



SCHOOL LAW GROUP



January 27, 2017

School Liability for Student Death for Failure to Follow Policy and Procedure

A school district was recently found liable when a student suffered a fatal asthma attack at school. The Court emphasized that the “reasonableness” of the response to an emergency can be judged in part by whether the persons involved followed District policies and procedures.

The Court determined that the failure of a teacher to respond in a reasonable fashion over a period of time, and the school and teacher failures to follow procedures, can constitute “a willful and wanton disregard” of a student’s welfare and expose a District to liability for injury.

We provide a more detailed summary of the case and the Court’s holding herein.

For any questions or comments you might have regarding this newsletter, please feel free to contact:

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A full copy of the decision is available at the following link:

[In Re Estate of Stewart, 2016 Il. App. \(2d\) 151117](#)

CASE SUMMARY

In Re Estate of Stewart, 2016 Il. App. (2d) 151117

The case involved a classroom teacher who failed to follow the District protocol for emergency responses generally and the District failing to follow its protocol for notifying teachers of a student health condition.

Facts

The teacher was a five year veteran in the District. He did not know that the student had asthma. He testified at trial that per school policy he should have been notified that the student had asthma. The relevant information from the case:

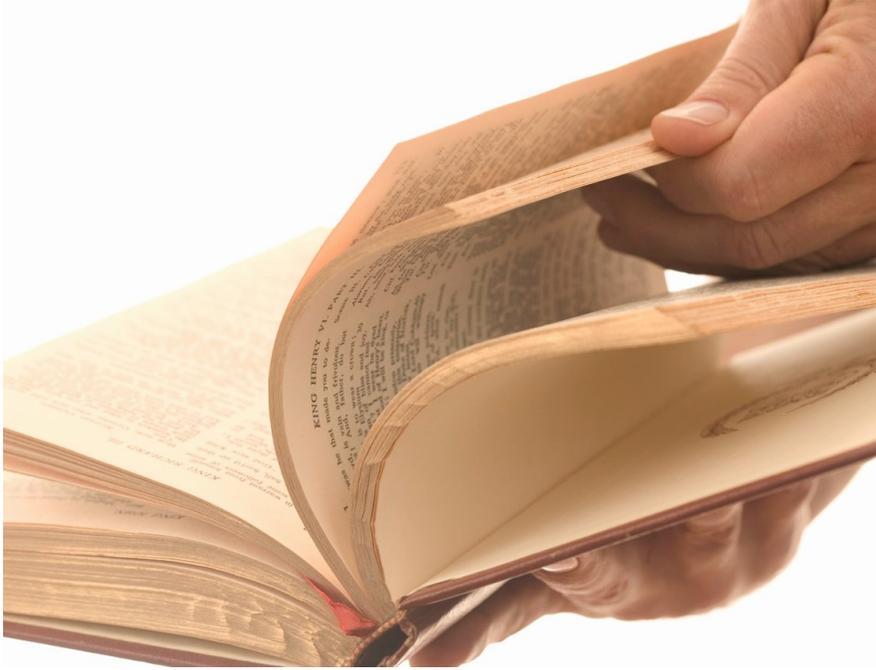
About 15 minutes into class, an 18 year old high school senior stood up from his desk, inhaled heavily, "went a little bit forward," and fell down. The teacher ran over to him. The student was "shaking convulsively" on the floor, but he was still breathing. The teacher thought that the student was having a seizure. The teacher asked the student if he was "with [him]" and if he could hear him. Over a period of 6-8 minutes the student became unresponsive. According to the autopsy report, the cause of death was asthma.

The student's teacher ran to the student's side and told two students in his class to go by foot to the other side of the building to get the nurse, but, contrary to school policy, Harper did not call or have someone call 911 for another 7 to 20 minutes. There was a phone in his classroom. The paramedics arrived too late to help.

The School maintained the student's health file in a central location. The file contained information that the student had asthma and used an albuterol inhaler. That information was supposed to be circulated quarterly to teachers [in this case to each of the teachers of the student involved]. The school had a policy that, if a student suffered a "serious" health episode, the teacher should call the nurse; if a student suffered a life-and-death episode, the teacher should call 911 or direct another person to call 911.

The school's policy handbook provided the following for "Student Accident or Illness":

If any of your students become ill or are injured, you should immediately take or send him to the



***In Re Estate of Stewart*, 2016 Il. App. (2d) 151117 (cont.'d)**

school health office. In the event of a serious accident or illness, you should not attempt to move the student. In such instances, the main office would be notified immediately. We will then call the nurse and the home immediately and will, if necessary, make arrangements for your class to be held elsewhere. An accident report should be filled out within 24 hours for all injuries involving school or classroom activity.

The school's policy handbook provided the following for "Medical Emergency":

Under life and death circumstances call or have someone call 911 immediately. Be prepared to provide the school name and address, exact location (floor, room, number), describe the illness or type of injury, and the age of the victim(s). Administer appropriate first aid according to your level of training until help arrives. Comfort and reassure the victim.

Analysis of the Court

The Court (jury) concluded that the teacher violated a clear policy. The school policy handbook directly addressed medical emergencies. The teacher did not call or have someone else call 911 immediately upon the student's

Use the below link to see our e-Note from November 2016 "New Asthma Plan, Emergency Response and Training Requirements." regarding the new Illinois Asthma Training Requirements and Emergency Response Protocol now required.

[New Asthma Plan, Emergency Response and Training Requirements.](#)

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In Re Estate of Stewart, 2016 Il. App. (2d) 151117 (cont.'d)

collapse. Instead, only after 7 to 20 minutes, when an official from the nurse's office directed him to, he asked the health coordinator to call 911. Also contrary to policy, the teacher failed to provide the school health coordinator with the exact location of the room, and, according to the health coordinator, the teacher did not provide sufficient detail concerning the student's condition.

The evidence at the trial also supported a finding of an earlier policy violation by the School or, at least, a deviation from standard operating procedure in managing and dispersing student healthcare information. The parent testified she informed the school that the student had asthma. A school official testified that the student's IEP stated that he had asthma. The student's health file contained information that he had asthma and carried an albuterol inhaler with him in school. The nurse's office testified that they recalled e-mailing the teacher to inform him that the student had asthma. The teacher acknowledged that it was "school policy" to keep teachers informed of students' known health conditions, but said he was never told about the student's asthma.

Ruling of the Court

The Court noted that the teacher had more than mere seconds to respond to the danger posed to his charge. The teacher's delay lasted 7 to 20 minutes. Given the lengthy time frame at issue, the jury rejected the District's attempts to characterize the teacher's failure to call or have someone call 911 as "an error of judgment in the pressure of the moment" or a "split-second decision." The teacher's 7- to 20-minute continuing failure to act was found to be willful and wanton misconduct (a willful disregard for the care and safety of the student).

The training and notification errors and failure to call 911 within a reasonable period of time (as required by District protocol) were part of the totality of the circumstances that contributed to the determination of liability for willful and wanton misconduct.