Student assaults at your school – Can schools be liable?

By Jonathan M. Goodman

School violence seems to be everywhere, and we are reading more and more about serious assaults, and even occasional murders, in and around school grounds. Serious incidents of assault are often attributed to earlier incidents of student-to-student harassment, and to claims that the school did not do enough to make the victim turned perpetrator safe. As a result, both the victim and the perpetrator may blame, and sue, the school. Can parents succeed with such law suits? And if so, in what circumstances?

Immunity

Let’s begin with the good news. Fortunately, the Maine Tort Claims Act generally blankets schools and their employees with immunity from liability for negligent acts or omissions.1 The purpose of this immunity is to provide public officials with some protection in their discretionary decision-making, so that they will not be afraid to make the decisions that they are charged to undertake. It is important to note, however, that there are exceptions to the school’s immunity, such as where the school purchases liability insurance in areas where it would otherwise be immune. The remainder of this article is devoted to a discussion of how and when liability might arise in the event that there is such insurance coverage.

Tort liability

When one student seriously assaults and injures another, the injured student can certainly bring a tort claim for damages against his or her assailant under the legal theory of assault and battery. But to be frank, it is often true that the attacking student or his family will have little in the way of resources to pay the injured student if a jury enters a monetary judgment in the injured student’s favor. If the injured student could successfully sue the school, however, that public entity will have far “deeper pockets” available to pay a damage award to the student. An attorney for the injured student, therefore, will work hard to craft a tort claim against the school that could provide a remedy.

The primary avenue for pursuing such claims has been under the legal claim of “negligence,” with the particular theory usually being one of negligent supervision. Negligence is understood as the breach of a duty of care by one person (or entity) toward another, with damage to the harmed person that was proximately caused by the breach of that duty.2 Of course, every case depends on its unique
circumstances, but given the right facts, schools and school officials can be held responsible for injuries that arise out of an attack by one student upon another. The key will usually be whether the student attack was reasonably foreseeable by the school official and in some manner within the school official’s control.

For example, in LePage v. Evans, a New York court recently held that when one student’s injuries are caused by the intentional acts of another student, the school may be held liable under a negligent supervision theory only where the plaintiff shows that the acts of the fellow student could have been reasonably anticipated due to the school’s notice or prior specific knowledge of the aggressor student’s propensity to engage in such conduct.

In LePage, two students engaged in a brief altercation on the school bus, wherein the students allegedly exchanged words and plaintiff student pushed the defendant student. Later, after they exited the bus, the defendant student attacked the plaintiff student and struck him in the face approximately ten times in rapid succession, breaking his jaw. The court found that the conduct on the bus was insufficient to render school district liable under a negligent supervision theory, because neither student had been involved in fights before, neither had any serious disciplinary history, the two hardly had any previous interaction, and the school district was not aware of any problems with either one individually or between the two of them.

Following the same line of reasoning, but reaching a different result, in Mirand v. City of New York, another New York court permitted a legal claim against the City’s Board of Education for an assault and knife attack on two sisters near the end of the school day. In Mirand, one of the sisters had bumped into another student, who then cursed the girl and attempted to kick her. The other student then threatened to kill the girl. The girl went to the school’s security office to report the threat, but found no one there. The girl then passed a school teacher in the hall and allegedly told the teacher of the altercation and the threat. Apparently the teacher did nothing with that information. The girl then joined up with her sister and when the two of them walked down a school staircase, they met up with the student who had made the earlier threat, along with some other students. There was then an attack by one of those students with a hammer and by another student with a knife, leading to serious injuries for both sisters. A jury ordered the school to pay a total of $800,000 in damages to the two girls based on a finding of negligent supervision.

Conclusion

The lesson school officials should take away from LePage and Mirand is that, where school officials have notice of the risk of a physical attack, and they do not take adequate steps to prevent the attack, the school can be held liable for negligent supervision, as long as the attack itself was not so spontaneous that greater supervision would have been unable to head it off. As common as school yard fights have been throughout the ages, most parents expect that their children will not be seriously injured by other students during the school day. Perhaps even more so, parents expect their children not to be harassed or abused while in school. These expectations are justified. Indeed, all students have a legal right to be safe in school from known hazards. Thus, where there is insurance coverage, schools can be held liable for violent assaults by students against students, particularly when school officials had notice of a student’s violent propensities and then failed to take reasonable means to protect against those actions.

Endnotes

1. See 14 M.R.S.A. § 8101 to 8118.