

Michigan Supreme Court: Student-on-Student Harassment Not a Recognized Claim

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Can a student harassed by another student bring a lawsuit against the school for allegedly creating a hostile environment under state law? **On July 29, 2024, the Michigan Supreme Court answered no.**

An elementary student complained of sexual harassment she experienced from another student. The school took a variety of actions in response to the harassment, including suspension, implementing a behavioral interventional plan, transfer to a different classroom, assigning the student to a different lunch period and ordering no further contact.

The victim, through her parents, sued the district alleging that it turned a blind eye and failed to stop the sexual harassment. The trial court dismissed the case, concluding student-on-student sexual harassment was not a recognized claim under the plain language of Michigan's employment anti-discrimination law, the Elliott-Larsen Civil Rights Act ("ELCRA"). The Michigan Court of Appeals affirmed the dismissal, but also ruled in a published opinion that an educational institution could be held liable for student-on-student harassment. *Doe v Alpena Pub Sch Dist*, 345 Mich App 35 (2022). The appellate court read into the ELCRA statute the doctrine of *in loco parentis*, under which a school exercises control over students while on campus akin to parents exercising control over their children at home. It then analogized that concept to the recognized theory of vicarious liability under the ELCRA, by which an employer can be legally responsible for the harassing behavior of its employees. According to the court of appeals, just as an employer can be liable for a hostile work environment created by its employees over whom it exercises control, a school can be liable for a hostile school environment by failing to stop the harassing behavior of a student over which it has control. However, based on the facts presented, the court concluded that the school took prompt and appropriate remedial action to stop the harassment and therefore could not be liable as a matter of law.

The Michigan Supreme Court reversed. It ruled that a school merely having some degree of control over a student is insufficient to impose liability for a hostile educational environment harassment claim involving student-on-student misconduct. The ELCRA statute only authorizes vicarious liability in the employment context, as it does not feature any suggestion that it was intended to also cover claims against a school for actions taken by non-employees like students. The Court did leave open the possibility of a direct claim for ordinary negligence against the school "in an appropriate case" and ordered the trial court to consider the issue on remand, but nonetheless expressed skepticism for vicariously holding a school liable for the actions of its students.

This decision underscores the distinction between employer-employee relationships and the responsibilities schools bear in such cases. Nonetheless, school administrators should take adequate, prompt and remedial actions to address sexual harassment in their school because of obligations imposed by **federal law under Title IX**.

To further discuss this ruling's impact on your organization, please contact the authors or your Miller Canfield attorney.