LEGAL UPDATES

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Schools Could Face Liability Under the MHRA for Student-on-Student Harassment

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On April 17, 2012, the Missouri Court of Appeals issued its decision in *Doe ex rel. Subia v. Kansas City, Missouri School District*. There, the Court of Appeals recognized the existence of a cause of action against a school district for student-on-student sexual harassment. Doe, an elementary student, alleged he reported sexual harassment and assault by another male student to school administrators, who allegedly allowed the perpetrator to use the bathroom -- where the harassment and assault were alleged to have occurred -- at the same time as Doe. As a result, Doe alleged the harassment and assault continued. Doe filed a Charge of Discrimination against the district, alleging its inaction deprived him of the full, free and equal use of a public accommodation in violation of the Missouri Human Rights Act (MHRA). When this action proceeded to the Circuit Court, the district successfully moved for dismissal, and Doe appealed.

The district contended that an elementary school is not truly "open to the public" and is thus excluded from coverage of the MHRA. The Court of Appeals rejected this argument, reasoning that it could be extended to exclude a restaurant that only serves those with reservations or a stadium that only serves those with tickets. The Court of Appeals found that to limit public accommodation coverage to completely public accommodations would render this portion of the MHRA a dead letter. Next, the Court of Appeals found that Doe sufficiently alleged a violation of the MHRA's prohibition against sex discrimination under a statutory provision creating liability for those who "indirectly" deny a claimant full, free and equal use of a public accommodation. Finally, the Court of Appeals rejected the district's argument for a higher "deliberate indifference" standard adopted by the Supreme Court of the United States under Title IX. In its place, the Court of Appeals adopted

the MHRA's standard for employer liability for co-employee sexual harassment: "The school district can be held liable if it *knew or should have known* of the harassment and *failed to take prompt and effective remedial action*" (emphasis added). By applying this standard, *Doe* essentially creates a duty for public schools to investigate a student complaint to the same extent an employer must investigate a complaint of co-employee sexual harassment.

What This Means to You

Though Doe raised claims against a school that is "public" in the traditional sense, the MHRA includes in its definition of public accommodation "all places or businesses offering or holding out to the general public goods, services, privileges, facilities, advantages or accommodations for the peace, comfort, health, welfare and safety of the general public…including, but not limited to…[a]ny public facility owned, operated or managed by or on behalf of this state or any agency or subdivision thereof or any public corporation; and any such facility supported in whole or in part by public funds." The MHRA excludes "private clubs" and religious institutions from public accommodation coverage, but *Doe* suggests it will be an uphill climb to show that an entity is not otherwise open to the public under the meaning of the MHRA. For example, a secular private school that limits its enrollment by academic requirements and class size could be in the same unsuccessful position the District was when it argued that a public elementary school's enrollment is limited by age and residency, and physical access to the school is strictly limited due to safety concerns.

Contact Info

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