

Upon the boy's return, he received counseling. The A.P. transferred the boy out of the one class that he shared with Amber. He was supervised by a teacher's aide while in the hall. A program on inappropriate touching was presented to the student body. No further incidents between Amber and the student occurred during that academic year.

When an additional incident occurred in school the next year, Amber's parents sued. The suit claimed that the district's response to the bus incident couldn't have been reasonable because a second incident occurred.

The school district prevailed on a motion for summary judgment, with the court holding that the actions of the school district were so clearly reasonable that no trial was necessary. The court said: "Although defendants' remedy was not foolproof...there is little more short of outright expulsion that school officials could have done to prevent further harassment by H.M."

### **Other districts sometimes fail to act on available knowledge**

*Doe v. Chicago Board of Education* reflects a fact pattern seen all too often. A mentally ill student with developmental and cognitive disabilities was sexually assaulted on a school bus by a male student with a deviant sexual history known to the school district.

The aggressor had a "Protective Plan" which required that he would "never be left unsupervised among other children." The plan was enforced on the school bus by employing an aide to supervise. "On the day of the sexual assault, the Board knew or should have known that the school bus attendant, whose job was to supervise the children, called in sick." There was no attendant on the bus that day.

A very similar fact pattern undermined the school district's motion to dismiss in the 1999 case *David "XX" v. St. Catherine's Center for Children*. David "XX" is the father of Michael, an emotionally disabled 6-year-old


who was allegedly sexually abused on the school bus by a 13-year-old student. Although the transportation contract between the City School District of Albany and the Albany Yellow Communications Company required the presence of an aide on buses transporting certain students, including Michael, it was alleged that there was no aide on the bus on the day of the assault. The court found that the plaintiff had properly claimed that the action created "an unreasonable risk of harm" for Michael.

In contrast to Pennsylvania's *Amber Ings-Ray*, the Illinois Appellate Court has sent the *Doe* case back to the trial court for further proceedings. This is the same action that the *David "XX"* court ordered.

### **The lessons**

Be very alert to sexual harassment on the school bus. The Office for Civil Rights has often commented on particular aspects of the school bus which can make unwelcome sexual behavior even worse for a student victim:

- The adult supervisor (often the only supervisor) – the bus driver – must concentrate primarily on safe driving. The driver may not be aware of the conduct while it's occurring and/or may be in no position to do anything about it right away.
- The "close quarters" of the bus may limit the number of witnesses.
- The school bus is a confined area that prevents escape from the harassment.
- The student's ability to avoid the harassment is restricted.

The school district's responsibility is to prevent harm to students that is foreseeable. If it occurs despite the district's reasonable efforts, the district must make a prompt and adequate response. 

## **Court Agrees Walk Path is Safe; Here's How to Make the Case**

*Sioux City Community School District v. Iowa DOE*, 2003 Iowa Sup., LEXIS 65, April, 2003. An Iowa school district was challenged when it discontinued transportation to elementary students living in a mobile home park approximately one mile from their school. An Area Education Agency ("AEA") overruled the district's deci-

sion, finding that the pathway students would have to take to school was unsafe. The Department of Education and district court affirmed AEA's ruling that the district must resume transportation. The school district appealed the decision.

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