

**Education Alert
March 2018**

***SJC HOLDS PUBLIC SCHOOL DISTRICTS ARE NOT LIABLE IN
TORT FOR NEGLIGENCE RELATING TO BULLYING***

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On February 27, 2018, the SJC held in Cormier, et al. v. City of Lynn, et al., SJC-12323 (2018), that defendants the City of Lynn, the Lynn Public Schools, and several public employees were not liable under the Massachusetts Tort Claims Act, G. L. c. 258, for claims arising from one public elementary school student being pushed down the stairs by another, resulting in his permanent paralysis. The student's parents argued that the school district was negligent because staff had been informed about the bullying on multiple occasions but did nothing to stop it, eventually resulting in their son's injuries. They also claimed that the school district had failed to implement its own anti-bullying policies.

The SJC held that G. L. c. 258, § 10(j) prevents school districts from being liable in a negligent tort claims action for any injury caused by a third party. The Court explained that, in order for the school district to be liable, the situation that created the injury must have been "originally caused" by the school district. The SJC rejected an argument that the school district was the cause of the injuries because the students were required to line up near each other and attend the same class, explaining that this was not an "affirmative action" that "materially contributed" to the student's injuries. The Court cited a previous case, Brum v. Dartmouth, 482 Mass. 684 (1999), in which a student had been stabbed to death by armed assailants after school officials had been notified that the assailants were planning to come to school and attack certain students, including the victim. In Brum, the SJC similarly found that the school district and Town of Dartmouth were not liable in tort for negligently failing to warn the student.

In this case, the SJC concluded that "those working at the elementary school could have and should have done more" to protect the student, but under the statute, school districts, school employees, and municipalities are immune from negligent tort claims. However, school districts should be aware of the limitations of this holding. When bullying involves a legally protected class, such as race, gender, religion, national origin, or disability, the school district could still face liability in federal court, OCR complaints, DLC investigations, and DESE investigations. If your school is facing a bullying issue, we advise that you reach out to your attorney for legal advice.

If you have any questions about this issue, please contact Elizabeth Sherwood or the attorney responsible for your account, or call (617) 479-5000. This alert is for informational purposes only and may be considered advertising. It does not constitute the rendering of legal, tax or professional advice or services. You should seek specific detailed legal advice prior to taking any definitive actions. ©2018 MHTL