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Higher Education

ALERT

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CALIFORNIA COURT CREATES SPECIAL DUTY FOR COLLEGES TO PROTECT STUDENTS

By Karen Baillie

On March 22, 2018, the top California Court stated for the first time that there is a special relationship between colleges and their enrolled students which gives rise to an exception to the general rule that there is no duty to act to protect others from the conduct of third parties. The special relationship creates a duty to protect or warn students from foreseeable acts of violence in classroom activities. In the case before the court, *The Regents of the University of California (UCLA) v. The Superior Court of Los Angeles (Rosen)*, a female student was seriously injured by a fellow student in a chemistry lab class when the fellow student attacked her from behind with a kitchen knife. Although the attacker had not previously exhibited violent tendencies and had denied any plans of violence, UCLA allegedly had knowledge of the attacker's schizophrenia, that he had been hearing voices, and that he had recently begun identifying the victim as someone whom he thought had called him names.

In defining this duty, the court was careful to say that colleges did not have a duty to prevent all violence on their campuses nor all violence toward students. The court noted that it would be unrealistic to extend the duty to the public at large, to unpreventable violence, and to off-campus and student social activities unrelated to school. "Rather, the school's duty is to take *reasonable* steps to protect students when it becomes aware of a *foreseeable* threat to their safety."

The court explained that schools might discharge this duty by issuing warnings to targeted students of specific threats, by assembling threat assessment teams to evaluate troubling student and prospective student behavior, by refusing admission to students who pose a threat, and/or by expelling or suspending students suspected of posing threats on campus.

Colleges will have to balance the duty to protect against other, competing obligations towards their students, including those created by privacy laws and disability laws. Privacy laws generally prevent sharing information with others from a student's educational records or mental health records, but typically do allow for sharing information in certain emergency situations. Likewise, anti-discrimination laws commonly prevent schools from making decisions based on a student's history of having a mental health disability or the school's perception of that disability. But these laws do permit schools to make decisions using current information and information about a student's demonstrated and threatened behavior.

It will be noteworthy to see whether other states follow California's lead in recognizing this special relationship. The Pennsylvania Supreme Court has agreed to hear an appeal of a Superior Court's

2017 decision in *Feleccia v. Lackawanna College*, which will address the duty a college owes to students participating in collegiate sports. In that case, two football players were injured during tryouts and by the college's alleged failure to have qualified medical trainers on site. The Superior Court held that the College owed the students a duty of care in their capacity as intercollegiate athletes engaged in a school-sponsored and supervised intercollegiate athletic activity, but left open the question of whether that duty required the college to have qualified medical trainers on site.

Regarding a similar issue, the Connecticut Supreme Court in August 2017, in response to the Second Circuit's request that it rule on two certified questions, held in *Munn v. Hotchkiss School*, that it was not contrary to the public policy of Connecticut to hold a private school responsible for failing to take reasonable precautions (such as advising the student to stay on the path, wear long sleeves and bug spray) to protect a minor participating in a field trip abroad from the foreseeable injuries caused by a tickborne illness contracted on the trip.◆

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