STATE CREATED DANGER THEORY: SCHOOL DISTRICTS CAN BE LIABLE FOR THE ACTIONS OF STUDENTS

School administrators across the Commonwealth often fret about the prospect of a lawsuit against them for the improper actions of their respective employees. Such anxiety is understandable and unavoidable. Less predictable yet equally problematic is that school districts are liable in some circumstances for the actions of independent third party actors, such as students or parent volunteers. In a never-ending effort to reach the "deep pockets" of a school district, plaintiff attorneys often attempt to convert an ordinary tort (such as a fight between two students) into a federal constitutional violation based on the "state created danger theory."

The "state created danger theory" is an exception to the general rule that the state has no affirmative obligation to protect its citizens from the violent acts of private individuals. The Third Circuit in *Bright v. Westmoreland County,* 443 F.3d 276 (3d. Cir. 2006), articulated the four required elements a plaintiff must prove to have a meritorious state created danger claim. They are as follows:

> (1) the harm ultimately caused was foreseeable and fairly direct;
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> (2) a state actor acted with a degree of culpability that shocks the conscience;
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> (3) a relationship between the state and the plaintiff existed; and
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> (4) a state actor affirmatively used his or her authority in a way that created a danger to the citizen or that rendered the citizen more vulnerable to danger than had the state not acted at all.

Accordingly, in most cases, when one student physically abuses another student during the school day, the school district is not liable for such conduct. Under certain circumstances, however, a school district is liable for the actions of another student. Take for instance if the following situation:

1) Student A tells an administrator that Student B, a student with a history of bullying and abusing other students in school, intends to physically harm Student A during homeroom and needs some type of intervention or protection. The administrator ignores Student A's concern for his physical safety. Specifically, the administrator does nothing to separate the two students, does not investigate the situation, and does not alert any teacher to the situation.

2) Subsequently, while in homeroom, the homeroom teacher hears Student B tell another student that he is going to attack Student A. Instead of taking some sort of preventive action, the homeroom teacher leaves the class to go down the hall. However, before leaving, the homeroom teacher locks the classroom door - leaving Student A and Student B in the same locked classroom. Student B then takes this opportunity to physically assault Student A.

In this situation, a court could find the District liable for the actions of Student B because the District had specific and concrete information that foreseeable harm could happen to Student A but took no action. Rather, the District turned a blind eye to a known threat and was deliberately indifferent to the safety needs of Student A. Moreover, the District affirmatively created a situation (a locked classroom) for the assault to take place. This hypothetical would most likely satisfy all the elements of a state created danger cause of action.

The lesson to learn from this hypothetical is that when an administrator becomes aware of specific and concrete information about foreseeable harm to a student, he/she should take immediate action and address the situation, making sure to keep proper documentation. Waiting for something bad to happen is never good policy. In the name of student safety, and to avoid liability under the "state created danger theory," it is always better to act proactively as soon as the District learns about a potentially dangerous situation.

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.