



SUPREME COURT VALIDATES NEGLIGENT HIRING AND NEGLIGENT SUPERVISION CLAIMS AGAINST PUBLIC EMPLOYER

In *C.A. v. William S. Hart Union High School District* (March 8, 2012) ___ Cal.4th ___ (2012 WL 745067), the California Supreme Court held that public entities may be held liable, under a theory of vicarious liability, for negligence in their hiring, retention or supervision of an employee they knew or should have known had a history of inappropriate sexual contact with minors. Further, the Court held that individual administrators and supervisors may also be held personally liable for such negligence.

C.A. was a student at a District high school. C.A. claimed that the District hired a known child molester as a guidance counselor and assigned that counselor to “counsel, advise and mentor” C.A. C.A. alleged that the guidance counselor sexually harassed, abused and molested C.A. multiple times, and that the District knew or should have known that the counselor had previously engaged in such conduct and failed to appropriately supervise, train or discipline the counselor.

C.A. sued the District and the guidance counselor. The causes of action alleged against the District included negligence, negligent supervision, negligent hiring and retention, and negligent failure to warn, train or educate. The District asserted that allegations of negligent hiring and supervision do not apply against a public entity, and the trial court agreed, dismissing the case at the pleading stage. The court of appeal agreed with the trial court.

The Supreme Court, however, rejected the District’s claims that it could not be found liable for negligent hiring and supervision as a public entity. The Court concluded that the District could be liable for the negligent hiring and supervision of the counselor because there was a special relationship between the District’s employees, including administrative staff, and the student. The Court explained that this special relationship arose from “the mandatory character of school attendance and the comprehensive control over students exercised by school personnel.” School districts therefore owe students a duty of care to use reasonable measures to protect students from foreseeable dangers at the hands of third parties acting negligently or intentionally, including other school district employees.

The Court also held that public school administrators owe a duty of care and therefore may be personally responsible for negligence in hiring, retaining and supervising employees. The District argued that the hiring and termination of certificated personnel is the responsibility of the governing board, not individual administrators; therefore, such employment actions are not within the scope of administrator’s employment. The Court

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rejected this argument and found that administrators have the power to initiate such actions, and therefore are not absolved of liability for their negligence in initiating or failing to initiate charges that could have led to the counselor's suspension or termination. The Court acknowledged that although individual administrators may be personally liable because the conduct is within the scope of their employment, administrators are generally entitled to a defense and indemnity by the district.

This decision is a reminder that school districts have a special relationship with the students under their control, and administrators have a duty to act reasonably to protect students from foreseeable harm. This may include screening applicants to determine whether they have a history of abusing children and properly supervising, training or discharging employees who may pose a danger to students. Districts must also be cognizant of the requirements of Education Code section 45123, which generally prohibit the hiring of individuals convicted of certain sex offenses, including child molestation.

If you have any questions about this decision or employer liability for employee conduct, please contact one of our [eight offices](#) located statewide, visit our [website](#), or follow Lozano Smith on [Facebook](#).

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