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STATE AND MUNICIPAL IMMUNITY

By: James Orlando, Associate Analyst

You asked about the law on civil immunity for state and municipal employees and entities, including when immunity cannot be invoked. You also asked if immunity would extend to a teacher or municipality if a teacher engaged in sexual misconduct.

Our office is not authorized to give legal opinions and this report should not be considered one.

SUMMARY

The law on liability of government entities and employees is complex and a great deal depends on the specific facts of a particular case. Limitations exist under both statute and common law on the liability of the state and municipalities for the acts of their officials and employees.

Under the common law sovereign immunity doctrine, the state cannot be sued without its consent. In response to this doctrine, the state created a claims commissioner and a structure to process claims against the state. Statutes provide a few exceptions that allow claims against the state to be taken directly to court instead of through the claims commissioner process.

State law gives state officials and employees immunity from liability when discharging their duties and acting within the scope of their employment. But they are not immune from liability for wanton, reckless, or malicious acts.

Municipalities have no sovereign immunity from suit, but there are several limitations and exceptions to municipal liability. For example, when they act in performance of a governmental duty they have limited immunity from liability, such as immunity for discretionary actions (any action involving judgment or policy making, subject to certain exceptions) and for acts or omissions by employees that constitute criminal conduct or willful misconduct.

Municipal officers or employees also have immunity for discretionary actions while acting within the scope of their authority. However, municipal officers and employees can be held personally liable for: (1) negligence in performing a ministerial act (one that is performed in a prescribed manner without the exercise of judgment or discretion); (2) negligence in executing a governmental act where imminent injury to a specific individual was foreseeable; and (3) wanton, willful, or malicious misconduct (acts manifesting a reckless disregard of the consequences or rights and safety of others). The statutes require municipalities to indemnify or reimburse their employees for financial loss arising out of legal proceedings in certain circumstances when the employee acted in the discharge of his or her duties.

The Connecticut Supreme Court has also ruled that individuals aggrieved by certain violations of state constitutional rights may pursue a damages action in state court.

Federal law also provides a remedy for people deprived of federal rights under color of state law. Government employees or officials sued under federal law are entitled to qualified immunity.

In addition to the laws regarding liability and immunity outlined above, Connecticut law requires local and state boards of education to pay any claims against teachers resulting from injury, death, property damage, or deprivation of civil rights occurring in the course of the individual's duties, so long as the individual's actions were not reckless, wanton, or malicious.

While each case must be assessed based on its specific circumstances, a teacher engaging in sexual misconduct with a student would likely not be able to invoke immunity if faced with civil liability and may also face criminal liability. Whether the municipality would

also be liable is complex and would depend on the facts of the case and the legal theories pursued. If the teacher's conduct was criminal, the municipality would likely avoid liability under state law for the teacher's conduct. However, even if the school district were not directly liable for the teacher's actions, the district may face other liability, such as negligent hiring under state law or discrimination under federal law.

CLAIMS AGAINST THE STATE AND STATE EMPLOYEES AND OFFICERS UNDER STATE LAW

By statute, state employees and officers are not liable for damage or injury that is caused within the scope of their employment or by the discharge of their duties as long as they are not wanton, reckless, or malicious (CGS § 4-165). Anyone wishing to pursue a claim for such damage or injury must present a claim against the state to the claims commissioner (CGS § 4-141 et. seq.).

Claims Commissioner

The claims commissioner is authorized to hear and determine most claims against the state. The law defines a claim as a petition for the payment or refund of money by the state or for permission to sue the state. It explicitly excludes claims for employment benefits, including disability, pension, and retirement benefits; claims that under law can be brought through a lawsuit or administrative hearing; requests by political subdivisions for payment in lieu of taxes; and claims for tax refunds. Any claim that can be presented to the claims commissioner cannot be presented against the state in any other way (CGS §§ 4-141, 142, 148(c)).

Statute of Limitations. A claim must be presented within one year after it accrues. By law, a claim accrues on the date the damage or injury is sustained or discovered or in the exercise of reasonable care should have been discovered. But no claim can be presented more than three years from the date of the act or event complained of.

The General Assembly may, through special act, authorize a person to present a claim after the time limitation passes if it (1) deems the authorization to be just and equitable and (2) makes an express finding that the authorization is supported by compelling equitable circumstances that would serve a public purpose (CGS §§ 4-148(a), (b)).

Awards of Less than \$7,500. The commissioner can approve the immediate payment of "just claims" not exceeding \$7,500. "Just claims" are those that in equity and justice the state should pay, as long as it

caused the damage or injury or received a benefit. The commissioner must report to the General Assembly on all claims paid in this way but does not need General Assembly approval (CGS §§ 4-141, 158).

Anyone who filed a claim for more than \$7,500 but is awarded \$7,500 or less and wishes to protest the award can waive immediate payment and have the claim submitted directly to the General Assembly (CGS § 4-158). The claimant must file this waiver with the commissioner within 20 days after receiving a copy of the order approving immediate payment. These claims are then handled the same as claims exceeding \$7,500 (see next section).

Claims in Excess of \$7,500. If the commissioner recommends paying or rejecting claims over \$7,500, he must make this recommendation to the General Assembly within five days after it convenes or at such other times as the Senate president pro tempore and speaker of the House desire. He must include a copy of his findings and the hearing record of each claim he reports. The General Assembly may accept or alter such a recommendation or reject it and grant or deny the claimant permission to sue the state (CGS § 4-159).

Authorizations of Lawsuits Against the State. The General Assembly or the commissioner can authorize a claimant to sue the state when they deem it just and equitable and when the claim, in their opinion, presents an issue of law or fact under which the state, were it a private person, could be liable. The state waives its immunity from liability and all defenses that might arise from the governmental nature of the activity complained of. The rights and liability of the state in these lawsuits are the same as those of private persons in similar circumstances. The lawsuit must be filed within one year after it was authorized and must be tried to the court without a jury (CGS §§ 4-159, 160).

Medical Malpractice Claims. The claims commissioner may authorize a lawsuit against the state for any medical malpractice claims against the state; a state hospital or sanitarium; or a state-employed physician, surgeon, dentist, podiatrist, chiropractor, or other licensed health care provider under the following condition: the attorney or person filing the claim submits the certificate of good faith that is currently required in medical malpractice lawsuits and an affidavit supporting the certificate from a licensed similar health care provider (CGS § 4-160).

Statutes Authorizing Lawsuits

As noted above, the law allows injured people to go directly to court in certain circumstances without going to the claims commissioner. Examples include the following:

CGS § 19a-24 authorizes claims in excess of \$7,500 against the commissioners of public health and developmental services and their staffs to be brought as a lawsuit in Superior Court. The attorney general must defend and damages are paid by the state. This law also authorizes lawsuits against certain other state entities. Claims of \$7,500 or less must be brought to the claims commissioner.

CGS § 4-197 authorizes those who are aggrieved by a violation of the law protecting the privacy of personal data maintained by certain state or municipal agencies to sue for damages.

CGS § 13a-144 authorizes those injured by a defective road or bridge to sue the commissioner of transportation for damages (the defect must be the sole proximate cause).

CGS § 17a-550 allows a person injured by a violation of the patient's bill of rights for mentally ill people to sue the state or its commissioners for damages.

CGS § 52-556 allows anyone suffering injury or property damage because of the negligence of any state official or employee operating a state owned and insured motor vehicle to sue the state for damages.

MUNICIPAL LIABILITY AND IMMUNITY

Municipalities generally are liable for damages to persons or property caused by: (1) their negligence or the negligence of their employees, officers, or agents acting within the scope of their employment or official duties; (2) negligence in the performance of functions that result in profit or financial gain (for example, a municipal parking garage that charges for parking); and (3) acts constituting the creation or participation in the creation of a nuisance (CGS § 52-557n(a)(1)). However, this liability is significantly limited by several exceptions.

One notable exception is that municipalities are not liable for negligent acts or omissions requiring the exercise of judgment or discretion as an official function of authority granted by law. Municipalities are also not liable for acts or omissions by employees, officers, or agents that constitute criminal conduct, fraud, actual malice,

or willful misconduct (CGS § 52-557n(a)(2)). There are several other statutory exceptions covering particular activities or conditions (see OLR Report [2009-R-0444](#) for additional information).

MUNICIPAL EMPLOYEES' LIABILITY

Municipal employees and officers are allowed wide latitude in performing their governmental duties—those involving supervisory or discretionary functions that are executed for the public's benefit, not for a specific person to whom a special duty is owed. These employees are generally immune from personal liability for discretionary actions they take or do not take in performing their official duties, unless their actions are wanton, willful, or malicious or they acted negligently when they could have foreseen imminent injury to a specific person.

Conversely, they are given much less latitude in performing ministerial duties, which are acts in which the employee must follow specific procedures and make no judgments. Employees may be held liable if they perform such ministerial duties negligently.

In addition, municipal employees and officers acting within the scope of their employment or official duties are granted immunity for several specific types of actions or conditions, as are the municipalities themselves (CGS § 52-557n(b)). Attached is a copy of OLR Report [2009-R-0444](#), which provides more detail on specific statutory grants of immunity for municipalities and municipal officials, liability of uncompensated municipal officials, common law immunity for municipal officials, and indemnification.

LIABILITY FOR STATE CONSTITUTIONAL VIOLATIONS

The Connecticut Supreme Court has ruled that in certain circumstances people may sue state and local officials in state court for alleged violations of state constitutional rights (*Binette v. Sabo*, 244 Conn 23 (1998)). In *Binette*, the plaintiffs alleged that municipal police officers violated their federal and state constitutional rights, including the state constitution's provisions on unreasonable search and seizure and wrongful arrest (Article I, §§ 7 and 9). The claims stemmed from an incident in which police officers allegedly entered the plaintiffs' home without a warrant and assaulted them.

The defendants contended that because the plaintiffs had remedies under state common law and 42 U. S. C. Section 1983 (see below), the court should decline to create a damages action under the state constitution. The court disagreed, but noted that its ruling does not hold

that every tort by a government employee is actionable. A determination must be made on a case-by-case basis after considering, among other things, such factors as the constitutional provision at issue, the nature of the harm, and other factors brought to light by future litigation.

Connecticut courts, after the *Binette* ruling, have rejected other attempts to create constitutional causes of action for damages based on other constitutional provisions.

FEDERAL LAW AND QUALIFIED IMMUNITY

Federal law provides that:

Every person who, under color of [state law] subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress (42 U. S. C. § 1983).

Thus, under § 1983, people may sue most state or municipal officials for violating their federal rights. The law provides a full range of civil remedies including damages, injunctive and declaratory relief, and attorney fees.

Persons sued under § 1983 can assert qualified immunity. The U.S. Supreme Court has held that “government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known” (*Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) (citations omitted)).

Liability and immunity under § 1983 is very complex and depends on the circumstances of a specific case. If you would like additional information, please let us know.

LIABILITY FOR TEACHERS COMMITTING SEXUAL ASSAULT

Depending on the facts of a particular case, teachers who commit sexual assault or harassment are likely liable for damages in civil suits and not protected by immunity. Municipal employee immunity does not cover actions that are wanton, willful, or malicious or actions that subject an identifiable victim to imminent harm. Sexual assault or harassment would likely be considered one of these types of actions.

Teachers who commit such acts may face various criminal charges, including some form of sexual assault (CGS §§ 53a-70 to -73a). For example, sexual assault in the fourth degree includes a school employee subjecting another person to sexual contact who is a student enrolled in a school (1) where the defendant works or (2) under the jurisdiction of the local or regional board of education which employs the defendant (CGS § 53a-73a(6)). This crime is a class A misdemeanor or, if the victim is under 16 years of age, a class D felony.

Depending on the particular circumstances, a teacher engaging in sexual misconduct may face more serious charges. For example, sexual assault in the first degree includes (among other acts) engaging in sexual intercourse with someone who is under 13 years old when the defendant is more than two years older than the victim (CGS § 53a-70). This crime may be a class A or B felony and includes a mandatory minimum prison term.

Generally, school boards are entitled to the same immunity as other municipal agencies. The question of whether a school district or municipality could be liable for a teacher's misconduct is complex and depends on the facts of a particular case and the particular legal claims asserted by the plaintiff. As noted above, municipalities are not liable for acts or omissions by employees that constitute criminal conduct (CGS § 52-557n(a)(2)). However, a review of the case law suggests that municipalities may face liability under various legal theories if a teacher engages in sexual misconduct (see next section).

There are also specific provisions in the statutes providing for indemnification in various circumstances when teachers are sued (CGS § 10-235). Some plaintiffs have argued that the indemnification provisions in CGS § 10-235 permit a direct claim against the school district, since the district will likely indemnify the teacher who committed the act giving rise to the lawsuit. However, the majority view among Connecticut Superior Courts is that CGS § 10-235 does not establish a direct cause of action against a school district (Thomas B. Mooney, *A Practical Guide to Connecticut School Law*, 5th Edition, p. 151-52). For example, in *Logan v. Adams* (discussed below), the court granted the municipality's motion to strike the plaintiff's claim that CGS § 10-235 established a direct action against the municipality.

Cases Involving Teacher Sexual Assault or Misconduct

State law. Various court cases have considered claims against school districts stemming from a teacher's sexual misconduct. They have allowed some claims to go forward while dismissing others. While it is difficult to generalize about the cases because each one involves specific facts and legal theories, the cases demonstrate that school districts may face liability when their teachers engage in such misconduct.

Following are summaries of a sample of Connecticut cases dealing with municipal liability and teacher sexual misconduct.

In one Superior Court case, the plaintiff brought various claims against a municipality and teacher stemming from the teacher's alleged sexual abuse of the plaintiff. The court granted the municipality's motion to strike several claims, including claims based on the teacher indemnification statute. The court held that the claim seeking to hold the board of education liable for the teacher's acts must be stricken because the teacher's acts constituted criminal conduct, thus shielding the city from liability under CGS § 52-557n(a)(2) (*Logan v. Adams*, 2005 Conn. Super. LEXIS 2242) (Aug. 24, 2005) (unreported)).

In another Superior Court case, the plaintiff brought various claims against his former teacher and the district board of education stemming from the teacher's alleged mental and physical abuse of the plaintiff while he was a student. The teacher had resigned from a previous school after allegations arose that he had engaged in improper sexual language and conduct with a male seventh grade student. The defendant school district hired the teacher two months later, without inquiring into his experience at the previous school.

The court denied the defendant's motion for summary judgment as to the plaintiff's negligent hiring claim, finding that there was a genuine issue of material fact as to whether the defendant school district's checking of the teacher's prior employment was a discretionary act (entitled to immunity) or ministerial (not entitled to immunity). However, the court granted the district's motion for summary judgment on the claim that the town was vicariously liable for the teacher's sexual abuse of the plaintiff. The court held that as the acts in question were clearly criminal, the municipality was not liable for its employee's criminal conduct, citing CGS § 52-557n(a)(2) (*Haberern v. Castonguay*, 2005 Conn. Super. LEXIS 1412) (May 27, 2005) (unreported)).

In another Superior Court case, the plaintiff alleged that starting in eighth grade her math teacher (who was also her basketball coach) kissed and touched her inappropriately. The activity escalated throughout her high school years. The plaintiff did not disclose the relationship to the police, her parents, or school authorities, but her mother complained to the superintendent about an incident when the teacher kissed the plaintiff. The school did not investigate the allegation.

The court granted the school district's motion for summary judgment on the claim that it was vicariously liable for the teacher's conduct, finding that the teacher was acting outside the scope of his employment. However, the court did not grant the motion for summary judgment as to the plaintiff's claim that the district was negligent in failing to supervise and investigate the complaint, finding that the mother's report about the teacher kissing her daughter raised an issue of material fact as to whether the identifiable victim exception to municipal immunity should apply (*Doe v. Burns*, 2005 Conn. Super. LEXIS 2163 (July 19, 2005) (unreported)).

Federal law. In limited circumstances, school districts may face liability under federal law for teacher sexual misconduct. In *Gebser v. Lago Vista Independent School District*, 525 U.S. 274 (1998), a teacher had a sexual relationship with a female student. The student did not report the relationship to other school officials, but the teacher and student were discovered together. The teacher was arrested and fired. The plaintiffs sued the school district under Title IX of the Education Amendments of 1972, which prohibits "discrimination under any education program or activity receiving Federal financial assistance" (20 U.S.C. § 1681(a)).

The case reached the U.S. Supreme Court. The Supreme Court ruled that plaintiffs cannot recover damages for teacher-student sexual harassment under Title IX unless a school district official who, at a minimum, had authority to address the alleged discrimination and take corrective measures had actual notice of, and was deliberately indifferent to, the teacher's misconduct. The Supreme Court also ruled that the plaintiffs in this case could not show that a school official had actual notice of the misconduct, and thus could not prevail.

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