



WEEKLY LAW RESUME™

Issue By: ANNA FABIANO

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## Vicarious Liability of a Public Entity Defendant—School Districts Can Be Liable for Negligent Hiring/Retention of Employees Who Sexually Abuse Students”

*C.A., a Minor, etc. v. William S. Hart Union High School District, et al.*  
Supreme Court of California (March 8, 2012)

Last week, the California Supreme Court significantly expanded public entity liability by recognizing vicarious liability for a public employee’s negligent hiring, retention and supervision of a co-worker. Reversing a 2010 decision, the high court ruled unanimously that a California school district could be sued for negligently hiring and supervising a counselor who sexually abused a student.

Plaintiff, a former high school student, filed a complaint against his guidance counselor and the school district, alleging that the counselor molested him on and off campus over a nine month period in 2007. The suit alleged that the school administrators knew or should have known that the counselor, Roselynn Hubbell, had a propensity for sexual abuse when they hired her at Golden Valley High School in Santa Clarita.

Whether the school district could be held directly liable for the conduct of the counselor was not at issue because the molestation occurred outside the scope of employment as a matter of law. Rather, the question before the Court was whether the school district could be held vicariously liable for the negligence of administrative or supervisory personnel who allegedly

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knew of the counselor's prior history, and nevertheless hired, retained and inadequately supervised her.

The District filed a demurrer in the Los Angeles Superior Court, arguing that it could not be held liable in tort in the absence of an authorizing statute or enactment; that it could not be held vicariously liable for the guidance counselor's actions; and that allegations of negligent hiring, training, and supervision did not apply against a public entity defendant. The trial court sustained the demurrer and dismissed the case. The Court of Appeal affirmed the decision on the grounds that the misconduct was not within the scope of the counselor's employment. However, the Supreme Court of California reversed, finding that the school administrators and supervisors could be held liable for negligent hiring of other employees that molest students; and that, under Government Code section 815.2(a), the school district that employs the administrators and supervisors may be held vicariously liable.

Section 815 establishes that public entity tort liability is exclusively statutory. Accordingly, section 815.2, provides the statutory basis for liability relied on here: "(a) A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative." Pursuant to section 815.2(a), the Court considered whether employees of the District, who allegedly had reason to know of Hubbell's dangerous propensities, acted negligently.

The District argued its employees owed plaintiff no legal duty to protect him against abuse by another employee; however, the Court disagreed, reasoning that the special duty of care owed by school personnel to students includes the "duty to use reasonable measures to protect students from foreseeable injury at the hands of third parties acting negligently or intentionally." The Court found that supervisory employees, to the extent their duties include overseeing the educational environment and the performance of teachers and counselors, have a responsibility to take reasonable measures to ensure that students are protected from foreseeable abuse and harassment.

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Since administrators have input in hiring decisions, the Court rejected the argument that administrators and supervisors cannot be held responsible because hiring decisions are made by a governing board. In order to establish causation, a plaintiff must necessarily demonstrate that the individual employee's recommendation, or failure to take action, was a substantial factor in causing the wrongdoer to be hired or retained, but the fact that employment decisions are subject to approval by a governing board does not necessarily absolve district employees of liability in initiating, or failing to initiate, those decisions.

Limiting the scope of the holding, the Court emphasized that all the other elements of the tort action must be established, including the factors of foreseeability and moral blame. Additionally, the Court pointed out that any vicarious liability of a school district must be based on evidence of actual negligent hiring, supervision, or retention; the sexual misconduct of an employee alone does not itself establish that the employing district should bear liability for the resulting injuries.

## COMMENT

The C.A. decision redefines a broader basis of liability that could open a floodgate of litigation against public entity defendants. A public entity can now be found vicariously liable under Government Code section 815.2 for the negligence of its individual administrators in failing to vet and supervise an employee.

For a copy of the complete decision see:

[HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/S188982.PDF](http://www.courtinfo.ca.gov/opinions/documents/S188982.pdf)

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