[Cite as *Doe v. Dayton Pub. Schools*, 2026-Ohio-4499.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

JOHN DOE A PSEUDONYM ET AL.	:	
	:	C.A. No. 30747
Appellants	:	
	:	Trial Court Case No. 2025 CV 00306
v.	:	
	:	(Civil Appeal from Common Pleas
DAYTON PUBLIC SCHOOLS ET AL.	:	Court)
	:	
Appellees	:	**FINAL JUDGMENT ENTRY & OPINION**

. . . . . .

Pursuant to the opinion of this court rendered on November 13, 2026, the judgment of the trial court is affirmed in part, reversed in part, and remanded for further proceedings consistent with the opinion.

Costs to be paid as follows: 50% by the Appellants and 50% by the Appellees.

Pursuant to Ohio App.R. 30(A), the clerk of the court of appeals shall immediately send a copy of the court's ruling to each party and note that action on the docket. Additionally, pursuant to App.R. 27, the clerk of the court of appeals shall send a certified copy of this judgment, which constitutes a mandate, to the clerk of the trial court and note the service on the appellate docket.

For the court,



MARY K. HUFFMAN, JUDGE

TUCKER, J., and EPLEY, J., concur.

OPINION
MONTGOMERY C.A. No. 30747

MICHAEL L. WRIGHT, ROBERT L. GRESHAM, KESHA Q. BROOKS, DENNIS P. MULVIHILL, & PETER D. TRASKA, Attorneys for Appellants
JONATHAN E. ROACH & SAMANTHA BAGLEY, Attorneys for Appellees

HUFFMAN, J.

{¶ 1} Plaintiffs-Appellants, John Doe (a minor) and his parents Taneisha Lindsay and Robert Tootle, individually and as next friends of John Doe, appeal from the trial court's judgment dismissing for failure to state a claim in their tort claim for negligent supervision, their 42 U.S.C. 1983 claim of a denial of a free appropriate public education under the Individuals with Disabilities Education Act (IDEA), and their 42 U.S.C. 1983 claim of a denial of bodily integrity against school principal Celeste Hoerner in her individual and supervisory capacity. They also appeal from the trial court's judgment dismissing their 42 U.S.C. 1983 claims against Dayton Public School District (DPS) based on municipal liability for failure to state a claim. According to appellants, Doe was injured on the first day of school by Darrick Sorrells, a paraprofessional employed by DPS and supervised by Hoerner.

{¶ 2} Because appellants were only required to provide notice of their claims to Hoerner and DPS at the pleading stage, we agree with appellants that appellants had made sufficient factual allegations to survive a Civ.R. 12(B)(6) motion to dismiss. For the reasons discussed below, the trial court's judgment will be affirmed in part and reversed in part, and this matter will be remanded to the trial court.

I. Background Facts and Procedural History

{¶ 3} In August 2023, Doe, a nonverbal three-year-old boy on the autism spectrum, went to school for the first time at Rosa Parks Early Learning Center (RPELC) in DPS, where

Hoerner was the principal. Doe had an individualized education plan (IEP), which provided that he needed assistance with toileting and often eloped from caregivers.

{¶ 4} On August 21, the first day of school, Doe was under the care of Sorrells, who worked at RPELC as a paraprofessional helping teachers in the classroom. Sorrells was assisting Doe in the restroom, and Doe ran away from him. Sorrells went after Doe, struck him on the side of his head, knocked him to the floor, and carried him upside down and by his feet back to the classroom. The same day, Hoerner and Doe's classroom teacher met personally with Doe's parents to inform them of the incident. At some point, unbeknownst to appellants, the incident was reported to Montgomery County Children's Services, who advised appellants to obtain video footage of the incident.

{¶ 5} Appellants filed an initial complaint and then an amended complaint against DPS, Sorrells, Hoerner, Jane and John Doe Employees, and the Ohio Department of Medicaid, asserting the following causes of actions: 1) acts and omissions excepting individual defendants from immunity against all defendants; 2) assault and battery against Sorrells; 3) deprivation of constitutionally protected rights under color of law against all defendants; 4) loss of consortium with respect to Taneisha Lindsay, Doe's mother, against all defendants; 5) loss of consortium with respect to Robert Tootle, Doe's father, against all defendants; 6) intentional infliction of emotional distress on Doe's behalf against all defendants; and 7) subrogation claims with regard to the Ohio Department of Medicaid.

{¶ 6} In their complaint, appellants alleged that Sorrells was unfit and incompetent to be charged with the physical custody of a young, developmentally disabled child like Doe. They claimed that DPS had been required to ensure the physical safety and well-being of students who attended its schools. They further alleged that: Hoerner and Jane and John Doe Employees had recklessly or wantonly placed Doe in Sorrells's care despite that

Sorrells was incapable of meeting Doe's needs; Sorrells had been incapable of meeting the requirements of a paraprofessional as described in Ohio Adm.Code 3301-51; he had been temperamentally, cognitively, and in other ways patently unfit and incompetent to be charged with the physical custody of a young, mentally disabled child; appellees should have known that Sorrells presented a known or knowable danger to young children; and Doe was injured by Sorrells's actions. Appellants also alleged that Hoerner and Jane and John Doe employees had acted with malicious purpose, in bad faith, and in a wanton or reckless manner when they deliberately concealed the extent to which Doe had suffered at the hands of Sorrells in direct violation of Ohio's mandatory reporting statute and that Doe had suffered physical and emotional injuries. They claimed that DPS, Sorrells, Hoerner, and Jane and John Doe Employees had had a duty to exercise care, custody, and control over the students to whom they delivered special education and they had failed to do so. The claims against Sorrells, Hoerner, and Jane and John Doe Employees were brought against them in their official capacities as DPS employees and in their individual capacities. Sorrells had also been criminally charged for his actions against Doe; according to appellants, he initially pleaded that he did not understand the nature of the charges against him and was unable to participate in his own defense, which appellants suggested demonstrated his own mental limitations. .

{¶ 7} DPS, Hoerner, and Jane and John Doe Employees filed a motion to dismiss Doe's amended complaint for failure to state a claim, asserting that they were immune under R.C. 2744, in both their official and individual capacities, with respect to Doe's state law claims. They also argued that appellants had failed to plead sufficient facts to support their 42 U.S.C. 1983 claims against DPS related to political subdivision liability under *Monell v. Dept. of Social Servs*., 436 U.S. 658 (1978), and against Hoerner in her supervisory capacity

(qualified immunity).

{¶ 8} The allegations in appellants' first cause of action were difficult to discern, but the trial court determined that they asserted two state law claims against Hoerner in her individual capacity: 1) a tort claim for negligent supervision of Sorrells; and 2) a negligence claim based on her breach of a duty to inform Doe's parents regarding the nature and extent of the incident so that they could seek prompt medical attention for him.

{¶ 9} The trial court dismissed appellants' first, second, fourth, fifth, and sixth causes of action under state law against all defendants, including Hoerner, in their official capacities due to their political subdivision tort immunity under R.C. 2744. The court found DPS, Sorrells, and Hoerner were entitled to the broad immunity afforded by R.C. 2744.02(A)(1) and that no exception to their immunity in their official capacities under R.C. 2744.02(B) applied. The trial court further found that, Hoerner, in her individual capacity, was entitled to dismissal of the negligent supervision claim, presumably based on individual employee immunity, but it found that appellants' claims for negligence (first cause of action), loss of consortium (fourth and fifth causes of action), and intentional infliction of emotional distress (sixth cause of action) survived the dismiss to motion. The court noted that appellants had sufficiently alleged that Hoerner deliberately concealed the truth from Doe's parents of what Doe had suffered at the hands of Sorrells and had violated her duty under Ohio's mandatory reporting statute (negligence claim). The trial court also dismissed appellants' claims for relief under 42 U.S.C. 1983 based on a deprivation of Doe's right to a free, appropriate public education under the IDEA and their claims for relief against Hoerner, individually, based on Hoerner's conduct in hiring, training, and supervising Sorrells. Finally, regarding its 42 U.S.C. 1983 claims, the trial court concluded that appellants had failed to state a claim for political subdivision liability against DPS under *Monell*.

{¶ 10} The trial court denied appellees' motion to dismiss appellants' 42 U.S.C. 1983 claims against Hoerner, individually, for violations of Doe's Fourteenth Amendment substantive due process right to be secure in his person and Fourth Amendment right to be free from unreasonable seizures based on Hoerner's conduct in withholding the extent of the incident's seriousness, intentionally obscuring the likelihood of physical injury to Doe, and actively concealing the existence of video evidence of the incident.

{¶ 11} Appellants now appeal the trial court's dismissal of 1) their claim for negligent supervision against Hoerner, and (2) their 42 U.S.C. 1983 claims against DPS (as a municipality) and against Hoerner (individually as a supervisor) for a) the deprivation of Doe's right to bodily integrity while under the care of Sorrells, who was unqualified to be a paraprofessional in charge of multiple special needs children at the same time, and b) deprivation of Doe's right to free appropriate public education (FAPE) as required by the IDEA and Ohio Adm.Code 3301-51. They allege that, based on Hoerner's conduct in hiring, training, and supervising Sorrells, Hoerner ignored or disregarded the requirements of federal law and the Ohio Administrative Code specifying the qualifications of a paraprofessional working with special needs children and recklessly placed Sorrells independently in charge of multiple special needs children despite his known limitations.

{¶ 12} Appellants also complain that DPS denied their public records requests prior to this action and that their claims were dismissed prematurely, particularly when they could not know the full extent of DPS's or Hoerner's history with Sorrells, how many other times such an incident had occurred, how many other times DPS's personnel covered for Sorrells, or the precise circumstances around DPS's and Hoerner's choices to "certify" Sorrells as a paraprofessional despite his known deficiencies.

II. Assignments of Error

{¶ 13} Appellants state the following four assignments of error:

> Contrary to the language of R.C. 2744.03(A)(6), the trial court incorrectly grafted a requirement that the appellees must have had knowledge of a "propensity for violence" on Defendant Sorrells's part onto the statutory standards for liability.
>
> The trial court should have recognized that allegations that the appellees certified Defendant Sorrells as a paraprofessional recklessly, wantonly, or in bad faith state a claim under Ohio law.
>
> The trial court incorrectly analyzed appellants claims that the appellees violated both Ohio and federal law by recklessly ignoring State and federal certification requirements as sounding in "negligent supervision."
>
> The trial court should have recognized that allegations that the appellees recklessly placed Defendant Sorrells as the sole paraprofessional caring for multiple special needs children at once state a claim under 42 U.S.C. 1983.

{¶ 14} We find that appellants' assignments of error, however, appear to relate to two broad arguments: 1) Ohio law recognizes actions in tort against employees of political subdivisions for conduct that is reckless, wanton, in bad faith, or with malicious purpose; and 2) appellees' conduct gave rise to 42 U.S.C. 1983 claims for denial of federally protected rights. Their first two assignments of error appear to pertain to the first of these arguments, and the last two relate to the second.

{¶ 15} Although we find appellants' assignments of error difficult to discern, we conclude that the errors relate to two issues: 1) the trial court's Civ.R. 12(B)(6) dismissal of their claim for negligent supervision against Hoerner based on her immunity in her individual

capacity under R.C. 2744; and 2) the trial court's dismissal of their claims against DPS (as a municipality) and against Hoerner (individually) under 42 U.S.C. 1983. Based on this conclusion, we will combine their arguments into two assignments of error as set forth below.

Standard of Review

{¶ 16} Civ.R. 12(B)(6) provides for dismissal of a complaint for failure to state a claim upon which relief can be granted. Under Civ.R. 12(B)(6), a motion to dismiss should only be sustained if it appears beyond doubt that a plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief. *York v. Ohio St. Hwy. Patrol*, 60 Ohio St.3d 143, 145 (1991). A motion to dismiss is procedural and tests the sufficiency of the complaint, not the merits of the suit. *See State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548 (1992).

{¶ 17} When considering a motion to dismiss for failure to state a claim, all factual allegations must be taken as true and all reasonable inferences must be drawn in favor of the non-moving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192 (1988); *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*, 76 Ohio St.3d 521, 524 (1997). "[T]he movant may not rely on allegations or evidence outside the complaint." *State ex rel. Hanson* at 548. In other words, in order to sustain a Civ.R. 12(B)(6) motion, the trial court must find beyond doubt from the allegations in the pleadings, without resort to any extraneous material, that there is no set of facts which could conceivably be proved by the plaintiff that would allow the case to be submitted to a jury. "A court cannot dismiss a complaint under Civ.R. 12(B)(6) merely because it doubts the plaintiff will prevail." *Leichtman v. WLW Jacor Communications, Inc.*, 92 Ohio App.3d 232, 234 (1st Dist.1994).

{¶ 18} We conduct a de novo review of trial court decisions that grant or deny a Civ.R. 12(B)(6) motion to dismiss. *Student Doe v. Adkins*, 2021-Ohio-3389, ¶ 17 (4th Dist.), citing

Alexander Local School Dist. Bd. of Edn. v. Village of Albany, 2017-Ohio-8704, ¶ 22 (4th Dist.); *see*, *e.g., Menorah Park Ctr. for Senior Living v. Rolston*, 2020-Ohio-6658, citing *Lunsford v. Sterilite of Ohio, L.L.C.*, 2020-Ohio-4193. Accordingly, we afford "no deference to the trial court's decision"; instead, we independently review it. *Id*., citing *Struckman v. Bd. of Edn. of Teays Valley Local School Dist.*, 2017-Ohio-1177, ¶ 18 (4th Dist.).

A. First Assignment of Error

1. IDEA, Ohio Adm.Code 3301-51, and FAPE

{¶ 19} In support of their arguments, appellants reference several provisions related to the IDEA and Ohio Adm.Code 3301-51. To provide context, we will discuss those here.

IDEA

{¶ 20} The IDEA is a federal law that ensures children with disabilities receive a FAPE across the United States. The IDEA governs how states provide early intervention, special education, and services to children with disabilities. It "offers federal funds to States in exchange for a commitment to furnish a 'free appropriate public education' (FAPE) to children with certain disabilities, 20 U.S.C. 1412(a)(1)(A), and establishes formal administrative procedures for resolving disputes between parents and schools concerning the provision of a FAPE." *Fry v. Napoleon Community Schools*, 580 U.S. 154 (2017). The IDEA's core guarantee is a FAPE. *Id*. at 157, citing 20 U.S.C. 1412(a)(1)(A).

{¶ 21} An eligible child "acquires a 'substantive right' to such an education once a State accepts the IDEA's financial assistance." *Id*. at 158, citing *Smith v. Robinson,* 468 U.S. 992, 1010 (1984). Under the IDEA, an individualized education program (IEP) "serves as the 'primary vehicle' for providing each child with the promised FAPE." *Id*., citing *Honig v. Doe,* 484 U.S. 305, 311 (1988); *see* 20 U.S.C. 1414(d). "[T]he IEP spells out a personalized plan to meet all of the child's 'educational needs.'" *Id*., citing 20 U.S.C.

1414(d)(1)(A)(i)(II)(bb), (d)(1)(B).

{¶ 22} If a dispute arises between parents and school representatives, the IDEA establishes the following formal resolution procedures:

> To begin, a dissatisfied parent may file a complaint as to any matter concerning the provision of a FAPE with the local or state educational agency (as state law provides). *See* § 1415(b)(6). That pleading generally triggers a "[p]reliminary meeting" involving the contending parties, § 1415(f)(1)(B)(i); at their option, the parties may instead (or also) pursue a full-fledged mediation process, *see* § 1415(e). Assuming their impasse continues, the matter proceeds to a "due process hearing" before an impartial hearing officer. § 1415(f)(1)(A); *see* § 1415(f)(3)(A)(i). Any decision of the officer granting substantive relief must be "based on a determination of whether the child received a [FAPE]." § 1415(f)(3)(E)(i). If the hearing is initially conducted at the local level, the ruling is appealable to the state agency. *See* § 1415(g). Finally, a parent unhappy with the outcome of the administrative process may seek judicial review by filing a civil action in state or federal court. *See* § 1415(i)(2)(A).

Id. at 159.

{¶ 23} Generally, a plaintiff must exhaust the IDEA's procedures before filing an action under the American with Disabilities Act, the Rehabilitation Act, or similar laws. *Fry*, 580 U.S. at 165, citing 20 U.S.C.A. 1415(l). The only relief available under the IDEA relates to denial of a FAPE. *Id*. In determining whether a civil suit seeks relief for a denial of a FAPE, "a court should look to the substance, or gravamen, of the plaintiff's complaint." *Id*.

Ohio Adm.Code 3301-51 and FAPE

{¶ 24} Chapter 3301-51 of the Ohio Administrative Code sets forth Ohio's specific operating standards, which translate the IDEA mandates into actionable rules for local school districts and educational agencies and govern the education of students with special needs. "The purpose of Chapter 3301-51 of the Administrative Code is to ensure that all children with disabilities residing in Ohio between the ages of three and twenty-one years, inclusive, including children with disabilities who have been suspended or expelled from school, have available to them a free appropriate public education (FAPE), as provided by Part B of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) at 20 U.S.C. 1400, related federal regulations at 34 C.F.R. Part 300, Chapter 3323. of the Revised Code, the provisions of this chapter of the Administrative Code, and applicable state policies, procedures, and guidelines issued by the superintendent of public instruction." Ohio Adm.Code 3301-51-01(A).

{¶ 25} The Code requires that (a) children with disabilities have available to them FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and (b) the rights of children with disabilities and their parents are protected. Ohio Adm.Code 3301-51-01(A)(1)(a) and (b). The child's school district of residence is responsible for ensuring that the requirements for making FAPE available are met for every eligible child in its jurisdiction. Ohio Adm.Code 3301-51-01(A)(2)(a). Ohio Adm.Code 3301-51-07 outlines Ohio-specific procedures for creating, reviewing, and managing IEPs in compliance with federal standards. Ohio Adm.Code 3301-51-05 establishes parental rights, notice requirements, and dispute resolution processes mandated under federal law.

{¶ 26} The Code also permits Ohio school districts to utilize paraprofessionals in the classroom. In general, a paraprofessional is a school support staff member who works under the direction of a licensed teacher to help classrooms run smoothly. Under the Code, "'[p]araprofessional services' include services provided by educational agency employees who are adequately trained to assist in the provision of special education to children with disabilities. Paraprofessionals work under the supervision of teachers, intervention specialists, and/or related service providers. Other titles used to identify these service providers include teacher assistants, educational aides, school psychology aides, occupational therapy assistants, physical therapist assistants, and job coaches." Ohio Adm.Code 3301-51-01(B)(47).

{¶ 27} The delivery of services as required by the IDEA are described in Ohio Adm.Code 3301-51-09. Under that rule, the roles of preschool and school-age service providers are set forth in Ohio Adm.Code 3301-51-09(G), which states:

> (1) The educational agency will assign early childhood, and school-age intervention specialists, and/or related service providers to meet the unique educational needs of each child with a disability. The school-age service provider may provide indirect or direct services in one or any combination of instructional groupings, including large group, small group, individual instruction, or parent and teacher training and consultation.
>
> (2) The educational agency will ensure early childhood and school-age intervention specialists, and/or related service providers:
>
> > (a) Serve children with disabilities to assure a free appropriate public education and may serve children without disabilities where needs for services are identified;

(b) Support regular education teachers in serving and/or consulting about children with and without disabilities so that the regular education personnel, in partnership with the special education service providers and related service personnel, can implement a child's individualized education program in the least restrictive environment;

(c) Assist in organizing and facilitating supplemental supports provided within the regular classroom;

(d) Design parent involvement activities; and

(e) Implement educational interventions and specially designed instruction which means adapting, as appropriate, to the needs of the eligible child, the content, methodology, or delivery of instruction:

(i) To address the unique needs of the child that result from the child's disability; and

(ii) To ensure access to the general curriculum so that the child can meet the educational standards adopted by the state board of education that apply to all children.

(3) The educational agency will ensure services of paraprofessionals and related service assistants are supervised in accordance with Ohio law.

{¶ 28} The Code also provides that the educational agency must ensure that all personnel necessary to carry out the purposes of IDEA are employed and appropriately and adequately prepared and trained, including that those personnel have the knowledge and skills to serve children with disabilities. Ohio Adm.Code 3301-51-09(H)(1). Personnel are also expected to have appropriate certification or licensure as defined by Chapter 3301-24 of the Ohio Administrative Code. *Id*.

{¶ 29} The Code further states that paraprofessionals are to have certain qualifications that:

> (a) Are consistent with state-approved or state-recognized certification, licensing, registration, or other comparable provisions that apply to the professional discipline in which those personnel are providing special education or related services; and
>
> (b) Ensure that related services personnel who deliver services in their discipline or profession:
>
> (i) Meet the provisions of paragraph (H)(2)(a) of this rule; and
>
> (ii) Have not had certification or licensure obligations waived on an emergency, temporary, or provisional basis; and
>
> (iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with state law, regulation, or written policy, in meeting the provisions of this rule, to be used to assist in the provision of special education and related services under this rule to children with disabilities.
>
> (a) Paraprofessionals providing services to children with disabilities will hold an educational aide permit or associate license and meets [sic] the provisions under paragraph (I) of rule 3301-24-05 of the Administrative Code. Any educational agency that employs a paraprofessional will have written policies and procedures outlining:
>
> (i) Criteria for staff selection;
>
> (ii) A planned sequence of continuing education and

> annual training opportunities to enable the paraprofessional to continue to develop the knowledge and skills that are specific to the students with whom the paraprofessional works, including following lesson plans, implementing follow-up instructional procedures and activities, supporting effective classroom organization and behavior management, and working effectively with teachers and as part of an instructional team;
>
> (iii) A process for direct continuing supervision by one or more licensed teachers or service providers and evaluation of the services of such personnel; and
>
> (iv) A job description of the role and function of a paraprofessional.

Ohio Adm.Code 3301-51-09(H)(2).

2. Immunity as an Individual Employee under the Political Subdivision Tort Liability Act

{¶ 30} Political subdivision immunity is outlined in the Political Subdivision Tort Liability Act in Chapter 2744 of the Ohio Revised Code, which sets forth rules for when local governments and their employees can or cannot be sued for injury, death, or property damage. Public school districts are political subdivisions performing a governmental function by providing public education. R.C. 2744.01(C)(2)(c) and (F). Public school principals are considered employees of a political subdivision under R.C. 2744.01(B).

{¶ 31} R.C. 2744.03(A)(6) governs a political subdivision employee's individual immunity. Under that provision, individuals working for a public school district start with a broad presumption of tort immunity from individual civil lawsuits when performing their job

duties. This protection applies as long as they are employees acting within the scope of their employment. A plaintiff, however, can overcome an employee's presumptive immunity. In those circumstances, a plaintiff can hold the employee personally liable by proving that at least one of three exceptions to immunity under R.C. 2744.03(A)(6) applies: (a) the employee's acts or omissions were manifestly outside the scope of employment or official responsibilities; (b) *the employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner*; or (c) civil liability is expressly imposed upon the employee by another specific section of the Revised Code.

{¶ 32} In other words, "Ohio law generally provides political subdivisions and their employees with immunity from lawsuits and liability." *Maternal Grandmother v. Hamilton Cty. Dept. of Job & Family Servs.*, 2021-Ohio-4096, ¶ 7, citing R.C. 2744.02(A)(1) and R.C. 2744.03(A)(6). However, that immunity is not absolute, as "Ohio law permits plaintiffs to sue and hold liable employees of a political subdivision if the employees' acts or omissions in the course and scope of their employment were wanton or reckless." *Id*., citing R.C. 2744.03(A)(6)(b).

{¶ 33} "Reckless conduct is characterized by the conscious disregard of or indifference to a known or obvious risk of harm to another that is unreasonable under the circumstances and is substantially greater than negligent conduct." *Anderson v. Massillon*, 2012-Ohio-5711, ¶ 34, citing *Thompson v. McNeill,* 53 Ohio St.3d 102, 104-105 (1990), adopting 2 Restatement of the Law 2d, Torts, Section 500, at 587 (1965); *see also Black's Law Dictionary* 1298-1299 (8th Ed.2004) (explaining that reckless conduct is characterized by a substantial and unjustifiable risk of harm to others and a conscious disregard of or indifference to the risk, but the actor does not desire harm). Recklessness requires a showing that "the actor knew his or her conduct 'in all probability' would result in injury" and

is a rigorous threshold to meet. *Wyatt v. Springfield*, 2024-Ohio-3334, ¶ 21 (2d Dist.), citing *McDonald v. Lacy*, 2018-Ohio-2753, ¶ 26 (2d Dist.).

{¶ 34} Wanton misconduct, on the other hand, is "the failure to exercise any care toward those to whom a duty of care is owed in circumstances in which there is great probability that harm will result." *Anderson* at ¶ 33, citing *Hawkins v. Ivy,* 50 Ohio St.2d 114, 117-118 (1977); *see also Black's Law Dictionary* 1613-1614 (8th Ed.2004) (explaining that one acting in a wanton manner is aware of the risk of the conduct but is not trying to avoid it and is indifferent to whether harm results). "'Human error' might mean negligence, but it does not constitute willful or wanton misconduct." *Whitley v. Progressive Preferred Ins. Co.*, 2010-Ohio-356, ¶ 22 (1st Dist.); *see also Fabrey v. McDonald Village Police Dept.*, 70 Ohio St. 3d 351, 357 (1994) ("mere negligence in [officer's] official duties should not give rise to personal liability").

{¶ 35} Whether a political subdivision employee may invoke statutory immunity under R.C. Chapter 2744 generally presents a question of law. *See Nease v. Med. College Hosp.*, 64 Ohio St.3d 396, 400 (1992), quoting *Roe v. Hamilton Cty. Dept. of Human Servs.*, 53 Ohio App.3d 120, 126 (1st Dist.1988) (citations omitted) ("'Whether immunity may be invoked is a purely legal issue, properly determined by the court prior to trial, and preferably on a motion for summary judgment'"); *Conley v. Shearer*, 64 Ohio St.3d 284, 292 (1992); *accord Williams v. Glouster*, 2012-Ohio-1283, ¶ 15 (4th Dist.); *Long v. Hanging Rock*, 2011-Ohio-5137, ¶ 17 (4th Dist.). Whether a political subdivision employee acted in a wanton or reckless manner, however, is generally a question of fact. *Cannavino v. Rock Ohio Caesars Cleveland, L.L.C.*, 2017-Ohio-380, ¶ 26 (8th Dist.); *Long* at ¶ 17, citing *Theobald v. Univ. of Cincinnati*, 2006-Ohio-6208; *Fabrey*, 70 Ohio St.3d at 356.

{¶ 36} We note that "the affirmative defense of immunity under R.C. Chapter 2744

may be the basis of a dismissal under Civ.R. 12(B)(6)." *Student Doe*, 2021-Ohio-3389, at ¶ 20, quoting *Para v. Jackson*, 2021-Ohio-1188, ¶ 16 (8th Dist.). "Whether a party is entitled to immunity is a question of law properly determined by the court prior to trial pursuant to a motion for summary judgment [or a motion to dismiss]." *Student Doe* at ¶ 18, quoting *Pelletier v. Campbell*, 2018-Ohio-2121, ¶ 12, citing *Conley* at 292. "A trial court may grant a motion to dismiss on the basis of political-subdivision immunity only when the complaint bears 'conclusive evidence that the action is barred by the defense.'" *Id*. at ¶ 20, citing *Plush v. Cincinnati*, 2020-Ohio-6713, ¶ 13 (1st Dist.), quoting *Bucey v. Carlisle*, 2010-Ohio-2262, ¶ 9 (1st Dist.). Consequently, "unless the pleadings obviously or conclusively establish the affirmative defense," a trial court may not dismiss the complaint. *Id.*, quoting *Steele v. City of Cincinnati*, 2019-Ohio-4853, ¶ 15 (1st Dist.). We "conduct a de novo review of a trial court's determination regarding political-subdivision immunity." *Id.* at ¶ 18, citing *Wright v. Village of Williamsport*, 2019-Ohio-2682, ¶ 15 (4th Dist.).

3. Notice Pleading

{¶ 37} Ohio is a notice-pleading state. *Wells Fargo Bank N.A. v. Horn*, 2015-Ohio-1484, ¶ 13. Generally, a plaintiff is not required to plead the operative facts of his or her case with particularity, except in very narrow circumstances, such as fraud. *York,* 60 Ohio St.3d at 145. Thus, "a short and plain statement of the claim showing that the party is entitled to relief" is typically sufficient. Civ.R. 8(A).

{¶ 38} In cases where a government employee's reckless or wanton behavior is at issue, "these general pleading rules still apply." *Maternal Grandmother,* 2021-Ohio-4096, at ¶ 11, citing *see* Civ.R 9(B) ("Malice, intent, knowledge, and other condition of mind of a person may be averred generally."). Accordingly, "when a complaint invokes the exception to a government employee's immunity under R.C. 2744.03(A)(6)(b), notice pleading suffices

and the plaintiff may not be held to a heightened pleading standard or expected to plead the factual circumstances surrounding an allegation of wanton or reckless behavior with particularity." *Id.*, citing *Parmertor v. Chardon Local Schools*, 2016-Ohio-761, ¶ 49-51 (11th Dist.); *Thompson v. Buckeye Joint Vocational School Dist.*, 2016-Ohio-2804, ¶ 31 (5th Dist.); *see also York* at 144-145.

4. Negligent Supervision

{¶ 39} In their first assignment of error, appellants contend that the trial court erred in dismissing their tort claim for negligent supervision against Hoerner based on her individual immunity under R.C. 2744. They assert that Ohio law recognizes actions in tort against employees of political subdivisions for conduct that is reckless, wanton, in bad faith, or with malicious purpose. They argue that contrary to the language of R.C. 2744.03(A)(6), the trial court incorrectly "grafted a requirement" that Hoerner have knowledge of Sorrells's "propensity for violence" in order for her to be liable. They also contend that the trial court should have recognized that their allegations—namely that Hoerner recklessly, wantonly, or in bad faith "certified" Sorrells as a paraprofessional—stated a claim under Ohio law.

{¶ 40} At the outset, we note that appellants repeatedly argue that Hoerner recklessly or wantonly "credentialed" Sorrells and "certified" him as competent to work as a paraprofessional. In support of their argument, they point to the requirements in the Ohio Adm.Code 3301-51 relating to paraprofessionals and the personnel qualifications of those working with children with disabilities. They contend that, when individual officers or employees ignore the paraprofessional requirements set out in the Ohio Administrative Code recklessly, wantonly, in bad faith, or with a malicious purpose, they are subject to liability under R.C. 2744.03(A)(6), that the Ohio Administrative Code prescribes how the education agency officers and employees are required to implement the IDEA, and that R.C.

2744 prescribes the rules for liability.

{¶ 41} We want to emphasize that R.C. 2744 governs liability related to *tort* claims. While it is unclear in this context why appellants point to those administrative code requirements, we observe that there is no cognizable tort claim in Ohio for a violation of the IDEA or for negligently credentialing or certifying a school paraprofessional under Ohio Adm.Code 3301-51.

{¶ 42} We surmise, however, that perhaps appellants are now arguing that they asserted a claim for general negligence and that 1) a duty arose under the Ohio Administrative Code requiring Hoerner to ensure that Sorrells had the necessary qualifications to serve as a paraprofessional and that he was appropriately and adequately prepared and trained, and 2) Hoerner breached that duty based on her knowledge of Sorrells's inability to carry out his job responsibilities. However, a violation of an administrative rule does not constitute negligence per se. *Lang v. Holly Hill Motel, Inc.*, 2009-Ohio-2495, ¶ 20; *Chambers v. St. Mary's School*, 82 Ohio St.3d 563, 568 (1998). While it may be admissible as evidence of negligence, a party cannot establish an automatic breach of duty just by pointing to an Ohio Administrative Code violation. *See id*. But, more importantly, in this case, if appellants sought to assert a negligence tort claim on the basis of this argument, they should have made it more clear in their vaguely worded complaint. Thus, we agree with the trial court that the crux of their tort claim in this instance was one for negligent supervision—or more specifically, in our view, one for negligent hiring.

{¶ 43} With respect to appellants' claim for negligent supervision, appellants assert that the key issues were that Hoerner recklessly or wantonly placed Doe in Sorrells's care despite that he was incapable of meeting Doe's needs, that he was incapable of meeting the requirements of a paraprofessional, and that he was temperamentally, cognitively, and

in other ways patently unfit and incompetent to be charged with the physical custody of a young, mentally disabled child. Appellants allege that Hoerner, as the school principal, should have known that Sorrells presented a known or knowable danger to young children like Doe.

{¶ 44} Appellants maintain that their allegations against Hoerner were sufficient to overcome a motion to dismiss and that discovery was necessary for them to obtain further evidence to support their claim. They essentially argue that Hoerner was at least reckless because, despite that she had information about Sorrells's intellectual limitations, she still allowed him to supervise a severely autistic child. They contend that there were sufficient allegations that Hoerner's placement of Doe in Sorrells's care was without care or was done with a conscious disregard of the requirements for being a paraprofessional as defined under Ohio law (requirements that Sorrells could not meet). They also argue that if Sorrells was not competent enough at one point to assist in his own legal defense in the criminal case against him for his actions against Doe, Hoerner was not entitled to dismissal for failure to state a claim on their claim involving her role in negligently hiring Sorrells, particularly where she had hiring, firing, and supervisory authority. We agree.

{¶ 45} Negligent hiring of a school employee in Ohio occurs, for example, when a school district or hiring authority fails to do a proper investigation and hires someone who is unfit for the job; The claim arises when that employee goes on to harm a student or someone else, which directly leads to a foreseeable injury. A claim of negligent hiring, supervision, or retention requires proof of the following elements: "(1) the existence of an employment relationship; (2) the employee's incompetence; (3) the employer's actual or constructive knowledge of such incompetence; (4) the employee's act or omission causing the plaintiff's injuries; and (5) the employer's negligence in hiring or retaining the employee as the

proximate cause of plaintiff's injuries." *Cooke v. Montgomery Cty.*, 2004-Ohio-3780, ¶ 23 (2d Dist.), citing *Evans v. Ohio State Univ.*, 112 Ohio App.3d 724, 739 (10th Dist.1996); *Evans v. Akron Gen. Med. Ctr.*, 2020-Ohio-5535, ¶ 5.

{¶ 46} The trial court acknowledged that a duty to control a violent person may arise when a "special relationship" exists between the violent individual and the victim. Generally, a defendant has no duty to control the violent conduct of a third person to prevent that person from causing physical harm to another unless a "special relation" exists between the defendant and the third person or between the defendant and the other. School officials "have a special responsibility to protect those children committed to their care and control" and "have special relationships with their teachers and direct control of the environment in which their teachers and students interact." *Yates v. Mansfield Bd. of Edn*., 2004-Ohio-2491, ¶ 45.

{¶ 47} "In order for a special relation to exist between the defendant and the third person, the defendant must have the ability to control the third person's conduct." *Estates of Morgan v. Fairfield Family Counseling Ctr.*, 1997-Ohio-194, paragraph one of the syllabus. "[A] 'special relation' exists when one takes charge of a person whom he knows or should know is likely to cause bodily harm to others if not controlled." *LaMusga v. Summit Square Rehab, LLC*, 2017-Ohio-6907, ¶ 14 (2d Dist.), quoting *Littleton v. Good Samaritan Hosp. & Health Ctr.*, 39 Ohio St.3d 86, 92 (1988). "Even when a special relationship exists, a defendant is not liable unless the actions of the third party were foreseeable." *Id*. at ¶ 15, citing *Maier v. Serv-All Maintenance, Inc.*, 124 Ohio App.3d 215, 221 (8th Dist.1997). The test to determine foreseeability is "[w]hether a reasonably prudent person would have anticipated that an injury was likely to result from the performance or nonperformance of an act." *Id*., quoting *Menifee v. Ohio Welding Products, Inc.*, 15 Ohio St.3d 75, 77 (1984).

{¶ 48} In dismissing appellants' claim for negligent supervision, the trial court concluded that appellants had alleged no facts that would give rise to a reasonable inference either that Sorrells had a propensity for violence or aggression or that Hoerner was aware of such a propensity. The basis of this reasoning was discussed in *Jackson v. Hogeback*, 2014-Ohio-2578, ¶ 2 (12th Dist.), where the plaintiff brought a claim for negligent hiring, supervision, and retention against his co-worker and employer after the co-worker repeatedly struck him, broke his jaw, and injured his hand at a worksite.

{¶ 49} The *Jackson* court explained that "[i]n the context of negligent hiring, supervision, or retention, liability on behalf of the employer results by way of its own negligence in selecting a person to employ or allowing a person to continue to work, where the employer knows or should have known of the hired individual's violent or dangerous propensities." *Id.* at ¶ 34, citing *Brown-Spurgeon v. Paul Davis Systems of Tri-State Area, Inc.*, 2013-Ohio-1845, ¶ 45 (12th Dist.). "The focus of these claims is on the employer's knowledge of the hired individual's violent, criminal, or tortious propensities and whether such knowledge would have prevented the employment relationship." *Id*., citing *Stephens v. A-Able Rents Co.,* 101 Ohio App.3d 20, 26 (8th Dist.1995), citing *Byrd v. Faber*, 57 Ohio St. 3d 56, 62 (1991). "The foreseeability of a criminal act depends upon the knowledge of the employer, which must be determined by the totality of the circumstances, and it is only when the totality of the circumstances are 'somewhat overwhelming' that the employer will be liable." *Id*., citing *Brown-Spurgeon* at ¶ 33; *Prewitt v. Alexson Servs., Inc.*, 2008-Ohio-4306, ¶ 31 (12th Dist.).

{¶ 50} In this case, Sorrells's assault on Doe was a criminal act, which occurred on the first day of school and resulted in a criminal conviction. It therefore qualifies as "incompetence" for a negligent supervision or hiring claim. *See Jackson* at ¶ 35, citing

Brown-Spurgeon at ¶ 47, citing *Wagner v. Ohio State Med. Ctr.,* 2010-Ohio-2561, ¶ 22 (10th Dist.). While the facts asserted by appellants were not particularly expansive, a review of their amended complaint reveals that appellants made broad assertions concerning facts supporting the elements of a claim for negligent hiring and rebutting Hoerner's presumed immunity in her individual capacity. Appellants alleged that Hoerner knew Sorrells 1) was incapable of meeting John Doe's needs, 2) was incapable of meeting the regulatory requirements for a paraprofessional, and 3) was "temperamentally, cognitively, and in other ways patently unfit and incompetent to [be] charged with physical custody of a young, developmentally disabled child." They claimed Hoerner had a duty to exercise care, custody, and control over the students receiving special education, which she failed to do. They essentially argued that Sorrells was so unqualified that he should have never been hired and charged with the physical custody of a young, developmentally disabled child like Doe, and that Hoerner recklessly or wantonly placed Doe in Sorrells's care despite that he was incapable of meeting Doe's needs, resulting in Doe's physical and emotional injuries caused by Sorrells's actions. Appellants further alleged that the facts Hoerner knew "would have put a reasonable person on notice that Defendant Sorrells presented a known or knowable danger to young children committed to his care." Finally, they alleged that two months after the incident, Sorrells suggested his own incompetence in the criminal case that arose out of the incident in this matter. We conclude that appellants asserted sufficient factual allegations to support a claim for negligent hiring.

{¶ 51} For a negligent hiring claim in these circumstances, appellants were only required to allege: 1) the existence of an employment relationship; 2) Sorrells's incompetence; 3) Hoerner's actual or constructive knowledge of such incompetence; 4) Sorrells's act or omission causing Doe's injuries; and 5) Hoerner's negligence in hiring or

retaining Sorrells as the proximate cause of Doe's injuries. In order to overcome Hoerner's assertion of employee immunity, they also alleged that Hoerner's conduct was reckless or wanton with respect to her hiring of Sorrells. Here, given the limitations of discovery, all that was required of appellants at the pleading stage was to put Hoerner on notice of the claims against her and to raise the possibility that an exception to her statutory immunity under R.C. 2744.03(A)(6)(b) may apply. *See Maternal Grandmother*, 2021-Ohio-4096, at ¶ 15.

{¶ 52} We express no opinion on the merits of this claim, but at this stage, we cannot say that there is no set of facts that would entitle appellants to relief when taking the material allegations in their complaint as true. We therefore conclude that the trial court erred in dismissing appellants' negligent supervision (hiring) claim under Civ.R. 12(B)(6). Appellants' first assignment of error is sustained. On remand, appellants will still have to prove their negligent hiring claim based on Sorrells' violent, criminal, or tortious propensities, and they will also have to demonstrate that Hoerner's conduct in hiring Sorrells was reckless or wanton in order to overcome her R.C. 2744.03(A)(6) employee immunity. *See Maternal Grandmother* at ¶ 16.

{¶ 53} The trial court did not dismiss appellants' fourth, fifth, and sixth causes of action, which were based on appellants' allegations concerning Hoerner's conduct in concealing the severity of the harm done by Sorrells to Doe. Appellants assert, however, that those claims are also on appeal as they relate to their claim that DPS and Hoerner recklessly certified Sorrells as a qualified paraprofessional. Having concluded that the trial court erred in dismissing appellants' claim for negligent supervision (hiring), the claims raised in appellants' fourth, fifth, and sixth causes of action, which are related to the negligent hiring claim, will be subject to further consideration on remand.

B. Second Assignment of Error

{¶ 54} While it is not clear, it appears that appellants sought to bring one of their 42 U.S.C. 1983 actions against Hoerner based on two violations stemming from her conduct in hiring, training, and supervising Sorrells and her consequential failure to uphold the IDEA and to ensure that certain requirements under Ohio Adm.Code 3301-51 were met. During oral argument, appellants' counsel stated that the deprivation of rights included 1) a right to a FAPE, and 2) a substantive due process right to bodily integrity. Despite that the trial court did not dismiss appellants' 42 U.S.C. 1983 claim related to Doe's right to be secure in his person as it pertained to Hoerner's actions in concealing the extent of Doe's injuries, it seems as if appellants wanted to advance an alternative theory, based on Hoerner's apparent indifference to the requirements regarding paraprofessionals set forth in Ohio Adm.Code 3301-51, while also alleging a violation of Doe's right to a FAPE as required under the IDEA. We will address each in turn.

{¶ 55} On appeal, appellants argue that DPS and Hoerner were required by law to ensure that paraprofessionals like Sorrells had the ability, training, and support to provide the services necessary to children receiving special education. They based that argument on Ohio Adm.Code 3301-51-09(G) and 3301-51-09(H)(1-2). Appellants complain that trial court erred when it concluded that appellants had not alleged Hoerner violated any statute when she placed Doe in Sorrells's care. They specifically argue that Hoerner violated the IDEA and Ohio Administrative Code sections prescribing the IDEA's implementation because: Sorrells was not suited to working as a paraprofessional; Hoerner knew or should have known that Sorrells was not sufficiently qualified for the position; and Doe was injured due to Sorrells's inability to perform his job responsibilities. They also allege that Hoerner, as the principal of RPELC, was one of the people responsible for the choices that led to

Sorrells's being certified as a paraprofessional and then placed in a position to meet Doe's needs when he was unable to do so.

1. 42 U.S.C. 1983

{¶ 56} "Section 1983, Title 42, U.S. Code provides a remedy to persons whose federal rights have been violated by government officials. It is limited, however, to deprivations of federal constitutional or statutory rights." *Leonhardt v. City of Akron*, 2019-Ohio-5223, ¶ 31 (9th Dist.), quoting *Trubiani v. Graziani*, 2000 WL 14043, *4 (9th Dist. Dec. 29, 1999), citing *State ex rel. Carter v. Schotten*, 70 Ohio St.3d 89, 92 (1994). A plaintiff can bring a 42 U.S.C. 1983 claim when he is deprived "of any rights, privileges, or immunities secured by the Constitution and laws" as a result "of any statute, ordinance, regulation, custom, or usage, of any State." *Doe v. Claiborne Cty., Tenn. By & Through Claiborne Cnty. Bd. of Edn.*, 103 F.3d 495, 505 (6th Cir. 1996), citing 42 U.S.C. 1983. "To recover under Section 1983, the claimant must establish (1) that the conduct complained of was committed by a person acting under the color of law, and (2) that the conduct deprived him or her of a federally protected right." *Leonhardt* at ¶ 31, citing *Shirokey v. Marth*, 63 Ohio St.3d 113, 116 (1992). 42 U.S.C. 1983 provides a federal cause of action, but, in several respects, federal law looks to the law of the state in which the cause of action arose. *Wallace v. Kato,* 549 U.S. 384, 387 (2007).

2. Review of the Trial Court's Decision Related to Appellants' 42 U.S.C. 1983 Claims

{¶ 57} In the trial court, DPS and Hoerner raised three issues as to appellants' 42 U.S.C. 1983 claims: 1) appellants could not premise a 42 U.S.C. 1983 claim on the denial of a FAPE because they had not exhausted their administrative remedies under the IDEA; 2) appellants' claims against Hoerner for individual liability under 42 U.S.C. 1983 were barred by qualified immunity because appellants had failed to allege Hoerner engaged in

any active unconstitutional conduct; and 3) appellants failed to state a claim for political subdivision liability against DPS because appellants had not adequately alleged facts under any of the four avenues provided in *Monell,* 436 U.S. 658.

a. 42 U.S.C. 1983 Claim Based on a Denial of a FAPE

{¶ 58} The trial court agreed that appellants could not base a 42 U.S.C. 1983 claim on the denial of a FAPE under the IDEA, but not for the reason advanced by appellees. Instead, the court found that, despite the allegations in appellants' amended complaint regarding denial of a FAPE, appellants were not seeking relief under the IDEA. And because appellants were not seeking relief under the IDEA, they could not recover under 42 U.S.C. 1983 for denial of a FAPE. The trial court noted that the Sixth Circuit Court of Appeals has held that when a child's injuries are "non-educational" in nature, a suit seeking relief for such injuries does not seek relief under the IDEA. *See F.H. ex rel. Hall v. Memphis City Schools*, 764 F.3d 638, 644 (6th Cir. 2014) (in suit alleging 42 U.S.C. 1983 claims, child's injuries arising out of verbal, physical, and sexual abuse by his aides did not relate to the provision of a FAPE because those injuries were non-educational in nature); *Crochran v. Columbus City Schools*, 748 F.Appx. 682, 687 (6th Cir. 2018) (when autistic child fell down and injured his front teeth as a result of his teacher's conduct, the child's claims did not fall under the IDEA because his injuries were non-educational in nature), citing *F.H. ex rel. Hall* at 644; *see also Fry*, 580 U.S. at 172, fn. 9 (expressing agreement with school district's hypothetical argument that when a teacher, acting out of animus or frustration, strikes a child with a disability, "the substance of the plaintiffs claim is unlikely to involve the adequacy of special education and thus is unlikely to require exhaustion").

{¶ 59} In *F.H. ex rel. Hall*, a minor child with disabilities was allegedly subjected to physical abuse by school personnel, among other things. *F.H. ex rel. Hall* at 641. Under the

IDEA, the school was required to create an IEP for the disabled child and conform to it. *Id*. The plaintiffs initiated a process under the IDEA by requesting a due process hearing related to their complaints. *Id*. The parties eventually reached a settlement agreement. *Id*. at 642.

{¶ 60} Thereafter, the plaintiffs filed a complaint, alleging that the defendants had violated 42 U.S.C. 1983 under the Fourteenth Amendment of the United States Constitution, the Rehabilitation Act (Section 504), and the Americans with Disabilities Act (ADA). *Id*. at 642. The plaintiffs also made claims of retaliation under the ADA and Section 504, as well as breach of the Settlement Agreement. *Id*. The court concluded that the plaintiffs' factual allegations of physical and non-educational injuries could not be redressed by any remedy under the IDEA, and thus the plaintiffs had not been required to exhaust their 1983 claims related to non-educational injuries through the IDEA administrative process before bringing them to court. *Id*. at 643. The court reasoned that injuries from physical abuse by the child's aides were non-educational in nature and could not be remedied through the administrative process. *Id*. at 644. When the gravamen of a plaintiff's complaint is abuse by his aides, such factual allegations point to non-educational injuries that have no remedy under the IDEA. *Id*. at 645.

{¶ 61} The facts in appellants' case are similar to those in *F.H. ex rel. Hall*. Like the child in *F.H. ex rel. Hall*, Doe was allegedly physically injured by school personnel (Sorrells), his injuries were non-educational in nature, and no remedy for his non-educational injuries were available under the IDEA. Because no relief was available under the IDEA, appellants were not required to exhaust administrative remedies before bringing suit under 42 U.S.C. 1983.

{¶ 62} However, despite that appellants cannot and did not seek redress for their injuries under the IDEA, they now apparently seek to bring their 42 U.S.C. 1983 claim

against Hoerner based on her conduct in hiring, training, and supervising Sorrells, which they alleged was in violation of the IDEA and Ohio Adm.Code 3301-51, resulted in appellants' injuries, and denied Doe's right to a FAPE under the IDEA.

{¶ 63} We find no precedent under the law to support appellants' 42 U.S.C. 1983 claim as it relates to a denial of a FAPE. In *F.H. ex rel. Hall*, where the facts were like those in this case, the plaintiffs filed 42 U.S.C. 1983 actions under the Fourteenth Amendment of the United States Constitution, the Rehabilitation Act, and the Americans with Disabilities Act, not under the IDEA. A denial of a FAPE under the IDEA is a statutory violation, not a constitutional one, and appellants did not seek relief under the IDEA. Additionally, appellants did not set forth any authority under which the court could have analyzed their claims based on a constitutional right to a FAPE, particularly when the U.S. Constitution does not guarantee such a right. Based on our review of the case law, we conclude that appellants cannot contend that they do not have a claim under the IDEA and then use a violation of the IDEA and corresponding Ohio Administrative Code provisions as the basis for a 42 U.S.C. 1983 claim. The gravamen of appellants' complaint does not concern the appropriateness of any educational program offered by DPS under the IDEA. Because appellants' injuries were non-educational in nature, their claim did not fall under the IDEA. *See Crochran*, 748 F.Appx. at 687.

{¶ 64} Under these circumstances, we conclude that the trial court did not err in finding that appellants failed to state a claim under 42 U.S.C. 1983 against Hoerner based on a denial of a FAPE.

b. 42 U.S.C. 1983 Claim Based on a Substantive Due Process Right to Bodily Integrity Arising from Hoerner's Conduct in Hiring, Training, and Supervising Sorrells in her Supervisory Capacity

{¶ 65} In their second assignment of error, appellants seem to complain that the trial court allowed their 42 U.S.C. 1983 claims for violation of Doe's Fourteenth Amendment substantive due process right to be secure in his person and his Fourth Amendment right to be free from unreasonable seizures arising from Hoerner's alleged actions in failing to fully disclose the details of the incident to Doe's parents and in concealing video evidence of the incident to survive appellees' motion to dismiss but wrongfully dismissed their claim related to Hoerner's conduct in hiring, training, and supervising Sorrells in violation of the requirements in Ohio Adm.Code 3301-51.

{¶ 66} The trial court evaluated appellants' allegations as to Doe's constitutional rights that were violated by Hoerner, including: 1) his right under the Fourth and Fourteenth Amendments to be free from unreasonable searches and seizures; 2) his right under the Fourth, Fifth, and Fourteenth Amendments to be secure in his person; and 3) his right under the Fourteenth Amendment to not be deprived of a FAPE without due process of law. As already explained, the court concluded that appellants had not sought relief under the IDEA and thus had failed to state a 42 U.S.C. 1983 claim against Hoerner for deprivation of Doe's right to a FAPE.

{¶ 67} The court then proceeded to analyze potential violations of Doe's constitutional rights to be free from unreasonable searches and seizures and his right to be secure in his person. The court found that appellants did, in fact, state a claim against Hoerner for supervisory liability under 42 U.S.C. 1983 based on her alleged cover up and concealment of the extent of Doe's injuries and the video depicting those injuries. The court found that such a claim was based both on potential violations of Doe's Fourteenth Amendment substantive due process right to be secure in his person and his Fourth Amendment right to be free from unreasonable seizures.

{¶ 68} The trial court reasoned that, to overcome Hoerner's qualified immunity defense, appellants were required to state a claim against Hoerner for violation of one of two constitutional rights: Doe's right to be free from unreasonable searches and seizures or his right to be secure in his person. The court found that appellants had stated claims against Hoerner under 42 U.S.C. 1983 for 1) supervisory liability based on a violation of Doe's substantive due process right to be secure in his person, and 2) supervisory liability based on a violation of Doe's right to be free from unreasonable seizures.

{¶ 69} The court found, however, that appellants had not stated a claim against Hoerner based on her conduct in hiring, training, and supervising Sorrells under 42 U.S.C. 1983. The court based that finding on the same reason that the court dismissed appellants' claim against Hoerner for negligent supervision: the absence of any facts in their amended complaint that allowed to a reasonable inference either that Sorrells had a propensity for violence or aggression or that Hoerner was aware of such a propensity. Appellants criticize the trial court's conclusion, apparently arguing that Hoerner's conduct resulted in a violation of the requirements of Ohio Adm.Code 3301-51 relating to the supervision, vetting, and training of paraprofessionals, and thus Doe's rights to a FAPE and bodily integrity were violated.

{¶ 70} Having already determined that appellants cannot assert a 42 U.S.C. 1983 claim for deprivation of a FAPE, we will consider their claim relating to Hoerner's conduct in hiring, training, and supervising Sorrells in the context of whether her actions stated a claim involving a violation of Doe's right to bodily integrity.

i. Hoerner's Supervisory Liability

{¶ 71} As observed by the trial court, appellants alleged their 42 U.S.C. 1983 claims against Hoerner in her capacity as Sorrells's supervisor. As such, appellants' amended

complaint was required to "meet the requirements of supervisory liability in § 1983 cases." *See Crawford v. Tilley*, 15 F.4th 752, 761 (6th Cir. 2021) (claim for individual 42 U.S.C. 1983 liability under the Eighth Amendment against state corrections official depended on whether official had supervisory liability). "Supervisory liability comprises two concepts . . . : active involvement by the supervisor and causation." *Id*.

{¶ 72} The Sixth Circuit described what a plaintiff must allege as to "active involvement" and broadly explained the process for alleging supervisory liability under 42 U.S.C. 1983:

> To state a claim of supervisory liability under § 1983, plaintiffs must plausibly allege that a defendant "authorized, approved, or knowingly acquiesced in the unconstitutional conduct ... of his subordinates through the execution of his job functions." *Crawford v. Tilley*, 15 F.4th 752, 761 (6th Cir. 2021) (quoting *Peatross v. City of Memphis*, 818 F.3d 233, 242 (6th Cir. 2016)). Each government official is liable only for her own misconduct, not for that of her subordinates. *Ashcroft v. Iqbal*, 556 U.S. 662, 677, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009); *Crawford*, 15 F.4th at 761. To survive a motion to dismiss, a plaintiff must plausibly allege "active unconstitutional behavior," which goes beyond "a mere failure to act." *Crawford*, 15 F.4th at 761 (quoting *Peatross*, 818 F.3d at 241); *cf. Helphenstine v. Lewis County*, 60 F.4th 305, 321 (6th Cir. 2023) (affirming grant of summary judgment to supervisor where there was no evidence that supervisor directed, authorized, or acquiesced in unconstitutional conduct). We require "more than an attenuated connection" between the injury and the supervisor's wrongful conduct. *Peatross*, 818 F.3d at 241. Sloppiness, recklessness, or negligence is insufficient to establish

> liability. *See Garza v. Lansing Sch. Dist.*, 972 F.3d 853, 866 (6th Cir. 2020). But deliberate indifference, knowing acquiescence, tacit or implicit authorization, or failure to take precautions against likely violations may suffice. *Id.* at 865; *Gardner v. Evans*, 920 F.3d 1038, 1051 (6th Cir. 2019); *Peatross*, 818 F.3d at 242; *Doe ex rel. Doe v. City of Roseville*, 296 F.3d 431, 439 (6th Cir. 2002).

Does v. Whitmer, 69 F.4th 300, 306-07 (6th Cir. 2023); *see also Bass v. Robinson*, 167 F.3d 1041, 1048 (6th Cir. 1999) ("Supervisory liability under § 1983 cannot attach where the allegation of liability is based upon a mere failure to act . . . Instead, the liability must be based upon active unconstitutional behavior. . . Liability under this theory must be based upon more than a mere right to control employees and cannot be based upon simple negligence."). Additionally, supervisory liability "must be based upon more than a mere right to control employees . . ." *Bass* at 1048, citing *Leach v. Shelby Cty. Sheriff*, 891 F.2d 1241, 1246 (6th Cir. 1989). Supervisory liability under 42 U.S.C. 1983 holds a government supervisor responsible for a subordinate's constitutional violation only through the supervisor's own individual actions or deliberate indifference, as vicarious liability (respondeat superior) does not apply. *See Ashcroft, generally*.

{¶ 73} The burden of showing qualified immunity was explained in *MacIntosh v. Clous*, 69 F.4th 309, 315 (6th Cir. 2023):

> Although the plaintiff ultimately bears the burden of showing that a defendant is not entitled to qualified immunity, that burden is not high at the 12(b)(6) stage: Reading the complaint in the light most favorable to the plaintiff, it need only be "plausible" that an official's acts violated a clearly established

constitutional right. *Courtright v. City of Battle Creek*, 839 F.3d 513, 518 (6th Cir. 2016) (quoting *Heyne v. Metro. Nashville Pub. Schs.*, 655 F.3d 556, 562 (6th Cir. 2011)). And although qualified immunity is available at the motion to dismiss stage, "it is generally inappropriate ... to grant a 12(b)(6) motion to dismiss on the basis of qualified immunity." *Anders v. Cuevas*, 984 F.3d 1166, 1175 (6th Cir. 2021) (quoting *Wesley v. Campbell*, 779 F.3d 421, 433 (6th Cir. 2015)). As we have often explained, "an officer's 'entitlement to qualified immunity is a threshold question to be resolved at the earliest point,'" but "that point is usually summary judgment and not dismissal under Rule 12." *Id.* (quoting *Wesley*, 779 F.3d at 433-34). This is for good reason—development of the factual record is "frequently necessary to decide whether the official's actions violated clearly established law." *Id.*

ii. Doe's Right to Substantive Due Process Bodily Integrity

{¶ 74} When a 42 U.S.C. 1983 claim is related to bodily integrity, it means a government actor has severely violated a person's right to control their own physical body, health, and safety. Because 42 U.S.C. 1983 does not create any rights on its own, the claim must be anchored to a specific part of the U.S. Constitution, and the primary legal bases for a bodily integrity claim depend on the context of the injury. "It is well established that persons have a fourteenth amendment liberty interest in freedom from bodily injury." *Doe*, 103 F.3d at 506, quoting *Webb v. McCullough,* 828 F.2d 1151, 1158 (6th Cir.1987).

{¶ 75} "The basic protection of substantive due process as to other fundamental rights is 'intended to secure the individual from the arbitrary exercise of the powers of government.'" *Peoples Rights Org. v. Montgomery*, 142 Ohio App.3d 443, 491 (12th Dist. 2001), quoting *Albright v. Oliver*, 510 U.S. 266, 272 (1994). "Violation of this branch of

substantive due process occurs where there is government action infringing a fundamental right or which 'shocks the conscience.'" *Id*., quoting *Mansfield Apt. Owners Assn.. v. Mansfield*, 988 F.2d 1469, 1474 (6th Cir. 1993). "The protection of substantive due process exists to ensure 'the right to be free from state intrusions into the realms of personal privacy and bodily security through means so brutal, demeaning, and harmful as literally to shock the conscience.'" *Id*., quoting *Lillard v. Shelby Cty. Bd. of Edn.*, 76 F .3d 716, 725 (6th Cir. 1996).

{¶ 76} "Public school students have the substantive due process right 'to be free of state intrusions into realms of personal privacy and bodily security.'" *Kouider v. Parma City School Dist. Bd. of Edn*., 480 F.Supp.3d 772, 782-783 (N.D. Ohio 2020), quoting *Webb*, 828 F.2d at 1158. "When determining whether actions shock the conscience in the public-school context, we consider, among other factors: (1) whether there was a pedagogical justification for the use of force; (2) whether the force used was excessive to meet the legitimate objective in this situation; (3) whether the force was applied in a good-faith effort to maintain or restore discipline or was instead applied maliciously and sadistically for the very purpose of causing harm; and (4) whether there was serious injury." *Crochran*, 748 F.Appx. at 686, citing *Gohl v. Livonia Pub. Schools Dist*., 836 F.3d 672, 678-679 (6th Cir. 2016).

{¶ 77} Here, appellants argue that: Hoerner had authority as the principal and that she recklessly or wantonly placed Doe in Sorrells's care despite that Sorrells was incapable of meeting Doe's needs; Sorrells was incapable of meeting the requirements of a paraprofessional; that Sorrells was temperamentally, cognitively, and in other ways patently unfit and incompetent to be charged with the physical custody of a young, mentally disabled child; Hoerner should have known that Sorrells presented a known or knowable danger to young children; and Doe was injured by Sorrells's actions. They also allege that Hoerner

had a duty to exercise care, custody, and control over the students receiving special education and to ensure that the requirements of Ohio Adm.Code 3301-51 were complied with, which she failed to do. They contend that the trial court erred in dismissing their 42 U.S.C. 1983 claim regarding Doe's bodily integrity based on Hoerner's conduct in supervising, certifying, and training Sorrells, which arose due to Hoerner's failure to ensure that the requirements under Ohio Adm.Code 3301-51 regarding paraprofessionals were met. We agree.

{¶ 78} Although we again find that the facts asserted by appellants were not particularly expansive, appellants were only required at the pleading stage to put Hoerner on notice of the claims against her, particularly when they alleged that they could not know the full extent of DPS's or Hoerner's history with Sorrells (especially since the incident occurred on the first day of school), whether such an incident had happened with Sorrells in the past; whether DPS's personnel had previously covered for Sorrells; or the precise circumstances around DPS's and Hoerner's choices to "certify" Sorrells as a paraprofessional despite his known deficiencies. Again, we express no opinion on the merits of this claim, but at this stage, we cannot say that there is no set of facts that would entitle appellants to relief when taking the material allegations in their complaint as true. We conclude the trial court erred in dismissing appellants' 42 U.S.C. 1983 claim based on a violation of Doe's constitutional right to bodily integrity arising from Hoerner's alleged conduct in hiring, training, and supervising Sorrells and her failure to ensure the Ohio Adm.Code 3301-51 requirements were met when she supervised and trained Sorrells. Appellants' second assignment of error regarding their 42 U.S.C. 1983 claim for Doe's denial of bodily integrity as it relates to Hoerner's supervising, certifying, and training is sustained.

c. DPS's Political Subdivision Liability

{¶ 79} As to DPS, in their second assignment of error, appellants contend that their amended complaint contained factual allegations supporting the likelihood that Sorrells was put in his position through a series of choices to pass him through training and supervision in contravention of Ohio Adm.Code 3301-51. Appellants criticize DPS's policies and practices related to the credentialing, education, and training of Sorrells. They also argue that Hoerner was a DPS official and that, within that capacity, she deemed Sorrells qualified to do the job as a paraprofessional even though he was unable to meet the paraprofessional requirements as stated in Ohio Adm.Code 3301-51. They further allege that DPS had a policy of inadequate training or supervision, as evidenced by Sorrells's actions and demeanor. Finally, they claim that Hoerner was responsible for training and credentialing Sorrells, as a staff member, to ensure that he was qualified for the position to which he was assigned, and that she did not transparently reveal the details of the incident to Doe's parents, apparently suggesting that she and DPS tolerated or acquiesced in federal rights violations.

{¶ 80} Appellants argue that their allegations were sufficient to overcome a Civ.R. 12(B)(6) motion to dismiss because they set forth four possible avenues for establishing that DPS had a policy or custom that would support a *Monell* claim and that they could not be expected to know DPS's specific policies or customs without sufficient discovery. They contend that the trial court erred when it concluded that appellants wholly failed to state a claim for political subdivision liability against DPS under *Monell*. To the extent set forth below, we agree.

i. Political Subdivision Liability under 42 U.S.C. 1983

{¶ 81} Originating from *Monell v. Dept. of Social Servs.*, 436 U.S. 658, a *Monell* claim

allows an injured party to sue a local government entity for violating individual federal constitutional rights and applies to local municipalities and political subdivisions of a state, including school districts. "To prevail in a § 1983 suit against a [political subdivision], a plaintiff must show that the alleged federal right violation occurred because of a [political subdivision] policy or custom." *Thomas v. City of Chattanooga*, 398 F.3d 426, 429 (6th Cir. 2005), citing *Monell* at 694. A political subdivision "may not be sued under § 1983 for an injury inflicted solely by its employees or agents." *Id.* It is only liable under 42 U.S.C. 1983 for its own actions: it is liable only where offending conduct occurs pursuant to an "official policy" or custom. *D'Ambrosio v. Marino*, 747 F.3d 378, 386 (6th Cir. 2014). In other words, a political subdivision cannot be held automatically liability for an employee's constitutional violations under a theory of respondeat superior simply because it employed the wrongdoer.

{¶ 82} A plaintiff may consider the following four avenues to prove the existence of a political subdivision's illegal policy or custom: "(1) the existence of an illegal official policy; (2) that an official with final decision-making authority ratified illegal actions; (3) the existence of a policy of inadequate training or supervision; or (4) the existence of a custom of tolerance of or acquiescence to federal rights violations." *Myers v. Boardman Local School Dist. Bd. of Edn.*, 2022 WL 17307806, *4 (N.D. Ohio Nov. 28, 2022); *see also Pembaur v. Cincinnati*, 475 U.S. 469, 480 (1986). "[T]o satisfy the *Monell* requirements a plaintiff must 'identify the policy, connect the policy to the [political subdivision] itself and show that the particular injury was incurred because of the execution of that policy.'" *Garner v. Memphis Police Dept.*, 8 F.3d 358, 364 (6th Cir. 1993), quoting *Coogan v. City of Wixom*, 820 F.2d 170, 176 (6th Cir. 1987).

{¶ 83} In this case, the trial court surmised that appellants identified four DPS policies or customs that they claimed were illegal: 1) a policy or custom of hiring unqualified

paraprofessionals to supervise children with special needs; 2) a policy or custom of concealing from Doe's parents the video evidence and full extent of Doe's injury; 3) a policy or custom of placing inadequately trained and temperamentally unqualified persons in the role of paraprofessional; and 4) a policy or custom of placing Sorrells in charge of multiple children with special needs at the same time. The trial court then engaged in a lengthy analysis related to DPS's alleged failure to screen unqualified employees like Sorrells, concealment of Doe's injuries, ratification of Sorrells's behavior, failure to train or supervise Sorrells, and custom of tolerance or acquiescence to federal rights violations. The court ultimately found that appellants had failed to state a 42 U.S.C. 1983 claim based on political subdivision liability against DPS under any theory. We will address each theory in turn.

ii. Failure to Screen

{¶ 84} A claim for municipal liability based on the hiring of unqualified employees is a "failure-to-screen claim." *Kovalchuk v. City of Decherd*, 95 F.4th 1035, 1039 (6th Cir. 2024). "For such a claim, a plaintiff must plead sufficient facts supporting the conclusion 'that a municipal [hiring] decision reflects deliberate indifference to the risk that a violation of a particular constitutional or statutory right will follow the decision.'" *Id*., quoting *Bd. of Cty. Commrs. of Bryan Cty., Okl. v. Brown*, 520 U.S. 397, 411 (1997). Failure-to-screen claims usually rest on a single hiring decision. *Id*., citing *Brown* at 408-410.

{¶ 85} "For a 'single hiring decision' by a municipal decisionmaker that resulted in a constitutional violation, which 'can be a "policy" that triggers municipal liability,' there exists a 'particular danger that a municipality will be held liable for an injury not directly caused by a deliberate action attributable to the municipality itself.'" *Kovalchuk* at 1039, quoting *Brown* at 404, 410; *see also Siler v. Webber*, 443 F.Appx. 50, 55 (6th Cir. 2011) (explaining the "potential pattern exception" created in *Brown*). In *Brown*, the U.S. Supreme Court set forth

a stringent test to mitigate that danger:

> "To prevent municipal liability for a hiring decision from collapsing into respondeat superior liability," the plaintiff alleging failure to screen must show that the decisionmaker was deliberately indifferent to the "known or obvious consequence" of the hiring decision and that the link between the applicant's background and the specific constitutional violation was sufficiently strong. [*Brown*,] 520 U.S. at 410-12. Simply choosing not to inquire into an applicant's background does not amount to deliberate indifference. *See id*. at 411. "Only where adequate scrutiny of an applicant's background would lead a reasonable policymaker to conclude that the plainly obvious consequence of the decision to hire the applicant would be the deprivation of a third party's federally protected right can the official's failure to adequately scrutinize the applicant's background constitute 'deliberate indifference.'" *Id*. As for the causation element of deliberate indifference, establishing that a hiring decision would likely result in any constitutional injury is insufficient to impose municipal liability. *Id*. at 412. Instead, the plaintiff must show that "this officer was highly likely to inflict the particular injury suffered by the plaintiff." *Id*.

Kovalchuk at 1039-1040.

{¶ 86} For the same reasons that the trial court found appellants failed to state a claim for negligent supervision, the court found that appellants failed to state a failure-to-screen claim for municipal liability under 42 U.S.C. 1983. The court reasoned that appellants had alleged no facts that would give rise to a reasonable inference either that Sorrells had a propensity for violence or aggression or that Hoerner was aware of such a propensity.

{¶ 87} We agree that appellants did not allege that Sorrells had a propensity for

violence or aggression or that Hoerner was aware of such a propensity. However, at the Civ.R. 12(B)(6) stage, appellants were only required to put DPS on notice of its claims; they were not yet required to prove that DPS was deliberately indifferent to the "known or obvious consequence" of the hiring decision and that the link between the Sorrells's background and the specific constitutional violation was sufficiently strong. As to this argument under *Monell*, we sustain appellants' assignment of error.

iii. Policy or Custom of Concealment

{¶ 88} Next, the trial court concluded that appellants had also failed to state a claim for municipal liability based on a custom, practice, or policy of concealing information from Doe's parents regarding the incident in this case. The court noted that appellants did not allege there was a widespread course of conduct among DPS officials to conceal information regarding a student's assault from the student's parents, as the only alleged incident in which DPS employees concealed such information from a student's parents was the incident at issue here. Thus, the trial court concluded that appellants failed to allege that a custom or practice of such concealment existed within DPS.

{¶ 89} The trial court reasoned that appellants failed to adequately allege that a policy of such concealment existed. "[M]unicipal liability may be imposed for a single decision by municipal policymakers under appropriate circumstances." *Pembaur,* 475 U.S. at 480. "[O]nly those municipal officials who have 'final policymaking authority' may by their actions subject the government to § 1983 liability." *City of St. Louis v. Praprotnik*, 485 U.S. 112, 123 (1988), quoting *Pembaur* at 483. "[W]hether a particular official has 'final policymaking authority' is a question of state law." *Id*., quoting *Pembaur* at 483. "[A] showing of policymaking authority typically requires specific evidence that the official's decisions were not subject to review or that the official could set policy related to broad goals." *Tlapanco v.*

Elges, 969 F.3d 638, 658 (6th Cir. 2020), citing *Miller v. Calhoun Cty.*, 408 F.3d 803, 813 (6th Cir. 2005); *see also Baar v. Jefferson Cty. Bd. of Edn.*, 476 F.Appx. 621, 638 (6th Cir. 2012) ("[T]he actions of a single official can only create liability for the local government where that official has final policymaking authority, and whether an official has such final authority is a question of state law.").

{¶ 90} The trial court opined that appellants were attempting to impose political subdivision liability on DPS based on a single decision by Hoerner to allegedly conceal information regarding the incident from Doe's parents. When a plaintiff bases a claim for municipal liability upon the actions of a single municipal official but fails to allege the official is a final policymaker, the claim is subject to dismissal. *See, e.g., Solarz v. Graven*, 2020 WL 3433297, *5 (N.D. Ohio June 22, 2020) (when complaint failed to identify any official city policy that caused a constitutional violation, and complaint identified defendant mayor, the alleged wrongdoer, as being responsible for formulation, implementation and enforcement of all city policies, practices and procedures, but complaint did not identify mayor as final decisionmaker or policymaker, plaintiffs complaint failed to state a claim for municipal liability); *Gallagher v. City & Cty. of San Francisco*, 2023 WL 7174228, *4 (N.D. Cal. Oct. 30, 2023) (when plaintiff sought to hold city liable based on actions of city official, but complaint did not allege the city official was a final policymaker, there was no basis for municipal liability under 42 U.S.C. 1983).

{¶ 91} The trial court pointed out that appellants did not allege in their amended complaint that Hoerner was a final policymaker, which was required to avoid dismissal when political subdivision liability is based on a policy or custom of concealment. For these reasons, the court found that appellants had failed to state a claim for political subdivision liability based on a custom, practice, or policy of concealing information regarding the

incident from Doe's parents. With respect to this theory, we agree with the trial court's conclusion.

iv. Ratification of Sorrells's behavior

{¶ 92} With respect to ratification, "[a] plaintiff can establish a municipal liability claim by demonstrating that a final municipal policymaker approved of a subordinate's behavior, approved of an investigation that was so inadequate as to constitute a ratification of the alleged behavior, or failed to punish the responsible parties." *Miller v. City of Shaker Hts.*, 438 F.Supp.3d 829, 838 (N.D. Ohio 2020), citing *Wright v. City of Canton*, 138 F.Supp.2d 955, 966 (N.D. Ohio 2001), citing *Praprotnik*, 485 U.S. at 127; *Johnson v. City of Memphis*, 2008 WL 111978, *8 (W.D. Term. Jan. 8, 2008); *see also Marchese v. Lucas*, 758 F.2d 181 (6th Cir. 1985); *Leach*, 891 F.2d 1241. "'A municipality fails to meaningfully investigate when it does not conduct any investigation into the alleged unconstitutional conduct.'" *Meyers v. Cincinnati Bd. of Edn.*, 343 F.Supp.3d 714, 729 (S.D. Ohio 2018), quoting *Baker v. Union Twp., Ohio*, 2013 WL 4502736, *23 (S.D. Ohio Aug. 22, 2013) (denying summary judgment in finding municipal liability based on ratification). "A municipality also may fail to meaningfully investigate when the evidence shows that 'the investigation was not designed to discover what actually happened[.]'" *Baker* at *23, quoting *Wright* at 966.

{¶ 93} Based on a ratification theory, the trial court deduced that not only did appellants fail to allege that Hoerner was a final policymaker, but they also alleged no facts in support of their ratification claim; this was particularly true because appellants alleged that the incident had been reported to Montgomery County Children's Services, which would have been a proper and required part of an investigation. Accordingly, the trial court found that appellants had failed to state a claim for political subdivision liability based on a ratification theory. We again agree with the trial court's conclusion.

v. Policy of Inadequate Training or Supervision

{¶ 94} Failure-to-train claims typically involve a pattern of unconstitutional conduct to establish deliberate indifference. *See Burgess v. Fischer*, 735 F.3d 462, 478 (2013); *Brown*, 520 U.S. at 408-410. "A municipality's culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train." (Citation omitted.) *Connick v. Thompson*, 563 U.S. 51, 61 (2011). Liability attaches only when "such inadequate training can justifiably be said to represent 'city policy.'" *City of Canton v. Harris*, 489 U.S. 378, 390 (1980). "To establish failure to train, a plaintiff must allege and prove 'prior instances of unconstitutional conduct demonstrating that the [school district] has ignored a history of abuse and was clearly on notice that the training in this particular area was deficient and likely to cause injury.'" *Myers* at *5, quoting *Miller v. Sanilac Cty*., 606 F.3d 240, 255 (6th Cir. 2010); *see also M.T. v. Benton-Carrol-Salem Local School Dist.*, 2017 WL 2119346, *3 (N.D. Ohio May 16, 2017).

{¶ 95} The trial court found that appellants pled no facts regarding any prior instances of similar misconduct that would put DPS on notice as to any deficiency in training or supervision. *See Myers*. The court concluded that appellants therefore had failed to state a claim for political subdivision liability on a theory of failure to train. While we agree that appellants' factual allegations were tenuous, they were only required to put DPS on notice of its possible political subdivision liability based on a policy of inadequate training. Moreover, appellants requested public records from DPS as part of their investigation before filing this action, but DPS denied their requests. When the facts are considered in a light most favorable to appellants, the complaint included sufficient allegations to withstand the motion to dismiss, and thus, at the Civ.R. 12(B)(6) stage, we disagree with the trial court's conclusion. As to this argument, we sustain appellants' assignment of error.

vi. Custom of Tolerance of or Acquiescence to Federal Rights Violations ("Inaction Theory")

{¶ 96} "A *Monell* claim premised on a 'custom of tolerance of or acquiescence to federal rights violations' is sometimes referred to as an 'inaction theory.'" *Myers* at *6, citing *D'Ambrosio*, 747 F.3d at 387-88. "To state a ... claim [against a school board] under an 'inaction' theory, [a plaintiff] must establish: (1) the existence of a clear and persistent pattern of [misconduct] by school employees; (2) notice or constructive notice on the part of the School Board; (3) the School Board's tacit approval of the unconstitutional conduct, such that their deliberate indifference in their failure to act can be said to amount to an official policy of inaction; and (4) that the School Board's custom was the "moving force" or direct causal link in the constitutional deprivation." *Id.*, quoting *Doe*, 103 F.3d at 508; *see also Burgess*, 735 F.3d at 478 ("[A] custom-of-tolerance claim requires a showing that there was a pattern of inadequately investigating similar claims."). Additionally, "[a] custom of tolerance claim would require a showing that [the Board] 'consciously never acted when confronted with its employees' egregious and obviously unconstitutional conduct." *Myers* at *6, citing *M.T.* at *3, citing *Arendale v. City of Memphis*, 519 F.3d 587, 600 (6th Cir. 2008).

{¶ 97} The trial court concluded that appellants had only alleged one instance of unconstitutional conduct—Sorrells's assault of Doe—and thus found that appellants had failed to state a claim for political subdivision liability based on a custom of tolerance of or acquiescence to federal rights violations. Again, we find that appellants' factual allegations were limited but that, at the Civ.R. 12(B)(6) stage before discovery, the complaint included sufficient allegations to withstand the motion to dismiss when the facts are considered in a light most favorable to appellants. As to this argument, we sustain appellants' assignment of error.

III. Conclusion

{¶ 98} The judgment of the trial court is affirmed in part, reversed in part, and remanded to the trial court for further proceedings related to the following claims:

1. Appellants' tort claim against Hoerner in her individual capacity for negligent hiring;
2. Appellants' fourth, fifth, and sixth causes of action, insofar as they were derived from appellants' negligent hiring claim against Hoerner;
3. Appellants' 42 U.S.C. 1983 claim against Hoerner based on Doe's substantive due process right to bodily integrity arising from Hoerner's conduct in hiring, training, and supervising Sorrells in her supervisory capacity;
4. Appellants' 42 U.S.C. 1983 claims against DPS under three theories of political subdivision liability: failure to screen, policy of inadequate training, and custom of tolerance of or acquiescence to federal rights violations.

. . . . . .

TUCKER, J., and EPLEY, J., concur.