

**NOT DESIGNATED FOR PUBLICATION**

*JEW*  
*UGW by Emily*  
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STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2015 CA 0964

NICOLE BOLDEN, INDIVIDUALLY AND AS MOTHER,  
NATURAL TUTRIX AND FOR AND ON BEHALF OF HER  
MINOR CHILD, DIAMONTE D. BOLDEN

VERSUS

USAGENCIES CASUALTY INSURANCE COMPANY, ET AL.

Judgment Rendered: DEC 23 2015

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Appealed from the  
17<sup>th</sup> Judicial District Court  
In and for the Parish of Lafourche, Louisiana  
Trial Court Number 122037

Honorable F. Hugh Larose, Judge

\* \* \* \* \*

Richard A. Thalheim, Jr.  
Thibodaux, LA

Attorney for Appellant  
Plaintiff – Nicole Bolden, Individually  
and as Mother, Natural Tutrix and for and  
on Behalf of her Minor Child, Diamonte D.  
Bolden

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Defendant – Lafourche Parish School Board

\* \* \* \* \*

**BEFORE: WHIPPLE, C.J., WELCH, AND DRAKE, JJ.**

**WELCH, J.**

The plaintiff, Nicole Bolden, individually and on behalf of her minor child, Diamonte D. Bolden, appeals a trial court judgment signed on March 19, 2015, granting summary judgment in favor of the defendant, Lafourche Parish School Board (“LPSB”), dismissing with prejudice all of the claims against LPSB. For reasons that follow, we reverse the judgment of the trial court and remand the matter for further proceedings.

**FACTUAL AND PROCEDURAL BACKGROUND**

On December 10, 2012, Diamonte was struck by a car after being dropped off at his school bus stop. At the time of accident, Diamonte was seventeen years old and a ninth grader in the special education program at Thibodaux High School performing significantly below grade level. According to Diamonte’s mother, he is also mentally and hearing impaired. Diamonte’s bus stop was located at the intersection of Serenity Drive and Esplanade in Lafourche Parish. Diamonte lived approximately one-half mile from the bus stop on Serenity. There was no sidewalk in the immediate area where Diamonte exited from the school bus, and Diamonte and other passengers were required to walk approximately one and a half blocks on the right side of Serenity before an off-street sidewalk became available. The accident occurred on Serenity near the bus stop due to the brakes failing on a motor vehicle being operated by Keriyon Price. Keriyon Price had borrowed the vehicle from her grandmother, Ella Mae Price.

On February 1, 2013, Diamonte’s mother, Nicole Bolden, individually and on behalf of her child, filed suit against the following defendants: LPSB, Keriyon Price, Ella Mae Price, and USAgencies Casualty Insurance Co. (“USAgencies”)(Ella Mae Price’s automobile insurer). On June 14, 2013, USAgencies filed a motion for summary judgment asserting that the policy issued to Ella Mae Price contained a driver restriction endorsement that expressly

excluded coverage for her granddaughter, Keriyon Price. Following a hearing, the trial court granted USAgencies' motion for summary judgment on August 27, 2013, and found no duty by USAgencies to defend either of the Prices and dismissed all claims against USAgencies with prejudice. Keriyon Price filed an answer on her own behalf on August 28, 2013.

On September 30, 2014, LPSB filed the motion for summary judgment at issue in the instant appeal. LPSB maintained that it owed no duty to supervise Diamonte while he was walking home from his bus stop. LPSB argued that under the controlling jurisprudence, the duty to ensure the safety of students after the bus drops students off at their designated stop rests with parents and students, not the school board.

LPSB further argued that even if it did owe a duty of supervision to Diamonte at the time of the accident, the facts fail to demonstrate a causal connection between lack of supervision by LPSB and Diamonte being struck by a car with failed brakes, because such a risk was too remote and unforeseeable. LPSB argued that it had never been informed by Ms. Bolden that Diamonte required special transportation services due to his mental impairments and hearing issues; thus, there was no expansion of the duty owed to Diamonte after he was dropped off at his bus stop. LPSB concluded that the injuries sustained by Diamonte were the result of either Diamonte's failure to exercise ordinary care when walking home or the lack of working brakes in the vehicle being operated by Keriyon Price.

In opposition to LPSB's motion for summary judgment, the plaintiff maintained that the unsafe bus stop location and route resulted in Diamonte being needlessly exposed to the risk of being struck by a car. The plaintiff asserted that there were genuine issues of material facts regarding the reasonableness of the route and stop selected by LPSB and its employee, bus driver, Michelle Duet. The

plaintiff asserted that the evidence taken as a whole reveals that issues of material facts exist as to whether LPSB and Ms. Duet violated regulations governing the loading and offloading of students from school buses in selecting the bus stop Diamonte was dropped off at; and whether the supervision provided to Diamonte failed to properly consider his developmental impairments; and the actual time delay between when Diamonte was dropped off at the intersection and his being struck by Keriyon Price.

The motion for summary judgment was originally set for hearing on November 3, 2014. Following a hearing on March 4, 2015, the trial court signed a judgment on March 19, 2015, granting LPSB's motion for summary judgment and dismissed LPSB as a party from this litigation. The plaintiff filed the instant appeal arguing that the trial court erred in granting LPSB's motion in light of the contradictory evidence presented by the parties in the form of affidavits and exhibits evidencing that genuine issues of material fact exist and preclude the granting of summary judgment.

## **APPLICABLE LAW AND DISCUSSION**

### **Standard of Review**

Summary judgments are reviewed on appeal *de novo* using the same criteria as the trial court in determining whether summary judgment is appropriate. **Jones v. Estate of Santiago**, 2003-1424 (La. 04/14/04), 870 So.2d 1002, 1006.

### **Summary Judgment**

A motion for summary judgment is a procedural device used to avoid a full-scale trial when there is no genuine issue of material fact. **Granda v. State Farm Mutual Insurance Company**, 2004-2012 (La. App. 1<sup>st</sup> Cir. 02/10/06), 935 So.2d 698, 701. Summary judgment is proper only if the pleadings, depositions, answers to interrogatories, and admissions, together with any affidavits, if any, admitted for purposes of the motion for summary judgment, show there is no genuine issue of

material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B)(2).

On a motion for summary judgment, the initial burden of proof is on the moving party. If, however, the moving party will not bear the burden of proof at trial on the matter before the court, the moving party's burden of proof on the motion is satisfied by pointing out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Thereafter, the non-moving party must produce factual support sufficient to establish that it will be able to satisfy its evidentiary burden of proof at trial. Failure to do so shows that there is no genuine issue of material fact. La. C.C.P. art. 966(C)(2). Any doubt as to a dispute regarding a genuine issue of material fact must be resolved against granting the motion and in favor of a trial on the merits. **Fernandez v. Hebert**, 2006-1558 (La. App. 1<sup>st</sup> Cir. 05/04/07), 961 So.2d 404, 408, writ denied, 2007-1123 (La. 09/21/07), 964 So.2d 333.

A "genuine issue" is a "triable issue," on which reasonable persons could disagree. If, on the state of the evidence, reasonable persons could reach only one conclusion, there is no need for a trial on that issue. **Jones**, 870 So.2d at 1006. In determining whether an issue is genuine, a court should not consider the merits, make credibility determinations, evaluate testimony, or weigh evidence. **Fernandez**, 961 So.2d at 408. A fact is material if it potentially ensures or precludes recovery, affects a litigant's ultimate success, or determines the outcome of the legal dispute. **Anglin v. Anglin**, 2005-1233 (La. App. 1<sup>st</sup> Cir. 06/09/06), 938 So.2d 766, 769.

### **Duty-Risk**

Louisiana courts have adopted a duty-risk analysis in determining whether liability exists under the facts of a particular case. **Brewer v. J.B. Hunt Transport, Inc.**, 2009-1408, 2009-1428 (La. 03/16/10), 35 So.3d 230, 240. For

liability to attach under a duty-risk analysis, a plaintiff must prove: (1) the defendant had a duty to conform his conduct to a specific standard (the duty element); (2) the defendant failed to conform his conduct to the appropriate standard (the breach of duty element); (3) the defendant's substandard conduct was a cause-in-fact of the plaintiff's injuries (the cause-in-fact element); (4) the defendant's substandard conduct was a legal cause of the plaintiffs injuries (the scope of liability or scope of protection element); and (5) actual damages (the damages element). **Roberts v. Rudzis**, 2013-0538 (La. App. 1<sup>st</sup> Cir. 05/28/14), 146 So.3d 602, 608-609, writ denied, 2014-1369 (La. 10/03/14), 149 So.3d 797. A negative answer to any of the inquiries of the duty-risk analysis results in a determination of no liability. **Mathieu v. Imperial Toy Corporation**, 94-0952 (La. 11/30/94), 646 So.2d 318, 326. Whether a duty is owed is a question of law; whether defendant has breached a duty owed is a question of fact. **Mundy v. Department of Health and Human Resources**, 620 So.2d 811, 813 (La. 1993).

It is well-settled that the duty imposed on a school board and its agents with regard to children in its care is one of "reasonable supervision." **Wallmuth v. Rapides Parish School Bd.**, 2001-1779, 2001-1780 (La. 04/03/02), 813 So.2d 341, 346. In **Wallmuth**, the supreme court endorsed the applicable standard of liability as follows:

A school board, through its agents and teachers, owes a duty of reasonable supervision over students. The supervision required is reasonable, competent supervision appropriate to the age of the children and the attendant circumstances. This duty does not make the school board the insurer of the safety of the children. Constant supervision of all students is not possible nor required for educators to discharge their duty to provide adequate supervision.

Before liability can be imposed upon a school board for failure to adequately supervise the safety of students, there must be proof of negligence in providing supervision and also proof of a causal connection between the lack of supervision and the accident[....] Furthermore, before a school board can be found to have breached the duty to adequately supervise the safety of students, the risk of unreasonable injury must be foreseeable, constructively or actually

known, and preventable if a requisite degree of supervision had been exercised.

*Id.*, 813 So.2d at 346 (citations omitted); see also **S.J. v. Lafayette Parish School Board**, 2009-2195 (La. 07/06/10), 41 So.3d 1119, 1125; and **Frazer v. St. Tammany Parish School Board**, 99-2017 (La. App. 1<sup>st</sup> Cir. 12/22/00), 774 So.2d 1227, 1232, writ denied, 2001-0233 (La. 03/21/01), 787 So.2d 1001.

### **Evidence on the Motion for Summary Judgment**

The evidence in support of LPSB's motion can be summarized as focusing on establishing that the plaintiff will be unable to prove breach of duty and causality. LPSB attaches the affidavit of Michelle Duet, the bus driver employed by LPSB, who attested that she dropped Diamonte and several other students at the Esplanade and Serenity location at "around 2:42 p.m." Ms. Duet stated that it was necessary for her to drop the students off at the Esplanade/Serenity intersection, because Serenity is a dead-end street and it was not possible for her to turn the bus around on the dead-end street. According to Ms. Duet's affidavit, dropping the students off at the intersection allowed her to safely turn the bus around at the intersection. Regarding the condition of the bus stop, Ms. Duet attested that the drop off area on Serenity had ample green space and sidewalks facilitating the ability of students to walk home without the necessity of entering the street or lane of traffic. Ms. Duet's affidavit described the traffic on Serenity as minimal. Ms. Duet denies being present when Diamonte was struck by the car. Attached to Ms. Duet's affidavit are several log sheets presented for the purpose of showing an accurate account of Ms. Duet's morning and afternoon trips with the time of each stop and the mileage of each stop. The log sheets do indicate that Ms. Duet dropped Diamonte off at 2:42 p.m.; however, the log sheets are dated August 24, 2012, months before the December 10, 2012 accident.

LPSB also attached the deposition of Deputy Brad Ross, a patrol sergeant with the Lafourche Parish Sheriff's Office. Deputy Ross testified that he was called to investigate a possible hit and run involving a pedestrian on Serenity at approximately 3:00 p.m. Upon receiving the call, Deputy Ross proceeded to the hospital where he attempted to speak with Diamonte without success. Deputy Ross testified that Ms. Bolden told him that her son was struck while playing in the street. Additionally, Deputy Ross stated he was never informed of the fact that Diamonte had been dropped off by the school bus prior to the accident. Deputy Ross testified that Keriyon Price informed him that her brakes failed as she was turning from Esplanade on to Serenity. Deputy Ross stated the he tested the brakes and found them malfunctioning. Deputy Ross further testified that he had been unable to accurately ascertain the exact location where the accident occurred from either the participants or witnesses. Deputy Ross admitted that he did not follow-up with the parties to the accident or witnesses after conducting his initial investigation.

In support of its contention that LPSB was never informed of the particular danger to Diamonte due to the location of the bus stop, LPSB relies upon excerpts from the deposition of Ms. Bolden and Individualized Education Program ("IEP") documents. In particular, LPSB points to Ms. Bolden's deposition testimony that she never worried about Diamonte's safety in connection with the location of the bus stop in the four years they had lived in the neighborhood. Bolden admitted that she had never complained to the school board or Ms. Duet about the safety of the bus stop. LPSB asserts that review of the Individualized Education Program ("IEP") documents produced by the LPSB evidence that Ms. Bolden never requested special transportation for Diamonte during any of the IEP meetings with school officials.

Review of the IEP reports indicates that in August of 2011, Diamonte was shown to have the primary exceptionality of a specific learning disability in mathematics, calculations, and mathematics problem solving as well as speech and language impairments. The IEP reports compiled during the 2011-2012 school year also indicated that Diamonte appeared to be functioning below grade reading and math skills at approximately a third to fourth grade level depending on the subject.

The plaintiff relied upon the affidavits of Diamonte and his older brother, Kionte Bolden, indicating that the bus driver had dropped the students off in the intersection of Serenity and Esplanade on the day of the accident. The Bolden brothers testified that there was no shoulder or green space available for the students to use upon exiting the school bus. Diamonte and Kionte attested that the owner of the property adjacent to the location of the bus stop told them and other students not to walk on his property. Diamonte attested that Ms. Duet was aware that the property owner's objection required Diamonte and other students to walk in the street. As to the timing of the accident, Kionte's affidavit provides that the accident occurred "very shortly after the bus dropped [them off] in the street." Similarly, Diamonte's affidavit represents that he had not walked very far down Serenity after being dropped off when he was struck. Both brothers attested that Diamonte was walking on the far right side of the road, close to the edge of the road, when the accident occurred.

The evidence offered by the plaintiff contradicts many of the facts alleged by LPSB. For instance, the plaintiff attached the affidavit of Crystal Batiste, a licensed bus driver, who attested that she was familiar with LAC Title 28, Part CXIII, Bulletin 119, Chapter 15, containing the Louisiana School Transportation

Specifications and Procedures in effect at the time of the incident.<sup>1</sup> Ms. Batiste's affidavit identified various violations by LPSB and Ms. Duet of the transportation regulations including, Section 903(B)(1), which provides that the bus driver is responsible for selecting a safe stopping point for loading students, and Section 1501(B), requiring the school board to establish safe bus routes. Ms. Batiste attested she inspected the bus stop at the intersection of Esplanade and Serenity and opined the intersection was unsafe and unreasonable as it violated Sections 903(B)(3) and 907(A)(4), which prohibit the loading and unloading of students in an intersection. Also, Ms. Batiste opined that the bus stop violated Section 903(B)(2) because it necessitated the loading and unloading of students where there is no shoulder, sidewalk, or designated and approved passageway. Ms. Batiste's affidavit identified several other alternative bus stop options on Serenity that would have allowed her to turn around without backing up the bus. Further, Ms. Batiste opined a properly trained bus driver would have selected an alternative bus stop and a concerned school board would have adopted such a route to eliminate the necessity for the students to be exposed to traffic by walking in the street.

In her affidavit and supplemental affidavit, Ms. Bolden, attested that the school board was aware that Diamonte is severely mentally impaired with schooling, comprehension and "everyday things" as well as hearing impaired. Ms. Bolden's affidavit stated that the school board never offered to provide Diamonte any special transportation. Further, she attested that she counted on the school board to provide safe and appropriate transportation. Ms. Bolden's affidavit denied informing any police officer that Diamonte was playing in the street.

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<sup>1</sup> According to Section 101(A) of Louisiana School Transportation Specifications and Procedures contained in LAC Title 28, Part CXIII, Bulletin 119, Chapter 15, the rules were developed by the Department of Education to provide information and direction to local education agencies (LEAs) involved in the school transportation in Louisiana. The rules were promulgated in accordance with La. R.S. 17:158, 17:160-161, 17:164-17:166, and 17:494.

## Duty

We must first determine the duty, if any, which LPSB owed to the plaintiff. Louisiana Revised Statutes 17:158(A)(1) requires school boards to provide free transportation for students residing more than one-mile from the school they attend. In accordance with the statutory authority governing the establishment and continuation of school bus routes in Louisiana (La. R.S. 17:158 and La. R.S. 17:497), BESE has been granted the authority under the provisions of La. R.S. 17:164, *et seq.*, to establish and adopt regulations relating to the operation of school buses in the transportation of students to and from school. The regulations governing the transportation of students are contained in LAC, Title 28, Part CXIII, Bulletin 119, Chapter 15. Section 1501(B) of the regulations assigns primary responsibility for establishing and continuing school bus routes rests with the local education authority (LEA), or school board. Each school board has the authority to set additional policies that are not in conflict with state or federal regulations.

Section 903(B) of the regulations provides in pertinent part as follows regarding locations of loading and unloading students:

1. It is the bus driver's responsibility to select a safe stopping point within LEA guidelines for students to load and unload from the school bus, even if this requires students to walk a distance.
2. The bus must stop in the right traffic lane, or the LEA has the option to permit loading and unloading on the shoulder of the road (when sufficient room exists on the shoulder or on adjacent state property) or on private property, when permission can be obtained from the owner and when no children are required to cross the highway to load or unload. (Off-road loading and unloading negates the effectiveness of flashing lights and stop arm signals. See also R.S. 32:80.)
3. Buses shall not stop within intersections to pick up or discharge students.<sup>2</sup>

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<sup>2</sup> The prohibition of loading and unloading students in an intersection is reiterated in Section 907(A)(4) which provides: "School buses should not stop within intersections to pick up or to discharge students."

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Here, we find the duty of reasonable supervision imposed on school boards and their agents includes the duty to select a safe location for the unloading of all students. This duty includes unloading students in an area where there is immediate access to a shoulder or pathway where the student is placed out of the flow of traffic. Our finding is supported by the above-quoted regulations applicable to safe loading and dropping off students, which prohibit bus drivers from dropping off students in an intersection and require that the students either be dropped off in the right traffic lane or on a shoulder or private property, where the private property owner has granted permission.<sup>3</sup>

### **Breach**

We find in the instant matter issues of material fact exist as to whether LPSB and its agents breached the duty to select a safe location for drop off. In support of our finding, we note that conflicting affidavits of Ms. Duet and the Bolden brothers regarding whether or not the children were required to unload and walk home in the lane of traffic. Ms. Duet's affidavit attests that students had the ability to walk home on ample green space without the necessity of entering a lane of traffic.

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<sup>3</sup> LPSB maintains that under this court's holding in **Cavalier v. Ward**, 97-1927 (La. App. 1<sup>st</sup> Cir. 09/25/98), 723 So.2d 480, writ denied, 98-2615 (La. 12/11/98), 729 So.2d 1047, controls the scope of the duty herein. In **Cavalier**, this court found that the duty to ensure the safety of students prior to the time that the bus arrives and after the time the school bus drops them off at their designated bus stops rests solely with the students themselves and their parents or guardians. *Id.* at 484. There, an eleven-year old student waiting to be picked up at his designated bus stop was struck by a car crossing a street when he attempted to go back home to retrieve some books. This court further found in **Cavalier** that at the time of the accident, the student was not in the possession, custody, or under the protection of the school board or any of its employees, and there was clearly no duty on the school board or its employees to prevent the student from crossing the street before arrival of the school bus. *Id.*

However, we find **Cavalier** distinguishable on several grounds. First, the parties there did not raise and the court did not consider the issue of whether the bus stop in question was improper or dangerous. *Id.* at 483-484. Here, the plaintiff expressly alleges that Diamonte's bus stop was an unreasonable unsafe location, and violated the regulations governing transportation of students. (Petition – Paragraph 14, R. 12). Second, we note that **Cavalier** was decided prior to the promulgation of LAC, Title 28, Part CXIII, Bulletin 119, Chapter 15, which was enacted after the decision was rendered. Third, the court in **Cavalier** found that there were no school board rules or procedures which imposed a duty on the school board prior to the arrival of the bus. *Id.* at 483.

Both Bolden brothers attested that they were dropped off in the intersection and required to walk on the street the day of the accident and other days as well. LPSB did not attach any evidence demonstrating that the property owners had granted permission for the students to be off loaded on the green space; therefore, it has failed to controvert the Bolden brothers' testimony on this issue. Moreover, photographs of the area attached to Ms. Duet's affidavit, clearly show that there are no sidewalks in the area immediately around the bus stop area selected by Ms. Duet. These considerations support a finding that a material issues of fact exist as to the determination of breach.

### **Causation**

In a breach of supervision case, causation can only be satisfied if it is proven that "but for" the lack of reasonable supervision, plaintiff's injuries would have been prevented. See Wallmuth, 813 So.2d at 346; **Iles v. St. Tammany Parish School Board**, 2014-1250 (La. App. 1<sup>st</sup> Cir. 03/06/15)(unpublished), writ denied, 2015-0677 (La. 05/22/15), 171 So. 3d 256. In **Wallmuth**, the supreme court found that to impose liability upon a school board for failure to adequately supervise the safety of students, there must be proof of a causal connection between the lack of supervision and the accident. *Id.* at 346. The supreme court added that before a school board can be found to have breached its duty of reasonable supervision, the risk of unreasonable injury must be foreseeable, constructively or actually known, and preventable if a requisite degree of supervision had been exercised. *Id.*

LPSB maintains that Diamonte's accident was too remote and unforeseeable to establish the required causal connection between the lack of supervision and the accident. The crux of LPSB argument rests on LPSB's assertion that a seventeen-minute time delay occurred between when Ms. Duet dropped off Diamonte at the bus stop and the accident. According to LPSB, this time delay establishes that Ms. Duet had completed the duty owed in safely delivering Diamonte to his stop, and

as such, places the accident outside of the scope of LPSB's custody. Here, the trial court in its oral reasons for judgment agreed with LPSB and found that it appeared that the seventeen-year old, Diamonte, had loitered in the area, thus his own actions placed him in the path of the subsequent intervening event of the failed brakes of the vehicle operated by Keriyon Price.

LPSB relies on Ms. Duet's affidavit and Officer Ross' testimony as to the time that the accident was reported to police to establish the seventeen-minute time delay. However, we find material issues of fact exist regarding the timing of when the accident occurred. As noted above, the time logs attached to Ms. Duet's affidavit are dated August 24, 2012; therefore, the only evidence in support of Ms. Duet's time estimate is the statement in her affidavit where she attested only that she dropped the students off at "around 2:42" on the date of the accident. Also, Officer Ross' testimony is clear that he was only certain as to when the accident was reported to law enforcement, but he did not provide testimony regarding the time of the accident or when Diamonte was dropped off by the school bus. The Bolden brothers' affidavits, however, attest that they had gotten off the bus shortly before the accident and begun walking home after off loading. Considering this evidence, we find issues of material fact exist as to the time that elapsed between the offloading of Diamonte and the accident, as well as whether Diamonte was "loitering" in the road at the time the accident occurred or walking home. The trial court's finding in its oral reasons that the accident occurred seventeen-minutes after the drop off of Diamonte and that Diamonte was loitering in the area is an impermissible weighing of evidence and credibility determination on a motion for summary judgment.

The plaintiff maintains that it is foreseeable that a student walking in the street, particularly an intellectually and hearing-impaired student like Diamonte, could be struck by a car if required to walk in the lane of traffic. The plaintiff

further argues that but-for Diamonte being dropped off in the intersection on the date in question this accident would not have occurred. Moreover, the plaintiff maintains that the accident was preventable. In support of this position, the plaintiff points to the affidavit of Ms. Batiste, who opined that there were three other alternative locations for bus stops available on Serenity. We note Ms. Bolden's uncontroverted deposition testimony stating that the buses delivering the elementary students dropped off those students further down Serenity at either a park or a lot on Serenity, and that both locations provided space for the driver to turn around.

In contrast, LPSB relies upon the affidavit of Ms. Duet stating it was necessary to drop the students off at the intersection and turn her bus around at that location because Serenity is a dead-end street, which suggests that other alternative drop off locations were not available. At a minimum, the conflicting evidence regarding whether alternative bus stops were available to Ms. Duet raises an issue of material fact as to whether the accident herein was foreseeable and preventable.

Finally, LPSB maintains that it was Ms. Bolden's duty to request special transportation services for Diamonte due to his disabilities as well as to warn LPSB about safety concerns regarding the bus stop. See Brooks v. St. Tammany Parish School Board, 510 So.2d 51 (La. App. 1<sup>st</sup> Cir.), writ denied, 513 So. 2d 821 (1987). LPSB relatedly contends that the plaintiff has failed to present independent proof of Diamonte's intellectual and hearing disabilities. We note that the IEP reports in the record evidence that Diamonte was performing significantly below grade level despite being promoted to ninth grade. Ms. Bolden attested that he needed assistance with hearing and had difficulty comprehending in everyday situations. The parties present opposing evidence on the issue of whether Ms. Bolden was offered, but declined transportation assistance.

Mindful that we cannot make credibility determinations, weigh or evaluate evidence when considering a summary judgment, we find that the evidence on the motion for summary judgment created a factual dispute as to whether LPSB breached its duty to provide a safe location for a bus stop; the issue of causation, including the time that elapsed from when Diamonte was dropped off before the accident; the availability of alternative bus stop locations on Serenity; and the relevance of Diamonte's mental impairment. For the forgoing reasons, we find the trial court erred in granting summary judgment in favor of LPSB, and we reverse the judgment and the dismissal of LPSB from this litigation.

### **CONCLUSION**

For the above reasons, we reverse the March 19, 2015 judgment of the trial court dismissing the claims of plaintiff/appellant, Nicole Bolden, individually and on behalf of her minor child, Diamonte D. Bolden, against the defendant, Lafourche Parish School Board, and remand to the district court for further proceedings. All costs of this appeal, in the amount of \$3,326.64, are to be paid by the defendant/appellee, Lafourche Parish School Board.

**REVERSED AND REMANDED.**