

STATE OF IDAHO
 COUNTY OF KOOTENAI
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**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

RANDY KOCH AND JENEANE KOCH,)
 husband and wife, individually and as)
 the legal guardians of KAHLEN KOCH;)
 and KAHLEN KOCH, a minor,)

Plaintiffs,)

vs.)

POST FALLS SCHOOL DISTRICT)
 NO. 273; ERIC GARDNER, individually)
 and as the legal guardian of CHASE)
 GARDNER; and CHASE GARDNER,)
 a minor,)

Defendants.)

CASE NO. CV – 09 – 9935

**MEMORANDUM OPINION AND
 ORDER RE: DEFENDANT POST
 FALLS SCHOOL DISTRICT'S
 MOTION FOR SUMMARY JUDGMENT**

The Plaintiffs allege that the Defendant Chase Gardner struck Kahlen Koch in the faculty parking lot of the Post Falls High School, and Kahlen Koch sustained head injuries as a result. The Plaintiffs claim that the Defendant Post Falls School District was negligent in supervising its employees at the time of the incident. The Defendant Post Falls School District claims it is immune from liability under the Idaho Tort Claims Act.

Greg D. Horne, ATTORNEY AT LAW, for Plaintiffs.

Donald J. Farley and Jeffrey R. Townsend, HALL, FARLEY, OBERRECHT & BLANTON, P.A., attorneys for Defendant Post Falls School District.

I. FINDINGS OF FACT AND COURSE OF PROCEDURE

The following facts are undisputed by the Plaintiffs and the Defendant Post Falls School District ("PFSD"). On February 9, 2009, Kahlen Koch was leaving the Post Falls High School after classes, and as he walked through the faculty parking lot to his car Chase Gardner accosted Kahlen Koch and struck him in the head. Both Chase Gardner and Kahlen Koch were students at Post Falls High School and the incident took place on school grounds. Kahlen Koch has suffered brain injuries.

PFSD sets forth the following additional facts in the "Affidavit of Becky Ford," the PFSD assistant superintendent:

-Post Falls High School has 27 security cameras, on the exterior of the building, which are connected to a digital video recorder and monitored from the security office. Post Falls High School had purposefully positioned the cameras to scan the areas of highest population in the parking lot on the date of the incident, but the cameras were not focused on the faculty parking lot where the incident occurred because the parking lot is not heavily populated.

-Post Falls High School employs two "Prevention Deans" that frequently walk the school grounds to supervise students, and at the time of the incident, the "Prevention Deans" were stationed in the security office and watching the live video feeds and receiving training on the security camera system.

-Post Falls High School utilizes teachers to supervise students in addition to the Prevention Deans. Sue Lauer, a teacher, was on supervisory duty at the front of the school where the faculty parking lot is located.

(Affidavit of Becky Ford, ¶¶ 3-6.) PFSD asserts that all systems were operational and all personnel were performing their duties when the incident occurred. (Id.)

The Plaintiffs also submit additional facts through two affidavits. As set forth in the "Defendant's Answer to Interrogatory No. 19" attached as an exhibit to the Affidavit of Greg D. Horne, a School Resource Officer ("SRO") was receiving training on the

security cameras with the "Prevention Deans" and PFSD knew that the SRO was not patrolling the grounds. (Exhibit, Affidavit of Greg D. Horne, ¶ 3.) Plaintiff claims that Kahlen Koch had received permission to park in the faculty lot and that the parking lot is designated as an area for parents to pick-up and drop-off students. (Affidavit of Kahlen Koch, ¶ 3.) According to the Plaintiffs, a faculty member of PFSD had admitted to "failing" Kahlen, that PFSD could not control the fighting at Post Falls High School or protect Kahlen, and that the camera at the front of the school building had been repositioned earlier and was not put back in the proper position such that the attack on Kahlen would have been seen. (Affidavit of Randy Koch, ¶¶ 3-4.)

On November 25, 2009, the Plaintiffs filed a complaint ("Complaint") against PFSD for negligence.¹ The Plaintiffs allege that "Chase Gardner continues with his threats of violence and intimidation against Kahlen Koch," and "[d]espite the ongoing threats of which the School District has knowledge, the School District has failed to act in an appropriate manner to address the situation." (Complaint, p.3.) The Plaintiffs seek damages against PFSD for negligence, and an "injunction to prevent any further violence or threats of violence by Chase Gardner." (Complaint, pp. 5 and 10.)

II. LEGAL STANDARD FOR SUMMARY JUDGMENT

Idaho Rule of Civil Procedure 56(c) provides for summary judgment where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, based on the "pleadings, depositions, and admissions on file, together with any affidavits." Once the moving party has properly supported the motion for

¹The Plaintiffs also allege battery, negligence, injury to familial relations, and intentional infliction of emotional distress against Defendants Eric and Chase Gardner, but these claims are not part of PFSD's pending motion.

summary judgment, the non-moving party must come forward with evidence which contradicts the evidence submitted by the moving party and which establishes the existence of a material issue of disputed fact. Zehm v. Associated Logging Contractors, Inc., 116 Idaho 349, 775 P.2d 1191 (1988). If the record contains conflicting inferences or if reasonable minds might reach different conclusions, a summary judgment must be denied. Roell v. City of Boise, 130 Idaho 197, 938 P.2d 1237 (1997); Bonz v. Sudweeks, 119 Idaho 539, 808 P.2d 876 (1991).

III. DISCUSSION

A school district has “a duty to exercise reasonable care in supervising students while they are attending school.” Brooks v. Logan, 127 Idaho 484, 490, 903 P.2d 73, 79 (1995); Rife v. Long, 127 Idaho 841, 846, 908 P.2d 143, 148 (1995) (holding that a school district “has a common law duty to protect against the reasonably foreseeable risk of harm to a student while in the [d]istrict’s custody”). This duty extends beyond the classroom to activities on the school’s campus, extracurricular activities, and school sponsored activities. Bauer v. Minidoka Sch. Dist. No. 331, 116 Idaho 586, 590, 778 P.2d 336, 340 (1989), *quoting* Albers v. Independent Sch. Dist. No. 302, 94 Idaho 342, 344, 487 P.2d 936, 938 (1971). By statute, school districts have a duty to protect the “morals and health” of their students. I.C. § 33-512(4). However, this statute does not create any new or separate cause of action, but supports a common law cause of action for negligence. Coonse v Boise Sch. Dist., 132 Idaho 803, 807, 979 P.2d 1161, 1165 (1999); Hei v. Holzer, 139 Idaho 81, 88, 73 P.3d 94, 101 (2003). “The duty is not an absolute mandate to prevent all harm; rather, schools are obligated to exercise due care and take reasonable precautions to protect their students.” Sherer v. Pocatello Sch.

Dist. #25, 143 Idaho 486, 491, P.3d 1232, 1237 (2006), *citing Doe v. Durtschi*, 110 Idaho 466, 716 P.2d 1238 (1986).

The Plaintiffs allege in Count II of the Complaint that PFSD breached this duty by failing to ensure the Post Falls High School employees, i.e., the "Prevention Deans," SRO, and teacher Sue Lauer, were performing their duties:

COUNT TWO – NEGLIGENCE (SCHOOL DISTRICT)

The School District owed a duty to its students, including Kahlen Koch, to provide adequate supervision, including, but not limited to, anticipating reasonably foreseeable dangers and taking precautions to protect the students in its custody from such dangers.

That the School District breached its duty to Kahlen Koch and was negligent by failing to properly implement its plan to protect students, and by failing to ensure that the personnel charged with maintaining the safety of the School's students, including but not limited to the Student Resource Officer and School Prevention Deans, were properly performing their duties. The school security personnel were neither in the parking lot after school let out to deter such attacks, nor monitoring the School's security cameras. Further, one of the security cameras normally monitoring the parking area had been improperly re-positioned such that the area where the attack occurred could not be seen by camera, where normally it would have been.

As a direct and proximate result of the actions of the School District, Kahlen Koch has been damaged as hereinabove set forth.

(Complaint, pp.5-6.) PFSD answered, asserting, among other defenses, the affirmative defense that "Defendant PFSD is immune from liability for the damages alleged in plaintiff's (sic) Complaint pursuant to Idaho Code Section 6-900, et seq." (Answer, p. 2.)

PFSD now moves for summary judgment, raising only an issue of law: whether PFSD is immune from liability pursuant to I.C. § 6-904A.² This section states:

² PFSD does not challenge whether PFSD owed a duty to Kahlen Koch, whether that duty was breached, or whether PFSD's actions were the proximate cause of Kahlen Koch's injuries. See, Stoddart v. Pocatello School Dist., 2010 Opinion No. 99, Docket No. 36434 (September 20, 2010).

A governmental entity and its employees while acting within the course and scope of their employment and without malice or criminal intent and without reckless, willful and wanton conduct, as defined in section 6-904C, Idaho Code, shall not be liable for any claim which:

2. Arises out of injury to a person or property by a person under supervision; custody or care of a governmental entity, . . .

PFSD is correct that case law interpreting this subsection clearly establishes that school districts are immune from liability in cases where it is alleged that the school district negligently supervised a student who injures another student, injures himself, or cases where it is alleged that the school district negligently supervised the injured student.

In Mickelsen v. Sch. Dist. No. 25, the plaintiff sustained injuries in a fight with two other students at school and alleged that the “school defendants failed to provide adequate hallway monitoring, an indisputably supervisory activity.” 127 Idaho 401, 403, 901 P.2d 508, 510 (1995). The Idaho Supreme Court concluded that the school district was immune from liability under I.C. § 6-904A because there is a supervisory relationship between the school district and the students. Mickelsen, 127 Idaho at 403, 901 P.2d at 510. Later the Idaho Supreme Court extended the application of I.C. § 6-904A to cases where a student injures himself. Brooks v. Logan, 130 Idaho 574, 944 P.2d 709 (1997).

The Idaho Supreme Court later applied Mickelsen and Brooks in Coonse v. Boise Sch. Dist., where the plaintiff, a third grader at an elementary school, was assaulted by some older students on school grounds. 132 Idaho 803, 804, 979 P.2d 1161, 1162 (1999). The plaintiff alleged that she was “assaulted due to the District’s negligent supervision,” and “in failing to properly supervise [the plaintiff] and the other students involved, breached its statutory duty to protect the morals and health of its students in

accordance with section 33-512(4) of the Idaho Code.” Coonse, 132 Idaho at 804, 979 P.2d at 1162. The Idaho Supreme Court concluded that a school district was immune from liability under I.C. § 6-904A in a case where one student is injured by another, regardless if it is alleged that the school district failed to supervise the injured student or the student that caused the injury. Id. at 806, 979 P.2d at 1164.

While it is well established that I.C. § 6-904A immunizes a school from a negligence claim in cases where a student injures a student, a school district is not immune from liability when a school district fails to supervise a school employee that injures a student. In Hei v. Holzer, an eighteen-year old student had a consensual sexual relationship with a teacher. 139 Idaho 81, 73 P.3d 94 (2003). The student and her parents sued the school district, “claiming that the school district is liable for both failing to supervise, and thereby protect, [the plaintiff], and failing to properly supervise [the teacher].” Hei, 139 Idaho at 87, 73 P.3d at 100. Applying Mickelsen, Brooks, and Coonse, the Idaho Supreme Court affirmed that summary judgment against the plaintiff was appropriate because I.C. § 6-904A immunized the school from liability for negligently supervising the plaintiff. Id. at 87-88, 73 P.3d at 100-101.

However, the Idaho Supreme Court further held that

we do not believe ‘supervision, custody or care’ can be so broadly interpreted as to include the employment relationship between a school district and a teacher. Thus, we find no supervisory relationship between a school district and its teachers for purposes of I.C. § 6-904A Because I.C. § 6-904A does not apply to this case, the School District is not immune from a claim of negligent supervision against Holzer.

Id. at 87, 73 P.3d at 100. Hei’s common law negligence claim, then was allowed to proceed because she raised a genuine issue of material fact regarding whether “the School District may have known one of its teachers was having sexual relations with a

student, yet failed to take action to supervise and protect the student.” Id. at 88, 73 P.3d at 101.

The Idaho Supreme Court also addressed whether I.C. § 6-904A immunizes a school district from a negligence claim brought by a student injured by a third party contractor of the school district in Sherer v. Pocatello School District #25, 148 Idaho 486, 148 P.3d 1232 (2006). In that case, the school district contracted with a bungee jumping company to provide bungee jumping services during a school carnival, and the plaintiff was injured while bungee jumping at the carnival. Sherer, 148 Idaho at 489, 148 P.2d at 1235. The Idaho Supreme Court held that I.C. § 6-904A does not immunize a school district from a claim of negligence when the injuries are caused by a contracted third party, “if the third party’s actions were the foreseeable result of the school’s negligence.” Id. at 491, 148 P.3d at 1237.

The Plaintiffs argue that this case is similar to that of Hei and Sherer in that the allegation is that PFSD had a duty to supervise the students, and breached this duty by negligently failing to ensure that the employees charged with carrying out the duty were performing the required tasks. The Defendants, however, argue that this case is similar to Mickelsen, Brooks, and Coonse because really the Plaintiffs are alleging that PFSD failed to supervise the persons who are supervising the students and therefore I.C. § 6-904A provides PFSD immunity from the Plaintiffs’ claim.

The facts of this case differ from both Hei and Sherer in one very important respect: the status of the person who caused the plaintiff’s injury. As the Court stated in Coonse, “[i]t is clear that the immunity arises from the status of the person(s) causing the injury, not the status of the person injured.” Id. at 806, 979 P.2d at 1164. In Hei and

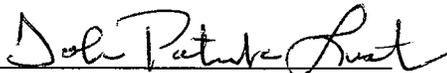
Sherer, the person who injured the plaintiff was an employee of the school district, and due to the status of being an employee, the employee did not benefit from a supervisory relationship with the school district under I.C. § 6-904A. Conversely, in this case, a student, Chase Gardner, injured another student, Kahlen Koch, and because of Chase Gardner's status as a student, PFSD enjoys the benefits of a supervisory relationship under I.C. § 6-904A.

Given the status of the person causing the injury and the resulting supervisory relationship, the Plaintiffs' claims as alleged in the Complaint are more similar to those made in Mickelsen, Brooks, and Coonse. School districts like PFSD are comprised of employees, and the duty to supervise students is carried out by those employees. It would defeat the purpose of I.C. § 6-904A if plaintiffs are allowed to allege that a school district is liable for negligently failing to supervise the supervisors of the students. Therefore, this Court concludes as a matter of law that I.C. § 6-904A immunizes PFSD from the Plaintiffs' negligence claim.

IV. CONCLUSION

Based on the foregoing, it is hereby ORDERED that the Defendant's Motion for Summary Judgment be and the same is hereby GRANTED, and the Plaintiffs claims against Defendant Post Falls School District are dismissed.

DATED this 30 day of September, 2010



John Patrick Luster
District Judge

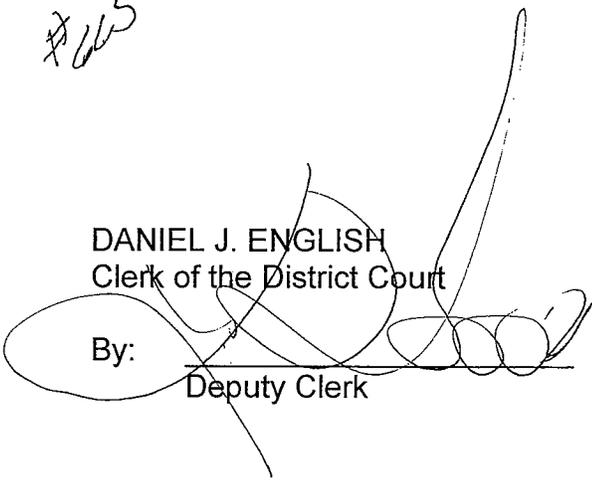
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MEMORANDUM OPINION AND ORDER RE: DEFENDANT POST FALLS SCHOOL DISTRICT'S MOTION FOR SUMMARY JUDGMENT was sent by U.S. Mail, postage prepaid, sent by facsimile transmission, or sent by interoffice mail on the 30 day of September, 2010, to the following:

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