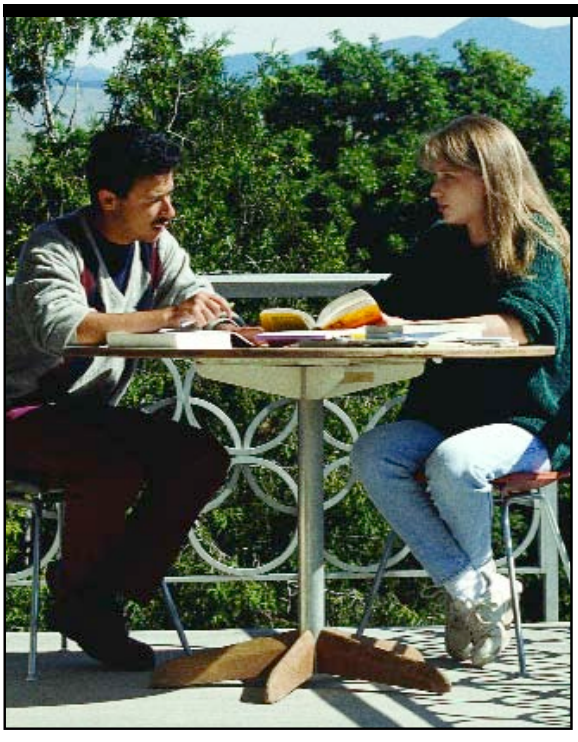

STOCK PHOTO IMAGE

Student Suicide and School Liability

Schools must be diligent in efforts to prevent student suicide, but should also be aware that the courts most often do not hold schools and school personnel liable.

By Perry A. Zirkel

When he was in grade 7, a student was diagnosed with ADHD and prescribed medication. The medication helped, and four years later, in August 2002, a physician reduced the dosage without any notable problems. The student lived with his mother, but spent considerable time with his uncle, who was a licensed social worker and family therapist.

In early fall 2002, the student wrote a series of notes to a fellow 11th grader, with whom he had a brief romance during the summer. The reason for the notes was that he was upset upon finding out that she had a new boyfriend. The last note, which was received on November 26, read:

> I've heard 3 different stories about you & Ryan. The one I heard almost made me want to kill myself.... I just thought this & have to ask you, is there any grudge or animosity btwn us? I g2g. Write back if you can.... Luv ya.

The next morning, the student's ex-girlfriend showed the note to her guidance counselor and explained that the student had been "bugging" her and she did not think he would commit suicide, but she was worried about him. The guidance counselor asked the ex-girlfriend whether she could tell the student who had given her the note, but the ex-girlfriend said, "Please don't."

That afternoon, the ex-girlfriend's guidance counselor gave the note to the student's guidance counselor, who summoned the student to her office. She knew or had reason to know of his ADHD diagnosis. She told him that some of his friends were concerned about him, and thus, she was concerned too. When she asked whether he was upset about a situation with a girl, he dismissed it as being "two months ago, not now." When she inquired whether he had ever planned to hurt himself, he replied he definitely would not. After exploring his plans for the immediate future with him for another 10 minutes or so, she sent him back to class, concluding that he was not at risk of committing suicide. In accordance with the school district's suicide referral policy, she did not contact the school psychologist or the student's mother.

A week later, the student's mother read an instant message exchange between the student and one of his friends in which one said, "I get the knife," and the other responded, "Fine I got the rope." Neither the student's mother nor his uncle thought it was serious. He appeared to them to be a "happy-go-lucky" student who even played on the basketball team.

The following day, the student visited the guidance office and asked his guidance counselor who had given her the note that they had discussed. She declined to tell him, citing confidentiality. She invited him into her office, but he said, "Thanks, I thought that's what you would say. That's all I needed."

That night, on the way home from basketball practice, the student had an argument with his mother in the car. He jumped out and, ultimately, walked home. Upon his

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return, his mother, who was on the second floor, called down to remind him to clean the kitchen. When she did not hear him doing so, she went downstairs and found that he had hanged himself to death in the basement.

The student's mother filed suit in federal court, claiming that school officials, including the principal, were liable for violating Fourteenth Amendment substantive due process and that the counselor was liable for negligence. The defendants moved for summary judgment—a final ruling in their favor without a trial because there was no dispute about the material facts.

In November 2004, the federal district court issued its decision (*Sanford v. Stiles*), granting the defendants' motion for summary judgment. After acknowledging that the plaintiff-parent had dismissed her claim against the principal, the court rejected the Fourteenth Amendment claim against the other official representatives of the district, in particular the counselor.

In the court's view, a reasonable jury could not find that the requisite elements of the "danger-creation" theory were present. These elements are that the harm was foreseeable and direct, the conduct of the public school official was at least at the level of deliberate indifference, there was a relationship between the governmental unit (here, public school) and the plaintiff, and the governmental official used his or her authority to create an opportunity that otherwise would not have existed for harm to come to the plaintiff.

More specifically, the court concluded that the allegations did not come close to a colorable claim with respect to the second and fourth elements. In addition, the court concluded that the counselor was covered by qualified immunity because the asserted right was not clearly established and that the plaintiff had similarly not come close to proving the required elements for district liability on her Fourteenth Amendment "liberty" claim.

Finally, the court rejected the negligence claim for two alternative reasons. First, although the plaintiff's allegations were sufficient to reach a jury on the question of whether the counselor had breached her duty (under the district policy) to properly evaluate and refer the student, the allegations were not sufficient with regard to causation (i.e., that the breach was a substantial factor in bringing about his suicide). Second, Pennsylvania's governmental immunity legislation covered not only the

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district but also its employees with regard to such negligence claims.

Other Constitutional Cases

As the court in *Sanford* recognized, the only published decision in which a constitutional claim arising from student suicide survived district-defendants' motion for dismissal or summary judgment was *Armijo v. Wagon Mound Public Schools* (1998). The alleged facts in *Armijo* were much more egregious and included the facts that the student received special education under the classification "emotional disturbance"; that he told one of the school staff members that he was depressed and suicidal; and that, as a result, the principal had the counselor drive him home, where the counselor, contrary to school policy, left him alone without contacting his parents. Moreover, on denying the defendants' motion for summary judgment, the court merely preserved the case for a jury trial, which ended the matter in terms of judicial precedent.

Other courts have either questioned the *Armijo* ruling, thus leaving in doubt danger-creation claims against school defendants in the wake of student suicide, or concluded, as in *Sanford,* that the plaintiffs did not establish its requisite elements (see *Hasenfus v. LaJeunesse,* 1999; *Martin v. Shawano-Gresham Sch. Dist,* 2002; *Morris v. Dapolito,* 2004; *Wyke v. Polk County Sch. Bd.,* 1997). The courts have similarly and even more strongly rejected Section 1983 claims on the basis of other constitutional provisions (*Ziegler v. Eby,* 2003) or on the Individuals With Disabilities in Education Act or Section 504 (*Scott v. Montgomery County Bd. of Educ.,* 1997).

Common Law Claims

As *Sanford* also illustrates, the primary alternate claim of school liability for student suicide is negligence in terms of failure to evaluate, notify, or refer. Here, plaintiffs have had more but still notably limited success. The first partial victory was a decision by Maryland's highest court (*Eisel v. Bd. of Educ. of Montgomery County,* 1991) that denied the defendants' summary judgment motion. Relying in part on the state's Suicide Prevention School

Programs Act and remanding the case for trial, the court held that "school counselors have a duty to use reasonable means to attempt to prevent a suicide when they are on notice of a child or adolescent student's suicidal intent." However, the resulting trial returned a verdict for the school defendants.

Moreover, in the subsequent published case law, courts—with two limited exceptions—decided in favor of school officials based on governmental immunity (*Brooks v. Logan,* 1997; *Fowler v. Szostek,* 1995; *Grant v. Bd. of Trustees of Valley View Sch. Dist.,* 1997; *Killen v. Indep. Sch. Dist. No. 706,* 1996; *Nalepa v. Plymouth-Canton Cmty. Sch. Dist.,* 1994) or, in states where such immunity did not exist or apply, the plaintiffs' failure to prove the requisite elements of negligence, such as breach of duty and proximate cause (*Brown v. Bd. of Educ. of Milford,* 1996; *McMahon v. St. Croix Falls Sch. Dist.,* 1999; *Scott,* 1997).

The long line of litigation shows not only the frequency and tragedy of student suicide but also the steep uphill slope that plaintiff-parents face to obtain money damages against school defendants.

The first exception was in *Scott* (1997). On appeal, the appellate court upheld a jury verdict for the plaintiff parent, but victory was limited because the jury had reduced the damages to one-third of the total on the basis of its finding that the parent and another guardian had been contributorily negligent. The second exception was in *Carrier v. Pend Oreille Sch. Dist.* (2005), which was more notably limited for two reasons: first, because it was an unpublished state trial court decision, and second, because it was inconclusive, denying the defendants' motion for summary judgment and reserving the matter for a jury trial to determine whether the plaintiffs established the required elements for negligence, including causation.

Conclusion

The long line of litigation shows not only the frequency and tragedy of student suicide but also the steep uphill slope that plaintiff-parents face to obtain money damages against school defendants. Jurisdictions vary, but the general trend advises against undue fear of liability. Contrary to news reports, advocacy claims, or professional lore, the courts are not particularly hospitable to liability suits that are brought by understandably grief-stricken parents, particularly those based on Section 1983 federal civil rights claims.

Check your state law. State law may contain applicable judicial precedents and suicide-specific, school-related legislation or regulations. As Maryland's *Eisel* decision illustrates, some states have legislation or regulations that courts may interpret as establishing a legal duty, which is one of the elements of negligence. Whether interpretations could lead to a danger-creation civil rights claim is a more remote possibility, requiring egregious facts as well as pro-plaintiff precedents.

Develop a proactive policy, and follow it. Prudent formulation and implementation of a proactive policy can help prevent student tragedy, regardless of school liability. Such a policy should include balanced awareness and reasonable training that are based on the legal boundaries I have summarized here and those that apply to individual jurisdictions.

Be proactive, not paranoid. Undue fear of liability leads to overreaction or paralysis. As a matter of professional discretion and ethical imperative, school leaders should be proactive in including suicide prevention as part of a coordinated and comprehensive program of a safe and secure environment for student learning and growth. PL

References

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- ❏ Brooks v. Logan, 994 P.2d 709 (Idaho 1997)
- ❏ Brown v. Bd. of Educ. of Milford, 681 A.2d 996 (Conn. App. Ct. 1996)
- ❏ Carrier v. Pend Oreille Sch. Dist., 2005 WL 78266 (Idaho Dist. Ct. 2005)
- ❏ Eisel v. Bd. of Educ. of Montgomery County, 597 A.2d 447 (Md. 1991)
- ❏ Fowler v. Szostek, 905 S.W.2d 336 (Tex. Ct. App. 1995)
- ❏ Grant v. Bd. of Trustees of Valley View Sch. Dist., 676 N.E.2d 705 (Ill. App. Ct. 1997)
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- ❏ Sanford v. Stiles, 2004 U.S. Dist. LEXIS 22948 (E.D. Pa. 2004)
- ❏ Scott v. Montgomery County Bd. of Educ., 120 F.3d 262, U.S. App. LEXIS 21258(4th Cir. 1997)
- ❏ Wyke v. Polk County Sch. Bd., 129 F.3d 560 (11th Cir. 1997)
- ❏ Ziegler v. Eby, 77 Fed. Appx. 117 (3d Cir. 2003)