SCHOOLS LEGAL SERVICE

Special Education Law Update

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COMPULSORY ATTENDANCE DOES NOT CREATE A SPECIAL RELATIONSHIP BETWEEN SCHOOL DISTRICT AND STUDENT

In the recent decision of Patel v. Kent School District, 111 LRP 47736 (9th Cir. 7/11/11), the Ninth Circuit (Federal Appellate Court) held that compulsory attendance alone does not create a "special relationship" between a district and a student.

A parent of a disabled child sued the student's teacher and school district when the special education teacher allowed the student to use the bathroom alone without an escort. The student's IEP included a provision requiring the student to be supervised when going to class. However, the teacher permitted the student to go to the nearby restroom alone, where it was subsequently discovered that the student was having sex with another special education student in the bathroom.

The basis for parent's suit was that the teacher and district deprived the student of her 14th Amendment right to bodily integrity. The Due Process Clause of the Fourteenth Amendment provides that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law." *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 194 (1989). The court pointed out that the 14th amendment does not impose a duty to protect individuals from third-party harm, unless a special relationship exists between the district and victim, or the district affirmatively places the victim in danger by acting with deliberate indifference to a known or obvious risk. Neither exception applied here.

The court stated that under the 14th Amendment, compulsory education does not create a special relationship between a district and a student. As to the second exception, the court observed that deliberate indifference requires that the individual knew something was going to happen, ignored the risk, and exposed the student to the risk. While the teacher was aware that the student required extensive supervision and knew she was involved in some type of inappropriate behavior in the restroom previously, she did not know there was an immediate danger in allowing the student to briefly use the next-door bathroom alone.

The court did note that the parent may still have viable claims against the teacher and district under state law for possibly being negligent in allowing the student to use the restroom unsupervised. More specifically, previous California case law has stated that a special relationship is formed between a school district and its students resulting in the imposition of an affirmative duty on the school district to take all reasonable steps to protect its students and that this affirmative duty arises, in part, based on the compulsory nature of education. *M. W. v. Panama-Buena Vista Union School Dist.*, 110 Cal. App. 4th 508 (Cal. App. 5th Dist. 2003). Therefore, a parent may be able to allege under California law, that a California school district has an obligation and affirmative duty to protect his or her child from harm by a third party.

If you need further information on this topic, do not hesitate to contact our office.

— Monica D. Batanero

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