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## INTERPRETING IMMUNITY AND EXPOSURE: RECENT COURT DECISIONS UNDER THE PSTCA

We wish to share with you four recent decisions of the Commonwealth Court of Pennsylvania concerning the Political Subdivision Tort Claims Act (PSTCA) which focus on one exception to the broad immunity from liability the law grants. Under the PSTCA, school entities are immune from liability for its actions or omissions except for specific exceptions listed in the law. In 2019, the Pennsylvania legislature added a new exception for various listed sexual offenses. This exception allows plaintiffs to sue when injury was caused by negligent actions or omissions of a school entity which results in conduct that meets the definition of the listed sexual offenses. These decisions of the court provide guidance on the scope of this exception.

- ***In L.F.V. v. South Philadelphia High School & School District of Philadelphia***, the court held that the sexual abuse exception applied and thus allowed a lawsuit to go forward when the abuser was another student, and not a school employee. In that case, during a physical education class, two male students sexually assaulted a female student behind the gymnasium bleachers. The school district's employees supervising the class did not witness the assault. The student sued the school district alleging the district owed a duty to protect her while she was at school and that it breached that duty in several ways. The school district argued that its immunity could only be eliminated if a school district employee committed the abuse. In response, the student maintained the school district's liability arose from its negligence in enabling the sexual abuse to occur. Agreeing with the student, the court noted that the intent of the 2019 legislation was to hold municipalities, like the school district, accountable for negligently enabling sexual abuse. The court emphasized the plain language of the exception, which it stated does not limit liability to employee-on-student abuse.<sup>1</sup>
- ***In Matos v. RM Knox Transportation, LLC, School District of Philadelphia, Mastery Charter School, and Charles Johnson***, the court allowed a lawsuit to continue against all the defendants<sup>2</sup>. In this case, Mastery Charter School provided education to Philadelphia School District students and contracted with RM Knox Transportation to provide vehicles and drivers to transport its students. In the fall of 2022, Knox Transportation hired Charles Johnson despite a lengthy criminal record. "S.M.," an autistic student, was enrolled in the Charter School in the fall of 2022 and Johnson was her bus driver. Between October 31, 2022, and November 17, 2022, Johnson is alleged to have engaged in the sexual and physical abuse of S.M. Johnson was charged with multiple crimes including indecent assault, corruption of minors, unlawful contact with a minor, and endangering the welfare of children. The plaintiff claimed that all the defendants' omissions with respect to screening, monitoring, and supervising Johnson allowed for the abuse of S.M. to take place. As a result, the plaintiff argued that the defendants were not entitled to immunity from suit pursuant to the sexual abuse exception. The defendants argued that the sexual abuse exception to immunity did not apply because Johnson was an independent contractor and was not an employee of the district or the charter school. The court rejected this argument and noted that the key allegation was that the defendants' negligence in failing to screen, monitor, or supervise bus drivers, and permitting those with criminal backgrounds like Johnson to come into direct contact with children is what allowed the abuse to occur. In other words, the court concluded that the district and the charter school could be liable for negligence that enabled the sexual abuse.
- ***In N.N. v. School District of Phila., Sandra Williamson and David Johnson***, the court permitted a lawsuit against all the defendants to proceed based upon a student sexual assault that occurred on a bus. In this case, "K.W.," a 14-year-old disabled

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female student, took transportation provided by the school district. The “special transportation” was intended to provide added safety and supervision due to K.W.’s disability. On March 10, 2020, K.W. was on the bus with a male student seated directly behind the bus attendant (Williamson) and five rows behind the driver (Johnson). During the ride, K.W. was alleged to have been sexually assaulted while the bus attendant was on a personal phone call. Once again, the court concluded that the immunity protection of the PSTCA did not protect the defendants because it was alleged that the defendants negligently enabled the sexual abuse to occur.

- Finally on January 9, 2026, in ***S.M. v. City of Phila. and Free Library of Phila. Foundation***, the court allowed a lawsuit to continue against both defendants again rejecting claims of immunity. On April 3, 2019, “S.M.” visited the library to work on homework assignments. The library had a system of dividing students by age, with high school students on the first floor and elementary and middle school students on the second floor. While S.M. was looking for a book in an isolated section of the children’s area, another patron, who was between 16 and 17 years of age, sexually assaulted her. Williams, as a parent of S.M., filed a lawsuit against the city and the foundation alleging they breached multiple duties owed to S.M., and that S.M.’s injuries were caused by these negligent acts and omissions. The court concluded that the sexual abuse exception applied because there was an allegation the defendants negligently enabled sexual abuse to occur.

The court in all these cases has made it clear that from its perspective an exception to the general immunity provided to school entities applies when the school entity’s negligence enables conduct to occur that constitutes one of the listed sexual offenses even if that conduct was engaged in by a third party and not an employee. Unfortunately, fact patterns similar to those in these four cases, while not common, do occur with enough frequency to cause concern.

As a result of the current rulings, one piece of advice we have, beside doing everything you can to protect against these kinds of situations, is to review the indemnification language you have in any of your third party contracts to make sure it would provide protection in the event of a lawsuit caused by the conduct or omission of a third party vendor, such as a transportation company.

Once the Pennsylvania Supreme Court issues its ruling in the *L.F.V. v. Phila. School District* case, we will let you know. In the meantime, the current state of the law is as set forth above.

**Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.**

<sup>1</sup> This case has been appealed to the Pennsylvania Supreme Court and that court has agreed to consider the matter.

<sup>2</sup> Section 1714-A(a)(2) of the Pennsylvania School Code (regarding powers of charter schools) provides that a charter school shall have the power to “[s]ue and be sued, but only to the same extent and upon the same condition that political subdivisions and local agencies can be sued.”

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