**“I feel like a dumping ground”- Legal Issues Surrounding Paraprofessionals in Schools**

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**Abstract**

The practice of utilizing paraprofessionals to perform key classroom and support functions for students not only deprives students of high-quality care and instruction, it also creates a potential liability for school districts in several areas. This study reviews legal cases involving paraprofessionals in order to categorize and describe key legal concerns surrounding the use of paraprofessional labor in schools. Using the NexisUni database, our search returned 78 legal cases centered around the following themes: Restraint/physical abuse, sexual misconduct, paraprofessionals as key witnesses, supervision, employment issues, and speech issues. These findings illustrate the need for districts to clearly define the roles and responsibilities of paraprofessionals and to provide training for assigned duties, especially for paraprofessionals working with medically fragile students.

**“I feel like a dumping ground”- Legal Issues Surrounding Paraprofessionals in Schools**

As the staff members most often tasked with working with high needs students, paraprofessionals report a host of complaints with their expansive and ill-defined roles (Chopra et al., 2004). Paraprofessionals perform a wide variety of tasks including literacy support in a regular classroom, behavioral support of students, and supporting medical needs of students receiving special education services (Giangreco & Broer, 2005). Unfortunately, the often-changing demands are not coupled with training and development to ensure paraprofessionals are qualified to perform requested tasks (Mason et al., 2020). While teachers have received years of instruction and supervised training, paraprofessionals receive comparatively little training, yet through their roles, they often are in closer proximity to and spend more time with students receiving special education services (Giangreco & Broer, 2005).

The practice of utilizing paraprofessionals to perform key classroom and support functions for students not only deprives students of high-quality care and instruction, it also creates a potential liability for school districts in several areas. This study reviews legal cases involving paraprofessionals in order to categorize and describe the key legal concerns surrounding the use of paraprofessional labor in schools. Since many paraprofessionals work closely with medically fragile students, the findings most importantly inform on legal issues resulting from paraprofessional supervision of high-needs students and illustrate common accidents that occur in special education classrooms. In addition to special education classrooms concerns, the cases additionally illustrate gaps in paraprofessional training practices and how paraprofessionals’ legal rights differ from the rights of teachers.

**Perspective and Theoretical Framework**

Our search for cases was informed by the literature review, which demonstrates that the bulk of existing studies concerning paraprofessionals revolve around issues of training and supervision, primarily for work specifically with students in special education (e.g., Mason et al., 2020). This systematic review of legal cases was conducted with the perspective of a school administrator, not an attorney. That is, we seek to identify key issues (rather than specific laws) that a supervisor of paraprofessionals should be aware of when hiring, training, and supervising this type of staff member. This type of legal research is often driven by the practical search for issues and less often relies on theoretical foundations (McCarthy, 2013; Taekema, 2018). Our interpretation of the resulting themes however, is rooted in critical pedagogy which questions embedded structures of power that create an inequitable educational environment for students (Darder et al., 2017).

**Methods**

In this systematic review, we were guided by Baude and colleagues’ (2017) proposed four-step process for ensuring rigor in legal analysis. First, we identified the question which is to determine key legal issues involving paraprofessionals in schools. For step two, we defined the cases to be used in the analysis, which are detailed below. The next step requires an explanation of the weighting of the cases. We did not assign weights in the analysis, opting instead to assign each case to a thematic group which collectively informs best practices. Finally, for the last step, we conducted analysis and formed conclusions (Baude et al., 2017).

To locate cases concerning paraprofessionals in public schools, we searched the NexisUni database for the following terms: failure to supervise, failure to train, negligence, physical restraint, FERPA, sexual misconduct, deliberate indifference. For each search, we then narrowed the cases for the term “paraprofessional.” Following the first search for “failure to supervise”, we eliminated duplicate cases when using subsequent search terms. The searches returned the results as noted in Table 1.

<Insert Table 1 here>

Once the search was narrowed, we skimmed the case to determine if it was generally regarding an issue within a public school. Paraprofessionals serve in multiple fields, such as law firms and libraries, so we eliminated those cases in the first review. In the second review, we further considered if the case concerned a paraprofessional in a public school and if the paraprofessional(s) were key parties in the cases. All cases were briefly summarized at this stage. In several circumstances, paraprofessionals were mentioned within actions seeking special education modifications, these cases were removed. A final group of 78 cases comprise the resulting collection.

We then reviewed the case summaries to identify common themes, ranging from the location of the injury events at issue, the specific legal complaint, to the identity of the plaintiff (parent or paraprofessional). The results are described in the following section.

**Findings**

Our review of 78 legal cases concerning paraprofessionals revealed six themes:

Restraint/physical abuse, sexual misconduct, paras as key witnesses, supervision, employment issues, and speech issues. This section includes a description of each theme and highlights core issues that survived initial motions for summary judgment and dismissal.

**Restraint/Physical Abuse**

Paraprofessionals were frequently mentioned in cases concerning restraint and/or physical abuse of students receiving special education services. Sixteen cases included issues in which students were placed into seclusion rooms, often by force, and in some cases, suffered injuries. Of the cases, six include claims of documented injuries and two include student deaths. Key factors are the physical process of moving a student (who often does not want to be moved) and the evident mental toll on paraprofessionals when they experience repeated encounters with challenging students. In most cases, paraprofessionals received correct training, with a few paraprofessionals responding to events in violation of district policy by “lashing out” with a kick or push towards a student.

**Sexual Misconduct**

The 13 cases specific to paraprofessionals who committed sexual misconduct illustrate the ease with which this type of employee can remove a student from the classroom for inappropriate reasons. In cases specific to special education students, paraprofessionals abused students in bathrooms or invited students to their homes to engage in abuse. In three cases, paraprofessionals also served as coaches, though the connection of the students to their coaching experiences varied. The State of Georgia notably had three separate cases concerning whether a paraprofessional was “a person who has supervisory or disciplinary authority over another individual” (O.C.G.A. § 16-6-5.1(b)(1)). *Hart v. State* (2013) found that a paraprofessional (who was also a coach) did have authority over students, but the supreme court and the state appeals court, in two later cases (*State v. Hammonds*, 2014; *State v. Morrow*, 2016), reached the opposite finding that a paraprofessional is not in a position of authority and cannot be convicted under that specific statute.

**Paraprofessionals as Key Witnesses**

While paraprofessionals had an alarming ease of access to students in the sexual misconduct cases, in other situations paraprofessionals are key witnesses to inappropriate behavior of special education teachers or administrators. The 12 cases in this group all include key testimony from paraprofessionals. The witnessed events include a wide variety of activities: strip searches, restraint, physical abuse, and a poorly implemented bus evacuation drill.

**Supervision**

This theme includes the largest grouping of cases (25), which we further subdivided into two categories: supervision in the school buildings and supervision on the playground. In both sub-groups, we see examples of how quickly accidents occur when a paraprofessional inadvertently turns around to attend to another student.

**Supervision in the building/classrooms.** There are several tragic events described within this set of 18 cases. Four cases of rape/molestation of students in special education classes were committed by students when paraprofessionals allegedly had supervisory responsibility. Six students, all with severe needs, died when in the care of paraprofessionals. In the remaining cases (bumps, breaks, bruises, and unfounded claims), parents allege injuries occurred due to lack of supervision.

**Supervision on the playground.** Paraprofessionals also perform supervision outside of special education classrooms and for the general population, as we see in the seven playground injury cases. In the one federal suit, *Wilson v. Salmon Sch. Dist. #291* (2017), a student stabbed another student. The issue that survived summary judgment was not the paraprofessional’s supervision, but the principal’s error in not documenting the offending student’s earlier violent behaviors and allowing him to be on the playground. The majority of the playground cases were dismissed in early action. In the only case in which paraprofessionals were not released from the suit (*DeCastro v. Center Moriches Sch. Dist.* 2016), there was a question if paraprofessionals were enforcing appropriate behaviors for using the slide (where the student’s injury occurred).

**Employment Issues**

There are six cases concerning paraprofessionals’ employment issues. These include disputes over dismissals or reassignments and damages for injuries. In the injury cases, we see how physically challenging it can be when working with students in special education classes. One notable case concerns two paraprofessionals who worked with a particularly violent student, where they were kicked, punched, bit, and head-butted for multiple years (*Stenger v. Stanwood Sch. Dist.,* 1999). While this behavior was part of the job conditions that they originally accepted, the issue that remained was that the district knew of the danger to them and did not take steps to address the danger to them.

**Paraprofessional Speech**

Finally, the last theme, paraprofessional speech, included six cases in which paraprofessionals said unprotected or protected things. On the unprotected side, two of the cases are the result of a paraprofessional harassing students for reporting the sexual misconduct of a teacher (*B.W. v. Career Tech. Ctr. of Lackawanna Cty*., 2019; *C.D. v. Career Tech. Ctr.,* 2020). In another case, parents alleged that the paraprofessional revealed a student’s schizophrenia diagnosis (*M.P. v. Indep. Sch. Dist. No. 721*, 2002). On the protected side, one notable case shows the extent to which a paraprofessional will advocate for a student. In *Hicks v. Benton Cnty. Bd. of Educ.* (2016), a paraprofessional who was assigned to work with a specific student, felt that the student’s study guide did not meet her specific needs as outlined in her IEP. The paraprofessional contacted district administrators instead of following the proper chain of command, but since she was advocating for a student receiving special education services, any retaliation that she suffered as a direct consequence of her advocacy was potentially in violation of the ADA.

**Discussion and Recommendations**

This review of legal cases concerning paraprofessionals reveals themes consistent with the literature describing paraprofessionals’ job duties and their perceived challenges in their roles (Fisher & Pleasants, 2012; Giangreco et al., 2010; Ratcliff et al., 2011). With the primary task of managing student behavior (both during instructional and non-instructional times) there are cases in which student injuries occurred while paraprofessionals had supervisory responsibility for the students. More extreme injury cases involving student-on-student assault and deaths while under paraprofessional supervision warranted attention to the circumstances involving training, supervision, and actions of the paraprofessionals. In addition, the 16 cases involving restraint/physical abuse of students occurred while paraprofessionals were performing their assigned duties of managing student behavior. The nature of the paraprofessional role to be assigned to individual students further contributed to paraprofessionals’ opportunities to engage in sexual misconduct with students.

As noted in the description of methodology, Baude and colleagues (2017) caution legal scholars to avoid drawing conclusions beyond the scope of their analysis in a systematic review. To that end, our discussion does not claim specific legal outcomes, but rather emphasizes issues found in the cases within each theme. These issues survived at least past the initial pleadings stage in each case and inform best practices for administrators in hiring, training, and working with paraprofessionals. In the cases of student deaths, there were questions of fact regarding the level of training paraprofessionals had received and questions regarding assigned duties for each step in caring for medically fragile students. Rigorous training and documentation is recommended for paraprofessionals in these roles. While in many cases, districts successfully demonstrated that paraprofessionals had received training, paraprofessionals continue to perceive that they need specialized training to perform their assigned tasks (Giangreco et al., 2010). This disconnect demonstrates that districts may be meeting the technical requirements, but that the training itself is not sufficient and/or comprehensive. Increased training time will improve the quality of service delivered to students and improve paraprofessionals’ beliefs that teachers and administrators do not value their contributions (Fisher & Pleasants, 2012). Finally, improved screening and background checks during hiring and enhanced supervision (to minimize any one-on-one time with students) can reduce the likelihood of paraprofessionals engaging in inappropriate behaviors with students.

When viewed through the critical theoretical lens, it is clear that students with the lowest ability to speak out against harsh treatment are subjected to supervision by employees with the least amount of training for their roles. The difficult nature of working with medically fragile and/or behaviorally challenged students, often in one-on-one settings, further exacerbates paraprofessionals’ perceptions that they have little support for their work. Like teachers, paraprofessionals in these cases suffered injuries, made poor decisions, witnessed accidents, and a few committed atrocious crimes. Administrators, instead of considering their paraprofessionals’ needs as an afterthought, should maintain regular attention to ensuring the quality of work paraprofessionals are providing to the most overlooked groups of students.

**Scientific and Scholarly Significance of the Study**

This study of legal issues surrounding paraprofessionals by nature speaks to the conference theme of Cultivating Equitable Education Systems for the 21st Century. Paraprofessionals provide key services for students with the highest level of medical and behavioral needs. How are we maintaining an equitable system if students with the highest needs are supervised by the employees with the lowest amount of training? Several cases within this study illustrate that while paraprofessionals technically received required training, factors such as unclear routines, mental strain, or unanticipated distractions from other students, created a combination of events resulting in student injuries and/or deaths. Administrators can benefit from these descriptions and interrogate their own district’s practices to ensure best practice in paraprofessional hiring, training, and supervision.

As the first known systematic review of cases surrounding paraprofessionals, this study informs future scholarly work regarding key phrases and concerns of this group of school employees. The largest number of cases surrounded issues of restraint and supervision, most often in the special education setting. We recommend future scholarship specific to maintaining legal compliance and high-quality care in high-needs classrooms.

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*Note: Case citations are listed in Appendix A*

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**Table 1**

*Search Results of Paraprofessional Cases, by Search Term Used*

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Search Term | Narrowed by | # cases | Narrowed by | # cases | # Duplicates | # non-relevant | Final # cases |
| Failure to supervise | paraprofessional | 76 | --- | 76 | --- | 25 | 51 |
| Failure to train | paraprofessional | 53 | --- | 53 | 15 | 13 | 25 |
| Negligence | paraprofessional | 401 | --- | 401 | 53 | 300 | 48 |
| Physical restraint | paraprofessional | 90 | --- | 90 | 25 | 52 | 13 |
| FERPA | paraprofessional | 18 | --- | 18 | 3 | 14 | 1 |
| Sexual misconduct | paraprofessional | 40 | --- | 40 | 9 | 24 | 7 |
| Deliberate indifference | paraprofessional | 169 | school | 151 | 35 | 110 | 6 |
| Total cases |  |  |  |  |  |  | 151 |
| 2nd Review |  |  |  | 151 | 8 | 65 | **78** |

Appendix A

Case Summaries

Case summaries appear by theme, jurisdiction, alphabetical

**Restraint/Physical Abuse (16)**

Federal-Appeals

J.S. v. Houston Cty. Bd. of Educ., 877 F.3d 979 (11th Cir. 2017). 2017 U.S. App. LEXIS 19007

This case brings up the difficult question of whether a teacher is responsible for a paraprofessional’s conduct. A para regularly removed a student from the classroom and brought him to the weight room, where the student worked on classwork and the para chatted with the coach. The para allegedly verbally and physically abused the student while in the weight room. The principal was made aware of this behavior and directed him to stop removing the child from the classroom. The principal did not follow up on whether the behavior had stopped and the teacher did not reprimand the para either, leaving both open to claims of deliberate indifference. This action reversed in part the district court’s decision to award summary judgment to the district.

Federal-District Court

Clines v. Special Admin. Bd. Transition. Sch. Dist. of St. Louis, (E.D. Mo. 2020). 2020 U.S. Dist. LEXIS 99026

A nonverbal student with autism exhibited behaviors consistent with his disability when he was assigned a different paraprofessional for the day (the regularly assigned para was absent). The student kicked at the para, the para responded using the appropriate behavioral training techniques for the first two kicks. The third time, the para grabbed the student’s foot, causing the student to fall, break bones and dislocate an elbow in the fall. The magistrate judge declined to dismiss the charges of due process-bodily integrity, failure to train and supervise, and the state law tort claim against the para.

Crecy v. Kankakee Sch. Dist. #111, (C.D. Ill. 2016). 2016 U.S. Dist LEXIS 196585

A hall monitor allegedly restrained a student by grabbing his neck. This action, with claims against both the hall monitor and the district, survived summary judgment. The hall monitor potentially violated state law with “willful and wanton conduct”. The biggest issue for the district, other than Green’s behavior, is that the assistant hall monitor never received training in appropriate restraint techniques, potentially demonstrating a clear failure to train on the part of the district.

D.C. v. Pittsburgh Publ. Sch., (W.D. Pa. 2019). 2019 U.S. Dist. LEXIS 207945

The school developed a crisis intervention plan and put the child with a 1:1 para, who was not trained in implementing the crisis plan or in restraint. At one point, the para used a book to push the child against the lockers and pin him there. The school continued to call the police whenever the child’s behavior would escalate.

Doe v. Torrington Bd. of Educ., (D. Conn. 2018). 2018 U.S. Dist. LEXIS 161165

Doe was subject to pervasive bullying and sexual hazing at the hands of fellow students. His parents’ pleas fell on deaf ears, and the bullying continued. A paraprofessional took part in the bullying.

E.H. v. Brentwood Union Sch. Dist., (N.D. Cal. 2013). 2013 U.S. Dist. LEXIS 158482

A student was allegedly dragged, restrained harshly (suffered scratches), and pulled by his arm in several incidents in which his assigned paraprofessional and other staff attempted to keep him from running off campus. The court dismissed some of the Section 1983 claims, but denied the motion to dismiss claims against most of the individuals involved (including the paraprofessional).

Ebonie S. v. Pueblo Sch. Dist. 60, (D. Colo. 2011). 2011 U.S. Dist. LEXIS 99534

Ebonie S. v. Pueblo Sch. Dist. 60, 819 F. Supp 2d 1179 (D. Colo. 2011). 2011 U.S. Dist. LEXIS 47210

A student with Down Syndrome was placed in a wraparound desk (a restrictive desk with bars on it to prevent exit) frequently and, as a result, the paraprofessionals spent less time one-on-one time with her. The court immediately dismissed all claims against individuals. The issue was the district’s use of the wraparound desks and if they were discriminatory since they were used only in special education rooms. Thus, the court denied the district’s motion for summary judgment on the Rehabilitation Act and ADA claims. In the following case, plaintiffs prematurely sought reimbursement of costs of the litigation.

Gm v. Lincoln Cty. Sch. Dist., (D. Oregon 2017). 2017 U.S. Dist. LEXIS 101161

A nonverbal student with Down’s Syndrome was routinely physically forced into a seclusion room (by paras, acting on the principal’s directive), which the magistrate judge found was an “ongoing and systematic policy of discrimination.” This action dismissed some of the Section 1983, the Rehabilitation Act, and 504 claims against defendants, though several claims remained.

K.G. v. Sergeant Bluff-Luton Cmty. Sch. Dist., 244 F. Supp. 3d 904 (N.D. Iowa 2017). 2017 U.S. Dist. LEXIS 42171

Contrary to the Safety Plan, the special education teacher grabbed K.G. by the ankles and dragged him across the rug, resulting in his parents taking him to a medical center. Principal, para, teachers all allegedly laid hands on him at some point.

Padilla v. School Dist. No. 1, 35 F. Supp. 2d 1260 (D. Colo. 1999). 1999 U.S. Dist. LEXIS 661

A child in a special education class was frequently placed in a stroller (for restraint) and placed in a closet, unsupervised. In one occurrence, the stroller tipped backwards and the child sustained skull fractures from the fall. The court denied summary judgment for the teacher and the para involved in these incidents. The para had restrained the child on previous occasions without the teacher’s knowledge.

Rutherford v. Fla. Union Free Sch Dist. (S.D.N.Y. 2019). 2019 U.S. Dist. LEXIS 55971

Among other complaints, parents allege their child with autism was forcefully dragged by the para and that the para was not trained, leading to the child’s suffering. This claim was dismissed for failure to exhaust under the IDEA.

Shinn v. Detroit Pub. Schs., (E.D. Mich. 2011). 2011 U.S. Dist. LEXIS 10140

A student with epilepsy was pushed by a paraprofessional (Hawkins Washington), hit her chin, subsequently suffered increased seizures, and died five days later. Two other paras witnessed Hawkins Washington saying “I never liked you anyway” when she pushed the student. The principal was granted summary judgment, he investigated and followed up on the incident. Hawkins Washington was denied summary judgment.

State-Supreme Court

Chapdelaine v. Town of Brookfield (2017). 2017 Conn. Super. LEXIS 3876

A child in special education was injured when being placed in seclusion and lost part of his finger in the door. Parents alleged the restraint was negligent, but the court, citing *Lopez v. Bridgeport*, found the defendants entitled to immunity. Summary judgment was granted for all defendants.

Johnson v. Town of E. Hampton (2008). 2008 Conn. Super. LEXIS 1009

(unreported decision)

A child with neuro-muscular atrophy was placed in a “giraffe” chair by his paraprofessional at the request of his in-school physical therapist. The child slipped out of the chair and hit his head, resulting in several injuries. PT failed to perform evaluation to see if “giraffe” chair was appropriate, but ordered para to put him in it.

Reilly v. Sw. Vt. Supervisory (2016). 2016 Vt. Super. LEXIS 19

Torts case- a parent of a student with behavioral needs filed multiple claims against multiple parties after she placed a recording device in her child’s backpack and taped rude comments made by staff. She was unable to demonstrate that her child suffered harm as a result of those comments (or that he even heard them) and she concurred with the district that the attempt at using restraints was not intended to cause harm to her child, thus the district won summary judgment.

State-Appeals

King v. Pioneer Reg’l Educ. Serv. Agency (2009), 301 Ga. App. 547. 2009 Ga. App. LEXIS 1266

Two Paras placed a student in the time-out room and the student subsequently hung himself with a length of rope that a para had given him earlier to use as a belt. The claims were dismissed and the appeals court confirmed the dismissal. The paras did not restrain the student’s personal liberty. They were unaware he had made previous threats to kill himself. In fact, the psychologist who evaluated him after such a threat found that his threats were attempts to seek attention, thus there was no perceived risk to the time out.

**Sexual Misconduct (13)**

Federal-District Court

Doe v. Bradshaw, 203 F. Supp 3d 168 (D. Mass. 2016). 2016 U.S. Dist. LEXIS 114748

A paraprofessional (who was also a soccer coach) sexually assaulted a student after multiple reports of his inappropriate behavior with several students over a period of several months. This action follows initial motions and awards summary judgment to defendants for some but not all claims. Remaining claims against the superintendent are violations of due process and equal protection. Remaining claims against the town are based on actions after the assault was discovered (in which Doe requested services) are negligence, negligent infliction of emotional distress, and ADA.

Doe v. Darien Bd. Of Educ., 110 F. Supp. 3d 386 (D. Conn. 2015). 2015 U.S. Dist. LEXIS 66699

12 year old boy with Down Syndrome told his parents that his paraprofessional had taken out his penis and asked the boy to touch it. There was evidence that some school employees knew about the alleged incident(s), but did not believe the boy. Summary judgment for the defendants was denied on several counts.

Hurt v. W. Lafayette Cmty. Sch. Corp., 450 F. Supp. 2d 900 (N.D. Ind. 2006). 2006 U.S. Dist. LEXIS 69360

A high-school student in special education was sexually assaulted by his para and they continued to engage in sexual relations beyond high school. The court found that his claims were time-barred since it had been more than two years since he had reached the age of majority. Summary judgment was granted for defendants.

J.G. v. Bd. of Educ., (S.D. Md. 2017). 2017 U.S. Dist. LEXIS 33597

A substitute who sexually abused a child (yet not discovered) was subsequently hired the following year as a paraprofessional. A teacher witnessed this para in that next year assaulting the child again and reported it. The para had assaulted the child 13-14 times. While most claims were dismissed, the state tort claims for negligent hiring, supervision, and retention remained.

State-Supreme Court Appeals

People v Somodi (2019), 170 A.D. 3d 1056, 94 N.Y.S. 3d 586. 2019 N.Y. App. Div. LEXIS 2060

A paraprofessional was convicted of an attempted criminal sexual act and she appealed her placement on the sex offender list, the appeals court affirmed her placement on the list.

State-Supreme Court

Doe v. Wilton Bd. of Educ. (2017). 2017 Conn. Super. LEXIS 10599

A para sexually abused a four-year-old student when he took her to the bathroom. Other staff witnessed him taking her to the bathroom, a clear violation of school policy, but did not report. The parent noticed injury that night (12/21), reported it to the principal (following the holiday break), who investigated but did not file a mandatory report for four days. The principal noted on the report that the claims were unsubstantiated since the para had denied the event took place. A few days later, the para confessed, though the principal did not inform the parents. This action claims negligence against the board, negligent infliction of emotional distress, and associated damages. The defendants’ motion for summary judgment was denied on all counts.

J.A. v. City of New York (2009), 34 Misc. 3d 1214(A). 2009 N.Y. Misc. LEXIS 6665

A para was convicted of raping 2 middle-school students. This action alleged that the district was vicariously liable, negligent supervision of students, and negligent hiring/supervision/and retention of the para. The events occurred at para’s home, so the district was not vicariously liable. Court found no evidence that the district would have known about the para’s propensity for sexual misconduct, proper hiring procedures were followed.

State v. Morrow (2016), 300 Ga. 403, 794 S.E. 2d 37. 2016 Ga. LEXIS 791

Morrow was a paraprofessional who was convicted of sexual assault of a student whom he supervised. The issue is that he was convicted under a statute that is specific to teachers, not paraprofessionals. The Appeals court overturned, finding the statute did not apply to him and the Supreme Court of Georgia affirmed.

Veres v. Sch. Bd., (S.D. Fla. 2011). 2011 U.S. Dist. LEXIS 172833

A paraprofessional sexually assaulted a student who was assigned to the special education classroom in which he worked. The parent filed this action, claiming that the para’s previous incident in which he sexually harassed a coworker served as actual notice to the principal that he might later sexually assault a student. The court disagreed and granted summary judgment for the district.

Winkler v. Town of Berlin (2010), 2010 Conn. Super. LEXIS 2481

(unreported decision)

A paraprofessional supervising a 17, then 18-year old student receiving special education services engaged in “sexual touching” during school, then later entered a sexual relationship with the student at an undetermined time and place. Another para witnessed some of the touching incidents at school. The plaintiffs did not demonstrate how the alleged failure to train caused imminent harm to the student (the relationship happened later, thus was not imminent). The school district was granted immunity and the charges of failing to supervise, train, and/or educate were dismissed.

State-Appeals

Harper v. Patterson (2004), 270 Ga. App. 437. 2004 Ga. App. LEXIS 1500

A para in a special education classroom sexually abused children and took pornographic pictures of them. This action appealed the summary judgment that was awarded to defendants. Specifically of note for this study, the court considered the difference of ministerial duty and discretionary duty of the supervising teacher. Finding that it is a discretionary duty, this entitled the teacher to immunity (if said duty was properly exercised). A discretionary duty requires “personal deliberation and judgment” and plaintiffs’ agreed that the teacher did not act with malice or intent to cause injury, thus she was immune to claims of negligent supervision.

Hart v. State (2013), 319 Ga. App. 749, 738 S.E. 2d 331. 2013 Ga. App. LEXIS 64

A para (who was also a coach) engaged in sexual contact with a student. The record reflects that he assisted with lesson planning and “had the authority to to implement appropriate rules and procedural safeguards regarding the management of behaviors of individuals with exceptional learning needs.” The appeals court upheld his indictment under the state statute that prohibits “a person who has supervisory or disciplinary authority” over a student, even though Hart argued he did not have that authority. See *State v. Morrow* (2016), a similar case, though the para’s conviction under the same statute was overturned, and the State Supreme Court overruled the decision made in this case.

State v. Hammonds (2014), 325 Ga. App. 815, 755 S.E. 2d 214. 2014 Ga. App. LEXIS 76

A school secretary (who was also an assistant cheerleading coach) engaged in sexual contact with three students. Her indictment was dismissed due to the same issues raised in *State v. Morrow*.

**Paras as Key Witnesses (12)**

Federal-Appeals

Thomas v. Roberts, 323 F.3d 950 (11th Cir. 2001). 2003 U.S. App. LEXIS 4153

(continuation of the Thomas v. Clayton County case, see below) A para was a witness when a teacher conducted a strip search. The Federal Appeals Court upheld the qualified immunity of all parties, even in light of another case which added to the law regarding strip searches.

Federal

A.B. v Adams-Arapahoe 28J Sch. Dist., 831 F. Supp. 2d 1226 (D. Colo 2011). 2011 U.S. Dist. LEXIS 136295

Paras put in complaint about a teacher who was keeping A.B. in a restraint chair for the entire school day, only removing the restraints right before mother came to pick the child up daily.

Adam C. v. Scranton Sch. Dist., (M.D. Pa. 2010). 2010 U.S. Dist. LEXIS 142448

Court found negligence-para and teacher did not receive training, did not feel safe. Adam was injured when fighting with another student and they couldn’t break up the fight.

B.A. v. Manchester Sch. Dist. SAU 37, (D. N.H. 2017). 2017 U.S.Dist. LEXIS 111032

Medically fragile child (J.F.) with PDD, Autism, and impaired ability to chew and swallow, which left him at risk of choking or aspiration of food was force fed by the teacher in his self-contained classroom.  Undisputed that neither the teacher nor the aides were trained to avoid abusive treatment, in the lawful and appropriate use of physical restraints, or in requirements for reporting abuse.

Doe v. Livonia Pub. Sch., (E.D. Mich. 2018) 2018 U.S. Dist. LEXIS 175805

A teacher allegedly physically abused 3 children in an early education special education class. One of the paras was named as a defendant. Multiple paras had complained to the principal that they felt the teacher was overly physically abusive to the children. Ultimately, the court awarded summary judgment for the district and other defendants. The teacher’s behavior did not rise to the level of malicious and sadistic.

McKenzie v. Talladega City Bd. of Educ., 242 F. Supp. 3d 1244 (N.D. Ala. 2017). 2017 U.S. Dist. LEXIS 31409

A bus driver poorly implemented a bus evacuation drill and two paraprofessionals were key witnesses to the event. A student with cerebral palsy who uses a wheelchair was removed from her wheelchair and encouraged to jump out the back into the arms of the teacher. Instead, the student fell backwards and suffered several broken bones as a result. The U.S. Magistrate Judge dismissed the federal claims finding that the student was not deprived of a federal right or substantive due process.

Noble v. Branch Intermediate Sch. Dist., (W.D. Mich. 2002). 2002 U.S. Dist. LEXIS 19600

Civil action in which parents alleged the district was aware of a student’s potential danger to their own child because a paraprofessional had knowledge of the abusing student’s past. The court dismissed, finding that the para was not an “appropriate person” per Gebser and not high enough on the chain to hold the district liable under Title IX.

S.G. v. Success Acad. Charter Sch., Inc., (S.D.N.Y. 2019). 2019 U.S. Dist. LEXIS 45866

A student with regular paraprofessional supervision reacted negatively in class to a poor rating on his behavior chart. The assistant principal called EMS, though the paraprofessional maintains that S.G. did not exhibit behavior worthy of that call and was not a danger to self or others. S.G. was taken to the hospital, then discharged with the determination that he did not require treatment. There were other charges-the parent believed this was part of a pattern of retaliation-and this particular issue was not dismissed due to the para’s testimony.

S. L. v. Seymour R-2 Sch. Dist., (W.D. Mo. 2009). 2009 U.S. Dist. LEXIS 95731

A para responsible for assisting a child use the restroom noticed a mark on a child’s rear end and she reported it to the teacher, who then reported it to the principal. The principal directed the para to photograph the mark, which the para did in private. The court found this action did not violate the child’s federal rights and dismissed the case.

Thomas v. Clayton County Bd. of Educ., 94 F. Supp. 2d 1290 (N.D. Ga. 1999). 1999 U.S. Dist. LEXIS 21556

A paraprofessional was a witness to a strip search (teacher conducted the search) and named in the suit - parents alleged that the district failed to supervise and/or train employees regarding search policies. All individual parties were dismissed-the teacher erred in her decision to conduct a strip search, though it was not malevolent, and the court upheld qualified immunity.

Vicky M. v. Northeastern Educ'l. Intermediate Unit, 689 F. Supp. 2d 721 (M.D. Penn. 2009). 2009 U.S. Dist. LEXIS 85026

Denial of FAPE resulting from abusive teacher and inappropriate training of paras may survive summary judgement claim under §504. Paras complained about treatment of students by teacher, but were told that “no one would believe them over a teacher.”

Williams v. Fulton Cnty. Sch. Dist., 181 F. Supp. 3d 1089 (N.D. Ga. 2016). 2016 U.S. Dist. LEXIS 70307

Pattern of abuse of students with disabilities by one special educator, ranging from tying students to a chair in a dark closet for hours, hitting, kicking, calling names, to squeezing one boy’s penis so hard that he suffered a penile embolism.  Paraprofessionals and other teachers complained to their supervisors and principals, but the complaints were ignored or paperwork “lost”.

**Supervision (25)**

Subcategory-General/Sped-not playground (18)

Federal-

A.H. v. Jackson-Olin High Sch., (N.D. Ala 2019). 2019 U.S. Dist. LEXIS 58190

Student’s IEP expressly required supervision by para, she was not supervised in PE/locker room, subsequently raped by students. Court denied district’s motion to dismiss indicating she was denied FAPE.

Doe v. Berkeley County Sch. Dist., (D. S.C. 2015). 2015 U.S. Dist. LEXIS 159869

Middle school female student was placed in a self-contained classroom, except for certain classes where she would be with her non-disabled peers. Para escorted her to gym, then left and did not supervise in locker room. Doe ended up in wrong PE class (with boys instead of girls), she was sexually assaulted, Doe’s teacher did not mark attendance consistently

Estate of Esquivel v. Brownsville Indep. Sch. Dist., (S.D. Tex. 2018). 2018 U.S. Dist. LEXIS 231742

20-year old student with cerebral palsy began vomiting while in the school’s swimming pool and later died. Disagreement over why she began vomiting (aspirating water or vomit?).  Para testified that she aspirated on vomit. All parties agree para “was always very caring with her” in and out of the pool. Aquatics director was fully qualified and trained, one-to-one para was with her in the water. No evidence of failure to supervise.

Estate of Esquivel v. Brownsville Indep. Sch. Dist., (S.D. Tex. 2018). 2018 U.S. Dist. LEXIS 231738

This action is a follow up to the magistrate judge’s recommendation in July 2018. The court adopted most recommendations to grant motion for summary judgment, though left the claims for violations of the ADA and Rehabilitation Act intact. At issue was destruction of video evidence and the evidence demonstrating that the defendants deliberately disregarded accommodations required by her physician.

Lewis v. Igwe, (S.D. Tex. 2006). 2006 U.S. Dist. LEXIS 104837

A tragic case in which a student in a special needs school died after choking on food that he grabbed off of another student’s plate. Four staff (including an instructional aide) rushed to assist the student once he started choking, but they were unable to dislodge the food. Notable for this study, the U.S. Magistrate Judge found no merit to claims of failure to train (all staff had been trained in CPR), understaffing, and the issue that the nurse on duty was a substitute.

Oskowis v. Sedona Oak-Creek Unified Sch. Dist. #9, (D. Az. 2019). 2019 U.S. Dist. LEXIS 175349

Student alleged his para was not qualified and lacked supervision. The district won since the para was indeed qualified and supervised. The district sued for attorneys fees for all the claims, stating it was a frivolous suit and “brought for an improper purpose”. Oskowis had filed 43 separate actions over the years. The district was awarded $41k of the $47k it sought.

T.G. v. Detroit Pub. Sch. (E.D. Mich. 2016). 2016 U.S. Dist. LEXIS 161475

A student inexplicably had a knot on his forehead, which presumably occurred at some point when he was not in his wheelchair. The parent filed claims against the teachers and paras. All claims were dismissed as there was no evidence of deliberate indifference, no state-created danger, etc.

State-Supreme Court

Figaro v. City of Norwalk (2016), 2016 Conn. Super. LEXIS 2883

In this personal injury case, a para was pushing a student in a wheelchair down the hallway. The student’s foot got caught in the wheel, causing him to be propelled from the chair. The court dismissed all claims against all parties. The plaintiff did not provide evidence indicating a lack of judgment on the para’s part. The para was engaged in conversation at the time of the incident, though this fact alone was not sufficient evidence to demonstrate harm.

Jones v. Red Clay Consol. Sch. Dist. (2013). 2013 Del. Super., LEXIS 1809

School district was grossly negligent in its supervision, training, and retention of the two paraprofessionals who were with the plaintiff at the time of her injuries (students pushing/bullying her) and did not intervene to prevent them.

L.L. v. Sterling (In re Ingram) (2017), 229 So. 3d 220. 2017 Ala. LEXIS 18

Student in special education was molested by a fellow student. Incident occurred while multiple students in wheelchairs were being transferred from cafeteria, assisted with restrooming, then brought back to classroom. Student left unattended by para when when was helping another student in the bathroom. Lower court found that teacher and para acted beyond their authority by not keeping a teacher at the front of the line and a para at the back per school procedures. Court found it was not reasonable to hold para liable-she notified the teacher that she needed to help another student and the teacher is the responsible party here, not the para. In the same action, they did not grant the teacher summary judgement.

Lopez v. City of Bridgeport (2017). 2017 Conn. Super. LEXIS 3903

A student in a special education class was sexually assaulted by another student in the bathroom during the transition time to the cafeteria. Four paraprofessionals typically escorted the students and there was a general practice regarding bathroom supervision. At issue is whether the paras were performing ministerial or discretionary duties, thus immunity could not be determined at this stage and the request for summary judgment by the defendants was denied.

Lyons v. Richmond Cmty. Sch. Corp. (2014), 19 N.E.3d 254. 2014 Ind. LEXIS 867

In this tragic case, a student with medical needs choked to death in the cafeteria. The paraprofessional assigned to her for lunch that day was not aware that she needed to cut up the student’s food into small pieces. The award for summary judgment for the defendants was reversed here because there are issues of concealment in the case (not from the paras, though-their issue is the original negligence claim).

Matter of Daley v. City of New York (2009). 2009 N.Y. Misc. LEXIS 4381

An assistant principal was dismissed, in part, because he left 3 paras in charge of supervision in the gym (without a certified teacher AND he left the whole building without an administrator despite the express request of the principal not to) and a student was injured. He lost this protest, still fired.

Stewart v. City of Bridgeport (2017). 2017 Conn. Super. LEXIS 516

(unreported decision)

A student receiving SPED services was injured by another student during P.E., even though there were 2 paras in the gym to supervise. The claim for negligence failed-citing Goldberger v. David “it must appear that a reasonably prudent person...would have anticipated that harm of the general nature...was likely to result...” The paras witnessed events immediately before the incident, though they could not have anticipated the collision that occurred thereafter.

Tews v. Cape Henlopen Sch. Dist. (2013). 2013 Del. Super. LEXIS 56

Parent complained that teachers and paras failed to supervise her child, who took a serious fall down a set of stairs. The complaint was poorly filed, she did not engage in discovery prior to filing the complaint, so all claims were dismissed.

State-Appeals

JAMES THOMPSON, Personal Representative of the Estate of MARY ELIZABETH ELKINS v. ROCHESTER COMMUNITY SCHS. 2006 Mich. App. LEXIS 3233

A child who suffered from epilepsy collapsed in the school lunch line. Her para thought that she was having a seizure, though the para and other staff did little to determine another reason for her non-responsiveness, despite the fact that she was turning blue. The appeals court affirmed summary judgment for the district, but reversed judgment for the individuals involved, stating that it was possible that gross negligence directly contributed to the child’s death.

Kathleen Ryan v. Lamphere Pub. Sch. Sys., 2010 Mich. App. LEXIS 494

A student with severe needs drowned during swimming practice for the Special Olympics. The lower court originally granted summary judgment in favor of the defendants (paraprofessionals, the lifeguard, and the district) since the individuals were serving in their official capacities. The appeals court (while affirming the finding for the district), found that since the paras were volunteering beyond the scope of the regular job duties, they were potentially serving as agents for the Special Olympics, and thus the issue of liability could not be resolved at this stage.

Mitchell v. Special Educ. Joint Agmt Sch. Dist. No. 208 (2008), 386 Ill. App. 3d 106, 897 N.E.2d 352. 2008 Ill. App. LEXIS 1020

A student with special needs required supervision when eating so that he would not stuff large amounts of food into his mouth and choke. His para momentarily stepped away, the student grabbed cupcakes and choked, ultimately resulting in medical complications. Both the teacher and para had been trained, they exercised routine care, and this one-time occurrence was beyond their control as the student moved faster than they did. The school was awarded summary judgment.

Postell v. Anderson (2015), 334 Ga. App. 331, 779 S.E.2d 397. 2015 Ga. App. LEXIS 636

A para let go of a child’s wheelchair in order to attend to another student needing immediate assistance. The appeals court found that her actions were discretionary and absent of malice, thus she was entitled to summary judgment.

**Supervision (cont).**

**Playground (7)**

Federal

Wilson v. Salmon Sch. Dist. #291, (D. Idaho 2017). 2017 U.S. Dist. LEXIS 140076

A paraprofessional was supervising the playground when a student stabbed another student in the eye, resulting in permanent blindness in that eye. The plaintiff agreed to amend to remove the paraprofessional from the suit, as he was not liable in their claims. The bigger issue was with the principal’s error in not documenting the aggressive child’s earlier behaviors (violating district policy), her staffing decisions for the playground, and the district had not trained her in policy for bullying, harassment, and physical violence.

State-Supreme Court

Carrion v. Reyes (2014). 2014 Conn. Super. LEXIS 1719

Students fought on a playground and child broke his arm. 4 paras supervising 15 students, so there was no negligence. Even though there was a history of alleged bullying, there was no reason to suspect child was in imminent danger.

DeCastro v. Center Moriches Sch. Dist. (2016). 2016 N.Y. Misc. LEXIS 4792

A playground injury case in which summary judgment for the district was denied. There were five recess monitors for approx 115 students, but at issue was whether the monitors took appropriate action prior to the incident to enforce appropriate behaviors for using the slide.

Derrick v. Port Wash. Union Free Sch. Dist. (2018). 2018 N.Y. Misc. LEXIS 5695

Child injured on playground equipment. Para had been trained each year on playground procedures and routinely redirected students to appropriate areas to play ball. While para did not witness the event when the student ran into the wood-chip area to catch a ball, it was not failure to supervise on her part-the student was originally in the grassy area and only briefly ran into the wood chips, which was when the injury occured.

Kourkoumelis v. Dept. of Educ. of N.Y. (2016). 2016 N.Y. Misc. LEXIS 6044

Student injured at recess-fell and hit head on low concrete retaining wall. Dean and 3 paras were present. Summary judgement for the defendant.

Milligan v. Harborfields Cent. School Dist. (2011). 2011 N.Y. Misc. LEXIS 4380

A playground case in which a child fell off the monkey bars when being supervised by paras. Case was dismissed, it was not negligent supervision and the playground met standards.

Osborn v. City of Waterbury (2019), 333 Conn. 816, 220 A.3d 1. 2019 Conn. LEXIS 373

Child injured at recess, she was punched by another student. The issue is whether there was enough playground supervision (by paras) and whether the district had to present expert testimony to establish the appropriate number for supervision. The state’s Supreme Court determined that facts established there were no more than 50 students at the time and 1 para and that no expert testimony was needed since that was within established guidelines. The parents lost the other parts of the case in earlier action-individual actors (including the para) were not liable.

**Employment Issues (6)**

Federal

Elvington v. Phenix City Bd. of Educ., (M.D. Ala 2019). 2019 U.S. Dist. LEXIS 25162

A paraprofessional working with students with special needs often voiced concerns about a student with violent tendencies. The para was informed that his contract was not renewed for the following year. A week later, in a physical altercation with the student, the para allegedly suffered damage to his pacemaker. Following the event, the para was sent home and the school made no further contact to the para. This action brought multiple claims against individual parties regarding the para’s injuries and the district’s failure to provide a safe work environment. All claims were dismissed.

Giamundo v. Shevell, (E.D.N.Y. 2006). 2006 U.S. Dist. LEXIS 67880

An assistant principal allegedly made several inappropriate comments to school secretaries and paraprofessionals and engaged in retaliatory behavior once he had been reported (he was reassigned to a different campus shortly after their reports to the principal). This complaint includes alleged retaliatory incidents in which two school secretaries were “excessed” or reassigned to other schools the following semester and others suffered emotional trauma as a result of their interactions with the assistant principal and from follow up encounters with other administrators. The court dismissed claims related to the reassigned staff, the district demonstrated budgetary needs for those decisions. The court otherwise left most claims intact.

Wellington v. Spencer-Edwards, (S.D.N.Y. 2017). 2017 U.S. Dist. LEXIS 162788

A paraprofessional assigned to a special education classroom filed this action alleging discrimination after she was terminated for alleged use of corporal punishment. She plausibly demonstrated that other paraprofessionals (younger, U.S. born) received preferential treatment, so the court denied the district’s motion for summary judgment.

State-Supreme Court

Barczak v. State (1997), 1997 Del. Super. LEXIS 524

A sped para sought compensation for permanent injuries that resulted from physically restraining students for many years. This action overturned and remanded some of the charges, ordering the state’s accident board to reconsider the ruling and award compensation as appropriate.

Gorman v. Town of New Milford (2011). 2011 Conn. Super. LEXIS 2502

An independent contractor provided services to a life skills student who struck her multiple times (note-this contractor replaced a paraprofessional who had previously performed these duties). In one incident, the contractor went to the hospital due to a jammed thumb which the student had hit. The contractor filed this claim seeking damages from the assault. Two issues were debated in this case. Whether the contractor could be considered a teacher/employee-her position did not require certification and she was not technically a school employee. The court determined for the purposes of this motion to use the most favorable light for the contractor-since she did not have independent control over her day, she functioned as an employee. The second issue was whether the principal should have reported the incidents of assault to the local police “Where there is a physical assault made by a student upon a teacher or other school employee...principal shall report such physical assault to the local police authority.” The principal felt that since the contractor was not a teacher and that the student did not commit the assaults willfully, she was not required to fulfill this requirement. The court granted summary judgment for defendants on only some of the claims (released the town from claims) and denied the rest.

State-Appeals

Stenger v. Stanwood Sch. Dist. (1999), 95 Wn. App. 802, 977 P.2d 660. 1999 Wash. App. LEXIS 985

Two paras received multiple injuries over years of working with a student with severe needs. The student routinely bit, hit, pulled hair, kicked, pinched, and head-butted. While the trial court originally dismissed their personal injury claims, the appeals court found that the district knew of the danger to them and did not take steps to address the danger to them, summary judgment for the district was reversed.

**Paraprofessionals’ Speech (6)**

Federal-Appeals

Wendrow v. Mich. Dep’t of Human Servs., 534 Fed. Appx. 516 (6th Cir. 2013). 2013 U.S. App. LEXIS 18115

An extremely complex case in which a nonverbal student with severe needs allegedly typed on the computer (using the facilitated support of a para) that she had been sexually abused by her father. The para assisting her reported that the student had made this statement, then participated in the interviewing process, allegedly altering and interfering with the questioning. She was denied summary judgment on appeal for this behavior and for allegedly making defamatory statements about the child’s parents.

Federal

B.W. v. Career Tech. Ctr. of Lackawanna Cty., (M.D. Pa. 2019). 2019 U.S. Dist. LEXIS 191103

Multi-party case in which students were sexually abused by auto teacher and para connected to the class reprimanded the student for “attempting to ruin Mr. Humphrey’s reputation”. Court did not find his comments to be retaliation (met only 2 of 4 elements).

C.D. v. Career Tech. Ctr., (M.D. Pa. 2020). 2020 U.S. Dist. LEXIS 43186

A related case to B.W. v. Career Tech...the claim of retaliation on the part of the para was similarly dismissed. Failure to train allegations were upheld in this early stage, though this was in reference to training for teachers and admin, not the para connected to this case.

Dillon v. Twin Peaks Charter Acad., (D. Colo. 2008). 2008 U.S. Dist. LEXIS 45615

A para protested her firing, saying it was retaliation for free speech. She filed claims against both the academy and the district. The court granted summary judgment for the district, but denied it for the academy.

Hicks v. Benton Cnty. Bd. of Educ., 222 F. Supp. 3d 613 (W.D. Tenn. 2016). 2016 U.S. Dist. LEXIS 165844

A complex case in which a paraprofessional alleged multiple claims after her employment was not renewed for the following year. The para had advocated to multiple parties that the study guide provided to the student she worked with did not meet her needs per her student’s IEP. There were other events and issues with this para, but this issue survived summary judgment. While the para’s speech was not protected (as part of her official duties), the principal could not demonstrate a strong enough reason for the nonrenewal other than that issue. Thus, the para’s advocacy for a special education student (if that was the sole reason for her nonrenewal) is potentially protected.

M.P. v. Indep. Sch. Dist. No. 721, 200 F. Supp. 2d 1036 (D. Minn. 2002). 2002 U.S. Dist. LEXIS 9053

A paraprofessional allegedly disclosed a student’s schizophrenia diagnosis (by asking in front of students if his medicine was for treatment of schizophrenia) and the student allegedly suffered assaults as a result. Plaintiffs could not prove that the para released the information, and even if so, that she did with deliberate indifference. Plaintiffs could also not demonstrate that the alleged assaults occurred, and the district responded appropriately when informed of the assaults. Defendant’s motion for summary judgment was granted.