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THE DBYD DIFFERENCE – EDUCATION LAW
JANUARY 15, 2010

How Should School Districts Respond to Sexual Abuse Claims?

- A look at recent sexual abuse cases from the Commonwealth -

There is perhaps no thought that worries parents more than the idea of an individual causing harm to their children. Unfortunately, every year there are incidents that take place where teachers or school staff members take advantage of vulnerable students by committing illegal acts of abuse. Although such acts may have never taken place in a particular district or school setting in the past, it is critical that school administrators and employees know how to appropriately react should such an incident occur.

In this Education Law Update we provide our insight and analysis into two recent Pennsylvania cases in which the parents of abused students brought lawsuits against their public school districts. We believe it is important to give school districts practical, useable advice. So...

What's the Bottom Line for School Districts?

There are two significant lessons that can be learned from the *Maier* and *Haines* decisions (the cases described below). The first lesson is that courts are reluctant to hold school districts accountable for the actions of their employees in sexual abuse cases absent a finding that the district attempted to cover up the wrongdoing or had policies or customs in place that allowed such abuse to occur. The second, and more important, lesson for school districts is that the best thing it can do to prevent future liability is to react quickly and thoroughly when allegations or suspicions of sexual abuse arise.

Although the court in *Haines* found that a lack of staff training regarding sexual abuse did not create liability for the district, the *Maier* court specifically pointed to the fact that the district employees “were aware of the policy against sexual harassment and knew that they must report and/or investigate any sexual abuse” as evidence that the district was not deliberately indifferent to the possibility of sexual abuse of its students. **Therefore, the safest bet for school districts is to have an updated sexual harassment policy in place that applies to staff, students, and visitors and take steps to ensure that those individuals are regularly informed about the policy.**

The bottom line is that it is in the best interest of school districts, from both a legal and an ethical perspective, to take steps to eliminate the likelihood of sexual abuse occurring in the first place and should abuse occur, to act quickly and thoroughly to address the problem and prevent it from happening again.

School Districts would be wise to have their attorneys review the district's sexual harassment policies to ensure that they comply with current law and are effectively designed to protect students and staff. Should allegations or suspicions of sexual abuse arise in your district, it is also recommended that you keep your district's counsel well-informed of the steps you are taking and the actions that you intend to take.

Maier v. Canon McMillan School District

Introduction

This case involved a school district employee who worked in the Information Technology Department and was also a volunteer assistant coach for the high school's softball team. The employee made a number of sexual advances toward a minor student on the softball team and engaged in sexual activity with that student during and after school, on school property, and in the student's home.

The timeline of events is very important in this case. In the month of February, the student's mother noticed a history of frequent phone calls between the district employee and her daughter at inappropriate hours of the day and night. On Friday, February 10th, the mother called the head softball coach to express her concerns regarding the phone calls. On Monday, February 13th, the student's mother and father met with the softball coach and the school principal to discuss the concerns. Later in the day on Monday the 13th, the principal and the softball coach met with the district employee and terminated his role as assistant coach. Also on the 13th, after speaking with the school principal, the superintendent of the district demanded and received a resignation of employment from the employee.

The employee was eventually convicted of statutory sexual assault and aggravated indecent assault and incarcerated for his conduct. The student's parents brought claims in federal court not only against the District but against the superintendent, principal and head softball coach as well. The specific claims asserted are as follows:

Section 1983 Claims Against Individual District Employees

Section 1983 of the Civil Rights Act of 1871 allows individuals to seek remedies for violations of rights protected by federal law or the United States Constitution. In order to recover on a section 1983 claim, the parents must prove (1) that the superintendent, principal and head softball coach deprived their child of a right secured by the Constitution or laws of the United States AND (2) that they deprived the student of this federal right while acting under color of state law (meaning in their capacity as school district employees).

The court in this case noted that the law is clear that, under the Fourteenth Amendment, students have a constitutional right to be free from sexual assault by their teachers. The court also held, however, that the fact that the individual employees may have supervised the abuser did not automatically make them liable. Rather, there must have been “some affirmative conduct by the supervisor that played a role in the discrimination.”

In order to recover against the District employees based on the section 1983 claim for sexual abuse of their child, the parents needed to establish that the school district employees:

- (1) learned of facts or a pattern of inappropriate sexual behavior by their subordinate (the abuser) pointing plainly toward the conclusion that the subordinate was sexually abusing the student; and
- (2) demonstrated deliberate indifference toward the constitutional rights of the student by failing to take action that was obviously necessary to prevent or stop the abuse; and
- (3) such failure caused a constitutional injury to the student.

To prove their case, the parents pointed to information possessed by the head softball coach that the abuser had spent a night at the home of another softball player with permission of the other girl’s parents after he had been drinking, that the abuser had given members of the team rides to practice before being told to stop, that the abuser made personal phone calls to other team members during a previous season, and that members of the softball team believed that the abuser “acted differently” with the student victim.

In spite of this, the court found that the parents “failed to produce any evidence showing that the four individual School District defendants had knowledge of facts pointing towards sexual abuse of [the student] by [the employee] or were deliberately indifferent to it.” The court noted that the head softball coach took immediate action against the employee after learning of the suspicious telephone calls.

Section 1983 Claims Against the School District Itself

A school district may be found liable under section 1983 for the sexual abuse of a student by a teacher. In order to prevail on such a claim, the parents must establish that: (1) the School District’s policy, practice, or custom played an affirmative role in bringing about the sexual abuse; and (2) the School District acted with deliberate indifference to that abuse.

The court in this case noted that “the mere failure of supervisory officials to act or investigate cannot be the basis of liability.” The court further went on to state that it could find “no evidence that any School District policy, practice, or custom played an affirmative role in bringing about the sexual abuse.”

Interestingly, the court compared the facts of this case to those of *Stoneking*, a case in which a school district's motion for summary judgment was denied. 882 F.2d 730. In *Stoneking*, the evidenced showed that: (1) the principal and assistant principal received at least five complaints of sexual assaults; (2) the records of such complaints were actively concealed; (3) the wrongdoers were given excellent performance evaluations despite the complaints; and (4) the school officials discouraged and/or intimidated students from pursuing their complaints.

In contrast, the District employees in this case immediately conducted an investigation after learning of the suspicious phone calls. With regard to the information possessed by the head softball coach that members of the softball team believed that the employee "acted differently" with the abused student, the court found that the coach's failure to act on that information was not enough to "show a policy of condoning sexual abuse of students by coaches." The court cited a Third Circuit decision explaining that the court is reluctant "to impose on the district an obligation to treat as true, all rumors, until proven otherwise."

With regard to the second element of a successful claim against the district under section 1983, the court found that the School District was "not deliberately indifferent to the possibility of sexual abuse of [the student], as shown by its prompt response when made aware of the phone records, as well as, by its hiring and employment requirements."

In addition to requiring its employees to undergo a criminal record check and a child abuse history clearance, the District adopted a written sexual harassment policy and also included a statement forbidding sexual harassment in its High School Handbook which stated that the policy applied to students, employees, and visitors.

Title IX Claim Against the School District

Title IX provides that "no person...shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance." In order to succeed on a Title IX claim, the parents must show that "an official of the school district who at a minimum has authority to institute corrective measures on the district's behalf has actual knowledge of, and is deliberately indifferent to, the teacher's misconduct."

The court in this case found that the District did not have any notice of inappropriate behavior until it learned of the suspicious phone calls. The court noted that this notice may not even reach to the level required by Title IX because "evidence of telephone calls does not automatically establish sexual misconduct." Regardless, the court found that the District "acted immediately to investigate and take corrective measures" and that "no reasonable jury could find the School District's quick and thorough response to be deliberately indifferent."

Conclusion

In short, the court in this case found in favor of the School District defendants on all federal claims (section 1983 and Title IX) and dismissed the state law-based claims that the parents had asserted (intentional infliction of emotional distress and violation of the student's due process rights under the Pennsylvania Constitution).

Haines v. Forbes Road School District

Introduction

This case involved a teacher employed by the School District who sexually assaulted two minor female students over a period of several months. The abuse came to light when, within a day of each other, the two students informed a school secretary that the abuse had been taking place. The school secretary instructed the students to fill out complaint forms and inform their parents of the abuse. The secretary also immediately telephoned the school principal and the district superintendent who in turn contacted the State Police.

Although the District did have written policies regarding sexual harassment, the record evidence demonstrated that the students and teachers at the school where the abuse occurred were "largely unaware of any official policies regarding harassment" and that the policies did not appear to have been updated for at least six years.

The teacher accused of the abuse committed suicide during the investigation into the students' allegations. Subsequently, the students' parents initiated the following claim against the District:

Section 1983 Claim Against the School District

The parents based their claim against the School District on the theory that there was a failure to train the staff at the school to identify and report sexual abuse and that this failure to train amounts to a deliberate indifference to the rights of the students at the school.

In order to succeed on their claim, the court stated that the parents needed to (1) show a causal nexus between the failure to train and the violation of the students' rights, (2) show a pattern or practice of constitutional violations sufficient to put the district on notice that action was required, and (3) prove that the failure to train specifically caused the violation at issue or made it "plainly obvious."

The court ruled that "vague rumors" and "two unfounded allegations of prior sexual abuse by school district employees" presented by the plaintiffs was not enough to demonstrate a pattern or practice of constitutional violations.

The court further held that "it is not obvious, that a teacher confronted with complaints or probable rumors of sexual abuse would not report those incidents to police or to school

officials absent proper training and refined reporting procedures.” In fact, as the court noted, “the one staff member who was informed of alleged abuse swiftly took action to inform the principal, superintendent, and police of the allegations.”

Lastly, the court found that “plaintiffs’ evidence could not prove that increased training into either the symptoms of sexual abuse or reporting duties would have prevented the abuse” and that there was no “evidence that any teacher knew or suspected sexual abuse was occurring and failed to report or to identify it due to improper knowledge or training.”

Conclusion

In light of its findings, the court dismissed the section 1983 claims against the School District and ruled that the School District could not be held “jointly and severally liable” with the teacher who had committed the abusive acts.

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