SHARON DURRANT *v.* BOARD OF EDUCATION OF THE CITY OF HARTFORD ET AL.
(SC 17733)

Rogers, C. J., and Borden, Norcott, Katz, Palmer, Vertefeuille and Zarella, Js.*

Argued May 15—officially released October 2, 2007

Kenneth J. Bartschi, with whom were *Wesley W. Horton* and, on the brief, *Jeffrey G. Schwartz*, for the appellants (defendants).

Paul N. Shapera, for the appellee (plaintiff).

Kelly D. Balser filed a brief for the Connecticut Association of Boards of Education as amicus curiae.

Marvin P. Bellis filed a brief for the Connecticut Conference of Municipalities as amicus curiae.

Opinion

KATZ, J. The plaintiff, Sharon Durrant, appealed from the judgment of the trial court rendered following the granting of the motion for summary judgment filed by the defendants, the board of education (board) of the city of Hartford and certain city of Hartford employees,[1] which was based on governmental immunity under General Statutes § 52-557n (a) (2) (B) and Connecticut common law.[2] The plaintiff claimed that the defendants' failure to remove a puddle of water on an outside staircase of a public school attended by her child was an act that had subjected her, as an identifiable member of a foreseeable class of persons, to imminent harm, thereby abrogating the defendants' claim of governmental immunity. In a divided opinion, the Appellate Court reversed the judgment of the trial court and remanded the case for further proceedings, concluding that the doctrine of governmental immunity did not apply to shield the defendants from responsibility for the alleged injuries to the plaintiff, which she had sustained on public school premises when picking up her six year old child from an after school program conducted under the auspices of the board pursuant to General Statutes § 17b-737.[3] *Durrant* v. *Board of Education*, 96 Conn. App. 456, 900 A.2d 608 (2006). The Appellate Court majority determined that, due to the allegedly improper maintenance of the school premises, the plaintiff was within a cognizable and narrowly defined class of foreseeable victims within the precepts of *Burns* v. *Board of Education*, 228 Conn. 640, 638 A.2d 1 (1994), and, therefore, overcame the barrier of governmental immunity of a municipality for discretionary acts.[4] *Durrant* v. *Board of Education*, supra, 472. Thereafter, the defendants petitioned for certification to appeal to this court. We granted their petition, limited to the following question: "Did the Appellate Court properly conclude that the plaintiff was a member of an identifiable class of persons subject to imminent harm?" *Durrant* v. *Board of Education*, 280 Conn. 915, 908 A.2d 536 (2006). We answer that question in the negative and, accordingly, we reverse the judgment of the Appellate Court.

The Appellate Court opinion sets forth the following undisputed facts and procedural history pertinent to our discussion of the issue on appeal. "In her complaint and subsequent affidavit in response to the motion for summary judgment, the plaintiff alleged that on September 14, 2001, at approximately 4 p.m., she arrived at West Middle School [in Hartford (school)] to pick up her six year old son from an after school day care and homework study program conducted by the Boys and Girls Club and the school. As she exited the school, the plaintiff slipped and fell due to a puddle of water that had accumulated on the backdoor stairs, sustaining several injuries. The plaintiff claims that the defendants failed to inspect the stairs reasonably, failed to promul-

gate policies and procedures that required inspection and removal of standing water and failed to warn the plaintiff and others adequately of the dangerous condition on the stairs.

"The defendants denied the allegations of the complaint and raised the special defenses of contributory negligence and the doctrine of governmental immunity, pursuant to § 52-557n and the common law. The plaintiff denied the allegations in the defendants' answer and the assertion that § 52-557n and the common law barred her claims. The defendants filed a motion for summary judgment, pursuant to Practice Book § 17-49 et seq., on the ground that governmental immunity barred the plaintiff's recovery on her complaint. The plaintiff argued that (1) the doctrine of governmental immunity is inapplicable because whether removal of water from a staircase is a ministerial or discretionary act is a question of fact that should be left for the jury's determination and (2) even if removal of water from the staircase is a discretionary act, the plaintiff's cause of action falls within the 'identifiable person-imminent harm' exception to governmental immunity.

"The court granted the defendants' motion for summary judgment, concluding in its memorandum of decision that it was apparent from the complaint that the omissions alleged in the plaintiff's complaint were discretionary acts, thereby permitting the court to consider the motion for summary judgment pursuant to *Segreto* v. *Bristol*, 71 Conn. App. 844, 855, 804 A.2d 928, cert. denied, 261 Conn. 941, 808 A.2d 1132 (2002).[5] The court concluded that the plaintiff's claim that the 'identifiable person-imminent harm' exception to the governmental immunity doctrine should govern did not apply.[6]

"Addressing the plaintiff's claim that her presence at the school was a necessity and, therefore, that she was an identifiable person or a member of a foreseeable class of victims subject to imminent harm, the court found that the plaintiff failed to plead any facts indicating that this was the case. Citing Practice Book § 10-1, the court concluded that the plaintiff was not entitled to litigate the factual issue of whether her presence was a necessity because she failed to plead any such allegation properly. The court, assuming arguendo that the plaintiff was entitled to litigate the factual issue regarding her presence, concluded, in the alternative, that she did not fall within the exception, as a matter of law. The court found that both the plaintiff and her son were voluntarily present at the school. On the basis of the fact that the plaintiff's attendance was not statutorily compelled, the court concluded that the plaintiff could not fall within the identifiable person-imminent harm exception to governmental immunity as defined in existing Connecticut appellate decisions." *Durrant* v. *Board of Education*, supra, 96 Conn. App. 458–61.

In deciding that the trial court improperly had con-

cluded that the identifiable person-imminent harm exception to municipal employees' immunity did not apply to the present case, the Appellate Court majority predicated its decision on several determinations. First, the court determined that the puddle in the stairwell satisfied the imminent harm element of the exception because the allegedly dangerous condition was limited in duration and location. Id., 468. Second, turning to the identifiable person element, the court reasoned that, had the plaintiff's child been injured in the fall, he would have been allowed to maintain an action against a municipality "because, although not legally required to be on the premises after the school day had concluded, the child was legally present on the premises for the after school program by invitation of the defendants. . . . General Statutes § 17b-737. [Accordingly] . . . the six year old student would be in an identifiable class of foreseeable victims had he been the one who was allegedly injured." *Durrant* v. *Board of Education*, supra, 96 Conn. App. 468–69. Building on that reasoning, the Appellate Court concluded that, because the plaintiff "was there to escort her six year old child out of the school building safely" in the exercise of her common-law duty to protect her child, her "presence at the school to ensure the safe departure of her child was reasonably to be anticipated." Id., 469. Because our statutes "condone and encourage the use of public school facilities for the very purpose that the plaintiff's child was in attendance at [the school] on the day of the plaintiff's fall"; id., 470; the Appellate Court determined that the plaintiff was one of the beneficiaries of the particular duty of the defendants to keep students safe. Id., 471. Finally, in view of the fact that "[t]he scope of the 'foreseeable class of victims' test is the 'product of the policy considerations that aid the law in determining whether the interests of a particular type are entitled to protection' "; id.; the court concluded that the plaintiff fell within the scope of the "foreseeable class of victims" test. Id., 472. In his dissent, then Appellate Court Judge Schaller concluded that, because "the adult plaintiff was on school property to pick up her child, who was attending an extracurricular, after school day care and homework study program"; id.; the majority improperly "exceeded the firm standards established by [this court] in *Burns* v. *Board of Education*, [supra, 228 Conn. 640], and more recently in *Prescott* v. *Meriden*, 273 Conn. 759, 873 A.2d 175 (2005)," when it determined that the plaintiff was an identifiable member of a foreseeable class of persons. *Durrant* v. *Board of Education*, supra, 472–73 (*Schaller*, *J.*, dissenting). This certified appeal followed.

Mindful of the well settled standard regarding the scope of our review of a trial court's decision to render summary judgment,[7] we turn to the narrow issue in dispute in this case. The plaintiff concedes that the defendants' conduct was discretionary, and therefore,

she can prevail only if she falls within one of the delineated exceptions to governmental immunity. See footnote 4 of this opinion. The only relevant exception is that the circumstances would "make it apparent to the public officer that his or her failure to act would be likely to subject an identifiable person to imminent harm . . . ." (Citations omitted.) *Evon* v. *Andrews*, 211 Conn. 501, 505, 559 A.2d 1131 (1989). "[This court has] construed this exception to apply not only to identifiable individuals but also to narrowly defined identified classes of foreseeable victims. See *Sestito* v. *Groton*, 178 Conn. 520, 527–28, 423 A.2d 165 (1979)." *Burns* v. *Board of Education*, supra, 228 Conn. 646. The plaintiff does not claim to be an identifiable individual for purposes of the exception to the governmental immunity doctrine. Therefore, the plaintiff may prevail only if she comes within an identifiable class of foreseeable victims. She contends that, as a parent of a six year old child who picked her child up from an after school program conducted under the auspices of the board pursuant to § 17b-737, she was a member of an identifiable class of foreseeable victims subject to imminent harm for purposes of satisfying that exception to qualified immunity of a municipal employee for discretionary acts.

We begin with the understanding that the question of whether a particular plaintiff comes within a cognizable class of foreseeable victims for purposes of this narrowly drawn exception to qualified immunity ultimately is a question of law for the courts, in that it is in effect a question of whether to impose a duty of care. *Purzycki* v. *Fairfield*, 244 Conn. 101, 108 n.5, 708 A.2d 937 (1998). "In delineating the scope of a foreseeable class of victims exception to governmental immunity, our courts have considered numerous criteria, including the imminency of any potential harm, the likelihood that harm will result from a failure to act with reasonable care, and the identifiability of the particular victim. . . . Other courts, in carving out similar exceptions to their respective doctrines of governmental immunity, have also considered whether the legislature specifically designated an identifiable subclass as the intended beneficiaries of certain acts . . . whether the relationship was of a voluntary nature . . . the seriousness of the injury threatened . . . the duration of the threat of injury . . . and whether the persons at risk had the opportunity to protect themselves from harm." (Citations omitted.) *Burns* v. *Board of Education*, supra, 228 Conn. 647–48. In considering these factors to determine whether the defendants owed a duty of care to the plaintiff, we begin this process with *Burns* and conclude with *Prescott* v. *Meriden*, supra, 273 Conn. 759, as aptly summarized by Judge Schaller in his Appellate Court dissenting opinion in the present case.

"The plaintiff in *Burns* was a schoolchild who was required by statute to attend the school where he sus-

tained an injury during school hours on an icy courtyard. *Burns* v. *Board of Education*, supra, 228 Conn. 650. [This court] decided that the child was one of a class of foreseeable victims to whom the defendant superintendent owed a duty of protection. Id. The defense of governmental immunity did not apply under the circumstances in which parents are statutorily compelled to relinquish protective custody of their children to a school board and its employees. Id., 649–51. Central to the holding in *Burns* was the statutory requirement that the plaintiff attend school, coupled with his entitlement to a public education as guaranteed by article eighth, § 1, of the Connecticut constitution. Id., 649. . . .

"In *Purzycki* v. *Fairfield*, supra, 244 Conn. 103–104, the minor plaintiff suffered injuries when he was tripped by another student in an unmonitored school hallway. In discussing the applicable exception to governmental immunity, [the court] reiterated that schoolchildren who are statutorily *compelled* to attend school, during school hours on school days, can be an identifiable class of victims. . . . Id., 109. The court concluded that the limited time period and limited geographical area, namely, the one-half hour interval when second grade students were dismissed from the lunchroom to traverse an unsupervised hallway on their way to recess constituted sufficient evidence for a jury to find imminent harm. Id., 110." (Citations omitted; emphasis added; internal quotation marks omitted.) *Durrant* v. *Board of Education*, supra, 96 Conn. App. 475–77 (*Schaller*, *J.*, dissenting).

"Finally, in *Prescott*, [the court] refused the adult plaintiff's invitation to enlarge the category of foreseeable victims, emphasizing that the only class of foreseeable victims that we have recognized for these purposes is that of schoolchildren attending public schools during school hours. *Prescott* v. *Meriden*, supra, 273 Conn. 764. The unsuccessful plaintiff in *Prescott*, which was decided in 2005, was the parent of a high school student-athlete. Id., 761. The plaintiff, attending his son's football game as a spectator, was on school grounds after school hours. Id., 761–62. [The court], in applying the *Burns* doctrine, first concluded that the plaintiff, as the parent of a student, was not entitled to any special consideration in the face of dangerous conditions. Id., 764. More specifically, the court stated that parents are not the intended beneficiaries of any particular duty of care imposed by statute, nor are they legally required to attend school. Id. The court then advanced three other considerations that militated in favor of the defendants. First, the plaintiff's attendance at the game was purely voluntary. Id. In other words, he was no different from any other member of the general public. Second, the court expressly stated that, in this particular legal context, parents are different from children in the context of determining the applicability of an exception to

governmental immunity. Id., 764–65. Third, to allow this plaintiff to qualify for the exception would mean that all spectators at a public municipal event would constitute a class of foreseeable victims for these purposes, thus making the exception so broad that it would threaten to swallow the rule. . . . Id., 765. The court went on to say that the public policy of promoting parental involvement in a child's education did not justify extending the duty of care abrogating governmental immunity to parents attending school sponsored activities. Id., 766." (Internal quotation marks omitted.) *Durrant* v. *Board of Education*, supra, 96 Conn. App. 478 (*Schaller*, *J.*, dissenting).

The Appellate Court applied the factors set forth in these cases and made an initial determination from which all else followed. The court first examined whether, "if the child instead of the parent fell while leaving the after school program, the defendants would have been able to invoke the doctrine of governmental immunity." Id., 468. Rejecting the defendant's argument that "the student would also be excluded as a foreseeable victim because his attendance at the program was voluntary, not legally required"; id.; the Appellate Court concluded that "[i]t is not a large judicial leap to reason that the six year old student should be allowed to maintain an action against a municipality because, although not legally required to be on the premises after the school day had concluded, the child was legally present on the premises for the after school program by invitation of the defendants." Id., 468–69; see General Statutes § 17b-737. According to the Appellate Court, "the six year old student [therefore] would be in an identifiable class of foreseeable victims had he been the one who was allegedly injured." *Durrant* v. *Board of Education*, supra, 96 Conn. App. 469. On the basis of this premise, the Appellate Court thereafter concluded that, because the plaintiff was obligated to accompany her child from school to home, consistent with her legal duties as a parent to care for her child, she too fell within the identifiable class of foreseeable victims. We disagree with the underlying premise of the Appellate Court's reasoning that the plaintiff's child was an identifiable member of a foreseeable class of persons, and, therefore, we reject that court's determination that the plaintiff was a member of an identifiable class of foreseeable victims subject to imminent harm for purposes of satisfying that exception to the qualified immunity of a municipal employee for discretionary acts.

Even if the Appellate Court properly determined that the puddle of water in the staircase had satisfied the imminent harm element of the identifiable person-imminent harm exception because the danger in the present case had been limited in duration; see *Burns* v. *Board of Education*, supra, 228 Conn. 650 (danger confined to duration of temporary icy condition in particularly " 'treacherous' " area of campus); and had been geo-

graphically confined; see *Purzycki* v. *Fairfield*, supra, 244 Conn. 109–10 (danger confined to particular hallway in which defendants knew that students were permitted to travel unmonitored for one-half hour period each day); the court's conclusion that the plaintiff's child fell within an identifiable class of foreseeable victims was improper. The Appellate Court failed to recognize the significance of the enactment of § 52-557n as it affected the common-law authority of trial courts to determine when governmental immunity may be abrogated.

Section 52-557n, enacted in 1986; see Public Acts 1986, No. 86-338, § 13; specifically delineates circumstances under which municipalities and its employees can be held liable in tort and those under which they will retain the shield of governmental immunity. With respect to the latter, § 52-557n (a) (2) provides in relevant part: "Except as otherwise provided by law, a political subdivision of the state shall not be liable for damages to person or property caused by . . . (B) negligent acts or omissions which require the exercise of judgment or discretion as an official function of the authority expressly or impliedly granted by law." Although the statute contains no express exceptions to governmental immunity for discretionary acts, this court has "assume[d], without deciding, that § 52-557n (a) (2) (B) codifies the common law" relating to circumstances in which immunity is abrogated.[8] *Considine* v. *Waterbury*, 279 Conn. 830, 854 n.14, 905 A.2d 70 (2006); see *Doe* v. *Petersen*, 279 Conn. 607, 614, 903 A.2d 191 (2006) ("§ 52-557n abandons the common-law principle of municipal sovereign immunity and establishes the circumstances in which a municipality may be liable for damages").

Prior to the enactment of § 52-557n, municipalities generally were immune for the discretionary acts of their officials. See *Shore* v. *Stonington*, 187 Conn. 147, 153, 444 A.2d 1379 (1982). This court has explained the policy rationale for this immunity as follows: "Municipal officials are immunized from liability for negligence arising out of their discretionary acts in part because of the danger that a more expansive exposure to liability would cramp the exercise of official discretion beyond the limits desirable in our society. . . . Discretionary act immunity reflects a value judgment that—despite injury to a member of the public—the broader interest in having government officers and employees free to exercise judgment and discretion in their official functions, unhampered by fear of second-guessing and retaliatory lawsuits, outweighs the benefits to be had from imposing liability for that injury." (Internal quotation marks omitted.) *Violano* v. *Fernandez*, 280 Conn. 310, 318–19, 907 A.2d 1188 (2006). Under its common-law authority, the court recognized limited exceptions to the discretionary acts immunity. See footnote 4 of this opinion. "Each of these exceptions represents a situa-

tion in which the public official's duty to act is [so] clear and unequivocal that the policy rationale underlying discretionary act immunity—to encourage municipal officers to exercise judgment—has no force."[9] (Internal quotation marks omitted.) *Violano* v. *Fernandez*, supra, 319. As a result, under the common law, "[t]he 'discrete person/imminent harm' exception to the general rule of governmental immunity for employees engaged in discretionary activities ha[d] received very limited recognition in this state." *Evon* v. *Andrews*, supra, 211 Conn. 507.

Since the codification of the common law under § 52-557n, this court has recognized that it is not free to expand or alter the scope of governmental immunity therein. Thus, in rejecting a plaintiff's invitation to abandon the distinction between ministerial and discretionary acts in favor of a different rule of liability, we recently stated: "Because the legislature has codified this distinction, we are bound by it. . . . Irrespective of the merits of the competing approach advocated by the plaintiff, [w]e must resist the temptation which this case affords to enhance our own constitutional authority by trespassing upon an area clearly reserved as the prerogative of a coordinate branch of government." (Citation omitted; internal quotation marks omitted.) *Violano* v. *Fernandez*, supra, 280 Conn. 327–28.

Burns was the first case decided by this court after the enactment of § 52-557n (a) (2) (B) to address the foreseeable victim/imminent harm exception that the court previously had recognized under its common-law authority. Although *Burns* and its progeny implicitly proceeded from the assumption that the statute had codified the common law in considering whether a class of victims could be foreseeable, the court's reasoning was consistent with the narrow common-law view of the exception. The only identifiable class of foreseeable victims that we have recognized for these purposes is that of schoolchildren attending public schools during school hours. "In determining that such schoolchildren were within such a class, we focused on the following facts: they were intended to be the beneficiaries of particular duties of care imposed by law on school officials; they were legally required to attend school rather than being there voluntarily; their parents were thus statutorily required to relinquish their custody to those officials during those hours; and, as a matter of policy, they traditionally require special consideration in the face of dangerous conditions." *Prescott* v. *Meriden*, supra, 273 Conn. 764; see also *Purzycki* v. *Fairfield*, supra, 244 Conn. 108–109; *Burns* v. *Board of Education*, supra, 228 Conn. 648–50.

In the present case, the plaintiff was not compelled statutorily to relinquish protective custody of her child. No statute or legal doctrine required the plaintiff to enroll her child in the after school program; nor did

any law require her to allow her child to remain after school on that particular day. Contrast General Statutes §§ 10-157 and 10-220 (school boards and superintendents required to maintain schools for benefit of students); General Statutes §§ 10-184 and 10-220 (children statutorily compelled to attend school and parents statutorily obligated to send them to school). The plaintiff's actions were entirely voluntary, and none of her voluntary choices imposes an additional duty of care on school authorities pursuant to the *Burns* standards.[10]

We recognize that our state statutes condone and even encourage the use of public school facilities for the very purpose for which the plaintiff's child was in attendance at the school on the day of the plaintiff's fall.[11] See General Statutes § 17b-737 (allowing grants to municipalities and boards of education "to encourage the use of school facilities for the provision of child day care services before and after school" and providing that "[t]he commissioner [of social services] may utilize available child care subsidies to implement the provisions of this section and encourage association and cooperation with the Head Start program established pursuant to section 10-16n [which allows the establishment of grant programs to assist local boards of education establishing extended day Head Start programs]"). There is a significant distinction, however, between a program in which participation is *encouraged* and one in which it is *compelled*. This distinction is paramount in light of the fact that an interpretation that would embrace such voluntary activities would constitute an expansion in abrogation of the common law, which we generally eschew in the absence of an express directive. This court often has cautioned that, "[w]hen a statute is in derogation of common law or creates a liability where formerly none existed, it should receive a strict construction and is not to be extended, modified, repealed or enlarged in its scope by the mechanics of [statutory] construction. . . . In determining whether or not a statute abrogates or modifies a common law rule the construction must be strict, and the operation of a statute in derogation of the common law is to be limited to matters clearly brought within its scope." (Internal quotation marks omitted.) *Spears* v. *Garcia*, 263 Conn. 22, 28, 818 A.2d 37 (2003); *Yale University School of Medicine* v. *Collier*, 206 Conn. 31, 36–37, 536 A.2d 588 (1988).

We disagree with the Appellate Court majority that the legislature manifested an intent to abrogate the common law in these circumstances by way of §17b-737; see footnote 3 of this opinion; which provides in relevant part that, "[i]n order to qualify for a grant, a municipality, board of education or child care provider . . . shall agree to provide liability insurance coverage for the program." Even if we were to assume arguendo that the legislature possibly could have intended its conditioning the receipt of grants under § 17b-737 on

municipalities or boards of education having obtained liability insurance coverage to expand implicitly the foreseeable class of victims exception to governmental immunity; see *Sestito* v. *Groton*, supra, 178 Conn. 527–28; the language in § 17b-737 is insufficient to achieve that end. See *A. Aiudi & Sons, LLC* v. *Planning & Zoning Commission*, 267 Conn. 192, 209, 837 A.2d 748 (2004) ("[w]e previously have noted that zoning regulations, as they are in derogation of common law property rights, cannot be construed to include or exclude by implication what is not clearly within their express terms" [internal quotation marks omitted]). Nothing in that statutory language evidences the clear, express intent necessary to abrogate the common law by expanding substantially the exception to governmental immunity for discretionary acts.

More likely, as Judge Schaller noted, "[t]he liability insurance requirement serves to protect against various types of risks associated with operating child care services. For example, such insurance would provide coverage if a child were injured and came within one of the recognized exceptions to governmental immunity." *Durrant* v. *Board of Education*, supra, 96 Conn. App. 485 n.8 (*Schaller, J.*, dissenting). Additionally, because municipalities are liable for an employee's negligent performance of ministerial acts, and for negligence in connection with money-making activities and nuisances; see General Statutes § 52-557n (a) (1); the liability insurance requirement for municipalities and boards of education imposed by § 17b-737 likely is intended to address these situations.

The judgment of the Appellate Court is reversed and the case is remanded with direction to affirm the judgment of the trial court.

In this opinion ROGERS, C. J., and BORDEN and VERTEFEUILLE, Js., concurred.

* This case originally was argued before a panel of this court consisting of Justices Borden, Norcott, Katz, Palmer and Vertefeuille. Thereafter, the court, pursuant to Practice Book § 70-7 (b), sua sponte, ordered that the case be considered en banc. Accordingly, Chief Justice Rogers and Justice Zarella were added to the panel, and they have read the record, briefs and transcript of the oral argument.

The listing of justices reflects their seniority status on this court as of the date of oral argument.

[1] The individual defendants are: Anthony Amato, a former superintendent of the city of Hartford's public schools; Fran DiSiores, the principal of West Middle School, a Hartford public school; and Rick Deschenes, the director of maintenance of West Middle School.

[2] General Statutes § 52-557n (a) (2) provides in relevant part: "Except as otherwise provided by law, a political subdivision of the state shall not be liable for damages to person or property caused by . . . (B) negligent acts or omissions which require the exercise of judgment or discretion as an official function of the authority expressly or impliedly granted by law." The court has explained that, as a general matter, § 52-557n was enacted to codify the common law and to limit the scope of governmental immunity. *Conway* v. *Wilton*, 238 Conn. 653, 672, 680 A.2d 242 (1996).

[3] General Statutes § 17b-737 provides: "The Commissioner of Social Services shall establish a program, within available appropriations, to provide grants to municipalities, boards of education and child care providers to encourage the use of school facilities for the provision of child day care

services before and after school. In order to qualify for a grant, a municipality, board of education or child care provider shall guarantee the availability of a school site which meets the standards set by the Department of Public Health in regulations adopted under sections 19a-77, 19a-79, 19a-80 and 19a-82 to 19a-87a, inclusive, and shall agree to provide liability insurance coverage for the program. Grant funds shall be used by the municipality, board of education or child care provider for the maintenance and utility costs directly attributable to the use of the school facility for the day care program, for related transportation costs and for the portion of the municipality, board of education or child care provider liability insurance cost and other operational costs directly attributable to the day care program. The municipality or board of education may contract with a child day care provider for the program. The Commissioner of Social Services may adopt regulations, in accordance with the provisions of chapter 54, for purposes of this section. The commissioner may utilize available child care subsidies to implement the provisions of this section and encourage association and cooperation with the Head Start program established pursuant to section 10-16n."

[4] "Although municipalities are generally immune from liability in tort, municipal employees historically were personally liable for their own tortious conduct. . . . The doctrine of governmental immunity has provided some exceptions to the general rule of tort liability for municipal employees." (Citations omitted.) *Burns* v. *Board of Education*, supra, 228 Conn. 645. Governmental immunity in such cases depends on whether the act in question involves a ministerial or discretionary act. "[A] municipal employee . . . has a qualified immunity in the performance of a governmental duty, but he may be liable if he misperforms a ministerial act . . . . The word ministerial refers to a duty which is to be performed in a prescribed manner without the exercise of judgment or discretion." (Internal quotation marks omitted.) Id. "The immunity from liability for the performance of discretionary acts by a municipal employee is subject to three exceptions or circumstances under which liability may attach even though the act was discretionary: first, where the circumstances make it apparent to the public officer that his or her failure to act would be likely to subject an identifiable person to imminent harm . . . second, where a statute specifically provides for a cause of action against a municipality or municipal official for failure to enforce certain laws . . . and third, where the alleged acts involve malice, wantonness or intent to injure, rather than negligence." (Citations omitted.) *Evon* v. *Andrews*, 211 Conn. 501, 505, 559 A.2d 1131 (1989). Only the first exception, which this court addressed more specifically in *Burns* and its progeny, is at issue in this appeal.

[5] "In *Segreto*, [the Appellate Court] stated that 'although the general rule is that a determination as to whether the actions or omissions of a municipality are discretionary or ministerial is a question of fact for the jury, there are cases where it is apparent from the complaint.' . . . *Segreto* v. *Bristol*, supra, 71 Conn. App. 855." *Durrant* v. *Board of Education*, supra, 96 Conn. App. 460 n.5.

[6] "For the purposes of this appeal, the plaintiff has stipulated that the only exception to the qualified immunity of a municipal employee for discretionary acts that is relevant to the present case is the exception permitting a tort action in circumstances of perceptible imminent harm to identifiable individuals or a class of foreseeable victims. She claims that, on the facts of this case, she is a member of an identifiable class of foreseeable victims subject to imminent harm for purposes of satisfying the exception to qualified immunity of a municipal employee for discretionary acts." *Durrant* v. *Board of Education*, supra, 96 Conn. App. 460 n.6.

[7] "Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party moving for summary judgment has the burden of showing . . . that the party is . . . entitled to judgment as a matter of law. . . . Our review of the trial court's decision to grant the defendant's motion for summary judgment is plenary." (Internal quotation marks omitted.) *Cantonbury Heights Condominium Assn., Inc.* v. *Local Land Development, LLC*, 273 Conn. 724, 733, 873 A.2d 898 (2005).

[8] In examining the legislative history of § 52-557n, this court has concluded that the statute "was intended, in a general sense, both to codify and to limit municipal liability, but [the legislative history] reflects confusion with

respect to precisely what part of the preexisting law was being codified, and what part was being limited." (Internal quotation marks omitted.) *Considine* v. *Waterbury*, 279 Conn. 830, 839 n.7, 905 A.2d 70 (2006).

[9] Compare *Evon* v. *Andrews*, 211 Conn. 501, 507–508, 559 A.2d 1131 (1989) (foreseeable victim exception not satisfied in action brought against city officials after fire in multifamily apartment dwelling killed five people, officials immune for negligent failure to enforce various laws concerning safety of rental dwellings) and *Shore* v. *Stonington*, supra, 187 Conn. 157 (foreseeable victim exception not satisfied to waive immunity of police officer who failed to arrest driver, despite evidence of intoxication, and driver's vehicle later struck and killed plaintiff's decedent) with *Sestito* v. *Groton*, 178 Conn. 520, 528, 423 A.2d 165 (1979) (action against police officer who watched public disturbance involving group of approximately nine men without interfering until plaintiff's decedent was shot could be submitted to jury).

[10] We are mindful that parents often need to place their children in after school care and that the program the plaintiff in the present case chose may have been the most convenient, least expensive and most beneficial, in view of the homework assistance component, of all her options. These factors did not, however, make her child's attendance compulsory.

[11] Additionally, we accept the validity of the plaintiff's after school program choice, particularly in light of the homework component, and we acknowledge the general proposition, implicit in the plaintiff's argument, that the law's policy choices should be informed by the incentives and disincentives created by any particular rule of law. See *DiLullo* v. *Joseph*, 259 Conn. 847, 854, 792 A.2d 819 (2002). We disagree, however, that we must extend the narrow exception involved in the present case in order to further the goals the plaintiff hopes to achieve. Certainly, other options could provide homework assistance attendant to after school care, and we cannot imagine that the plaintiff made or will make her choices in the best interest of her child based on the likelihood of recovery of damages in the event of someone's negligence. Cf. *Prescott* v. *Meriden*, supra, 273 Conn. 766 (recognizing benefits of parental involvement in child's extracurricular activities but rejecting contention "that any parent will choose to attend his or her child's school event—athletic or otherwise—because he or she may be able to recover in negligence against school officials if he or she is injured during that attendance, and we do not think that any parent so inclined to attend such an event will decline to do so because he or she may not be able to secure such a recovery").