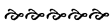


SCHOOL AND COLLEGE LEGAL SERVICES of California

General Counsel
Margaret M. Merchat

Attorneys
Nancy L. Klein
Marko H. Fong
Carl D. Corbin
Patrick C. Wilson
Loren W. Soukup
Frank Zotter, Jr.
Kristina T. Jansen


Susanne K. Reed
(1947 - 2010)

A Joint Powers Authority serving school and
college districts throughout the state

Reply to:
Santa Rosa Office
5350 Skylane Blvd.
Santa Rosa, CA 95403
(707) 524-2690
Fax: (707) 578-0517
santarosa@sclscal.org

Of Counsel
Robert J. Henry
Virginia A. Riegel
Janna L. Lambert

LEGAL UPDATE

April 2, 2012

To: Superintendents/Presidents, Member School Districts (K-12)

From: Frank Zotter Jr., Sr. Associate General Counsel *438*

Subject: Court Permits Sexual Abuse Lawsuit to Go Forward on Negligent Hiring and Supervision Legal Theory
Memo No. 10-2012

On March 8, 2012, the California Supreme Court released its decision in *C.A., a Minor, v. William S. Hart Union High School District* (2012) ___ Cal.4th ___, 138 Cal.Rptr.3d 1. The case involved a minor who was sexually abused by a guidance counselor over an eight-to-nine month period when he was 14 and 15 years of age. The court overturned the dismissal of the lawsuit by the trial court and court of appeal, ruling that school personnel owe a duty of care to protect students from foreseeable injury at hands of third parties, and that districts may be vicariously liable for negligent hiring and supervision of employees who commit sexual abuse. Because the case had been dismissed by the lower court at an early stage in the proceedings, the plaintiff still must prove that the District had knowledge of the counselor's propensity for sexual abuse once the case returns to the trial court.

FACTS:

Plaintiff C.A. was a student at Golden Valley High School in the William S. Hart Union High School District in Santa Clarita, California. He was assigned to Roselyn Hubbell, the head guidance counselor at his school, for counseling. Claiming that she wished to help him do well at school, Hubbell began to spend many hours with him both on and off the high school premises, and to drive him home from school each day. Exploiting her position of trust, Hubbell engaged in sexual activities with plaintiff, allegedly beginning around January 2007 and continuing until September 2007. The plaintiff was born in July 1992, making him 14 to 15 years old during the time of the harassment and abuse.

C.A. filed his complaint on January 8, 2009. The case was dismissed by the trial court, and that dismissal was upheld by the court of appeal. Both courts relied on earlier case law,

including a California Supreme Court decision, *John R. v. Oakland Unified School Dist.*¹ which had held that a school district could not be held liable for a sexual assault committed by a teacher against a student because this was not within the scope of the teacher's duties to the school district. This decision was in accord with an earlier court of appeal decision, *Alma W. v. Oakland Unified School Dist.*² which had held that the district was not vicariously liable for a sexual molestation committed by a school custodian.

THE COURT'S DECISION:

The Supreme Court did not retreat from the position it had taken in *John R.* A school district still cannot be held liable for the misconduct of the employee itself. Instead, the Supreme Court decided that the case could go forward under a different legal theory.

The Supreme Court focused on language in C.A.'s lawsuit alleging that the district's employees were negligent in their hiring, supervision, training, or retention of Hubbell as an employee. The lawsuit claimed that before she was hired, employees of the district knew that Hubbell had engaged in unlawful sexually-related conduct with minors in the past, and that they knew of her "propensity and disposition" to engage in such abuse. The lawsuit also alleged that after Hubbell was hired, the district knew that there were ongoing allegations against Hubbell but that its employees did not reasonably investigate these claims and failed to use reasonable care to supervise her to prevent her abuse of C.A.

IMPLICATIONS FOR DISTRICTS:

This case itself now goes back to the trial court, where C.A. and his attorneys will be entitled to engage in discovery—that is, to obtain documentary and testimonial evidence from the district and its employees. Although the case does open the door to potential liability, C.A. made the allegations in his complaint "on information and belief," which means that he alleged only what he hoped he could prove, but made the allegations in the absence of hard evidence. This is enough to keep the case alive for now, but unless there really is proof that the district knew of Hubbell's propensities but hired her anyway (which seems unlikely, particularly given that she was the head guidance counselor), the long-term result might not be much different.

Toward the end of its opinion, the Supreme Court acknowledged that C.A. still faced this hurdle: "[W]e emphasize that a district's liability must be based on *evidence* of negligent hiring, supervision or retention, not on assumptions or speculation. That an individual school employee has committed sexual misconduct with a student or students does not of itself establish, or raise any presumption, that the employing district should bear liability for the resulting injuries."³ The court also noted that, assuming that the district actually was negligent, Hubbell herself still should bear the greatest proportion of fault, and therefore as to any damages for pain and suffering or emotional distress, the district will bear only the percentage of liability it actually was at fault.

If you have any questions, please contact one of the attorneys in our offices.

¹ *John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438.

² *Alma W. v. Oakland Unified School Dist.* (1981) 123 Cal.App.3d 133.

³ *C.A. v. William S. Hart Union High School District*, *supra*, 2012 WL 745067 at *p. 11, emphasis in original.