IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

LINDA ROGERS and FREDERICK ROGERS, Husband and Wife, Individually, and as Administrators of the Estate of ROGER L. ELLERBE, Jr., a minor, and ROGER L. ELLERBE, Sr., Individually,	)	
Plaintiffs,	)	
v.	)	C.A. No. N10C-07-060 JRJ
The CHRISTINA SCHOOL DISTRICT, an agency of the State of Delaware, DR. MARCIA V. LYLES, individually and in her capacity as Superintendant, CURTIS BEDFORD, individually and in his capacity as Principal of NEWARK HIGH SCHOOL; MARGETTE FINNEY, individually, HOLISTIC FAMILY SERVICES, individually,	)	
Defendants.	)	

Date Submitted: December 13, 2010
Date Decided: January 18, 2012

Upon Defendants' Motion to Dismiss Converted to Motion for Summary Judgment: **GRANTED**

Stephen B. Potter, Esq., Potter Carmine & Associates, P.A., 840 N. Union Street, P.O. Box 30409, Wilmington, DE 19805, Attorney for Plaintiffs.

Allyson M. Britton, Esq., James H. McMackin, Esq., David H. Williams, Esq., Morris James LLP, 500 Delaware Avenue, Suite 1500, P.O. Box 2306, Wilmington, DE 19899, Attorneys for Defendants.

Jurden, J.

I. INTRODUCTION

Before the Court is Christina School District, Dr. Marcia V. Lyles,[1] Curtis Bedford,[2] Margette Finney,[3] and Holistic Family Services' (collectively "Defendants") Motion to Dismiss, pursuant to Superior Court Rule 12 (b)(6). The Court has deemed it necessary to consider "matters outside the pleading[s]" in resolving the Motion, and thus Defendants' Motion to Dismiss shall be treated as one for Summary Judgment pursuant to Superior Court Civil Rule 56.[4]

Linda Rogers, Frederick Rogers, and Roger Ellerbe, Sr. (collectively "Plaintiffs")[5] allege the Defendants are liable for the suicide death of Roger Ellerbe, Jr. ("Roger"), a minor. The Defendants claim, *inter alia*, that their alleged conduct does not constitute a "wrongful act," pursuant to 10 *Del. C.* § 3721(5), and the Plaintiffs do not have standing to sue under the Delaware Wrongful Death

[1] Lyles is the Superintendent and Chief School Officer of the Christina School District. Plaintiff's Amended Complaint ("Pl.'s Am. Comp.") at ¶4.
[2] Bedford is the principal of Newark High School. Newark High School is a public high school within the Christina School District. *Id*. at ¶5-6.
[3] Finney is the Intervention Specialist at Newark High School and is an agent for Holistic Family Services under contract with Christina School District to provide counseling for troubled students. *Id*. at ¶7.
[4] *See* the Court's letter to the parties, dated March 11, 2011, providing notice of the Court's intention to consider Defendants' Motion to Dismiss as one for summary judgment. *See also* Super. Ct. Civ. R. 12 (b) which states:

> If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleadings to state a claim upon which relief can be granted, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

[5] Linda and Frederick Rogers are Roger Ellerbe, Jr.'s grandparents, who had care and custody of Roger at the time of his death. The Rogers filed suit individually, and as the administrators of Roger's estate. Roger L. Ellerbe, Sr. is Decedent's biological father, and filed suit individually. *Id*. at ¶1-2.

Statute.[6] For the forgoing reasons, the Defendants' Motion to Dismiss, converted to summary judgment by the Court, is **GRANTED.**

II. FACTS

On November 2, 2009, Aigner Walker, a friend and classmate of Roger, approached Robert Newman, a Newark High School teacher, during school hours and told Newman that Roger was in trouble and contemplating suicide.[7] Mr. Newman reported this conversation to Margette Finney, the Intervention Specialist at Newark High School.[8]

The next day, November 3, 2009, Finney met with Walker in Finney's office.[9] Walker told Finney that Roger was considering committing suicide and that Roger had tried to suffocate himself the previous weekend.[10] Finney then called Roger into her office.[11] Roger admitted to Walker and Finney that he had attempted suicide the previous Sunday.[12] At this time, Finney dismissed Walker and called Marlyna Melendez, Roger's girlfriend and classmate, to her office to meet with Finney and Roger.[13] Finney informed Melendez that Roger was contemplating, and had recently attempted, suicide.[14] Finney then focused on

[6] 10 *Del. C.* § 3722.
[7] Pl.'s Am. Comp. at ¶12.
[8] *Id*.
[9] *Id*. at ¶14.
[10] *Id*.
[11] *Id*.
[12] *Id*.
[13] *Id*. at ¶15.
[14] *Id*.

discussing Roger and Melendez's relationship with one another.[15] Before Melendez went back to class, Melendez told Finney that Roger's mother should be called and "something needed to be done."[16] Now that Finney and Roger were one-on-one, Finney instructed Roger to write down how he was feeling.[17] When Roger finished, Finney discussed with Roger what he had written.[18] Roger indicated that he had a desire to hurt himself or others, and that he felt alone.[19] After approximately four and a half hours of counseling, in Finney's opinion, Roger's "overall demeanor" was improving.[20] Before returning to class, Finney asked Roger to again write down how he was feeling.[21] This time, Roger wrote: "[s]o I was better then (*sic*) yesterday, I have a smile on my face im (*sic*) ready for school and I know im (*sic*) being loved. I just want people to understand me. So thank you."[22] Finney then sent Roger back to class.[23]

In an effort to follow-up on her conversation with Roger, Finney sent an e-mail to Roger's teachers, the Assistant Principal, and other counselors in the

[15] *Id*.
[16] *Id*.
[17] *See id.* at ¶16.
[18] *Id*.
[19] *Id*.
[20] Defendants Answering Brief on the Issue of Whether the Christina School District, Marcia Lyles, or Curtis Bedford Owed a Duty ("Def. Ans. Br. on Duty") at p. 4.
[21] *Id*.
[22] *Id*.
[23] Pl.'s Am. Comp. at ¶16.

school.[24] The purpose of the email was to apprise everyone of her conversation with Roger, and inform them that "she had resolved the situation."[25]

Tragically, after school that day, Roger went home and hanged himself.[26] Roger's grandparents discovered Roger's body that evening. Roger's grandparents claim they had no prior knowledge of Roger's suicidal intent, past attempt or tendencies.[27]

III. PARTIES' CONTENTIONS

The Plaintiffs argue that the relationship between the authorities and employees of a high school is *in loco parentis*, and thus a public high school is under a special duty to exercise reasonable care to protect its students from harm.[28] According to Plaintiffs, Lyles, as the Christina School District Superintendent, and Bedford, as the principal of Newark High School, "owed a duty to ensure that proper training, education, and resources were available within the Christina School District to prevent and handle suicide risk" among the students.[29] The Plaintiffs also contend that the Defendants were guilty of gross negligence and/or willful and wanton disregard of the Decedent's safety when they: (1) failed to notify the Rogers of the Decedent's suicidal intent and past attempt; (2) failed to

[24] Def.'s Ans. Br. on Duty at p. 5.
[25] *Id*.
[26] Pl.'s Am. Comp. at ¶21.
[27] Pl.'s Am. Comp. at ¶24. Defendants dispute this claim, and assert that Roger's friends were concerned about his depression because Roger "posted desperate stories about his growing frustrations" on social networking sites. Def. Ans. Br. on Duty at p. 1.
[28] Pl.'s Am. Comp.. at ¶ 25.
[29] *Id.* at ¶¶ 27, 28.

hire staff trained in handling suicide risk or obtain suicide prevention training; (3) failed to establish a school procedure for suicide intervention; (4) failed to respond appropriately when the Decedent's suicidal intent became known to the staff; and (5) willfully refused to train staff in appreciating the risk of suicide.[30] The Plaintiffs allege that the Roger's death by suicide was a direct and proximate result of the Defendant's gross and wanton negligence.[31]

The Defendants counter that: (1) the conduct alleged by the Plaintiffs does not constitute a "wrongful act" pursuant to 10 *Del. C.* §§ 3721-25, (the "Delaware Wrongful Death Statute"); (2) the Rogers do not have standing to sue under the Wrongful Death Statute; (3) punitive damages are not available under the Wrongful Death Statute; and (4) the claims against Lyles and Bedford should be dismissed because the Plaintiffs failed to allege personal involvement pursuant to Superior Court Civil Rule 9(b).[32]

IV. STANDARD OF REVIEW

A motion for summary judgment requires the Court to determine whether genuine issues of material fact remain for trial.[33] The Court will only grant summary judgment where there is no genuine issue of material fact and the moving

[30] *Id*. at ¶29.
[31] *Id*. at ¶30.
[32] Defendants Motion to Dismiss at ¶¶2-7. Super. Ct. Civ. R. 9(b) states: "In all averments of fraud, negligence or mistake, the circumstances constituting fraud, negligence or mistake shall be stated with particularity. Malice, intent, knowledge and other condition of mind of a person may be averred generally."
[33] *Oliver B. Cannon & Sons, Inc. v. Dorr–Oliver, Inc.,* 312 A.2d 322, 325 (Del. Super. 1973).

party is entitled to judgment as a matter of law.[34] Upon a review of the record, if material facts are in dispute, or the record is not developed enough to allow the court to apply the law, summary judgment must be denied.[35]

The initial burden rests with the moving party to demonstrate that "the undisputed facts support his claim for dispositive relief."[36] If properly supported, the burden then shifts to the non-moving party to show that a material issue of fact remains and/or the moving party's legal arguments are baseless.[37]

V. DISCUSSION

Plaintiffs allege that the Defendants' failure to act constitutes a "wrongful act" under the Delaware Wrongful Death Statute.[38] Pursuant to the Wrongful Death Statute, "[a]n action may be maintained against a person whose wrongful act causes the death of another."[39] In order for a plaintiff to recover damages under this statute, the defendant must have owed a duty to the plaintiff. The Plaintiffs here claim that the Defendants "failed to use reasonable means to attempt to prevent the suicide of Decedent by contacting the legal guardians of Decedent to inform them of his suicidal intent and past attempt."[40] Plaintiffs contend that

[34] *Id*.
[35] *Ebersole v. Lowengrub,* 180 A.2d 467, 470 (Del. 1962).
[36] *Stratton*, 2011 WL 2083933, at *4. (citing *Moore v. Sizemore,* 405 A.2d 679, 680 (Del.1979) (citing *Ebersole,* 180 A.2d at 470)).
[37] *See Brzoska v. Olson,* 668 A.2d 1355, 1364 (Del. 1995).
[38] 10 *Del. C.* § 3721(5): "Wrongful act" means an act, neglect or default including a felonious act which would have entitled the party injured to maintain an action and recover damages if death had not ensued.
[39] 10 *Del. C.* § 3722(a).
[40] Pl.'s Am. Comp. at ¶29.

Defendants' failure to act was the proximate cause of Roger's death.[41] To overcome Defendants' summary judgment motion, Plaintiffs must establish that the Defendants owed a duty to Roger.[42]

A. The Duty of Care in Delaware.

The existence of a duty "is entirely a question of law to be determined . . . by the court."[43] To determine the duty of care owed by one party to another, Delaware courts have generally followed the Restatement (Second) of Torts (hereinafter "the Restatement Second").[44] "Duty" is defined under Section 4 of the Restatement Second as follows:

> The word "duty" is used throughout the Restatement of this subject to denote the fact that the actor is required to conduct himself in a particular manner at the risk that if he does not do so he becomes subject to liability to another to whom the duty is owed for any injury sustained by such other, of which that actor's conduct is a legal cause.

The Restatement Second discusses the concept of duty most often in the sections that address negligence.[45] Section 284 of the Restatement Second breaks down negligent conduct into two categories: (1) "an act which the actor as a reasonable man should recognize as involving an unreasonable risk or causing an invasion of an interest of another"; or (2) "a failure to do an act which is necessary for the

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[41] For the purposes of a motion to dismiss it is not "necessary to set forth a causal connection between the alleged negligence and the resulting injury." *See Weinberg v. Hartman*, 65 A.2d 805, 807 (Del. Super. 1949).
[42] *Furek v. University of Delaware*, 594 A.2d 506, 516 (Del. 1991) ("[A]n antecedent duty of care with respect to the interest involved must be established before liability is imposed.").
[43] *Kuczynski v. McLaughlin*, 835 A.2d 150, 153 (Del. Super. Ct. 2003).
[44] *See e.g.*, *Doe v. Bradley*, 2011 WL 290829, at *4 (Del. Super.) (citing *Reidel v. ICI Americas Inc.*, 968 A.2d 17, 22 (Del. 2009)); *Furek v. Univ. of Delaware*, 594 A.2d 506, 520 (Del. 1991); *Naidu*, 539 A.2d at 1072.
[45] *Riedel v. ICI Americans Inc.*, 968 A.2d 17, 21 (Del. 2009) (citing Restatement (Second) of Torts § 4 cmt. b.)

protection or assistance of another and which the actor is under a duty to do so."[46] Section 302 of the Restatement Second further explains the distinction between negligent acts and negligent omissions, stating:

> A negligent act or omission may be one which involves an unreasonable risk of harm to another either through
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> (a) the continuous operation of a force started or continued by the act or omission, or
>
> (b) the foreseeable action of the other, a third person, an animal, or a force of nature.[47]

In *Riedel v. ICI Americas Inc.*, the Delaware Supreme Court discussed the distinction in the Restatement Second between an act and a failure to act:

> Although Comment (a) to § 302 notes that § 302 'is concerned only with the negligent character of the actor's conduct, and not with his duty to avoid the unreasonable risk[,]' the comment proceeds to explain the dissimilar duties owed by 'one who merely omits to act' versus one 'who does an affirmative act.' As Comment (a) explains, 'anyone who does an affirmative act is under a duty to others to exercise the care of a reasonable man to protect them against an unreasonable risk of harm to them arising out of the act.' On the other hand, 'one who merely omits to act' generally has no duty to act, unless 'there is a special relation between the actor and the other which gives rise to the duty.'[48]

The difference between act and omission, or misfeasance and nonfeasance, is further discussed in Section 314, where it states the general rule that, "[t]he fact that the actor realizes or should realize that action on his part is necessary for

[46] Restatement (Second) of Torts § 284.
[47] *Id*. at § 302.
[48] *Riedel*, 968 A.2d at 22 (citing Restatement (Second) of Torts § 302 cmt. a).

another's aid or protection does not itself impose upon him a duty to take such action."[49] The Court in *Reidel* acknowledged the "disparate treatment of negligent acts and negligent omissions" in the Restatement Second, and concluded that "Delaware has and continues to recognize the legal difference between so-called 'malfeasance' (a negligent act) and 'nonfeasance' (a negligent omission)."[50] This proposition is best illustrated by the classic law school torts hypothetical where a strong swimmer happens upon a distressed swimmer. At no point, despite his knowledge that the swimmer is drowning, does the strong swimmer have a legal duty to assist the swimmer.[51] Although failing to act may draw the ire of those with a different set of morals, "Delaware courts have been careful to draw a bright line between a *moral* obligation to act . . . and a *legal* obligation (or duty) to act, the breach of which will subject the defendant to tort liability."[52] Notwithstanding the Delaware Supreme Court's adoption of the common law rule that there is generally no duty to act, exceptions to the rule exist. Here, unless a recognized exception to the common law rule applies, Defendants owed no duty to Roger.

[49] *Id*. (citing Restatement (Second) of Torts § 314.).
[50] *Bradley*, 2011 WL 290829, at *5.
[51] *See id*. at *6.
[52] *Id*. (citing generally *Riedel*, 968 A.2d at 20-22) (emphasis added).

B. Special Relationships Act as an Exception to the No Duty to Act Rule.

Sections 314A, and 316 through 324A, of the Restatement Second create exceptions to the general rule that there is no duty to act.[53] Typically, to impose a duty, which establishes liability, there must be a special relationship between the parties.[54] Comment (c) to Section 314 explains the affect of a special relationship on nonfeasance:

> The origin of the rule lay in the early common law distinction between action and inaction, or "misfeasance" and "non-feasance." In the early law one who injured another by a positive affirmative act was held liable without any great regard even for his fault. But the courts were far too much occupied with the more flagrant forms of misbehavior to be greatly concerned with one who merely did nothing, even though another might suffer serious harm because of his omission to act. Hence liability for non-feasance was slow to receive any recognition in the law. It appeared first in, and is still largely confined to, situations in which there was some special relation between the parties, on the basis of which the defendant was found to have a duty to take action for the aid or protection of the plaintiff.

Thus, under Delaware law, if a special relationship existed between Roger and the Defendants, the Defendants had an affirmative obligation to take reasonable steps

[53] *Riedel*, 968 A.2d at 22; Restatement (Second) of Torts: § 314A Special Relations Giving Rise to Duty to Aid or Protect (including common carriers, innkeepers, possessors of land who hold it open to the public, and those who are required by law to take or who voluntarily take the custody of another under circumstances such as to deprive the other of his normal opportunities for protection); § 316 Duty of Parent to Control Conduct of Child; § 317 Duty of Master to Control Conduct of Servant; § 318 Duty of Possessor of Land or Chattels to Control Conduct of Licensee; §319 Duty of Those in Charge of Person Having Dangerous Propensities; § 320 Duty of Person Having Custody of Another to Control Conduct of Third Persons; § 321 Duty to Act When Prior Conduct is Found to be Dangerous; § 322 Duty to Aid Another Harmed by Actor's Conduct; § 323 Negligent Performance of Undertaking to Render Services; § 324 Duty of One Who Takes Charge of Another Who is Helpless; § 324A Liability to Third Person for Negligent Performance of Undertaking.

[54] *See Riedel*, 968 A.2d at 22 (citing Restatement (Second) of Torts § 314 cmt c.).

in order to prevent the occurrence of foreseeable harm to Roger.[55] The Delaware Supreme Court has also recognized that if a special relationship exists between the actor and a third party, a duty arises to protect an injured person from the third party's dangerous foreseeable actions.[56] As such, "in limited circumstances, the law should impose a duty to act when a party otherwise may be inclined not to act."[57]

Delaware courts have considered whether a special relationship exists in a variety of circumstances. For example, in *Naidu v. Laird*, the Delaware Supreme Court held that a special relationship exists between a psychiatrist and a patient, such that a psychiatrist owes an affirmative duty to persons other than the patient to exercise reasonable care in the treatment and discharge of psychiatric patients.[58] The *Naidu* Court reasoned that a psychiatrist is in a unique position to control the conduct of his patient, and thus, under a duty "to initiate whatever precautions

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[55] *Kuczynski v. McLaughlin*, 835 A.2d 150, 155 (Del. Super. 2003) ("The duty derives from the relationship between the parties and the foreseeable risk of harm that is implicated by the relationship.").
[56] *See Naidu v. Laird*, 539 A.2d 1064 (Del. 1988); *see Doe*, 2011 WL 290829, *7 ("Delaware courts have not hesitated to find a duty to act based upon § 315 when the requisite 'special relationship' between the actor and a third person or actor and the plaintiff was pled in the complaint. . . ."); *Shively*, 2001 WL 209910, at *5; Restatement (Second) of Torts § 315 (1965):

> There is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless:
>
> (a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or
>
> (b) a special relation exists between the actor and the other which gives to the other a right to protection.

[57] *Kuczynski*, 835 A.2d at 156.
[58] *Naidu*, 539 A.2d at 1072.

reasonably necessary to protect potential victims of the [patient.]"[59] The Court held that psychiatrists must use the care, skill, and diligence that a reasonably prudent psychiatrist would undertake when releasing a mentally impaired patient.[60] A special relationship has also been recognized between a neurologist and an epileptic patient,[61] and between the operator of a halfway house for mentally challenged individuals and its residents.[62] However, the Delaware Supreme Court declined to find that a special relationship existed between a university and its students in a particular context, reasoning that there is "no duty on the part of a college or university to control its students based *merely* on the university-student relationship."[63]

Moreover, "each of the Restatement Second sections identified in the Reporter's Notes to § 314 involve relationships made 'special' by virtue of the degree of control the actor/defendant is able to exercise over the third party."[64] The injury in this case occurred off school grounds. The Defendants were not in a position to control Roger's conduct once he left school property, and thus, they were under no duty. Tragically, under the circumstances, perhaps no one was in a position to control Roger's conduct. As the United States Court of Appeals for the

[59] *Id.* at 1073.
[60] *Id.*
[61] *Harden v. Allstate Ins. Co.*, 883 F.Supp. 963, 971 (D. Del. 1995) (finding that a neurologist has a duty to prevent his epileptic patient from operating a motor vehicle).
[62] *Shively v. Ken Crest Centers for Excep. Pers.*, 2001 WL 209910, at *5-6 (Del. Super.) (halfway house operator has a duty prevent reasonably foreseeable harm caused by residents of the facility).
[63] *Furek*, 594 A.2d at 517-519.
[64] *Bradley*, 2011 WL 290829, at *7.

First Circuit stated: "Absent a showing that the school affirmatively caused a suicide, the primary responsibility for safeguarding children from this danger, as from most others, is that of their parents; and even they, with direct control and intimate knowledge, are often helpless."[65]

Although the Delaware Supreme Court in *Furek v. University of Delaware*[66] determined that a special relationship did not exist between a University and its students in a narrow context,[67] the Court continued on with its duty analysis. There, a student brought an action seeking damages from the University and the fraternity he was pledging for injuries sustained during hazing. The Court reasoned that because the University was aware of hazing on campus, created policies to discipline students involved in hazing, and communicated these policies with fraternities and the rest of the student body, the university *assumed* a duty to protect its students.[68] The Court noted that Section 323 of the Restatement Second recognizes that "one who assumes direct responsibility for the safety of another through the rendering of services in the area of protection" owes the party a duty to perform that responsibility reasonably.[69]

Section 323 of the Restatement Second provides:

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[65] *Hasenfus v. LaJeunesse*, 175 F.3d 68, 73 (1st Cir. 1999).
[66] 594 A.2d 506 (Del. 1991).
[67] *See* fn. 42 *supra*.
[68] *Furek*, 594 A.2d at 520.
[69] *Furek*, 594 A.2d at 520.

> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if
> (a) his failure to exercise such care increases the risk of such harm, or
>
> (b) the harm is suffered because of the other's reliance upon the undertaking.[70]

At first glance, considering the language of Section 323 and the Court's holding in *Furek* together, it appears that Section 323 is a good fit for the facts of this case. However, courts in other jurisdictions that have interpreted Section 323 have established what a plaintiff must prove to establish a special relationship, and thus show assumption of a duty under Section 323:

> Cases interpreting section 323(a) have made it clear that the increase in the risk of harm required is not simply that which occurs when a person fails to do something that he or she reasonably should have. Obviously, the risk of harm to the beneficiary of a service is always greater when the service is performed without due care. Rather . . . court[s have] stated:
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> > [Section] 323(a) applies only when the defendant's actions increased the risk of harm to plaintiff relative to the risk that would have existed had the defendant never provided the services initially. Put another way, the defendant's negligent performance must somehow put the plaintiff in a worse situation than if the defendant had never begun performance . . . . [T]o prevail under a theory of increased harm a plaintiff "must identify the sins of commission rather than sins of omission."[71]

[70] Restatement (Second) of Torts Section 323.
[71] *Jain v. State*, 617 N.W.2d 293, 299 (Iowa 2000) (citing *Power v. Boles*, 673 N.E.2d 617, 620 (Ohio 1996) (citing *Turbe v. Government of Virgin Islands, Virgin Islands Water & Power Auth.*, 938 F.2d 427, 432 (3d Cir. 1991))).

Similarly, under subsection (b) of Section 323 of the Restatement Second, the plaintiff must show "actual or affirmative reliance, *i.e.*, reliance 'based on specific actions or representations which cause a person to forego other alternatives of protecting themselves.'"[72]

The Court does not find a special relationship existed between Roger and the Defendants that created a duty to prevent Roger's suicide by contacting his grandparents to inform them of Roger's suicidal intent or to hire qualified personnel to deal with student suicide risk. The Court cannot infer, and thus declines to find, that Defendants assumed a *legal* duty under subsection (a) of Section 323 of the Restatement Second by rendering counseling services. Roger had already recently attempted suicide before the Defendants became involved, and thus, Defendants could not have put Roger in a worse position than if the Defendants had not begun performance. And, with respect to subsection (b), Roger did not forego alternatives to protect himself by meeting with Finney. Nothing in the record indicates that Decedent was actively seeking help for his issues. He did not initiate the meeting with Finney, or seek other counseling services at Newark High School. His meeting with Finney was the result of Roger's friend, Aigner Walker, reporting that Roger was contemplating suicide.[73]

[72] *Jain*, 617 N.W.2d at 299. (citing *Power*, 673 N.E.2d at 621) (other citations omitted).
[73] Pl.'s Am. Comp. at ¶12.

Because no special relationship existed between Roger and the Defendants, the Defendants owed no duty to Roger. As such, the Defendants "failure to act" does not constitute a "wrongful act" under the Delaware Wrongful Death Statute.[74]

VI. CONCLUSION

For the reasons stated above, the Defendants' Motion to Dismiss is **GRANTED**. Consequently, the Court need not address the issues of standing, punitive damages, or the failure to allege personal involvement under Superior Court Civil Rule 9(b).

IT IS SO ORDERED.

Jan R. Jurden, Judge

[74] *See* 10 Del. C. § 3721(5).