



CLIENT NEWS BRIEF

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COURT INVALIDATES NEGLIGENT HIRING AND NEGLIGENT SUPERVISION CLAIMS AGAINST PUBLIC EMPLOYERS

In C.A. v. William S. Hart Union High School District (2010) ___ Cal.App.4th ___, the court of appeal reaffirmed that, absent a statutory basis, public entities cannot be held liable for negligence in their hiring and supervision practices. However, the presiding justice's dissent indicates the controversial nature of this decision and foretells possible review by the California Supreme Court.

C.A. was a student at the William S. Hart Union High School District ("District"), a public 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 further contended that the District knew the guidance counselor had engaged in such conduct and took no action to supervise, train or discharge her.

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 against the District. The court of appeal affirmed in a 2 to 1 decision.

In rejecting C.A.'s claim that the District negligently hired and supervised the guidance counselor, the court explained that "(e)xcept as otherwise provided by statute," a public entity cannot be liable for negligence, and "there is no statutory basis for declaring a governmental entity liable for negligence in its hiring and supervision practices." The court also held that the District was not vicariously liable for the employee's misconduct because the alleged sexual misconduct occurred outside the scope of the guidance counselor's employment with the District. Finally, the court rejected C.A.'s claim that the "special relationship" between the District and its minor students imposed on the District a "mandatory duty" to prevent the guidance counselor from sexually abusing C.A.

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In a strongly-worded dissent, the presiding justice of the court of appeal argued, "Although the school district cannot be held liable for the *intentional misconduct* of the *guidance counselor*, it may be liable through (vicarious liability) for the *negligence of other employees* who were responsible for hiring, supervising, training, or retaining her." The presiding justice would have permitted C.A. to bring causes of action against the District for the negligence of any school administrator who knew of the guidance counselor's sexual misconduct and, while acting within the scope of his or her employment, failed to protect students from this known danger.

While this case affirms school districts' considerable protection from claims of negligent hiring and negligent supervision, administrators still have a duty to act reasonably to protect students from harm. This may include screening applicants to determine whether they have a history of abusing students and properly supervising, training or discharging employees who may pose a danger to students. School district employers must also be cognizant of the requirements of Education Code section 45123, which generally prohibits the hiring of individuals convicted of certain sex offenses, including child molestation. Finally, while the presiding justice's dissenting comments are not legally binding, these opinions could become significant if the California Supreme Court agrees to review this decision.

If you have any questions regarding this decision or your district's employment practices generally, please do not hesitate to contact one of our [seven offices](#) located statewide or consult our [website](#).

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