

# THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

## CivilLITIGATION

### The duties on school districts

It seems we can't go more than a few weeks these days without hearing about a shooting or other act of violence at one of our nation's high schools — or even middle or elementary schools.

While in the immediate aftermath there usually is a message of solidarity between school officials, parents and politicians, almost inevitably that initial solidarity devolves into finger pointing about who or what was responsible for the tragic event. Many schools then find themselves the defendant in a lawsuit alleging their lack of supervision was the cause of the rogue student's actions.

Less dramatically, the courts also are filled with lawsuits alleging inadequate supervision resulted in a student's accident on the playground, in the gym or in the hallways. What duty of supervision does a school actually have, and how far does it extend?

Schools are under a duty to adequately supervise students in their charge, and will be held liable for foreseeable injuries proximately related to the absence of adequate supervision. The nature of the duty owed was set forth long ago in *Hoose v. Drumm*, 281 NY 54 (1939): "A teacher owes it to his or her charges to exercise such care of them as a parent of ordinary prudence would observe in comparable circumstances."

Courts have long noted the duty derives from the simple fact that a school, in assuming physical custody and control over its students, effectively takes the place of parents and guardians.

Schools are not "insurers of safety," however, as they cannot reasonably be expected to continuously supervise and control all movements and activities of students. As the court in *Laves v. Board of Educ.*, 16 NY2d 302 (1965) noted, schools are not to be held liable "for every thoughtless or careless act by which one pupil may injure another."

In determining whether the duty to provide adequate supervision was breached in the context of injuries caused by the acts of fellow students, it must be established that school authorities had sufficiently specific knowledge or notice of the dangerous conduct that caused the injury; that is, that the third-party acts reasonably could have been anticipated. *Bertola v. Board of Educ.*, 1 AD2d 973 (Second Dept. 1956).

To that end, actual or constructive notice to the school of prior similar conduct generally is required, as school personnel cannot reasonably be expected to guard against all of the sudden, spontaneous acts that take place among students daily. As one court put it, "An injury caused by the impulsive, unanticipated

act of a fellow student ordinarily will not give rise to a finding of negligence absent proof of prior conduct that would have put a reasonable person on notice to protect against the injury-causing act." *Ohman v Board of Educ.*, 300 NY 306 (1949).

Even if a breach of the duty of supervision is established, however, the question remains whether such negligence was the proximate cause of the injuries suffered. In some cases, the wrongful conduct of a fellow pupil may be considered an intervening act, which breaks the causal nexus between a defendant's negligent act or omission and a plaintiff's injury. The test to be applied is whether, under all the circumstances, the chain of events that followed the negligent act or omission was a normal or foreseeable consequence of the situation created by the school's negligence.

In *Mirand v. City of New York*, 84 NY2d 44, 49-50 (1994), a high school student brought a claim against the board of education for the injuries she suffered during an attack at school. The student was involved in a verbal altercation with a group of students, and one member of the group threatened to kill her.

The plaintiff attempted to report the altercation to the security office, but the office was empty. She subsequently reported the incident to a teacher she came across in the hallway, then returned to the security office, but again found it empty. About half an hour later, the plaintiff and her sister were attacked with a hammer and knife by the group that already had threatened her.

A jury found in favor of plaintiff on her claim of negligent supervision and, in upholding the verdict, the Court of Appeals found it was not unreasonable for the jury to infer the defendant board was on notice of an imminent foreseeable danger to the plaintiff, and that the violent acts that caused the plaintiffs' injuries were sparked by a prior altercation and death threat of which the defendant, through one of its teachers was expressly made aware. Despite that awareness, no action was taken to prevent escalation of the incident by the teacher, and no security personnel even were present in the main security office or at key locations throughout the school.

Conversely, in *DeMunda v. Niagara Wheatfield Board of Educ.*, 213 AD2d 975 (Fourth Dept. 1995), a fight occurred between two girls on a school bus. One of the girls' parents then



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brought a lawsuit alleging negligent supervision.

In affirming the grant of summary judgment, the Fourth Department found the fight was a brief, spontaneous occurrence, and there was no opportunity for the defendant's bus driver to intervene on the plaintiff's behalf, despite the fact that the school district about four months prior had disciplined the student for fighting on the bus. The court noted that plaintiff's daughter never reported any difficulties with the student, nor was there any indication in the

record that the two were involved in a fight previously.

Whether it is the school violence headline on the evening news, or the more mundane schoolyard injury, it is important for school districts and their counsel, plaintiff's attorneys, and parents to understand the duty imposed on school district's in New York to supervise students.

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