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## CAN SCHOOL DISTRICT EMPLOYEES BE HELD PERSONALLY LIABLE WHEN CARRYING OUT THEIR PROFESSIONAL DUTIES?

As with many legal questions, the answer is, “It’s possible but it’s not likely.” To unpack this question and its answer, it is important to first understand that in the eyes of the law, public school districts are government entities and school district employees carrying out their professional duties are government actors. Accordingly, the official actions of school district employees implicates basic constitutional rights and protections for students. As an example, it is clear and well-established that students have constitutionally protected rights relative to the First (speech), Fourth (searches) and Fourteenth Amendments (due process).

In general, courts have held that the U.S. Constitution does not impose a duty on the government to protect citizens from the acts of other private citizens. *DeShaney v. Winnebago County Dep’t of Soc. Servs.*, 489 U.S. 189, 198-200 (1989). There are, however, two exceptions to this general rule. First, the government does have a duty to protect and care for private citizens when there is a “special relationship” that exists between the government actor and the citizen. The second exception is when the government itself had created the risk for harm, which courts refer to as a “state created danger.” Although it may seem somewhat counter-intuitive, courts have generally found that a “special relationship” does not apply to the circumstances of the relationship between students and public school districts. Courts have reasoned that school districts do not “take custody” of children, that parents retain ultimate control of their children who attend public schools, that school districts are open institutions and that students and parents are “at liberty to help themselves.” *D.R. by L.R. v. Middle Bucks Area Vocational Technical School*, 972 F.2d 1364, 1373 (3d Cir. 1992).

For the “state created danger” exception to apply, it must be shown that the harm caused and suffered by a student: 1) was foreseeable and fairly direct; 2) a government actor acted with a degree of culpability that “shocks the conscience;” 3) a relationship between the government actor and the student was such that the student was a foreseeable victim of the government actor’s acts; and, 4) the government actor affirmatively used his or her authority in a way that created danger to the student or made the student more vulnerable to danger than had the government actor not acted at all. *Sanford v. Stiles*, 456 F.3d 298, 304-305 (3d Cir. 2005). All four criteria must be met. The U.S. Supreme Court has held that whether a government actor’s behavior meets a “conscience-shocking” level will depend on the facts and circumstances in each case noting that actual intent to harm, recklessness, gross negligence or deliberate indifference not only exist on a continuum of culpability, but any one of which could meet the “shock the conscience” standard depending on the circumstances. *County of Sacramento v. Lewis*, 523 U.S. 833, 849-850 (1998). While both the “state created danger” and “special relationship” theories are routinely utilized in lawsuits against school districts and school officials, they are not often successful.

Even if the four “state created danger” standards could be met by a particular set of facts, government actors may also have qualified immunity from civil liability actions. In order to be shielded by a qualified immunity defense, a government actor’s conduct must not violate clearly established rights of which a reasonable person would have known. *Pearson v. Calahan*, 555 U.S. 223, 231 (2009). Essentially, “every reasonable official would have understood that what he is doing violates that right.” A couple of cases illustrate the contours. In *Dorley v. South Fayette Township School District*, 2016 WL 3102227, a 140 pound freshman injured with a broken arm during a football drill against a 240 pound junior could not establish that he had a constitutional right against being injured because the drill was designed to be “non-contact,” less than full speed, and the game of football often involves players of mismatched weight and skills. However, in *Sciotto*

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*v. Marple-Newtown Sch. Dist.*, 81 F. Supp. 559 (E.D. Pa. 1999) a high school student who suffered paralysis when wrestling a college alumna wrestler 35-40 pounds heavier was able to establish a constitutional right against injury because it was found that coaches had used their authority to create and to maintain a tradition of inviting heavier, more experienced alumni wrestlers to high school wrestling practice.

Negligence claims brought against public school employees under Pennsylvania state law also face significant hurdles. In Pennsylvania, the Political Subdivision Tort Claims Act (PSTCA) provides broad immunity to government entities and their employees, including school districts. There are however, eight enumerated exceptions: 1) operation of motor vehicles in the possession or control of the government entity; 2) the care, custody and control of personal property in the possession or control of the government entity; 3) the care, custody and control of real property (real estate) in the possession or control of the government entity; 4) a dangerous condition created by trees, traffic controls or street lights; 5) a dangerous condition of utility service facilities; 6) a dangerous condition of streets; 7) a dangerous condition of sidewalks; 8) the care, custody and control of animals in the possession or control of a government entity. In addition, school employees cannot expect refuge in the PSTCA if their conduct can be shown to rise to the level of "actual malice" or "willful misconduct."

What is a public school employee to do in order to avoid personal liability? Act professionally. Stay within the scope of professional duties and responsibilities to students. Follow established and official policies, guidelines and authorized student plans such as IEPs and Section 504 Service Agreements. Subject any unofficial "traditions" and misconduct on the part of students or colleagues of which you are aware, to a "reasonable official" standard. Do not turn a blind eye to conditions and circumstances that have a reasonable chance of causing harm to a student. If you have questions, seek guidance.

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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