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# The Critical Balance Between Parents' Rights and Students' Safety – How Parental Kidnapping Poses An Acute Threat To School Security

\*Adrianna B. La Kam

## I. INTRODUCTION

Imagine this: You go to your child's school to pick her up. You wait in your car; Your child never comes out. You ask the teacher where she is, and you are told that the other parent picked up your child. You begin making phone calls and driving to the other parent's house. You get there and find it empty.<sup>1</sup>

It is a paralyzing fear—consumed by anxiety, depression, and rage—when a parent realizes their child is missing.<sup>2</sup> Although non-family abductions are the most prominently broadcasted incidents of child kidnappings, it is exceedingly overlooked that some of the most dangerous kidnappers are a child's parent or close relative.<sup>3</sup> In 2002, the United States Department of Justice's Office of Juvenile Justice and Delinquency Prevention published a national incidence study, ("NISMART-2"), which recorded the estimated amount of missing children in the United States.<sup>4</sup> The percentage of missing children from

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<sup>1</sup> *The Crime of Family Abduction: A Child's and Parent's Perspective*, U.S. DEP'T OF JUSTICE, Office of Juvenile Justice and Delinquency Prevention, 21, (May 2010) available at <https://www.ncjrs.gov/pdffiles1/ojjdp/229933.pdf>.

<sup>2</sup> *See id.* at 29. ("The taking of a child is a traumatic event that can have physiological and psychological effects on the searching parent. The parent may experience a rollercoaster of emotions. She may be filled with fear, helplessness, and anxiety not knowing where her children are and what is happening to them.")

<sup>3</sup> *See* Bryan Robinson, *The Most Dangerous Kidnappers: Parents*, ABC News (Aug. 19–Jan 7, 2006), <http://abcnews.go.com/US/story?id=91365&page=1&singlePage=true>.

<sup>4</sup> Andrea J. Sedlak et al., *National Estimates of Missing Children: An Overview*, U.S. DEP'T OF JUSTICE, Office of Juvenile Justice and Delinquency, National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children (Oct. 2002), available at <https://www.ncjrs.gov/pdffiles1/ojjdp/196465.pdf>.

family abductions was greater than double the percentage of children reported missing from non-family abductions.<sup>5</sup>

Schools are a convenient location for a parent to carry out a kidnapping because the other parent is not present to interfere with such attempts.<sup>6</sup> With the frequency of custody disputes, in conjunction with the potentially life-threatening risk of releasing a child to a distraught parent or relative, school district officials and school administrators are placed in a vulnerable position when grappling with these complex domestic relations issues. There is a critical balance that must be considered between protecting the safety and security of students, while also ensuring school personnel are not improperly involved in contentious custody disputes.

This note will examine the legal ramifications school officials are exposed to in parental kidnapping cases and the crucial role school administrators' play in the efforts of preventing a child from being abducted by a parent or family member. This note will first provide an overview of parental kidnapping; including the stigma parental kidnapping carries and the gravity of harm endured by victim children and left-behind parents. Second, this note will discuss state criminal penalties and federal legislation—with an emphasis on national kidnapping laws and Florida law. Third, this note will analyze the implications parental kidnappings have on school districts, in the context of civil liability, if a faculty member improperly releases a child to a non-custodial parent while the child is in the school's custody. Lastly, this note will review the procedural safeguards schools can take to educate faculty members and parents in order to protect students from family abductions.

## II. OVERVIEW OF PARENTAL KIDNAPPING

Parental kidnapping, also known as parental abduction, occurs when one parent takes their child without the permission or legal authority from the other parent.<sup>7</sup> The term parental abduction is defined as, "the taking, retention, or concealment of a child or children by a parent, other [sic] family member, or their agent, in derogation of the

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<sup>5</sup> See *id.* at 6. (In instances where a caretaker reported a child missing, family abductions accounted for 9 percent of the total reported missing children versus 3 percent of nonfamily abductions. In cases where the child was reported missing by a non-caretaker, family abductions accounted for 7 percent of the total missing children versus 2% nonfamily abductions).

<sup>6</sup> See Andrew Trotter, *Shutting Out Child-Snatchers*, 180 THE AM. SCH. BOARD J. 8, 28 (1993).

<sup>7</sup> See Rebecca Hegar & Geoffrey L. Grief, *Abduction of Children by Their Parents: A Survey of the Problem*, 36 SOC. WORK 5, 421 (1991).

custody rights, including visitation rights, of another parent or family member.”<sup>8</sup> Parental abductions are not only carried out by non-custodial parents. In fact, parent-abductors may have sole custody, joint custody, or no custody of the child.<sup>9</sup> Also, abductors may be individuals acting on behalf of the parent.<sup>10</sup> Parental abduction has three distinct characteristics: “concealment, intent to prevent contact, and flight.”<sup>11</sup> The most vulnerable time for these abductions to occur is at the onset of dissolution of a marriage or separation, either before or following a custody order rendered by the courts.<sup>12</sup>

There is a deficiency among state and federal agencies on publishing or releasing timely statistical data cataloging parental abduction cases. Additionally, most states do not maintain international parental abduction statistics.<sup>13</sup> In fact, parental kidnapping is an area that is “grossly underreported.”<sup>14</sup> Such underreporting is attributed to a variety of reasons.

Many left-behind parents are unaware that legal remedies exist to combat parental kidnapping. Undocumented parents may fear that reporting the abduction to authorities will result in their swift deportation and permanent separation from the missing child or other dependents. Many system actors are unfamiliar with applicable civil, criminal and international laws or are inadequately trained to investigate and enforce. Authorities sometimes fail to respond appropriately to parental kidnapping reports because they are unaware of its deleterious effects upon children.<sup>15</sup>

A staggering number of children are abducted by their family members each year. According to NISMART-2, “an estimated 203,900 children were victims of a family abduction in 1999. Among these, 117,200 were missing from their caretakers, and of these, an estimated

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<sup>8</sup> Linda K. Girdner & Patricia M. Hoff, *Obstacles to the Recovery and Return of Parentally Abducted Children*, U.S. Dep’t of Justice, Office of Juvenile Justice and Delinquency Prevention, 15, (Jan. 1994) available at <https://www.ncjrs.gov/pdffiles1/Digitization/188063NCJRS.pdf>.

<sup>9</sup> *Id.*

<sup>10</sup> *See id.*

<sup>11</sup> *The Crime of Family Abduction*, *supra* note 1, at 1.

<sup>12</sup> Hegar, *supra* note 7.

<sup>13</sup> *See* Julia Alanen, When Human Rights Conflict: Mediating International Parental Kidnapping Disputes Involving the Domestic Violence Defense, 40 U. MIAMI INTER-AM. L. REV. 49, 55-56 (2008), available at <http://repository.law.miami.edu/umialr/vol40/iss1/4>.

<sup>14</sup> *Id.* at 56.

<sup>15</sup> Alanen, *supra* note 13, at 56-57.

56,500 were reported to authorities for assistance in locating the children.”<sup>16</sup>

There are several motivating factors behind a parent’s decision to kidnap their child. These explanations range from the parent’s most virtuous attempts of protecting their child from a dangerous situation, such as domestic violence or child abuse, to malicious intentions directed towards inflicting harm on the child or other parent.<sup>17</sup> Most importantly, state law provides that parental abduction is a crime, although there may be defenses available to refute the charge.<sup>18</sup>

### A. *Social Stigma and Gravity of Parental Kidnapping*

Parents who are victims of parental kidnapping encounter an array of obstacles during the process of relocating and recovering their child.<sup>19</sup>

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<sup>16</sup> Heather Hammer, et al., *Children Abducted by Family Members: National Estimates and Characteristics*, U.S. Dep’t of Justice, Office of Juvenile Justice and Delinquency Prevention, National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children, 2, (Oct. 2002), available at <https://www.ncjrs.gov/pdffiles1/ojjdp/196466.pdf>.

<sup>17</sup> See Hegar, *supra* note 7. (stating “Among the motives for parental abductions noted in the criminal justice and popular literature are a parent’s unhappiness with custody, visitation, or child support arrangements; emotional instability; anger at the other parent; desire for revenge; or the belief that the child is being harmed by the custodial parent.”); see also Georgia K. Hilgeman, *Impact of Family Child Abduction*, California Child Abduction Task Force, (Aug. 27, 2001) <http://www.childabductions.org/impact2.html>. Why do family members take children? Is it for love? Usually not, the typical motivation for family abduction is power, control, and revenge. These characteristics are also prevalent in domestic violence cases. In fact, family abduction is really a form of family violence. Some abductors may believe they are rescuing the child, but rarely do they resort to legal approaches for resolution. Some abductors are so narcissistic they do not have the ability to view their children as separate entities from themselves. These abductors believe since they hate the other parent, the child should as well. Sometimes abductors feel disenfranchised and have a culturally different perspective regarding child rearing and parenting. They may miss and want to return to their country of origin with the child.

<sup>18</sup> See Kathi L. Grasso, et al., *The Criminal Justice System’s Response to Parental Abduction*, U.S. Dep’t of Justice, Office of Juvenile Justice and Delinquency Prevention, available at <https://www.ncjrs.gov/pdffiles1/ojjdp/186160.pdf>.

<sup>19</sup> See Patricia M. Hoff, *Family Abduction Prevention and Response*, Nat’l Center for Missing and Exploited Children, Office of Juvenile Justice and Delinquency Prevention (2009), available at [http://www.missingkids.com/en\\_US/publications/NC75.pdf](http://www.missingkids.com/en_US/publications/NC75.pdf).

A parent may encounter legal, procedural, cultural, and practical obstacles to recovering his or her abducted child. In family abduction cases, lack of funds is a common barrier to hiring lawyers and financing searches. Local statutes may not provide adequate remedies, making it harder to recover a child. The failure of law-enforcement agencies to take a missing-child report, make an NCIC entry, or actively investigate a family abduction can be major obstacles to locating an abducted child and also violate mandates stipulated in the Missing Children Act, National Child Search Assistance Act, and Adam Walsh Child Protection and Safety Act of 2006.

Prior to the 1990's, there was a lack of systematic research conducted concerning the psychological impact that parental kidnapping had on the victim's family members and professionals who handled these cases.<sup>20</sup> Misconceptions on the physical and physiological impact parental abductions have on victims, both children and parents, are among the impediments that adversely affect preventative and recovery efforts.<sup>21</sup> One of the most common misconceptions of parental kidnapping is the perception that simply because the child is with a parent or relative, the child is safe from harm.<sup>22</sup> Contrary to this belief, psychological studies have proven that children who have been abducted by a parent or relative suffer a detrimental emotional impact.<sup>23</sup>

Parent-abductors subject their children to an unstable lifestyle, possibly living vagrantly while on the run.<sup>24</sup> While captured, "the child is hidden and typically forced to live an artificially manipulated life."<sup>25</sup> The child is sequestered "with a distressed caretaker who may neglect the child in terms of care, feeding, and psychological nurturing."<sup>26</sup> This disruption has lasting effects on a child's psychological development.<sup>27</sup> In addition, these abductions generally occur during the onset of a separation, which in most cases, is a strenuous time for the child and the parent, leaving members of the family torn.<sup>28</sup>

Individuals around the child may be reluctant to intervene because they have a misperception that the child is safe because he or she is with their parent.<sup>29</sup> A narrative from a victim who was abducted by her mother as a child exemplifies this notion:

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<sup>20</sup> See Hegar, *supra* note 7.

<sup>21</sup> See *id.*

<sup>22</sup> See Ernie Allen, "The Kid is With a Parent, How Bad Can It Be?" *The Crisis of Family Abductions*, Nat'l Center for Missing and Exploited Children (1991), available at [http://ag.hawaii.gov/cpja/files/2013/02/kid\\_is\\_with\\_a\\_parent.pdf](http://ag.hawaii.gov/cpja/files/2013/02/kid_is_with_a_parent.pdf).

<sup>23</sup> See Girdner, *supra* note 8.

<sup>24</sup> See Hoff, *supra* note 19, at 139-140.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Marilyn Freeman, Parental Child Abduction: The Long-Term Effects, International Centre for Family Law, Policy, and Practice, 32 (Dec. 5, 2015) available at <http://www.famlawandpractice.com/longtermeffects.pdf>.

<sup>28</sup> Hegar, *supra* note 7.

<sup>29</sup> See Janet Chiancone, *Parental Abduction: A Review of the Literature*, United States Department of Justice <https://www.ncjrs.gov/html/ojdp/190074/page6.html> (last visited Oct. 24, 2015); see also *The Crime of Family Abduction: A Child's and Parent's Perspective*, *supra* note 1, at 21 (stating "Like the child, the searching parent also deals with tremendous grief and loss. Often, other family members and friends do not know what to do or how to respond. They do not get involved because they view the abduction as a custody battle that should be dealt with privately.").

When I was 10 years old, someone took me from the street in front of my home, drove me across the country, gave me a new name, made me lie about who I was and where I was from, and told me I would never go back to my old life or see the rest of my family again. The strangest part of my story is that I did not realize while it was happening that I was being abducted. A great many people around me responded to the abduction by thinking that it was perfectly okay—thinking, in fact, that the person who took me and hid me for 2 years had a right to do so. Because the person was my own mother.<sup>30</sup>

For school administrators, such disinclination could dim their judgment and vigilance when releasing a child to a parent or relative, which in turn can have detrimental psychological consequences to the child.<sup>31</sup>

Further, parent-abductors will often avoid providing their children with essential health and medical care while on the run.<sup>32</sup> In one particular case, authorities in Quincy, Massachusetts were involved in an active search for a mother of five, Yurong Wu (“Wu”), who was believed to have kidnapped her children.<sup>33</sup> Wu was placed under arrest in March 2015, after fleeing with her five children for approximately one month.<sup>34</sup> A particular concern for the Department of Children and Families and the authorities working on the case was the medical condition of the youngest child, two-month-old Kalen Mei, who was born prematurely

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<sup>30</sup> *The Crime of Family Abduction*, *supra* note 1, at 11.

<sup>31</sup> See Chiancone, *supra* at note 29.

Terr’s (1983) study reported on a sample of 18 children seen for psychiatric evaluations following recoveries from abductions (or after being threatened with abduction and/or unsuccessfully abducted). Nearly all the children (16 of 18) suffered emotionally from the experience. Their symptoms included grief and rage toward the left-behind parent, in addition to suffering from “mental indoctrination” perpetrated by the abducting parent. Likewise, another study of a sample of 104 parental abductions drawn from National Center for Missing and Exploited Children (NCMEC) cases revealed that more than 50 percent of the recovered children experienced symptoms of emotional distress (including anxiety, eating problems, and nightmares) as a result of being abducted (Hatcher, Barton, and Brooks, 1992).

<sup>32</sup> Georgia K. Hilgeman, *Impact of Family Child Abduction*, California Child Abduction Task Force, (Aug. 27, 2001) <http://childabductions.org/impact2.html> (“Abducted children whose identities are changed may be told that the left-behind parent is dead or did not want them. Moving from place to place to avoid discovery, they are compelled to live like fugitives. They receive little or no medical care or schooling.”).

<sup>33</sup> Ryan Trowbridge, *Quincy Police Seeking Woman Wanted for Parental Kidnapping*, ABC News, (March 10, 2015) <http://www.wggb.com/2015/03/10/quincy-police-seeking-woman-wanted-for-parental-kidnapping/>.

<sup>34</sup> Antoinette Antonio, *Quincy Mom Accused of Kidnapping 5 Kids Held on Bail*, WCVB.COM, (March 13, 2015) <http://www.wcvb.com/news/quincy-mom-accused-of-kidnapping-5-kids-found/31773974>.

and in need of necessary medical treatment.<sup>35</sup> Before the abduction, the Department of Children and Families was actively involved with the family and received a court order for the children based on two-month-old Kalen Mei's need for medical attention.<sup>36</sup> Authorities believed Wu was in fear of losing her children and fled with her children to New York where her family lived.<sup>37</sup> Wu was arraigned on parental kidnapping charges and two counts of reckless endangerment.<sup>38</sup> The children were recovered safely and are in the custody of the Department of Children and Families.<sup>39</sup>

The story above is only a minor depiction of the abuse children victims may undergo while on the run. Along with medical treatment, the child's education often is neglected for fear of the other parent locating the child through the school's database.<sup>40</sup> Parental kidnappings should not be overlooked merely because the parent of the child is the person carrying out the abduction. The necessity to intervene and prevent a parent from kidnapping their child is an urgent matter, which should be handled with the same earnestness as a non-family abduction.

### III. STATE AND FEDERAL LEGISLATION

Although state criminal penalties vary widely regarding parental kidnapping, every state has adopted parental kidnapping statutes—generally referred to as “criminal custodial interference” laws—in recognition to the threat parental abduction poses on a child.<sup>41</sup> In Florida, unless there is a prior court order outlining custody and visitation, Florida Statute 787.03(2) provides in part:

[A]ny parent of the minor or incompetent person, whether natural or adoptive, stepparent, legal guardian, or relative of the minor or incompetent person who has custody thereof and who takes, detains, conceals, or entices away that minor or incompetent person within or without the state with malicious intent to deprive another person of his or her right to custody of the minor or incompetent person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.<sup>42</sup>

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<sup>35</sup> *Id.*

<sup>36</sup> *Quincy Mother Wanted for Kidnapping Her 5 Children May be in NY: Yurong Wu Charged with Parental Kidnapping*, WCVB.com, (March 10, 2015), <http://www.wcvb.com/news/quincy-mother-wanted-for-kidnapping-her-5-children/31713728>.

<sup>37</sup> *See* Antonio, *supra* note 34.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *See* Hilgeman, *supra* note 32.

<sup>41</sup> *See* Girdner, *supra* note 8.

<sup>42</sup> FLA. STAT. § 787.03(2) (2014).



Florida law provides several defenses for parents in situations where the safety and security of the child is a concern.<sup>43</sup> The statute provides a defense for parents who have “reasonable cause to believe that his or her action was necessary to preserve the minor or the incompetent person from danger to his or her welfare.”<sup>44</sup> Florida law also provides a defense for victims of domestic violence, or victims who have “reasonable cause to believe that the action was necessary in order for the defendant to escape from, or protect himself or herself from, the domestic violence or to preserve the minor or incompetent person from exposure to the domestic violence.”<sup>45</sup>

*A. Uniform Child-Custody Jurisdiction and Enforcement Act*

Florida adopted the Uniform Child-Custody Jurisdiction and Enforcement Act (“UCCJEA”) in 1997.<sup>46</sup> The UCCJEA is a uniform state law, which was adopted by the National Conference of Commissioners on Uniform State Laws (“NCCUSL”).<sup>47</sup> The UCCJEA served as a revision to the Uniform Child Custody Jurisdiction Act (“UCCJA”).<sup>48</sup>

Prior to the enactment of UCCJA, courts had the jurisdiction to review child-custody orders and issue decrees based solely on the child’s presence within the state.<sup>49</sup> Society’s ease of travel and high rate of divorce created complex jurisdictional problems for the courts concerning disputes in child-custody and visitation orders.<sup>50</sup> Interstate travel and international movement of children began to raise concerns of which state or country had the authority to exercise jurisdiction over the

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<sup>43</sup> FLA. STAT. § 787.03(4) (2014).

<sup>44</sup> FLA. STAT. § 787.03(4)(a) (2014).

<sup>45</sup> FLA. STAT. § 787.03(4)(b)(2014); *see* FLA. STAT. § 741.28(2) (2014) (Domestic violence is defined as “any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.”).

<sup>46</sup> FLA. STAT. §61.13(2)(c) (2014) (“The court shall determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, except that modification of a parenting plan and time-sharing schedule requires a showing of a substantial, material, and unanticipated change of circumstances.”).

<sup>47</sup> Patricia M. Hoff, *The Uniform Child-Custody Jurisdiction and Enforcement Act*, U.S. Dep’t of Justice, Office of Juvenile Justice and Delinquency Prevention 1 (Dec. 2001) (available at <https://www.ncjrs.gov/pdffiles1/ojjdp/189181.pdf>).

<sup>48</sup> Uniform Law Commission, *Child Custody Jurisdiction and Enforcement Act Summary* (accessed on January 1, 2015). <http://www.uniformlaws.org/ActSummary.aspx?title=Child%20Custody%20Jurisdiction%20and%20Enforcement%20Act>.

<sup>49</sup> Hoff, *supra* note 47, at 2.

<sup>50</sup> *See id.*

initial custody order, and which court had the jurisdiction to modify the existing order.<sup>51</sup> Courts were at liberty to modify sister state custody orders because the Supreme Court of the United States had not decided the issue of whether the Full Faith and Credit Clause of the United States Constitution applied to child-custody judgments.<sup>52</sup>

This loophole provided an opportunity for non-custodial parents to exploit the legal system, by abducting their child and taking the child across state lines in the hopes of finding “sympathetic courts willing to reverse unfavorable custody orders.”<sup>53</sup> The UCCJA operated under the following principles:

1) [E]stablish jurisdiction over a child custody case in one state; and, 2) protect the order of that state from modification in any other state, so long as the original state retains jurisdiction over the case. If a non-custodial parent cannot take a child to another state and petition the court of that state for a favorable modification of an existing custody order, the incentive to run with the child is greatly diminished.<sup>54</sup>

Four jurisdictional grounds were created establishing the child’s close affiliation with the state.<sup>55</sup> First, jurisdiction was reserved to the home state, which was the state the child resided in for the six months preceding the action.<sup>56</sup> Second, the court looked to whether there was evidence to establish that the child had significant connections with the state.<sup>57</sup> Third, the court looked to see if an emergency situation was present, such as abandonment or abuse, which would allow for the court to exercise jurisdiction over the case.<sup>58</sup> Lastly, the court would operate under a vacuum principle, meaning that if no other jurisdiction existed, the court had the authority to review the case.<sup>59</sup>

Although the UCCJA was an improvement to previous legislation, concerns remained. Among these problems, the UCCJA was not effective in relieving jurisdictional conflicts for states that had concurrent jurisdiction—typically in situations where the child had a home state and significant connections to a sister state.<sup>60</sup> Additionally, an overlap of jurisdiction began to occur with respect to modifications on custody and

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<sup>51</sup> *See id.*

<sup>52</sup> *See id.*

<sup>53</sup> *Uniform Law Commission, supra note 48.*

<sup>54</sup> *Uniform Law Commission, supra note 48.*

<sup>55</sup> Hoff, *supra note 47*, at 2.

<sup>56</sup> Hoff, *supra note 47*, at 2.

<sup>57</sup> Hoff, *supra note 47*, at 2.

<sup>58</sup> Hoff, *supra note 47*, at 2.

<sup>59</sup> Hoff, *supra note 47*, at 2.

<sup>60</sup> Hoff, *supra note 47*, at 2.

visitation decrees—creating uncertainty in situations where the child moved from the original home state and established residency in a new home state.<sup>61</sup>

In 1980, Congress enacted the Parental Kidnapping Prevention Act (“PKPA”), codified as 28 U.S.C. §1738A. The PKPA sought to relieve concurrent jurisdictional problems “by resolving conflicts between two states when one [state] claims jurisdiction based on significant connections and the other [state] claims jurisdiction based on home state.”<sup>62</sup> Under the PKPA, states are required to give full faith and credit to child-custody decrees, therefore requiring the state to enforce, and not modify, the custody order.<sup>63</sup> The PKPA required sister states to refrain from issuing a judgment when another state was exercising jurisdiction under the PKPA, giving the home state priority.<sup>64</sup> However, inconsistencies between the UCCJA and the PKPA caused misunderstandings.<sup>65</sup>

The UCCJEA takes the position of the PKPA: to provide priority to the child’s home state when determining the court’s jurisdictional authority over the custody proceeding.<sup>66</sup> Under the UCCJEA, emergency jurisdiction—misinterpreted under the UCCJA as a method of obtaining permanent jurisdiction—<sup>67</sup> was clarified to function as a temporary source of jurisdiction, “long enough to secure the safety of the threatened person and to transfer the proceeding to the home state, or if none, to a state with another ground for jurisdiction.”<sup>68</sup> The UCCJEA also provides that the home state is to retain jurisdiction over the case unless, “that state, by its own determination, maintains a significant connection with the disputants or until all disputants have moved away from that state.”<sup>69</sup>

There are two requirements for parents to seek modifications of custody orders under the UCCJEA.<sup>70</sup> First, the court must have subject matter jurisdiction, provided by the requirements of the Act.<sup>71</sup> Second, “the parties must be given notice and opportunity to be heard.”<sup>72</sup> Like the

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<sup>61</sup> Hoff, *supra* note 47, at 2.

<sup>62</sup> Girdner, *supra* note 8, at Exsum-3.

<sup>63</sup> Hoff, *supra* note 47, at 3.

<sup>64</sup> Hoff, *supra* note 47, at 3.

<sup>65</sup> Hoff, *supra* note 47, at 3.

<sup>66</sup> *Uniform Law Commission, supra* note 48.

<sup>67</sup> Hoff, *supra* note 47, at 2.

<sup>68</sup> *Uniform Law Commission, supra* note 48.

<sup>69</sup> *Id.*

<sup>70</sup> Hoff, *supra* note 47, at 5.

<sup>71</sup> Hoff, *supra* note 47, at 5.

<sup>72</sup> Hoff, *supra* note 47, at 5.

UCCJA, the UCCJEA also has four jurisdictional grounds.<sup>73</sup> Unlike the UCCJA, the home state of the child continues to have jurisdiction, even after the child is removed to a new state, to give the left-behind parent an opportunity to bring a cause of action.<sup>74</sup>

Additionally, only one state can claim jurisdiction over the proceeding based on the child having significant connections to the state.<sup>75</sup> Conflicts are resolved in favor of the state where the action was first filed.<sup>76</sup> Under the UCCJEA, the home state or state with significant connections to the child may decline to exercise their jurisdictional authority in situations where another state is a more appropriate forum “on the ground of inconvenient forum or unjustifiable conduct.”<sup>77</sup>

### B. *Uniform Child Abduction Prevention Act*

Florida is among the minority of states which have adopted provisions from the Uniform Child Abduction Prevention Act (“UCAPA”),<sup>78</sup> to reduce the risk of parental abductions.<sup>79</sup> The UCAPA was created to “deter both pre-decree and post-decree domestic and international child abductions by parents, persons acting on behalf of a parent or others.”<sup>80</sup> In recognition of the harmful effects children often endure during such abductions, the UCAPA is “premised on the general principle that preventing an abduction is in a child’s best interests.”<sup>81</sup>

While the judge is deciding the initial custody order, identifying abduction risk factors is a fundamental aspect for the courts to consider. Parental kidnappings could be prevented through the “imposition of appropriate preventive measures.”<sup>82</sup> With such awareness, courts have the “tools to make the initial child-custody determination clearer, more

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<sup>73</sup> Hoff, *supra* note 47, at 5. (“The UCCJEA establishes four basis for initial jurisdiction—home State, significant connection, more appropriate forum, and vacuum jurisdiction. It also authorizes courts to issue temporary relief on emergency grounds.”).

<sup>74</sup> Hoff, *supra* note 47, at 5.

<sup>75</sup> Hoff, *supra* note 47, at 5.

<sup>76</sup> Hoff, *supra* note 47, at 5.

<sup>77</sup> Hoff, *supra* note 47, at 6.

<sup>78</sup> *Legislative Fact Sheet- Child Abduction Prevention*, Nat’l Conference of Comm’r on Unif. State Laws, <http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Child%20Abduction%20Prevention> (accessed Jan. 13, 2015) (Jurisdictions which have enacted the UCAPA include: Alabama, Colorado, District of Columbia, Florida, Kansas, Louisiana, Michigan, Mississippi, Nebraska, Nevada, New Mexico, Pennsylvania, South Dakota, Tennessee, Utah).

<sup>79</sup> See FLA. STAT. § 61.45 (2014).

<sup>80</sup> *Uniform Child Abduction Prevention Act*, Nat’l Conference of Comm’r on Uniform State Laws, 1, (July 7-14, 2006) [http://www.uniformlaws.org/shared/docs/child\\_abduction\\_prevention/ucapa\\_final\\_oct06.pdf](http://www.uniformlaws.org/shared/docs/child_abduction_prevention/ucapa_final_oct06.pdf).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

specific, and more easily enforceable,”<sup>83</sup> which in turn will reduce the number of post-decree abductions.<sup>84</sup>

Florida law enables a judge to issue several orders against parents who are either at risk of violating the court order or in danger of removing the child from the state or country.<sup>85</sup> Section 61.45, Florida Statutes, provides that a court may issue an order against a parent during a parenting plan proceeding:

. . . upon the presentation of competent substantial evidence that there is a risk that one party may violate the court’s parenting plan by removing a child from this state or country or by concealing the whereabouts of a child, upon stipulation of the parties, upon the motion of another individual or entity having a right under the law of this state, or if the court finds evidence that establishes credible risk of removal of the child . . . .<sup>86</sup>

### C. *The Hague Convention on the Civil Aspects of International Child Abduction*

For international parental abduction cases, the Hague Convention on the Civil Aspects of International Child Abduction (“The Hague Convention”),<sup>87</sup> enforced through the International Child Abductions Remedies Act (“ICARA”),<sup>88</sup> is an international treaty, which “establishes administrative and judicial mechanism[s] to expedite the return of children . . . across international borders.”<sup>89</sup> The Hague Convention sought to safeguard against forum shopping by “noncustodial parents attempting to relocate in order to ‘establish artificial jurisdictional links.’”<sup>90</sup> One of the most distinguishing features of The Hague

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<sup>83</sup> *Id.*

<sup>84</sup> *See id.* (“Post-decree abductions often occur because the existing child-custody determinations lack sufficient protective provisions to prevent an abduction. An award of joint physical custody without a designation of specific times; a vague order granting “reasonable visitation”;[sic] or the lack of any restrictions on custody and visitation make orders hard to enforce.”).

<sup>85</sup> FLA. STAT. § 61.45 (2014).

<sup>86</sup> FLA. STAT. § 61.45(1).

<sup>87</sup> *See* Statute of the Hague Convention Conference on Private International Law, Hague Conference on Private International Law, [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=29](http://www.hcch.net/index_en.php?act=conventions.text&cid=29) (last visited on January 2, 2015).

<sup>88</sup> *See* International Child Abductions Remedies Act, 22 U.S.C. §§ 9001-9011 (2004) (formerly classified as 42 U.S.C. § 11601).

<sup>89</sup> Hoff, *supra* note 47, at 3.

<sup>90</sup> Melissa L. Thompson, *Will Noncustodial Parents Who Are Refused Visitation with Children Also Be Turned Away from U.S. Courts?: Judicial Remedies in Access Cases Under the Hague Convention in Cantor v. Cohen and Ozaltin v. Ozaltin*, 82 U. CIN. L. REV. 1005 (2014) (citing to Elisa Pérez-Vera, *Explanatory Report on the 1980 Hague*

Convention is the power to afford officials the authority to grant an order for the child to return home.<sup>91</sup>

Even with the protections under The Hague Convention, a parent's struggle to bring back their child to the United States may continue because several countries have not ratified The Hague Convention.<sup>92</sup> Also, "the United States has not accepted all nations' accessions, and some countries that have ratified do not comply with the treaty obligations."<sup>93</sup>

Florida law provides certain safeguards against such concerns through the provisions enacted under the UCAPA.<sup>94</sup> Among the statutory orders listed under Section 61.45, Florida Statutes, judges are granted the power to enter an "[o]rder that a parent may not take the child to a country that has not ratified or acceded to the Hague Convention on the Civil Aspects of International Child Abduction[,] unless the other parent agrees in writing that the child may be taken to the country."<sup>95</sup> The court may also issue an order to compel the parent to "surrender the child's passport."<sup>96</sup>

#### D. Civil Liability Against Abductor Parent

The Florida Supreme Court has recognized a common law cause of action for intentional interference with a custodial parent-child relationship.<sup>97</sup> This cause of action is rooted in the English common law, "descended from a writ giving the father an action for the abduction of his heir."<sup>98</sup>

In the Florida Supreme Court case of *Stone v. Wall*, Appellant, Walter Stone, filed an action against his child's maternal grandmother, maternal aunt, and their attorney, for interference with a custodial parent-child relationship and abduction by a third party.<sup>99</sup> Stone exercised

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*Child Abduction Convention*, Hague Conference on Private International Law, 428, (1982), available at <http://www.hcch.net/upload/expl28.pdf>).

<sup>91</sup> *Id.*

The Hague Convention directs claims for securing the return of a child to the Central Authority of the country of the child's habitual residence and requires that Central Authority to immediately transmit the petition to the Central Authority of the contracting state in which the child is believed to be located.

<sup>92</sup> See *Non-Member Contracting States*, Hague Conference on Private International Law [http://www.hcch.net/index\\_en.php?act=states.nonmember](http://www.hcch.net/index_en.php?act=states.nonmember) (last visited on Jan. 3, 2015).

<sup>93</sup> *Uniform Child Abduction Prevention Act*, *supra* note 81, at 2.

<sup>94</sup> FLA. STAT. § 61.45 (2014).

<sup>95</sup> FLA. STAT. § 61.45(1)(c) (2014).

<sup>96</sup> FLA. STAT. § 61.45(1)(d) (2014).

<sup>97</sup> See *e.g.*, *Stone v. Wall*, 734 So. 2d 1038, 1041 (Fla. 1999).

<sup>98</sup> *Id.* at 1038.

<sup>99</sup> *Id.* at 1039.

custody rights over his child upon divorcing his wife; however, after Stone's ex-wife was diagnosed with brain cancer, Stone allowed for his child to remain in Virginia until his ex-wife passed away.<sup>100</sup> Stone alleged that the Appellees conspired in Florida to remove his child from Virginia to Colorado.<sup>101</sup> The Appellees removed the child from Virginia before the child's mother died and "refused to return the child to Stone despite repeated requests and Stone's status as the natural guardian legally entitled to custody of the child."<sup>102</sup>

The court began their legal analysis with the recognition of common law torts in Florida, conceding that the common law "cause of action for interference with a custodial parent-child relationship is a natural progression of the common law with due regard for constitutional principles, changes in our social and economic customs, and 'present day conceptions of right and justice.'"<sup>103</sup> In addition, the court acknowledged that the "parent-child relationship has fundamental constitutional significance."<sup>104</sup>

Next, the court found that a civil cause of action was consistent with the statutory criminal prohibition against "interference with custody," under section 787.03.<sup>105</sup> Lastly, the court assessed whether there were conflicting policy considerations which would cause the court to preclude such a cause of action.<sup>106</sup> The court determined the following:

While the courts must be constantly vigilant to guard against the misuse of the legal process, those who would bypass the legal system by taking children from those who have a superior right to legal custody cause a far greater affront to our system of justice. Such conduct has the potential for causing far greater harm to the children than litigation. It is this conduct that causes the real harm that the tort is designed to redress, including substantial expenses incurred by a parent in having the child returned.<sup>107</sup>

The court concluded, "[o]ne who, with knowledge that the parent does not consent, abducts or otherwise compels or induces a minor child

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<sup>100</sup> *Id.* at 1040.

<sup>101</sup> *Id.*

<sup>102</sup> *Stone*, 734 So. 2d at 1040.

<sup>103</sup> *Id.* at 1044; (citing *Hoffman v. Jones*, 280 So. 2d 431, 435 (Fla. 1973)).

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 1044-45 (holding in part "The fact that the Legislature does not also provide a civil remedy in its criminal statutes is not dispositive because the recognition of a common law tort, which is not inconsistent with our statutes and Constitution, falls within the judicial domain.").

<sup>106</sup> *Id.* at 1046.

<sup>107</sup> *Id.* at 1047.

to leave a parent legally entitled to its custody or not to return to the parent after it has been left him, is subject to liability to the parent.”<sup>108</sup> In order for the parent to have standing, the parent must have “superior custody rights to the child and that the defendant intentionally interfered with those rights.”<sup>109</sup>

#### IV. THE IMPLICATIONS OF PARENTAL KIDNAPPING ON SCHOOL GROUNDS

In many respects, the principal of a school acts as the first line of defense to protect against parental kidnappings.<sup>110</sup> While Florida jurisprudence provides “that school officials and/or teachers are neither insurers of their students’ safety, nor are they strictly liable for any injuries which may be sustained by the students,”<sup>111</sup> school districts generally have “no sovereign immunity defense for the negligent performance of an operational duty.”<sup>112</sup> School officials owe a general duty of reasonable supervision to their students, and “Florida courts have specifically recognized that a negligent failure to act in carrying out this

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<sup>108</sup> *Id.* at 1041-42 (citing to RESTATEMENT (SECOND) OF TORTS § 700 (1977)).

<sup>109</sup> *Stone*, 734 So. 2d at 1042; *see also* *Stewart v. Walker*, 5 So. 3d 746 (Fla. Dist. Ct. App. 2009).

The father had been temporarily granted visitation by a Massachusetts court, so the mother was the parent with primary residential care and custody pursuant to the first sentence of section 742.031(2). Under the definition of tortious interference with a custodial parent-child relationship, therefore, the father had no standing because he did not have custody of Tyler. Moreover, his parental rights were inferior to the mother’s. Thus, the trial judge properly found that the father did not have standing to bring this cause of action against the mother under §742.031(2), Fla. Stat. (2007).

<sup>110</sup> *See* Trotter, *supra* note 6.

<sup>111</sup> *Concepcion v. Archdiocese of Miami*, 693 So. 2d 1103, 1104 (Fla. Dist. Ct. App. 1997); *see also* FLA. STAT. § 768.28(9)(a) (2015).

No officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

<sup>112</sup> 28 Fla. Jur. 2d Government Tort Liability § 53; *see Avallone v. Bd. of Cnty. Comm’rs*, 493 So. 2d 1002, 1006 (Fla. 1986) (Shaw, J., concurring).

[S]ection 768.28, Florida Statutes (1975), completely waived sovereign immunity and there is no immunity for either planning or operational level activities. This artificial distinction has no foundation in either the constitution or section 768.28 and should be discarded. In a tort suit against a government entity, we should apply the same law as in a tort suit between private individuals: whether there was a duty, whether the duty was violated, and whether the violation caused injury.



duty of the school is actionable.”<sup>113</sup> This duty is based on the fact that “mandatory schooling has forced parents into relying on teachers to protect children during school activit[ies].”<sup>114</sup> While a student is at school, the school is partially standing in the place of the student’s parents.<sup>115</sup> Consequently, school boards must ensure that school officials are “exercising ordinary care of reasonable prudence, or [acting] as a reasonable person would act under similar circumstances.”<sup>116</sup>

School administrators have to grapple with an onslaught of threats directed towards students and faculty members. For instance, the active shooting that took place at Sandy Hook Elementary School, which killed twenty students and six teachers,<sup>117</sup> prompted the Obama Administration to release comprehensive emergency guidelines for school districts—outlining “prevention, protection, mitigation, response, and recovery from technological, human-caused, natural, and biological threats.”<sup>118</sup>

While active shooter drills and building safety updates are necessary for the safety of students and staff, there is a silent threat which looms on a day-to-day basis: the danger posed by the unauthorized removal of a child from their school by an unapproved parent or relative.<sup>119</sup> According to NISMART-2, forty-four percent of family-abducted children are younger than the age of six.<sup>120</sup> Seven percent of parental abductions occur at a school or a daycare center.<sup>121</sup> Even though this number is small in comparison to the abductions that occur at the child’s home or someone else’s home, such kidnappings pose a serious

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<sup>113</sup> *Rupp v. Bryant*, 417 So. 2d 658, 666 (Fla. 1982); see *La Petite Academy, Inc. v. Nassef*, 674 So. 2d 181, 182 (Fla. Dist. Ct. App. 1996); see also *Doe v. Escambia County Sch. Bd.*, 599 So. 2d 226, 227 (Fla. Dist. Ct. App. 1992).

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*; see also *Kazanjian v. Sch. Bd. of Palm Beach Cnty.*, 967 So. 2d 259, 264 (Fla. Dist. Ct. App. 2007).

<sup>116</sup> Allan E. Korpela, *Tort Liability of Public Schools and Institutions of Higher Learning for Injuries Resulting from Lack or Insufficiency of Supervision*, 38 A.L.R.3d 830, 2a (1971).

<sup>117</sup> See Mark Memmott, *Tragedy in Connecticut: 20 Children, 6 Adults Killed At Elementary School*, NPR(Dec. 14, 2012, 11:20 AM), <http://www.npr.org/blogs/thetwo-way/2012/12/14/167248541/developing-shooting-at-elementary-school-in-newtown-conn>.

<sup>118</sup> See Lesli A. Maxwell, *White House Releases Detailed Guide on School Crisis Management*, EDUCATION WEEK (June 19, 2013, 9:30 AM), [http://blogs.edweek.org/edweek/rulesforengagement/2013/06/white\\_house\\_releases\\_detailed\\_guide\\_on\\_school\\_crisis\\_management.html](http://blogs.edweek.org/edweek/rulesforengagement/2013/06/white_house_releases_detailed_guide_on_school_crisis_management.html).

<sup>119</sup> Ken Trump, *When Was the Last Time Your School Did a Non-Custodial Parent Safety Drill?*, NAT’L SCH. SAFETY AND SEC. SERVS. (Sept. 15, 2014), <http://www.schoolsecurity.org/2014/09/last-time-school-non-custodial-parent-safety-drill/>.

<sup>120</sup> Hammer, *supra* note 16, at 4.

<sup>121</sup> *Id.* at 5.

threat to the safety and security of students while at school. Based on the majority age group of children abducted, elementary and secondary schools are particularly susceptible to this threat.

There have been several parental kidnapping cases regarding the unlawful release of students from their school by the non-custodial parent, or an agent acting on behalf of the parent. In one particular case, police in Lawrenceburg, Tennessee issued a child endangerment alert after six-year-old Ashlynn Young (“Ashlynn”), was taken by her non-custodial mother, Amanda Young (“Young”).<sup>122</sup> Young went to David Crockett Elementary School on September 8, 2014, at 8:00 a.m. and removed Ashlynn from school.<sup>123</sup> Young did not act alone; “Lawrenceburg Police Chief Judy Moore said two males were in the car with Young.”<sup>124</sup> Following a sixteen-hour search, authorities finally located Ashlynn in Mississippi.<sup>125</sup> Upon Ashlynn’s recovery, “Young was taken into custody by the George County Sheriff’s Department [to await] extradition back to Lawrenceburg for custodial interference charges.”<sup>126</sup> While it was not specified whether Ashlynn’s guardian(s) would seek legal action against David Crockett Elementary School, or the school district, such breaches in security can amount to civil liability.

Since the 19th century, American courts have recognized the right for parents to sue their child’s kidnapper(s).<sup>127</sup> Modern civil liability is not exclusive to the child’s kidnapper. Tort recovery is available in situations where the left-behind parent and abducted child “have suffered substantial physical and emotional harm from the abduction.”<sup>128</sup> Tort

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<sup>122</sup> Department, *Officers Recognized For Work On Kidnapping Case*, LAWRENCEBURG NOW (Nov. 26, 2014), <http://www.lawrenceburgnow.com/112614department%20now.html>.

<sup>123</sup> Tom Smith, *Child Found in Mississippi; Mother in Custody, Faces Charges*, TIMES DAILY.COM (Sept. 2014), [http://m.timesdaily.com/news/article\\_f159c572-3895-11e4-adad-001a4bcf6878.html?mode=jqm](http://m.timesdaily.com/news/article_f159c572-3895-11e4-adad-001a4bcf6878.html?mode=jqm).

<sup>124</sup> Breken Terry, *UPDATE: Missing Child Taken From TN School*, WAAY-TV (Sept. 8, 2014), [http://www.waaytv.com/appnews/update-missing-child-taken-from-tn-school/article\\_1d46a522-376c-11e4-a525-001a4bcf6878.html](http://www.waaytv.com/appnews/update-missing-child-taken-from-tn-school/article_1d46a522-376c-11e4-a525-001a4bcf6878.html).

<sup>125</sup> Department, *Officers Recognized For Work On Kidnapping Case*, *supra* note 123.

<sup>126</sup> Staff Reports, *Missing Lawrence Co. Girl Recovered in Mississippi*, COLUMBIA DAILY HERALD (Sept. 2, 2014, 9:28 PM), <http://columbiadailyherald.com/news/local-news/missing-lawrence-co-girl-recovered-mississippi>.

<sup>127</sup> See *Rice v. Nickerson*, 91 Mass. 478, 481 (1864) (determining “. . . those persons who illegally assumed to direct the removal of the boy from the custody of the father, became liable to the father to the extent of his actual injuries sustained thereby, and this would include reasonable and proper expenditures incurred in the attempt to regain the possession of the boy.”).

<sup>128</sup> Richard A. Campbell, *The Tort of Custodial Interference—Toward a More Complete Remedy to Parental Kidnappings*, 1983 U. ILL. L. REV. 229, 240-41 (1983).

remedies are not exclusive—often times the parent will initiate a cause of action on the basis of several tort claims.

### A. Negligence

A left-behind parent or guardian can initiate a cause of action against a third-party nonparent on the grounds of negligence.<sup>129</sup> Although the general rule under Florida law is that a person cannot bring a tort action against an individual based on the misconduct of a third-party,<sup>130</sup> “[a]n exception . . . has been recognized where a special relationship exists which gives rise to a duty to control the conduct of a third person so as to prevent them from harming others.”<sup>131</sup> This special relationship exists in the school-minor student relationship,<sup>132</sup> Florida courts have found that injuries inflicted onto students by third parties may be actionable against the school district.<sup>133</sup> In order “[t]o state a claim for negligence under Florida law, a plaintiff must allege that the defendant owed her a duty of care, that the defendant breached that duty, and that the breach caused plaintiff to suffer damages.”<sup>134</sup>

While it is true that most of the case law pertaining to school negligence deals with the negligent supervision of a child during school-based activities, the elements to establish a negligence case against a school are not limited to the school’s duty during school-related activities. Florida law provides that while the student is on premise attending school, participating in school-authorized events, and during a reasonable time before and after school begins, the student is considered

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<sup>129</sup> *Wyke v. Polk Cnty. Sch. Bd.*, 129 F.3d 560, 571 (11th Cir. 1997).

Florida schools have a duty to supervise students placed within their care. *Rupp v. Bryant*, 417 So.2d 658, 666 (Fla.1982); *La Petite Academy, Inc. v. Nassef*, 674 So.2d 181, 182 (Fla. 2nd Dist.Ct.App.1996); *Doe v. Escambia County Sch. Bd.*, 599 So.2d 226, 227 (Fla. 1st Dist.Ct.App.1992). That duty is operational, not discretionary, and the school is not entitled to sovereign immunity. *Doe*, 599 So.2d at 227; *Comuntzis v. Pinellas County Sch. Bd.*, 508 So.2d 750, 753 (Fla. 2nd Dist.Ct.App.1987). In carrying out the duty to supervise, school officials and teachers must use the degree of care “that a person of ordinary prudence, charged with the duties involved, would exercise under the same circumstances.” *Collins v. School Bd. of Broward County*, 471 So.2d 560, 564 (Fla. 4th Dist.Ct.App.1985); *Nassef*, 674 So.2d at 182. A breach of the supervisory duty exposes a school to liability for reasonably foreseeable injuries caused by the failure to use ordinary care. See *Roberson v. Duval County Sch. Bd.*, 618 So.2d 360, 362 (Fla. 1st Dist.Ct.App.1993); *Collins*, 471 So.2d at 563.

<sup>130</sup> *K.M. v. Publix Super Markets, Inc.*, 895 So.2d 1114, 1117 (Fla. Dist. Ct. App. 2005).

<sup>131</sup> *Doe v. Faerber*, 446 F. Supp. 2d 1311, 1320 (M.D. Fla. 2006).

<sup>132</sup> *Gross v. Family Servs. Agency, Inc.*, 716 So. 2d 337, 339 (Fla. Dist. Ct. App. 1998).

<sup>133</sup> See *O’Campo v. School Bd. of Dade County*, 589 So. 2d 323, 325 (Fla. Dist. Ct. App. 1991).

<sup>134</sup> *Woodburn v. State of Florida Dep’t of Children & Family Servs.*, 854 F. Supp. 2d 1184, 1195 (S.D. Fla. 2011).

to be “under the control and direction of the principal or teacher in charge of the school, and under the immediate control and direction of the teacher or other member of the instructional staff . . . .”<sup>135</sup> Therefore, if a student is harmed during those times, and the school is found culpable for such harm, a cause of action for negligence can succeed.

In *O’Campo v. School Board of Dade County*, the Third District Court of Appeals of Florida determined that the School Board of Miami-Dade County had a duty to supervise a student who was raped while waiting for transportation to a gifted program directed by the School Board.<sup>136</sup> The school board’s directive created the correlative duty to supervise.<sup>137</sup>

### B. *Intentional Infliction of Emotional Distress*

The parent left behind may also bring a cause of action under intentional infliction of emotional distress.<sup>138</sup> The plaintiff’s likelihood of prevailing under this cause of action varies considerably because of the heightened factual requirements the plaintiff must demonstrate to seek recovery.<sup>139</sup>

In the Florida case of *Allen v. Walker*, the Fourth District Court of Appeals held that the mother and grandparents of elementary student, Cydney Walker (“Cydney”), failed to establish grounds for intentional infliction of emotional distress against elementary school principal, Hazel Calvet (“Calvet”).<sup>140</sup> Cydney’s grandparents provided the school with “specific, written instructions” regarding who was permitted to pick Cydney up from school.<sup>141</sup> Kenneth Walker (“Walker”), Cydney’s father, came to her school with a Georgia court order, which awarded him “full legal and physical custody” over Cydney.<sup>142</sup>

Although Walker was not among the names listed in Cydney’s grandparents’ written instructions, upon reviewing the court order,

<sup>135</sup> FLA. STAT. § 1003.31(1)(b),(c),(d) (2014).

<sup>136</sup> *O’Campo*, 589 So. 2d at 325.

<sup>137</sup> *Id.*

<sup>138</sup> Campbell, *supra* note 129 4.

<sup>139</sup> *Stewart v. Walker*, 5 So. 3d 746, 749 (Fla. Dist. Ct. App. 2009) (citing *Legrande v. Emmanuel*, 889 So. 2d 991, 995 (Fla. Dist. Ct. App. 2004)).

(1) The wrongdoer’s conduct was intentional or reckless, that is, he intended his behavior when he knew or should have known that emotional distress would likely result; (2) The conduct was outrageous, that is, as to go beyond all bounds of decency, and to be regarded as odious and utterly intolerable in a civilized community; (3) The conduct caused emotional distress; and (4) The emotional distress was severe.

<sup>140</sup> *Allen v. Walker*, 810 So. 2d 1090, 1091 (Fla. Dist. Ct. App. 2002).

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

Calvet released Cydney to Walker.<sup>143</sup> The court held that the plaintiffs pled insufficient facts to bring a cause of action against the school's principal for intentional infliction of emotional distress because "there was no conduct 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'"<sup>144</sup> The grandparents also initiated a cause of action under negligence, which was unsuccessful.<sup>145</sup> The court found the "complaint did not state a cause of action against Calvet [because it failed] to allege that Calvet knew or should have known of the, 'unlawful' nature of Cydney's restraint when faced with the court order."<sup>146</sup>

Intentional infliction of emotional distress has been successful, however, against other school districts. In San Diego, California, a federal jury awarded a father, Manuel Ramirez ("Ramirez"), 2.8 million dollars against the Escondido Union School District after school administrators at Farr Elementary School improperly released his son, Enrique.<sup>147</sup> Approximately a month after Enrique's mother, Claudia Cano ("Cano"), was deported to Mexico in 2010, she contacted Farr Elementary School and told the school's office manager that Enrique had a doctor's appointment and that her boyfriend would be taking Enrique to his appointment.<sup>148</sup>

Although Cano's boyfriend was not on Enrique's emergency card as an authorized person to remove Enrique from the school, the office manager released Enrique without seeking Ramirez's permission.<sup>149</sup> Ramirez filed a cause of action on the grounds of his "deprivation of father-son contact, negligence and intentional infliction of emotional distress."<sup>150</sup> The school district was held responsible for deviating from school policy, which required students who were dismissed during the day must only be signed out by a person listed on the emergency card.<sup>151</sup>

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<sup>143</sup> *Id.*

<sup>144</sup> *Id.* (citing to Metro. Life Ins. Co. v. McCarron, 467 So. 2d 277, 278-79 (Fla. 1985) (quoting the RESTATEMENT (SECOND) OF TORTS § 46 (1965)).

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> See Kristina Davis, *Father, Kidnapped Son Win \$2.8M Verdict*, THE SAN DIEGO UNION TRIBUNE (Oct. 3, 2013), <http://www.utsandiego.com/news/2013/oct/03/father-kidnap-son-escondido-school-mexico/>.

<sup>148</sup> *See id.*

<sup>149</sup> See Ramirez v. Escondido Unified Sch. Dist., No. 11CV1823 DMS BGS, 2012 WL 667774, at \*2 (S.D. Cal. Feb. 29, 2012).

<sup>150</sup> Davis, *supra* note 147.

<sup>151</sup> *See id.*

Since the abduction, Ramirez is still working with the child abduction unit of the District Attorney's Office to bring back his son.<sup>152</sup>

## V. SAFEGUARDS AGAINST PARENTAL KIDNAPPING

### A. *Educating Educators on the Law*

School principals are faced with a myriad of problems on a daily basis, concerning the monitoring of both students and faculty members. As seen in the case law above, school districts are not immune from civil liability; therefore, education on the law and thorough training regarding procedures is imperative.

In a study measuring the perceptions of school principals on tort liability,<sup>153</sup> forty-three percent of principals answered that they had a significant concern with tort liability.<sup>154</sup> Elementary school principals scored the lowest mean score, illustrating that they had the least concern about tort liability.<sup>155</sup> One explanation offered to account for such difference is that since elementary schools offer fewer school activities than high schools and secondary schools, there is less of a chance for possible injuries to be sustained by students.<sup>156</sup>

The survey also found a "moderate relationship between the emphasis on tort liability by the superintendent and how significant the principal perceives the issue to be."<sup>157</sup> Such a correlation is of particular importance because it raises the following concerns: "how seriously superintendents take the issue of tort liability and whether superintendents discuss the issue with their principals."<sup>158</sup> The superintendent plays an integral role in ensuring the district office is educating school principals to prevent liability.<sup>159</sup>

The superintendent is vested with a number of powers to facilitate the operation and control of the school district. As the executive officer

<sup>152</sup> See Ramirez, No. 11CV1823 DMS BGS, 2012 WL 667774, at \*2.

<sup>153</sup> Todd A. DeMitchell, Ed.D. & Thomas Carroll, Ph.D., *A Duty Owed: Tort Liability and the Perceptions of Public School Principals*, 201 Educ. L. Rep. 2, 10 (2005).

The quantitative analysis consists of a survey of 300 randomly selected public school principals (100 each from elementary schools, middle/junior high schools, and high schools). Three research questions are posed. First, "To what extent is liability for student injuries an issue for principals?" Second, "What steps have been taken to reduce the exposure to liability?" And third, "Is the principal's knowledge of tort liability adequate for the demands of the principalship?"

<sup>154</sup> *Id.* at 11.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> DeMitchell, *supra* note 153, at 12.

<sup>158</sup> *Id.*

<sup>159</sup> See generally Joseph Bassano, et. al., *Generally: powers of superintendent*, 46 Fla. Jur. 2d Schools, Universities, and Colleges § 74.

of the school district, the superintendent is responsible for the “administration and management of the schools and for the supervision of instruction in the district . . . .”<sup>160</sup> The superintendent has the authority to “exercise general oversight over the district school system in order to determine problems and needs, and recommend improvements,”<sup>161</sup> and “recommend to the school board for adoption [of] such policies pertaining to the district school system.”<sup>162</sup> Also, the superintendent has the power to set “minimum standards relating to the operation of any phase of the district school system as are needed to supplement those adopted by the state board or the commissioner and as will contribute to the efficient operation of any aspect of education in the district.”<sup>163</sup>

### B. Risk Assessment

School administrators must be vigilant when releasing a child to their legally authorized guardian. The crux of the issue centers on “how closely [school] policies are followed, especially when dealing with splintered families and complicated parent work schedule[s].”<sup>164</sup> This task has become an exceptionally difficult task because often times the chain of custody for the child can be uncertain, especially during the onset of a custody dispute.<sup>165</sup>

Faculty members of the school’s office staff must be trained to assess such risk and not deviate from school policy when releasing a student. Before the start of each school year, the school principal should schedule a thorough review session concerning the school district’s policies and procedures regarding the release of students to noncustodial parents.<sup>166</sup> During this review session, teachers and office members should freely discuss any discrepancies they find within the district policy and voice their concerns to the school board. These policies should be outlined in the school’s handbook and viewable on the district’s website for parents to access. Any changes made should be

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<sup>160</sup> FLA. STAT. § 230.03(3) (1997).

<sup>161</sup> FLA. STAT. § 230.32(1) (1997).

<sup>162</sup> FLA. STAT. § 230.32(3) (1997); *see also* Hollis v. Sch. Board, 384 So. 2d 661, 663 (Fla. 1st DCA 1980).

<sup>163</sup> FLA. STAT. § 230.32(5) (1997).

<sup>164</sup> *See* Davis, *supra* note 147.

<sup>165</sup> Chiancone, *supra* note 29, at 7, available at <https://www.ncjrs.gov/html/ojdp/190074/page7.html> (obstacles handling parental kidnapping cases include “[v]erifying custody orders, overcoming the poor documentation available on custody orders, and dealing with custody orders subject to varying interpretations.”).

<sup>166</sup> Trotter, *supra* note 6, at 30.

posted through the school and district newsletters to notify parents of such changes.

The *Ramirez* case is paramount because it illustrates how office staff must be properly trained to handle and identify a multitude of sensitive custody issues.<sup>167</sup> Faculty must ensure that students are safe and being properly released in strict accordance with school district policy. In the *Ramirez* case, when Cano called the school to prepare to release her son, she informed the office manager that she was unable to pick up her son for his doctor appointment because she was at work.<sup>168</sup> The school's office manager allowed for Cano's boyfriend to pick up Enrique, despite the fact that Cano's boyfriend was not on the emergency card, so long as he presented his identification.<sup>169</sup> Allowing for this exception, while at the time may have been perceived as having no risks, turned out to cost the Escondido Union School District millions of dollars.<sup>170</sup>

Several factors affect an individual's judgment while assessing for risks. Society perceives and reacts to risks in two fundamental ways: (1) risk as feelings and (2) risk as analysis.<sup>171</sup> "Risk as feelings refers to our instinctive and intuitive reactions to danger. Risk as analysis brings logic, reason, and scientific deliberation to bear on risk assessment and decision making."<sup>172</sup> People predominately evaluate risks through their personal intuition of a situation.<sup>173</sup> Therefore, it is likely that Cano's common excuse of being at work caused the office manager to misjudge the situation, and not perceive releasing Enrique as a risk to his safety. This misjudgment is why principals, with the guidance from the school district office, need to conduct regular training and role-playing exercises targeted at training office staff on early release and dismissal procedures.

Additionally, school administrators cannot rely on the student fighting back from their abductor.<sup>174</sup> For younger students in elementary school, "children probably cannot resist and might not fully understand the custodial arrangement..."<sup>175</sup> In the *Ramirez* case, "Enrique appeared to recognize the boyfriend, calling him by his nickname, and looked

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<sup>167</sup> *Ramirez v. Escondido Unified Sch. Dist.*, 2012 WL 667774, at \*4 (S.D. Cal. Feb. 29, 2012).

<sup>168</sup> *Davis*, *supra* note 147.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> Paul Slovic & Ellen Peters, *Risk Perception and Affect*, 15 *Current Directions in Psychol. Sci.* 6, 322 (2006) available at <http://courses.washington.edu/pbafhall/514/514%20Readings/riskperceptionand affect.pdf>.

<sup>172</sup> *Id.*

<sup>173</sup> *See id.*

<sup>174</sup> Trotter, *supra* note 6, at 28.

<sup>175</sup> *See* Trotter, *supra* note 6, at 28.



‘happy to see him...’<sup>176</sup> Often, especially if it is a parent-abductor, the child will be happy and willing to go with the parent, not comprehending the potential dangers.<sup>177</sup>

School board policies vary among school districts; however, every major school district in Florida has a policy pertaining to the early release of students from school.<sup>178</sup> In Orlando, Florida, Orange County Public Schools’ release policy is unique with respect to the fact that the district’s policy provides a hierarchy system for determining the appropriate release of a student in the event of conflicting parental custody.<sup>179</sup> Orange County Public Schools’ policy provides:

The principal or designee shall establish the identity and authority of any individual who seeks the release of a student from school. A student shall be released only to the parent(s) or legal guardian(s) of the student. If an individual other than the student’s parent(s) or legal guardian(s) requests release of a student, the principal or designee shall obtain the parent(s) or legal guardian’s consent prior to releasing the student.

...

In the event the school receives conflicting direction from divorced or separated parents concerning a student, the school may rely on the direction of the parent identified by the following criteria, which are listed in order of priority:

(a) First, the parent who is designated in a parenting plan or other court order as having either sole educational decision-making authority or sole parental responsibility of the student; or

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<sup>176</sup> Davis, *supra* note 147.

<sup>177</sup> See Trotter, *supra* note 6.

<sup>178</sup> Orange Cnty. Pub. Sch., *Custodial and Noncustodial Parent Rights and Responsibility, Release of Students From School, Visits at School, Release of Student Records*, OPCS (June 22, 2010), [https://www.ocps.net/sb/Superintendent%20Documents/KBBA%20Custodial%20Non%20Custodial%20Parental%20Rights%2006\\_2\\_2\\_2010.pdf](https://www.ocps.net/sb/Superintendent%20Documents/KBBA%20Custodial%20Non%20Custodial%20Parental%20Rights%2006_2_2_2010.pdf); Hillsborough Cnty. Pub. Sch., Policy Manual, 5230, *Late Arrival and Early Dismissal*, available at <http://www.sdhc.k12.fl.us/policymanual/detail/224> (last visited Jan. 12, 2015); Sch. Bd. Of Miami-Dade Cnty., Bylaws & Policies, 5230, *Late Arrival and Early Dismissal*, available at <http://www.neola.com/miamidade-fl/> (last visited Jan. 12, 2015); Duval Cnty. Pub. Sch., Duval Cnty. Sch. Bd. Policy Manual, Ch. 5, 5.34, *Granting Permission for Students to Leave the School Campus*, DCPS (Nov. 10, 2008), <http://dcps.duvalschools.org/Page/9598>; Broward Cnty. Pub. Sch., 5310, *Students Leaving School Grounds*, available at <http://www.broward.k12.fl.us/sbbcpolicies/docs/P5310.000.pdf> (last visited Jan. 11, 2015).

<sup>179</sup> *Id.*

(b) Second, if both parents are designated as shared educational decision-makers with shared parental responsibility, the parent who resides at the address specified in the parenting plan or other court order as the address to be used for school assignment purposes; or

(c) Third, if no such parenting plan or court order exist or no such address is specified, the parent who resides at the address used by the District for student assignment purposes; or if this address cannot be ascertained, the parent who enrolled the student.<sup>180</sup>

Such an assessment ensures that the school's administrators are going through a methodical evaluation process to determine the appropriate parent or guardian to release the student to during situations where divorce or separation may create a conflict. Creating a policy structured in this manner cuts back on confusion when needing to make an immediate decision. If a legal incident were to occur, such a procedure demonstrates to the court that the office staff acted as a reasonable person would act under the circumstances to make the most prudent decision when releasing the student from school.

### *C. Communicating with Parents*

Maintaining constant communication with parents is key. Given the volume of students a principal must oversee, it would be impossible for a principal to keep track of custodial problems that may arise independently. In cases where "a family has gone through a divorce or separation, have administrators ask parents for a certified copy of any custody decrees or restraining orders."<sup>181</sup> This information should be properly recorded at the school district's office. The school's principal or office manager should ask "both parents to sign a statement or letter explaining the custody arrangement..."<sup>182</sup> These "documents should be explicit in defining the terms of the arrangement with regard to school."<sup>183</sup>

Students' emergency cards should be kept up-to-date at all times. Any person, other than an individual listed as a designated person for pick up under the emergency card, should be refused by the principal or office manager unless the primary parent of the student has provided written notice. If the principal or school district is informed of any custody disputes or changes, the school should flag the student's

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<sup>180</sup> *Id.*

<sup>181</sup> Trotter, *supra* note 6, at 30.

<sup>182</sup> See Trotter, *supra* note 6, at 30.

<sup>183</sup> See Trotter, *supra* note 6, at 30.

emergency card and records and relay this information to the school's district office.<sup>184</sup> Since it is not uncommon for parent-abductors to take their children from bus stops, or while the student is walking to school, if the student is absent without any notification from the parent, the school should immediately call the custodial parent to alert them.<sup>185</sup> In the event a child has been kidnapped by a parent or relative, the school should advise the parent to contact the National Center for Missing and Exploited Children.<sup>186</sup>

## VI. CONCLUSION

Parental abduction is not a private domestic matter—it is a crime. Therefore, like any crime, school district officials and administrators must be particularly cognizant of the issue of parental kidnapping. Parental kidnapping is intensified by the fact that the structure of today's modern family is remarkably different from the shape and size of what a traditional nuclear family of the past.<sup>187</sup> This shift causes a particularly unique problem for school faculty members because differentiating between who is the designated parent or guardian can become extremely difficult.

Parent abductors do not always work alone. Frequently, agents of the parent-abductor include a boyfriend, girlfriend, or other family members. Communication is key, not only to faculty members, but also to the student's parents. Educating parents on the school's early release policies and the importance of keeping the school up to date on any custody decrees or court orders is imperative to ensure that the safety and security of the students are protected. The greatest shield for principals and faculty members is staying informed by parents and keeping "abreast on every child's family status."<sup>188</sup> Most importantly, principals and office staff must emphasize to parents that it is their job is to make decisions

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<sup>184</sup> See Trotter, *supra* note 6, at 30.

<sup>185</sup> See Trotter, *supra* note 6, at 30.

<sup>186</sup> Trotter, *supra* note 6, at 30.

<sup>187</sup> See Andrew Cherlin, *The Marriage-Go-Around: The State of Marriage and the Family in America Today* 14-15 (Vintage Edition, 2010).

Both marriage and divorce contribute to the larger picture of a country in which people partner, unpartner, and repartner faster than do people in any other Western nation. They form cohabiting relationships easily, but they end them after a short time than people in other nations. They tend to marry at younger ages. After a divorce, they tend to find a new partner ore quickly. In other words, having partnerships is more common in the United States not just because people exit intimate partnerships faster but also because they enter them faster and after a breakup reenter them faster.

<sup>188</sup> Trotter, *supra* note 6, at 29.

based on what is in the child's best interest in terms of their safety and security.<sup>189</sup>

Unless otherwise dictated by the courts, both the custodial and non-custodial parents have equally vested rights in their child's welfare.<sup>190</sup> There is a critical balance a principal must weigh between the parent's rights and the child's safety when deliberating whether to release a child to a noncustodial parent. The principal cannot legally restrict a parent from seeing their child unless the court has issued a restraining order.<sup>191</sup> While the law and school district policies may provide guidance to principals, the most valuable aid to principals is their level of skill and tact when they are faced with an irate parent demanding the release of their child.<sup>192</sup> Vigilance cannot eliminate every potential risk of a parent unlawfully taking their child from school. However, establishing procedural safeguards "increases the odds that all students go home at the end of the day to the place where they belong."<sup>193</sup>

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<sup>189</sup> See Trotter, *supra* note 6, at 29.

<sup>190</sup> S.G. v. C.S.G., 726 So. 2d 806, 809 (Fla. Dist. Ct. App. 1999) ("When a custody dispute is between two parents, where both are fit and have equal rights to custody, the test involves only the determination of the best interests of the child.").

<sup>191</sup> See Trotter, *supra* note 6, at 29.

<sup>192</sup> See Trotter, *supra* note 6, at 29.

<sup>193</sup> See Trotter, *supra* note 6, at 30.

