COURT CASES ABOUT EMINENT DOMAIN

IN THE PUBLIC SCHOOLS

by

JERRY R. BELL

DAVID DAGLEY, COMMITTEE CHAIR
DAISY ARREDONDO-RUCINSKI
ANN GODFREY
ROXANNE MITCHELL
C. JOHN TARTER
STEPHEN TOMLINSON

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ABSTRACT

This study examines how the courts have addressed eminent domain in public K-12 schools. The analysis of 77 cases was conducted on the topic of eminent domain as it relates to public schools. The cases analyzed occurred in state and federal court jurisdictions, ranging from 1982-2013. There were no cases from the U.S. Supreme Court. Cases were examined over time and from five primary categories: constitutional taking, just compensation, necessity of a taking, power to take, and procedural matters. Issues emerged from each category allowing the researcher to identify trends and patterns within the cases. Given that the federal government has delegated the authority of eminent domain to the state governments, each state has developed individual procedures that do not necessarily apply to all other states. Hopefully, through the guiding principles that were revealed from the analysis of the cases, which are provided to help district level administrators and school boards avoid potential litigation and lengthy court proceedings, general guidance has been established for school district use.
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CHAPTER I
INTRODUCTION TO THE STUDY

Introduction

The Supreme Court’s decision in the 2005 *Kelo v. City of New London* has prompted many states to reexamine or alter the power given to government entities as it relates to eminent domain. Since this landmark decision more than 40 states have enacted post-*Kelo* legislative action to limit government’s use of eminent domain (Mihaly & Smith, 2011). The case sparked wide-spread controversy when the Supreme Court ruled that property could be taken for the purpose of economic development. This in itself changed what has been deemed public use for public purpose. The ruling has opened the door for municipalities to invoke the Taking Clause, granted in the Fifth Amendment against land owners as long as the purpose is for the good of the public not necessarily the use of the public.

Not only are states taking a closer look at the impact *Kelo* is having on eminent domain legislation, but local leaders are also taking necessary steps to create procedures that deal with the Taking Clause. One particular issue that has been discovered is the lack of literature regarding how local leaders, including boards of education and school leaders, make decisions on this topic (Hoyman & McCall, 2010). The *Kelo* case provides a starting point for a review of eminent domain cases and procedures associated with eminent domain, especially for members of the board of education and those in school district leadership positions who may at some point become involved in a takings case. Until now, the need for school districts to have policies and procedures in place for eminent domain proceedings was not as necessary. The attention brought
by the decision of *Kelo v. The City of New London* is forcing government agencies and school
districts alike to address polices pertaining to eminent domain.

An understanding of the basic principles of eminent domain is important as a public
school district level administrator, for a time may come when the taking of property becomes a
necessity. The following study will provide a gateway into the understanding of the history of
eminent domain, an understanding of what it means to take a person’s property through eminent
domain, policy implications that school systems must address before proceeding with eminent
domain, as well as a look at specific cases that have had a significant impact on eminent domain
as we know it today.

**Statement of the Problem**

The Fifth Amendment of the U.S. Constitution establishes the right of the federal
government to “take” or appropriate private property for purposes of supporting the general
welfare and the public good (U.S. Constitution, 1789). In *U.S. v. Jones* (1883), this action by the
government became known as the right of eminent domain. Since then, eminent domain has
come to represent a legal doctrine that permits government to exercise its sovereign authority by
“taking” or confiscating privately-owned property for the public good and welfare (*Western
Although this process is generally controversial, the right to “take” can be enacted with or
without the consent of the owner (Bixby, 1987).

Originally, it was believed that the Takings Clause of the Fifth Amendment to the
Constitution only applied to the federal government’s right to confiscate property; however, the
Supreme Court ruled in 1897 that the due process clause of the Fourteenth Amendment means
that the Takings Clause applies to the states as well (Saginor & McDonald, 2009). As states and
school districts continue to see population growth, the use of eminent domain becomes more prevalent. As pointed out by Jackson (2006), there is demand nationally for new school facilities due to school overcrowding, aging schools, and rising enrollments in the student population. Adequate research is not available to guide boards of education and district level administrators who resort to the use of eminent domain (Sack, 2004).

**Significance of the Problem**

As population growth in many public school districts continue to be realized, the need for eminent domain proceedings will increase; hence, the importance for public school leaders to know and understand the issues relating to eminent domain and the proceedings. It is important to examine and analyze case law and standards for eminent domain in public schools. Likewise, it is important to establish a set of guidelines for educators to use when faced with the implementation of eminent domain proceedings.

**Statement of Purpose**

The purpose of this study is to examine how courts have dealt with eminent domain cases involving public school systems and to provide relevant information to boards of education and system level administrators who may become involved in eminent domain proceedings. Eminent domain is an area of law that continues to develop and there is a need to know and understand case law as it pertains to the legal responsibilities of school and district level administrators. The intended goal of this study is to provide a clear understanding of the history of and sound principals related to eminent domain to help administrators as they make decisions concerning eminent domain. In furtherance of that goal, the following research questions are presented.
Research Questions

1. What issues regarding eminent domain have the state and federal courts identified in court cases about eminent domain and the public schools?

2. What were the outcomes of cases pertaining to eminent domain and the public schools in the state and federal courts?

3. What are the trends found in cases involving eminent domain and the public schools in the state and federal courts?

4. What principles and procedures applicable for school system administrators can be discerned from court cases about eminent domain and the public schools in the state and federal courts?

Assumptions

1. It was assumed that the decisions adjudicated from the cases studied are in compliance with all existing and applicable local, state, and federal laws.

2. It was assumed that the analysis of the cases briefed would result in generalized principles that may be used by public K-12 administrators.

3. It was assumed that all cases used in this study were accurately identified and recorded in the West Education Law Reporter, by using Key Numbers found within Eminent Domain: Nature, Extent, and Delegation of Power 1-68; Compensation 69-165; Proceedings to take Property and Assess Compensation 166-265; Remedies of Owners of Property; Inverse Condemnation 266-316; and Title or Rights Acquired 317-325.

Limitations

1. This study excluded cases not pertaining or relating to public K-12 education, which excluded higher education, during the time frame of 1982 to 2013.
2. This study was conducted by a public K-12 system level administrator. It is therefore a qualitative study of case law about eminent domain, rather than a search for a particular case that applies to a particular fact pattern for legal practice.

3. The principles generated for school and system level administrators were produced from court cases reviewed in this study.

Definitions

The following section contains defined, relevant legal and educational terms used in the study.

*Appeal:* “A proceeding undertaken to have a decision reconsidered by a higher authority; esp., the submission of a lower court’s or agency’s decision to a higher court for review and possible reversal” (Garner, 2011, p. 41).

*Assumption of Risk:* “The act or an instance of a prospective plaintiff’s taking on the risk of loss, injury, or damage” (Garner, 2011, p. 53).

*Brief:* “A written statement setting out the legal contentions of a party in litigation, esp. on appeal; a document prepared by counsel as the basis for arguing a case, consisting of legal and factual arguments and the authorities in support of them” (Garner, 2011, p. 89).

*Case:* “A civil or criminal proceeding, action, suit, or controversy at law or in equity” (Garner, 2011, p. 99).

*Caselaw:* “The law to be found in the collection of reported cases that form all or part of the body of law within a given jurisdiction” (Garner, 2011, p. 99).

*Certiorari:* “An extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in the case for review” (Garner, 2011, p. 104).
**Condemnation:** “The determination and declaration that certain property (esp. land) is assigned to public use, subject to reasonable compensation; the exercise of eminent domain by a governmental entity” (Garner, 2011, p. 143).

**Defendant:** “A person sued in a civil proceeding or accused in a criminal proceeding” (Garner, 2011, p. 213).

**Eminent Domain:** “The inherent power of a governmental entity to take privately owned property, esp. land, and convert it to public use, subject to reasonable compensation for the taking” (Garner, 2011, p. 264).

**Eminent Domain Clause:** “The Fifth Amendment provision providing that private property cannot be taken for public use without just compensation” (Garner, 2011, p. 264).

**Liability:** “The quality or state of being legally obligated or accountable; legal responsibility to another or to society, enforceable by civil remedy or criminal punishment” (Garner, 2011, p. 452).

**Quitclaim:** “A formal release of one’s claim or right; to convey all of one’s interest in (property), to whatever extent one has an interest; to execute a quitclaim deed” (Garner, 2011, p. 619).

**Statute:** “A law passed by a legislative body; specif., legislation enacted by any lawmaking body, including legislatures, administrative boards, and municipal courts” (Garner, 2011, p. 714).

**Substantive Law:** “The part of the law that creates, defines, and regulates the rights, duties, and powers of parties” (Garner, 2011, p. 726).
**Writ:** “A court’s written order, in the name of a state or other competent legal authority, commanding the addressee to do or refrain from doing some specified act” (Garner, 2011, p. 839).

**Organization of Study**

Chapter I of this study serves as the introduction. This chapter includes the statement of the problem, significance of the problem, statement of purpose, research questions, assumptions to be considered, limitations, and definitions of key terms.

Chapter II contains a review of the relevant literature relating to school districts and eminent domain. The literature review concentrates on the historical perspective of eminent domain and the Fifth Amendment, compensation as it relates to taking of property, and due process and proceedings to take property. The review further provides a comprehensive overview of the legal implications and legal principles related to eminent domain.

Chapter III delivers a description of the methodology for the study. It describes the methodology and procedures used as well as a description of the analysis process.

Chapter IV provides briefs of selected cases and the analysis of those cases as it relates to the topic of study.

Chapter V of this study provides answers to the research questions, including practical application for educators.
CHAPTER II
REVIEW OF LITERATURE

Introduction

Perhaps one of the most difficult decisions made by school superintendents and boards of education, both professionally and politically, is the taking of a private individual’s property without that person’s consent. As populations across the south rise, school systems are required to meet the spatial demands brought on by increased student growth. As the economic drought continues to plague most public school systems, boards are finding it increasingly difficult to fund the cost of purchasing land and building a structure to meet state and federal guidelines. Many urban and suburban school systems are finding that land is either not available or the owners are asking substantially more than the system is willing to pay or can afford to pay.

Many urban, inner city, and even suburban districts are turning to vacated industrial buildings or empty big box store fronts and converting these buildings to meet the district spatial needs. These buildings are usually purchased at reduced prices from banks or franchise stores such as Walmart, Ingles, or BassPro (Sack, 2004). Whereas these options may be financially beneficial and suffice in particular circumstances, they do not always meet the logistical needs such as central location to the attendance zone or provide acreage for the building, multi-purpose fields and other outdoor needs. Although this may be an option, it is not preferred when building a new school facility.

School districts are attempting to meet state and federal guidelines on classroom size per pupil, building square footage, and building amenities, but many states have placed acreage
requirements that must be followed when building schools, albeit elementary, middle, or high
schools. Acreage requirements are considered for new construction as well as renovations and/or
addition projects but are determined by “the number of students; the grades to be housed; the
educational programs and services that are planned; the site requirements including physical
education programs, parking, forestation or reforestation, zoning and set-backs, storm water
management, and community sports, leisure and recreational events” (Weihs, 2003). In most
cases there are local, state or district guidelines that govern acreage requirements. Many states
follow the Council of Educational Facility Planners’ (CEFPI) site formula of:

Elementary Schools = 10 acres plus 1 acre for every 100 students;
Junior High/Middle Schools = 20 acres plus 1 acre for every 100 students;
Senior High Schools = 30 acres plus 1 acre for every 100 students (Weihs, 2003).

While this may be the preference of many states and districts, others have developed a formula
that is specific to the individual state or district. A review of the Alabama State Department of
Education website revealed Alabama Code 290-2-2-.04, which provides site requirements for
existing and proposed school sites within that state. In one area of the code, site standards were
referred to by the state architect as “recommendations only.” In another area, the word
“requirement” was listed. Either way, the base requirements differ somewhat from the CEFPI
recommendations:

Elementary School = 5 acres plus one for every 100 students;
Middle School = Base of 10 acres plus one for every 100 students;
Secondary School = An existing secondary school must have a base of 15 acres plus one
acre for each 100 students. A proposed secondary school must have a minimum of 30
acres plus one acre for each 100 students.

In the State of Georgia, the Georgia Department of Education determines, through the
official code of Georgia (O.C.G.A. 20-2-260 (c) (7)), site standards for all related school facility
construction. Those standards are set at minimum useable acreage requirement for the State Board of Education:

Elementary Schools = 5 acres plus one acre for each 100 children in FTE;  
Middle School = 12 acres plus one acre for each 100 children in FTE;  
High School = 20 acres plus one acre for each 100 children in FTE.

A variance in the minimum number of acres required may be granted for those districts/schools that are located in more developed areas, so long as the reduced acreage is appropriate and provides space for parking and other outdoor areas as documented by the architect. Schools and districts located in densely populated areas cannot afford to purchase the acreage required for particular schools. The district located in Los Angeles has built high schools on as little as five acres. In cases such as these parking is located underground and the building is built four to five stories high (Sack, 2004).

The Georgia Department of Education website further provides a list of criteria to consider when choosing a site appropriate for building an educational facility:

1. Utilities--Electricity, gas, water, sewage, telephone services, and high speed internet are essential to the operation of a school facility.
2. Road Access--Site access from two different roads is preferable so that bus traffic and car traffic can be separated. Other considerations are sight distance, distance from driveway and intersection, one way in--one way out driveways, posted speed limit on highway, turn/deceleration lanes, pedestrian and handicapped access into proposed site.
3. Site Development--low cost of grading, drainage, and development.
4. Geographical and Related Factors--The site should be accessible, provide for efficient transportation, accessible to community services needed by the school, and appropriately located with respect to other schools and the population served.
5. Environmental Factors--Protected species and waterways that may be impacted, avoid areas zoned for commercial and industrial development.
6. Safety Hazards--Free of conditions and installations which endanger the life, safety and health of students.

These criteria alone make it difficult to find appropriate sites that are for sale, priced reasonably, and located in an area that is feasible for the building of a new school.
In situations where land is overpriced, owners are not willing to sell, or vacant buildings will not meet the district needs or state requirements, school districts are forced to take or condemn private property for public use without the land owner’s consent, upon paying just compensation.

This chapter will provide a relevant review of literature as it relates to the historical perspective of eminent domain, including public use, just compensation, and due process, as well as a review of literature relative to the legal implications and consideration surrounding the issue of eminent domain and the public K-12 school district. First we must have an understanding of what is being taken and the landmark case that has changed the face of eminent domain.

**Eminent Domain**

**Understanding Property**

The premise of eminent domain is for the government to take one’s property for public use or for the good of the public. To understand the full scope of eminent domain and what is being taken, it is important to understand what constitutes “property.” Underkuffler (2015) described property as an idea, an establishment of entitlements. We, as members of our society, have certain “unalienable rights” that exist outside of those governed or established by law. Speech, religion, and liberty are rights that cannot be taken away or transferred without the consent of those that possess these rights. Property, on the other hand, is the “recognition and protection, of the individual’s rights in hand; or rights in chattels; or rights in any identified source of wealth (Underkuffler, 2015, p. 2016). Property is more than a concrete idea; property is the rights associated with the idea.

To further define property we must look at the characteristics associated with the property: (1) it is rivalrous in nature, (2) its meaning, solely, is the affordance of protection.
Separating the rights of retained for property and those provided in the constitution, Underkuffler (1996) labeled the constitutionally protected rights (religion, speech, due process) as rights for the “constitutional public good”, (p. 1036). These rights do not place a monetary burden on others in society when used. These rights, when used, do not take the same right from another. Tangible property, on the other hand, is rivalrous in that protection of that property provides individual control and exclusivity of use. Providing protection for one property owner denies the same rights to others. Hence, property only exists through the existence of law and legal protection (Underkuffler, 2015).

Eminent domain and the taking of property poses an issue in our society only because of the deprivation of rights associated with the property. Inherently, the protection under the letter of the law places control and exclusivity on the use of the property, taking the rights of others to use property. Understanding what defines property and the underlying reason for protection of property helps to gain a better knowledge for the purpose of eminent domain.

**Kelo’s Impact**

To understand eminent domain one must first understand what is at stake in the taking of property and understand the most significant case in the history of eminent domain. Since the 2005 ruling of *Kelo v. City of New London*, states have struggled to enact legislation to protect property owners from condemnation of property by private entities. Eminent domain allows for government organizations to condemn private property for public use, but the *Kelo* ruling opened the door for condemnation for the good of the public. This allowed private organizations to condemn privately owned property as long as condemnation benefits the public.

The case is centered on the condemnation of private property owned by Susette Kelo, in the City of New London, Connecticut. The city established the New London Development
Corporation, a non-profit, in which the city would use to condemn the property needed and construct residences, parks, and private business in the place of the homes on the existing property. The city believed the benefit of increased taxes and permanent jobs provided the right to take the property. Kelo sued under the Fifth Amendment to the U.S. Constitution, stating the taking was not for public use and contended that a public benefit did not constitute “public use” (Bell & Parchomovsky, 2006; Cohen, 2006). In a much divided decision, the Connecticut Supreme Court ruled 5-4 in favor of the City of New London, stating that the benefit to the general public qualified the redevelopment of private property as public use. This ruling rejected the notion the “economic development could never constitute a public use and held that promoting economic development is a classic government function, indistinguishable from other public purposes upheld by the Court in the past” (Cohen, 2006, p.519-520).

The notion that one private owner cannot take property from another private owner was nullified with the decision in the Kelo case. Saginor and McDonald (2009) noted the dissenting opinion of Justice O’Connor, which recognized that a favorable ruling gives authority for one land owner to take from another for economic development purposes and that such a taking is unconstitutional. Her worry is like many others in that she fears the impact of the ruling will harm those that have little and benefit those with “influence and power” (p. 6).

The ruling in Kelo has sparked much debate to the power of eminent domain. Although this case has brought much attention to eminent domain, this is not the first time that the courts have sided with private entities for the purpose of economic development. In fact, the Kelo case affirmed the Poletown Neighborhood Council v. City of Detroit decision from 1981, in which the Michigan Supreme Court upheld a decision to allow the City of Detroit to take all realty associated with a neighborhood and transfer the land to General Motors. And like many takings,
the property condemned was from a lower-income neighborhood (Bell & Parchomovsky, 2006; Jackson, 2010; Munch, 1976).

In yet another instance, *Kelo* reaffirmed the ruling in Berman v. Parker (1954), in which the courts found favor with the taking of private property and transferring the property to a private company as part of an urban renewal plan. The property taken also affected mostly non-white, low income property owners. Although Kelo, and those cases used to confirm Kelo, were focused on the taking of private property for the benefit of a private entity, it is clear that those most affected were poor, people of color, and the elderly, as pointed out by Justice Thomas in his dissenting vote (Bell & Parchomovsky, 2006).

Eminent domain proceedings and outcomes have a great impact on individuals whose property is condemned. As seen with the *Kelo* case, the Court has determined that private property can be taken by government and private organizations alike, as long as the taking benefits the public. Although this is not a new determination, it has brought about much debate on the topic of eminent domain and caused states and government organizations to rethink eminent domain process and procedures. For instance, because of the *Kelo* decision, the State of California has enacted legislation to deny petitions for eminent domain proceedings for the purpose of economic development (Bell & Parchomovsky, 2006). Other states are following suit with legislative action that limits reasons for eminent domain. The history of eminent domain is lengthy and ever changing, with cases such as *Kelo* having a lasting impact on future takings.

**Public Use**

Eminent domain has been defined as the power by which the government takes someone’s property for public use (Dagley, 2010). Traditionally, eminent domain has been used to build schools, railroads, waterways, roads, government buildings and interstate highways.
However, over recent years the law has been broadly interpreted to include big-box retail stores, malls and urban development (Cohen, 2006; Dalton, 2006; Hoym & McCall, 2010; Leung, 2003; Nichols, 1999). The idea of the government’s power to take ones property has existed long before the foundation of the United States.

As early as 1215 the power of eminent domain was established as law with the signing of the Magna Carta, but it did not require that the government compensate the owner of the property. Article 39 of the Magna Carta gave the government the right to take the land but only through the “judgment of his peers or by the law of the land.” This meant that a jury could take the property or the property could be condemned by the state legislature. In either case, compensation could be awarded but most often the government offered no compensation for the property, (Revolutionary War and Beyond, n.d.).

It was not until the time of the Revolutionary War did citizens finally begin to see the governments offering payment for property. During this time properties such as metal for bullets, food, and other supplies, including homes, were taken or used for support of the war effort. Even the early thirteen colonies took land for better access to the frontier. But, by the time of the Bill of Rights, the American citizens were growing tired of their land and property being taken without just compensation. James Madison stood up for the American people and proposed on June 8, 1789, an amendment to the constitution that has become known as the Eminent Domain amendment. The Bill of Rights, containing the 5th amendment, formally became law on December 15, 1791, (Revolutionary War and Beyond, n.d.).

In early 1795 the power of eminent domain was described by the Supreme Court as the “despotic power”, leading to taking of land for public use (Ravenell & Davis, 2006). If land can be taken by the government for public use, parameters must be defined as to what is “public
use.” Cohen (2006) provided two categories of public use: the “narrow” view and the “broad” view. Under the “narrow” view the term public use simply means “use by the public.” The public has a right to use the property that has been taken or the property will be owned by the government after it has been taken. The “broad” view definition allows for more flexibility in the taking of property as it relates to public use. The taking of the property must result in a “public advantage or benefit” (p. 494). Simply put, if public welfare is enhanced, the taking of property is considered for public use.

The debate of “public use” has raged on for over 300 years and will likely continue for many years to come. In 2005 the Supreme Court issued a landmark decision in *Kelo v. New London*, in which the high court ruled in favor of the City of New London, that private property could be taken and given to a private entity for a public purpose, not necessarily a public use. Although the Court held consistent with the interpretation of the Fifth Amendment from *Hawaii Housing Authority v. Madkiff* (1984), the *Kelo* decision did not relate to a blighted area. However, the decision served the purpose to merely increase tax revenues and attract a wealthier population to the city to replace the lower middle class home owners in the area. The company in which the city contracted for the development of the condemned property could not secure the needed funding for the project, therefore, the land was never used for the purpose in which was condemned.

Schools and school districts are not immune to the “public use” requirement of the Fifth Amendment when attempting to condemn property through eminent domain. Although a public school benefits those located within the district boundaries, it is still required to prove the condemnation is for public use and necessary for the benefit of the district (Bird, 2010; Matkins, n.d.).
Just as condemnation of property for public use pertains to federal, state, and county government entities, it pertains to school districts as well. As early as 1777, Vermont established in the state constitution that taking of private property for the purpose of building a school constituted public use (Zoracki, 2006). Although most states do not include “public use” in their constitutions several have developed lists for which public entities can exercise eminent domain powers; these lists usually include governmental buildings, schools, and highways (McCarthy, 2005). There is extensive case law pertaining to public use and school districts.

One of the first cases establishing the state’s right to condemn property for the building of a school and declaring that a school is for public use was Williams v. School District No. 6 (1860). Other cases followed, establishing a precedent for the condemnation of property to build public schools. In 1949, Deer Creek BOE v. Payne, the courts held the property taken was for public use. The school district had previously used the land for a playground area, with consent from the owner. The new owner enclosed the property for private use. The school district needed the land to provide adequate space for the students. Since the students benefited from the condemnation it was a legal taking. The same held true in BOE of Kanawha County v. Campbell Creek Road Co. (1953), where the school district filed condemnation procedures to take property for the purpose of a playground and athletic fields. Both parties retained eminent domain rights, but the school district was able to show “public use” and superior condemner in the case.

Conversely, in the case The American Oil Co. v. School District of Philadelphia (1954), the court ruled that the condemnation of property by the school district was not for public use. Instead of condemning the land most suited for the new school, the district chose to take the property from The American Oil Co. and trade for the more suitable land. Since the land that was actually being taken was not for public use the court ruled in favor of the plaintiff. In the case of
Smith v. City of Birmingham (1961), the district proceeded with condemnation of property for the purpose of building an administrative complex. Ms. Smith filed suit stating this was not a public use. The Supreme Court of Alabama ruled that because the Alabama Code specifically listed administrative buildings for the local board of education as a public use, the property could be taken.

Historically, the courts have ruled the condemnation of property for the purpose of building schools or school related facilities, so long as the students will benefit, constitutes a public use. This is applicable unless the land being taken is already used for public use. In an open letter from Washington State Attorney General Don Eastvold (1956), it was determined that a school district cannot take land that is already being used for public use even though the intent of the district is to use the land for public use.

More recently, the battle of eminent domain for the purpose of constructing needed schools continues. In a 2013 article “Beaverton School District eminent domain case may end up in trial”, on the website “OregonLive.com”, Wendy Owen wrote of eminent domain proceedings between the Beaverton School District and Crescent Grove Cemetery. Primarily, the issue is agreement on compensation; however, “under state law, schools and other government agencies can exercise their power of eminent domain to take private property for public use after compensating the owner” (Owen, 2013).

Takings Clause

As seen throughout history, the government has the ability to take a private individual’s property for public use, through eminent domain. Today, the term eminent domain is better known as the “Takings Clause.” This comes from the Fifth Amendment, where the words, eminent domain, are not found, instead the word “taken.” The Fifth Amendment states “nor
shall private property be taken for public use, without just compensation.” Originally, the belief was that this power belonged only to the individual states. Often times when the federal government needed land for roads and lighthouses the state would make the condemnation on behalf of the federal government (Dagley, 2010).

The taking of property has existed in the Americas as early as the American Revolution, where quasi-governmental jurisdictions took supplies and property in the name of the war effort (Martin, 1983). Throughout the nineteenth century citizens saw the dramatic expansion of the use of eminent domain. During this time, as a means to foster investment and economic growth, power was granted through the states to private corporations for the building of railroads, bridges and canals, as set forth in Noble v. Oklahoma City, 1936, (Cohen, 2006). Generally, the courts upheld these takings on the premise that these functions provided a service to the public or that the public would benefit from the taking.

Primarily, the taking of property has mostly been assumed to be real, physical property such as land and buildings. However, the government’s ability to take property goes beyond just land and buildings. The Fifth Amendment allows for the taking of Intellectual properties as well. Intellectual properties include patents, trademarks, copyrights, and trade secrets (Fitzpatrick & Dilullo, 2007). Taub (2006) stated that the decision reached in the Kelo case extends beyond the tangible and has further enhanced the government’s ability to force intellectual property owners into compulsory licenses agreements for the good of economic development.

The ultimate authority of the “Takings Clause” remains with the national government and cannot be enlarged nor diminished by the state. When a state is in need of land or property for public use, Congress has the authority to authorize the property be taken by the courts of the
state, with its consent, or by the courts of the United States, with or without the consent of the state (Ravenell & Davis, 2006).

The Fifth Amendment to the U.S. Constitution (1789) establishes the authority for the federal government to take property for public use. It is the Fourteenth Amendment that extends that right to the state and allows for the states to delegate the power of eminent domain to other government entities within the state. Through the delegation of power school districts are given the authority to initiate eminent domain proceedings to obtain property, as long as the condemnation is for public use, and just compensation is given upon taking. School districts across the nation are taking property to build or renovate school facilities. Much of this is due to old and dilapidating buildings, overcrowding, consolidation, and district population expansion (Lansted, 2009). Regardless of who takes the property, the owner should be given the right to due process prior to the actual taking.

**Due Process**

The Fourteenth Amendment to the United States Constitution provides the Due Process Clause, which prohibits state and local governments from depriving persons of life, liberty and property without legislative authorization (U.S. Constitution, 1789). Following the Civil War, the processes involved in the taking of property resembled that of civil litigation. Although the Fifth Amendment allowed land to be taken for public use and with just compensation, it failed to construct a process leading up to the actual taking that would protect the land owner by ensuring just compensation and notification of the actual proceedings. Often times no notification was given the property owner until after the proceeding was over. Other times compensation was withheld until long after the property was taken, causing an obvious hardship on the property owner. It was not until the early 1890s that the process was challenged. In the case of Cherokee
Nation v. Southern Kansas Railway Co. (1890), the question arose as to what point should the owner be compensated? The Supreme Court ruled that provisions should be made to adequately compensate the land owner but compensation should not be made prior to transfer of property (Hudson, 2010). Hudson also points out that the same held true in Sweet v. Rechel (1895), where the court ruled that “so long as ‘adequate provision be made for compensation,’ it was unnecessary to actually compensate the owner of the condemned property prior to completing the taking” (p. 1295).

Compensation, public use, and pre-condemnation hearings are just a few of the process issues that have been brought before the courts over the years. Eventually the federal government decided to leave Due Process to individual states to decide, and since the late 1800s many processes have been introduced across the nation. The Supreme Court has never fully defined the due process rights of those property owners being faced with eminent domain proceeding (Hudson, 2010). Since the ruling on Kelo, states have scrambled to find a one-size fits all solution to stream line the process on a property condemnation. Several states continue to allow the eminent domain process without due process, while many have enacted eminent domain laws that provide full due process rights to land owners, which include prior notice and pre-condemnation hearings (Hudson, 2010). For example, Alabama Code 18-1A-22 requires a prior offer of compensation to the condemnee, as well as a negotiation of compensation, notice, and a full pre-condemnation hearing. Furthermore, Alabama is one of twelve states that have implemented an expedited eminent domain procedure, similar to that in civil court.

In 2001, Jerry Behrens, while speaking at the 22nd Annual Coalition for Adequate School Housing Conference in California, outlined key components schools districts should
follow to “fast track” eminent domain proceedings. He suggests the following to help avoid lengthy proceedings, which cost the district enormous expense trying to condemn property:

1. Assemble an experienced team—the team should consist of a district facilities director/manager, real property negotiator and strategist, real estate appraiser, civil engineer, environmental consultant, and legal counsel specializing in site acquisition work.

2. Property owner: willing or unwilling seller—access to the property for toxic and environmental testing speeds the process by months if the seller is willing. Also, negotiations with a willing seller speeds the process by agreement of compensation and contract negotiations. An unwilling seller may protest the condemnation and push the district to follow prescribes regulations that accompany eminent domain proceedings.

3. Level of community support or opposition to site—condemnation of property by a school district can be a very political and emotional issue. Communication between the district and the community plays an important role in the process. A capital facilities plan demonstrating the need for the acquisition of property may also be helpful in communicating the necessity of the acquisition.

4. Timing and commencement of environmental analysis—environmental analysis of projected sites can take up to 12 months to complete. The sooner this is done the better opportunity to select the most appropriate site and begin negotiations with the owner.

5. Timing and sequencing of statutory notices and approval by Department of Education—state statutes require notices in a timely manner, depending on the location of the school site. For example, if a school will be located near an airport, or gas pipeline, in proximity of electrical power line, etc. notification must be given to the DOE within a prescribes timeframe.

6. Relocation assistance issues—even though relocation assistance is separate from eminent domain, district must develop a plan that is in-line with the individual state plan. This applies to owners and tenants and the district must offer compensation and information for relocation assistance. Failure to provide appropriate relocation assistance may delay the eminent domain proceedings.

7. Vesting of titles; pre-judgement possession—vesting of title in an eminent domain proceeding is the purpose of fast tracking the process. Vesting of title does not occur until the final judgement in an eminent domain proceeding; however, it can happen pre-judgement when the district deposits the estimated compensation with the courts and the court issues an order to the owner or tenant. This can happen in as little as three days for “urgent need.” Farms and businesses usually take 90 days.

Whereas Beherens offered key components to “fast tracking” eminent domain processes, Bernstein (2011) offered a new solution to the process in which he provided an “optimal way to overcome the problems of holdouts, economic inefficiency, and exploitation of minorities” (p.
The process he describes resembles the tender offers for securities of publicly traded companies, hence, the name Tender Offer Taking (TOT). Below are steps, he argues, should be taken by the government when it has bound itself by statute or constitutional amendment to follow a specific process before resorting to eminent domain:

1. Draw the boundaries of an area of land that it requires for a specific project;
2. Simultaneously offer every landowner within that boundary the same percentage above market price for their land;
3. Confidentially collect acceptances during a 20 business-day period;
4. Publicly announce at the end of the period whether the threshold has been met without revealing the percentage of acceptances;
5. If the threshold has been met, then pay the premium price to every landowner who accepted and use eminent domain to pay market value to every landowner who had not accepted by the 20th business day; or
6. If the threshold has not been met, then either end the TOT process or repeat the process by restarting at step two with a higher offer. (pp. 105-106)

This process does not come without problems, but it seems the advantages outweigh the disadvantages. If the owners reject the premium price the government would move forward with the individual state eminent domain process; hence, a problem still exists since each state can have a process independent of other states and the federal government.

Currently, 12 states, including Alabama, have developed procedures that require notice and an adversarial process, similar to that of civil litigation, prior to the condemnation of property. The District of Columbia and 21 other states can condemn property without notification to the property owner or a pre-condemnation hearing, as long as the owner is given just compensation for the property. At a minimum, the Due Process Clause should provide individual landowners receive notice and a hearing prior to having their land taken through eminent domain. It seems rather clear that property should not be taken without due process; however, case law at neither the federal or state level seems to recognize the right of basic procedural protections as it relates to eminent domain (Hudson, 2010).
Case in point, *Rhode Island Economic Development Corporation v. Parking Co.* (2006), because of Rhode Island eminent domain statute, power was granted to the Economic Development Corporation to take property, with very little oversight or due process. Rhode Island General Laws (1997, in Hudson, 2010), allowed for the taking based on a sworn statement of public use and an estimated amount for compensation. The statute further allows the taking without providing notification to the property owner until after the taking is completed. This is one of the worst forms of due process abuse in recent times and is now being used by other states in the development of a comprehensive process when initiating eminent domain proceedings.

**Just Compensation**

The argument as to what is “just compensation” has been debated since the foundation of the United States. Prior to the Civil War there was no clear understanding as to who had the authority to take property—the federal government or the state government. In most cases, it was arranged by the federal government to have the states exercise their eminent domain powers on behalf of the federal government. Eventually the conflict was resolved making clear the rights of the federal government.

This understanding of the law changed in 1875 with the case of *Kohl v. United States* (1875), when the Supreme Court made it clear that the power to take also belonged to the federal government as long as “just compensation” was given (Baude, 2013). Just compensation has long been interpreted by the United States Supreme Court as a provision requiring that “condemnees be paid a sum equivalent to the value of the properties that they have lost to governmental takings” (Lee, 2013, p. 598). This is further emphasized in *Monongahela Navigation Co. v. United States* (1893), where the court reads the words of the Fifth Amendment as requiring that “no private property shall be appropriated to public uses unless a full and exact
equivalent for it be returned to the owner.” In the case of Olsom v. United States (1934) the courts quoted the passage from Monongahela Navigation Co. v. United States (1893) and then added that the “full and exact” is equivalent to “the market value of the property at the time of the taking contemporaneously paid in money. . . . Just compensation includes all elements of value that inhere in the property, but it does not exceed market value fairly determined” (Lee, 2013).

Determining “fair” is usually subjective and as Bernstein (2011) points out the formula in which the government uses to determine fair market value does not include compensation for subjective value. In most cases the subjective value will be higher than the fair market value. “Subjective value can come from a variety of locality-dependent assets, such as the goodwill that businesses have developed among local customers and the social capital developed between friendly neighbors” (p. 99). In almost all cases of eminent domain the government fails to consider subjective value, leading to the perception of unfairness among those losing their property. What is just in the eyes of the courts may be unjust for those losing their property and does not take into account the economic loses the property owner will most definitely suffer. As pointed out by Garnett (2006), fair market value does not take into consideration relocations expenses, business location, or the cost of replacing the condemned property. This is referred to by Serkin (2005) as “consequential damages and compensation for any of the real but subjective harms suffered by the property owner” (p. 679).

Property owners whose land is taken will more than likely suffer economic shortfalls when attempting to replace condemned property. In United States v. Miller (1943), the court ruled that fair market value is determined by “what a willing buyer would pay in cash to a willing seller at the time of the taking” (Berenholz v. United States, 1982). One would only
assume that in a time of eminent domain the seller is not “willing”, therefore, the owner would be undercompensated, at least in her opinion, when taking into account the subjective and economic values. Even so, as cited in Serkin (2005), in the case of *Snowbank Enter, Inc. v. United States*, the court determined that fair market value will be determined by recent sales of the property itself, comparable sales, replacement cost, and the income capitalization or upon any combination of these appraisal methods. The final compensation will be based off of these measures as well as the timing of the determination.

Typically, land owners want more than the fair market value for their property, and often times, school districts are willing to pay premium price to satisfy the needs of the district. When the district and the landowner cannot agree on a price the district will often invoke eminent domain (Looney, 2009). In 2005, a suburban community outside of Atlanta was experiencing tremendous growth. Housing developments were being constructed in one particular area of the county causing overcrowding in the area high school. Plans were developed to compensate for the increased growth and what was expected in the coming years. A site was selected and offers above the fair market value were made to each property owner. All but one accepted the offer. According to Dr. Rob Brown, Executive Director of High Schools in Douglas County at the time, the district was willing to pay a premium price for the property, well above fair market value. The property owner still refused compensation. The district weighed the options and decided to change plans and construct around the owner’s property. Although this was a less costly plan for the district, the owner’s property decreased dramatically in value due to the school and heavy traffic in the area (R. Brown, personal communication, July 18, 2015).

Just compensation serves to ensure that property owners receive fair market value for property being condemned. Courts have outlined a process for determining what is deemed “fair”
in hopes of providing some consistency in compensation. Whether the owner agrees or not, if the compensation offered is determined to be “just” and the property is for “public use”, the property will in all likelihood be condemned.

**Summary**

The taking of an individual’s property through the process of eminent domain is a difficult task at the very least. With growing populations across the south many school districts are making decisions on how best to meet facility needs. In many circumstances land is just not available and in others, the cost for the land is more than the system can afford. Unfortunately, districts are turning to the condemnation of property to meet their needs.

The ability of a government entity to condemn property was granted through the Fifth Amendment to the Constitution. Largely this is referred to as the Taking Clause and permits the taking of property for public use or public good, as seen most recently in *Kelo v. New London*, 2005, and the owner must receive just compensation for the property. The exact meaning of public use has been debated over time, however, Meidinger (1980), provided three different interpretations of the term. First, she describes the first interpretation as the most restrictive, where the government holds title of the property after the condemnation. The second interpretation is less restrictive than the first in that the title holder is irrelevant; what is important is that the property is accessible to the public. The final interpretation is broader and disregards possession of title or public access. The property can be taken for any reason the legislature determines to be sufficient public justification or for the good of the public, so long as the owner is justly compensated.

As school districts mull the possibility of taking property for use of new schools, boards and superintendents need to become familiar with individual state statutes regarding eminent
domain. It is clear that the taking must be for public use and the owner must be fairly compensated; however, the procedures and processes that are set by each state varies.
CHAPTER III

METHODOLOGY

Introduction

The focus of this study is to gain a better insight into eminent domain as it relates to public K-12 school systems. The study is qualitative in nature and is embedded in case law utilizing legal-historical research. Primary source materials were used to complete this research project. Federal and state court decisions were used as the foundation for the primary source materials. Secondary sources were included and evaluated to function as additional insight into the assessment of case law. In an attempt to achieve a thorough interpretation of the case law, a period from 1982-2013 was used to provide cases for comparison and trend analysis to offer insight into future educational issues. Through analysis of these cases, specific trends and patterns were identified, providing a deeper understanding of eminent domain and the application to public school systems.

Research Questions

1. What issues regarding eminent domain have the state and federal courts identified in court cases about eminent domain and the public schools?

2. What were the outcomes of cases pertaining to eminent domain and the public schools in the state and federal courts?

3. What are the trends found in cases involving eminent domain and the public schools in the state and federal courts?
4. What principles and procedures applicable for school system administrators can be discerned from court cases about eminent domain and the public schools in the state and federal courts?

**Data Collection**

The research was conducted in its majority at The University of Georgia’s Law Library in Athens, Georgia. The researcher also used the Law Library at The University of Alabama and The University of Alabama Education Library, McClure Library, located in Tuscaloosa, Alabama. The data and research from each library were collected and analyzed. Court cases associated with this study were also utilized.

All cases were taken from a time period from 1982 to 2013, using Key Numbers found in West’s Education Law Digest under the description of Eminent Domain: Nature, Extent, and Delegation of Power 1-68; Compensation 69-165; Proceedings to take Property and Assess Compensation 166-265; Remedies of Owners of Property; Inverse Condemnation 266-316; and Title or Rights Acquired 317-325, and analyzed using a procedure outlined by Statsky and Wernet (1995), in *Case Analysis and Fundamentals of Legal Writing*. The following descriptors were used to extract pertinent information for the case briefs:

1. Citation: “Identifying information that will enable you to find a law, or material about the law, in a law library” (p. 450).

2. Key Facts: “A fact that is essential to the court’s holding. A fact that would have changed the holding if that fact had been different or had not been in the opinion” (p. 453).

3. In Issue: “Before the court for resolution. A specific legal question that is ready for resolution” (p. 452).
4. Holding: “The answer to a legal issue in an opinion. The result of the court’s application of one or more rules of law to the facts of the dispute” (p. 452).

5. Reasoning: “The explanation of why a court reached a particular holding for a particular issue” (p. 455).

6. Disposition: “. . . whatever must happen in the litigation as a result of the holdings that the court made in the opinion” (p. 128).

Digests

The West Law Digest System was used to review and ascertain information specifically related to eminent domain court cases. Hundreds of legal educational issues can be found within the West Law digest system. Each topic within the eminent domain area contained multiple cases that were used in the legal analysis. Selection of cases depended on the case relation to eminent domain and the public K-12 school. Through the course of this research 78 cases were briefed and used as a base for this research project. Cases were screened and only those that directly related to eminent domain and public K-12 education were used. The researcher examined each case found within the description of eminent domain and ruled out those that involved higher education, municipalities, state government, retirement systems, and insurance companies, unless a public K-12 district was directly involved.

Data Analysis

Through this qualitative research project the researcher attempted to identify trends and patterns that derived from case briefings of state and federal court cases on the topic of eminent domain and the public school system. Prior to beginning the study the researcher determined, through conversation with other school system administrators, personal experience, and through the study of the literature or lack thereof, that the matter of eminent domain needed further
exploration. Creswell (2007) established that the prerequisite for qualitative research is based on needs or issues that must be explored; because we need a complex, detailed understanding of the issue. Likewise, Patton (1985) defined qualitative research as

an effort to understand situations in their uniqueness as part of a particular context and the interactions there. This understanding is an end in itself, so that it is not attempting to predict what may happen in the future necessarily, but to understand the nature of that setting—what it means for participants to be in that setting, what their lives are like, what’s going on for them, what their meanings are, what the world looks like in that particular setting—and in the analysis to be able to communicate that faithfully to others who are interested in that setting. . . . The analysis strives for depth of understanding. (Merriam, 1998, p. 6)

This researcher believes that due to a small amount of research concentrated in the understanding and implementation of eminent domain, school and system level administrators need a more in-depth understanding of the subject.

This study involved analyzing 77 cases through the process of coding. Saldana (2009) defined coding as the “transitional process between data collection and move extensive data analysis” (p. 4). The act of coding allowed for each case to be converted into data; thus, separating the enormous amounts of information collected into more manageable units, “representing and capturing the datum’s primary content and essence” (Saldana, 2009, p. 3). The data were coded and recoded in an attempt to better refine the information gleaned. The cases were then analyzed and categorized based on key facts, holdings and court reasoning. This progression led to an analysis of cases involving the taking of property from its owner for public use, nature, extent and delegation of the power in general, property subject to taking, and necessity and sufficiency of compensation.

Key words were identified that led the cases to be separated into major categories: Constitution, Compensation, Necessity, Power, and Procedure. Further analysis of each case under each major category revealed subcategories based on patterns within the case. These
patterns were identified from essential elements of the case that were similar and regular within the case. Cases were then grouped into clusters within the major category depending upon the pattern. Clusters were different for each major category, depending on the particular theme or pattern that was discovered: land, title, inverse condemnation, reversionary interest, lease, etc. An analysis was conducted of the cases found within the major category and clusters and served as the foundation of this study.

**Summary**

The intent of this study is to provide a usable framework through emerging patterns and trends for school system administrators who may be faced with the implementation of eminent domain. As our nation continues to see population growth and an economic collapse, school systems are faced with difficult decisions of meeting facility needs with fewer resources. By deducing the data into manageable parts, the researcher is able to provide suggestions that may guide public school administrators in the event of an eminent domain taking.
CHAPTER IV
DATA AND ANALYSIS

Introduction

A detailed summary for 77 cases is provided in Chapter IV, specifically regarding eminent domain as it pertains to public K-12 schools. The cases studied here range in date from 1982-2013. Each case was individually analyzed using the case summary format described in Chapter 10 of *Case Analysis and Fundamentals of Legal Writings*, Fourth Edition, William P. Statsky and R. John Wernet, Jr. (1995). All cases are listed in chronological order by the date in which the case was decided. Each case analyzed provides the legal citation, key facts, issues, the holding of the court, reasoning for the decision, and the disposition of the case, and each case is presented below in chronological order.

Case Briefs

1982


Key Facts: In 1956, the Board of Education of Unified School District No. 512 divested Dennis L. Steele and Frances Steele title to their real estate property for a school site. In 1959, the same board divested Vic Regnier Builders, Inc., of the adjacent property to the Steele’s, to add and extend to the present school building site. The school district was awarded the fee simple title to both properties. In 1978, the school and its facilities that were built on this property were voted on by the electors to close due to lack of students attending this facility. The school board wanted to clear title to the real estate so it may be sold or otherwise disposed of.
The defendants responded that since the land is no longer being used for the purposes it was acquired, the title should revert to the former owners.

Issues: At issue is whether the plaintiff school district acquired the fee title to the property in the previous condemnation proceedings and whether the property should revert back to the prior owner, from whom the property was taken, when the property was no longer being used for school purposes.

Holding: The Kansas Supreme Court held that the district court reached the correct verdict in that the district did obtain the fee simple title in the previous eminent domain proceedings, and the land does not revert back to the original owner when no longer used by the school district.

Reasoning: In 1956 and 1959 the BOE of Unified District 512, acquired land from the defendants taking the fee simple title. The defendants do not question the regularity of the decisions, just the extent of the title acquired. Under Kansas eminent domain procedure, where the entire tract of land was taken, the landowner was compensated by payment, for the full value of the land at the time of the taking. The public policy of Kansas was reviewed for the past 100 years with respect to school lands. Nowhere was it found that the legislature intended to change the principle of law that school districts who use eminent domain to acquire property acquire also the fee title.

Disposition: The Kansas Supreme Court affirmed the District Courts decision.


Key Facts: The Superior Court denied the motion to dismiss condemnation proceeding brought by the county board of education. It also allowed for the land to be acquired. The land is outside of the schools district/boundaries. The Court of Appeals held that the condemnor could authorize
the power of eminent domain according to the Special Masters Act and that it could not exercise that power outside of its jurisdiction. This in fact exceeded their authority.

Issues: At issue is whether the school district has the authority to condemn property through eminent domain, which is located outside of the district boundaries, for the purpose of building an athletic track.

Holding: The Court of Appeals of Georgia held that the school district did not have the authority to take property outside of its own district boundaries for the purpose of building an athletic track.

Reasoning: Upson County School district encompasses all of Upson County with the exception of the land within the corporate limits of the City of Thomaston. The City operates an entirely different school system from the County. The Superior Court ruled that the County could take by eminent domain 2.29 acres from the plaintiff to build an athletic track adjacent to the high school that is under construction. It also ruled that the plaintiff’s action to appeal be denied.

Disposition: The Court of Appeals of Georgia ruled that the superior court erred in overruling the exceptions to the return of the special master and to dismiss the condemnation proceeding. The school district was ruled to have no authority to exercise eminent domain outside the limits of its authority.

1983

Citation: Frazier v. Lowndes County, Miss., Bd. Of Educ., 710 F.2d 1097 (1983).

Key Facts: The county board of education leased property to the plaintiffs. The plaintiffs state that the county board of education threatened to cancel their leases unless they agreed to a higher rent. The county board sent a letter stating that the Attorney General deemed the leases to be invalid due to receiving inadequate compensation and needed to be re-negotiated.
Issues: At issue is whether the leaseholder was denied due process granted under the Fourteenth and Fifth Amendment due process clause, when the board of education threatened to terminate their lease if the leaseholder did not agree to higher lease payments.

Holding: The United States Court of Appeals held that the “threat” of lease termination was in good faith and does not constitute a taking; therefore, the leaseholder was not deprived of due process granted under the Fourteenth and Fifth Amendments.

Reasoning: The act of lease termination, especially where possession was not entered, does not constitute a taking. The act of terminating the lease does not take the property, but could lead to other acts that might.

Disposition: The United States Court of Appeals, Fifth Circuit, upheld the United States District Court for the Northern District of Mississippi’s decision to dismiss the leaseholders’ complaint.

1984

Citation: Board of Educ., Unified Sch. v. Porter, 676 P.2d 84 (Kan. 1984).

Key Facts: In 1979, the School District No. 464 condemned a tract of land belonging to Alvin Shilling, for school expansion. This land surrounds the Porter land and after expansion of the school onto the Shilling land, the Porter land was declared unsafe. This was due to the Porter land once operating a liquid propane business on the property. The proximity to the school was too close to deem safe. The school during that time frame was financially unable to purchase the Porter land. On April 10, 1980, a permit was issued to the Porter’s to build a $50,000 building. The school superintendent called the same day to inquire about purchasing the property. No response was given. The school board authorized immediate condemnation action of the property on April 11, 1980. The plaintiffs were notified by telephone the same day. April 14, 1980, the
action was filed and a notice published on April 16th. On April 4th, the plaintiffs issued a
contract with Mr. Alvin Shilling to erect a metal building on their property. Shilling surveyed the
site on April 10, and poured cement foundation piers and assembled the building despite the
school boards notice.

Issues: At issue is whether the building, propane tank, and equipment located at the
property being taken under eminent domain should be included in the compensation awarded for
the property.

Holding: The Supreme Court of Kansas upheld the trial court’s decision that the storage
tank and related equipment was personal property and not part of the actual real estate.
Furthermore, the court held that compensation should not be awarded for the partially erected
metal building because the land owner began the erection after being notified of the district’s
intent to condemn the property under eminent domain.

Reasoning: The land owners claim that the appraisal for the property was to include the
partially built building’s value. The building was constructed after notification of the school’s
intent to purchase by eminent domain. The District Court concluded the building was not to be
included due to the timeframe of notification and the continuation of the building process after
notification.

Disposition: The Supreme Court of Kansas affirmed the decision of the District Court.

Citation: Johnson v. Wylie, 679 S.W.2d 198 (Ark. 1984).

Key Facts: For 10 years a private road has been used as a bus route and the county has
maintained and repaired the road. In 1983, Act 166 gave county judges the discretion to make
private roads county roads if they are used as a bus route. July 1983, the county judge declared
the private road to be a county road. The Johnsons filed suit saying this was unconstitutional.
Issue: At issue is whether the taking of a private road that had been maintained by the county and declaring it a “county” or public road, was unconstitutional and whether compensation should have been awarded.

Holding: The Supreme Court of Arkansas held that declaring the road a county road constituted a taking; therefore, compensation should be awarded to the property owner.

Reasoning: There was a taking of private property when the property was made public. The county judge ruled that the maintaining of the road was just compensation. The county did not have to maintain this road. Maintenance is not a claim of right. Eminent Domain statutes proclaim that the property must be private, taken, for public use, and for just compensation, and an opportunity to be heard. The land owners did not receive due process.

Disposition: The Supreme Court of Arkansas ruled that the county and chancery court had erred. The taking of the land without compensation was wrong and the county judge cannot take private property without compensation.

Citation: School Bd. Of Broward County v. Viele, 459 So.2d 354 (Fla.App. 4 Dist. 1984).

Key Facts: In the late 1960s, the Broward County School Board determined it needed a new administration building. They hired an architectural firm and after several searches, narrowed the building site down to two places. The school board decided to use the downtown site and set forth to negotiate the purchase of the sites. One of the titles needed to be taken after a judicial determination of title. The trial court denied the taking. The school board filed an appeal.

Issues: At issue is whether the downtown property chosen for taking by the school district under eminent domain is necessarily the best property for the construction of the new administration building.
Holding: The District Court of Appeal of Florida, Fourth District, held that the school district only need to show a reasonable necessity to take a particular parcel of land, not an absolute or “real” necessity.

Reasoning: The School Board followed correct protocol in narrowing the site down to two. All steps were taken to insure correct proceedings of the taking of property. The trial court cannot decide that the choice was a wrong one and was not “necessary.”

Disposition: The District Court of Appeal of Florida, Fourth District, reversed the Circuit Courts decision and ordered the taking of the land.

1985


Key Facts: In 1972, the Minutemen Regional Vocational School District took 9.55 acres of land by eminent domain. Two years later, the landowners filed a petition for assessment of damages in Superior Court. In 1983, the jury returned a verdict for the landowners. The School District then wanted to compute interest at 6%. This was the amount entered at the time of the taking. The plaintiffs then requested the amount of interest be changed to 10% based on the most recent statute.

Issues: At issue is whether 6% interest should be granted from the date of taking until the effective date of the newest statute, which will be granted as 10% or does the new statute supersede the old and 10% interest be awarded from the date of the taking.

Holding: The Supreme Judicial Court held that the landowners were entitled to 10% interest from the date of taking to the effective date of statute establishing 10% rate, and 10% thereafter.
Reasoning: The land was taken in 1972; the verdict was decided by the Superior Court in 1983. The statue was changed from 6% to 10% in 1982. Therefore, the Supreme Court ordered that since the judgment was decided in 1983, after the 1982 statute, the full 10% was to be given to the landowners.

Disposition: The Supreme Court of Massachusetts, Middlesex, reversed the decision of the Superior Court, Middlesex County.

1986


Key Facts: In 1979, the school district planned to build a high school on property it owned. The DOT notified the school from 1981 to 1984 that it planned on taking a portion of that land for a bridge and road construction. Based on this knowledge, the school district adjusted its plan for the school building. The school was completed in 1984. The DOT did not use the portion of land as planned. The School District believed the threat of the “taking” of the land caused the school to lose value and inhibited it from being used to its fullest potential and seeks compensation. The Common Pleas Court found that a de facto taking did occur and ordered a board of reviewers to determine damages. The DOT appealed.

Issues: At issue is whether the threat of condemnation by Pennsylvania Department of Transportation, resulting in the school district’s change of location of new construction, constitutes a taking.

Holding: The Commonwealth Court held that there was no de facto taking. The DOT’s plan was not ordered and the school district had the authority to choose where to build on the property. Had the school moved forward and built where planned, and the eminent domain ordered, compensation would have occurred.
Reasoning: The School District was informed by the DOT of plans to construct a bridge and road construction on a part of the property that the school planned on building a high school. The DOT conducted hearings and had appraisals and surveys performed on said property. The school was constructed and the plans were adjusted accordingly to the DOT’s plans. The DOT did not construct the bridge or the road. The School District filed suit that the DOT not following through with the construction decreased the value of the property due to changing the site of the building. The court ruled in favor of the school and the DOT appealed.

Disposition: The Commonwealth Court of Pennsylvania reversed the Common Pleas Court decision. They held that there was no de facto taking.


Key Facts: The Court of Claims dismissed the damage claim of the school board stating that the de facto taking of the land should have been August 2, 1978, instead of March 25, 1980. The 1980 date was the date the New York State Health Commissioner declared a state of emergency at Love Canal. Both parties placed on the record of appraisal the date of March 25, 1980, in determining the value of the damages. The Board of Education appealed.

Issues: At issues is whether to use the de facto taking date of August 2, 1978, or the de jure taking date of March 25, 1980, in assessing damages awarded to the school district.

Holding: The Supreme Court held that the Court of Claims made the right decision of using the date March 25, 1980.

Reasoning: The School Board tried to bring action against the State of New York for an earlier date of taking due to easements and demolition of the property. However, the School District and the State of New York both recorded the date of valuation as of March 25, 1980 instead of August 2, 1978.
Disposition: The Supreme Court affirmed the previous court’s decision.

Citation: *Klein Independent School v. Fourteenth Court*, 720 S.W.2d 87 (Tex. 1986).

Key Facts: Houston Lighting and Power condemned an easement going through the school campus of Klein School District for running a high voltage transmission line. The School District objected and the case went to Civil Court. Jury verdict was in favor of the school district. This injunction was a permanent refusal for the power company to run lines through the school property. The power company appealed and sought mandamus relief from the Fourteenth Court of Appeals. The court of appeals held that the power company had the right to possession and use of the property. The school district then sought writ against in the Court of Appeals.

Issues: At issue is whether the trial court abused its discretion in refusing to allow HL & P to supersede the injunctive portion of its judgement.

Holding: The Supreme Court held that the trial court did not abuse its discretion.

Reasoning: The power company used Appellate Rule 47(f) as reasoning to appeal. This rule is for the recovery of property or land. The trial court ruling was only an injunction for denying transmission through the property.

Disposition: The Supreme Court held the decision of the Trial Court.

Citation: *Wood v. City of East Providence*, 811 F.2d 677 (1st Ctr. 1987).

Key Facts: In 1967, the School committee of the City of East Providence condemned land owned by the Woods so that a school could be constructed. The Woods received fair market value for the taking and filed a quit claim deed hoping this would not give the school a clear title. The proposed school was never built because the changing neighborhoods rendered it not usable. The land was transferred in 1979 from the East Providence School Committee to the City Council for public sale. The Woods at this time notified the city of their desire to repurchase the
condemned property. The land was sold to a private developer. The Woods then filed suit believing they had rights to repurchase the property.

Issues: At issue is whether the property condemned under eminent domain was abandoned by the city and never used for the purpose for which it was condemned; whether the property owner had first rights to repurchase the property under the Rhode Island Constitution; and whether the filing by the property owners for quitclaim deed ensured repurchase rights.

Holding: The United States Court of Appeals held that: (1) the city had not abandoned the property; (2) failure to allow school condemnee’s right of repurchase enjoyed by highway condemnees did not violate equal protection; and (3) effect of quitclaim deed executed by condemnees was immaterial.

Reasoning: The Woods believed they deserved first rights to purchase the property. Their reasoning was based on the fact that highway condemnees could repurchase property if not used in its intended manner. State’s rights for school condemnations and highway condemnations are not the same. Even if a school does not use the condemned property, it remains the title owner and is not considered abandoned. It can offer the property up for public sale. Not allowing the Woods to purchase the property first did not violate their civil rights. The quit claim deed they filed also conveyed all their rights in the property.

Disposition: The United States Court of Appeals confirmed the decision of the District Court.

1987


Key Facts: The Carlynton School District, by eminent domain, condemned and took an apartment building. Raymond T. Hays and Janet E. Hays were owner occupants who conducted
business in their dining room. The business was the managing and leasing the other apartments in the building. The Court of Common Pleas of Allegheny County ruled that the Hays receive $53,000 as general damages for real estate, $4,000 for replacement housing, $2,034 for search expenses, and $10,000 for business dislocation expenses. The School District believed the replacement housing and the business dislocation expenses were wrong. The Hays had found a replacement property, but there was a lack of $4,000 to fully purchase the property. This is the reason the court ordered the replacement-housing amount. The School District appealed the decision.

Issues: At issue is whether the school district, upon taking the property through eminent domain, appropriately compensated the owners for replacement housing and business relocation damages, since the owners conducted business in the dining area of the condemned property.

Holding: The Commonwealth Court of Pennsylvania held that the owner-occupants of the apartment building taken were entitled to $4,000 special damages for replacement housing and $10,000 for business dislocation damage.

Reasoning: The owner-occupants searched for four months to find a replacement property. The award for replacement housing was shown as being accurate by the testimony of the realtor used in acquiring this new home. This award also recognizes that it may be necessary to obtain financing for the replacement housing, so the award will include service charges for this. The dining room of the apartment building was used fully as a place of business to manage and lease the apartments in the building. The award for business dislocation was given because the code permits any person displaced from his business to recover special damages as business dislocation. This must be proved to show that the business cannot be relocated without a major loss of existing patronage.
Disposition: The Commonwealth Court of Pennsylvania affirms the order of the Court of Common Pleas of Allegheny County.


Key Facts: In 1947, the plaintiff owned a property in fee simple estate that was condemned so the property could be acquired by the school. In 1948, a school was built on the property. In 1981, the school was closed and the system ordered the sale of the property. The previous owner alleges that the school only acquired an easement to use the property and filed a quiet title action against the school board and city in trust for schools. The case went to circuit court and the judgment entered for the school system. The plaintiff appealed due to two issues: 1) Did the defendants have the statutory authority to acquire through condemnation fee simple estate; and 2) Did they fully execute this power.

Issues: At issue is whether the City of Chicago, acting on behalf of the school district, had the statutory authority to acquire through condemnation proceedings a fee simple estate and if such authority existed, whether they fully exercised their power.

Holding: The Appellate Court of Illinois held that eminent domain statute empowered school board and city to take fee simple absolute and that the school board and city were presumed to exercise full condemnation power to acquire fee simple absolute, where there was no contrary evidence in record.

Reasoning: School trustees are given the authority to take real estate in fee simple to be used for school purposes. The authority was given to take this property in 1947. The school followed the execution of the authority to take this property and acquired title in fee simple absolute.
Disposition: The Appellate Court of Illinois, First District, Fourth Division affirmed the Circuit Court of Cook County.


Key Facts: The County Civil Court at Law in Harris County had previously awarded Klein Independent School District actual and punitive damages, writ of possession, and permanent injunction against Houston Lighting and Power Company for using the school’s land to run an active transmission power line through it. The school cited health and safety concerns for the children on campus, and due to this, the power company was trespassing on school grounds. The power company appealed.

Issues: At issue is whether power lines located on school property, taken through eminent domain, pose a health risk to students who attend the school, and whether the trial court had jurisdiction to award punitive damages to the school district.

Holding: The Court of Appeals held that the school district is granted writ of possession and permanent injunction; however, the school district would not be awarded punitive damages previously awarded by the trial court.

Reasoning: The Klein School District used several professional testimonies to show that the safety of the students was in fact compromised by the transmission of electricity through the school district. The issue with the necessity of taking was once again declined due to the health reasons. Several statues were also used to show that the trial court did have the authority to award actual damages. The damages awarded have been shown to be limited to the market value of the property itself. If the court would have agreed that the power company had indeed trespassed onto the property, the punitive damages could have then been awarded.
Disposition: The Court of Appeals of Texas, Houston held the County Civil Court
decision but modified the decision stating the school district could not recover punitive damages.

1988


Key Facts: The Board of Education of the City of Asbury Park planned to acquire
Theodore R. Murnick’s property and construct a public school facility for approximately 600-
700 elementary students. The adjacent lots were also in this plan. The Bureau of Facility
Planning Services (BFPS) in the Department of Education approved these sites. Approval was
granted under the then existing provisions of the New Jersey Administrative Code. This proposal
was voted down by the voter referendum. New regulations regarding the approval of land
acquisition for school purposes came into effect. The regulations continued to require prior
approval. The new regulations dealt with standards for minimum acceptable school site sizes.
The lots were submitted as separate public referendum questions to voters and approved by a
majority vote. The school board did not request another site acquisition approval from the
Bureau. Murnick filed a request for an informal hearing alleging the previous approval was now
ineffective due that the Board did not request another site approval from the Bureau.

Issues: At issue is whether the sites being condemned through eminent domain
proceedings should be re-approved by the BFPS, prior to condemnation.

Holding: The Superior Court held that the pendency of an administrative agency
proceeding on a required approval did not preclude the exercise of judicial jurisdiction.

Reasoning: The Commissioner is the expert on the site plan. If the site plan has changed,
and it had, he should be responsible for approving or disapproving. Prior approval that was
granted needed to be addressed due to the changes in the size of the land to be acquired for the
school had changed. The Commissioner still has a responsibility to decide the school law issue even though the trial judge exercised the condemnation. The Board now condemns at its own risk property that may not be usable. The Department of Education should have been consulted first before finalizing the condemnation.

Disposition: The Superior Court of New Jersey affirmed that the administrative agency/Bureau does not preclude the exercise of the judicial jurisdiction in a condemnation case. It also does not need to exhaust administrative agency remedies. Affirmed in part; reversed and remanded in part.


Key Facts: Deer Valley Unified School District No. 97 had a dramatic increase in the number of elementary school student enrollments. They searched several areas of property and determined a 15-acre parcel owned by the state school trust was an excellent choice. The school district inquired from the Arizona State Land Department about purchasing the land. The Department refused based upon their reasoning that they could obtain a higher amount through future commercial leases. They refused also to hold a public auction to allow the school district to buy the property. The Deer Valley District filed an action to then condemn the proposed school site by eminent domain. They also filed to take immediate possession of the property after the deposit of money or posting of a bond. The trial court dismissed the complaint due to the condemnation violated the Arizona-New Mexico Enabling Act. This Act prohibits the sale of state school trust lands for less than appraised value to the highest and best bidder at an advertised public auction. The court determined this in effect prevented eminent domain. The Court held that no school trust land could be condemned by eminent domain and dismissed the action.
Issues: At issue is whether the Enabling Act or the Arizona Constitution Act would allow the Deer Valley School District to condemn state school trust land. The Enabling Act of Arizona is a federal law. It requires the state only sell or dispose of school trust land at a fully advertised auction after obtaining an appraisal. The Arizona Constitution Act states the state may not sell, lease, or dispose of school trust land without a highest and best bidder at a public advertised auction. The land can by no means go for less than the appraised value.

Holding: The Supreme Court of Arizona held that the Arizona-New Mexico Enabling Act did not prevent acquisition of school trust property by condemnation, but the State Constitution did.

Reasoning: The exercise of eminent domain would not enable a highest and best bidder and would not allow a public auction. With the Enabling Act and the Arizona Constitution Act stating best and highest bidder, an advertised public auction, and no amount less than appraised value, the school district could not by any means condemn the land by eminent domain.

Disposition: The Supreme Court of Arizona affirmed the trial court’s dismissal of the action of eminent domain of state school trust land.

1989

Citation: *Appeal of Octorara Area School Dist.*, 556 A.2d 527 (Pa.Cmwlth. 1989)

Key Facts: Starting in 1986, the public and the School District Board of Directors were informed of a need to acquire land for the building of athletic facilities. The superintendent determined 30 acres would be sufficient to cover the need. During that time, a 189-unit housing development was being planned. This set in motion the search for more land to prepare for larger or more schools to handle this housing growth. Neighboring farms were asked if they would sell and none were interested. The school board then sought to condemn and take a farm containing a
50-acre tract and a 100-acre tract. In executive session, the board determined that this amount was needed based on the superintendent’s assumption of populated growth. Naaman King was the owner of the land sought and he filed objections and it went to trial court. The trial court ruled condemning the entire tract of land was not justified by the assumptions of projected growth over a 5 to 12-year period. Condemnation was denied.

Issues: At issue is whether the school board abused its discretion when obtaining through eminent domain, a large amount of land (owner’s whole farm), due to not proving the necessity for the property. The taking was based on an assumption by the superintendent on what amount of land was projected to be needed over a 12-year period and not factual evidence.

Holding: The Commonwealth Court of Pennsylvania held that the school district did abuse its discretion when condemning the entire farm based on enrollment projections over a 12-year period.

Reasoning: The only immediate need of the school system to condemn Mr. King’s land is for the athletic facilities, which is a 30-acre tract. Mr. King brought forth an affidavit from the planned neighborhood showing it was only in its first stage of 48 planned homes, with only 2 units being finished. The second stage had not been planned or scheduled yet.

Disposition: The Commonwealth Court of Pennsylvania affirmed the Common Pleas Court’s decision that the condemnation of an entire farm was not justified by projections over a 5 to 12-year period.

Citation: Downingtown Area School v. DiFancesco, 557 A.2d 819 (Pa.Cmwlth 1989).

Key Facts: The school district hired an architectural and planning firm to search for possible building sites for a 600-pupil elementary school to be constructed. 11 sites were selected and presented to the board. A piece of land was selected and preliminary plans were
made. The township manager was informed of the decision. The township supervisors did not believe this tract of land was ideal due to several factors. The manager then suggested two other tracts of land owned by Boesler-Wagner and DiFrancesco that would be more ideal, mainly due to each area being slated for public water and sewage, as opposed to being agricultural land or open space. The Board then directed the firm to evaluate these two sites as opposed to the previously selected site. A verbal report was given that these two sites were more ideal and to change proceedings on the previous land to these two tracts. The Board authorized the condemnation to the two tracts owned by Boesler-Wagner and DiFrancesco. DiFrancesco filed preliminary objections to the taking. The Trial Court sustained his objections and the school district appealed.

Issue: At issue is whether district’s selection of school site, through eminent domain proceedings, was arbitrary and “retroactively” justified and whether there was an abuse of discretion.

Holding: The Commonwealth Court of Pennsylvania held that the district’s site selection was neither arbitrary nor retroactively justified. The court also held that the school district’s choice of site was not an abuse of discretion.

Reasoning: The Commonwealth Court reversed the decision based on the fact that the trial court cannot state that the school site did not meet the criteria for selection. Also, the choice of the site was selected for several investigative reasoning’s. School districts do take or follow the advice of township supervisors in the choosing of a school site. This is just merely gathering good information to make the best decision on a school site. DiFrancesco suggested that this was of improper influence. This was decided as not an abuse of discretion.
Disposition: The Commonwealth Court of Pennsylvania reversed the decision of the Common Pleas Court.

Citation: Rudolph Farm v. Gr. Jasper Consol. Sch., 537 N.E.2d 1199 (Ind.App. 1 Dist. 1989).

Key Facts: Greater Jasper Consolidated Schools decided to unite one its school facilities due to overcrowding, safety issues, and obsolete facilities. Forty to 50 years of use was dedicated to this undertaking. Rudolph Farm’s property was needed to utilize this plan. The farm owner believed this was an immediate need, not a future need, and did not need to acquire 6-acres of his land. The state minimum for this is 3-acres. The owners also believe the school acted in bad faith with the negotiation process. The Trial Court ruled in favor of the school system and the farm appealed.

Issues: At issue is whether the school district had an immediate need to condemn, through eminent domain, six acres for the purpose of building a 500 student capacity elementary school and did the district “bargain” in good faith for the property.

Holding: The Court of Appeals of Indiana held that the school district did not abuse its power to condemn based on a presumed need for the school and did not abuse its discretion in determining the amount of land needed for the new building. The court further held that the school district did negotiate in good faith prior to initiating the eminent domain proceedings.

Reasoning: Even if the school’s needs were immediate, it did not exceed its statutory authority by acquiring the property by eminent domain. The school also tried to make a reasonable offer to the farm, but it was rejected. The amount of land desired in the taking was a matter of the school board, not the farm.
Disposition: The Court of Appeals, Indiana, First District affirmed the Circuit Court’s judgment for the school corporation.


Key Facts: The Northwestern Lehigh School District looked at obtaining land through eminent domain to construct a middle school adjacent to the high school. The land they selected for the building site was deemed as an “agricultural area.” The Agricultural Area Security Law Act was established to protect and conserve agricultural lands. It states that no land set aside as an agricultural area can exercise eminent domain by condemnation unless prior approval has been granted by the Agricultural Lands Condemnation Approval Board. The School District notified the Board of its intention to condemn a certain agricultural area and was denied the application. The School District believed the legislature unlawfully surrendered its power of eminent domain to the Agricultural Lands Condemnation Approval Board.

Issues: At issue is whether the school district has the authority to condemn property, through eminent domain, that rests under the authority of the Agricultural Lands Condemnation Approval Board (ALCAB).

Holding: The Commonwealth Court of Pennsylvania held that the school district does not possess the power to condemn land protected under the Agricultural Area Security Law.

Reasoning: The land the School District wanted to obtain by eminent domain was considered an agricultural area and is protected. Condemnation cannot be obtained without approval of the Agricultural Lands Condemnation Approval Board. The School District did not provide any studies or any proof of protecting this land. The only reason they could claim as a deciding factor for the taking of this land was its relation to existing school facilities, the
availability of transportation and staff facilities, and the availability of sewer facilities. No other land was presented as an option.

Disposition: The Commonwealth Court affirmed the decision of the Agricultural Lands Condemnation Approval Board. The School District was denied the right to take the property.


Key Facts: The Hudson Local School District sought acquisition of five lots of real property through fee simple. Dubetz owned three of the five parcels. All owners but Dubetz settled the case. The case went before a jury trial with just the School District and Dubetz. The Trial Court awarded an amount for the land and Dubetz appealed.

Issue: At issue is whether proper instruction was given to the jury in determining value of property taken in eminent domain proceedings; whether the school superintendent should have been cross-examined on contiguous parcel of land; whether “asking prices” of other like property should have entered into evidence; and whether the court abused its discretion by not allowing a continuance of the trial.

Holding: The Court of Appeals of Ohio held that the court did not err in the instruction given to the jury for value determination; that the superintendent cross-examination was not relevant to determining value; that “asking prices” were not relevant to the actual market value of the property; and that the trial court did not abuse its discretion by not continuing the trial.

Reasoning: Dubetz made several claims of trial error, but each one was found to not establish reasoning of one. He failed to show proof on each claim. No abuse of discretion by the trial court was found.

Disposition: The Court of Appeals affirmed the Trial Courts Decision.
Citation: *Homeward Bound v. Anchorage School Dist.*, 791 P.2d 610 (Alaska 1990)

Key Facts: Homeward Bound owned a twenty-five acre parcel of land located in east central Anchorage. It sought to have this tract rezoned to allow a variety of land use. Neighboring properties rejected the idea. Homeward Bound then decided to contact the School Board and the Municipal Parks Department about purchasing. The Parks Department did purchase a 10-acre tract. Homeward Bound then contracted an agent to send in writing that the Anchorage School District consider purchasing the remainder of the land. The neighboring landowners agreed to support this acquisition if Homeward Bound would agree to postpone rezoning the land. The School District and the Municipal Planning Department together issued a study of three different school sites, including the one owned by Homeward Bound. The two decided to go with one of the other three sites. They, in turn, recommended that the Anchorage Municipal Assembly designate the site they chose, which was not Homeward Bound’s tract. At a public hearing, the Municipal Assembly passed a resolution selecting Homeward Bound’s property for an elementary school site. The School Board did not purchase the property. One year later, the Municipal Assembly passed another resolution selecting Homeward Bound’s property again for purchase. The School Board again did not purchase the property. The School Board did not see a need to purchase the land when a new school was not needed in that particular area. Homeward Bound then sued both the Municipal Assembly and the School District. They wanted to force the School District to purchase the property or to recover damages due to loss of value in the property as a designated school site. The Superior Court entered judgment for the District and the Municipality. Homeward Bound appealed.
Issues: At issue is whether the school district should be compelled to purchase property selected by the Municipal Assembly to be condemned through eminent domain and whether the mere selection constitutes a taking.

Holding: The Supreme Court of Alaska held that the property owner could not force a school district to purchase a particular property. They also held that a municipal assembly’s choice of property did not constitute a taking and could not force the school to “take” the property.

Reasoning: The Municipal’s designation of property as a school site does not mean the School District has to go along with the decision. This also does not entitle the property owner for compensation. The School District and the Municipal Planning Department did a study of three areas of land for a potential school site. They did include Homeward Bound’s tract of land. The joint study decided to go with one of the three choices, not Homeward Bound’s tract. The School District did not have an immediate need for a new school in the area of Homeward Bound’s tract. The School District never indicated it choose Homeward Bound’s property.

Disposition: The Supreme Court affirmed the Superior Courts decision for judgment for the School District and the Municipality of Anchorage.


Key Facts: Conroe Independent School District filed eminent domain proceedings against a property that others, along with George D. Gordon, owned. The Special Commissioners awarded a sum to the owners of the condemned property. An objection was filed and 8 days later, George Gordon filed. Two new parties were added several months later. The School District filed a Plaintiff’s Second Amended Statement hoping the court would assess the
damages in accordance to that previously awarded by the Special Commissioners. The trial court then moved to dismiss the docket. The School District filed to either enter judgment or retain the case, believing the land owners had abandoned their objections by failing to cite the School District and not prosecuting their cause. The trial court found that the land owners did abandon their objections, reinstated the commissioners’ award, awarded the property to the school, and the tax cost against the school district. George D. Gordon appealed.

Issues: At issue is whether the property owner abandoned his objection to the condemnation of his property by the school district through eminent domain, as determined by the trial court, and whether the trial court abused its discretion by placing the consequences of lack of prosecution on the property owner.

Holding: The Court of Appeals held that by the school district attending the preliminary proceedings the burden of the proceeding with the case was placed on the district. Furthermore, the trial court abused its discretion by placing consequences of lack of prosecution on the property owner.

Reasoning: With the School District appearing in the judicial proceedings, they then had to go forward with the case. An amendment statement that was filed showed that the School District had notice of both Gordon and the other objections. The statement was not a file to dismiss, but an objection to the amount of award given. Filing of this objection serves as notice and waives the citation.

Disposition: The Court of Appeals reversed and remanded the Trial Court’s decision.

Citation: Hamer v. School Bd., 393 S.E.2d 623 (Va. 1990).

Key Facts: The School Board of the City of Chesapeake conducted a study to evaluate the need for expansion based on anticipated growth. A public high school was decided upon and
a search for land was issued. A tract of land owned by the Hamer family was selected. A petition for the land was filed for condemnation in trial court. The owners challenged the petition and demanded a trial on these conditions: 1) The internal proceedings that led to the authorizing of the taking; 2) The taking needed to be shown it was for public purpose; and 3) The necessity of the taking. Trial Court denied a jury hearing. The evidence was heard on all counts and the Trial Court ruled in favor of the School Board and granted the owners an appeal limited to the three questions they had asked clarification for in the trial.

Issues: At issue is whether the condemnation of property by the school district, through eminent domain, was necessary; whether the site was selected “arbitrarily and capriciously”; whether the right to open and close final arguments was granted properly; and whether comments made by counsel affected compensation.

Holding: The Supreme Court of Virginia held that it had no jurisdiction in determining the necessity of the taking; the owners failed to provide proof to support their allegation of “arbitrary and capricious site selection”; and the trial court ruled correctly in allowing the district to open and close the trial; however, the court rule that the comments made by counsel did in fact affect compensation awarded and remand the case for a new trial on the issue of just compensation.

Reasoning: The Board was clear on defending the questions the landowners had asked about the taking. The comments made at the end of the hearing were such that it could not be removed by instruction. For this reason alone, the landowners have a right to receive a new trial.

Disposition: The Supreme Court of Virginia affirmed the trial court’s decision and remanded a new trial based on the issue of just compensation.

Key Facts: Joseph Claghorn Saffold feels the Board of Education, through planning the condemnation of his property and the publicizing of such, will depress the land’s value. He also alleges the board has no need of the property, nor has the funds to make the purchase. Saffold further claims no negotiations were started to try and avoid condemnation. The Board issued a move for dismissal. Saffold made no allegations that there were condemnations for his property, just the motions set in place to issue condemnation.

Issues: At issue is whether the pre-condemnation proceedings negatively impacted the full value of the property, leading to inverse condemnation; whether the intention of condemnation cause irreparable harm to the land owner; and the land owner has been deprived of just compensation for his property.

Holding: The United States District Court held that the land owner’s allegations were insufficient to state a claim on any of the three issues filed.

Reasoning: The claims Saffold was holding against the Board had no merit. The publicizing of the intent to take the land did not diminish value. Citing no need of the property was also in-valid. Several steps have to be encountered before deciding that a school system needs to acquire more land for their use. The US Supreme Court has ruled on multiple occasions that land owners are not entitled to compensation for pre-condemnation proceedings.

Disposition: The District Court grants the school district’s motion to dismiss the complaint.

1991

Citation: *Dillard v. Austin Indep. School Dist.*, 806 S.W.2d 589 (Tex.App.-Austin 1991).

Key Facts: The Austin Independent School District board of trustees voted to either
negotiate or condemn property owned by the Dillard’s to build a new high school. The Dillard’s were agreeable to selling the land. The Dillard’s, at their own expense, prepared for the sale by various tasks including surveys and permits. The school district later purchased a different tract of land. The Dillard’s sued for damages for the expenses involved, decrease in the value of the land, breach of contract, slander of title, and damage due to prior negotiation. The trial court ruled in favor of the school district and the Dillard’s appealed.

Issues: At issue is whether the school district is provided with governmental immunity and protected from being sued while proceeding with eminent domain.

Holding: The Court of Appeals of Texas held that the district did have governmental immunity in this case.

Reasoning: There was never a contract between the Dillard’s and the school district. A governmental agency has immunity from being sued except for a municipality. The independent school district acts as an agency of the state. Since it can only carry out governmental functions, it is entitled to governmental immunity. The beginning of a negotiation to purchase/condemn a property is considered incidental damage and is not compensable. Since the Dillard’s sought to sue the school district as a whole instead of trustees in their individual status, the defense of governmental immunity held.

Disposition: The Court of Appeals affirmed the Trial Court’s decision in favor of the School District.

Citation: Lake County Forest Preserve v. First Nat., 157 Ill.Dec.96, 571 N.E.2d 1115 (Ill.App. 2 Dist. 1991)

Key Facts: The Lake County Forest Preserve District had its petition dismissed from trial court condemning property owned by landowners. The District appealed. The trial court case
involves three parcels of land the District wanted to acquire. The landowners and the City of Waukegan agreed to pay court costs and fees to the District for requesting their plea to abandon the taking. The case was at that time dismissed. A few years later, the District brought forth the desire to purchase two of the three previously dismissed parcels. They sent letters of their request to purchase and no response was given, so the District moved to proceed with a petition of condemnation. One of the landowners filed a motion to dismiss based upon the fact that these parcels were once part of the same agreement and was dismissed based on the payment of fees and expenses of the District. He argued it could not be re-filed. The City of Waukegan joined in their objections also due to easements they had on the land in question. The School District also joined in citing the decrease in real estate taxes if the Preserve District took the land. The trial court granted the City’s request of dismissal stating the District did not pay the owners’ costs in the previous condemnation proceeding. The District appealed.

Issues: At issue is whether the trial court erred in allowing the City of Waukegan and the school district to intervene as defendants in the eminent domain proceedings.

Holding: The Appellate Court of Illinois held that the loss of tax dollars that the school district would suffer is not sufficient to give it standing in joining the case.

Reasoning: The allowance for further proceedings in this case is granted due to invalid reasoning for dismissal from the landowner. The non-payment of non-requested fees and expenses are not an allowable charge. The School District was proved to not have a viable complaint solely based on decreased taxes. The City did have a valid point due to their easements across the property, and should be allowed to intervene. The City filed past the court-imposed deadline, but the judge is allowed to use discretion in permitting them to file. The City
however, used the non-payment as reason to dismiss. The previous court did not state that non-payment of non-requested fees were admissible. The fees were not stated as automatic payment.

Disposition: The Appellate Court of Illinois, Second District, reverses and remanded the judgment of the Circuit Court. Further proceedings are allowed.

1992


Key Facts: The School District of Hudson passed a resolution claiming it was necessary to take/obtain certain parcels of land owned by the Joyce’s and Tupper’s. A negotiation for sale was not reached so the School District served the owners with condemnation proceedings and filed the petition with Circuit Court. The Trial Court ruled that the School District was not authorized to make a determination of necessity for the taking of land. It also awarded litigation expenses to the property owners. The School District appealed.

Issues: The main issue is whether the School District has sole power over deciding the necessity of taking of land for its use.

Holding: The Court of Appeals held that the School District was not authorized in the determination of the necessity of the taking of property.

Reasoning: The School District was found not to be a branch of state government nor was a board entitled to decide the necessity of taking or condemnation of land. This determination needed to be required by a judge. The Appeals Court also ruled that the litigation expenses include those on appeal.

Disposition: The Court of Appeals held that the School District did not have the authority to deem a necessity of land. It affirmed the Trial Court’s decision.
Citation: *Garrick Dev v. Hayward School Dist.*, 4 Cal.Rptr.2d 897 (Cal.App. 1 Dist. 1992).

Key Facts: The Hayward Unified School District was authorized to impose a fee for the purpose of a “taking” of up to a maximum of $1.50 per square foot of new residential development. This authorization was enacted in 1986 and took effect 1987. This was due to an increase in enrollment within the district that brought some of the elementary schools to capacity. The School District hired a private consultant to study projected new school facility needs for the anticipated residential and commercial/industrial development. The study showed that the school’s cost was $2.97 per square foot of new residential development over the next 20 years. Two hearings were held in the community and the Board adopted the resolution on September 14, 1987. The developers paid the fees under protest in 1988 and 1989. The developers filed separate suits in superior court seeking writ of mandate. The court consolidated the suits and denied relief. The developers appealed.

Issues: At issue is whether the imposition of fees was reviewable under traditional mandate or administrative mandate and whether the imposition of fees qualifies as a “taking” and violates the Fifth Amendment.

Holding: The Court of Appeals held that the school district’s imposition of school facilities fees on developers was reviewable under traditional mandate and the issuance of fees did not constitute a taking.

Reasoning: The issue of the imposition of fees was correct in being reviewed under traditional mandate. Court of Appeals can only determine if this action was arbitrary, capricious, or entirely lacking in evidence, or whether the district failed to carry out procedures required by law. The “special tax” claim was found not holding also. The fees needed by the school were
$2.97, and the fees charged were $1.50. Since the fees were lower than the required amount, there was no need for a vote. The “taking” claim was also ruled in favor of the school district. The fees were assessed in a manner that had no influence on new students entering the district. Also, the fees imposed did not prove to cause economic decrease in their use of land.

Disposition: The Court of Appeal, First District, Division 2, affirmed the Superior Court County of Alameda’s decision.


Key Facts: The Whitman School was built in 1956 and was operated by the Yonkers Board of Education. At one time Crest Brook Estates owned the property on which the school was built. Crest Brook Estates conveyed a portion of the land to Berkeley Homes, Inc., with restrictive covenants limiting the construction to single-family detached houses with size limitations. A separate parcel of land, which included the future school site, was conveyed to Clarge, Inc. It also had restrictive covenants. The covenants were similar to the others but would not apply if the Board of Education of the City of Yonkers ever acquired the land by gift, purchase, or condemnation. On June 12, 1956, the City Council ordained the acquisition for the land as a school site. In 1988, the school site was selected as a development for a 200 unit public housing project. On July 24, 1990, the City was ordered to condemn any private easement and the City shall be granted title free and clear. The previous owners of the land believed the covenants were violated since a school was no longer on the site and further believed monetary judgment should be given to them based on a breach of covenant.

Issues: At issue is whether the City breached the covenant of restrictions placed on the land prior to taking through eminent domain proceedings.
Holding: The United States District Court held that the restrictive covenant requirements exclusion for the acquiring by the City Board of Education applied to the property and compensable taking did not occur when public housing was built on the property.

Reasoning: The June 12, 1956 date was very important. The Ordinance on that date showed that the City, for use as a school site, acquired the land. It also read that the City will hold the title to the site until the City decides to convey or sell it when it is in the school district’s best interest. The covenant clearly describes the land that was taken and the exemption that accompanied the land.

Disposition: The United States District Court granted the summary judgment in favor of the City of Yonkers.

1993

Citation: State Bd. Of Educ. v. Drury, 437 S.E.2d 290 (Ga. 1993).

Key Facts: The State Board of Education set forth rules and regulations issuing teachers a non-renewable three-year teaching certificate. The teachers had to pass the Teachers’ Performance Assessment Instrument during the three-year period. In 1989, this requirement was lifted and the teachers were re-established in their profession. The teachers then proceeded to seek damages due to the non-passing and non-renewal period. The trial court granted judgment against the Board, but granted in favor of individual Board members. Both appealed.

Issues: At issue is whether a taking occurred when the teachers were denied renewable teaching certificates that were never issued to them; whether the teachers should be awarded damage; and whether the board and individual board members are protected under sovereign immunity.
Holding: The Supreme Court of Georgia held that teachers did not have property interest in the renewable teaching certificates; therefore, a taking did not occur and the teachers were not due compensation for the renewable certificates; the board as a whole and the individual board members were protected under sovereign immunity.

Reasoning: The issue of non-renewable teaching certificates was found not to be a “taking” since they were never issued renewable certificates. They did not have a property interest in the renewable certificates since they were never granted. State Board of Education members are protected as a whole and as a group against any state law liability for damages.

Disposition: The Supreme Court reversed part and amended part of the Superior Court’s decision.

Citation: *Indep. School D. 194 v. Tollefson Dev.*, 506 N.W.2d 346 (Minn.App. 1993).

Key Facts: Tollefson Development, Inc. purchased land from Bernard, Elizabeth, and Mary Schweich by contract for deed. Tollefson then sold the interest in property to Indian Hills of Lakeville, Inc. by contract for deed. Carl Tollefson and Norman Vogelpohl are the equal shareholders for Indian Hills. Bernard and Elizabeth Schweich later acted on an interest in the property under contract for deed for obtaining one superior lot in the development. The School District filed a condemnation proceeding before any developments took place. The District Court approved the condemnation and approved a quick take of transfer of title. Commissioners were then appointed to determine damages. The Schweich’s were deemed to have an interest equal to one lot in the land acquired by the school district. An amount was awarded. Tollefson and Indian Hills appealed the award and the Schweich’s appealed the award for their one lot. They filed notice but did not serve Vogelpohl or the Schweich’s. After the time for the appeal to expire had
taken place, the school district moved to dismiss the appeal stating that not all parties were correctly notified. The Court denied the motion.

Issues: At issue is whether the district court made an error in ruling that a failure to serve all parties either involved or adversely involved would deprive the court of jurisdiction.

Holding: The Court of Appeals of Minnesota held that there was a requirement of notification of all parties of record. The notices should have been mailed.

Reasoning: A requirement of 40-day statutory period of notice is a jurisdictional requirement. Mailing of such notice is also a jurisdictional requirement. Eminent Domain by condemnation notices are required to be mailed to all parties of record having an interest and to parties whose interests may not be adversely affected by the appeal. This was not the case in this appeal. Neither Vogelpohl nor the Schweich’s were served with a notice of appeal.

Disposition: The Court of Appeals of Minnesota reversed the Districts Court decision with denying the motion to dismiss.

1994

Citation: Exxon Corp. v. Bd. Of Ed. Lamar County, Miss., 849 F.Supp. 479 (S.D.Miss. 1994).

Key Facts: The Exxon Corporation had leases of land that were managed by the various school boards. These leases in fact, when established in the 1940s through the 1960s, read that the lease would be good for a primary term of six years as long as production was evident. Exxon wanted the leases to remain valid and in effect, sought monetary relief, and that the school districts could never terminate the lease. Exxon feels that since there has been continuous production of oil and/or gas, the leases should remain in effect.
Issues: At issue is whether the courts had subject matter jurisdiction over action; whether the lease provided to Exxon has a twenty-five year limit; whether declaring those leases invalid would impair Exxon’s contractual rights; and whether the termination of the lease constituted a taking.

Holding: The United States District Court held that the court had subject matter jurisdiction over the action. The court also held the Mississippi Supreme Court’s decision that oil/gas leases are limited to a 25-year limit. The Court also held that declaring the leases invalid did not impair the oil company’s contract rights.

Reasoning: Even though the subject leases stated the six-year limitation for producing oil and/or gas, the 25-year lease limit took precedence. Exxon did not have vested property rights. Taking of the property did not exist due to the time limitation of the lease that was in effect.

Disposition: The United States District Court granted the Motion for Summary Judgment of the Joint Defendants.


Key Facts: The Unified School Districts brought forth the School District Finance and Quality Performance Act based on several alleged violations of the constitutionality of the Act. This Act requires that each school district levy an ad valorem tax upon taxable tangible property. Every June 1, the district’s gives the Kansas State Treasurer the revenues from the local level, which exceeds the district’s state financial aid. These funds are called recapture funds. These funds are deposited in the State School District Finance Fund and given to those districts which do not have adequate funds at the local level to fully fund the district’s financial aid. The Districts believe this in essence is a “taking” of one district’s funds and giving it to another district.
Issues: At issue is whether the taking of funds from one district to educate students in another district is constitutional.

Holding: The Supreme Court of Kansas held taxes from one district to benefit students in another did not constitute a taking and is constitutional.

Reasoning: The trial court reasoned that everyone pays school taxes. One does not have to have children or even be a resident to pay this tax. Living in an organized society has obligations and the school tax to educate children is a benefit to be seen by public improvement with the adequate and equal education of its state. The State of Kansas is seen as one whole district not individual school districts.

Disposition: The Supreme Court of Kansas affirmed and held the District’s Court decision.

Citation: Wells v. Panola County Bd. Of Educ., 645 So.2d 883 (Miss. 1994).

Key Facts: In May 1989, a school bus accident occurred injuring several students. Wells had expenses exceeding $600,000. The Accident Contingent Fund statues limited recovery for injuries caused by school bus injuries to $10,000 per person and $50,000 aggregate. Wells filed a motion against the Panola County School Board for five million in compensatory damages and five million in punitive damages. He also wanted to go before Circuit Court to have a jury decide the case. His case was dismissed. He appealed to the Supreme Court challenging the constitutional changes to the Mississippi Accident Contingency Fund’s $10,000 limitation.

Issues: At issue is whether the $10,000 limit violates either the state or federal constitution.

Holding: The Supreme Court of Mississippi held that the limit placed on injuries arising from school bus accidents did not violate either the state or federal constitution.
Reasoning: The Accident Contingent Fund was established to keep an open ended award from being awarded. This allows for effective risk management and also allows some relief for those injured. School Districts cannot afford limitless recovery by claimants. This is done to conserve the school’s resources. The notion that a taking had occurred by not allowing Wells claim be taken before a jury is not adequate to stand.

Disposition: The Supreme Court of Mississippi upheld and affirmed the District Court’s decision.

Citation: New Haven Unified School D v. Taco Bell, 30 Cal.Rptr.2d 469 (Cal.App. 1 Dist. 1994).

Key Facts: The New Haven Unified School District filed a complaint for eminent domain against the owner of the shopping center, Howard Van Orden, Jr., and each of the tenants, including Taco Bell. The School District wanted to expand a high school on the property. Taco Bell immediately began searching for a site to re-locate. The site was in a prime location, but the lease would be higher than at the previous site. Taco Bell sought compensation for the trade fixtures and loss of goodwill. The Trial court awarded a separate amount for trade fixtures, the loss of goodwill, interest, and litigation expenses. The School Board appealed.

Issues: At issue is whether Taco Bell is entitled to “goodwill” as part of the compensation awarded during eminent domain proceedings; whether interest should be given for time prior to the school district taking possession of property; and whether attorney fees should be given to Taco Bell.

Holding: The Court of Appeal held that the trial court failed to deduct the amount of leasehold bonus value from the award value to represent loss of goodwill. Taco Bell was not
entitled to litigation expenses. Interest had to be changed due to the date the school district took
possession, not the date Taco Bell left before condemnation was granted.

Reasoning: With Taco Bell selling, moving, or discarding the fixtures, the award was to be
based on subtracting these factors from the true loss. The trial court did not differentiate
between lease bonus value and loss of goodwill. These two should be taken into consideration
before an award is given. Taco Bell found a suitable location prior to transfer of property and
decided to move prior to being required. Interest is only compiled from the time of change in
property possession.

Disposition: The Court of Appeal, First District, Division 1, reversed the trial court’s
decision.


Key Facts: In 1991, James Hamilton Construction Company wanted to purchase a parcel
of land containing 28 acres. They set forth an agreement with the owners on a price containing
an escrow paragraph with how payment was to be issued. In 1992, the Gadsden Independent
School District, No. 16, filed a condemnation suit on 13 of the 28 acres the construction
company had agreed to purchase. The construction company took this to court and demanded
compensation for the taking of the land. The School District appealed.

Issues: At issue is whether the tentative buyer of the property is due compensation for the
condemnation, through eminent domain proceedings, of property for the purpose of building a
school.

Holding: The Court of Appeals held that the construction company should not be granted
compensation due to a purchase agreement. The purchase agreement did not give legal interest in
the property.
Reasoning: The real estate purchase agreement from the construction company to the land owners included a due diligence period of 40 days and terms of depositing escrow funds. The construction company failed to make the first payment amount as directed in the contract due to an issue with the sewer services. There was a verbal agreement to postpone this payment until this issue corrected. This in fact deems the purchaser in default of the purchase agreement at the time of the land’s taking. When land is condemned, the person who owns or occupies the land at the date of the taking or has legal interest has the claim for damages for compensation purposes.

Disposition: The Court of Appeals of New Mexico reversed the decision that the James Hamilton Construction Company was entitled to compensation.


Key Facts: The Chicago School Reform Act eliminated tenure for Chicago public school principals. The principals argued that the United States and Illinois Constitution were violated because not renewing the principal’s contract also deprived the teaching tenure they earned as teachers.

Issues: At issue is whether the loss tenure for principals constitutes a taking.

Holding: The United States District Court held that the abolishment of and tenure does not constitute a taking nor does it impair vested contract rights.

Reasoning: A claim of taking and a claim of deprivation cannot be seen as the same. The principals argue that their teacher tenure was taken and their future employment guarantee not granted was a claim of deprivation. There has to be a vested right and the principals could not file a legitimate claim of entitlement.
Disposition: The United States District Court, N.D. Illinois, Eastern Division held that the Chicago School Reform Act did not impair vested contract rights by elimination of tenure of Chicago school principals.

1995

Citation: Board of Educ. v. Seagle, 463 S.E.2d 277 (N.C.App. 1995).

Key Facts: The Board of Education of the Hickory Administrative School Unit brought forth legal proceedings to condemn a portion of land for expanding Oakwood Public Elementary School. The Defendant’s argued the taking based on the school not obtaining a permit from the United States Army Corp of Engineers for disturbing water under the Clean Water Act. The Superior Court moved for summary judgment for the school district except for just compensation. The landowners appealed.

Issues: At issue is whether the property owners have raised a genuine issue of material fact as to whether the land to be taken through eminent domain constitutes a “suitable site.”

Holding: The Court of Appeals of North Carolina held that the property owners evidence concerning whether the school district must secure a permit before beginning work did not raise material issues of fact as to the property’s status as a suitable site.

Reasoning: The immediate appeal of granting the board of education summary judgment, except just compensation, was valid. The issue of whether the permit needed to be in hand before deciding that the land was a valid and a suitable site is the main question. Both sides produced experts in the opinion. This in itself did not raise a material fact issue. This is still a matter of the board’s discretion.

Disposition: The Court of Appeals of North Carolina affirmed the Superior Court of Catawba County’s decision in favor of the Board of Education.
Citation: *Dare County Bd. Of Educ. v. Sakaria*, 456 S.E.2d 842 (N.C.App. 1995).

Key Facts: The Cape Hatteras School, part of the Dare County Board of Education System, needed to build additional athletic facilities to meet state and southern accreditation requirements. The area that was deemed to be the most suitable backed up to wetlands. The wetlands brought in the Army Corps of Engineers to help determine the site choice. The first and second plan was rejected. There needed to be either an on-site or off-site replacement of the wetlands. The Corps informed the Board that an on-site replacement was preferred. Two of the lots to be acquired would now have to be claimed as wetlands to either enhance or replace what would be lost during the building of the facilities. Superior Court granted this plan and the landowners appealed.

Issues: At issue is whether the school district can condemn land for use as wetlands mitigation, although, the actual building or facility will not sit on the land that will be condemned through eminent domain.

Holding: The Court of Appeals of North Carolina held that using property for wetlands mitigation was “necessary for construction of a school facility; therefore, the school district was statutorily authorized to condemn the property.

Reasoning: The school still needed to condemn the property to build the athletic facility. The fact that the wetland enhancement/creation needed to be involved so the Corps would grant the building was put into play. With the Corps suggesting that on-site would take preference, the Board did not seek off-site places. This was not deemed as arbitrary use of discretion.

Disposition: The Court of Appeals of North Carolina affirms the Superior Court’s Decision.
Citation: Bradley v. Eagle-Union Comm. Sch. Corp., 647 N.E.2d 672 (Ind.App. 5 Dist. 1995).

Key Facts: Eagle-Union approved a plan to build a new high school and a committee was formed to search for an adequate site. A resolution was adopted and the superintendent was granted the authority to obtain two appraisals and the authority to purchase the property. The property belonged to Lester and Alyce Bradley. No offer was made and the Bradley’s filed a complaint seeking to keep Eagle-Union from condemning their property. No condemnation proceedings were initiated by Eagle-Union. The trial court granted Eagle-Unions motion to dismiss. The Bradley’s filed an amended claim seeking damages for injuries sustained by the threatened condemnation and for an injunction. Eagle-Union filed to do soil testing and the Bradley’s filed an objection. Eagle-Union withdrew its motion to do the testing before the trial court ruled. The Bradley’s then filed to recover attorney’s fees and expenses.

Issues: At issue is whether the school district started the eminent domain process, which would entitle the property owner to recovery of attorney fees and expenses incurred and whether the trial court should have dismissed the tort claim without prejudice.

Holding: The Court of Appeals of Indiana held that the Bradley’s were not entitled to attorney fees because there was never an act of condemnation filed. The Court of Appeals also reversed the Superior Court’s decision in going forth with the Bradley’s tort claim.

Reasoning: There was never a condemnation proceeding filed toward the Bradley’s property. Initiation of soil sampling, even though this was withdrawn, does not count as initial condemnation proceedings. If a case occurs where one files a claim with the school district and the court at the same time and did not wait for denial of claim or expiration of a 90-day statutory period, the Tort Claims Act does not stand.
Disposition: The Court of Appeals of Indiana, Fifth District affirmed in part and reversed in part.


Key Facts: The Harrison County Board of Education filed a petition to condemn 37.7-acres. They, in accordance with the statutory requirements of West Virginia, deposited a sum with the Clerk of the Harrison County Circuit Court. A hearing before five commissioners was held to establish compensation for the property. The commissioners agreed upon an amount, the owners filed exceptions, and the case was sent to a jury trial. The jury heard from two appraisers regarding the fair market value of the property in question. The jury awarded an amount and the landowners appealed and wanted a new trial granted. This motion was denied. The landowners appealed.

Issues: At issue is whether the evidence presented as “comparable sales” were voluntary transactions; whether the lower court abused its discretion prohibiting the testimony of a witness with an “oral” offer; and whether the lower court erred in refusing to permit evidence of the Board’s payment into court.

Holding: The Supreme Court of Appeals held that the property owners did not establish that the comparable sales were voluntary transaction and that there was no written evidence that the testimony of the witness was no more than an oral offer, which is not to be accepted in the trial. Furthermore, the court held that statutory requirements prohibit the discussion of the Board’s payment into trial proceedings.

Reasoning: Without showing the comparables used to increase the award were voluntary; they were not allowed to be presented. The use of an oral offer as evidence was also ruled out.
due to contracts or offers must be placed in writing to be valid. Provision of the West Virginia statute strictly prohibit the introduction of the Board’s payment into evidence.

Disposition: The Supreme Court of Appeals of West Virginia affirmed the Circuit Court, Harrison County’s, decision in favor of the Harrison County Board of Education.


Key Facts: The landowners claim to have crops and farmlands that have been damaged by flooding caused by the site and construction of a public high school. The school is across the road from their property. The landowners believe the Board of Education is liable to compensate them for damage and loss to their crops. They also brought suit against the architect, general contractor, and the city. Their claims were dismissed based on statute of limitations, statute of repose, or the notice provisions of the Tort Claims Act. The landowners appealed.

Issues: At issue is whether the property owners filed notices of inverse condemnation in a timely manner.

Holding: The Superior Court of New Jersey, Appellate Division held that notices were not filed in a timely manner and remanded to the lower court for further proceedings.

Reasoning: The appeal court determined the tort claims against the board were barred due to time restraints, except for the damages that occurred within 90-days prior to serving notice to the board. The tort claims against the city were also time barred, except for the damage between the two years before filing the complaint and the date the conditions causing the flooding were corrected. The court also determined a new tort claim occurred with each new occurrence of floodwater. This could cause negligence claims against the architect and the contractor. A 10-year statutory period is in effect for claims against people performing the design, planning, supervision, and construction. This starts on the date of full, completion of the property.
Disposition: The Superior Court of New Jersey, Appellate Division remanded the Superior Court, Law Division, Cumberland County’s decision.

1996


Key Facts: The Bryan County Board of Education filed a petition in the Superior Court of Bryan County for condemnation of a 1.99-acre tract to obtain road right-of-way to and from an elementary school. The land in question was on a landfill owned by Charles L. Stafford and the heirs of Andrew and Amelia Thomas. An award was given and Stafford filed exceptions to the award and an appeal. Fifteen days was given to file an amended claim. The Superior Court made the award and four days later Stafford filed again. A trial on the valuation was returned with a verdict for the landowners. Stafford appealed.

Issues: At issue is whether the land owner has the right to file exceptions once the award has been amended.

Holding: The Court of Appeals of Georgia held that the trial court could enter judgment before time passed for filing exceptions to the amended award.

Reasoning: It is clear that the right to file exceptions under the statue does not extend to exceptions taken to an amended award. It is also clear that a break in chain of ownership diminishes the property’s value.

Disposition: The Court of Appeals of Georgia affirms The Superior Court, Bryan County, decision.

Citation: *Los Angeles U.S.D v. Trump Wilshire*, 50 Cal.Rptr.2d 229 (Cal.App. 2 Dist. 1996).
Key Facts: In 1990 the Los Angeles Unified School District petitioned a condemnation of 17.11 acres of a 23.48-acre parcel. Trump Wilshire became the owner of the property in 1989. He planned on building a world-class hotel and a mixed-use development. When the condemnation was announced Wilshire was only in the beginning stages of planning and ceased action. The District deposited an amount of probable compensation. Wilshire, against his lenders wishes, withdrew this amount to pay off the loan for the property. The lender believed if the District abandoned this acquiring, Wilshire would have to re-compensate the District. The parties filed in court a stipulation stating that if the District did abandon the acquiring, the District would receive the money back minus any costs that Wilshire is entitled to. The main reason for doing this was because Wilshire announced he would seek $200 million for the property, which is more than the District was prepared to pay. In 1993, the District filed for abandonment. Wilshire appealed the Superior Court’s granting of abandonment and lack of compensation for dispossession.

Issues: At issue is whether the landowner was entitled to damages due to dispossession of property.

Holding: The Court of Appeal, Second District, Division 4, held that the setting aside of abandonment and damages based on the dispossession should not be granted.

Reasoning: With notice of Eminent Domain proceedings, the owner of property is advised not to do extensive renovations or improvements until the action is resolved. The district, by law, can at any time, abandon proceedings before 35 after final judgment. Wilshire withdrew the deposit before final judgment. The District had found another cleared site for several million dollars less than Wilshire’s property. With his announcing the $200 million amount, the District
had no choice but to abandon. Due to this, Wilshire was correctly informed of his need to repay the District the deposit amount. The District can also abandon the project.

Disposition: The Court of Appeal, Second District, Division 4, affirms the Superior Courts decision.

Citation: *Clayton v. School Bd. Of Volusia County*, 667 So.2d 942 (Fla.App. 5 Dist. 1996).

Key Facts: The School Board of Volusia County sought to obtain property by eminent domain. A petition was filed, but during the proceedings a new parcel of land was selected. The School Board then decided to negotiate the price instead of going to the jury to determine the amount to compensate for the taking. The purchase price for the new parcel was over $500,000 more than the appraisal value. The Board voted to purchase and a bare majority approved the act. James B. Clayton thought that the Board had no authority to do this action based on a Florida Statute (235.054(1)(b). This statute states that if a purchase price exceeds $500,000, the Board should acquire two appraisals. If the agreed purchase price exceeds the average appraised site, an approval by extraordinary vote is required. Clayton is a taxpayer and feels this is a misuse of public funds. Clayton also believes the change of land to be taken and negotiations voids the eminent domain proceedings. The Circuit Court, Volusia County, suppressed Clayton’s suit for mandamus. Clayton appealed.

Issues: At issue is whether the school district can settle an eminent domain action by paying more than the appraised value, without extraordinary vote.

Holding: The District Court of Appeal of Florida, Fifth District, held that if eminent domain proceedings are brought forth the compensation amount would be decided by a jury vote.
If negotiations are made without going before a jury vote, this becomes a negotiated purchase and not an eminent domain proceeding.

Reasoning: Florida statute requires that property valued over $500,000, there should be at least two appraisals. If the agreed purchase price exceeds the appraised value the board is required to approve the purchase by an extraordinary vote.

Disposition: The District Court of Appeal of Florida, Fifth District, reversed and remanded, and questions certified.

Citation: Kramer v. Van Dyke Public Schools, 918 F.Supp. 1100 (E.D.Mich. 1996).

Key Facts: Tenured teacher, Lynette Kramer, took a leave of absence during the 1976-1977 school year. She was restored to employment for the 1979-1980 school year. She filed an appeal with the State Tenure Commission seeking recovery of salary lost during the 1977-1978 and 1978-1979 school years. The Commission dismissed her claim and the Michigan Court of Appeals remanded the case back to the State Tenure Commission. Kramer entered new evidence that she should have been re-instated over two other teachers during the two years due to her seniority. The Commission did find that during the 1977-1978 year a reduction was in force making her claim invalid. However, the 1978-1979 school year was found that Kramer should have been re-instated due to her seniority and back pay was awarded. Kramer then filed a civil action stating a taking had occurred and her due process was deprived. She believed the adoption of the policy enabling reduction for recalling teachers on leave violated her tenure rights.

Issues: At issue is whether Kramer was denied due process rights when she was not reemployed for two years following a year-long leave of absence and whether the refusal to rehire constitutes a taking.
Holding: The United States District Court, E.D. Michigan, Southern Division, held that the statute of limitations had passed and her case does not constitute a valid taking.

Reasoning: Kramer failed to show that she was due her salary and interest for the two school years missed after her leave of absence. One of the years a reduction was in force. The other year in question she was found to have been wrongly denied re-hiring and was awarded salary for that year. A three-year statute was in place and Kramer failed to file during that time frame.

Disposition: The United States District Court, E.D. Michigan, Southern Division, granted the motion of the Van Dyke Public Schools for judgment to dismiss.

Citation: Loyola Marymount University v. LAUSD, 53 Cal.Rptr.2d 424 (Cal.App. 2 Dist. 1996).

Key Facts: Loyola Marymount University used its power of eminent domain to acquire vacant land adjacent to its existing campus. Loyola applied for a permit to construct a new building to house a postgraduate business school and a parking structure. It plans to move its existing business school to the new building. Loyola claims there will not be an increase in students or faculty. The permit would not be issued unless Loyola paid the school development fees. Government Code authorized these fees and Loyola paid them under protest. They then filed a writ of mandamus. The Trial Court granted the petition. The District appealed.

Issues: At issue is whether Loyola being non-profit, higher education, Catholic school, is exempt from paying the school development fees on new construction.

Holding: The Court of Appeals held that property tax exemption found in state constitution does not extend to school development fees. School development fees did not have attributes of special assessment. Development fees have no application as a taking clause.
Reasoning: The claim by the school that there would be no increase in students or faculty does not keep the construction from not being commercial or industrial. Property tax exemption does not extend to school development fees.

Disposition: The Court of Appeal, Second District, Division 2, reversed the decision.

Citation: St. Charles Parish School Bd. v. P & L, 674 So.2d 218 (La. 1996).

Key Facts: St. Charles Parish School Board purchased land from P & L Investment Corporation to build a high school. The St. Charles Parish Police jury exchanged a narrow strip of land owned by P & L for a dedicated roadway. This was named Tiger Drive and was maintained by the School District. The only request by P & L was to leave the gate unlocked so access to their property at the back of the school would be allowed. P & L fully intended to dedicate this small tract of land to the School District but never did. Several years later, P & L claimed ownership to the land to place water and sewer lines down the middle. The School District filed suit declaring that Tiger Drive was a public Street. They had used this area for years and maintained the property. They also knew that P & L had planned to dedicate this land. The trial judge declared this land to be P & L’s and no dedication was held to make it the School Districts. The Court of Appeals also ruled in favor of P & L. The Supreme Court granted the School District’s application for their case to be heard.

Issues: At issue is whether Tiger Drive, owned by P & L, was subject to public use based on how long it was used as a public road and the maintenance performed by the school district.

Holding: The Supreme Court of Louisiana held that the road was maintained by the school for over three years with P & L’s knowledge; therefore, it is now a private street dedicated to public use.
Reasoning: The main reason for the reversal of the trial and appeal court’s decision was based on the fact that P & L did not protest the use or the maintenance for way over the required three-year period. P & L did not do maintenance or contribute financially on the roadway.

Disposition: The Supreme Court reversed the appeal. All costs were assessed against P & L Investment Corp.

1998

Citation: Dollar v. Dalton Public Schools, 505 S.E.2d 789 (Ga.App. 1998).

Key Facts: Anna Dollar’s child fell from playground equipment and broke her arm while attending an after-school childcare program. Dollar sued the school district and the childcare workers. The District moved for summary judgment due to sovereign immunity. The trial court granted in favor of the District and Dollar appealed to the Supreme Court of Georgia. Dollar thought that sovereign immunity deprived her of her due compensation and denied her of due process. She felt this was a taking of her rights.

Issues: At issue is whether the school district is financially liable for the student injury and whether the district and child care workers were entitled to sovereign immunity.

Holding: The Court of Appeals of Georgia held that school districts and employees are protected through sovereign immunity against suits. After-school childcare workers are considered part of the school functions and are covered under sovereign immunity. Sovereign Immunity is not unconstitutional.

Reasoning: Schools are protected by sovereign immunity. After-school childcare falls under the District’s protection.

Disposition: The Court of Appeals affirmed the Superior Court’s decision.
Citation: Los Angeles School Dist. v. Wilshire Center, 108 Cal.Rptr.2d 691 (Cal.App. 2 Dist. 2001).

Key Facts: In 1990, the District filed a complaint in condemnation to acquire a parcel of property on which the Ambassador Hotel resided. The Hotel had been closed for a year. The District sought to obtain 17.11 of the 23.48 acres. Trump Wilshire, the owner at the time, stated that his intentions were to transform the property into a world class hotel and construct a mixed use development. The District deposited an amount into court as a probable compensation. Wilshire applied to withdraw the deposit for the benefit of his lender. The District then filed a notice of abandonment. Wilshire filed to set aside abandonment and for damages based on dispossession. The Superior Court denied the motions and Wilshire appealed. The Court of Appeals held that the property owner was not entitled to set aside abandonment of the condemnation proceedings. They also held that the property owner was not entitled to damages for dispossession. The District obtained a writ of execution to enforce the final judgment of denying Wilshire’s petition for review and awarding costs of appeal. On August 18, 1998, Wilshire filed a motion to quash and to recall the writ of execution and to stay enforcement proceedings. On December 21, 1998 the trial court denied the motion to quash. On February 22, 1998, Wilshire filed the appeal.

Issues: At issue is whether the February 17, 1994 judgment is final and enforceable. This judgment was entered in favor of the District for the full amount of the deposit.

Holding: The Court of Appeals held that the statutory award to Wilshire for costs of appeal did not affect the finality of judgment in the underlying proceeding, for payment of eminent domain statute providing for payment of excess amount withdrawn from condemnation
deposit as determined. The District was entitled to interest from the date of entry of judgment on
the net principal amount due.

Reasoning: The judgment entered on February 17, 1994 was affirmed by appeal court in
1996. Wilshire’s petition to the California Supreme Court was denied in 1996. At this time the
appeal was final and the jurisdiction of the case was transferred back to the trial court. Judgment
was finally deemed final and entered as originally determined.

Disposition: The Court of Appeal, Second District, Division 4 affirmed.


Key Facts: Elizabeth Board of Education wanted to acquire land from the New Jersey
Transit Corporation to build educational buildings to help with overcrowding. The Transit
informed the Board that it had been in negotiations with the City of Elizabeth. The City wanted
to purchase the land for redevelopments. The Board contacted the City and was informed it was
scheduled for the development. The Board contacted the Transit again and was told they would
not negotiate with the Board. The Board then filed a condemnation petition for the property. The
Board was awarded immediate possession, title to the property, and an amount to be paid to The
Transit was determined, filed properly and timely and the order was reversed. No title was to be
given to the Board and all actions should be nulled and voided. The Transit was then awarded
court costs and the City was allowed to intervene. The Board filed an appeal.

Issues: At issue is whether the school district had the authority to take property, through
eminent domain proceedings, from the New Jersey Transit Corporation.

Holding: The Superior Court of New Jersey, Appellate Division held that the Board did
not have the power to condemn State land and that attorney fees be awarded to the Transit.
Reasoning: School boards can negotiate to purchase State land, but it cannot execute its power to acquire it through eminent domain. Awarding of attorney fees are mandated by the State.

Disposition: The Superior Court of New Jersey, Appellate Division, affirmed the Superior Court of New Jersey, Law Divisions, decision.

Citation: *Westchester Creek v. N.Y.C. School Const.*, 730 N.Y.S.2d 95 (A.D. 1 Dept. 2001).

Key Facts: New York City School Construction Authority sought to acquire a lot by power of eminent domain to construct an elementary school. Westchester Creek Corporation held the lease at this lot. The City of New York owned the lot. The Corporation contends that the use of this lot was already deemed for urban renewal projects and cannot be taken by eminent domain.

Issues: At issue is whether the New York School Construction Authority had statutory authority to condemn a leasehold interest in property owned by the City of New York.

Holding: The Court of Appeals of New York held that the New York Construction Authority did have the authority to condemn a leasehold agreement owned by the City of New York.

Reasoning: The court reasoned that although the Legislature did state urban redevelopment was a superior public use, there can be no higher priority than creating an environment that promotes the education of children. The reason for the taking of the lot was to relieve severe overcrowding in two districts by building a school on the lot.

Disposition: The Court of Appeals of New York affirmed the decision of the lower court.
Citation: *Piche v. Independent School Dist. No. 621*, 634 N.W.2d 193 (Minn.App. 2001).

Key Facts: The Independent School District used eminent domain to acquire a parcel of land owned by the Piche’s. The Piche’s opposed the condemnation and the District Court granted the taking, and the Piche’s were awarded compensation. The School District was granted a fee title. The Piche’s then sold a second parcel of land several years later under the threat of condemnation. They provided the school with a warranty deed stating that title was conveyed. Both parcels of land remained undeveloped and the Piche’s tried several times to recover the land. A facilities task force was formed by the school and it was decided that no new buildings were to be built and the land acquired/bought from the Piche’s was to be sold. The Piche’s went before District Court for a writ of mandamus ordering the school to release the land back to them because the District had abandoned the site. Three days before the hearing, the school district adopted a resolution naming other potential uses for the land. The District Court denied the first parcel of land because it was acquired by eminent domain. A fee simple defeasible title instead of a fee simple absolute title was said to be in place because the School never fully planned to build on the land acquired. The Marketable Title barred the claim for reversionary interest on this parcel due to more than 40 years had passed. They granted the petition for the second parcel the Piche’s had sold to the District. The Court ruled that the District essentially “took” this parcel also by threat of condemnation. Both appealed.

Issues: At issue is whether the land taken through the process of eminent domain and the land that was purchased through the threat of eminent domain should resort back to the original owner when sold.

Holding: The Court of Appeals of Minnesota held that the school held fee simple absolute title; the Marketable Title Act blocked the claim for reversionary interest; using this Act
did not violate constitutional rights; and selling the land under threat of condemnation does not warrant changing the title in which it was conveyed.

Reasoning: Upon the taking of the first parcel of land from the Piche’s, an order was written that stated the land should be fee title absolute. The statute in place at the time gave schools the authority to sell of exchange the sites if the need arises. The Marketable Title Act also bars a claim for reversion on either properties.

Disposition: The Court of Appeals of Minnesota affirmed in part and reversed in part.

2002

Citation: Foster v. Denton Independent School Dist., 73 S.W.3d 454 (Tex.App.-Fort Worth 2002).

Key Facts: Sheri Foster worked at an elementary school within the Denton Independent School District. A new HVAC was installed and Foster began having respiratory issues. She noticed her walls were covered with a substance that was found to be mold spores. She and other teachers requested the air to be tested. Mold spores were found to be present. Under the advice of her doctor, Foster took sick leave and requested temporary disability. She eventually filed a workers’ compensation claim. Foster sued Denton and Honeywell for intentional nuisance and intentional pollution. The trial court favored Denton and Honeywell. Foster appealed.

Issues: At issue is whether the teacher’s claim of intentional nuisance and intentional pollution is considered a taking under the state constitution and whether the school district and the HVAC installer were protected under sovereign immunity.

Holding: The Court of Appeals of Texas held that the nuisance claim did not fall within the exception of sovereign immunity or was not in the nature of the claim under takings
provision of State Constitution, and that both the school district and the HVAC installer were protected under the umbrella of sovereign immunity.

Reasoning: The School District is a government entity and has sovereign immunity against suits and claims. Honeywell upon installing HVAC equipment is not required to ensure the air quality.

Disposition: The Court of Appeals of Texas, Fort Worth, affirmed the Trial Courts Decision.

Citation: Foskey v. Vidalia City School, 574 S.E.2d 367 (Ga.App. 2002).

Key Facts: In 1998 a Vidalia City School bus driver caused Foskey to have an accident. Foskey brought suit against the bus driver in his county of residence and the Vidalia City School Board. The School Board sought to dismiss based on immunity and the wrongly named employer. Foskey amended her complaint. She thought that naming Reed and the school board would authorize the suit of the school district. The Mayor was also served. The Vidalia School District was never directly named or properly served. The Montgomery County Superior Court dismissed the bus driver and transferred the case against the school district to Toombs County Superior Court. The Superior Court of Toombs County dismissed the case based on the fact that the school district was not properly named in the suit or served. Foskey appealed.

Issues: At issue is whether the bus driver and the school district are protected under sovereign immunity and whether the district can be sued for inverse condemnation.

Holding: The Court of Appeals of Georgia held the school district was never properly served in the case and cannot be a party to the suit. As an employee of the district, the bus driver is protected by sovereign immunity. This does not constitute a taking; therefore, inverse condemnation does not apply.
Reasoning: With the incorrect parties being brought to suit and Foskey only amending the names, the actual party was never named or served properly. An amendment does not bring a new cause of action or introduce a new party. Eminent domain falls into play here because the school board has the power to claim condemnation proceedings and can be sued in direct and inverse condemnation actions. It is a separate legal entity from the school district. However, the school board was not the proper case to be involved in this case. The school district was, but was never served.

Disposition: The Court of Appeals of Georgia affirms the Toombs County Superior Courts decision.

2003


Key Facts: The school district needed to build a new high school and selected a site. The board voted to initiate condemnation proceedings to acquire a site, payment of attorney’s fees for the action and filed the action in Pima Superior Court to obtain the site. A coalition was formed and filed a suit against the district. Their concerns were: violation of the open meetings law, violation of public vote, SFB funds could not be used to pay for damages in condemnation actions, and the SFB’s approval of the district’s plans had expired. The Superior Court judge ruled in favor of the Coalition on all four concerns and denied the District’s call for reconsideration. The District appealed.

Issues: At issue is whether the school board violated open meetings law by selecting a site while in executive session and whether School Facilities Board funds could be used to pay severance damages in condemnation actions.
Holding: The Court of Appeals of Arizona held that the District violated open meeting laws, but they ratified the situation by holding a public meeting and taking a single vote. The Court of Appeals also held that SFB funds could be used to pay for damages in condemnation proceedings. They vacated the judgment and remanded the case for further proceedings.

Reasoning: The District did violate open meeting laws by discussing the new school site. The District corrected this issue by holding a public meeting and by taking a single vote. SFB funds are designed to help with the construction of school sites. Eminent Domain/condemnation proceedings can be justified as a reason to use the SFB funds to help pay for the damages acquired with the process.

Disposition: The Court of Appeals of Arizona, Division 2, Department B granted relief to the District.

Citation: Pickler v. Parr, 138 S.W.3d 210 (Tenn.Ct.App. 2003).

Key Facts: David Pickler acting on behalf of the Shelby County Board of Education submitted a condemnation notice of property to construct a new elementary school. An appraisal was filed along with a bond posted representing double the amount of the appraisal for the property. The owners denied the action and filed to dismiss the condemnation proceedings. The Trial Court entered an order denying the owners’ dismissal motion and granted the taking of the land effective August 19, 2002. The owner appealed.

Issues: At issue is whether the trial court erred in granting a taking by the Board of the owners’ property effective August 19, 2002, when the Board had not complied as of the date with the appraisal and bond requirements.
Holding: The Court of Appeals of Tennessee held that the condemnation proceedings were not found to be in violation, although a school plan, design, etc. were not in the immediate future. The appeal court also complied with regulations concerning valuations and bonds.

Reasoning: An immediate plan of action for constructing a school does not have to be done before a condemnation/taking occurs. The claim from the owner of this was denied and found that the district was not arbitrary or capricious with their action. The district had at the time of their petition, filed an appraisal and posted bond twice the appraisal amount. The order of the court to complete a second appraisal and post any additional bond was also correct. The date of the taking is not set after the bond and appraisal are set. The order of the court was only to reevaluate if any changes needed to be made for possible additional bond requirements.

Disposition: The Court of Appeals of Tennessee, at Jackson, affirmed the Trial Courts decision.

2004

Citation: Dallas Indep. School Dist. v. Calvary Hill Cem., 318 F.Supp.2d 429 (N.D.Tex 2004).

Key Facts: Dallas Independent School District sought to condemn a parcel of land to construct a public school. The parcel involved land owned by Calvary Hill Cemetery, Tomas Reyes Trucking, Inc., the County of Dallas, and the City of Dallas. The amount determined for just compensation was also set. The cemetery filed the same day with objections to the award and counterclaims against the District, the City, and the Council Members. The cemetery alleges that it had already previously filed with the City to allow them to use the property for a cemetery. The cemetery also believes the City and the District delayed their consideration for a special use permit. If the permit had been granted in a timely manner, the District would have been stopped
from proceedings to condemn the property. The City and the District changed courts, believing the United States District Court has the removal and supplemental jurisdiction. The cemetery owners believe the case should be sent back to state court for lack of jurisdiction and that its federal counterclaims are not ripe for the District Court’s decision.

Issues: At issue is whether the case should be heard in the federal courts or remanded back to the state courts.

Holding: The District Court held that the cemetery’s counterclaims were not ripe for a federal judicial review. The case was remanded to State Court.

Reasoning: There was no motion to overrule the cemetery’s objection to neither award compensation nor a denial of just compensation based on the cemetery’s counterclaim. A violation does not occur until a denial has been granted. This instructs that the cemetery must use available state proceedings to seek compensation before bringing the case to a federal court. The District Court lacks jurisdiction over the case. The District Court remanded the case to the Dallas County Court.

Disposition: The United States District Court remanded to the State Court.

Citation: Marple TP v. Marple Newtown School Dist., 856 A.2d 225 (Pa.Cmwlth 2004).

Key Facts: The Marple Township filed a declaration of taking against property of the Marple Newtown School District. This property was not being used as an educational facility, but as a storage facility. The Township wanted the land to construct an administrative center, a community center, a police department, district justice facilities, a public park, and recreational areas. The School District filed preliminary objections. A hearing was held and the School withdrew some of its objections. The objections that remained were that the Township lacks the
power to condemn and the land is being used as a public land already. The Trial Court overruled the District’s objections. The District then appealed.

Issues: At issue is whether the school using the land and facility as a storage facility constitutes an educational purpose.

Holding: The Commonwealth Court of Pennsylvania held that buildings on the school district’s property used as storage facilities to house the district’s maintenance equipment are not considered “for educational purposes; therefore, the township was authorized to take school districts property for purpose of erecting public buildings.

Reasoning: The land the Township was condemning and taking was no longer being used as an educational facility. This allowed the Township to take the property without any township violations. The claim from the District that the land was used for charitable events and educational purposes, which made it a protected parcel from taking, was also wrong. The land itself had to be used consistently or as a charitable institution for it to be protected against the taking.

Disposition: The Commonwealth Court of Pennsylvania affirmed the Commonwealth Court’s decision.

2005

Citation: Herron v. Mayor and City Council of Annapolis, Md., 388 F.Supp.2d 565 (D.Md. 2005).

Key Facts: An ordinance was passed which permits the County to collect costs of improvements and facilities needed. The fees were to be assessed on all new residential developments. These fees were to be paid before a building permit or zoning certificate was to be issued. This ordinance allowed the City to collect for the county school’s benefit. Janet Herron
brought suit against the Mayor and City Council of Annapolis for deprivation of property due to violation of the Fifth Amendment. Herron bought her property from M & K, LLC. M & K, LLC are the ones that paid the impact fees. Herron acknowledges that she did not directly pay the fee, but that the fee was reflected in the purchase price of her home. She seeks to bring class certification with her being the representative of all who had been impacted by the development fees. The District Court ordered the case closed.

Issues: At issue is whether Herron was directly deprived of property by the fees assessed on her property that she believes were paid by the builder. Herron has the burden of proving the fee was included in the purchase price of her property. The claim of a taking will also need to be proved.

Holding: The United States District Court held that Herron lacked the right to challenge the city’s fee as a taking. The collection was deemed to not be a taking. Herron was also ineligible to represent the class as a whole.

Reasoning: Herron did not establish that she either paid the impact fees directly or indirectly. This also determined that she was not a member of a proposed class that was affected by the fees.

Disposition: The United States District Court, D. Maryland, Northern Division, closed the case. The School District’s motion to dismiss was granted.


Key Facts: In July 2001, the Council adopted a resolution that urges all governmental agencies within the city to submit plans for any public facility being built to insure they are done according to the City’s Master Plan. They are to submit plans to the Planning and Zoning
Commission of the City of Springfield. In 2002, the Springfield School Board started negotiating for the purchase of property to expand a parking lot that would serve a high school and administrative offices. The School Board received a letter stating this purchase would need approval by the Commission. The School Board filed a petition stating the Commission has no authority to file an enforcement action for failure to comply with submitting plans. The County filed a motion to intervene and Trial Court was set. All parties filed for summary judgment. The Trial Court granted summary judgment in favor of the School Board and denied the City’s motion to amend judgment. City filed an appeal.

Issues: At issue is whether the school district should submit plans to close or relocate public facilities to the zoning and planning commission and whether failure to submit gives the commission power to intervene on eminent domain proceedings.

Holding: The Court of Appeals held that the School Board was subject to the resolution to submit its plan for construction, abandonment, sale or lease of any public facility. The resolution requiring the submittal of plans did not give the City power to regulate the purchase or intervene on eminent domain proceedings.

Reasoning: The City’s motion did qualify as a motion to amend judgment. The adopting of the resolution for the submittal of plans did require the Board of Education to follow. The City could not regulate the purchase. This does not take the Board’s power of Eminent Domain.

Disposition: The Missouri Court of Appeals, Southern District, Division One, affirmed, reversed, and remanded.


Key Facts: Coach Brown, former baseball coach of Ridgeland High School, asked Rick Penland about contracting an indoor baseball practice facility. Brown advised this facility would
be used for training and summer camps. The building was to be a prefabricated 60’ x 100’ building. No grade work, electrical, or other accessories were to be done. Brown told Penland that if the Board approved, the facility would be priced through the boosters club. A $40,000 quote was given and brought before the Board. The Board approved the project and announced publicly that it would be a donated facility. Brown informed Penland that this was a misprint by the media. Penland ordered the building with the assurance that the boosters club would do some of the work, mainly the site prep. Penland did the site prep and subcontracted the remainder since the boosters did not follow through with the agreement. Penland advised Brown that the $40,000 was just for the building and the extra work was going to increase that amount. Brown advised Penland to keep all receipts. The facility opened and was used for summer and winter camps, athletic teams, and as a classroom. Penland submitted several invoices to the Board. The Board refused to pay. Penland filed action demanding payment and that the building be disassembled and moved off the property. The case went before a jury. The jury found that no written contract existed between Penland and the District, but Penland was entitled to payment. The jury entered judgment against Brown, the Board, and the School District for $150,000. They appealed.

Issues: At issue is whether the school district could be held liable for compensation of materials and labor for the construction of a building in which no contract existed.

Holding: The Court of Appeals of Georgia held that Penland was entitled to compensation for material and labor even though a written contract did not exist. The issue of Brown and the Board of Education being liable was for the jury to decide. The jury’s award of $150,000 was not against the weight of evidence.

Reasoning: A taking occurred when the contractor had a property interest in the facility and the school used the facility but did not compensate the contractor. The facility was located
on school district property and the school and student body benefited and would do so for years to come. The contractor was entitled to the compensation.

Disposition: The Court of Appeals of Georgia affirmed the Superior Court, Walker County’s decision.

2006

Citation: *Gabel v. Miami E. School Bd.*, 864 N.E.2d 102 (Ohio App. 2 Dist. 2006).

Key Facts: The Miami East School Board operated a long-standing wastewater treatment facility on property located next to the land the Gabel’s now own. This includes an easement that was first recorded in 1954 and then again in 1998. Two different owners occupied the property during this time. The only difference in the 1998 easement recording was that the water was not specified to drain into the Little Lost Creek as in the 1954 recording. The 1998 recording states the water was to drain into a low lying area a short distance from the creek into which it would eventually flow. The Gabel’s purchased the property in 2004. The Gabel’s noticed the pipe and the water flowing from a drain. They objected to the school about the drain. The school informed them of the 1998-recorded easement that it had obtained from the previous owners. The Gables filed action against the school for taking of their property and for damages acquired from the taking. The Trail Court ruled in favor of the School for summary judgment. The Gabel’s appealed.

Issues: At issue is whether school district had the authority to release treated wastewater on the adjoining property and whether such act is considered a constitutional taking.

Holding: The Court of Appeals held that the Trial court made an error in stating that the easements allowed the treated wastewater across the property. They were initially utilized for excess storm water runoff. The Court also concludes that the Trial Court erred in entering
summary judgment against the Gabel’s. The court did that drainage of treated wastewater across their land is unauthorized and interferes with their property rights and does constitute a taking. The Court held that the District was immune from liability on nuisance and trespass claims.

Reasoning: The easements did provide for storm water runoff, but the drainage of treated wastewater was another issue. The District felt an easement was obtained by estoppel. The 1954 easement provided for storm runoff. The 1998 easement was for treated wastewater. The previous owner’s not voicing their concern over the building of the wastewater treatment facility and the running of the pipe over their land does not permit estoppel. The disputed drainage of wastewater could be declared as a taking. It was unauthorized. The Board is immune from liability on the nuisance claim and the trespass claim.

Disposition: The Court of Appeals affirmed in part and reversed in part. The case is remanded for further proceedings.

2007

Citation: Young Partners v. Board of Educ., 160 P.3d 830 (Kan. 2007).

Key Facts: In 1947, the school district obtained a parcel of land by general warranty deed. This deed contained a reversionary clause. This was to insure that the land was to be used for school purposes and if not and/or abandoned, the parcel would revert back to the owners. Various improvements were done on the land and eventually classroom activities ceased, but various events that were school related were held on the property. In 1997, Young Partners, LLC, became the successor in interest to the grantors in the original warranty deed. In 2005, the school district started condemnation proceedings against Young Partners, LLC, to obtain by eminent domain the reversionary interest. They believed this would protect the school district’s investments, maintain the facility in case of future full time use, enable the sale of the facility,
prevent loss of title, and allow certain portions of the facility be decreased. Young filed an action stating that the school district’s eminent domain plans were not for a public good. The District Court held that the taking was unconstitutional. They granted an injunction against eminent domain proceedings. The school district appealed.

Issues: At issue is whether the condemning of a reversionary interest is constitutional under eminent domain statute.

Holding: The Supreme Court of Kansas held that the use of the district’s eminent domain power to acquire reversionary interest would not violate Contract Clause and is a constitutional taking for public purpose.

Reasoning: The School District acquired the property in 1947. A school building was built, a house and garage were built, and a gymnasium and extra classroom space were built. For over 50 years, the school has maintained and operated this facility. With these actions taken by the school district, they had to protect their investments in this property. Using the action of eminent domain to condemn the reversionary interest that Young held provided the protection of their investments.

Disposition: The Supreme Court of Kansas reversed the District Court’s decision.

Citation: Moriarty Bd. of Educ. v. Thunder Mtn. Water, 161 P.3d 869 (N.M. 2007).

Key Facts: The Moriarty Municipal School District had a Construction Contract and Water Service Agreement with Thunder Mountain Water Company, which allowed for construction of water line extension and consumptive-use water and fire protection to a newly constructed middle school. The agreement stated that the school district would contribute the installation of the water line. This was due to the New Mexico Public Regulation Commission Rule 19. Several years later, the school district filed a condemnation action to acquire the water
line extension and associated property. The school district believed it was entitled to deduct the amount paid for the contribution from the actual award given for the taking. The District Court held that the district was not due a credit for the amount already paid for services provided. The title would be given to the school district once payment for the property was given. The school district appealed.

Issues: At issue is whether the amount paid for a contribution in aid of construction (CIAC) could be deducted from the condemnation award for just compensation.

Holding: The Supreme Court of New Mexico held that deducting the CIAC payment from the compensation award would have unconstitutionally deprived the utility of its property without just compensation.

Reasoning: The school district was required by the New Mexico Public Regulation Commission Rule 19 to provide contribution in aid of construction to the Thunder Mountain Water Company for construction of water lines to a new middle school. The school district does not have the entitlement to deduct the required amount paid for service from the fair market value when eminent domain proceedings take place. The two amounts paid are for separate actions.

Disposition: The Supreme Court of New Mexico affirmed the District Court and the Appeal Court’s decision.

Citation: McKinney ISD v. Carlisle Grace, Ltd., 222 S.W.3d 878 (Tex.App.-Dallas 2007).

Key Facts: McKinney Independent School District condemned a 56.43-acre tract for the construction of a high school. The parcel of land was part of a tract owned by Carlisle Grace, Ltd. The parcel included a 56.43-acre tract, a 22.677-acre tract, and a 10.607-acre tract. Carlisle Grace, Ltd., sought compensation for the whole parcel, not just the 56.43-acre tract the school
wanted. They believed the use/value of the property was decreased because the land not taken was in a flood zone and could not be developed as its best use. The school district believed the tract they condemned was self-sufficient and claims of lack of use/value were not valid. The Trial Court held that the compensation award from the jury compensate Carlisle Grace, Ltd., for the single tract and for damages to the reminder. The school district appealed.

Issues: At issue is whether the taking of “best” track diminished the value of the remaining tracts and left the remaining tracts unusable for best use.

Holding: The Court of Appeals of Texas held that the testimony of the engineering expert proved the existence of damage to the remaining acres left over from the taking and awarded compensation to the land owners.

Reasoning: An appraisal was done on the property and the highest value and best use was determined by using the whole. The remaining tract was in a purported flood zone. This made the remaining tracts too small for development. Carlisle Grace, Ltd. sought compensation for the tract taken and damages to the land on the remainder.

Disposition: The Court of Appeals of Texas, Dallas, affirms the County Court at Law No. 2, Collin County.

Citation: Sunburst School Dist. No. 2 v. Texaco, Inc., 165 P.3d 1079 (Mont. 2007).

Key Facts: A gasoline refinery operated by Texaco was in operation from 1924 until 1961. The gasoline leaked from the pipes and contaminated the surrounding soil. It spread to the subsurface groundwater and eventually migrated underneath the town of Sunburst. Texaco started a partial cleanup of the area after a home exploded due to escaping fumes. Texaco notified the EPA in 1981 that there might be potentially hazardous substances at the present site. A site investigation was done and a consent order was required by Texaco to investigate the
substance and develop and implement a remediation plan. The study showed that benzene was found. Benzene is a known carcinogen. Montana at this time had not adopted benzene regulations for groundwater. Plans were made and several site studies were conducted over the years and the findings were made public. Sunburst School District filed an action against Texaco in 2001. The District Court held a scheduling conference in 2003. Both parties were required to disclose witnesses and information for their case. A three-week District Court session took place in 2004. The court ruled that Texaco was liable to Sunburst for dangerous activity. The court also ruled Texaco as liable for trespassing to all the Sunburst plaintiffs who owned property now contaminated. Awards were granted for damages, future environmental investigation, and lose of use and enjoyment. A separate hearing was held to determine award amounts. Texaco appealed. Eminent Domain falls into play by placing a cap on restoration damages. This would enable the tortfeasor the private right of inverse condemnation. The Appeal Court affirmed in part, reversed in part, and remanded for further proceedings.

Issues: At issue is whether Texaco deprived the property owners of use and enjoyment of their land, constituting a taking.

Holding: The Supreme Court of Montana held that private individual and corporations have no inherent power to exercise eminent domain.

Reasoning: Texaco did deprive the property owners of use and enjoyment of their property when it unlawfully contaminated their land. Texaco, being a private corporation, did not have the authority to “take” property from the landowners. The cost of restoration instead of diminished market value was to be used in measuring damages. The private attorney general doctrine does not support the award of attorney fees to Sunburst.
Disposition: The Supreme Court of Montana affirmed in part, reversed in part, and remanded.


Key Facts: Judy Hitchcock teaches physical education at a school within the Cypress-Fairbanks Independent School District. The school required Hitchcock to have hours from 7:30am until 3:30pm, with students having the hours 8:10am-3:10 pm for instructional time. Section 21.404 of the Texas Education Code entitles each teacher to have 45 minutes every day during the instructional day for a planning period. The school planning period was changed for one group of teachers to 7:40 am until 8:25am. This was within the work day hours, but included 30 minutes outside the instructional day. The next year the planning period was changed to 7:30am until 8:25am. In September or beginning of October 2004, Hitchcock found a rule governing planning periods in the Faculty Handbook and Commissioner Weatherbie’s decision. Hitchcock was offered to reschedule her planning period. She filed a Level One grievance that she is provided with a full teacher planning and preparation period within the instructional day as required by law or provides her with additional compensation. She was granted this effective February 25, 2005. On March 10, 2005 she appealed her grievance to Level Two. On March 22, 2005, the District responded that the appropriate response would be to refile the first grievance if the first issue had not been addressed. Hitchcock then filed a second Level One grievance in April seeking additional compensation. The decision was denied and Hitchcock filed in Harris Court. She claimed breach of contract, damages due to violation of statute, quantum meruit, and unconstitutional taking. The case was dismissed due to lack of jurisdiction because Hitchcock did not exhaust her administrative remedies within the 15-day deadline. The Trial Court granted
the District favor. They ruled that she failed to exhaust administrative remedies and she did not suffer any damages that she could be legally compensated. The Court of Appeals reviewed the Trial Court’s decision since summary judgment was granted.

   Issues: At issue is whether Hitchcock is entitled to compensation for time worked on planning outside of the scheduled work day and whether this constitutes a taking.

   Holding: The Court of Appeals of Texas, Houston held that Hitchcock did not exhaust her administrative duties by not timely filing the grievances. The 15-day deadline for filing grievances did not violate Civil Practice and Remedies Code. Hitchcock did not have protected property interest in the scheduling of her workday. This does not establish a takings claim.

   Reasoning: Hitchcock did not file the grievances in a timely manner. She missed the 15-day deadline. She did not exhaust all administrative remedies before bringing the issue to court. She has no claim of a taking because she does not have a protected property interest in the scheduling of her workday.

   Disposition: The Court of Appeals of Texas, Houston, affirmed the 280th District Court, Harris County, decision.

2009

   Citation: Knop v. Gardner Edgton Unified Sch. Dist., 205 P.3d 755 (Kan.App. 2009).

   Key Facts: In 2004, Gardner Edgerton Unified School District No. 231 bought 80 acres of land from the plaintiffs. The District had been in constant contact about purchasing the land to enjoin an additional parcel to build an elementary, junior high, and high school. They informed the landowners that if they did not sell, they would pursue the land by eminent domain. The plaintiffs sold the land to the District free and clear without any encumbrances. In 2006, the District sold the land to Gardner Property, LLC, for a profit of $1,043,316.10. In 2007, the
previous landowners filed petition for breach of contract against the District. They stated the breach of contract was due to the District promised it was using the land for school purposes. They did not want to stop the District from selling the land; they felt the profit should have been granted to them. They believed that since they sold the land under threat of condemnation, this was essentially a taking. An option to repurchase should have been given with the contract price since the school was not using the land for school purposes. The District filed a motion to dismiss for failure to state a claim for which relief could be granted. The District Court granted the school’s motion of dismissal. The plaintiffs appealed.

Issues: At issue is whether the threat of condemnation constitutes a taking.

Holding: The Court of Appeals of Kansas held that the property was sold and was not subject to restrictions of using the property for school use only. The landowners did not have a right to repurchase the property due to the District not using the land for school use because the land was sold and not taken.

Reasoning: The District bought the land under threat of condemnation. The land was never formally condemned and taken. The District had planned to build schools at the time of the purchase. Due to this, the landowners did not have any rights as to repurchase the land because of non-school use.

Disposition: The Court of Appeals of Kansas affirmed the District Court’s decision.

Citation: Kiriakides v. Sch. Dist. Of Greenville, 675 S.E. 2d 439 (S.C. 2009).

Key Facts: Alex Kiriakides, Jr. owned property that was being leased by United Artists as an eight-theater multiplex. A real estate agent approached Kiriakides about selling the property to the School District because the land adjoins a high school that needed renovations and expansion. Negotiations began for a voluntary sale. The negotiations failed and the school
district began to pursue acquiring the property by eminent domain. An appraisal was sought, but Kiriakides refused to allow entry onto his property. A complaint was filed by the District to obtain an order of entry. A condemnation notice was served to Kiriakides but condemnation action was never filed in court. Kiriakides challenged the right to condemn his property and sought damages for inverse condemnation and attorney fees. The District then notified Kiriakides that it had abandoned all efforts to condemn the property. They purchased a different lot located nearby. In 2005, the court ruled in favor of the School District. Kiriakides action was moot because the school had abandoned condemnation proceedings. He was not entitled to damages. He was awarded attorney fees. A cross-appeal followed. Kiriakides challenged the ruling in favor of the District on his claim of inverse condemnation. The District challenges the award of attorney fees.

Issues: At issue is whether Kiriakides is entitled to compensation and attorney fees for inverse condemnation.

Holding: The Supreme Court of South Carolina held that the district did not affect a taking of property. The filing of the condemnation notice commenced condemnation action, meaning the District would be liable for attorney fees.

Reasoning: The District abandoned condemnation proceedings due to time was of the essence with the needed building and renovations of the high school. Kiriakides denying entry and the appraisal backlog hindered the District’s action and the proceedings were abandoned. Kiriakides claimed inverse condemnation due to the lessening of his property due to the stigma of the proposed taking. Kiriakides has no claim except for attorney fees. The District felt that since Kiriakides had an agreement with his attorney for no fees unless the case was won, no award needed to be given. The Court ruled the fee was reasonable and granted it.
Disposition: The Supreme Court of South Carolina affirmed the Circuit Court’s decision.

2010

Citation: Tracy Joint Unified School Dist. v. Pombo, 117 Cal.Rptr.3d 470 (Cal.App. 3 Dist. 2010).

Key Facts: A 61.6-acre portion of a 231.26-acre parcel was desired by the Tracy Joint Unified school District to construct a new high school. This tract was in the middle of the parcel. A resolution was adopted to authorize the initiation of condemnation proceedings. The District deposited $3,080,000 with the State Treasurer. This amount was based on an appraisal done by the school district appraiser. A list of valuation data was exchanged and the District submitted a written appraisal valuing the taking at $3,081,500 and did not include severance damages. The landowner’s appraiser valued the taking at $12,406,000, which included $3,181,500 in severance damages. Prior to trial, final offer and demand for settlement was exchanged. The District offered to settle at $3,181,500 and the landowner’s final demand was $7,995,000. The case went to trial by jury and awarded the landowners $7,985,150. This included $7,085,150 for fair market value and $900,000 in severance damages. The landowner then wanted to recover litigation expenses of $574,000 due to the final settlement demand on their part was reasonable, but the District’s was not. Motion was denied. The judge determined both appraisers had problems with their evaluation of the appraisals. The landowner appealed.

Issues: At issue is the determination of compensation for the property condemned through eminent domain and whether the property owner is entitled to litigation expenses.

Holding: The Court of Appeals held the property owners’ settlement demand was reasonable and remanded the case back to the trial court for determination of litigation expenses.
Reasoning: The two amounts the appraisers valued the property were far apart. The landowner did decrease his amount, but the District did not. When the difference between the amount offered and the amount awarded are very far apart, litigation expenses can be sought. The District did not work with negotiations; therefore, their offer was unreasonable. The denying of these expenses was inconsistent with the legislative process. This is to protect the property owner from being unnecessarily forced to litigate the value of the property to be condemned.

Disposition: The Court of Appeal reversed and remanded.

Citation: *Scott v. Alphonso Crutch LSC Charter School*, 392 S.W.3d 165 (Tex.App.-Austin 2010).

Key Facts: Alphonso Crutch LSC Charter School is an open enrollment charter school that is part of the Texas public school system. The School is required to report its student attendance to the Texas Education Agency. The agency disburses funds on the basis of average daily attendance. The school was found to have received over allocation of funds based on this daily average on more than one occasion. This over allocation was corrected by the agency withholding from subsequent allocations of the state funds. The school sought declaratory relief and injunction due to the Commissioners actions violated state statutes. The school alleges a taking occurred by not providing adequate compensation for the taking of property (funds). The Commissioner entered a plea based on sovereign immunity. The District Court denied this plea. The Commissioner appealed.

Issues: At issue is whether the withholding of funds for overpayment constitutes a taking.

Holding: The Court of Appeals of Texas, Austin, held that the school did not have a vested right in the funds based on average daily attendance. This proves a taking did not occur.
The Commissioner did not act outside statutory authority and an ultra vires claim was not proven. The school was entitled to the opportunity to amend.

Reasoning: The funds based on daily attendance varied in the amount given. The school was found to at least twice to have received too much money. The Commissioner had the right to deduct the overage from future payments to the school. The school did not have a vested right in this overage amount and a taking of this amount was not considered valid.

Disposition: The Court of Appeals of Texas, Austin, affirmed in part, reversed in part, and remanded.

2011

Citation: Poole v. West Hardin, 385 S.W.3d 52 (Tex.App.-Beaumont 2011).

Key Facts: Poole purchased a lease in 1996. L & B was the lease operator and working interest owner. The school district’s attorney contacted Poole in 2002 regarding a claim for delinquent taxes. Poole disputed the claim and the school district’s attorney allegedly promised to dismiss the lawsuit. In 2004, the school district obtained an in rem judgment against Poole. The district foreclosed on the tax lien in 2005. During this time, the Railroad Commission instructed Poole to plug a well on the lease. The school district allegedly threatened Poole with criminal prosecution and a civil lawsuit, should he re-enter the lease. The district also accused him of destroying property and stealing equipment. Poole was not removed as the lease operator. The Railroad Commission then ordered Poole to plug a well on the lease. Poole declined to plug the well due to the school district refused to vacate the in rem judgment and return the lease to him. The Railroad Commission plugged the well and the Texas Attorney General sued Poole to cover the expense. Poole sued the school district for violation of the taking clause. He also claimed the district wrongfully and intentionally sought to recover taxes that were not due, filed
a tax lien, foreclosed the tax lien, and purchased the lease at the tax lien sale, threatened, bullied, and strong armed to take his property interest in the lease. Poole also sought fair compensation for the alleged taking, reimbursement for the well plugging, attorney’s fees, and expenses. The trial court ruled in favor of the school district. Poole appealed.

Issues: At issue is whether the school district taking the property due to delinquent taxes and forcing foreclosure constitutes a taking.

Holding: The Court of Appeals of Texas, Beaumont, held that Poole could not maintain request for compensation under due course of law clause. Poole could maintain claim under takings clause.

Reasoning: Poole did have a vested property interest in the lease at the time of alleged taking. The Appeal Court does not have jurisdiction over the amount of compensation and remanded the case to the Trial Court to determine the award.

Disposition: The Court of Appeals of Texas, Beaumont affirmed in part, reversed in part, and remanded in part.

2012

Citation: Bear Creek Tp. v. Riebel, 37 A.3d 64 (Pa.Cmwlth. 2012).

Key Facts: The landowners had 48.86 acres of undeveloped land. The Bear Creek Community Charter School is located on land adjacent to the land and wanted to enlarge its school facilities. The school tried unsuccessfully to purchase the land. The school, Bear Creek Foundation, and the Township brought about a plan to allow the district to construct a school and develop recreational facilities for Township residents. Public hearings were held on the proposed plan. The plan was for the Township to condemn the land and then convey it by fee simple to the Foundation. This agreement made the Foundation liable for the cost of the project, including the
compensation of the taking, construction of the new school, and the development of the recreational facilities. Public use and access plans were also set up as well as access to the library and community room in the school. The plan also included a right of first refusal should the Foundation decide to sell any part of the land. A Declaration of Taking was filed and the landowners responded with preliminary objections. The landowners voiced that the taking could not be authorized and the Township could not condemn property for the purpose stated in the Declaration of Taking. The Trial Court ruled in favor of the Township and the landowners appealed.

Issues: The issue to be determined is if the Township has the power to condemn land to build a charter school, even if recreational facilities open to the public are included in the plan.

Holding: The Commonwealth Court of Pennsylvania held that the Property Rights Protection Act did not include giving power to the Township or the Charter School for condemning property by eminent domain.

Reasoning: The forming of a non-profit corporation to construct a new charter school building and the development of recreational facilities for township residents on condemned land are not protected under the Property Rights Protection Act. The statutory provision that allows the taking of private property to be used for a private enterprise that also would occupy public facilities does not apply to the Township’s declaration of a taking. The charter school was the main focus of the reason for the taking. The Township’s power of eminent domain must be strictly construed. The building of the school and the building of public facilities cannot be combined.

Disposition: The Commonwealth Court of Pennsylvania reversed the Trial Court’s decision.
Citation: *Hargrove v. School Const. Authority*, 944 N.Y.S.2d 315 (A.D. 2 Dept. 2012).

Key Facts: Hargrove sought a review of determining if the New York City School Construction Authority had the authority to condemn her property.

Issues: At issues is whether the condemnation of property is for public use.

Holding: The Supreme Court, Appellate Division, Second Department, held the project was related to a public purpose and could be acted out by eminent domain.

Reasoning: The land sought by eminent domain needed to be acquired for a public good and purpose. The landowner’s claim of being intentionally treated differently from others in similar situation was found to be unmerited.

Disposition: The Supreme Court, Appellate Division, Second Department confirmed the order.

2013

Citation: *Seaside Park v. Com'r of N.J.*, 74 A.3d 80 (N.J. Super.A.D. 2013).

Key Facts: Throughout the years, Legislature has authorized and amended procedures and establishments on school funding. In 1931 the Legislature gave the authority to establish regionalized school districts. In 1953 the average daily enrollment was introduced as an alternative to the existing ratable method from the 1930s. The Supreme Court in 1970 ruled that the system of public school funding was unconstitutional based upon differences in an amount per pupil. An amendment was passed in 1975 by the Legislature, which allowed per pupil funding to be switched to an equalized value of real estate in each district. This would allow costs to be shifted to areas with higher property values. This process was amended again in 1993 to allow the districts to choose among either equalized valuation per student enrollment, or a combination of the two through voter approval. In 1954, by public referendum, six municipalities
were formed as a Central Region. The six municipalities included Seaside Heights, Seaside Park, Island Heights, Ocean Gate, Berkeley Township, and Lacey Township. These regions school buildings were located in Berkeley Township. At the formation of this region, the voters also agreed to distribute costs based on per pupil enrollment. The 1975 legislation altered the region’s funding means to an equalized property valuation basis. The 1993 legislation allowed changes to this funding, but it was not acted upon or changed. Lacey Township was allowed to withdraw from the Central Region by voter approval in 1977. Seaside Heights and Seaside Park’s petitions were rejected at this time. In 1981, Seaside Heights and Island Heights sought a study to determine the advisability of their withdrawal from the region. The Berkeley Township Board of Education in 1985 commissioned a study also seeking advisability of its withdrawal from the region. Seaside Park issued a resolution in 1998 seeking an alteration in the formula for municipal contributions to the District to return to a per pupil cost formula. Over the next few years, Seaside Park adopted a resolution to place a referendum for voters to authorize a change in the funding for Central Regional. They also issued a study showing that Seaside Park would realize large cost savings by withdrawing from the Central Region by entering into a sending-receiving agreement with Toms River or Point Pleasant. The study also suggested that the Central Region to be dissolved and Berkeley Township could create its own K-12 district. In 2006, Seaside Park and its Board of Education filed a petition with the State Department of Education seeking permission to conduct a referendum on withdrawing from or dissolving the Central Region. Central Region opposed. The State Department of Education allowed the vote on the referendum and voters defeated it. It passed in Seaside Park, Seaside Heights, and Island Heights. It was defeated in Berkeley Township and Ocean Gate. Over the next several years, this case was back and forth in the courtroom. Once the Trial Court ruled that it was for the
Legislature to determine if the current educational funding used in the Central Regional School District should be revised or repealed, Seaside Park appealed.

Issues: At issue is whether the current funding mandate was a taking of the school districts funds. The equalization valuation instead of per pupil basis was the district’s grounds of stating this violated contract clauses of the federal and state constitutions.

Holding: The Superior Court of New Jersey, Appellate Division, held that the cost system did not violate constitutional provision governing educational funding. The funding mandate did not constitute an unconstitutional taking or violate substantive due process rights of taxpayers.

Reasoning: The Seaside Park School System did not prove that the regional school funding was causing the students to not receive a thorough and efficient education. The distribution of education costs among taxpayers was a policy decision that needed to be made by the legislature, not by withdrawing from the district or by changing the legislative mandated funding.

Disposition: The Superior Court of New Jersey, Appellate Division, affirmed the Trial Court’s decision.

Data Analysis

The purpose of the study was to examine 78 cases that address eminent domain as it relates to public K-12 school districts. The cases examined ranged in date from 1982-2013. The analysis of cases began with The Board of Education of Unified School District 512, Plaintiff and Appellants v. Vic Regnier Builders Inc. and Dennis L. Steele and Frances Steele, Defendants and Appellants, No. 52203 (1982) and ended with Borough of Seaside Park v. Commissioner of New Jersey Dept. of Ed., 432 N.J. Super. 167 (2013). Each case was analyzed through the act of coding to identify emergent categories, trends, themes and concepts over time and across
multiple court jurisdictions in order to develop a more comprehensive understanding of the topic. This allowed large amounts of information produced by the data to be filtered to determine the most significant features of the data. Once the data were coded and recoded into meaningful segments, initial categories were formed, expanded, and refined by reviewing the categorical data base of cases. Guidelines were then developed from the data for use by boards of education and system level administrators regarding eminent domain.

Data were taken from a 31-year period and included 77 cases specific to eminent domain and the K-12 public school. Surprisingly, there were no cases during this period that were decided upon by the U.S. Supreme Court. The majority of the cases were decided at the state level, with only a few being decided at the federal level. The state Supreme Court rendered a decision on 19 of the cases reviewed; the state court of appeals decided on the largest portion of cases with 49; whereas, the U.S. District Court decided on 7 cases and the U.S. Court of Appeals decided on 2 (see Figure 1). Of the 77 cases analyzed all but five, which were deemed outliers, directly involved a public K-12 school district.

*Figure 1. Cases by court jurisdiction.*
Outlier Cases

In the case of *Johnson v. Wylie* (1984), the Supreme Court of Arkansas ruled that a private road owned by the Johnsons’ was taken when the road was made into a public road. It is believed this case presents an important question to be considered in future school related cases; therefore, it was included in this study. In many rural counties, buses use private roads to access student pick-up points. Oftentimes these roads are maintained by the county government or school district. The cost of maintenance and upkeep does not change the ownership of the property from private to public, without additional compensation to the owners. Although a school district was not directly named in the case, the case still guides boards and districts that use and maintenance of private property does not supersede the constitutional rights of the property owners. Under the Fifth Amendment of the Constitution, the landowners are still entitled to “just compensation” outside of the funds used to maintain the road.

In the case of *Lake County Forest Preserve District v. First National Bank of Waukegan* (1991), the LCFP District filed to take land from the bank. The bank appealed and the school district joined in stating the taking would significantly decrease real estate taxes collected by the school if the land were taken. The court ruled that a decrease in taxes was not a viable reason to dismiss the taking claim.

The case of the *State Board of Education v. Drury* (1993), involved a public K-12 entity in the State BOE and the results would have implications on all the districts in the State of Georgia. The BOE passed rules and regulations requiring teachers to pass Performance Assessment during a three-year period, which would enable them to keep their teaching certificates. The teachers were issued a non-renewable certificate during this three-year period, until each passed the assessment. The teachers claimed the change from a renewable certificate
to a non-renewable certificate was considered a taking and just compensation was due each. The Supreme Court of Georgia ruled in favor of the State BOE and declared the change in certificate was not a taking; hence, no compensation was awarded.

In the case of *Brown v. Penland Construction Co., Inc.* (2005), Brown was the head baseball coach at a high school. He contracted with Penland to build an indoor hitting facility. The board approved on the notion that the building and work were being donated and the donation was printed in the local paper. Brown told Penland the donation was a misprint in the paper and authorized Penland to proceed. No contract was ever signed. A taking occurred and compensation was awarded to Penland for the work performed.

In the case of *Bear Creek Township v. Riebel, et al.* (2012), the township wanted to condemn land adjacent to the Township charter school so as to expand the school facility. This would involve a recreation center that would be open to the public. Once taken, the land would be given to the charter foundation to complete the project. It was ruled neither the township nor the charter school held the authority to condemn property.

**Public K-12 Cases**

The remaining 72 cases directly involved public K-12 school districts, and from the briefs, the following 15 categories were initially developed: land, lease, fees, taxes, goodwill, injury, covenants, inverse condemnation, tenure/salary, labor/material, easement, teacher schedule, reversionary interest, state funds, and dissolution of district. After comparing, contrasting and reviewing each category, the cases were sorted into five primary categories: constitutional taking, compensation, proceeding, necessity, and power to take (see Figure 2).
The constitution category refers to those cases in which the court decides if the constitutional definition of “taking” has been met. A “taking” is defined in the U.S. Constitution as the entering upon private property and devoting it to public use so as to deprive the owner of all beneficial enjoyment (United States Constitution, 1789). This category contains 28 cases that determine the constitutionality of the taking. If the case is deemed to be an actual “taking” for public use and the owner is deprived of his property, then the owner is entitled to “just compensation.” Category 2 contains 17 cases that focused primarily on the determination of the compensation to be awarded and if the compensation is just. The third category contains 6 cases that determine whether it is actually necessary to take property from an individual. Necessity to take one’s property must be proven prior to the allowance of the condemnation. Category 4 was limited to 6 cases in which the court determined the authoritative power of the entity applying eminent domain. The last category focused on the procedures of 20 eminent domain cases. Many of the eminent domain cases reviewed were dismissed or overturned due to procedural issues.
Cases were also sorted by decision of the court within each of the five primary categories. This information is beneficial to administrators who may be contemplating condemnation of property for a public purpose. The terms “plaintiff” and “defendant” represent the party opposite of the district. The data revealed that of the 28 cases reviewed for the constitution of a taking, 20 cases ended with a ruling in favor of the district, 1 in favor of the plaintiff, 2 in favor of the defendant, and 5 split, where the court affirmed and reversed portions of the previous court’s decision. Those cases reviewed for compensation revealed 8 cases in favor of the district, 2 in favor of the plaintiff, 5 in favor of the defendant, and 2 split. In the category of necessity, the district was favored in 3 cases, plaintiff favored in 2, no cases favored the defendant and only 1 case was split. The cases reviewed in the power category revealed 1 cases in favor of the district, 2 in favor of the plaintiff, 3 in favor of the defendant, and no case had a split decision. In the final category, procedural, the district was favored in 12 cases, the plaintiff in 3 cases, the defendant in 3 cases, and 2 cases were split. In all primary categories, except for “power”, the school district demonstrated a higher number of cases in which the court ruled in favor (see Figure 3).
Constitutional Taking

A majority of the cases reviewed addressed the constitutional “taking” of property. The Fifth Amendment to the Constitution of the United States establishes the power of eminent domain, as long as the property taken will be used for public use. The authority to exercise eminent domain can be delegated by the state to government entities such as school districts, and as decided in *Kelo v. City of New London* (2005), the state can even delegate the authority of eminent domain to private individuals or corporations, as determined for public good.

Of the 77 cases analyzed, 28 cases focused primarily on the court deciding whether the condemnation of property constituted a taking. In the majority of these cases the court ruled in favor of the district simply because the land would be for public use. But not all cases centered on the taking of land for the use of building or expanding a school as a determination of a constitutional taking. Further analysis of cases in this category shed light on patterns and trends resulting in the identification of case clusters pertaining to the constitution of a taking. The
following clusters were derived from the cases pertaining to the constitution of a taking: reversionary interest, threat of condemnation, land, fees, lease, sovereign immunity, state funds, and other (see Table A1, Appendix A). These groups were determined after reading and analyzing the issues found in the 28 cases in this section.

**Reversionary interest.** Cases involving reversionary interest determine whether the owner at the time of the taking is entitled to first refusal if the property taken is abandoned or sold. Four cases within the constitutional taking category were reviewed in which the courts were to decide if the previous owner had a claim to reversionary interest an whether the refusal to sale the property back to the original owners constituted a taking.

In most cases, when property is condemned, a fee simple title is granted, waiving any right to reversionary interest. Such was the case in *Board of Education v. Vic Regnier* (1982). The board of education condemned property from the Steeles for the purpose of building a school. Three years later the same board divested property from Vic Regnier to add to the school. In both cases the board was granted fee simple title because they wanted a clear title so the property could be sold or disposed of when the time came. The awarding of a fee simple title has become more commonplace with eminent domain proceedings because states do not want to revisit the case years after the condemnation has taken place.

In those cases where fee simple was not addressed, school districts have the ability to take the reversionary interest through eminent domain proceedings. Case in point, *Young Partners v. BOE* (2007), in which the school district obtained a parcel of land by general warranty deed for the purpose of a school. The deed contained a reversionary clause to ensure the land would be used for school purposes and if not, the land would resort back to the owners. Young Partners, LLC, eventually became the successor in the interest to the grantors’ original
warranty deed. To protect the school districts investment in the property eminent domain proceedings were started to take the reversionary interest from Young Partners. Although the facility was no longer being used, the school district had longtime investments in the property and may at some point have used the facility again. Because a house, school facility, gymnasium and other available space on the property still existed, the taking was deemed constitutional.

In the case of Young Partners a school was built on the land taken and still existed at the time of non-use or abandonment, hence the denial of reversionary interest. However, in the two other cases, Wood v. City of East Providence (1987) and Piche v. ISD No. 621 (2001), properties were taken and schools were never built. Each property owner filed suit stating the property should be returned to them since it was never used for educational purposes and was being sold by the district. In the Wood case the court sided with the district because in an eminent domain proceeding, where the district granted condemnation rights for the purpose of building an educational facility, even if the land is not used for the purpose for which it was condemned, the title remains with the district. The same held true in Piche where the court ruled that because the first property was taken through eminent domain proceedings, it was protected from reversionary interest by the Marketable Title Act. Therefore fee simple title was granted. Because the second piece of property was sold by the Piches under threat of condemnation and not actually condemned, a fee simple absolute title was granted.

The trends that emerged for reversionary interest as it relates to the constitutional taking lend guidance to public school districts. Courts look disfavorably upon reversionary interest clauses and because of this, the school district prevailed in all cases reviewed.

Land. Generally, eminent domain proceedings are entered into for the purpose of condemning land for public use. However, a taking can occur for the just the mere use of a
person’s property or for the deprivation of use and enjoyment. For example, in the case of *Sunburst v. Texaco* (2007), property owners were deprived of the use and enjoyment of their property after a long-time gas leak from a Texaco refinery saturated the properties. Residents were exposed to cancer-causing agents from the gas, and therefore, they could no longer enjoy the use of the property. Owners, along with the Sunburst School District, sued Texaco for “taking” the property. The court ruled an industry or corporation does not have the authority to take property, so Texaco had committed an unconstitutional act of taking.

Similarly, in *Gabel v. Miami E. School Board* (2006), the school district began dumping wastewater on a neighboring property. The district cited an easement from 1954 and 1998, which was granted by the previous owners, which allowed for excess storm water runoff. The property was sold to the Gabel’s and they noticed treated wastewater being dumped onto their land, running into the nearby creek. The Gabels sued because they could not use the property for the intent in which they purchased. The loss of use interfered with their property rights. The court determined that the dumping of the wastewater onto the neighboring property constituted a taking.

The issue of public use enters every eminent domain proceeding. The first question that must be answered is whether the condemnation or taking is for public use. This is usually the determining factor as to whether the proceedings will move forward. A taking cannot occur if the property that is being taken is not for public use. More recently the case of *Hargrove v. School Construction Authority* (2012) once again “public use” was at issue. The New York School Construction Authority sought to condemn the Hargrove property for the purpose of building a school. In an attempt to halt the proceedings, Hargrove filed a claim that the property would not
be used for public use. The court ruled that the property would be used for a public good and purpose; therefore, a taking could occur.

Boards of Education and district level administrators need to be aware that depriving property owners of the use and enjoyment of their property will constitute a taking, whether the taking is constitutional or not will depend on the determination of public use.

**Fees.** Three of the cases examined focused on whether mandated fees for residential development and school development constituted a taking. Two of the three cases were specific to residential development fees. In the case of *Garrick v. Hayward School District* (1992), developers were required to pay $1.50 per square foot for any new residential development. A private consultant hired by the school district recommended that to pay the cost for new schools the fee should be $2.97. The school district declined the increase. The developer sued for an unconstitutional taking. In *Herron v. Mayor of Annapolis* (2005), fees were imposed on the property owner to cover the costs of improvements and facilities needed for educational purposes. Herron purchased her property from the development company and believed the fees were part of the purchase price. The school district disagreed. Herron filed suit stating that paying the fees constituted a taking. In the case of *Loyola v. LAUSD* (1996), the university built a facility on the campus, believing that tax exempt status exempted the university from paying the school development fees required by the school district. The university paid the fees in protest and later filed a writ of mandamus claiming an unconstitutional taking and tax exempt status.

From the three cases reviewed relating to fees, trends developed showing that school districts have the right to assess fees on residential development as well as commercial development based on state statute. In the first case the court sided with the district because the fee issued was less than that recommended by the private consultant. The court sided with the
district in the second case because Herron could not prove that the fee was included in the purchase price and that the issuance of a fee does not constitute a taking. In the final case, the school district prevailed because Maryland Government Code authorized the issuance of fees for educational facility purposes; therefore a taking did not occur.

**Other.** There were some cases that stand alone within the cases that constituted a taking and need to be discussed for the possible trends that emerge. In *Frazier v. Lowndes County, BOE* (1983), the school district leased property to the plaintiffs. The school board decided to increase the amount of rent the plaintiffs would pay or cancel the lease if the plaintiff refused to comply with the request. The plaintiff sued the school district arguing that the cancelation of the lease or the threat of the cancelation constituted a “taking.” The federal court of appeals ruled that the act of lease termination, especially where possession was not entered, does not constitute a taking.

In the case of *Wells v. Panola BOE* (1994), Mr. Wells filed suit against the school district because his son was seriously injured in a bus accident. Although the school district had insurance, the limits on the insurance were not enough to cover the expenses needed to treat the student. The Accident Contingent Fund limits the amount for injuries caused by bus accidents to $10,000 per person and $50,000 aggregate. Mr. Wells claimed the limit on the monetary recovery was a “taking” as defined in the Fifth Amendment and that he was denied due process guaranteed in the Fourteenth Amendment of the Constitution. The district court found he had not been denied his due process and the limit that had been set did not constitute a taking. This decision was upheld by the Supreme Court of Mississippi, because the Accident Contingent Fund statutes violated neither the state nor the federal constitutions.

Tenure provides educators with due process when terminated. In most cases, when an educator moves into an administrative role, tenure is lost. In 1994, principals in Chicago still
retained tenure, even though they were in an administrative role. The Chicago BOE decided to take tenure from principals and was sued for an unconstitutional taking. Through the case of *Pittman, et al. v. Chicago BOE* (1994), the United States District Court held that the loss of tenure did not constitute a taking, because a “‘legitimate claim of entitlement’ to a government benefit does not transform the benefit itself into a vested right. Rather, due process ‘property interests’ in public benefits are ‘limited, as a general rule, by the governmental power to remove through prescribed procedures, the underlying source of those benefits.’” Summary judgement was issued for the district.

**Compensation**

Not only does the Fifth Amendment require that a taking be for public use, it also requires that “just compensation” be paid to the one whose property is condemned. In many cases, an agreement cannot be reached and the court must decide on what “just compensation” is or how to determine just compensation. In review of the cases on compensation, three clusters emerged in the analysis: inverse condemnation, land, and fees. Other cases were reviewed that pertained to compensation, finding a wide variety of issues within the compensation arena (see Table A2, Appendix A).

**Inverse condemnation.** Inverse condemnation can be view as either the taking of property without just compensation or the damaging of property without compensation. Of the cases reviewed two focused on inverse condemnation and each dealt with the devaluation of the property because of eminent domain proceedings. In *Staffold v. Carter* (1990), the school district began the pre-condemnation proceedings but decide not to follow through with the taking. Staffold filed for inverse condemnation stating that the pre-condemnation proceedings negatively impacted the full value of the property. The US Supreme Court has ruled on multiple occasions
that land owners are not entitled to compensation for pre-condemnation proceedings, because the discussions and plans to consider condemnation does not require action of the property owner; only the actual eminent domain proceeding requires property owners to react to the process. The same held true in *Kiriakides v. Sch. Dist. Of Greenville* (2009), where the school district initiated eminent domain proceedings after negotiations to purchase the property failed. After Kiriakides failed to cooperate with the appraisal by refusing entry to the property, the district decided on another piece of property. Kiriakides filed alleging inverse condemnation, because the eminent domain proceedings negatively affected the value of the property. The court favored the school district in compensation for inverse condemnation, because the mere institution of condemnation proceedings does not constitute a taking, as it is a legitimate exercise of the government’s authority; however, attorney fees were awarded.

School district officials can use the trends found in inverse condemnation to better understand that compensation should not be awarded to property owners for the devaluation of property related to pre-condemnation proceedings, because pre-condemnation proceedings do not devalue the property being considered nor does the pre-condemnation proceedings require the property owner to expend money for the discussion or preparation of a taking. The initiation of eminent domain proceedings does, however, entitle the property owner attorney fees.

**Land.** Property owners whose land is condemned through eminent domain proceedings are entitled to compensation for the property. In the majority of all cases pertaining to eminent domain, compensation is offered for the property taken, but what is usually questioned is whether the compensation is “just” and who is actually entitled to the compensation. A unique case questioned whether the person who had signed an agreement to purchase property that would soon be condemned is entitled to compensation, just as the rightful owner would be. The
court ruled in *Bd. Of Educ. V. James Hamilton Const. Co.* (1994) that the purchase agreement did not give legal interest in the property. The owner of the property was the only one awarded compensation for the property taken.

In a different issue with the compensation of property related to eminent domain, a school district was required to purchase additional lots of land because of the affect the condemnation of the first lot had on the remaining lots. In *McKinney ISD v. Carlisle Grace, LTD.* (2007) the property owner owned a parcel containing three tracts. The school district was interested in the one that was deemed the best and condemned the property through eminent domain. The two remaining tracts were then considered to be unusable without the “best” tract. Because the remaining tracts were too small and in a flood zone the court awarded the property owner compensation for all three tracts.

**Attorney fees.** Compensation is often awarded for more than the property itself. In the following cases property owners sought compensation for litigation expenses including attorney fees. In the case of *New Haven USD v. Taco Bell* (1994), Taco Bell sued for compensation pertaining to loss of goodwill, lost interest and litigation expenses. In this case, as seen with many others, litigation expenses were not awarded as the court believed this to be part of the original compensation awarded.

However, the courts have been clear that litigation expenses should be granted to property owners who are forced to enter into pre-condemnation proceedings, as seen in *Kiriakides* (2009), but the property is never condemned. Determining whether the process had started became the focal point of *Bradley v. Eagle Union* (1995). The Bradleys thought they were entitled to litigation expenses because the district had taken an interest in their property.
Since a condemnation proceeding was never filed, the court determined litigation fees were not warranted, dismissing the claim altogether.

It was determined in *Tracey Joint USD v. Pombo* (2010) that attorney fees should be granted to the property owner when the school district refuses to negotiate appraisal values that are far apart. In this case the district and the property owner were not able to agree on compensation for the property. The appraisal for each side was drastically different, with the district’s appraisal being considerably less than the property owner’s. The property owner was willing to lower his request by $5 million to meet his appraisal value. The school district refused to negotiate and move their offer closer to the average of the two appraisals. The property owner was awarded litigation expenses because of his willingness to negotiate.

Boards of Education and district leadership should know that property owners are entitled to litigation expenses when eminent domain proceedings are commenced, whether the property is ever taken or not. School districts should be willing to negotiate compensation for condemned property and rely on the average of the two appraisals to identify just compensation.

**Other.** In reviewing cases that pertained to compensation for condemnation of property several other issues arose: personal property, maintenance, interest, replacement housing, health risks, abuse of discretion, dispossession, injury, and materials/labor. School boards and district level administrators need to be familiar with these issues as well as others described in this section. A few of the issues noted here are described in the following paragraph.

In the case of *BOE Unified School District No. 464 v. Porter* (1984), where the school district notified the land owners its intent of condemnation, and even though the owners knew of the intent, they began construction of a building on the property. This was to increase the value of the land for compensation purposes. Because the building construction began after the
notification of condemnation, the Supreme Court of Kansas ruled the construction costs of the new building should not be included in the compensation for the property.

The case of *Dollar v. Dalton Public Schools* (1998) includes sovereign immunity as a reason to deny compensation in what is thought to be a constitutional taking. Mrs. Dollar’s child fell while attending an afterschool program within the Dalton Public School system. She filed suit, claiming she was denied compensation, due process, and that this constituted a “taking” of her rights. The case was heard in the Superior Court and decided that because a taking did not exist and due to sovereign immunity no compensation was awarded. She appealed to the Georgia Supreme Court and the same verdict was given, because employees of a school system are protected from suit through sovereign immunity as long as the employee is not negligible in her actions. The after school program was an extension of the school; therefore, the employees were protected under sovereign immunity. Had the claim of a taking been upheld the court would have decided on what compensation would have been just.

**Necessity**

There were a number of cases that addressed the necessity of the taking. These cases focused on whether the taking was necessary for public use. Two clusters emerged in reviewing cases on necessity of a taking: site selection and land (see Table A3, Appendix A).

**Site selection.** The process of a school district building a new school facility relies heavily on where the facility will be located. The location can determine costs associated with the facility and inform the district whether the facility is financially feasible. Districts select sites based on many criteria such as centralized location, traffic flow, acreage, and preparation costs. Generally, multiple sites are selected and analyzed to determine which is the most appropriate. In the cases of *School Board of Broward Co. v. Viele* (1984) and *Hamer v. School Board of*
*Chesapeake* (1990), suits were filed by the landowners claiming that the selection of their property was not necessary and that the taking itself was not necessary. The *Viele* case focuses on “real” necessity v. “reasonable” necessity. The school board determined the need to build a new administrative building. The site of the building was narrowed to two different locations. The owner of one location argued that the other site would be more appropriate for the building. The trial court ruled in favor of the land owner stating that the district did not have a “real” necessity to take the land. The district appealed and the District Court of Appeal of Florida reversed the trial court’s decision, stating the trial court applied an incorrect rule that there must be a “real” necessity, when in actuality the district only needed to show a “reasonable” necessity. Furthermore, the court ruled that it is not the responsibility of the court to determine the appropriate site for the facility. Similarly, in *Hamer*, the court ruled, the Supreme Court of Virginia held that it had no jurisdiction in determining the necessity of the taking nor did it have authority to rule on the potential site that was selected.

The two cases analyzed reveal that courts have denied or disavowed their authority to determine site selection of property being condemned for building educational facilities.

**Abuse of discretion.** Typically, school districts condemn land for either an immediate or intermediate need. Occasionally, the need is only perceived or anticipated, as was the case in the *Appeal of Octorara* (1989). The school district began the condemnation process of two large tracts of land owned by King based on potential student growth over a 5 to 12-year period. The growth was anticipated from a planned 189-unit housing complex. Mr. King objected to the condemnation and the case was directed to court. Mr. King claimed the board abused its discretion by condemning his entire farm, when only a portion was needed to accommodate the immediate growth. The district failed to show the necessity for the entire farm and the court
ruled in favor of Mr. King. The potential growth over a 5 to 12-year period does not constitute a necessity. In the case of *Rudolph Farm v. Gr. Jasper Consol. Sch.* (1989), a more immediate need transpired when overcrowding and dilapidated facilities required the district to consolidate two schools. The consolidation required an expansion of the school facility, also requiring 6 acres to be obtained from the Rudolph farm. The owners of the Rudolph farm claimed an abuse of discretion in condemning six acres when the state only requires three. The court held that the district did not abuse its discretion in condemning the six acres. The amount of acreage needed was a matter to be determined by the school board, not the farm owners.

Courts tend to favor the district when there is an immediate need rather than a perceived need. School Boards and district level administrators need to be aware of court decisions as they relate to abuse of discretion in determining the necessity to take.

**Power**

The power to condemn a property for public use or good is strictly given in the Fifth Amendment of the Constitution. States have the right to delegate that authority to other governmental agencies such as school districts. A number of cases analyzed determined the authoritative power to initiate an eminent domain proceeding (see Table A4, Appendix A). Of the six cases analyzed, one focused on the district’s power to take property outside the district boundaries. In the case of *Mallory v. Upson County Board of Education* (1982), the district wanted to condemn property outside of the district boundaries. The City of Thomaston is a school district within the County of Upson, which also has its own district. The county district wanted to condemn land in the city for the purpose of building a track. The city opposed this taking stating the county did not have the power or authority to take property outside of its district. The Georgia Court of Appeal agreed with the City of Thomaston and ruled that the
Upson County Board of Education did not possess the power to take property outside of the district boundaries.

The other five cases in this category focused on power to take in general. More specifically, the outcome of the cases determined the school districts authority to take from city, state and protected land; the city’s power to take school land; and the city’s power to take land for the purpose of a charter school. In the case of Westchester Creek v. N.Y.C. School Const. (2001), the school district sought to acquire a lot from the City of New York. The city claimed the lot was slated for an urban renewal project; therefore, it could not be taken by eminent domain. The court reasoned that there is no higher priority than creating an environment that promotes the education of children. In a similar case the outcome was much different. The court ruled in Elizabeth Bd. Of Educ. v. NJT (2001), that the school district did not have the authority to take state land through eminent domain, even though the state was in negotiation to sell the property to the city. This was also the case in N.W. Lehigh School D v. Approval Bd. (1989), where the school district attempted to condemn property that belonged to the Agricultural Lands Approval Board. The land was protected under legislative act and because the land was protected, the court ruled that the school district does not have the power to take.

Conversely, in the case Marple Township v. Marple Newton School District (2004), the township wanted to take a building that was no longer being used as a school but was being used as a storage facility by the district. The court ruled that the township did have the power to initiate eminent domain and was allowed to take the building and land for the construction of a township administrative complex, because the land would be used for a public use and the district was no longer using the building or land for an educational purpose.
Non-governmental entities do not have the authority to take property through eminent domain proceedings. In *Bear Creek Tp. v. Riebel* (2012), a charter school wanted to expand. Though it did not have the power to condemn, the Township did. The two brought about a plan to allow the school to construct a facility and develop recreational facilities for the Township, gaining the required “public use.” Condemnation proceedings were started for the desired property. The court held that the actions taken by both the charter school and the township are not protected under the Property Rights Protection Act; therefore neither of the two entities held the power to condemn land under eminent domain. Furthermore, the taking of property by means of eminent domain by a private enterprise is unconstitutional under the state constitution.

The cases reviewed regarding the power to take give guidance to boards of education and district level administrators, through trends discovered from the analysis of each case. School districts have the power to take property to build school-related facilities unless the land being taken is state owned or legislatively protected.

**Procedural Matters**

The outcome of the many of the cases analyzed was determined based on procedural issues. The Fourteenth Amendment to the United States Constitution contains a due process clause which provides a protection of procedural due process. Outside of the Constitution, individual states have developed their own procedures that must be followed in proceedings with eminent domain. Of the 20 cases reviewed 12 were decided in favor of the district due to either the plaintiff or defendant not following procedures required in eminent domain proceedings. All cases dealing with procedural issues were reviewed and separated in smaller clusters, depending on the issue: land, site selection, sovereign immunity, and abuse of discretion (see Table A5,
Appendix A). Other cases were based on procedural issues but not enough to establish a pattern or trend. An analysis on each cluster was conducted.

**Land.** The following cases are specific to acquisition of land and the procedural issues that were debated in the courts. In the case of *Asbury Park Bd. Of Educ. v. Murnick* (1988) the school district selected a site for the new facility and had the site approved through the DOE. Regulations changed and the site was approved by a majority vote; however, the district did not get the site re-approved. The court allowed the proceedings to continue but under risk that the site not being usable. In *Deer Val. Unified Sch. D v. Superior Ct.* (1988), the school district attempted to condemn school trust land. The court denied the taking because the Arizona-Mexico Enabling Act outlines procedures for the sale of trust property. The taking did not fall within the procedures. In *Inde. School D. 194 v. Tollefson* (1993) the district was sued for compensation for a lot taken for a school facility. The property owner failed to serve all parties involved or who were adversely involved. The court favored the district because of the procedural issue. Similarly, in the case of *Stafford v. Bryan County* (1995), a procedural issue was at hand when an award was given for the property and the owner filed an exception after the award was amended. The court held that an exception is not allowed on an amended award. In *Clayton v. School Bd. Of Volusia* (1996), the procedural issue centered on whether the district can settle an eminent domain action by paying more than the appraised value, without an extraordinary vote. It was determined that the compensation amount should be decided by a jury, unless decided by a negotiated price, and then it is not an eminent domain case. In *Pickler v. Parr* (2003), the case was appealed to a higher court, because the district had not complied as of the date with the appraisal and bond requirements. The appeals court favored the district in finding the proceedings were not in violation.
Boards of educations and school district administrators need to be familiar with the procedures that are required in eminent domain proceedings. As shown, failure to follow prescribed procedures can delay or even forfeit eminent domain proceedings. The procedures for eminent domain vary across state and even local jurisdictions. Those involved in condemnation proceedings need to become familiar with the district policy as well as the state and federal procedures required.

**Site selection.** The issue of site selection can be argued for many different reasons. In *Board of Educ. v. Seagle* (1995), the property owners argued as to whether the board should have obtained a permit from the Army Corp of Engineers for the disturbance of water under the Clean Water Act on land the district was condemning. Again, the court left the matter of site selection to the district’s discretion, stating that the evidence presented by the property owners did not raise a material fact as to the site being suitable. In *Tanque Verde USD v. Bernini* (2003), the board of education discussed and decided the appropriate site while in executive session. An attempt to stop the condemnation was filed, stating the board violated open meetings law by discussing the site selection in executive session. The accusation was found to be true but the action was ultimately ratified by holding a public meeting and taking a single vote on the site. In *Sch. Dist. Springfield v. City of Springfield* (2005), the district filed action on the city after the city attempted to halt the eminent domain proceedings, because the district did not submit plans to the Planning and Zoning Commission. The district was required to submit plans to the Commission; however, the lack of submission did not give the city the authority to intervene in the eminent domain proceedings, because the school as a state function outweighs the city function.
The selection of the site in which to build a school facility is primarily the responsibility of the school district. School district have the authority to waive local codes and procedures set forth by the city. Because there are procedures set forth at the both the state and local level, school districts should adhere to those procedures when selecting a site to ensure favor by the courts.

**Sovereign immunity.** School districts and district officials are subject to sovereign immunity when acting in good faith. Two cases involved sovereign immunity and the procedural issues associated with sovereign immunity. In *Dillard v. Austin Indep. School Dist.* (1991), the school district voted to negotiate or condemn property owned by Dillard. The Dillards agreed to sell their property and at their own expense purchased permits and conducted surveys. The district then decided to purchase a different property. The Dillards sued the district for damages involving expenses they had incurred. Because there was never a contract between the district and the Dillards, and because the negotiation of a purchase is considered incidental damage and is not compensable, and because the district is covered under the umbrella of sovereign immunity, the court held in favor of the district. In the case of *Foskey v. Vidalia City Schools* (2002), a bus driver, while driving a bus, caused Foskey to have an accident. Foskey filed suit for damages naming the driver in his county of residence and the BOE in the suit. When the district sought to dismiss the case due to sovereign immunity and the wrongly-named employer, Foskey amended her complaint to include the mayor of the city, which had no authority within the school district. The Superior Court of Tombs County dismissed the case due to the school district not being named in the suit. Later, the Georgia Court of Appeal dismissed the case because Foskey did not follow procedures in filing when she improperly added the school district to the suit after initial filing and did not substitute by court order and properly serve the amended suit.
The driver and the BOE were protected by sovereign immunity and were dismissed from the case.

It is important for district level administrators and board to understand the term sovereign immunity and the protection afforded under the term. In both cases, because the district and the employees acted in good faith and were not negligible in their actions they were protected under sovereign immunity.

**Abuse of discretion.** Sometimes government officials abuse the power which they hold.

The three cases reviewed in this area determined whether the district did, in fact, abuse its discretion when enacting eminent domain proceedings. In *Hudson Bd. Of Educ. v. Hudson* (1989) the district sought acquisition of five lots in fee simple. All parties settled except for Dubetz. The trial court awarded just compensation but Dubetz requested a continuance of the trial for lack of proper instruction, cross-examination of superintendent, as well as other procedural issues He claimed the court abused its discretion when it refused to allow a continuance of the case. On appeal, the court ruled in favor of the district and it was found that the court did not abuse its discretion in not allowing a continuance of the case. A second claim that the court abused its discretion came in the case of *Gordon v. Conroe* (1990), stating that placing the consequences of lack of prosecution on the property owner constituted an abuse of discretion. It was believed the property owner abandoned his objections when he failed to name the school district and did not prosecute his case. On appeal the court found that when the district attended the preliminary proceedings the burden was placed on the district not the property owner; therefore, the property owner did not have to defend his case. The court did in fact abuse its discretion by placing consequences of lack of prosecution on the property owner.
Courts can also be held accountable for the procedures that encompass eminent domain proceedings as well as general legal procedures. The cases reviewed provided opposing results on the abuse of discretion by the courts, giving administrators a good perspective as to the generalities of abuse of discretion.

**Summary**

The cases reviewed provided different themes and patterns that can prove useful to school boards and district level administrators who are contemplating entering into an eminent domain proceeding. The analysis of 77 cases identified five major categories and multiple clusters within each major category that linked to different issues that have been identified. School districts should use the trends provided to develop policies and procedures for the individual district that would be used in the instance of an eminent domain proceeding. Courts tend to favor districts that are willing to work with property owners to settle the issue amicably and districts that follow prescribed procedures that have been set in advance. The analysis provided will assist in the development of such procedures so as to avoid lengthy and costly litigation.
CHAPTER V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Introduction

The purpose of this study was to examine how the courts have addressed eminent domain as it relates to public K-12 school districts. The analysis of cases, ranging across multiple court jurisdictions, will provide school district level administrators a deeper understanding of eminent domain and the process to follow when condemning property for public use.

Summary

The following questions guided the data collection and analysis:

1. What issues regarding eminent domain have the state and federal courts identified in court cases about eminent domain and public schools?

   The Fifth Amendment to the Constitution of the United States provides the authority of a state or entity delegated by the state, to take property if the taking is deemed necessary and beneficial for public good. Furthermore, the Fifth Amendment states “nor shall private property be taken for public use, without just compensation.” Just compensation is determined by fair market value and is awarded by the courts. The Fourteenth Amendment provides for procedural due process ensuring proper processes and procedures are followed. Considering both amendments, school districts have the authority to take property from a private individual only if the taking is for public use, if the individual is justly compensated for the deprivation of property, and if proper procedures are followed.
Through the review of cases for this study five major categories were established based on the issues argued in the courts. Each case was analyzed and key words relating to the issues were documented. The cases were then sorted into groups representing the major categories. Cases that argued the determination of the constitutionality of a taking were placed into the first category. Cases related to the compensation were placed into the second category. Those that dealt with the necessity of the taking were placed in the third category. Those cases that argued the authority or power to take a person’s property went into the fourth category and the final category was made up of the cases that looked into procedural issues relating to eminent domain. Each of the five groups made up the major categories: constitutional taking, just compensation, necessity to take, power to take, and procedural issues.

Similarly, the cases were then divided into smaller units or clusters within each major category. Through the process of coding, the researcher began to look for a more systematic order within the cases, creating subcategories or clusters. The overarching issues fell within the major category but the trends developed within the clusters. The clusters for each primary category are as follows: constitutional taking --reversionary interest, land, fees, other; just compensation --inverse condemnation, land, attorney fees, other; necessity to take--site selection, abuse of discretion; power--authority to take; procedural--land, site selection, sovereign immunity, abuse of discretion, other. A category of other was developed for cases that had individual significance within the major category but did not necessarily form a trend or pattern.

There are several issues the courts addressed regarding eminent domain. Primarily, the majority of the cases analyzed involved the constitutionality of eminent domain, just compensation and procedural issues. Many of these cases involved the physical taking of land,
compensation and procedural issues associated with each; however, others addressed issues such as title, taxes, fees, tenure, schedules, goodwill, and dissolution of a district.

2. What were the outcomes of cases pertaining to eminent domain and the public school in the state and federal courts?

Of the 77 cases analyzed, 72 cases directly involved a public K-12 school district for the purpose of determining the constitutionality of the taking, just compensation, necessity of the taking, power, or procedural safeguards. The data revealed that of the 28 cases involving the constitutionality of the taking, 20 (72%) of the cases resulted in the district as the prevailing party. The property owner prevailed in only 4 of the 28 cases (14%) and the decision was split in the remaining 4 (14%) cases. For those 20 cases involving just compensation, the district prevailed in 9 (45%); whereas, the property owner prevailed in 7 (35%). The decision was split in 4 (20%) of the cases reviewed. For the cases involving necessity of a taking, the district was the prevailing party in 3 of the 6 cases (50%) reviewed. The owner prevailed in 2 (33%) cases and 1 (17%) case was split. In the cases determining the authority to take (power) the district prevailed in only 1 of the 6 (17%) cases reviewed. In the remaining 5 (83%) cases the owner prevailed. The 20 cases involving procedural issues produced an outcome where the district prevailed in 12 of the 20 (60%) cases. In 6 of the cases (30%), the owner was deemed the prevailing party. The remaining 2 (10%) were split in the decision.

All cases reviewed either directly involved a public K-12 school district or could have a significant impact on a public school district. The remaining five cases analyzed were deemed outliers and although they did not directly name a public K-12 district they did have a significant impact. In the case of Johnson v. Wylie (1984), the Johnson’s disputed the county in taking their private road and making it public. The road had been used by the school district to pick up
students; therefore, the county and the school district had maintained the road for over 10 years. Maintenance did not equate to ownership and the taking required just compensation. In the case of *Lake County Forest Preserve District v. First National Bank of Waukegan* (1991), the LCFP District filed to take land from the bank. The bank appealed and the school district joined in stating the taking would significantly decrease real estate taxes collected by the school if the land was taken. The court ruled that a decrease in taxes is not a viable reason to dismiss the taking claim. The case the *State Board of Education v. Drury* (1993), involved a public K-12 entity in the State BOE and the results would have implications on all the districts in the State of Georgia. The BOE passed rules and regulations requiring teachers to pass Performance Assessment during a three-year period, which would enable them to keep their teaching certificate. The teachers were issued a non-renewable certificate during this three-year period, until each passed the assessment. The teachers claimed the change from a renewable certificate to a non-renewable certificate was considered a taking and just compensation was due each. The Supreme Court of Georgia ruled in favor of the State BOE and declared the change in certificate is not a taking; hence, no compensation was awarded. In the case of *Brown v. Penland Construction Co., Inc.* (2005), Brown was the head baseball coach at a high school. He contracted with Penland to build an indoor hitting facility. The board approved on the notion that the building and work was being donated and the donation was printed in the local paper. Brown told Penland the donation was a misprint in the paper and authorized Penland to proceed. No contract was ever signed. A taking occurred and compensation was awarded to Penland for the work performed. In the case of *Bear Creek Township v. Riebel, et al.* (2012), the township wanted to condemn land adjacent to the Township charter school so as to expand the school facility. This would involve a recreation center that would be open to the public. Once taken, the land would be given to the charter
foundation to complete the project. It was ruled neither the township nor the charter school held
the authority to condemn property.

3. What are the trends found in cases involving eminent domain and the public schools in
the state and federal courts?

The cases that were reviewed were taken from 1982-2013 and consisted of 5 cases that
did not directly name a public school district but was closely associated, providing data that was
pertinent to this study. The data discerned from the cases analyzed suggests that the school
district prevails in a majority of eminent domain cases, especially those that involve the
constitutionality of a taking, just compensation and procedural issues. Of the 68 cases that fell in
one of these three categories, the district prevailed in 41 (60%).

Eminent Domain is granted through the Fifth Amendment to the U.S. Constitution for the
taking of private property for public use. Technically, the Fifth Amendment only applies to the
federal government; however, the Supreme Court has ruled that the takings clause applies to
state governments through the Fourteenth Amendment to the Constitution. Delegating this power
to state governments creates a natural trend within the cases studied. Of the 78 cases reviewed,
only nine (12%) cases were settled in a federal court. No cases were heard in the U.S. Supreme
Court, six of the nine (67%) were heard in the U.S. District Court, and three of the nine (33%)
heard in federal courts came from the U.S. Courts of Appeal. The prevailing party in the majority
of the cases heard in federal court was the school district. The U.S. District Court ruled in favor
of the district in five of the six cases (83%) heard; whereas, the U.S. Court of Appeal ruled in
favor of the district in all three of the cases heard. The only federal case in which the land owner
prevailed was *Dallas Independent School District v. Calvary Hill Cemetery* (2005). In this
particular case the school district requested the case be moved to the U.S. District Court. It was,
and the District Court remanded the case back to the state court, ruling the federal court lacks jurisdiction. Because the federal courts have placed the burden on the states to oversee eminent domain proceedings, most cases reviewed were settled at the state level.

Through the review and analysis of all cases, trends and patterns emerged from the five primary categories that were studied. Boards of education and school district, system level administrators, need to be familiar with these trends so as to better prepare for future eminent domain proceedings.

Looking first at the constitution of a taking, trends that were developed are as follows:

1. It is evident that courts support the taking of property through eminent domain proceedings, so long as the property is taken for a public use by a government entity and not a private corporation, as seen in Sunburst v. Texaco (2007). In many cases, because land is unavailable or the property owner is not willing to sell for a reasonable price, school districts are finding it necessary to initiate eminent domain proceedings.

2. Courts look disfavorably upon reversionary interest clauses and because of this, the school district prevailed in all such cases reviewed.

3. Depriving property owners of the use and enjoyment of their property will constitute a taking, whether the taking is constitutional or not will depend on the determination of public use.

4. In cases where the school district is sued for “taking” property, whether through increase in lease payment, accidental injury limit, tenure or fees, courts tend to favor the school district.

The Constitution distinctly identifies “just compensation” as an absolute when initiating eminent domain proceedings. Determining what is “just” and what should be compensated for is
generally a question for the court. In reviewing cases in which compensation was the focus, trends emerged.

1. Compensation should not be awarded to property owners for the devaluation of property related to pre-condemnation proceedings. The initiation of eminent domain proceedings does, however, entitle the property owner to attorney fees.

2. If pre-condemnation proceedings are started, the property owner is entitled to compensation for litigation expenses. Conversely, if the process never begins, only discussions of the potential necessity, the property owner is not entitled to litigation expenses.

3. Properties that are left useless or unusable because of eminent domain proceedings should be awarded compensation.

4. Property owners are entitled to litigation expenses when eminent domain proceedings are commenced, whether the property is ever taken or not. School districts should be willing to negotiate compensation for condemned property and rely on the average of the two appraisals to identify just compensation.

School districts take or condemn property out of necessity due to overcrowding, increased student numbers, and old or dilapidated facilities. Trends emerged when analysis was conducted on cases involving necessity.

1. Courts have denied their authority to determine site selection of property being condemned for building educational facilities because it is believed to be the responsibility of the district to choose an appropriate site and live with the consequences if the site is not appropriate.

2. Courts tend to favor the district when there is an immediate need rather than a perceived need.
The power to condemn is bestowed upon states who in turn delegate the authority of condemnation to public school districts. In reviewing cases involving power to condemn, a trend emerged that can be useful to boards of education and school level administrators.

1. School districts have the power to take property to build school related facilities unless the land being taken is state owned or legislatively protected.

Federal and state procedures must be followed in eminent domain proceedings. Many of the cases analyzed pertained procedural issues that were debated in the courts. Based on information taken from cases that involved procedural issues, trends emerged that can be beneficial to boards and district level administrators.

1. Boards of educations and school district administrators need to be familiar with the procedures that are required in eminent domain proceedings. As shown, failure to follow prescribed procedures can delay or even forfeit eminent domain proceedings.

2. The selection of the site in which to build a school facility is primarily the responsibility of the school district. Because there are procedures set forth at both the state and local level, school districts should adhere to those procedures when selecting a site to ensure favor by the courts.

3. School district employees are protected under sovereign immunity when they act in good faith and are not negligent in their actions.

4. Courts can also be held accountable for the procedures that encompass eminent domain proceedings as well as general legal procedures.

4. What principles and procedures applicable for school district level administrators can be discerned from court cases about eminent domain and the public schools in state and federal courts?
As the population in the south continues to grow, school districts are faced with the difficult task of meeting the facility needs brought on by such growth. Few districts have the available property to build a new school or even to expand existing schools. In most cases where new construction will take place, districts need to purchase property to accommodate the facility. Too often property is not available in the location desired, or the asking price for the property is extreme. School districts are forced to execute eminent domain procedures to obtain the property needed at a price that falls within the fair market value. As a district level administrator or a member of a Board of Education, it is extremely important to know and understand the issues related to eminent domain. School districts stand to lose much needed funds through litigation and court rulings if the district, through eminent domain proceedings, fail to constitute a taking, fail to provide just compensation, attempts to take property that is not necessary, does not have the authority or power to take the property, and does not follow proper procedures set forth in the “takings” clause. The cases involved in this study revealed guiding principles that could possibly decrease an administrator or BOE member’s chance of ending up in the courtroom, or prove positive outcomes for those cases that are settled by the courts.

**Guiding Principles**

The following principles were developed from the 78 cases briefed for this study. These guidelines are intended to help system level administrators and Boards of Education involved in eminent domain proceedings. The themes of the principles are reflective of the conclusions drawn from the cases analyzed and should guide the action of the system leadership as well as the Board of Education.
Constitutional Taking

1. A school district has the right to take property through eminent domain proceedings as long as the taking is for public use. Unless specified in the final judgement of the taking, the title of the property taken does not resort back to the previous owner if the district sells the property at a future date. Not only is the land acquired with the taking, but also the fee simple title (Unified School District No. 512 v. Vic Regnier, 1982; Piche, et al. v. Independent School District, 2001).

2. Lease payments of property owned by school districts may be increased or the lease cancelled. Neither the increase in payment nor the threat of cancellation is considered to be a taking (Frazier v. Lowndes County Board of Education, 1983).

3. The threat of condemnation does not constitute a taking. If the landowner sells property under a threat of condemnation, he forfeits any and all legal proceedings under the eminent domain statute (Knop et al. v. Gardner Edgerton Unified School District No. 231, 2009).

4. When a school system does not act in an arbitrary and capricious manner, the system does retain sovereign immunity and is protected from suit (Foster v. Denton Independent School District, 2002).

5. Fees assessed for residential and commercial construction do not constitute a taking (Herron et al. v. Mayor and City Council of Annapolis, Md, 2005; Loyola Marymount University v. Los Angeles Unified School District, 1996).

Compensation

1. School districts as well as land owners should be willing to negotiate compensation, especially when two appraisers are distanced in the appraisal (Tracy Joint Unified School District v. Pombo, 2010).
2. Compensation should be given when a partial tract of land is taken, causing a decrease in functionality or value of the remaining parcel (McKinney Independent School District v. Carlisle Grace, Ltd., 2009).

3. Employees are representative of the school district and can bind the district under contract (Brown et al. v. Penland Construction Company, 2005).

4. School-related functions, such as after-school programs are protected under sovereign immunity and are immune from compensation due to injury. An injured child does not constitute a taking and just compensation is not appropriate (Dollar et al. v. Dalton Public Schools, 1998).

5. In any condemnation of real property, an appraisal must be obtained by the condemnor. If the property owner disputes the appraisal he must provide comparables for a jury to make an appropriate award (Harrison County Board of Education v. Ten-A-Coal, 1995).

6. The threat of condemnation does not constitute a taking; therefore, the landowner is not entitled to compensation based on a threat (Bradley et al. v. Eagle-Union Community School Corporation Board of Trustees, 1995).

Necessity

1. The taking of reversionary purposes does constitute a taking for public good so long as the district can show the property will be used for a necessary purpose (Young Partners, LLC v. Board of Education, Unified School District No. 214, 2007).

2. Environmental factors surrounding the condemnation of a parcel of land can necessitate the taking of additional property even though a school will not be built on the additional property (Dare County Board of Education v. Sakaria, 1995).
Power

1. School districts do not possess the authority to take property outside of their respective district (*Mallory v. Upson County Board of Education*, 1982).

2. A city or county does maintain the power to take school district property if said property is not being used for an educational purpose. Storage of school related equipment does not constitute an “educational purpose” (*Marple Township v. Marple Newtown School District*, 2004).

3. The school district has the authority to condemn property slated for urban development. Education of children supersedes the benefit of urban development (*Westchester Creek Corporation v. New York City School Construction Authority*, 2001).

4. Authority of school districts to take property from another governmental entity does not exist if the property is being used for the public good (*Elizabeth Board of Education v. New Jersey Transit Corporation*, 2001).

5. A city does not have the power to condemn land for the purpose of a charter school. This is not considered a “public use” (*Bear Creek Township v. Riebel*, 2012).

Procedural

1. Districts are not required to have an immediate plan of action for constructing a school at the time of a taking (*Pickler v. Parr*, 2003).

2. Each state outlines procedural guidelines that must be followed in an eminent domain proceeding. In cases where individuals fail to follow proper procedure, the court rules in favor of the opponent (*Foskey v. Vidalia City Schools*, 2002; *Clayton v. School Board of Velusia County*, 1996).
3. The right to file an eminent domain claim is time sensitive and if timelines are not met, the landowner forfeits his ability to pursue legal action (*Russo Farms v. Vineland Board of Education*, 1995).

**Conclusion**

Those individuals who serve in district level administrative positions or on local boards of education have complex and demanding jobs. Primarily, they ensure that students are safe and each has the opportunity to a quality education. To ensure both, students must have adequate facilities, providing the necessary space and safe environment in which to learn. As districts across the nation continue to see growth in student population, schools are becoming inadequate and less safe. Overcrowded classrooms make it difficult to teach to the individual needs of the students, forcing teachers to a “one size fits all” approach to teaching. This method is contradictory to the state accountability which requires differentiation of instruction to ensure teachers are teaching to the specific learning style of the student. This is impossible with overcrowded classrooms; hence, districts are forced with building new buildings to meet the spatial needs of the students, resulting in increased academics, less discipline and a safer environment for all. New schools require a set amount of acreage upon which to build, and the funds necessary not only to build the structure but to purchase the land. Finding large tracts of land that have the necessary utilities, appropriate acreage, traffic flow, landscape, and are either for sale or the owners are willing to sell is not always easy. When properties that meet the specific criteria are not available, districts are forced to begin eminent domain proceedings to condemn the property.

The Fifth Amendment to the U.S. Constitution provides for eminent domain for the federal government. The Fourteenth Amendment extends this authority to each state. The states
have the power to delegate the authority to eminent domain to other government entities, including boards of education. This is important to know because each state, through legislative action, provides a process that must be followed to enter into an eminent domain proceeding. Under state guidance school districts should have a procedure that should be followed when contemplating condemnation of property. As was determined throughout this study, school districts are primarily involved with legal issues involving the taking and just compensation of real property. However, eminent domain extends beyond just real property and includes cases that involve contracts, tenure, benefits, lease payments, utilities, compensation, schedules, goodwill, necessity, power, and procedural aspects.

A number of cases were briefed, involving a subset of 15 different areas of eminent domain. Emerging patterns and trends provided inference into what constitutes a taking, just compensation, necessity of a taking, power to take, and procedural issues involving eminent domain. Through the analysis of the data the researcher was able to provide guidance to district level administrators and members of a board of education, so as to better prepare them for the processes and procedures that accompany eminent domain proceedings. Having an in-depth knowledge of the subject, as well as a plan of action, helps to limit costly litigation that follows proceedings. As a result of this research project, clearer guidance for the provision of eminent domain was offered.

**Discussion**

The results of this study focused mainly on the issues that school districts should be aware of to avoid costly litigation and lengthy court proceedings. However, it should be noted that the review of this study by property owners that are faced with having their property taken by a school district should be encouraged. The results of the cases analyzed reveal that in over
60% of the cases studied, the courts ruled in favor of the district. Property owners should be aware that the odds of winning eminent domain cases against a school district that condemns property for public use and offers just compensation is not likely. The U.S. Constitution through state governments expressly grants the authority to condemn property to school districts for public use as long as the property owner is justly compensated and the district can show that the taking is necessary.

Many school districts are growing rapidly because of increased growth, especially in urban and suburban areas. Demonstrating the necessity to take property has become more difficult, even in the more populated areas. Most districts monitor the demographic changes that are currently taking place as well as those expected in the future, and develop at a minimum, a five-year facility plan so as to provide facilities and infrastructure to better prepare for the potential increased growth. As seen in Appeal of Octorara (1989), expected growth in 5 to 12 years does not necessitate a taking. This greatly hinders school districts from properly planning so as to avert overcrowding and spatial issues at individual schools.

Litigation expenses as well as the inability to properly plan ahead usually result in significant costs for all involved. Court cases involving eminent proceedings usually last for several years once all appeals are complete. And, as stated, generally results in a favorable action for the school district. In most court cases this could be avoided if the two parties were willing to negotiate and come to an agreement prior to court involvement. When the courts become involved, regardless of the outcome, the school district suffers financially. The property owner will suffer when he loses; otherwise, when the district loses the property owner is generally awarded legal expenses and compensation. In either case the district has to pay its own legal
expenses. It is important for property owners and school districts alike to understand the expense related to eminent domain proceedings.

**Recommendations for Future Research**

After reviewing the findings and conclusions of this study, the following recommendations are made:

1. Laws, policies, and procedures are rapidly changing within each state regarding eminent domain, especially since the 2005 *Kelo* ruling. This study should be conducted again in 10 years to see what affect the changes will have on future cases.

2. Research should be conducted to determine the level of understanding district office administrators and the local boards of education have in regard to eminent domain.

3. Research should be conducted to examine the local school district procedures and processes as they pertain to eminent domain.

4. A study should be conducted examining different size school districts and the need for eminent domain proceedings within each over a certain period of time.

5. Research should be conducted examining districts from rural, suburban, and urban areas as it relates to eminent domain proceedings.

6. Research should be conducted examining national regions and public K-12 districts within each that have been involved with eminent domain proceedings.

7. Research should be conducted examining demographics of those most affected by eminent domain.

8. Research should be conducted to examine the number of negotiated purchases that take place prior to going to eminent domain proceedings.
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Clayton v. School Bd. of Volusia County, 667 So.2d 942 (Fla.App. 5 Dist. 1996).


Klein Independent School v. Fourteenth Court, 720 S.W.2d 87 (Tex. 1986).


Kohl v. United States, 91 U.S. 367 (1875).


Loyola Marymount University v. LAUSD, 53 Cal.Rptr.2d 424 (Cal.App. 2 Dist. 1996).

Magna Carta (1215).


School Bd. of Broward County v. Viele, 459 So.2d 354 (Fla.App. 4 Dist. 1984).


United States Constitution (1789).


Wells v. Panola County Bd. of Educ., 645 So.2d 883 (Miss. 1994).


Western Union Telegraph Co. v. Louisville & N R Co., 201 Fed. 946 (1915).

Williams v. School District No. 6, 33 Vermont 271 (1860).
Wood v. City of East Providence, 811 F.2d 677 (1st Ctr. 1987).


APPENDIX A

MISCELLANEOUS TABLES
Table A1

Cases Pertaining to Constitution of a Taking

<table>
<thead>
<tr>
<th>Year</th>
<th>Case Title</th>
<th>Defendant/Plaintiff</th>
<th>District</th>
<th>Issue</th>
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<td><em>Wood v. City of East Providence</em></td>
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Cases Pertaining to Compensation

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CASES INCLUDED IN THE STUDY
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<tr>
<td>Klein Independent School District v. Fourteenth Court of Appeals</td>
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<td>Deer Valley Unified School District No. 97 of Maicopa Co. v. Superior Court In and Out for Maricopa Co.</td>
<td>1988</td>
<td>Procedural</td>
<td>Supreme Crt. Of Arizona</td>
<td>Defendant</td>
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<td>Lake County Forest Preserve Dist v. First Nat. Bank of Waukegan</td>
<td>1991</td>
<td>Procedural</td>
<td>Appellate Crt. Ill. 2 Dist</td>
<td>Plaintiff</td>
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<td>Exxon Corp. v. BOE of Lamar County, Miss.</td>
<td>1994</td>
<td>Constitution</td>
<td>US.Dist. Crt. Miss</td>
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<td>Wells by Wells v. Panola County Board of Education</td>
<td>1994</td>
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<td>Bradley v. Eagle-Union Community School Corp. Board of Trustees</td>
<td>1995</td>
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<td>Westchester Creek Corp. v. New York City School Construction Authority</td>
<td>2001</td>
<td>Constitution</td>
<td>Supreme Crt. N.Y.Appellate Div. 1 Dept.</td>
<td>District</td>
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<td>Young Partners, LLC v. BOE, Unified School District No. 214</td>
<td>2007</td>
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