

RESPONDING TO STUDENTS WHO MAY BE AT RISK FOR SUICIDE

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A Few Statistics

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- According to the CDC, in 2013
 - Suicide was the third leading cause of death for children ages 10-14 - 386 deaths by suicide
 - Suicide was the second leading cause of death for children ages 15-24 – 4878 deaths by suicide

Liability Claims for Student Suicide

- Claims based on alleged failure to adequately treat, warn, supervise, advise, or discipline the student, based on common-law theories of negligence, of gross negligence, the intentional infliction of emotional distress, or intentional or willful tort.
- Claims based on alleged failure to adequately treat, warn, supervise, advise, or discipline the student, based on a wrongful death claim alleging that there was medical, or educational malpractice.
- Claims based on the negligent infliction of emotional distress
- Claims of bystander negligent infliction of emotional distress
- Claims based on the Civil Rights Act (42 U.S.C. § 1983 alleging a deprivation of a constitutional or statutory right

Illinois Case Law

- *Grant v. Board of Trustees of Valley View School Dist. No. 365-U*, 286 Ill. App. 3d 642, 221 Ill. Dec. 902, 676 N.E.2d 705(3d Dist. 1997)
- Mother of high school student brought action against school district and counselor after student committed suicide, alleging that district had failed to inform mother of student's suicide threats or implement suicide prevention program.

Illinois Case Law

- Holding: District had no duty under school code to implement suicide prevent program; (2) Counselor and district were entitled to immunity based on their in loco parentis status under school code; and (3) Counselor had not engaged in wanton or willful conduct as would waive that immunity.

Federal Case Law from 7th Circuit

- *Moore v. Hamilton Southeastern School Dist.*, 2013 WL 4607228 (S.D. Ind. 2013)
- Parents contended the defendants were liable for negligence leading to J.B.'s wrongful death, in that they failed to properly train and supervise their employees, failed to ensure students were properly supervised, and failed to appropriately respond to and prevent the repeated bullying to which J.B. was subjected.

Federal Case Law from 7th Circuit

- Parents also contended the defendants failed to prevent J.B.'s suicide by failing to protect him from ongoing harassment that allegedly led to J.B.'s suicidal ideation.
- Parents alleged the defendants failed to evaluate her son and provide him with an alternative educational environment even with knowledge of his alleged history of severe emotional disability.
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Federal Case Law from 7th Circuit

- Parents also alleged the defendants were liable under negligence per se theories, citing Section 504 of the Rehabilitation Act and the Individuals with Disabilities in Education Act (IDEA) because of their failure to evaluate/classify J.B. as an emotionally disabled student and to thereafter ensure J.B. was provided with a free and appropriate public education.

Federal Case Law from 7th Circuit

- Parents also asserted claims under 42 USC § 1983 contending that J.B. was deprived of his constitutional rights by the defendants alleged creation of a dangerous environment, tacit approval of bullying, and failure to protect J.B.
- Parent also contended J.B.'s rights under Title IX were violated due to failure to investigate J.B.'s situation and appropriately respond to incidents of bullying.

Federal Case Law from 7th Circuit

- Jurors returned a verdict Feb. 25, 2014, finding HSSD had not negligently failed its duty to classify J.B. as emotional disabled, finding HSSD had breached its IDEA statutory duties when coming to the conclusion not to classify J.B. as emotionally disabled, finding Moore was contributorily negligent, finding HSSD's violation of the IDEA deprived J.B. of his rights guaranteed under federal law, finding HSSD's violation of the IDEA caused J.B./Moore harm, and finding no damages were owed.

Federal Case Law from 7th Circuit

- *Martin v. Shawano-Gresham School Dist.*, 295 F.3d 701, 167 Ed. Law Rep. 61 (7th Cir. 2002)
- Parents of public school student, who committed suicide after she was suspended from school, alleging substantive and procedural due process claims, equal protection claim, under § 1983, and supplemental state law claims.

Federal Case Law from 7th Circuit

- Conclusion: (1) school official did not violate procedural due process rights of student; (2) official's failure to conform with procedural requirements contained in written school policy and student handbook did not violate due process; (3) school did not create or increase risk of harm to student, precluding parents' claim for violation of substantive due process rights; and (4) official did not violate student's equal protection rights.

Federal Case Law From Other Circuits

- *Sanford v. Stiles*, 456 F.3d 298, 211 Ed. Law Rep. 104 (3d Cir. 2006)
- Parent brought an action alleging violation of 42 USC §1983 for violating the students substantive due process rights under the Constitution
- Decision in favor of school district

Federal Case Law From Other Circuits

- A 16 year old student committed suicide at home after an incident at school. The student had written a note stating he “almost wanted to kill himself” over an issue with a girl. The student’s guidance counselor called the student into her office and discussed whether he was upset about some sort of situation with a girl, and he no.

Federal Case Law From Other Circuits

- He also denied having plans to hurt himself and said that nothing was upsetting him. The evening after once again visiting the counselor and inquiring about who gave her the note, and after having an argument with his mother, the student hanged himself.
- Counselor did not contact the school psychologist or parent.

Federal Case Law From Other Circuits

- *Wyke v. Polk County School Bd.*, 129 F.3d 560, (11th Cir. 1997), certified question withdrawn, 137 F.3d 1292 (11th Cir. 1998).
- Parents of child who had attempted to commit suicide twice at school brought an action alleging negligence for failing to notify them when student later committed suicide at his home.

Federal Case Law From Other Circuits

- After reviewing the school district's health services policies and procedures required notices home for serious accident or injury and that the student's efforts to hang himself in the bathroom at school should have triggered a call home.

Federal Case Law From Other Circuits

- *Walsh v. Tehachapi Unified School Dist.*, 827 F. Supp. 2d 1107 (E.D. Cal. 2011).
- Parent alleged the school district staff violated their duty to protect a 13 year old openly homosexual student from harassment which resulted in the student's suicide.
- Decision in favor of the school district.

Federal Case Law From Other Circuits

- The mother alleged that two of the teachers gossiped about the student, a third teacher called him a name, and the fourth teacher was present, in a general sense, when other students harassed the student but that none of these allegations were sufficient to allege the breach of a faculty member's duty to protect the student.

State Case Law Decisions

- *Rogers v. Christina School Dist.*, 73 A.3d 1, 296 Ed. Law Rep. 1122 (Del. 2013)
- Parent brought a claim of negligence against school district
- Decision in favor of school district

State Case Law Decisions

- **Facts:** A 16-year-old high school student explained in writing to a school counselor that, while at school the day before, he wanted to hurt himself and others and that he was feeling alone and unloved; where after four hours with the student, the counselor decided the student was no longer suicidal and sent him back to class; where state and school district regulations required a parent or guardian to be notified of a crisis situation involving a student but the school did not notify the student's parent; and where after the student went home, he hanged himself.

State Case Law Decisions

- *Allison C. v. Advanced Educ. Services*, 28 Cal. Rptr. 3d 605 (Cal. App. 4th Dist. 2005)
- Parent brought a wrongful death action against a school district for the suicide of her severely emotionally disturbed 13-year-old son based upon negligence
- Decision in favor of parent – the matter was allowed to proceed.

State Case Law Decisions

- The student's suicide took place more than three months after he had stopped being a student at a special school for students with disabilities
- The student was known to have significant mental health issues and was allowed the student to leave campus, resulting in his being sexually assaulted, which caused him to commit suicide.

State Case Law Decisions

- School staff asserted that they could not physically restrain him to keep him on campus.
- Court rejected this argument indicating they could have followed him to the edge of campus, counseled him to return and called the police and should have done so.

State Case Law Decisions

- The court also noted that the student's behaviors before he left campus should have triggered a "crisis intervention" per the school's policies as he told staff he had not taken his medications and sewed his fingers together.

Response to Reports of Suicidal Ideation

- Interview/Counsel/Assess Student
- Contact Parents
- Provide Resources
- Contact Law Enforcement Where Appropriate
- Intervene and Address Issues of Bullying

Response to Reports of Suicidal Ideation

- Train Staff to Recognize and Report to Appropriate Staff Concerns Regarding Self Harm
- Train staff, particularly counselors, to identify the warning signs of mental illness and suicidal behavior in adolescents and teenagers and appropriate intervention and referral techniques;

Response to Reports of Suicidal Ideation

- Don't "Go It Alone" – Work with Other School Staff to Respond to a Student at Risk of Harm
- Document Your Interactions with the Student, Parents and Law Enforcement

QUESTIONS?