

**MARIA A. GUTH WIFE
OF/AND GREGORY D. GUTH,
INDIVIDUALLY AND ON
BEHALF OF THE MINOR
CHILD, JACOB E. GUTH**

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NO. 2004-CA-0313

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COURT OF APPEAL

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FOURTH CIRCUIT

VERSUS

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STATE OF LOUISIANA

**ORLEANS PARISH SCHOOL
BOARD, SUPERINTENDENT
ANTHONY AMATO**

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**APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2003-12506, DIVISION "I"
HONORABLE PIPER GRIFFIN, JUDGE**

**JAMES F. MCKAY III
JUDGE**

(Court composed of Judge Charles R. Jones, Judge James F. McKay III,
Judge Dennis R. Bagneris, Sr.)

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AFFIRMED

This appeal arises from the trial court's granting of the defendants' Exception of No Cause of Action based on educational malpractice. For the reasons assigned, we affirm.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On August 20, 2003, plaintiffs/appellants, Maria A. Guth and Gregory D. Guth, individually and on behalf of their minor child, Jacob E. Guth (the Guths), filed an Ex Parte Verified Petition for Discovery against defendants/appellees, the Orleans Parish School Board and Superintendent Anthony Amato (OPSB). At the time of this filing, the parties were involved in a due process hearing regarding the OPSB's alleged failure to provide an appropriate education for Jacob, a ninth grader at Benjamin Franklin High School (Franklin). The due process hearing was prompted by the fact that Jacob displayed poor academic performance in the ninth grade and was not invited to return to Franklin for the tenth grade.

On August 21, 2003, the Guths amended their petition and converted the matter into a class action demand. The amended petition alleged that the

OPSB was liable to those parents who incurred high tuition expenses in educating their children in private or parochial schools, allegedly because the OPSB failed to provide free and appropriate education. Monetary damages were sought in the class action.

In response to the class action demand, the OPSB filed Exceptions of No Cause of Action, No Right of Action, Prescription and Vagueness. The Exception of No Cause of Action was based on the assertion that the law does not recognize a cause of action for educational malpractice. On December 10, 2003, the trial court granted the Exception of No Cause of Action, thereby dismissing the Guths' suit. All other exceptions were thereby rendered moot. This appeal followed.

DISCUSSION

In their first two assignments of error, the Guths argue that the trial court erred in sustaining the OPSB's Exception of No Cause of Action based on educational malpractice. The Guths maintain that their case is based on negligence and breach of contract, and should not have been labeled an educational malpractice case. In opposition to this argument, the OPSB asserts that whether the Guths classify their action as negligence or breach of contract, their claim clearly alleges the failure of the New Orleans public schools to educate their students adequately, and must be construed as an

educational malpractice action.

The Guths further argue that the trial court erred in sustaining the Exception of No Cause of Action, if said ruling was based on La. R.S. 9:2798.1. The statute provides that “[l]iability shall not be imposed on public entities or their officers or employees based upon the exercise or performance or the failure to exercise or perform their policymaking or discretionary acts when such acts are within the course and scope of their lawful powers and duties.” We note that the judgment does not indicate whether or not the trial court relied on La. R.S. 9:2798.1 in making its ruling. Written reasons for judgment were not provided and the record before us contains no transcript of the proceeding.

Nevertheless, this court has recently had the opportunity to specifically address the issue of educational malpractice. In Miller v. Loyola University of New Orleans, 02-0158 (La. App. 4 Cir. 9/30/02), 829 So.2d 1057, 1061, in which this Court unequivocally held that “Louisiana law does not recognize a cause of action for educational malpractice under contract or tort law.” Miller, a part-time law student at Loyola University Law School, brought an action against the university alleging negligence and breach of contract for its failure to provided a quality legal education. As further stated in Miller, “[t]his Court looked to other jurisdictions and found that

there is a persuasive public policy argument against finding a cause of action for educational malpractice that is endorsed by most states.”

In light of our holding in Miller, we find that the Guths have no cause of action against the OPSB for educational malpractice in contract or in tort. We therefore pretermitt any discussion on the Guths’ argument regarding whether or not the trial court erroneously applied La. R.S. 9:2798.1 in rendering its decision.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court granting the Exception of No Cause of Action in favor of the OPSB.

AFFIRMED