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IS THERE A DUTY TO PROTECT STUDENTS FROM THE ACTS OF A THIRD PARTY?

Public school districts and public charter schools are government entities. Consequently, employees of school districts and charter schools are considered to be “state actors” for legal purposes. In general, courts have found that school personnel, in their professional roles as state actors, have no duty of care to protect students from harm deriving from the acts of third party individuals when those school personnel are functioning within the scope of their school employment.

When a student is harmed by a third party, the victim student will usually allege that the harm was foreseeable and school personnel should have done something to prevent or to stop the injury from occurring. Often the victim will contend that because a student was in the custody of the public school entity when the harm occurred, the public school entity should be held liable. The seminal cases in which courts analyze the contours of public schools’ obligations regarding third party harm tend to have very unfortunate and often tragic fact patterns. In these cases, courts look to the nature of the custodial, or special relationship, as well as the particular fact pattern of the incident or incidents involved.

The Third Circuit Court of Appeals has held that no special custodial relationship exists between school children and public school entities. *D.R. by L.R. v. Middle Bucks Area Vocational Technical School*, 972 F.2d 1364 (3d Cir. 1992). In *D.R.*, two students alleged that school staff knew or should have known that they were being molested by other students in a graphic arts darkroom and adjoining bathroom. The molested students argued that a teacher and principal knew or should have known of the sexual assaults and therefore should have prevented it or otherwise intervened. Because school personnel did nothing, the student-plaintiffs alleged the school was liable for the harm. The court began its analysis with the premise that the United States Constitution “does not impose an affirmative duty upon the state to protect its citizens. Rather, it serves as a limitation on the state’s power to act.” *D.R.* at 1369. The court concluded that neither Pennsylvania’s compulsory school attendance requirement nor its *in loco parentis* doctrine created the kind of “special relationship” between the state and its citizens that would create a duty to protect.

A second legal theory asserted by the student-plaintiffs in *D.R.* was that the danger was created by the school, and therefore the school should be held liable for the resulting harm. As the student-plaintiffs in *D.R.* argued, “having placed plaintiffs in the situation alleged, the school defendants were obligated to protect them from violations of their personal bodily integrity by other students who were also under such defendants’ control.” *D.R.* at 1373. Plaintiffs pointed out that the teacher assigned to the graphic arts classroom was a student teacher who was not adequately supervised and that the school failed to “put a stop to the non-sexual pandemonium [which] may have created a recognizable risk that plaintiffs would receive little education in that class, and perhaps, physical injury due to the roughhousing.” *D.R.* at 1374. The court concluded that even though there was “pandemonium” in the classroom, the type of harm suffered by the plaintiffs was not foreseeable by school personnel. The danger was neither foreseeable nor was it created by the school. Therefore, the school was not liable for failing to protect students against the harm. It should be noted that four of the nine judges in this *en banc* appeal dissented with the majority opinion signaling that the outcome of this case was a close call.

Although the *D.R.* decision is more than twenty years old, courts in the Third Circuit have continued to be disinclined to impose upon public school districts a duty to protect students against harm by a third party:

- *Mohammed e. rel. Mohammed v. School District of Philadelphia*, 355 F.Supp.2d 779 (E.D. Pa. 2005) (District not liable)

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for injuries to student when he was assaulted by another student in a school alleged to have known problems with student against student violence.)

- *Allen v. Susquehanna Twp. Sch. Dist.*, 233 Fed. Appx. 449 (3d Cir. 2007) (District not liable when student with emotional disturbance left school without permission and was struck and killed in traffic.)
- *Morrow v. Balaski and Blackhawk Sch. Dist.*, 719 F.3d 160 (3d Cir. 2012) (District not liable when siblings were bullied, taunted and assaulted by other students on and off school property.)
- *Swanger v. Warrior Run Sch. Dist.*, 2015WL5830822 (M.D.Pa. 2015) (District not liable when student with lengthy history of mental health problems and custodial care placed in a life skills class sexually assaulted a fellow life skills student while in school.)
- *Green v. Chester Upland Sch. Dist.*, 89 F.Supp.3d 682 (E.D.Pa. 2015) (District not liable for failing to protect student against assault by trespasser when the district failed to have student identification badges and non-student entered the school past security staff.)

It is vital to note that the outcomes of these cases always turn on the particular facts of the case. Districts cannot presume that they can never be held liable for harm perpetrated against a student by a third party. Whether a school district will be held liable will turn on whether the harm was foreseeable and fairly direct, whether the state actor acted in willful disregard for the victim's safety or with a degree of culpability that "shocks the conscience," whether a "special relationship" existed between the victim and the state actor such that it was foreseeable that the victim would be harmed by the state actor's acts, and whether the state actors used their authority to create a danger to the victim or that rendered the victim more vulnerable to danger than had the state actor not acted at all. *Kneipp v. Tedder*, 95 F.3d 119 (3d Cir. 1996) (See also *Enright v. Springfield*, 2007WL4570970 (E.D. Pa. 2007) (Young student harmed by foreseeable acts of known disruptive students on school bus with inadequate supervision and inadequate training of driver.) .

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.

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