School Leaders Risk Management Association

Case Summary

Donald Richardson, on behalf of himself and on behalf of his minor child, K.R. v. Huber Heights City Schools Board of Education

2016 WL 3090334 (U.S. Ct. App. 6th Cir)

June 22, 2016

Background

K.R. was a high school freshman who was trying out for the baseball team. While at a voluntary after school weight lifting session for the baseball team at the high school gym, K.R. got into an argument with other team members. The assistant baseball coach learned of the argument and talked to B.C., a junior on the baseball team, about K.R. The coach allegedly told B.C. to "take care of it," which the coach denied saying. Shortly thereafter, K.R. was sexually assaulted by fellow students B.C. and R.M., while 2 other students looked on. K.R.'s parents reported the incident to the high school vice principal the next day. Ultimately B.C. and R.M. were suspended from school, and were found guilty of assault in juvenile court after being charged with rape. The 2 students who watched the incident were also suspended.

K.R.'s father, Donald Richardson, brought an action against the Board under Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), for violation of civil rights under 42 U.S.C. § 1983, as well as common law tort claims against the two students who engaged in the assault. The tort claims were settled and the Title IX claim was dismissed.

Richardson's primary contention against the Board for the § 1983 civil rights violation claim was a so-called "environment of physical abuse and bullying" at the high school. Several students at the high school in question testified to various forms of male-on-male bullying, including striking in the genital area. This behavior rarely happened in front of a teacher or coach, but rather in unsupervised areas and times, or when coaches were present but their focus was elsewhere. Notably, none of the students were aware of anyone ever reporting these incidents, even though students acknowledged that inappropriate touching was a common thing. School officials stated they were not aware of unwanted sexualized touching and did not know of a "culture of hazing" among the students in the school. The official policy of the district was that horseplay was not tolerated and that the student code of conduct prohibited fighting, violence, bullying and hazing. One student agreed that teachers did not tolerate such behavior and that the school had previously acted to curb inappropriate touching when it happened prior to the incident with K.R.

On cross-motions for summary judgment on the § 1983 civil rights violation claim, the trial court ruled in favor of the Board.

Holding

The issue before the Appellate Court was whether Richardson could show the Board's liability for its own alleged wrongdoing under a "state-created danger theory." For liability to attach to the Board, Richardson had to prove elements of a three-prong test for state-created danger: (1) state-created or increased risk of exposure to private acts of violence; (2) a special danger to the student created by state action; and (3) deliberate indifference to an obvious risk. In addition, Richardson needed to demonstrate municipal liability of the Board by showing a need for the Board to take action that was so obvious that the Board's "conscious" decision not to act amounted to a policy of deliberate indifference.

In looking at the facts in this case, the Appellate Court found that Richardson proved the first two elements of the three-prong test through the assistant coach's comment to "take care of it." The Court reasoned that even though the assistant coach did not tell B.C. specifically *how* to "take care of it," a jury could conclude that the students involved had the coach's permission to resolve problems by means they felt appropriate, thus increasing the risk that K.R. would be exposed to violence. In addition, the assistant coach's words created a special danger to K.R. given the context that he was essentially being singled out for special punishment.

With regard to the third element, the Appellate Court stated that even if the assistant coach might not have envisioned the way that the student athletes assaulted K.R., the evidence supported the inference that school officials had to be aware of "this culture of student leadership via bullying," as well as the risk associated with it.

However, the Appellate Court found that Richardson could not establish municipal liability under Monell v. Department of Social Services, 436 U.S. 658. To prevail, Richardson had to show: (1) a clear and persistent pattern of abuse by school employees; (2) notice or constructive notice to the School Board; (3) School Board tacit approval of the unconstitutional conduct such that their deliberate indifference or failure to act amounted to a policy of inaction; and (4) that the School Board's custom was the "moving force" in the constitutional deprivation. Here, the Court drew a distinction between abuse by school employees and abuse by fellow students. The Court reasoned that Richardson did not show a pattern of abuse by school employees because the abusers of K.R. were students, nor did he show that the Board had notice of the abuse. In addition, the Court did not view the Board as being deliberately indifferent as demonstrated by the school's successful handling of prior hazing incidents, the school's prompt punishment of the students involved in the assault of K.R., and evidence that inappropriate touching in the high school virtually ended after the incident with K.R. In summary, the Court found that the Board could not have foreseen that the assistant baseball coach would authorize team members to haze another team member as a way to foster team discipline.

Learning Point

This case serves as a reminder of the importance of observing student behavior and of keeping an ear to the ground to learn what goes on when teachers, coaches, and administrators aren't looking. The Court clearly had a significant distaste for the "culture of abuse" among the students at this high school. This case might have easily been decided against the Board with just a few different facts. For example, evidence that this particular coach or other coaches had encouraged student athletes to bully or haze other student athletes on multiple previous occasions might have led the Court to find that the coaches were simply using students to carry out their abuse, thus demonstrating a pattern of abuse by school employees. Also, had student-on-student bullying or hazing been known to the Board through previous reports, and the Board had not acted, the Court could have found that the Board had an official policy of inaction.

To help your school district address issues of bullying and harassment, please download and use SLRMA's *Bullying and Harassment: Identification, Investigation and Remediation Self-Audit Checklist and Best Practices for School Districts*, published in March 2015