

District Potentially Liable for Hiring Teacher Alleged to Have Inappropriately Touched Students

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Poe v. Southeast Delco Sch. Dist., 2015 U.S. Dist. LEXIS 168598 (E.D. Pa. Dec. 16, 2015): Hiring a teacher with past allegations of sexual misconduct toward students made the district and an administrator potentially liable under the 14th Amendment when the teacher repeated similar behavior.

SUMMARY AND FACTUAL BACKGROUND

An assistant principal at Darby Township School hired a teacher who previously taught elementary school in another district, where he was investigated for complaints of inappropriately touching his students. The teacher resigned after the investigation at the previous school district, but the court's opinion does not mention any criminal charges or convictions related to the incident. Several years later, the assistant principal at Darby hired the teacher to teach fifth grade. The complaint alleges that the Darby assistant principal knew of the sexual abuse investigation at the previous school district when she hired the teacher. During the 2006-07 school year, a student in the teacher's class complained to administrators that the teacher was inappropriately touching her. The minor plaintiff in *Poe* alleged that the teacher was not disciplined for this 2006-07 incident, and that in 2011-12 the teacher inappropriately touched the minor plaintiff, who was a student in the teacher's class that year. After the plaintiff complained to administrators, the teacher was allegedly transferred to a second grade class and ultimately charged with criminal offenses related to his abuse of students at the school. The student's mother subsequently sued the school district and the assistant principal under 42 U.S. Code § 1983, alleging that school administrators failed to protect her child from abuse.

DISCUSSION

Typically, a school district is not responsible under the 14th Amendment, or section 1983, for instances of sexual abuse committed by a staff member against a student. However, there are exceptions to this general rule. First, when a school district is "deliberately indifferent" to the rights of students, and fails to establish a policy to protect students even though there is an obvious need to do so, the district may be liable for offenses committed by teachers. Second, when a district administrator knows of a danger to students and takes affirmative action to subject students to that danger, in a manner which "shocks the conscience," the administrator may be subject to liability under a "state-created danger" theory.

In this case the Plaintiff alleged the school district did not have adequate sexual abuse policies in place, including policies to train staff regarding sexual abuse allegations, to conduct investigations, to screen teachers or to discipline teachers accused of sexual abuse. Although the court conceded that the Plaintiff had not yet identified the exact manner in which the policies were insufficient, it held that the Plaintiff's claims on this issue could proceed on a "deliberately indifferent" theory.

The court also held that if the assistant principal knew of sexual abuse allegations against the teacher, but hired the teacher and placed him in an elementary classroom anyway, the assistant principal could be liable under a "state-created danger" theory. The court explained that the assistant principal took affirmative action to place the teacher in an elementary school classroom where he would be in regular contact with young children. The court did point out that this "state-created danger" form of liability was attached to the assistant principal but not to the district itself. The court explained, "As it would be entirely foreseeable to someone with knowledge of [the teacher's] history of abuse that such an ill-considered assignment of responsibilities without providing for adequate supervision could lead to more abuse of students, and a reasonable jury could certainly find that exposing students to the risk of abuse at the hands of a teacher is

shocking, Plaintiffs have sufficiently stated a claim against [the assistant principal].”

The court allowed the “deliberately indifferent” and “state-created danger” claims to go forward against the school district and the assistant principal, respectively.

PRACTICAL ADVICE

Claims similar to those involved in this case can be avoided by implementing and following policies that prohibit hiring teachers with past histories of sexual abuse. Pennsylvania’s recent Act 168 “Pass the Trash” amendments to the School Code now require all districts to gather employment history information from previous employers, in order to uncover past instances of child abuse. 24 P.S. § 1-111.1. Under Act 168 a Pennsylvania school district has broad discretion to reject an applicant who an employer previously **investigated** for sexual misconduct (unless the allegations were deemed false), **disciplined** or asked to resign for sexual misconduct, who **resigned** while allegations were pending, or who had a **professional license** suspended or revoked. There is no requirement that the applicant was criminally charged, or adjudicated by a child protection agency, in order for the school district to take action. The School Code also now requires background checks every 60 months for all district employees and independent contractors who have direct contact with children. 24 P.S. § 1-111.

Every district should have policies in place to prevent sexual abuse and to report and discipline teachers who engage in sexual abuse of students. Districts should also ensure that these policies are consistently followed by district staff and administrators. Implementing and following the “Pass the Trash” and background check provisions of the school code is one step that every district should take in order to avoid sexual abuse of students by staff members. Without a sufficient set of policies in place a school district, and its administrators, are exposed to potential liability for sexual abuse of students by district employees and independent contractors.

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