

School Bullies

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**State Bar of New Mexico
2007 Student Essay Contest
2nd Place Winner**

Facts Presented:

Jeff, a cheerleader, has been the object of ridicule by other students due to his being a cheerleader. Although he's been involved in cheering for two years, it seems that overnight he has become a pariah. Some students have made him the object of their teasing and name-calling, and it has progressed to the point where the verbal teasing has led to some actual physical acts against him. In one particular incident, some of the players "accidentally" brushed up against him and stepped on him, injuring him to the point that he couldn't even perform stunts with his teammates that evening. Jeff reported this to the coach, who basically did nothing but advise Jeff to see his counselor. Coach Taylor even went so far as to tell him to "suck it up" and "be a man," inadvertently or intentionally causing even more self-doubt and self-consciousness in Jeff, who was made to feel that because he chose cheering as his sport, he was thought of as less than a man. Jeff then went to his parents, who wrote a letter to Principal Carter, informing him that Jeff's grades had fallen and that he no longer wanted to attend school. The principal assured them that if any incident occurred again, the football players responsible would be suspended. Although school officials had promised to take care of the problem, they didn't, even though the school has policies prohibiting the type of teasing and acts that were being perpetrated on Jeff. By this point, Jeff was desperate, helpless, and hopeless; the adults he had been assured would be of assistance to him in any school-related situation had let him down. As a result of the failure to stop the continued abuse, Jeff ended up stabbing Tony, another school

student and athlete who suffered some permanent injuries and loss of a possible college scholarship in sports.

Issues Presented:

1. Is the school liable for the abuse of Jeff by other students when the school failed to follow its own policies to correct and stop the abuse of Jeff by other students?
2. Is the school district shielded from liability under the tort claims act?
3. Is the "stabbing" of Tony by Jeff a criminal act, which makes the school liable for the injuries suffered by Tony?

Discussion

Under the New Mexico Torts Claims Act, generally the State is not liable for the acts committed by one person against another. I am sure the school district would argue that they are not liable for injuries suffered by Tony because Jeff may have committed a criminal act when he stabbed Tony with the pencil. However, I would argue that the school is liable for the injuries suffered by Tony because they had policies in place that they did not follow or implement that prohibited the kind of behaviors, acts, and teasing inflicted upon Jeff by members of the student body. They were completely aware of what was going on, promised to put a stop to it, but, in fact, did not stop the continued teasing that escalated into even worse acts upon Jeff. As a direct result of this Jeff acted out and ended up stabbing Tony. The school district, under the Upton v. Clovis Municipal school district, 26-NMSC-04, is not immune from liability where they fail to follow their own policies and the same results in foreseeable injury as it did to Tony even though the same was inflicted by Jeff.

It, also, appears that Jeff would have claims against the school district that failed to protect him from the violation of school policies and the same resulted in him suffering mental, emotional and physical abuse at the hands of school district students who were not stopped in the activities which violated school policies. Again, it was foreseeable that such injuries could occur or that something could happen to Jeff or others due to the violation of school policies and the failure of school personnel to stop said policy violations. Even though arguably, the school could argue that Jeff has committed a criminal act, i.e., battery or aggravated battery depending on the seriousness of Tony's injuries, Jeff might be able to assert self defense even though he ended up stabbing Tony who apparently was not involved in the acts against him. The defense would have to be judged under a reasonable person in Jeff's place as provided for under 14-5181.

My review of the stated case law and the provision of the Tort Claims Act lead me to believe that as a legal matter, the school district is not shielded from liability due to my arguments as stated above. It is quite foreseeable that a school district's failure to follow its own policies in the area of unwelcome physical contact of a sexual nature, including touching, pinching, patting or brushing against and the prohibition against threatening, bullying, assaulting or battering of another student. Clearly, Jeff was subjected to all of the above at one time or another and then he struck out and he injured Tony. Here it was all virtually everybody in the "chain of command" that didn't do their job in enforcing policy and the Upton case appears to give a remedy for the same by allowing liability to be obtained against a government entity like a school district. The case of Pemberton v. Cordova, I would argue is not on point in that it states that an injured student cannot sue a school district on the theory of negligent supervision. Here we are not arguing negligent supervision, we are arguing violation of school policy, such as you find under the Upton case.