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**"DELIBERATE INDIFFERENCE" CLAIM FOR ONGOING SEXUAL ABUSE OF A
STUDENT BY A TEACHER DEFEATED BY SCHOOL DISTRICT'S
INVESTIGATIVE EFFORT AND REPORTING**

Ricketts v. Titusville Area Sch. Dist., C.A. No. 21-129 Erie, 2023 U.S. Dist. LEXIS 162029 (W.D. Pa. September 13, 2023). A federal court dismissed a claim of deliberate indifference by a school district for ongoing sexual abuse of a student by a teacher where the school district had undertaken a Title IX investigation and reported such allegations to multiple authorities.

BACKGROUND

Rochelle Cressman ("Cressman") worked as a physical education teacher at Titusville Area School District' ("TASD"). Plaintiff, Stephanie Ricketts' son, L.G., began attending TASD as a seventh-grade student in April of 2018. In the summer of 2018, L.G. began performing miscellaneous maintenance work at Cressman's home and rental properties several days per week. Cressman provided transportation to L.G. to and from her properties for this purpose. Eventually, Cressman and L.G. began spending significantly more time together throughout the summer, which included several "all-day trips." All of this was done with the consent of Plaintiff.

In the fall of 2018, rumors began to spread throughout TASD that Cressman and L.G. had a sexual relationship. A Title IX investigation ensued in which it was determined, among other things, that Cressman had been routinely driving L.G. home from school. Following the investigation, a TASD principal contacted Children and Youth Services ("CYS") to report her concerns about Cressman and L.G.'s relationship. Cressman was directed by TASD

via a memorandum to immediately stop driving L.G. home from school, to cease electronic communications with L.G., and to not spend time alone with L.G. TASD also filed an Educator Misconduct Report against Cressman with the Pennsylvania Department of Education.

TASD's superintendent contacted law enforcement several times to inquire about the status of the CYS report. CYS eventually began its own investigation on September 19, 2018. At the conclusion of its investigation, which included interviews with L.G.'s family and a forensic interview of L.G., CYS concluded that the allegations of sexual abuse by Cressman of L.G. were "unfounded." L.G. had denied any kind of inappropriateness with their relationship. The Crawford County District Attorney, who had observed the interview with L.G., agreed with the decision of CYS. Plaintiff also had given express permission for Cressman to drive L.G. home from school. As a result, TASD informed Cressman via a memorandum on October 17, 2018, that it would not enforce its policy prohibiting teachers driving students home from school against her and L.G.

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On May 3, 2019, Cressman went missing and attempted suicide. While Cressman was missing, L.G. confessed to his mother that Cressman had been sexually abusing him since September of 2018. Cressman later was criminally convicted of three counts of Statutory Sexual Assault. A federal suit against TASD followed.

DISCUSSION

In a claim against a school district for failing to protect a student from sexual abuse, a plaintiff must establish two elements: 1) the school district's policy, practice, or custom played an affirmative role in bringing about the sexual abuse; and 2) the school district acted with deliberate indifference to that abuse. *Doe v. Boyertown Area Sch. Dist.*, 10 F.Supp.3d 637, 650 (E.D. Pa. 2014).

Regarding the first element, Plaintiff argued that TASD implemented a practice and custom of refusing to enforce existing child-protection policies against Cressman. Specifically, Plaintiff noted the October 17, 2018 memorandum in which TASD indicated it would not enforce its policy prohibiting teachers driving students home from school against Cressman and L.G. Plaintiff also argued that TASD failed to ensure that its prior written directive that Cressman stop electronic communications with L.G. was being followed, thus furthering the practice and custom.

The Court responded, however, that Plaintiff had not demonstrated TASD knew about the sexual abuse at the time the alleged practice or custom was adopted. Although TASD's superintendent had suggested she "believed" CYS "made a mistake" in finding the allegations to be "unfounded," the Court stated that this merely indicates her belief and supposition from which the Court could not infer knowledge. The Court emphasized that both CYS and law enforcement had conducted extensive investigations and made no findings of sexual abuse. Because TASD had no knowledge of the abuse at the time its alleged policy was implemented,

the policy could not have played an affirmative role in bringing about the abuse. Therefore, Plaintiff failed to satisfy the first element.

The Court further explained that Plaintiff would likewise be unable to prove the second element of a deliberate indifference claim. In order to demonstrate deliberate indifference on the part of TASD, it must be shown that TASD knew about past violations and failed to take precautions against future abuse, which contributed to the victim's injury. As was established, TASD had no knowledge of any abuse. Additionally, the Court found that TASD did take precautions by promptly conducting a Title IX investigation, filing a report with CYS, contacting law enforcement about the status of the report, issuing directives to Cressman, and filing a misconduct report. Therefore, Plaintiff failed to satisfy the second element of her claim.

Finally, the Court summarily rejected Plaintiff's implicit state-created danger claim based on its finding that no rational fact-finder could conclude that TASD exhibited deliberate indifference to the sexual abuse of L.G.

PRACTICAL ADVICE

The ruling in *Ricketts* highlights the importance of promptly and thoroughly responding to information or allegations of an employee's sexual abuse of a student and of exercising adequate precautionary measures to prevent further abuse. In *Ricketts*, the school district immediately conducted a Title IX investigation upon learning of the rumored sexual relationship between a teacher and a student. Furthermore, after its investigation, the school district exercised a number of precautions, including: 1) filing a report with CYS; 2) issuing a written memorandum to the teacher directing her to cease driving the student, communicating with the student, and spending time alone with the student; (3) contacting law enforcement about the status of the CYS report; and (4) filing an Educator Misconduct Report with

the Pennsylvania Department of Education. In this instance, although it subsequently was determined that the teacher had actually sexually abused the student, the responsive measures undertaken by the school district ultimately precluded a finding of liability against the school district.



SCHOOL DISTRICT REAL ESTATE ASSESSMENT APPEALS REJECTED IF NOT DONE ON UNIFORM BASIS

Downingtown Area School District v. Chester County Board of Assessment Appeal, 2023 Pa. Commw. LEXIS 161 (Pa. Commw. Ct. October 6, 2023). Commonwealth Court rejects assessment appeal despite school district-established threshold, where determination of properties was arbitrary.

While Pennsylvania appellate courts have allowed school district tax assessment appeals to proceed if thresholds are established, Commonwealth Court has ruled that even with such objective standards, appeal program implementation must be uniform and not discriminate against certain classes of properties. Under the Court's ruling in *Downingtown Area School District v. Chester County Board of Assessment Appeals*, 2023 Pa. Commw. LEXIS 161 (Pa. Commw. Ct. October 6, 2023) appeals based on sales prices or potential annual tax revenue are permissible, but actual selection of properties for such appeals must follow established guidelines and not be arbitrary.

BACKGROUND

The Downingtown Area School District established a policy to appeal any real property assessment that potentially resulted in annual additional tax revenue of \$10,000 or more. The adopted policy did not limit the number of appeals the School District could file in a tax year. However, in 2019, the District hired Valbridge Property Associates to identify up to 15 properties that were likely to be under assessed by an amount sufficient to meet the \$10,000 standard. The District appealed the 15 property tax assessments Valbridge identified, and then added another complex owned by taxpayer Marchwood Apartments. Marchwood owned two separate tax parcels totaling 43.6 acres, in which there were 40 detached buildings with 504 residential apartments. It appears that Valbridge looked at property assessments in the District and the parties chose 15 to appeal as a “manageable number,” considering manpower and resources. Also, Valbridge excluded residential properties of less than 3,500 square feet in its initial analysis; the company further separated commercial properties into several categories. Moreover, once 15 properties were selected, no additional appeals took place despite many more properties that would meet the standards. Even after adding Marchwood to the list of appeals, an appeal was not filed on one qualifying parcel because it was represented by a “very aggressive” attorney.

The Court of Common Pleas of Chester County conducted a hearing on the School District's appeal. The trial court found that the School District's policy passed muster as it did not instruct the District to consider the type or nature of property when deciding whether to appeal the property's assessment (even though since the policy's implementation in 2012, the District filed an assessment appeal on just one residential parcel). The trial court rejected the taxpayer's constitutional challenges to the appeal, concluding that if the Marchwood complex was not appealed, it would remain underassessed, which would be discriminatory against other property owners. The trial court also rejected that the District's policy violated the state's “uniformity clause,” which requires that

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all taxes be uniform on the same class of subjects. The Court noted that absolute equality and perfect uniformity in taxation are not required under that Clause. The District policy’s \$10,000 threshold was facially neutral, especially as such thresholds are permitted under prior state court rulings. Further, the policy did not effectively eliminate appeals of residential properties, thereby creating unconstitutional property subclassifications. As a result, the trial court ordered the assessment of the Marchwood complex be increased to comport with its fair market value. The taxpayer then appealed the court’s decision to Commonwealth Court.

DISCUSSION

In its appeal to Commonwealth Court, Marchwood once again argued that the District’s policy violated the equal protection clause and uniformity clause. To address these, Commonwealth Court went through the history of the uniformity clause and assessment laws generally. The Court reiterated that within a taxing district all real properties are a “single class” and that the uniformity clause did not permit taxing authorities to treat different property subclassifications in a disparate manner. Therefore, where a taxing authority appeals only the assessments of a certain property type, it acts outside the applicable constitutional boundaries. But citing precedents, the Court repeated that appeals can be based on neutral selection criterion, such as a monetary threshold, so long as such are implemented without regard to the type of property in question or the residency status of the owner. This result holds true even if monetary thresholds are so high that it impacts only commercial property assessments.

Based on this history, the Court found that the Downingtown policy using a monetary threshold for identifying properties could be constitutional. However, the School District implemented its policy in an arbitrary fashion because it chose to appeal the assessment of 16 properties even though it knew that many more properties in the School District

existed that satisfied this threshold. In addition, Valbridge testified that it did not have a hard and fast rule with respect to the methodology that he used to identify properties: its goal was to “maximize the return to the School District.” The Court took note that Marchwood complex was not on the original list of properties identified for an assessment appeal and the School District offered no explanation for the later selection; also, the Court negatively viewed the fact that the District rejected another commercial property for appeal, despite meeting the threshold, because its counsel was aggressive. The District’s decision to implement a piecemeal approach to its policy, deliberately leaving many under-assessed properties alone, resulted in disparate treatment counter to the uniformity clause, with such random application of a threshold creating a lack of uniformity.

Overall, it appears that the Court, while affirming the use of uniform standards in carrying tax assessment appeals, had issues with loose or contradictory implementation of such policies, which seemed to have resulted in ad hoc basis decisions on appeals.

PRACTICAL ADVICE

The *Downingtown* Court decision clarifies that while neutral criteria may pass constitutional scrutiny, it still must be implemented in a fair way. School District policies and practices establishing thresholds should be rigorously followed in order to deflect legal challenges to appeal programs.



TEACHER CLAIMING FORCED RETIREMENT STATES VIABLE CLAIM FOR RETALIATION

Denise L. Morrow v. South Side Area School District, 2023 WL 6260107 (W.D. Pa 2023) (Federal court holds that a teacher who claimed she was subjected to a pattern of discipline and harassment that forced her to retire stated a viable claim for retaliation.)

BACKGROUND

Denise Morrow, who began teaching for the South Side Area School District in 1993, alleged that after a new superintendent was appointed in 2018, the school district de-prioritized district programs for disabled students. Beginning in May 2019, the teacher complained to the superintendent and board members, as well as her principal and other administrators, that the school district was discriminating against disabled students by changing in-house programs for disabled students and failing to meet federally mandated standards for service to disabled students. She alleged that her actions were met with a pattern of retaliation and harassment in the form of frequent changes in her job description, inconsistent and conflicting job assignments, denial of paraprofessional support, surprise observations by her supervisor, a reprimand, threatening her with a pre-disciplinary (Loudermill) hearing based on a false complaint, filtering her email, and denying her opportunities provided to other similarly-situated employees such as the ability to use a cell phone during school hours to contact parents and the option to work from home/bring her child to work when faced with a childcare issue.

DISCUSSION

To succeed on a retaliation claim, a plaintiff must show: 1) engagement in protected conduct; 2) that the defendant took retaliatory action sufficient to deter a person of ordinary firmness from exercising those rights; and 3) a “causal link” between the protected conduct and the retaliatory actions.

The Court concluded that the Complaint “contextually and temporally” asserted a causal connection between the legally protected activity of advocating for disabled students and the school district’s adverse employment actions and, therefore, stated causes of action under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Pennsylvania Human Relations Act.

PRACTICAL ADVICE

The Court’s decision is a reminder that the timing of discipline or other adverse employment actions can lead to an inference of illegal retaliation against an employee. If an employee has recently engaged in some legally protected activity, such as complaining of discrimination, commenting on some policy that affects the public interest, or filing a grievance or other legal proceeding, the decision of an employer to impose discipline should be based only on some recent and compelling instance of misconduct or poor performance. A record of progressive discipline also can be crucial to confirm the validity of the employer’s concerns and to show that the reason given for the discipline is not merely a “pretext” for illegal retaliation.



SCHOOL DISTRICT AND PRINCIPAL NOT LIABLE FOR GYM TEACHER'S INAPPROPRIATE PHOTOS OF STUDENT

Shaefer v. Chorba, No. 3:23-0019, 2023 U.S. Dist. LEXIS 170844, at *5 (M.D. Pa. Sep. 25, 2023). A Pennsylvania federal court dismissed a former student's § 1983 claim against a school district and principal arising from a teacher's taking inappropriate photos of the student due to lack of knowledge or reason to know of the teacher's misconduct.

SUMMARY AND FACTUAL BACKGROUND

Plaintiff, Julie Shaefer ("Shaefer"), was a student at Valley View School District ("District") High School from August 2013 to June 2017. In 2021, after Shaefer had graduated from the District, Lackawanna County Detectives notified Shaefer that Jamie Chorba ("Chorba"), her former high school gym and health teacher, had downloaded photographs of her from social media dating back to 2013; had multiple photos of her buttocks that he took in the high school gymnasium on more than one occasion; and created photographs of her face morphed onto the nude body of a different female engaging in sexual acts with nude bodies of a male which has Chorba's face morphed onto it. Shaefer was not aware of these photos until after she had graduated from the District. The images were found in conjunction with numerous other photographs of students and other minors, as well as inappropriate photographs and videos that Chorba had taken of himself on school property. Ultimately, Chorba plead guilty to sexual exploitation of children, along with other crimes involving inappropriate behaviors with children.

Shaefer alleged that District administration previously had received complaints about Chorba's inappropriate behavior with female students, including the use of his cellular telephone to take pictures of some of the female students and standing inappropriately close to them during stretching in the physical education classes. However, the District did not have a specific policy or procedure in place prohibiting this type of conduct. Additionally, Shaefer alleged that the District had a policy or custom of ignoring signs of

inappropriate actions by teachers and failed to investigate situations where inappropriate conduct by a teacher was suggested, suspected, or evident. Because no investigation had taken place into the complaints made by students and their parents about Chorba, the inappropriate and illegal behavior continued. Shaefer asserted that if the District had a policy in place to protect minor students from such conduct and did not ignore the warning signs of inappropriate behavior, her constitutional rights to bodily integrity would have been protected.

Shaefer filed a complaint against the District and the District's high school principal, Chris Mendicino ("Mendicino"). Specifically, she asserted Section 1983 claims against Valley View for violations of constitutional rights arising from a custom or policy, failure to supervise, failure to train, and state-created danger; an unreasonable search and seizure under the Fourth Amendment; a Title IX claim for sexual harassment; and a negligence claim under the sexual abuse exception to immunity under the Pennsylvania Political Subdivision Tort Claims Act, 42 Pa.C.S. §8541. The District filed a motion to dismiss all of Shaefer's claims. The court granted the District's motion concluding that the complaint did not allege sufficient facts to state cognizable claims.

DISCUSSION

Shaefer's claims against the School District and Mendicino alleged, inter alia, a violation of the constitutional right to bodily integrity pursuant to 42 U.S.C. § 1983. To state a claim under Section 1983, a plaintiff must show that the defendant "acting under the color of state law, deprived him of a right secured by the Constitution or the laws of the United States." Additionally, to demonstrate that her substantive due process rights were violated, Shaefer was required to establish that the particular interest at issue is protected by the substantive due process clause, and that the

government's deprivation of that protected interest "shocks the conscience." The Third Circuit Court of Appeals has recognized that individuals have a constitutional liberty interest in personal bodily integrity that is protected by the Due Process Clause of the Fourteenth Amendment. However, the Court explained that when applying a standard as nebulous as "shocks the conscience," courts typically look to precedent. The Court noted that in the majority of cases in which it was found that official conduct and administrator's responses "shocked the conscience," serious sexual battery, sexual molestation, sexual assault, or other direct sexual harassment by a district employee was involved. Accordingly, the Court felt that this case was distinguishable because Shaefer alleged no sexual interactions with Chorba.

Regarding her state-created danger claim, Shaefer alleged that the District's failure to act created the danger to which she was subjected by Chorba. There are four elements to a state-created danger claim: 1) the harm caused was foreseeable and fairly direct; 2) a state actor acted with a degree of culpability that shocks the conscience; 3) a relationship between the state and the plaintiff existed such that the plaintiff was a member of a discrete class of persons subjected to the potential harm brought about by the state's actions; and 4) a state actor affirmatively used its authority in a way that created a danger to the citizen or that rendered the citizen more vulnerable to danger than had the state not acted at all. However, the Court determined that Shaefer failed to show that the District affirmatively used its authority in a way that created the danger and that Shaefer's allegation that the District failed to take action in this circumstance was not enough to show a violation of her constitutional rights.

The Court also found that Shaefer could not succeed in her Title IX sexual harassment claim against Defendants because the District had no knowledge or reason to know of Chorba's conduct. Accordingly, the Court dismissed all claims against the District and Mendicino.

PRACTICAL ADVICE

The *Shaefer v. Chorba* case demonstrates that school districts are not categorically liable for employee misconduct toward students. Instead, school district liability requires either affirmative acts creating or exacerbating dangers for victims of improper conduct or inaction that leads to such inappropriate conduct, such as a failure to adequately train employees to identify, report, or investigate alleged inappropriate conduct or deliberate indifference to known or alleged misconduct.



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