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Districts Must Use Reasonable Care When Completing Employment Verification and Reference Forms

Last year we alerted you to *Doe-3 v. White*, an Illinois Appellate Court decision that appeared to greatly expand the possibility for school districts' and district officials' liability to students when failing to report an employee with a history of abusive conduct. *Doe-3* was appealed and the Illinois Supreme Court rendered a decision on August 9, 2012, that upholds a duty of districts to use reasonable care when completing employment forms, but does so narrowly, on the particular facts of the case.

Jon White was a teacher in McLean School District and, while employed by that district, sexually abused young girls in his class. Lawsuits alleged that McLean administration knew about the abuse, but did not report it to the Illinois Department of

Children and Family Services (“DCFS”). Instead, when White resigned, a McLean administrator gave him a positive letter of recommendation and a severance package that concealed the abuse. When White applied for employment at Urbana School District, McLean administrators not only allegedly failed to inform Urbana of White’s misconduct, but also provided false information to Urbana that White had taught the entire previous year at McLean.

Consistent with earlier decisions in the matter, the Illinois Supreme Court held that the students could not demonstrate an affirmative duty on the part of McLean School District to warn Urbana of White’s conduct or to protect the students from criminal acts of a third party. McLean School District had no special relationship to the students that created a duty to them and a school district has no duty to individual students in a district, separate from the district as a whole. However, under the specific facts of this case, where McLean officials allegedly falsely represented White’s employment history, a duty was created to protect the students from injuries that were reasonably foreseeable from the misstatements.

The Court applied a standard of ordinary care to the facts of this case, stating that every person owes a duty of ordinary

care to others to guard against injuries that naturally flow as a reasonably foreseeable consequence of his or her action. In other words, where a person's action creates a foreseeable risk of injury, the person has a duty to protect others from that injury. According to the Court, McLean's alleged act of misstating White's employment history on Urbana's employment verification form created a duty to the abused students. The Court found that the sexual abuse suffered by Urbana students was not, as a matter of law, an unforeseeable result of the false employment verification. By stating that White taught a full school year, when in fact he was terminated during the school year, McLean School District implied that White's severance was routine. Had McLean truthfully disclosed White's employment history, it would likely have been a "red flag" to Urbana to investigate further. The Court held that the injuries were not so remote or unlikely as to preclude a duty of care. It was a reasonable possibility that if White abused students in one district, he would do it again in another district. Finally, the Court held that it is

According to the Court, the Abused and Neglected Child Reporting Act could provide a separate basis for liability because of the

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failure to report White's misconduct to DCFS. School personnel and school board members are mandated reporters to DCFS under the Abused and Neglected Child Reporting Act, 325 ILCS 5/1 et seq. Likewise, pursuant to Section 10-21.9(e-5) of the Illinois School Code, a local superintendent must notify the State Superintendent of Schools and the Regional Superintendent, of any certificate holder whom he or she has reasonable cause to believe has intentionally abused a student. Illinois public policy favors protection of children from sex offenders. The Court also noted that the Tort Immunity Act does not protect public employees against liability for willful and wanton conduct.

This decision confirms that, while School Districts have no affirmative duty to protect individual students from harm, providing false information that is reasonably foreseeable to cause injury may result in liability.

Based on this decision, we advise that extreme caution be exercised in providing any factual information about past employees. For additional information, please call one of our attorneys in Flossmoor or Oak Brook.