Memorandum

To: ARPS parent working group
From: Amherst parent and caregiver working group
Date: October 21, 2026

Re: How the Amherst and Amherst-Pelham Regional School Districts may be exposing themselves to tort claims by enabling Google Additional Services on K-5 student accounts without parental consent

This memorandum was prepared by a parent, not an attorney, from public documents. Nothing in it is legal advice.

Question presented

Does a Massachusetts school district that enables consumer Google services (YouTube, Google Search) and generative AI (Gemini) on the accounts of students under 13 without parental consent, which Google's own agreement requires for the consumer services but not for Gemini, lose the protection of the Massachusetts Tort Claims Act when a child is harmed through those services, and what is the scale of the resulting exposure?

Short answer

Arguably yes, on the right facts, and the exposure is up to $100,000 per child under the Act's damages cap. The Tort Claims Act ordinarily bars claims that a district failed to prevent harm caused by a third party, which is how a failed-filter claim is usually framed and usually lost. The bar does not apply to harm that the district "originally caused" by its own affirmative act, and it does not apply where the district gave "explicit and specific assurances of safety" that a family relied on. Enabling a consumer service on a young child's account, when the district's vendor agreement conditions that act on parental consent and the district did not obtain it, is an affirmative act by the district rather than a failure to act. If a child is then harmed through that service, the district's usual immunity argument is unavailable, and the claim is analyzed like one against a private party, subject to the $100,000 per-plaintiff cap and the Act's procedural requirements. Separately, the district's contractual position with Google and its position under the federal children's privacy law both deteriorate for the same reason. Gemini is different. Google classifies Gemini for Education as a Core Service, so the agreement's parental-consent clause does not reach it, and the district itself gave the COPPA consent for under-13 users when it signed. Enabling or leaving Gemini on for an elementary organizational unit is still an affirmative configuration act, but the breach-of-agreement fact that strengthens the YouTube claim is absent.

Facts, as far as the public record shows

ARPS issues Google Workspace for Education accounts and Chromebooks to elementary students, including kindergartners. On August 10, 2026 Google enabled Gemini in Classroom by default for students of all ages unless a district administrator disabled it. Google did not change its agreement when it did so; the Education Terms of Service went from an October 7, 2025 version directly to the October 12, 2026 version, and the only substantive changes concern AI Agents, not consent or age. YouTube is available on the Chromebooks according to parent reports. Canva, on the district's signed vendor list, enables two image generators for student accounts by default. The district's operative technology regulation, Procedure I7, is dated 2014 and provides that students receive network accounts and internet access "unless a parent or legal guardian submits a signed request refusing access." Policy IJNDB states that filtering software "will not block ALL inappropriate websites." The 2026-27 enrollment forms for two Amethyst Brook students, reviewed in full, contain no request for consent to any technology service

and no acceptable use agreement; the only consent form the district circulated to families this fall concerns images and information release. Parents in the district report young students reaching YouTube, TikTok and pornographic content on school devices. The district's actual Google Admin configuration, consent records and incident log are unknown; a public records request is pending in the working group's action items.

I. The Google agreement conditions the district's act on parental consent

The Google Workspace for Education Terms of Service (last modified October 12, 2026) provide at section 3.5 that the customer "will, before allowing any such End User to access or use those products or offerings, obtain parental consent" for Additional Services used by students under 18 (the consent the clause names is for the collection and use of personal information, a data consent, and a district will say it is not a consent to content), and at section 3.10 that if the customer allows users under 13 to use the services, "Customer consents as required under" COPPA. Section 3.6 makes the customer responsible "for any use of the End User Accounts." Google's privacy notice states that administrators are responsible for "obtaining parental consent for the Additional Services that they choose to enable," and identifies YouTube, Google Search and Maps as Additional Services governed by consumer terms rather than the education agreement. YouTube's page for school administrators states that YouTube is off by default for under-18 users and that enabling it for students requires parental consent renewed annually. Gemini stands outside this clause. Google's Services Summary (modified August 31, 2026) lists Gemini for Education and Gemini Notebook as Core Services for every Education edition, and the Service Specific Terms, section 12.6, permit Education customers to enable users under 18 on them while the customer remains responsible for its obligations under applicable law. Google requires no parental consent for a Core Service; under section 3.10 the district gives COPPA consent on parents' behalf. Google's consumer Gemini age page still says users must be 13 or older with a personal or school account, which Google has not reconciled with the Workspace position. The consent argument in this memorandum therefore applies to YouTube and Search; the Gemini argument rests on the affirmative act alone.

Two consequences follow. First, the decision to enable these services is, by Google's design, a discrete administrative act taken in the Admin Console for a defined organizational unit, not a background condition. Second, Google has contractually placed the consequences of that act on the district: section 11 disclaims "any representations about content or information accessible through the Services," and section 12 caps Google's aggregate liability at the greater of $1,000 or twelve months of fees. Parents are not parties to this agreement and cannot sue on it, but the agreement fixes which party chose to expose the child and which party certified that consent existed.

II. COPPA narrows what a school may consent to

Under the FTC's COPPA guidance, a school "may act as the parent's agent and can consent under COPPA," but "the school's ability to consent for the parent is limited to the educational context," and only where the operator collects data "for the use and benefit of the school, and for no other commercial purpose." YouTube is an advertising-supported consumer product; in 2019 the FTC and New York obtained a $170 million settlement from Google and YouTube for collecting persistent identifiers from child viewers without parental consent. The 2025 COPPA rule update declined to codify a school-authorization exception and left the FTC's existing guidance in place. COPPA is enforced against operators, not schools, so the district faces no federal penalty. But a district that enables YouTube for an eight-year-old on its own authority is asserting a consent that the FTC's guidance says it cannot give for a non-educational commercial service. That matters below, because it undercuts any argument that the district's act was within its discretion or reasonable.

III. The Massachusetts Tort Claims Act framework

The Massachusetts Tort Claims Act, G.L. c. 258, section 2, makes public employers liable for the negligent acts of employees "in the same manner and to the same extent as a private individual," but not "for punitive damages or for any amount in excess of $100,000." The cap is per plaintiff. Section 4 requires the claimant to present the claim in writing to the public employer's executive officer within two years of the injury and bars suit until the employer has had six months to respond; suit must be filed within three years. Section 10(b) exempts "the failure to exercise or perform a discretionary function or duty," and section 10(j) exempts "any claim based on an act or failure to act to prevent or diminish the harmful consequences of a condition or situation, including the violent or tortious conduct of a third person, which is not originally caused by the public employer."

Section 10(j) is the district's principal shield in any case about student harm, and the Supreme Judicial Court applies it broadly. In Brum v. Town of Dartmouth, 428 Mass. 684 (1999), the court held that the "principal purpose" of 10(j) is "to preclude liability for failures to prevent or diminish harm," and that a failure to supervise is a failure to prevent. In Cormier v. City of Lynn, 479 Mass. 35 (2018), a fourth grader paralyzed by peer bullying could not recover because "the plaintiffs seek to hold the school liable for not acting." In Stahr v. Lincoln-Sudbury Regional High School District, 93 Mass. App. Ct. 243 (2018), the Appeals Court held that the statutory exceptions require "an affirmative act" by the public employer, and rejected the argument that allowing an untrained volunteer coach to run a drill was such an act. Stahr is the closest analog to the theory in this memorandum, and it cuts against it. A claim that the district's filter failed to stop a child from reaching pornography is, on these authorities, a 10(j) claim that fails.

Section 10(j) has exceptions, two of which matter here. Subsection (j)(1) preserves claims "based upon explicit and specific assurances of safety or assistance, beyond general representations," made to the direct victim or a member of the victim's family, where the injury resulted in part from reliance on those assurances. Subsection (j)(2) preserves claims "based upon the intervention of a public employee which causes injury to the victim or places the victim in a worse position than he was in before the intervention." And the threshold language of 10(j) itself limits the exemption to conditions "not originally caused by the public employer."

IV. Application: enabling an unconsented service is an act, not an omission

The distinction the courts draw is between harm the district failed to stop and harm the district set in motion. A content filter that leaks is the first kind. An administrator who, in the Admin Console, turns on YouTube or leaves Gemini enabled for the kindergarten organizational unit is doing the second kind. The service is not a condition of the world that the district failed to address; it is a feature the district chose to provide on an account the district created for a child the district knew to be under 13, under an agreement that, for YouTube and Search, told the district to ask the child's parent first. On a claim framed this way, the district "originally caused" the condition, and 10(j) does not apply by its own terms. The claim is then an ordinary negligence claim: a duty of reasonable care toward a young child in the district's custody, a breach in enabling a consumer service the vendor agreement and federal guidance both flagged as inappropriate for the child without a parent's consent, causation if the child reached harmful content through that service, and damages up to the cap. Kent v. Commonwealth, 437 Mass. 312 (2002), supplies the test, an affirmative act that materially contributed to creating the specific condition or situation and is not too remote from the harm. The decisions that support this framing are Gennari v. Reading Public Schools, 77 Mass. App. Ct. 762 (2010), where a principal's choice to hold recess in a concrete courtyard when a padded gym was available was an original cause even though a classmate's push was the immediate cause; Devlin v. Commonwealth, 83 Mass. App. Ct. 530 (2013), where allowing inmates to

work among civilly committed patients was an original cause; and Magliacane v. City of Gardner, 483 Mass. 842 (2020), where supplying water the city knew was corrosive was. The decisions that cut against it are Brum, Cormier, Stahr and Jacome v. Commonwealth, 56 Mass. App. Ct. 486 (2002), where operating a beach without the posted lifeguards was still a failure to prevent. No Massachusetts court has decided which side an administrative configuration falls on, and a court could characterize the third-party content as the condition and the enabled service as a failure to protect.

Subsection (j)(1) offers a second route where the district made assurances. Policy IJNDB states that "our schools employ filtering software to block access to inappropriate content on all computers." A parent who was told at an open house, in a handbook, or in a teacher's newsletter that devices were safe and filtered, and who allowed the child to use the device in reliance, has the kind of specific assurance the statute preserves. Whether any ARPS communication rises to "explicit and specific" is a factual question; the working group should collect what families were told. The bar is high. Lawrence v. City of Cambridge, 422 Mass. 406 (1996), requires an assurance that is definite, fixed and free from ambiguity, and Ariel v. Town of Kingston, 69 Mass. App. Ct. 290 (2007), holds that assurances implied from conduct do not count. A filtering sentence in a published policy is a general representation to the public, not an assurance to a particular family, so this route depends on finding a specific written or spoken promise.

Subsection (j)(2) is a third route where the district's intervention made the child's position worse. A child who had no YouTube or Gemini access before the district issued the account and enabled the service is in a worse position after the district's intervention than before it. The Appeals Court in Stahr required an affirmative act; the act here is the configuration decision. This is the weakest of the three routes. Serrell v. Franklin County, 47 Mass. App. Ct. 400 (1999), and Stahr read intervention as a direct act by an employee on the victim, and a console setting is unlikely to qualify.

The discretionary function exemption in 10(b) is the district's remaining argument, and it is a live one. The exemption protects policy-level choices involving planning and the weighing of alternatives, not operational decisions made without regard to governing rules. A decision to enable a service in breach of the vendor agreement's express precondition is not the exercise of discretion the exemption protects; it is a failure to follow the rule the district had already agreed to. If, on the other hand, the enabling decision was made district-wide at the superintendent or committee level after weighing alternatives, the district will argue it was a policy choice and protected. Magliacane holds that this question is usually too fact-bound to resolve on a motion to dismiss, so it would be litigated.

V. Scale of the exposure

The cap is $100,000 per plaintiff, with no punitive damages and no prejudgment interest. It does not aggregate across the district; it multiplies across children. If the configuration is district-wide, every elementary student with an enabled service on an unconsented account is a potential claimant, and the question for each becomes only whether that child was harmed and whether a parent presents the claim within two years. Amethyst Brook and Crocker Farm together enroll roughly [confirm enrollment] students in K-5. Two children harmed is up to $200,000 of exposure; twenty is up to $2 million. The figure is a ceiling, not a value. Harm must also be provable. Payton v. Abbott Labs, 386 Mass. 540 (1982), requires a negligence claim for emotional distress to show physical harm manifested by objective symptomatology, so exposure to disturbing content alone, without documented effects, is not compensable. These claims are typically covered by the district's liability insurer, which means the practical consequence of a pattern of claims is premium and underwriting pressure rather than a budget line, but an insurer that learns the district enabled consumer services on under-13 accounts contrary to its vendor agreement may raise coverage questions of its own. Parent-side counsel exists for exactly these

cases; the EdTech Law Center brought the pending Chromebook case against Google in federal court and advertises representation of families in school device matters.

The clock is the other dimension. Section 4's two-year presentment period runs from the date the cause of action arose, and the Supreme Judicial Court has held that it applies regardless of the claimant's age (George v. Town of Saugus, 394 Mass. 40 (1985)). A child's minority does not extend it. Exposures that occurred in the 2025-26 school year remain presentable through the corresponding dates in 2027-28. A district that corrects its configuration now limits future claims but does not extinguish past ones.
VI. Related exposures

Title IX. Under the current regulations, 34 CFR 106.30, sexual harassment includes unwelcome conduct "so severe, pervasive, and objectively offensive" that it denies equal access to education. A single accidental exposure through a device is unlikely to meet that standard. A pattern in which students use district devices to show pornography to classmates, known to staff and unaddressed, could, and Title IX carries no damages cap. No Massachusetts case on point was found.

Contract and procurement. The Massachusetts Student Privacy Alliance data privacy agreements that ARPS signs with vendors cover data use and advertising, not content exposure, and whether Google has signed the model agreement for ARPS should be confirmed in the Student Data Privacy Consortium database before it is asserted either way. The district's compliance posture with Google therefore rests entirely on Google's own terms, which the district appears to be in breach of. A breach gives Google, not parents, the remedy, but it is a fact any plaintiff can plead.

CIPA and E-Rate. The Children's Internet Protection Act creates no private right of action and no effectiveness standard; the district's only exposure is loss or repayment of E-Rate discounts if it cannot certify that a filter was installed and operating. The FCC opened a proceeding in June 2026 asking whether that standard is sufficient. This is not a damages exposure.

Governance. A documented pattern of enabling services for young children without the consent the vendor requires, during a year in which the School Committee has already listed technology policy as a goal and the Department of Elementary and Secondary Education is reviewing the district, is a finding the committee will have to explain regardless of whether anyone sues.

VII. What closes the exposure
Three steps, each within the superintendent's authority and none requiring a policy vote. Disable YouTube, Search and other Additional Services, and the Gemini app, Gemini Notebook and Gemini in Classroom, for the elementary organizational units until the School Committee adopts a policy, which removes the affirmative act going forward. Collect written parental consent, per child and per service, before any such service is re-enabled, which is what Google's agreement already requires for Additional Services. Stop making general assurances of safety to families and replace them with a plain statement of what is enabled, what is filtered, and what is not, which removes the (j)(1) reliance route for future claims. None of these steps affects past exposures, which only the passage of the two-year presentment period will close. One limit applies. Google's age-based access page states that AI Overviews and AI Mode in Google Search are available to under-18 Education users and provides no control to turn them off, which the Wall Street Journal reported on October 2, 2026 and which Los Angeles and Fairfax County have addressed with their own blockers. A district that keeps Search enabled cannot honor a parent's refusal of AI features without disabling Search itself for that child's organizational unit, and should say so in writing rather than represent otherwise. Update, November 5, 2026. On November 3,

2026 Google announced that Gemini and Google Search, including AI Overviews and AI Mode, will be off by default for K-12 student accounts beginning in early 2027, and that students in districts which keep AI off will lose access to Google Search entirely. From that date any AI service on an elementary account will exist because a district administrator enabled it, which is the affirmative act this memorandum describes.

Conclusion

The district's usual immunity for student harm depends on the harm being something the district failed to prevent. Enabling consumer services on young children's accounts without the consent its vendor agreement requires for consumer services, and enabling Gemini for children Google's own consumer rules say must be 13, converts the district from a bystander into the actor that created the condition, and on the authority of Kent, Gennari and Devlin that is an arguable application of the line the Tort Claims Act draws, though Stahr and Cormier show how a court could read the same facts as a failure to prevent. The exposure is up to $100,000 per child, uncapped in number, presentable for two years from each incident, and avoidable in an afternoon.

Open questions for counsel

Whether a Massachusetts court has treated an administrative configuration decision as an affirmative act under section 10(j), or whether it would characterize the enabled service as part of the "condition" and the harm as the third party's content. Whether the district's enrollment paperwork or any handbook contains language a court would read as consent or as a waiver. Whether the discretionary function exemption reaches decisions made in breach of a vendor agreement. Whether the district's insurance policy excludes claims arising from privacy or data practices, which is a common exclusion. Whether an aggregated set of claims presented together changes the district's or the insurer's response. Whether the affirmative-act theory is materially weaker for Gemini, a Core Service for which Google required no parental consent, than for YouTube and Search, where the district's act breached an express contractual precondition.

Sources are linked where cited. Statutory text from malegislature.gov; cases from FindLaw and Justia; Google terms as of October 12, 2026; FTC guidance as of October 2026. Prepared October 21, 2026 for the ARPS parent working group. Not legal advice.