

I. FACTUAL BACKGROUND

L.C. and Wade are students at Park Lane. Plaintiffs allege that starting in September 2000, Wade harassed, stalked, assaulted, and/or sexually assaulted L.C. at Park Lane. These incidents culminated on March 9, 2001, when Wade assaulted L.C. on the school playground during lunch recess and caused glass to lodge in her foot. L.C.'s injury required medical care from the school nurse. On that day, Wetzel was L.C.'s and Wade's substitute teacher. During the playground assault and later that day, Wade threatened to assault L.C. after school. Terrified that Wade would attack her, L.C. informed Wetzel of the threats and begged him to allow her to remain within the confines of the school, under adult supervision, until her mother came to pick her up. Wetzel disregarded her request and ordered L.C. off school premises.¹

Within minutes of leaving Park Lane, Wade physically and sexually assaulted L.C. on a nearby sidewalk. Plaintiffs allege that Wade's assault caused L.C. severe and permanent bodily injuries, including concussion and brain damage.

Plaintiffs contend that the School District Defendants knew of Wade's history of violent behavior and his history of harassing L.C., including the specific threats he made against her on March 9, 2001. Plaintiffs also allege that the School District Defendants failed to implement administrative and disciplinary policies to abate the rampant violence within the School District; failed to punish and remove known violent students, including Wade; repeatedly trivialized the nature and extent of continuing acts of violence, thereby fostering a level of violence that created a

¹ Plaintiffs do not allege the time of this incident aside from claiming that the School District Defendants deprived L.C. of the protection of school staff during school hours. Since Plaintiffs also allege that L.C. was assaulted by Wade earlier in the day, during the lunch recess, the Court can infer only that L.C.'s conversation with Wetzel happened at some time after lunch recess. See Am. Compl. ¶¶ 15, 18, 35.

dangerous environment; and failed to train their employees adequately to maintain order in their schools.

Plaintiffs also allege that Wetzel violated L.C.'s Fourteenth Amendment rights by ordering L.C. to leave the school premises and depriving her of the protection of school premises and staff during school hours, thereby putting L.C. in a foreseeable position of danger that would not have otherwise existed.

II. DISCUSSION

The School District Defendants seek dismissal of the following claims made in the Plaintiffs' Amended Complaint: (1) the claim that L.C.'s Fourth Amendment rights were violated; (2) section 1983 claims against Wetzel and O'Toole based on violations of L.C.'s Fourteenth Amendment due process rights; (3) section 1983 claims against the School District and O'Toole based on failure to train school employees; (4) willful misconduct and tort claims against Wetzel and O'Toole; and (5) claims for monetary damages under the Constitution of the Commonwealth of Pennsylvania.

When considering a Rule 12(b)(6) motion to dismiss, the Court must accept

as true all of the allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the plaintiff. A Rule 12(b)(6) motion should be granted if it appears to a certainty that no relief could be granted under any set of facts which could be proved. But a court need not credit a complaint's "bald assertions" or "legal conclusions" when deciding a motion to dismiss.²

With this standard in mind, the Court turns to an analysis of each claim addressed in the Motion to

² Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997) ("[W]hile the pleading standard is a liberal one, bald assertions and conclusions of law will not suffice.") (internal quotations omitted).

Dismiss.

A. Fourth Amendment Claim

In Count I of the Amended Complaint, Plaintiffs vaguely allude to a claim based on violations of the Fourth Amendment of the U.S. Constitution.³ However, as the School District Defendants correctly point out, Plaintiffs do not plead any facts or allegations supporting such a claim. Therefore, the Court grants the Motion to Dismiss as to any Fourth Amendment claim.

B. Section 1983 Claims against Wetzel and O’Toole

In Counts I and II of the Amended Complaint, Plaintiffs assert claims under 42 U.S.C. § 1983 (2000) against the School District Defendants. Wetzel and O’Toole argue they are entitled to qualified immunity from these claims.⁴ When a defendant asserts the affirmative defense of qualified immunity, the Court must make a threshold determination as to whether the defendant is entitled to that defense.⁵ Government officials performing discretionary functions are generally entitled to immunity “from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”⁶ The

³ See Am. Compl. ¶¶ 10, 33. The Fourth Amendment prohibits unreasonable searches and seizures. U.S. Const. amend. IV.

⁴ Since section 1983 does not, by its own terms, create substantive rights but provides only remedies for deprivations of rights established elsewhere in the Constitution or federal laws, a plaintiff must demonstrate a violation of a right secured by the Constitution or the laws of the United States and that the alleged deprivation was committed by a person acting under color of state law. See Morse, 132 F.3d at 907. Count I of the Amended Complaint alleges that Wetzel violated L.C.’s substantive due process rights by ordering her to leave the school premises, creating a danger and an opportunity for harm that would not have otherwise existed.

⁵ D.R. v. Middle Bucks Area Vocational Tech. Sch., 972 F.2d 1364, 1367-68 (3d Cir. 1992).

⁶ Id.

Court therefore must decide whether Plaintiffs alleged the deprivation of a statutory or constitutional right and, if so, determine whether that right was clearly established at the time Wetzel and O'Toole allegedly violated it.⁷

Here, L.C. claims a violation of her liberty interest in her personal bodily security. This is a constitutionally protected right, guaranteed by the Fourteenth Amendment.⁸ To demonstrate a violation of L.C.'s constitutional right, the Amended Complaint relies on different theories of liability under section 1983. Defendants argue that no liability attaches under Plaintiffs' theories in the *student-on-student violence* context of this case.

“Although the general rule is that the state has no affirmative obligation to protect its citizens from the violent acts of private individuals, courts have recognized two exceptions to this rule.”⁹ The first is the “special relationship” theory of liability, and the second is the “state-created danger” theory of liability.¹⁰ Defendants argue that Plaintiffs fail to allege a violation of a constitutional right under either theory.

⁷ See Wilson v. Layne, 526 U.S. 603, 786 (1999).

⁸ See Ingraham v. Wright, 430 U.S. 651, 673-74 (1977).

⁹ Morse, 132 F.3d at 907.

¹⁰ Id.

1. Special Relationship

“[W]hen the state enters into a special relationship with a particular citizen,” it may be held liable under section 1983 for failing to protect that citizen from the actions of private third parties.¹¹ Plaintiffs allege that the student-school relationship is such a “special relationship” subjecting Defendants to liability. Third Circuit precedent, however, is squarely to the contrary. Specifically, the Third Circuit has held that Pennsylvania’s compulsory school attendance laws, even “paired with the *in loco parentis* authority of the school,” do not create the type of custodial restraint necessary for a “special relationship”—and the resulting affirmative duty to protect.¹² Accordingly, this theory of liability fails as a matter of law.

2. State-Created Danger

Plaintiffs also premise their section 1983 claim on the “state-created danger” theory of liability. In Kneipp v. Tedder, the Third Circuit adopted the state-created danger theory as a basis for section 1983 liability, establishing a four-part test that holds a state actor liable to a plaintiff for injuries inflicted by a private actor if:

- (1) the harm ultimately caused was foreseeable and fairly direct;
- (2) the state actor acted in willful disregard for the safety of the plaintiff;
- (3) there existed some relationship between the state and the plaintiff; and
- (4) the state actors used their authority to create an opportunity that otherwise would

¹¹ D.R., 972 F.2d at 1369.

¹² Id. at 1369-70 (discussing DeShaney v. Winnebago Cty. Dept. of Social Serv., 489 U.S. 189 (1989), and emphasizing that the Court discussed the “special relationship” by “focusing primarily on physical restraint” of individual’s personal liberty).

not have existed for harm to occur.¹³

Defendants argue that the state-created danger theory of liability in the context of student-on-student violence was not clearly established at the time of the alleged assault on L.C. in March 2001.¹⁴ In support of this argument, Defendants rely on Gremo v. Karlin, a district court case in which the Honorable Anita B. Brody held that school supervisors would be constitutionally liable for failure to prevent a student-on-student attack within the school because they had notice of previous attacks by the same violent students on other innocents, and covered up a two-year escalation of school violence, creating an atmosphere condoning such violence and opportunities for harm.¹⁵ The Gremo court then granted the individual defendants' motions to dismiss on the basis of qualified immunity, finding that the school supervisors' liability for failure to address school violence that resulted in a student-on-student attack was not clearly established at the time of the alleged incident.¹⁶

Defendants contend that like the individual defendants in Gremo, they are entitled to qualified immunity because L.C. was attacked by another student and no School District employee

¹³ Kneipp v. Tedder, 95 F.3d 1199, 1208 (3d Cir. 1996). The test's third prong, requiring "some relationship," is different from the "special relationship" exception discussed above, since it "contemplates some contact such that the plaintiff was a foreseeable victim of a defendant's acts in a tort sense," whereas the "special relationship . . . has a custodial element to it." Id. at 1209 n.22.

¹⁴ The state of the law must give defendants "fair warning that their treatment of [the plaintiff] was unconstitutional." Anderson v. Creighton, 483 U.S. 635, 640 (1987). A constitutional right is established if it is sufficiently clear and well-defined so that "a reasonable official would understand that what he is doing violates that right." Carswell v. Borough of Homestead, 381 F.3d 235, 242 (3d Cir. 2002) (citations omitted) (even if a reasonable state actor would so understand, the defendant may still be shielded from liability if he made a reasonable mistake as to what the law requires).

¹⁵ Gremo v. Karlin, 363 F. Supp. 2d 771, 790 (E.D. Pa. 2005) (the plaintiffs satisfied Kneipp's four-part test for the state-created danger exception).

¹⁶ Id. at 791 (analogizing to the facts in D.R., where high school students were allegedly molested by other students in the school's darkroom and bathroom, and finding significant that in both cases the school defendants were not the attackers and did not witness the attacks).

is alleged to have witnessed the attack. Plaintiffs respond, without any analysis of their underlying standards and applicable case law:

[a] supervisor's liability for failing to train subordinates or to implement a policy to prevent a sexual assault on a child such as the minor plaintiff was clearly established as of March 2001 when the instant sexual assault and battery occurred. Applying the Supreme Court's reasoning in the City of Canton, the Third Circuit had clearly established that a supervisor may be individually liable for failing to adopt or implement a policy or training of subordinates to prevent deprivations of constitutional rights.¹⁷

The Court would benefit if Plaintiffs cite to the authority on which they rely, instead of leaving the Court to make an educated guess, and present a fully developed argument that addresses relevant issues rather than making unsubstantiated assertions that have no bearing on the issue before the Court.

Nonetheless, the School District Defendants' qualified immunity argument fails.¹⁸

In addition to arguing that the harm to L.C. resulted from Defendants' alleged condonation of student-on-student violence, Plaintiffs claim that the harm was a direct result of Wetzel's order for L.C. to leave the school premises, despite his knowledge that a violent student who had previously attacked L.C. was waiting for her outside of the school. Defendants do not dispute that a school official's constitutional liability for issuing an order that placed a student in a more vulnerable position, closer to the ultimate harm, was clearly established in March 2001.¹⁹

¹⁷ Pls.' Opp. at 20-21.

¹⁸ The Court reaches this conclusion after an independent analysis of the relevant case law, accepting as true all of the allegations in the Amended Complaint and all reasonable inferences that can be drawn therefrom, in the light most favorable to Plaintiffs.

¹⁹ This claim renders the case more akin to Kneipp and distinguishable from D.R. (or Gremo). Compare Kneipp, 95 F.3d at 1209 (conduct of the police put the plaintiff in a worse position than had the police not intervened; "[a]s a result of the affirmative acts of the police officers, the danger or risk of injury to Samantha was greatly increased"), with D.R., 972 F.2d at 1375 (harm to the students "came about solely through the acts of private persons without the level of intermingling of state conduct with private violence that support[s] section 1983)

Since the Motion to Dismiss does not address this claim, the issue of whether Wetzel and O'Toole are entitled to qualified immunity on Plaintiffs' state-created danger theory of liability remains to be decided at a later stage. Whether Defendants' actions were reasonable under the circumstances, or whether Defendants made a reasonable mistake concerning what the law requires, are not questions presently raised by the parties, and, in any event, these issues are more appropriately decided at the summary judgment stage.²⁰

The Court also notes that, at the present stage of proceedings, Plaintiffs' claim of liability satisfies the Kneipp four-part state-created danger test: (1) "the harm ultimately caused was foreseeable and fairly direct" because L.C. told Wetzel that she was assaulted by Wade prior in the day and that Wade was waiting for her outside of the school; (2) "the state actor acted in willful disregard for the safety of the plaintiff" because Wetzel ordered L.C. off the school premises despite his knowledge of Wade's violent propensities and previous assaults on other students, including L.C.; (3) "there existed some relationship between the state" and L.C. insofar as L.C. was a foreseeable victim of Wetzel's acts in a tort sense; and (4) Wetzel, in ordering L.C. off school premises, used his "authority to create an opportunity that otherwise would not have existed for harm

liability"). See also Morse, 132 F.3d at 910 ("the defendants here were unaware that any mentally deranged person, let alone [the mentally unstable murderer], was waiting outside the building for an opportunity to cause harm"). The dispositive factor is "whether the state has in some way placed the plaintiff in a dangerous position that was foreseeable." Id. at 915.

²⁰ Defendants correctly point out that Plaintiffs' Opposition, while asserting that the qualified immunity defense is premature at this time, fails to describe any factual disputes that would prevent resolution of this question at this time. See Curley v. Clem, 298 F.3d 271, 278 (3d Cir. 2002) (disputed historical facts relevant to the qualified immunity analysis "often need to be resolved before determining whether defendant's conduct violated a clearly established constitutional right."). While this omission is irrelevant in light of the basis for the Court's holding today, in the future, and especially at the summary judgment stage, the Court expects Plaintiffs' counsel to present a thorough analysis of the relevant factual and legal issues.

to occur.”²¹

Therefore, given that Plaintiffs allege a violation of a constitutional right under the state-created danger theory of liability, the Court declines to dismiss Plaintiffs’ section 1983 claims against Wetzel and O’Toole on the basis of qualified immunity.

C. Failure to Train Claim Against the School District and O’Toole

Defendants argue that, as a matter of law, Count II of the Complaint does not state a viable “failure to train” claim under section 1983 against either the School District or O’Toole.²²

Where, as here, Plaintiffs allege that a municipal policy caused the injury in question and the policy concerns failure to train or supervise, Plaintiffs must demonstrate that (1) the “failure to train amounted to a deliberate indifference to the rights of persons with whom the [municipal employees] come in contact” and (2) “the municipality’s policy actually caused a constitutional injury.”²³

1. Deliberate Indifference

Based on Supreme Court and Third Circuit precedent:

[F]ailure to train may amount to deliberate indifference where the need for more or different training is obvious, and inadequacy very likely to result in violation of constitutional rights. . . . [D]eliberate indifference [also] may be established where harm occurred on numerous previous occasions, and officials failed to respond

²¹ Kneipp, 95 F.3d at 1208; see also Morse, 132 F.3d at 913.

²² Count II seems to contain two separate section 1983 claims, one based on failure to train and another based on the state-created danger theory of liability.

²³ City of Canton v. Harris, 489 U.S. 378, 388 (1989). The standard for personal liability under section 1983 is the same as that for municipal liability. See Sample v. Diecks, 885 F.2d 1099, 1118 (3d Cir. 1989).

appropriately, or where risk of harm was great and obvious.²⁴

The Third Circuit applies a three-prong test to determine whether a municipality's alleged failure to train rises to the level of deliberate indifference. Plaintiffs must show that: "(1) municipal policymakers know that employees would confront a particular situation; (2) the situation involves a difficult choice or a history of employees mishandling [such situations]; and (3) the wrong choice by an employee will frequently cause deprivation of constitutional rights."²⁵

The Amended Complaint alleges that the School District and its agents and/or employees were deliberately indifferent because they failed "to identify, punish, and remove known student perpetrators in repeated criminal assaults upon innocent students," "knew that their employees were inadequately trained to maintain order in their schools," and "failed to provide adequate training in light of foreseeable serious consequences that could result from the lack of instruction."²⁶

Count II alleges, somewhat unclearly, that the School District and O'Toole acted with deliberate indifference when they established policies and/or practices "relating to how to handle, discipline and manage students such as the Defendant, Wade," and that their failure adequately to train their employees and monitor enforcement of these policies resulted in Defendant Wetzels

²⁴ Carter v. City of Philadelphia, 181 F.3d 339, 357 (3d Cir. 1999) (citing City of Canton, 489 U.S. at 389, 390 n.10; Sample, 885 F.2d at 1118).

²⁵ Id. (noting that the first prong is nothing more than ordinary knowledge).

²⁶ Am. Compl. ¶¶ 23-25, 41. Plaintiffs point to several incidents involving arrests of the School District's students for violent criminal behavior, concerns voiced by students' parents at a school board meeting in December 2000, the increasing frequency with which the Darby Borough had to send its police officers to the School District's schools, and the School District Defendants' knowledge that armed police officers were scheduled to begin patrolling the schools. These allegations seem to undercut Plaintiffs' claims of the School District Defendants' failure to act, since they show that the School District was trying to discipline and/or control violent students.

violations of such policies.²⁷

Defendants argue that Plaintiffs fail to plead deliberate indifference because the Amended Complaint does not allege that the School District Defendants violated students' constitutional rights at any time prior to the assault on L.C. or failed to respond to repeated complaints of constitutional violations by the School District's officers. Defendants also point to Plaintiffs' failure to plead that Wetzel's alleged conduct on the day of the incident was foreseeable, or that there was a history of any of the School District employees mishandling incidents of student-on-student violence.

Accepting as true all of the allegations in the Amended Complaint, Plaintiffs may establish that the alleged failure to train amounted to deliberate indifference because: (1) the School District and O'Toole, the alleged policymakers, knew that their employees would confront violent students—such as Wade—who attacked innocent students; (2) such situations would involve difficult questions of discipline and punishment, or such situations resulted in the school employees' failure to deal appropriately with violent students; and (3) the wrong choice by the school employee, i.e. failure to handle student-on-student violence, will frequently cause deprivation of other students' constitutional rights because the violent students would continue their attacks on innocents.²⁸ Therefore, Plaintiffs have established “deliberate indifference” for purposes of their failure to train claim.

²⁷ Am. Compl. ¶¶ 44-45.

²⁸ Regarding Plaintiffs' claim that Wetzel violated L.C.'s constitutional rights by forcing her off the school premises, the Amended Complaint is unclear as to its theory of failure to train claim based on Wetzel's alleged behavior. Therefore, the Court directs Plaintiffs to clarify.

2. Causation

In addition to proving “deliberate indifference,” Plaintiffs must establish a “‘direct causal link’ between the policy and a constitutional violation.”²⁹ Here, also, the Plaintiffs’ allegations in the Amended Complaint are unclear and imprecise. Plaintiffs appear to argue that the School District and O’Toole directly caused injury to L.C. because their actions created the dangerous school environment that allowed Wade to assault L.C. Plaintiffs do not, however, point to more specific facts or cases supporting their argument. Nonetheless, at this stage of the proceedings, drawing all inferences in favor of Plaintiff, it is reasonable to conclude that school policymakers’ failure to train school employees to handle and discipline known violent students directly lead to the student-on-student attack at issue here.

Because Plaintiffs appear to have plead facts sufficient to establish deliberate indifference and causation, the Court denies without prejudice the Motion to Dismiss as to Plaintiffs’ failure to train claim against the School District and O’Toole. However, since the Court agrees with Defendants that Plaintiffs’ failure to train claim is “somewhat unclear on the face of the Amended Complaint,”³⁰ the Court directs Plaintiffs to plead more definitely the basis for their failure to train claim.

D. Willful Misconduct & Tort Claims

Count I of the Amended Complaint alleges that the School District Defendants violated unspecified provisions of the Constitution of the Commonwealth of Pennsylvania, as well as the

²⁹ Brown v. Pa. Dept. Health Emergency Servs. Training Inst., 318 F.3d 473, 482 (3d Cir. 2003).

³⁰ Def.’s Mot. Dismiss at 6.

Political Subdivision Tort Claims Act (“Tort Claims Act”).³¹ Count II alleges that Wetzel’s and O’Toole’s conduct constituted willful misconduct, an exception to the immunity granted to municipal defendants by the Tort Claims Act.³²

The Tort Claims Act provides immunity to municipalities, as well as their agencies and individual employees (including employees of the City of Philadelphia), from actions for civil damages arising out of an “injury to a person or property caused by acts of the employee which are within the scope of his office or duties.”³³ There are eight statutory exceptions to this immunity.³⁴ The School District Defendants argue that, even assuming Plaintiffs pleaded a negligence claim, the School District Defendants are immune because Plaintiffs fail to allege that the misconduct in question falls into any of the eight statutory exceptions to immunity. Defendants are correct, and Plaintiffs do not argue otherwise. Accordingly, to the extent the Amended Complaint can be read to assert a negligence claim, that claim is dismissed.³⁵

Section 8550 of the Tort Claims Act creates an additional immunity exception with respect to any (individual) municipal employee where the conduct in question constituted “willful

³¹ Am. Compl. ¶¶ 41(b)-(I); see 42 Pa. Cons. Stat. §§ 8541-64.

³² Am. Compl. ¶¶ 62-65; 42 Pa. Cons. Stat. § 8550.

³³ 42 Pa. Cons. Stat. §§ 8541, 8545.

³⁴ 42 Pa. Cons. Stat. § 8542(b) (creating liability for acts related to: (1) vehicle liability; (2) care, custody, or control of personal property; (3) real property; (4) trees, traffic controls, and street lighting; (5) utility service facilities; (6) streets; (7) sidewalks; and (8) care custody or control of animals).

³⁵ Moreover, Wetzel is entitled to conditional immunity under the common law of Pennsylvania against Plaintiffs’ purported negligence claim, because Plaintiffs failed to plead that Wetzel acted outside of the scope of his authority. See Dubree v. Commonwealth, 303 A.2d 530, 534 (Pa. Commw. Ct. 1973) (a public official can escape liability if he acted “within the scope of his authority and if his negligent conduct was not intentionally malicious, wanton or reckless.”). Plaintiffs fail to respond to this argument, and the Amended Complaint specifically alleges that Wetzel acted by *using his authority*. See Am. Compl. ¶¶ 38, 49-50.

misconduct,” which is synonymous with the term “intentional tort.” This immunity exception applies to actions of municipal employees where “the actor desired to bring about the result that followed or at least was aware that it was substantially certain to follow, so that such desire can be implied.”³⁶

The School District Defendants argue that the Amended Complaint fails to identify the alleged “willful misconduct” at issue, or to allege the underlying intentional torts.³⁷ Plaintiffs’ Opposition recites the applicable legal standard and then simply asserts, without any analysis, that the “Amended Complaint alleges willful misconduct and these actions do not come within the tort claims act immunity [sic].”³⁸

As the Court is not required to argue Plaintiffs’ claims for them, the Court denies without prejudice the Motion to Dismiss as to the School District and Wetzel and directs Plaintiffs to plead more definitely the intentional torts underlying their willful misconduct claims.³⁹

³⁶ See Renk v. City of Pittsburgh, 641 A.2d 289, 293 (Pa. 1994); King v. Breach, 540 A.2d 976, 981 (Pa. 1988).

³⁷ See, e.g., Renk, 641 A.2d at 293.

³⁸ Pls.’ Opp. at 23.

³⁹ Defendants argue that O’Toole, the superintendent of Park Lane, is entitled to high public official immunity under the Pennsylvania common law against any purported tort claims. Plaintiffs’ only response is that this defense is limited to defamation cases. See Lindner v. Mollan, 677 A.2d 1194 (Pa. 1996). Defendants, relying on a decision from this Circuit, contend that while the Pennsylvania Supreme Court has yet to rule on the issue, the doctrine is not as limited as Plaintiffs suggest. See Smith v. Sch. Dist. of Philadelphia, 112 F. Supp. 2d 417, 426 (E.D. Pa. 2000) (DuBois, J.) (predicting that the Pennsylvania Supreme Court will extend the doctrine to cover torts other than defamation and granting school superintendent’s motion to dismiss torts of intentional infliction of emotional distress and invasion of privacy). The Court agrees with Defendants’ and Judge DuBois’s reasoning and thus grants the Motion to dismiss as to any tort claim against O’Toole (especially since Plaintiffs have so far failed to specifically articulate any tort claims they may be asserting).

E. Claim for Monetary Damages

Defendants argue that to the extent the Amended Complaint pleads violations of L.C.'s rights under the Constitution of the Commonwealth of Pennsylvania and seeks monetary damages,⁴⁰ this claim should be dismissed because there is no private right of action for monetary damages under the Pennsylvania Constitution.

The question of whether there exists a right of action for money damages against governmental officials for violations of the Pennsylvania Constitution is unclear.⁴¹ However, as Plaintiffs point out in their Opposition, a case of first impression where the court ruled that a civil remedy was available for a municipality's alleged violation of rights under the Pennsylvania Constitution, is currently pending on appeal.⁴² Since there is a possibility that this issue will be clarified in the near future, the Court denies without prejudice the Defendants' Motion to Dismiss as to Plaintiffs' claims for monetary damages under the Pennsylvania Constitution. However, the Court directs Plaintiffs to plead their Pennsylvania Constitution claims more definitively, including the specific sections of the Constitution upon which Plaintiffs rely, and to identify the specific Defendants against whom Plaintiffs state these claims.

An appropriate Order follows.

⁴⁰ See Am. Compl. ¶ 10.

⁴¹ Gremo, 363 F. Supp. 2d at 794 (discussing the unsettled state of Pennsylvania law on this issue).

⁴² See City of Philadelphia v. Jones, 68 Pa. D. & C.4th 47, 2004 WL 3104795 (Pa. Ct. Com. Pl. 2004).

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**L.C., a Minor By and Through Her Parents
and Natural Guardians C.P.C. and C.M.C,
C.P.C. and C.M.C. In Their Own Right,
Plaintiffs**

v.

**WILLIAM PENN SCHOOL DISTRICT,
PARK LANE ELEMENTARY SCHOOL,
ROBERT WETZEL, JAMES O'TOOLE,
DESMOND WADE, JANE DOE and
JOHN DOE,
Defendants**

**CIVIL ACTION
NO. 05-997**

ORDER

AND NOW, this 28th day of September, 2005, upon review of Defendants' Motion to Dismiss the Amended Complaint [Doc. #9]; Plaintiffs' Opposition thereto [Doc. #12]; Defendants' Reply [Doc. #15]; and for the reasons set forth in the attached Memorandum Opinion, it is hereby **ORDERED** that Defendants' Motion is **GRANTED IN PART** and **DENIED IN PART**. It is further **ORDERED** as follows:

1. Defendants' Motion to Dismiss Plaintiffs' Fourth Amendment claim is **GRANTED**.
2. Defendants' Motion to Dismiss Plaintiffs' section 1983 claims against Wetzel and O'Toole is **DENIED**;
3. Defendants' Motion to Dismiss Plaintiffs' failure to train claim against the School District and O'Toole is **DENIED WITHOUT PREJUDICE**. Pursuant to Rule 12(e) of the Federal

Rules of Civil Procedure and consistent with the attached Memorandum Opinion, Plaintiffs are hereby granted leave to plead more definitely their failure to train claim;

4. Defendants' Motion to Dismiss Plaintiffs' negligence claims under the Pennsylvania Political Subdivision Tort Claims Act is **GRANTED**.

5. Defendants' Motion to Dismiss Plaintiffs' willful misconduct claims is **DENIED WITHOUT PREJUDICE**. Pursuant to Rule 12(e) of the Federal Rules of Civil Procedure and consistent with the attached Memorandum Opinion, Plaintiffs are hereby granted leave to plead more definitely their willful misconduct claim.

6. Defendants' Motion to Dismiss Plaintiffs' claims for monetary damages under the Pennsylvania Constitution is **DENIED WITHOUT PREJUDICE**. Pursuant to Rule 12(e) of the Federal Rules of Civil Procedure and consistent with the attached Memorandum Opinion, Plaintiffs are hereby granted leave to plead more definitely their claims for monetary damages.

7. Plaintiffs must file a Second Amended Complaint and/or Counts pursuant to this Memorandum Opinion and Order within 14 days of the date of this Order.

It is so **ORDERED**.

BY THE COURT:

CYNTHIA M. RUFÉ, J.