

# WASHINGTON CASE UPDATE

## After Student Boarded District Bus, School Did Not Have Custody, Did Not Owe Duty

case in point...

**From the desk of Thomas McCurdy:** Schools and school districts have a duty to protect students in their custody from foreseeable risks of harm. Recently, the Washington Supreme Court held that if that duty is breached, the school or school district may be liable for harm the student incurs, even if the harm occurs after the student leaves the school or school district's custody. As the Court explained, it is the location of the negligence, not the injury, that is the critical factor of the liability analysis. Read on to see how Washington courts are applying this ruling.

**Claims Pointer:** In this case arising out of the off-campus sexual assault of a special education student by a stranger, the Washington Court of Appeals held that summary judgment in favor of the school was appropriate where there was no issue of fact as to whether the student was in the school's custody at the time of the alleged negligence. Because the student had boarded a district bus, the student was in the district's custody, and the school therefore did not owe the student a duty. The case provides important insight into the application of this recently established rule.

Bell v. Northwest School of Innovative Learning, No. 48063-8-II, Washington Court of Appeals, Div. II (March 7, 2017)

Bethel School District (the "District") was unable to meet the special education needs of one of its students, 15-year-old CB, so it contracted with Northwest School of Innovative Learning ("NW School"). At the end of a school day in March 2012, CB boarded a District school bus that was waiting at the sidewalk adjoining a city street in front of NW School. CB was agitated at the time, and following a verbal altercation with another student and with the bus driver, a NW School Behavior Intervention Specialist came to the bus doorway and spoke with CB. He attempted to deescalate the situation and saw that it was "contained." After he left, CB and the other student sat quietly in their seats.

Before the driver drove away from the school, however, CB asked to go back into the school to call her father for a ride. The driver accompanied CB to the door of the school, but the door was locked. They rang the doorbell, but no one came to the door. CB felt frustrated and returned to the bus, where she asked the driver to call her father or her social worker. The driver told CB that her only options according to the District's emergency protocol were for

CB to remain on the bus or for the driver to call 911. CB became agitated and left the bus, so the driver notified her dispatcher and called 911. After CB left the bus, she walked to the public library where she met a stranger who later sexually assaulted her.

Based on the sexual assault, CB brought negligence and gross negligence claims against both NW School and the District. NW School and the District moved for summary judgment on all claims. (The District was ultimately dismissed from the suit on other grounds not relevant to this discussion.) NW School argued in part that summary judgment was appropriate because it did not owe CB a duty after she left NW School's custody. CB argued that NW School had a duty to protect CB from reasonably foreseeable harm. The trial court agreed with NW School and granted summary judgment in its favor. CB appealed.

Under Washington law, a school or school district has a duty to take certain precautions to protect pupils in its custody from reasonably anticipated dangers. A school or school district's duty ends when the student leaves its custody, but liability for a breach of duty while a student was in custody is not cut off merely because a harm did not occur until



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later. [For more on this issue, see our prior case update on *N.L. v. Bethel Sch. Dist.*, 186 Wn.2d 422 (2016).] If a duty arises and a breach of that duty occurs while a student is in the school or school district's custody, then whether the scope of that duty extends to off-campus incidents will depend on whether such incidents were foreseeable to the school or school district.

The issue before the Court of Appeals was whether NW School owed CB a duty. As the court explained, the mere fact that CB was injured off campus was not determinative of whether NW School owed her a duty. Rather, the relevant inquiry was the location of the negligence, not the location of the harm. Where a duty arises and a breach of that duty occurs while a student is in a school district's custody, then whether the scope of that duty extends to off-campus incidents will depend on whether such incidents were foreseeable to the school district.

CB argued that NW School had a duty to properly supervise and protect CB in the loading area and outside the school doors. NW School, however, submitted evidence that CB was on the District's school bus, and that under District policy, once a student enters a District bus, the District's bus driver has responsibility for the student and final authority regarding the student's transport. Pursuant to the District policy, if the student cannot be transported on the bus, the bus driver must connect the student with a school representative in a "positive handoff" so that at no point is the student is not left unsupervised. Finally, NW School's Behavior Intervention Specialist spoke to CB on the bus, confirmed the situation seemed contained, and left the bus. Thus, NW School established that CB was on the District school bus, and pursuant to District policy, CB was no longer in NW School's custody and care. These facts did not raise any material dispute that CB was in the District's custody and not in NW School's custody.

Because CB entered the District's school bus and there was a "positive handoff" from NW School to the District school bus driver, the District had custody of CB and owed CB a duty of care. There was no issue of fact as to whether NW School, and not the District, had custody of CB once she was on the District school bus. Since NW School did not owe CB a duty at the time she left the bus, further analysis regarding NW School's negligence was unnecessary. Summary judgment was properly granted as a matter of law.

View full opinion at: <https://www.courts.wa.gov/opinions/pdf/D2%2048063-8-11%20Published%20Opinion.pdf>

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