

No “State-Created Danger” In Student-On-Student Sexual Assault and Harassment Case

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No “State-Created Danger” In Student-On-Student Sexual Assault and Harassment Case When The School District Took Precautions To Avoid Sexual Assaults

Strobel v. Neshannock Township School District, Civil Action No. 15-1089, 2018 U.S. Dist. LEXIS 125037 (W.D. Pa. July 26, 2018). The United States District Court of the Western District of Pennsylvania granted Neshannock Township School District’s motion for summary judgement in a student-on-student sexual assault and harassment case, holding that neither the District nor its administrators violated a student’s constitutional rights by creating a state of danger that resulted in the sexual assault, and were not deliberately indifferent in responding to the student’s complaint of sexual assault and harassment.

Summary and Factual Background:

Sarah Strobel (“Ms. Strobel”) was a high school freshman student at the Neshannock Township School District (“District”) in New Castle, PA. In April 2013, Ms. Strobel, 48 other high-school freshman students, and six chaperones traveled to New York City on a bus for a school-sponsored field trip. On the trip back, Ms. Strobel fell asleep and when she woke up around midnight, she discovered four students touching her vaginal area and buttocks over her pants. The chaperones sat together at the front of the bus and occasionally walked up and down the aisle to check on the students.

Ms. Strobel told her mother about the sexual assault when she got off the bus and the mother reported the incident to the District several hours later on April 27, 2013. The District immediately investigated the student’s complaint of sexual assault. The District discovered that the chaperones on Ms. Strobel’s bus did not know about the sexual assault and Ms. Strobel never told them anything about it. However, based on the District’s investigation and informal hearing, three of the students that were involved in the sexual assault were suspended, and the District later signed agreements in lieu of expulsion with these students that prohibited them from having any contact with Ms. Strobel for the rest of the school year. Ms. Strobel requested and received approval for homebound instruction for the remainder of her freshman year.

Prior to Ms. Strobel returning to the high school for her sophomore year, the District made arrangements to limit Ms. Strobel’s contact with any of her classmates that were involved in the sexual assault the prior year. For example, Ms. Strobel received preference for lunch period seating, an unrestricted hall pass, unlimited access to guidance and nurse offices, and was allowed to request homebound status at any time.

Despite these arrangements, Ms. Strobel encountered one of the students involved in the sexual assault, Tiara Saado (“Ms. Saado”), three times. These encounters did not involve direct physical or verbal contact between Ms. Strobel and Ms. Saado. The District Senior High School Principal was made aware of these three encounters, investigated each incident but took no action. Ms. Saado apparently also spread rumors about Ms. Strobel, including that Ms. Strobel had lied about the sexual assault, was pregnant, and had sexually transmitted diseases. Near the beginning of Ms. Strobel’s junior year, she left the high school for homebound instruction and remained in homebound until she graduated from high school in 2016.

After Ms. Strobel’s graduation her parents filed a complaint under 42 U.S.C. § 1983 against six District administrators (the “Chaperones”) and the District. The claim against the Chaperones alleged that they violated Ms. Strobel’s Fourteenth Amendment right to personal security and bodily integrity by their deliberate indifference to the sexual assault that

occurred while they were on the bus with Ms. Strobel; thus creating a danger that culminated in Ms. Strobel's physical and emotional harm. The claim against the District alleged that Ms. Strobel's constitutional rights were violated by the District's failure to train and supervise the Chaperones.

Ms. Strobel's parents also filed a complaint under 20 U.S.C. § 1681 ("Title IX") against the District alleging the District enabled Ms. Strobel's sexual assault and sexual harassment through deliberate indifference. The Chaperones and the District filed a motion for summary judgment on all of Ms. Strobel's claims.

Discussion:

The threshold question in any §1983 lawsuit is whether the plaintiff has sufficiently alleged a violation of a constitutional right. The due process clause of the Fourteenth Amendment does not require the state to protect the life, liberty and property of its citizens against invasions by private actors. However, the so-called "state-created danger" exception to this rule applies when a state actor, such as a school district, uses its authority to create a danger for its citizens.

There are four elements to a state-created danger claim: (1) the harm caused was foreseeable and fairly direct; (2) a state actor acted with a degree of culpability that shocks the conscience; (3) a relationship between the state and the plaintiff existed such that the plaintiff was a member of a discrete class of persons subjected to the potential harm brought about by the state's actions; and (4) a state actor affirmatively used its authority in a way that created a danger to the citizen or that rendered the citizen more vulnerable to danger than had the state not acted at all.

The Court concluded that Ms. Strobel's evidence did not demonstrate the second element of a state-created danger claim (i.e., a degree of culpability that shocks the conscience). In cases where deliberation is possible and school officials have time to make unhurried judgments, "deliberate indifference" is sufficient to shock the conscience. Ms. Strobel's evidence showed that the Chaperones and District had ample time to plan the school trip and implement safety measures. However, the Court concluded that neither the District nor the Chaperones were "deliberately indifferent" to the occurrence of Ms. Strobel's sexual assault.

The Chaperones discussed matters of security and school rules with each other and the students prior to the trip and walked up and down the aisle of the bus during the trip to and from New York City. Despite their periodic walks up and down the aisle, it was undisputed that the Chaperones did not observe the sexual assault. Accordingly, the Court agreed that neither the Chaperones nor the District created a climate of danger that resulted in Ms. Strobel's sexual assault.

Next, Ms. Strobel's Title IX claim against the District focused on the District's actions or inactions after Ms. Strobel's sexual assault occurred. To establish a Title IX claim against a school district based on a school district's response to student-on-student sexual harassment, a plaintiff must show: (1) the school district received federal funds; (2) sexual harassment occurred; (3) the harassment occurred under circumstances wherein the [school district] exercise[d] substantial control over both the harasser and the context in which the ... harassment occurred; (4) the [school district] had actual knowledge of the harassment; (5) the [school district] was "deliberately indifferent" to the harassment; and (6) the harassment was so severe, pervasive, and objectively offensive that it [could] be said to [have] deprive[d] the victims of access to the educational opportunities or benefits provided by the school.

The Court noted that "deliberate indifference" in the context of a student-on-student harassment claim under Title IX occurs when a school district's response to the harassment is **clearly unreasonable** in light of known circumstances. Specifically, Title IX does not require a school district to engage in a particular disciplinary action and courts should defer to school administrators' disciplinary decisions.

Again, the Court stated that Ms. Strobel's evidence did not demonstrate the District was deliberately indifferent to Ms. Saado's harassment against Ms. Strobel. The District developed and implemented a plan to limit personal contact that largely succeeded in limiting contact. The District investigated all of Ms. Strobel's reported incidents of contact with Ms.

Saado. The District's high school principal counseled Ms. Saado against her actions following all but one of the reported incidents, and, to the District's knowledge, none of Ms. Strobel's reported incidents involved direct physical or verbal contact. Accordingly, the Court concluded that the District was not deliberately indifferent to Ms. Strobel's post-assault harassment.

Finally, the Court granted the District's motion for summary judgment on Ms. Strobel's §1983 claim for failure to train and supervise the Chaperones because, as noted above, Ms. Strobel's evidence did not show that the District violated Ms. Strobel's constitutional rights by creating a climate of danger on Ms. Strobel's bus ride from New York City to New Castle, PA that resulted in her sexual assault.

Practical Advice:

Plans for a school-sponsored field trip should include reviewing relevant safety and security policies with administrators and students prior to the field trip. A school district's reasonable efforts to protect its students from sexual assaults, even if unsuccessful, will avoid a court from concluding that the school district created a climate of danger for its students that could culminate in a sexual assault against a student.

If a student reports a sexual assault it is vital for the school district to investigate and address the student's complaint. *Strobel v. Neshannock Twp. Sch. Dist.*, shows that a court will likely defer to school administrators' disciplinary decisions following a reported sexual assault when these decisions and actions are reasonable under circumstances known to the school district.

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