



SCHOOL SAFETY AND SCHOOL BOARD LIABILITY

School Safety Workshop

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School Safety and School Board Liability

- Theories of Liability
 - Liability for Failing to Act
 - State law claims
 - Negligence, negligence *per se*
 - Federal claims – not a focus today
 - Generally no duty under 14th Amendment to prevent student-to-student harm; can be liable under other theories (“deliberate indifference”)

School Safety and School Board Liability

- Liability for Taking Action – not a focus today
 - Federal claims
 - Constitutional claims
 - Notice and hearing rights for disciplined student
 - Students may be disciplined based on speech protected under the First Amendment if there is a reasonable forecast of substantial disruption (as in specific threats of school violence)

LIABILITY FOR FAILING TO ACT – STATE LAW CLAIMS

- School boards are liable for employee breaches of duty in state law negligence claims (“*respondeat superior*”)
- Failure to supervise, failure to warn, failure to prevent, failure to ...
- Broad liability for school boards – public policy favors the “deep pocket”
- State law establishes \$100,000 limit for school district liability in state law claims

STATE LAW CLAIMS – NEGLIGENCE / NEGLIGENCE PER SE

NEGLIGENCE ELEMENTS

- **DUTY** – Defendant had a duty of care to plaintiff (e.g., duty to supervise, warn)
- **BREACH** – Defendant breached that duty (in negligence *per se*, duty and breach are established by failure to comply with a statute that is designed to prevent the very injury that occurred)
- **CAUSATION** – The breach caused the injury (did the “failure to ...” cause the injury?)
- **DAMAGES** – The plaintiff suffered damages

A few words about **DUTY** ...

Generally, no duty is owed to control the dangerous conduct of another or to warn others of the dangerous conduct, but Nevada recognizes a duty of care arises when a special relationship exists. Nevada recognizes a special relationship between a teacher and a student.

STATE LAW CLAIMS – NEGLIGENCE

Duty to protect from foreseeable harm.

Breach is the failure to anticipate foreseeable dangers to students and take steps to minimize the dangers.

How would “reasonable” school officials have acted under the circumstances?

STATE LAW CLAIMS – NEGLIGENCE

Causation is the connection between breach and resulting injury.

Where a school fails to provide adequate supervision (breach) and an injury results from conduct that would not have occurred had supervision been provided, liability may be imposed.

The *Pocatello School District* case ...

- Student Cassie Jo was murdered by Brian and Torey in September 2006 at the home of another family
- 2 ½ years earlier, a student reported that Brian and another student C.N. were planning a school shooting
- Report based on statements made by C.N. in telephone conversations with two girls, who recorded C.N. saying “going to have a school shooting on Tuesday 17th, 2004”
- After one of the girls brought the threat to the attention of school officials at Irving Middle School, the principal and the SRO called C.N. into the principal’s office where he was confronted with the recording
- C.N. denied any intent to bring a weapon to school or to participate in a school shooting
- SRO went to Brian’s home, interviewed him + mother

The *Pocatello School District* case ...

- Brian's mother checked phone and saw calls to the girls. Brian said C.N. made the recorded statement after girl "begged" him to repeat the statement about a school shooting
- The following day, the principal and the SRO brought the girls, Brian & C.N. into the principal's office for a one-hour discussion of the matter. Brian and C.N. were warned and agreed not to make any such statements again, even in a joking manner
- One month later, another group of students reported that C.N. & Brian were planning a school shooting at a school dance. When the principal and SRO interviewed C.N., he said Brian and another boy had walked through the dance acting out a shooting, pretending to use firearms and identifying locations that could be used. C.N. said Brian was obsessed with Columbine and had "pictures of people with knives and guns and different killers hanging on the walls of his bedroom, as well as letters about the Columbine shooting incident." When the principal and SRO interviewed Brian, he said he and the other boys walked through the dance using imaginary paintball guns. Mom denied that Brian had any posters on his wall depicting weapons or "evil looking pictures."

The *Pocatello School District* case ...

- C.N. was referred for psychological counseling and transferred to an alternative school
- Principal testified, “we must have felt that Brian was not a threat” and Brian’s school disciplinary records did not mention either of the reports or the subsequent investigation
- In September 2006, a student who shared locker with Brian found several notes between Brian and Torey. She viewed the notes as threatening and remembers the word “death” in them. She showed one to her mother that asked “when are we going to do this?” Her mother encouraged her to bring the notes to the attention of the school officials, and she did. The SRO and vice-principal “dismissed her concerns.” (School says she couldn’t have shared a locker and she never showed SRO the note.)
- On day Cassie Jo was murdered, Brian and Torey made a video recording of themselves talking about their plans to kill Cassie Jo and to carry out a Columbine-style shooting. That night, they entered the home where Cassie Jo was staying and stabbed her to death.

What do you think?

- The court said the relevant inquiry is to the location of the negligence rather than the location of the injury
- Cassie Jo's parents argued that proper investigation during school hours would have prevented Cassie Jo's death, even though she was murdered off school grounds and after school hours.
- What do you think?
- Was the murder of Cassie Jo foreseeable? Why or why not?
- Assuming it was foreseeable, what would a reasonable investigation look like?

The Court said ...

- No evidence that the school district received information during the 2004 investigation of Brian & C.N.'s threat of a Columbine-style shooting that would provide notice that 2 ½ years later one of the two students involved would commit a murder that was not, in fact, a school shooting, but rather a prelude to a planned Columbine-style attack
- Whatever duty the school district owed to its students in 2004 did not include the duty of indefinitely monitoring Brian – “we cannot impose such a burden”
- The note relayed by the student who shared the locker did not create a duty either. She relayed her concern that Brian and Torey had been exchanging notes that she viewed as threatening and provided a note that asked “when are we going to do this?”
- The note did not identify Cassie Jo as a potential victim of a crime

PS – no duty to the family in whose home she was murdered (sued district for emotional distress, property damage, loss of property value)

The *Martinsville West Middle School* case ...

- On March 25, 2011, C.J. & B.K. were injured during school shooting by suspended student Michael
- C.J. & Michael were once friends, but relationship had deteriorated during the preceding few years and had grown particularly antagonistic in 2011 after they both began sporadically dating the same girl, N.A.
- Michael remained close with N.A.
- In the spring of 2011, C.J. began to spread offensive rumors about N.A., increasing hostility
- The boys never had a physical altercation at school, but Michael once tried to start a fight with C.J. on a local street after a basketball game
- While at middle school, Michael accumulated a total of 50 discipline referrals; 43 of which were for disrespect toward school personnel or failure to follow school rules; 7 for harassing, threatening, and physically assaulting other students

The *Martinsville West Middle School* case ...

Three weeks before shooting, Michael commented he want to “just blow up the school.” His classmates reported the remark and he was suspended for 10 days, but he could come to school to participate in state testing.

Principal initiated expulsion proceedings but before he was expelled, and about a week before the shooting, his mother withdrew him from school.

Two days after making the comment about blowing up the school, while on property to take state test, Michael had an argument with C.J. about N.A. A teacher overheard and told C.J., “not to feed into it and to walk away.” According to C.J., this is the only conversation he had with any school personnel regarding his ongoing problems with Michael.

Around the same time, about two weeks before the shooting, Michael again threatened C.J. after a school basketball game. C.J.’s girlfriend testified she told teachers, but the teachers did not report Michael’s threats to the school administration.

Another incident happened on the bus when N.A. told Michael on the phone that C.J. was making fun of her again. N.A. told C.J.’s girlfriend that “C.J. is doomed.” Not reported to school personnel.

The *Martinsville West Middle School* case ...

On the morning of the shooting, Michael's Facebook status read "today is the day" and "don't use your mind, use your nine." Michael arrived at school at 7 a.m., wearing a dark-colored hooded sweatshirt with the hood pulled over his head and moved toward the building so as to avoid detection.

The principal had developed a safety plan for the school and the surveillance cameras were positioned at three of the school entrances and functioning properly. Five employees were assigned to various positions around the school's exterior to monitor student arrivals. All knew Michael was prohibited from being on school property.

None of the monitors noticed Michael when he arrived, although several students did. No student reported Michael's presence although "everybody knew" he was banned and students saw that Michael carried in his back pocket what appeared to be a wrench covered in a cloth.

Michael entered the school's vestibule and told C.J. he "was about to get [expletive] up" Michael left, but returned and C.J. was still there. C.J. told Michael he did not wish to fight and Michael responded, "too bad," pulled a stolen handgun and fired two shots into C.J.'s stomach. The ejected shell casings hit another student, injuring his hand. Both survived.

What do you think?

The court said the school has a duty to protect its students from criminal attack and breach of that duty where the attacker had a propensity towards violence; the school system or school personnel were aware of the propensity; and the school personnel's failure to provide adequate supervision allowed the attacker the opportunity to assault the student, causing injuries.

Was the shooting of C.J. foreseeable? Why or why not?

- Did Michael have a propensity towards violence?
- Was the school aware of that propensity?

Assuming it was foreseeable, did the school take reasonable steps to prevent the shooting? Why or why not?

Did the school provide adequate supervision?

Why or why not?

What the court said ... (maybe foreseeable)

- Michael had lengthy history of serious misbehavior in school
- Threatened to blow up the school
- Was on school grounds, presumably in close proximity to “monitors” for 30 minutes prior to the shooting
- Had made threats against C.J., of which at least one teacher was aware
- The day before the shooting, another student had made a threat to shoot a teacher (I know, you didn’t know this)

“Given these facts, a jury could conclude that it is foreseeable that a shooting would occur.”

What the court said ... (maybe breach)

ts alleged failed to warn personnel monitors that Michael posed a threat and to specifically identify Michael for him; failed to instruct monitors to call 911 if spotted on school property; failed to have cameras or monitors on all unlocked doors

ol argued:

ool-wide policy prohibiting threats, bullying, fighting
or numbering system; electronic door locking system; video surveillance system
placement of monitors during arrival times

hael was suspended immediately when he threatened to “blow up the school” and expulsion proceedings were initiated – “we can’t go into lockdown every time two students threaten to fight each other”

ne school actual reasonably? Court decided to let the jury decide in light of
continued conflict between the two boys

Michael’s extensive disciplinary history, including discipline referrals for harassing, threatening, and assaulting

threat to blow up the school

LIMITING LIABILITY – PREVENTIVE MEASURES

- Develop safety plans at district and school level, according to state law
- The “duty of care” requires that you implement the plan, monitor the plan, and document your actions
- Under particular circumstances, the “duty of care” will require specialized plan development, implementation (including communication to all), monitoring (including changing plan if not effective), and documentation of all efforts
- Promote “if you see something, say something” culture
- Deference to schools’ discipline authority is at its highest when students’ speech portends violence, particularly violence against classmates
- Deference to authority will be at its lowest when speech targets public officials as opposed to vulnerable students
- Which lawsuit do you want to defend? But discipline poses its own risks ...

Wynar v. Douglas Co. Sch. Dist., 728 F.3d 1062, 1062 (9th Cir. 2013)

“With the advent of the Internet and in the wake of school shootings at Columbine, Santee, Newtown and many others, school administrators face the daunting task of evaluating potential threats of violence and keeping their students safe without impinging on their constitutional rights. It is a feat like tightrope balancing, where an error in judgment can lead to a tragic result.”

