Government School District Supervision Cases

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A case comes in your door. A teacher is alleged to have sexually abused a child. You immediately think the only way to hold the school liable is through negligent hiring, supervision, and retention.

NOT TRUE.

Under the law, a school district has a special relationship with the students and an affirmative duty to protect them. Therefore, be very careful when pleading your cases. You should plead general negligence as well as negligent hiring, supervision, retention. Then by the end of your case you will likely be arguing negligence for purposes of your verdict form, but we will get to that later in this article.

Tort liability for governmental entities is based upon statute. (*Hoff v. Vacaville Unified School District* (1998) 19 Cal. 4th 925, 932.) Pursuant to Government Code sections 815.2 and 820, a school district is vicariously liable for the negligence of its employees. (*C.A. v. William S. Hart Union High Sch. Dist.* (2012) 53 Cal. 4th 861, 868 (hereafter *C.A.*).) As explained by the court in *C.A.*: "'the general rule is that an employee of a public entity is liable for his torts to the same extent as a private person (§ 820, subd. (a)) and the public entity is vicariously liable for any injury which its employee causes (§ 815.2, subd. (a)) to the same extent as a private employer (§ 815, subd. (b)).'" (*Ibid*.; see also *Patterson v. Sacramento City Unified Sch. Dist.* (2007) 155 Cal. App. 4th 821, 829-830.)

As explained by the California Supreme Court, "a school district and its employees have a *special relationship* with the district's pupils, a relationship arising from the mandatory character of school attendance and the comprehensive control over students exercised by school personnel, 'analogous in many ways to the relationship between parents and their children.'" (*C.A.*, *supra*, at p. 869.) By virtue of the special relationship that exists between school authorities and their students, a school district and its employees have an "affirmative duty" *to take all reasonable steps to protect its students*. (*Id.* at pp. 869-70; *Rodriguez v. Inglewood*

Unified School Dist. (1986) 186 Cal. App. 3d 707, 717.)

"Because of this special relationship, imposing obligations beyond what each person generally owes others under Civil Code section 1714, the duty of care owed by school personnel includes the duty to use reasonable measures to protect students from foreseeable injury at the hands of third parties acting negligently or intentionally." (*C.A.*, *supra*, at pp. 869-870.)

As noted by the Supreme Court: "Ample case authority establishes that **school personnel owe students under their supervision a protective duty of ordinary care, for breach of which the school district may be held *vicariously liable***." (*Id.* at p. 865 (emphasis added).) Vicarious liability against a school district for its employees' failure to protect students from foreseeable harm was specifically outlined by the Court in *C.A.*: "Section 815 establishes that public entity tort liability is exclusively statutory: 'Except as otherwise provided by statute: [¶] (a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.' Section 815.2, in turn, provides the statutory basis for liability relied on here: '(a) A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative. [¶] (b) Except as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability.' Finally, section 820 delineates the liability of public employees themselves: '(a) Except as otherwise provided by statute (including Section 820.2), a public employee is liable for injury caused by his act or omission to the same extent as a private person. [¶] (b) The liability of a public employee established by this part (commencing with Section 814) is subject to any defenses that would be available to the public employee if he were a private person.' In other words, 'the general rule is that an employee of a public entity is liable for his torts to the same extent as a private person (§ 820, subd. (a)) and the public entity is vicariously liable for any injury which its employee causes (§ 815.2, subd. (a)) to the same extent as a private employer (§ 815, subd. (b)).' [Citations.]" (*C.A.*, *supra*, at p. 868 (emphasis added).)

The plaintiff in *C.A.* was just fourteen years old when his high school guidance counselor sexually abused him. (*Id*. at p. 866.) Exploiting her position of authority and trust, the counselor began spending many hours with plaintiff both on and off the high school premises and eventually engaged the plaintiff in sexual activities. Plaintiff brought an action against the school district arguing that through its employees, the school district was negligent in the hiring and supervision of the counselor. As framed by the Court, the issue before it was "whether the district may be found vicariously liable for the acts of its employees–not for the acts of the counselor, which were outside the scope of her employment [citations] but for the negligence of supervisory or administrative personnel who allegedly knew, or should have known, of the counselor's propensities and nevertheless hired, retained and inadequately supervised her." (*Id.* at p. 865.)

"These cases are better understood from the position: did the bad actor have the potential to do the bad acts? Argue strenuously against the idea that you have to show the District knew or should have known that the bad actor had the propensity to molest someone."

In finding that the plaintiff's theory was viable, the Court underscored the duty running between school district employees and the students under their control and supervision: "'While school districts and their employees have never been considered insurers of the physical safety of students, **California law has long imposed on school authorities a duty to 'supervise at all times the conduct of the children on the school grounds and to enforce those rules and regulations necessary to their protection**. [Citations.]' The standard of care imposed upon school personnel in carrying out this duty to supervise is identical to that required in the performance of their other duties. This uniform standard to which they are held is that degree of care 'which a person of ordinary prudence, charged with [comparable] duties, would exercise under the same circumstances.' [Citations.] ***Either a total lack of supervision* [citation] or ineffective supervision [citation] may constitute a lack of ordinary care on the part of those responsible for student supervision.**" (*C.A.*, *supra*, 53 Cal. 4th at p. 869 (emphasis added).)

C.A. specifically addressed the District's liability under a negligent hiring, retention, and supervision claim. But at the same time it laid the groundwork for a straight negligence claim by providing the underlying statutory framework and case law.

Remember that under a negligent hiring, retention, and supervision claim you have to show that a person in a super-

visorial position over the actor had prior knowledge. (*Z.V. v. County of Riverside* (2015) 238 Cal. App. 4th 889, 902.) Consider the following example: a first grade teacher sees a third grade teacher take a student into a classroom and shut the door but does nothing about it. Under a negligent hiring, retention, supervision claim, the District would not technically be liable for the first grade teacher's acts (or failure to act) because that first grade teacher had no supervisory authority over the third grade teacher. That is why you always need to make sure that you have a straight negligence cause of action.

You are arguing that the district is vicariously liable for its employees' negligence in failing to supervise the student. Here the duty runs straight to the student. In the example above, the District is vicariously liable for the first grade teacher's failure to properly supervise the student by not doing something about the third grade teacher taking the student into a classroom and shutting the door. Another example is where a teacher fails to report suspected child abuse as a mandated reporter under Penal Code section 11166. Just like any teacher can be liable for failing to report suspected child abuse (Penal Code 11166), the school district can then be variously liable for that breach which caused or contributed to the plaintiff's harm.

Further, a school district's liability does not turn on whether or not it was aware of employee's propensity to "sexually abuse" or "sexually molest" minors. **BEWARE** as the District will argue for a special instruction stating their negligence depends on whether they knew or should have known the molester had a propensity to sexually abuse minors. Plaintiff is not required to prove that the school district was aware of a *specific type of sexual misconduct* engaged in by the employee prior to the injury-causing events, much less the events similar or identical to those experienced by the student. (*M.W. v. Panama Buena Vista Union School District* (2003) 110 Cal. App. 4th 508, 519 (hereafter *M.W.*).)

"It is not necessary to prove that the very injury which occurred must have been foreseeable by the school authorities….Their negligence is established if a reasonably prudent person would foresee that injuries of the same general type would be likely to happen in the absence of [adequate] safeguards." (*Taylor v. Oakland Scavenger Co.* (1941) 17 Cal. 2d 594, 600*;* see also *Leger v. Stockton Unified School District* (1988) 202 Cal. App. 3d 1448, 1460 [harm reasonably foreseeable from threats of violence known by school authorities even where violence had yet to occur].) Further, "the issue of 'foreseeability' does not depend upon the foreseeability of a particular third party's act, but instead focuses on whether the allegedly negligent conduct at issue created a foreseeable risk of a particular kind of harm." (*Wiener v. Southcoast Childcare Centers, Inc.* (2003) 107 Cal. App. 4th 1429, 1436.)

A school district has "a duty of supervision that include[s] an obligation to offer [a student] some protection against her own lack of mature judgment." (*Kahn v. East Side Union High School Dist*. (2003) 31 Cal. 4th 990, 1017.) Such supervision is necessary because of the "commonly known tendency of students to engage in... impulsive behavior which exposes them... to the risk of serious physical harm." (*Dailey v. Los Angeles Unified School Dist.* (1970) 2 Cal. 3d 741, 748.) The duty to protect and supervise its students from abuse is not triggered only upon express knowledge of a sexual relationship between a particular teacher and a particular student. Rather, the school has a duty to protect a student from *foreseeable harm*. (See *Randi W. v. Muroc Joint Unified School Dist.* (1997) 14 Cal. 4th 1066.)

In *M.W.,* a student who had been sexually assaulted by another student on campus before the school day began filed an action against the school district for negligent failure to supervise and careless failure to guard, maintain, inspect, and manage the school premises. The appellate court affirmed the jury's verdict against the District, finding that the District employees had a duty to protect the minor student from sexual assault. The court explained that whether or not a duty was owed concerned whether the particular harm to the student is *reasonably foreseeable* and "[f]oreseeability is determined in light of all the circumstances." (*M.W., supra,* at pp. 518-519.) "**It is not necessary to prove that the very injury which occurred must have been foreseeable by the school authorities….Their negligence is established *if a reasonably prudent person would foresee that injuries of the same general type would be likely to happen in the absence of [adequate] safeguards***." (*Ibid*. (emphasis added).)

M.W. explained:

"The fact that a particular act of sodomy in a school bathroom may have been unforeseeable does not automatically exonerate the District from the consequences of allowing students, particularly special education students, unrestricted access to the campus prior to the start of school with wholly inadequate supervision. Such conduct created a foreseeable risk of a particular type of harm—an assault on a special education student. Not only was such an assault reasonably foreseeable, it was virtually inevitable under the circumstances present on this campus."
(*M.W., supra,* at p. 521.)

In *Jennifer C.,* a student was sexually assaulted by another student in an alcove under a stairway on the school's border. (*Jennifer C. v. Los Angeles Unified School District* (2008) 168 Cal. App. 4th 1320, 1324-25.) The alcove was visible from a public sidewalk adjoining the campus, but was not visible from the campus itself. The school's assistant principal was aware that the alcove was a potential "problem area" because "students could attempt to evade school supervision by hiding in the alcove," though there was no indication that students actually did so. (*Ibid*.) He had directed a campus aide to regularly check the alcove during the lunch break.

The area was marked by a chain to indicate that students were not allowed there, and students were informed that it was off-limits. School officials were unaware of any sexual assaults or other troublesome activity occurring in the alcove. (*Ibid*.) The trial court granted summary judgment for the school district.

Reversing, the Court of Appeal held that maintenance of a hiding place where students could be assaulted "satisfies the foreseeability factor of the duty analysis even in the absence of prior similar occurrences." (*Id*. at p. 1329.) "A court's task in determining whether there should be a duty, vel non, '...is *not* to decide whether a particular plaintiff's injury was reasonably foreseeable in light of a particular defendant's conduct but rather to evaluate more generally whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed on the negligent party.' [Citation.]" (*Ibid*.)

These cases are better understood from the position: did the bad actor have the potential to do the bad acts? Argue strenuously against the idea that you have to show the District knew or should have known that the bad actor had the propensity to molest someone. Think about it. Unless there was something in his background where he had been caught before how would anyone ever know that someone had the propensity to molest someone? That is why the request question is whether that actor had the potential.

Before starting one of these cases be aware of the differences between negligence and the negligent hiring, retention, and supervision cases. I suggest that you read some of the cases that I cited in this article because it will give you a good framework for your case. You want to make sure through your complaint and your responses to discovery that you are not trapping yourself into a negligent hiring, retention, and supervision cause of action only.

Additionally, you want to make sure that you are not falling into their trap that notice is contingent upon their knowledge that the molester had the propensity to sexually assault. As always reach out to one of us who has experience with these cases. We are happy to help you in any way because it is important that we do not end up creating bad law and extremely important that victims are given the opportunity to seek justice.

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