minor students attended a Philadelphia School District school, and all three were enrolled in special education and required supervision by District employees. During physical education class, the two other students pushed and pulled L.F.V. behind gym bleachers and into a bathroom, where they sexually assaulted her; the supervising employees allegedly did not witness the assault. The Varanos alleged that the District negligently failed to monitor the students and relevant areas and failed to supervise the employees, causing L.F.V. and her parents emotional, educational, and economic injuries.

## PROCEDURAL HISTORY

The Varanos sued the Philadelphia School District on behalf of L.F.V. and in their own rights, alleging negligence and negligent infliction of emotional distress arising from a sexual assault of L.F.V. by two other minor students at school. The Court of Common Pleas of Philadelphia County overruled the District's preliminary objections. After the trial court denied certification under 42 Pa.C.S. § 702(b), the Commonwealth Court granted permission to appeal, treated the petition as a notice of appeal under Pa.R.A.P. 1316, affirmed the trial court's order, dismissed the District's request for judicial notice as moot, and remanded for further proceedings.

## DISPOSITION

affirmed

## REMAND INSTRUCTIONS

The order of the Court of Common Pleas of Philadelphia County overruling the District's preliminary objections was affirmed. The case was remanded for further proceedings, and the District's request to take judicial notice of a related appeal was dismissed as moot.

## CASES CITED

- West ex rel. S.W. v. Pittsburgh Public Schools, 327 A.3d 340, 344 (Pa. Cmwlth.) (en banc)
- MFW Wine Co. v. Pennsylvania Liquor Control Board, 318 A.3d 100, 113 n.22, 122, 131 (Pa. 2024)
- Zauflik v. Pennsbury School District, 104 A.3d 1096, 1100 (Pa. 2014)
- N.W.M. ex rel. J.M. v. Langenbach, 316 A.3d 7, 13 n.21 (Pa. 2024)
- Brooks v. Ewing Cole, Inc., 259 A.3d 359 (Pa. 2021)
- City of Philadelphia v. J.S., 316 A.3d 619 (Pa. 2024) (per curiam order)
- Chevalier v. City of Philadelphia, 532 A.2d 411 (Pa. 1987)
- Mascaro v. Youth Study Center, 523 A.2d 1118 (Pa. 1987)
- Crowell v. City of Philadelphia, 613 A.2d 1178, 1181, 1183-84 (Pa. 1992)
- Jones v. Chieffo, 700 A.2d 417, 419-20 (Pa. 1997)
- Powell v. Drumheller, 653 A.2d 619, 622-24 (Pa. 1995)
- Maloney v. City of Philadelphia, 535 A.2d 209 (Pa. Cmwlth. 1987)
- Steiner v. Markel, 968 A.2d 1253, 1258 n.11 (Pa. 2009)
- Commonwealth v. McCoy, 962 A.2d 1160, 1163, 1166-69 (Pa. 2009)

- Herold v. University of Pittsburgh, 329 A.3d 1159, 1177-80 (Pa. 2025)
- Gidor v. Mangus, 322 A.3d 1290 (Pa. 2024) (per curiam order)
- Malt Beverages Distributors Association v. Pennsylvania Liquor Control Board, 974 A.2d 1144, 1153 (Pa. 2009)
- Steuart v. McChesney, 444 A.2d 659, 663 (Pa. 1982)
- King v. Burwell, 576 U.S. 473, 486 (2015)
- In re Gun Range, LLC, 311 A.3d 1242, 1248 n.8 (Pa. Cmwlth. 2024), cert. denied, 145 S. Ct. 1174 (2025)
- L.S. Hanover Area School District, No. 3:22-cv-234, 2024 WL 2393038, at \*13 (M.D. Pa. May 23, 2024)
- Burns v. Blair County, 112 A.3d 690, 700 (Pa. Cmwlth. 2015)
- City of Philadelphia v. Buck, 587 A.2d 875, 878-89 (Pa. Cmwlth. 1991)
- Lehigh Valley Cooperative Farmers v. Bureau of Employment Security, Department of Labor and Industry, 447 A.2d 948, 950 (Pa. 1982)
- Weaver v. Harpster, 975 A.2d 555, 563 (Pa. 2009)
- Zauflik v. Pennsbury School District, 104 A.3d 1096, 1120-21 (Pa. 2014)

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