

4-1-2014

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Recommended Citation

Catherine Blumenfeld, *C.A. V. Williams S. Hart Union School District: California's Shift In Vicarious Liability Leaves School Districts With No Protection*, 47 Loy. L.A. L. Rev. 883 (2014).

Available at: <http://digitalcommons.lmu.edu/llr/vol47/iss3/8>

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C.A. v. WILLIAM S. HART UNION SCHOOL DISTRICT: CALIFORNIA’S SHIFT IN VICARIOUS LIABILITY LEAVES SCHOOL DISTRICTS WITH NO PROTECTION

*Catherine Blumenfeld**

I. INTRODUCTION

Roselyn Hubbell was the head guidance counselor at Golden Valley High School until police arrested her when she checked into a motel with an underage male student.¹ Following this incident, a second student, C.A., sued Hubbell and the William S. Hart Union High School District (“the District”) claiming that both the individual and the public entity were responsible for the sexual abuse to which Hubbell had subjected him.² C.A.’s allegations eventually led to the *C.A. v. William S. Hart Union High School District* (“*William S. Hart*”)³ lawsuit. Even more disturbing than the sexual abuse details that C.A. revealed to the court⁴ were C.A.’s allegations that the District had known that “Hubbell had engaged in unlawful sexually-related conduct with minors in the past.”⁵

The California Supreme Court’s unanimous holding in *William*

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1. Sharon Cotal & Jim Holt, *Ex-Counselor Arrested*, SANTA CLARITA VALLEY SIGNAL (Aug. 15, 2008, 5:03 AM), <http://www.signalscv.com/archives/2356/>.

2. Brian Charles, *Hubbell Learns Her Fate*, SANTA CLARITA VALLEY SIGNAL (Apr. 11, 2009, 4:55 AM), <http://www.signalscv.com/archives/11819/>.

3. 270 P.3d 699 (Cal. 2012).

4. Appellant accused Hubbell of, among other things, forcing him to have sexual intercourse; “kissing him on his lips, face, chest, penis, testicles and other areas; masturbating him; and performing fellatio on him.” Opening Brief of Appellant John AC Doe at *5–6, *C.A. v. William S. Hart Union High Sch. Dist.*, 117 Cal. Rptr. 3d 283 (Ct. App. 2010) (No. B217982) 2009 CA App. Ct. Briefs LEXIS 6336. C.A. was referred to as John AC Doe in earlier litigation against Hubbell and the District. Both names refer to the same individual. *See C.A. v. William S. Hart Union High Sch. Dist.*, 117 Cal. Rptr. 3d 283, 283 (Ct. App. 2010).

5. *William S. Hart*, 270 P.3d at 702.

S. Hart established a new standard of vicarious liability for public school districts whose administrative and supervisory employees knew or should have known of an employee's propensity for sexual misconduct and, yet, hired and inadequately supervised the employee.⁶ The court remanded C.A.'s case to the court of appeal to determine whether this standard applied to the William S. Hart Union School District.⁷

The court's decision in *William S. Hart* may seem fair in light of recent reports of sexual harassment and abuse committed by school employees against students.⁸ However, this Comment argues that the holding improperly increases the standard of care school districts owe to their students. School districts have long been exempt from the role of "insurers of the physical safety of [their] students,"⁹ but *William S. Hart* changes that. Now, public school districts must more vigilantly police interactions between students and teachers to ensure that the districts do not violate the court's vague "knew or should have known" standard of care.

Part II of this Comment recounts the facts of *William S. Hart*. Part III details the court of appeal's decision in favor of the District and examines the unanimous California Supreme Court decision, which overturned the court of appeal and other case precedent. Part IV analyzes the shift in the California Supreme Court's approach to vicarious liability for public school districts from the prior leading case of *John R. v. Oakland Unified School District*.¹⁰ This part argues that, while students should be protected, the court's new approach to vicarious liability goes too far. An assessment of the California media's focus on sexual harassment and abuse by educators supports this position. The enhanced attention the media

6. *Id.* at 711.

7. *Id.*

8. *See, e.g.,* Barbara Jones, *Sex Scandal, Cover-Up Claims at LAUSD: Former Superintendent Ramon Cortines' Accuser Speaks Out*, DAILY NEWS L.A. (Aug. 25, 2012, 6:40 PM), http://www.dailynews.com/ci_21401483/sex-scandal-cover-up-claims-at-laUSD-former; Dave Marquis, *Sac. Unified Employee Reinstated After Sex Harassment Probe*, ABC NEWS 10 (Sept. 20, 2012, 10:45 PM), <http://www.news10.net/news/article/210422/2/School-employee-reinstated-after-sex-harassment-investigation>; *Principal Accused of Sexual Harassment Takes Leave*, NEWS 10 ABC (Sept. 18, 2012, 11:36 PM), <http://www.news10.net/news/article/210106/2/Principal-accused-of-sexual-harrassment-takes-leave>.

9. *William S. Hart*, 270 P.3d at 704 (quoting Dailey v. L.A. Unified Sch. Dist., 470 P.2d 360, 363 (Cal. 1970)).

10. 769 P.2d 948 (Cal. 1989).

gives to these types of crimes makes them seem more prevalent than the national statistics indicate.¹¹ Furthermore, the court's expansion of liability leaves school districts without necessary safeguards, which may hinder their ability to provide students with well-rounded educations. Finally, had the court used language more similar to the New York Court of Appeals in *Mirand v. City of New York*,¹² the decision would have protected students without placing additional unnecessary burdens on school districts. Part V concludes that the standard established by the court is overly broad to a fault and has stripped public school districts of the protection they were previously afforded.

II. STATEMENT OF THE CASE

While C.A. was a high school student in the William S. Hart Union School District, his school directed him to see Hubbell for counseling.¹³ Hubbell claimed that she wanted to help C.A. improve his grades.¹⁴ Under the guise of accomplishing this goal, she began spending time with him on and off school premises and driving him home from school each day.¹⁵ The fourteen-year-old student alleged that during this time Hubbell had sexually abused him by performing fellatio on him, requiring him to perform cunnilingus on her, and forcing him to have sexual intercourse with her, among other things.¹⁶ The abuse continued from approximately January 2007 through September 2007.¹⁷ As a result of Hubbell's inappropriate conduct, C.A. suffered emotional distress, nervousness, anxiety, and fear.¹⁸

In July 2008, Hubbell pleaded not guilty to a misdemeanor charge of one count of annoying or molesting a child under the age of eighteen.¹⁹ Hubbell originally had faced a felony charge for child

11. *See infra* Part IV.B.

12. 637 N.E.2d 263 (N.Y. 1994).

13. *William S. Hart*, 270 P.3d at 702.

14. *Id.*; Opening Brief of Appellant John AC Doe, *supra* note 4, at *4.

15. *William S. Hart*, 270 P.3d at 702.

16. Opening Brief of Appellant John AC Doe, *supra* note 4, at *5–6.

17. *William S. Hart*, 270 P.3d at 702.

18. *Id.*

19. Sharon Cotal, *No Felony for Ex-Counselor: Charges Reduced for Former Golden Valley Employee*, SANTA CLARITA VALLEY SIGNAL (Sept. 3, 2008, 5:03 AM), <http://www.signalscv.com/archives/2693/>.

endangerment and contributing to the delinquency of a minor due to C.A.'s and a second student's allegations against her,²⁰ but the charges were reduced based on the available evidence.²¹ The court ultimately required Hubbell to register as a sex offender and sentenced her to three years of probation and thirty days of community service.²²

In January 2009, C.A. sued Hubbell and the District.²³ The District subsequently filed a demurrer to the complaint²⁴ in which it argued in part that C.A.'s causes of action for negligent supervision, hiring, and retention failed to provide statutory authority for holding a public entity liable.²⁵ Additionally, the District claimed that allegations of negligent hiring and supervision did not apply to a public entity.²⁶

On June 4, 2009, the trial court sustained the demurrer and dismissed the action as to the District without leave to amend.²⁷ In a divided decision, the court of appeal affirmed the trial court's holding.²⁸ The majority held that C.A.'s claims of liability for negligent hiring, supervision, and retention were not viable because C.A. failed to prove that the District had breached a statutorily imposed duty.²⁹

In February 2011, the California Supreme Court granted review and ultimately overruled the court of appeal's decision.³⁰ It held that public school districts can incur vicarious liability for the negligence of any administrator or supervisor who knew or should have known that the employee he or she hired and retained had a propensity for sexual misconduct.³¹

20. *Id.*; Cotal & Holt, *supra* note 1.

21. Cotal, *supra* note 19.

22. Charles, *supra* note 2.

23. C.A. v. William S. Hart Union High Sch. Dist., 117 Cal. Rptr. 3d 283, 286 (Ct. App. 2010). The causes of action included: (1) negligent supervision, hiring, and retention; (2) negligent failure to warn, train, or educate; (3) constructive fraud; (4) intentional infliction of emotional distress; (5) sexual battery; (6) assault; (7) sexual harassment; (8) gender violence; and (9) unfair business practices. *Id.* at 287.

24. *Id.* at 287.

25. *Id.*

26. *Id.*

27. *Id.*

28. C.A. v. William S. Hart Union High Sch. Dist., 270 P.3d 699, 703 (Cal. 2012).

29. *Id.*

30. *Id.* at 702.

31. *Id.* at 711.

III. REASONING OF THE COURTS

Both the court of appeal and the California Supreme Court heard C.A.'s case.³² The court of appeal's decision relied heavily on traditional application of California law, which does not hold a public entity liable without a statutory basis.³³ The court also utilized case precedent, which applied the theory of respondeat superior to immunize public entities from liability if the employee's act occurred outside the scope of his or her employment.³⁴ The California Supreme Court overturned the court of appeal's decision and other case precedent to establish a new form of liability for public school districts.³⁵ Subpart A provides the court of appeal's traditional reasoning for affirming the trial court's decision to sustain the school district's demurrer. Subpart B discusses the California Supreme Court's logic in reaching its unanimous holding, which overruled the court of appeal's decision and radically departed from conventional case law.³⁶ The California Supreme Court's decision established that a public school district may be liable for negligently hiring and supervising an employee who it knew or should have known had a propensity for sexual misconduct with students.³⁷ Ultimately, this new standard increases the potential liability for California public school districts from the prior narrow standard of liability based on respondeat superior.³⁸

A. *The Court of Appeal's Traditional Opinion*

The court of appeal applied the general rule that a public entity employer may only be vicariously liable for torts its employees committed within the scope of their employment.³⁹ Since C.A. failed to show how Hubbell's sexual misconduct had fallen within the

32. *Id.* at 701–03.

33. *C.A. v. William S. Hart Union High Sch. Dist.*, 117 Cal. Rptr. 3d 283, 291 (Ct. App. 2010).

34. *Id.* at 288.

35. *William S. Hart*, 270 P.3d at 711.

36. *See infra* Part IV.A.

37. *William S. Hart*, 270 P.3d at 710–11.

38. *Compare id.* (holding that public school districts may be subject to vicarious liability for the negligence of their administrative employees resulting in sexual injuries of students), *with* *John R. v. Oakland Unified Sch. Dist.*, 769 P.2d 948, 953–57 (Cal. 1989) (holding that public school districts are immune from vicarious liability for the sexual misconduct of their employees).

39. *C.A. v. William S. Hart Union High Sch. Dist.*, 117 Cal. Rptr. 3d at 288.

scope of her employment, the court held that the District could not be vicariously liable for Hubbell's actions.⁴⁰

In addressing the causes of action for negligent supervision, hiring, and retention, the court held that the District could not be vicariously liable because C.A. had failed to assert a statutory basis for its liability.⁴¹ In California, a statutory basis is required for a plaintiff to assign tort liability to a public entity, such as a school district.⁴² The court further found that no mandatory duty existed that required school districts to protect students from sexual harassment or abuse.⁴³ Although the court recognized the existence of a special relationship between a school district and its students, it noted that the existence of this relationship did not create a mandatory duty to act absent a statutory basis for liability.⁴⁴

The court of appeal treated this case as a straightforward application of established case precedent and California law. Subsequently, the California Supreme Court created a new and ambiguous approach when it overruled the court of appeal's decision.

B. The California Supreme Court's New Approach

The California Supreme Court began its decision by finding a statutory basis where none previously had existed and by creating a more stringent mandatory duty arising out of a special relationship.⁴⁵ These two factors allowed the court to determine that a public school district may be liable for negligent hiring and supervision of its administrative and supervisory employees who knew or should have known of an employee's sexual proclivities toward students.⁴⁶ Consequently, the court created a wider basis for liability for public

40. *Id.* at 289. This included the causes of action for sexual battery, assault, sexual harassment, gender violence, constructive fraud, and intentional infliction of emotional distress. *Id.*

41. *Id.*

42. *Id.* Both California Government Code sections 815(a) and 815.6 indicate the necessity of an authorizing statute. *See* CAL. GOV'T CODE § 815(a) (2012 West) ("Except as otherwise provided by statute . . . a public entity is not liable for an injury."); CAL. GOV'T CODE § 815.6 (2012 West) (providing that a public entity may be found liable when it is under a mandatory duty imposed by an "enactment," which serves the purpose of protecting against a specific risk).

43. *C.A. v. William S. Hart Union High Sch. Dist.*, 117 Cal. Rptr. 3d at 291.

44. *Id.*

45. *C.A. v. William S. Hart Union High Sch. Dist.*, 270 P.3d 699, 703, 704–05 (Cal. 2012).

46. *See id.* at 703, 704–05, 711.

school districts.⁴⁷

1. Statutory Framework

While the court of appeal reasoned that C.A. had failed to provide statutory authority for his causes of action for negligent hiring, supervision, or retention, the California Supreme Court easily concluded that such a statutory basis existed.⁴⁸ The California Supreme Court relied on California Government Code section 815.2, which states, in part, that a public entity may be liable for injuries proximately caused by an employee's act that falls within the scope of his or her employment.⁴⁹ Section 815.2(a) codifies the concept of vicarious liability.⁵⁰ The court's reliance on this statute, therefore, precluded an application of direct liability in this case. The court used the respondeat superior framework of section 815.2 and its interpretation of the standard of care imposed on school employees to establish that a public school district may be vicariously liable for injuries caused by negligent behavior, such as ineffective supervision.⁵¹ However, the court recognized that the requirements of causation and duty would limit this potential liability.⁵²

2. Existence of a Special Relationship

After establishing a statutory basis for liability, the court confronted the issue of whether a special relationship exists in order to impose a heightened duty of care on public school districts.⁵³ The court noted that California law requires school districts and their employees to supervise students' conduct while on school grounds

47. See Answer to Petition for Review, *William S. Hart*, 270 P.3d 699 (No. S188982) 2011 CA S. Ct. Briefs LEXIS 182, at *3–4, *9–10 (reasoning that the law was well established to preclude liability and that were the court to hold for the petitioner it would “unsettle established law and statutory norms”).

48. *William S. Hart*, 270 P.3d at 703.

49. CAL. GOV'T CODE § 815.2(a) (2012 West).

50. Compare BLACK'S LAW DICTIONARY 998 (9th ed. 2009) (“[L]iability that a supervisory party (such as an employer) bears for the actionable conduct of a subordinate or associate (such as an employee) based on the relationship between the two parties.”), with CAL. GOV'T CODE § 815.2(a) (“A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative.”).

51. *William S. Hart*, 270 P.3d at 708–09.

52. *Id.* at 709–10.

53. *Id.* at 704–05.

and to enforce regulations necessary for students' protection.⁵⁴ This general duty subjects school personnel to a uniform standard of care, which compels them to act as reasonable persons would under the same or similar circumstances.⁵⁵

Since students are required to attend school and school personnel have power over students on school premises, the court concluded that a special relationship exists among the school district, the district's employees, and the students.⁵⁶ This special relationship imposes a heightened standard of care on school personnel, such as a duty to use reasonable measures to protect students from foreseeable injury caused by a third party.⁵⁷ The court's reasoning directly conflicted with the court of appeal's decision, which opined that the special relationship between a school district and its students did not create mandatory duties.⁵⁸

The California Supreme Court used the presence of a special relationship to expand a public school district's potential liability.⁵⁹ However, the court intended this factor to help guard against liability for other public entities in which no special relationship exists.⁶⁰ The court provided additional limitations in its discussion of causation and duty.

3. The Limiting Role of Causation and Duty

The court restricted the scope and effect of its holding through the required negligence elements of causation and duty.⁶¹ For example, the court proposed that proving causation might be difficult

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *C.A. v. William S. Hart Union High Sch. Dist.*, 117 Cal. Rptr. 3d 283, 291 (Ct. App. 2010) (citing *Mosley v. San Bernardino City Unified Sch. Dist.*, 36 Cal. Rptr. 3d 724, 727 (Ct. App. 2005)).

59. *Compare William S. Hart*, 270 P.3d at 704–05 (reasoning that the special relationship imposes additional obligations on a school district beyond what is generally owed by other public entities or individuals), *with C.A. v. William S. Hart Union High Sch. Dist.*, 117 Cal. Rptr. 3d at 291 (reasoning that the special relationship does not, by itself, create liability).

60. One such case where no special relationship exists is *de Villers v. County of San Diego*, 67 Cal. Rptr. 3d 253, 258 (Ct. App. 2007), where the plaintiff filed a claim of public liability for the murder of the husband of a coroner's office employee. In that case, the court held that the county was not vicariously liable for the employee's homicidal acts, in part because no special relationship existed between the employee's supervisors and coworkers, and the victim. *Id.* at 260–61.

61. *William S. Hart*, 270 P.3d at 709–10.

when an individual defendant did not have authority over the entity's hiring or firing practices.⁶² This limitation might affect the outcome of C.A.'s remanded case.⁶³

On remand, C.A. will need to establish that a District employee's recommendation to hire Hubbell or failure to recommend that the District fire Hubbell was a substantial factor in causing the District to hire and retain Hubbell.⁶⁴ This may be difficult given the hiring and firing practices within the District.⁶⁵

The hiring and termination of the District's employees is the responsibility of a governing board rather than of individual administrators.⁶⁶ For the school to fire an employee, the governing board and a commission on professional competence are required to take action.⁶⁷ Although administrators and supervisors may recommend that an individual be hired or fired, the effect that these actions would have on the governing board's ultimate decision is unclear.⁶⁸ Therefore, it is possible that the court of appeal will not view the District's hiring and firing procedures as a substantial cause of C.A.'s sexual abuse. If C.A. cannot establish the causation element of his negligence action, the court will not be able to find the District liable.⁶⁹ The California Supreme Court treated the causation element as an important limitation on its decision for future litigation against public entities.⁷⁰

The court also focused on the duty element of a negligence analysis by evaluating when a special relationship will give rise to a duty to take, or abstain from taking, a particular course of action.⁷¹ The court noted that a public entity's duty to an individual is implicated by a factual assessment of whether the resulting injury

62. *Id.* at 709.

63. *See id.*

64. *Id.*

65. *Id.* at 705–06.

66. *Id.*

67. *Id.* at 705.

68. *Id.* at 705–06.

69. *Id.* at 709. The court noted that, while the school principal's recommendations to the governing board might carry significant weight, recommendations made by other District employees would not be as influential. *Id.* Consequently, an individual District employee who is not responsible for hiring or retention decisions would not be subjected to individual liability. *Id.*

70. *Id.*

71. *Id.* at 709–10.

was foreseeable.⁷² The court reasoned that little or no blame could be attributed to a person or entity's action or inaction if that defendant did not know or should not have known of the danger a victim faced.⁷³ The court left open for future interpretation what would constitute inappropriate action or inaction that would lead a student to suffer a foreseeable injury.⁷⁴

Despite these limitations, the court's new public-entity standard of liability places an additional burden on school districts to closely monitor their administrators' and supervisors' actions.⁷⁵ Such liability is only somewhat curtailed by the characteristic limitations of a negligence action.⁷⁶ As a result of this new law, the court remanded the case to the court of appeal to determine if the District was vicariously liable for C.A.'s injuries.⁷⁷ Consequently, although a new standard has been set, it remains unclear how the court's decision will affect C.A.

IV. ANALYSIS

The court carefully noted that its *William S. Hart* decision continues the California practice established in *John R.* of immunizing public school districts from vicarious liability for its employees' intentional sexual misconduct.⁷⁸ Yet, the court's focus on negligent hiring, supervising, and retaining still deviated from California's twenty-year practice of protecting public school districts from liability arising out of sexual harassment suits. The following analysis proposes that the court's approach in *William S. Hart* incorrectly expanded public school districts' potential liability from the *John R.* standard. In so doing, the court left public school districts unprotected and ignored more practical options for creating a sufficiently specific standard of care.

72. *Id.* at 710.

73. *Id.*

74. *See id.* (including only one example that "it is not generally foreseeable . . . that a hiring recommendation made by an employee outside an organization's circles of authority and influence will cause harm to a third party" but not referencing any specific examples of what would constitute foreseeable injury caused by types of action or inaction).

75. *Id.* at 711 (citing *John R. v. Oakland Unified Sch. Dist.*, 769 P.2d 948, 956 (Cal. 1989)).

76. *Id.*

77. *Id.*

78. *Id.*

A. *Saying Good-Bye to the John R. Safety Net*

The California Supreme Court decided *John R.* in 1989.⁷⁹ Since then, it has been binding case precedent for claims of public school districts' vicarious liability for sexual harassment or abuse of students committed by a district employee.⁸⁰ In *John R.*, the California Supreme Court established that the doctrine of respondeat superior did not apply to public school districts for sexual harassment claims.⁸¹ The court premised its holding on the understanding that teachers' sexual misconduct did not arise out of their "job-created authority" over students.⁸² Consequently, the *John R.* court found that sexual misconduct falls outside the scope of teachers' employment.⁸³ The court reasoned that imposing liability on public school districts in this context would result in an "unacceptable risk that school districts would be dissuaded from permitting teachers to interact with their students on any but the most formal and supervised basis."⁸⁴

In *William S. Hart*, the court did not overrule *John R.*, but rather created a wider basis for liability. In *John R.*, the court narrowly focused on public school districts' vicarious liability for sexual abuse committed by teachers.⁸⁵ In comparison, the *William S. Hart* court focused more broadly on school districts' potential liability for the negligent supervision of *all* administrative or supervisory school district employees.⁸⁶ This change in approach indicates that a societal shift has occurred since the *John R.* decision, mainly as a result of increased media attention.⁸⁷

79. *John R.*, 769 P.2d 948.

80. *John R.* was a ninth-grade student when his mathematics teacher sexually abused him. *Id.* at 949. *John R.*'s parents sued the mathematics teacher and the school district, alleging that the district was liable for the teacher's acts and its own negligence. *Id.* at 950.

81. *Id.* at 956–57.

82. *Id.* at 954–55.

83. *Id.* at 956–57.

84. *Id.* at 957.

85. *Id.* at 949 ("The principal question before us is whether the school district that employed the teacher can be held vicariously liable for the teacher's acts [of sexual misconduct] under the doctrine of respondeat superior.").

86. *C.A. v. William S. Hart Union Sch. Dist.*, 270 P.3d 699, 701–02 (Cal. 2012) ("On review, the question presented is whether the District may be found vicariously liable for the acts of its employees . . . not for the acts of the counselor, which were outside the scope of her employment . . . but for the negligence of supervisory or administrative personnel.").

87. The Internet's growing prevalence has undoubtedly assisted in the constant publication of issues, such as sexual harassment in schools, in a way that was not feasible in the 1980s. For

*B. The Media Focus on Sexual Harassment
and the Resulting Misperception*

California courts have long held that public school districts cannot adequately educate students without also ensuring the students' physical and mental well-being.⁸⁸ This safeguarding of students previously included a reciprocal protection of public school districts from liability.⁸⁹ When the *John R.* court made school districts immune from vicarious liability for sexual harassment committed by teachers, it also emphasized the necessity of providing a healthy learning environment, which included extracurricular and one-on-one contact between students and teachers.⁹⁰ The *William S. Hart* court's expansion of liability introduced an all-encompassing protection of students from sexual predators, even at the expense of losing a well-rounded educational environment.⁹¹

One could assume that the court widened the basis of liability for public school districts because of a need to quash the prevalence of educator sexual misconduct toward students. However, no such prevalence exists.⁹² In fact, a national survey published by the American Association of University Women Educational Foundation (AAUW) showed that the number of incidents of teachers and other school employees sexually harassing students decreased from 44 percent in 1993 to 38 percent in 2001.⁹³ Other statistics indicate that sexual abuse of children in general has continued to decline on a national level.⁹⁴ According to sexual abuse experts, all cases of child sexual abuse fell by more than 60 percent between 1992 and 2010.⁹⁵

example, within four days of its release of the results of the American Association of University Women Educational Foundation (AAUW) study, approximately 1,200 articles were published nationwide regarding it. Jo Turner, *Crossing the Line: Sexual Harassment at School*, AAUW CALIFORNIA ONLINE BRANCH (Nov. 11, 2011), <http://www.aauwcaonline.org/2011/11/crossing-the-line-sexual-harassment-at-school/>.

88. *Leger v. Stockton Unified Sch. Dist.*, 249 Cal. Rptr. 688, 694 (Ct. App. 1988) (citing *In re William G.*, 709 P.2d 1287, 1294–95 (Cal. 1985)).

89. *See John R.*, 769 P.2d at 956 (reasoning that, under the theory of respondeat superior, school districts are protected from liability for a teacher's actions).

90. *Id.*

91. *William S. Hart*, 270 P.3d at 710–11.

92. *See* AM. ASS'N OF UNIV. WOMEN EDUC. FOUND., *HOSTILE HALLWAYS: BULLYING, TEASING, AND SEXUAL HARASSMENT IN SCHOOL* 14 (2001).

93. *Id.*

94. Erica Goode, *Researchers See Decline in Child Sexual Abuse Rate*, N.Y. TIMES, June 28, 2012, at A13.

95. *Id.*

These statistics starkly contrast with the picture that the California media paints of sexual harassment and abuse of minors at the hands of educators. From 2012 to 2013, print, broadcast, and Internet news outlets have paraded a continuous flow of sexual harassment cases brought against California teachers and school personnel.⁹⁶ When publications recount the sexual misconduct of one teacher, such as a Los Angeles Unified School District elementary school teacher who molested thirteen former students, there is understandable public concern.⁹⁷ This heinous crime begins to look like a pattern when viewed alongside the four Chino Valley Unified School District teachers who allegedly engaged in illicit sexual relations with students.⁹⁸ Concern could easily turn to outrage when one learns about the Los Angeles Unified School District second-grade teacher who allegedly molested twenty-three students over a five-year period.⁹⁹ The events underlying each of these criminal actions resulted in separate lawsuits that were memorialized in news stories within one month. This media coverage may have influenced the California courts to take action to quash what appears to be rampant sexual abuse.

However, action had already been taken: California's legislation passed the Child Abuse and Neglect Report Act ("the Act") in 1980. The Act's purpose is to protect children from sexual abuse,¹⁰⁰ defined as sexual assault, lewd or lascivious acts, and sexual exploitation.¹⁰¹ Under the Act, teachers, administrators, counselors, and other school employees are mandated reporters who have a duty to report reasonable suspicion of child abuse.¹⁰² If a mandated reporter fails to report a reasonably suspicious incident, he or she

96. See *Ex-LA Teacher Will Stand Trial on Molest Charges*, SAN DIEGO UNION TRIB. (Sept. 28, 2012), <http://www.utsandiego.com/news/2012/sep/28/ex-la-teacher-will-stand-trial-on-molest-charges/?print&page=all>; Sandra Emerson, *Chino Valley Unified Reveals 4 Teachers Had Sex with Students*, CONTRA COSTA TIMES (Sept. 3, 2012), http://www.contracostatimes.com/california/ci_21462239/cvusd-reveals-4-teachers-had-sex-students; Jason Kandel, *Telfair Elementary Teacher Sentenced in Sex Abuse Case*, NBCLA, (Sept. 20, 2012), <http://www.nbclosangeles.com/news/local/Telfair-Elementary-Teacher-Sentenced-Sex-Abuse-Case-170565876.html>.

97. Kandel, *supra* note 96.

98. Emerson, *supra* note 96.

99. *Ex-LA Teacher Will Stand Trial on Molest Charges*, *supra* note 96.

100. CAL. PENAL CODE § 11164 (2001 West).

101. CAL. PENAL CODE § 11165.1 (2001 West).

102. CAL. PENAL CODE §§ 11165.7, 11166 (2001 West).

may be subject to criminal liability and fines.¹⁰³ Consequently, California holds the administrators and supervisors who oversee hiring, firing, and retaining teachers responsible for reasonably suspicious acts of teachers' sexual misconduct with students.

Furthermore, the educators participating in the illicit acts continue to face criminal charges, which, if proven, would prevent them from teaching in the future. The criminal system may be flawed, as can be seen by the light sentence that Hubbell received for her crimes against C.A. and another student.¹⁰⁴ However, Hubbell's sentence is not necessarily indicative of a trend of lenient punishments. For example, the Los Angeles Superior Court sentenced Paul Chapel III to twenty-five years in prison and ordered him to register as a sex offender for life for his crimes of molesting thirteen former students.¹⁰⁵ Although the range of punishments may indicate a judicial downfall, the individuals responsible for sexual harassment and those who directly supervise them are already being held liable. The next logical step was not to place a heightened burden of additional liability on school districts to compensate for other judicial downfalls.

C. *The Lack of Safeguard for Our Schools*

School districts must provide students with safe environments in which to learn. However, the courts should also provide certain safeguards to public school districts so that they can accomplish this task effectively and without additional liability burdens.¹⁰⁶ The vague "knew or should have known" standard that the *William S. Hart* court implemented is a significant roadblock to protection of school districts.¹⁰⁷ Ultimately, the lack of safeguards afforded to

103. *Id.* § 11166(c) (2001 West).

104. Charles, *supra* note 2.

105. Kandel, *supra* note 96.

106. *John R. v. Oakland Unified Sch. Dist.*, 769 P.2d 948, 956 (Cal. 1989). The court reasoned that holding public school districts vicariously liable would "deter districts from encouraging, or even authorizing, extracurricular and/or one-on-one contacts between teachers and students or . . . induce districts to impose such rigorous controls on activities of this nature that the educational process would be negatively affected." *Id.*

107. *C.A. v. William S. Hart Union High Sch. Dist.*, 270 P.3d 699, 711 (Cal. 2012) The *William S. Hart* court noted that the *John R.* court's concern for maintaining an environment of a well-rounded educational experience is outweighed by the need to hold "school districts to the exercise of due care in their administrators' and supervisors' selection of . . . employees and the close monitoring of their conduct." *Id.* (internal quotation marks omitted).

public school districts could negatively impact the quality of education and resources available to students.¹⁰⁸

The court acknowledged that its decision could lead to undesirable consequences in schools,¹⁰⁹ including deterring public school districts from “encouraging, or even authorizing, extracurricular and . . . one-on-one contacts between teachers and students.”¹¹⁰ Yet, the court felt that these educational elements could be sacrificed to achieve the greater purpose of holding public school districts liable for their administrators’ negligence.¹¹¹ The court’s disregard for extracurricular activities is disconcerting given the value of these programs. These types of activities are considered a strong deterrent to students’ drug use and abuse,¹¹² an aid in improving foster children’s academic performance,¹¹³ and an incentive for student athletes to do well in school.¹¹⁴ As such, when courts determined educational quality in the past, they examined extracurricular activities as well as educational and sports facilities, class sizes, and other factors.¹¹⁵ Consequently, the court’s dismissal of extracurricular activities and one-on-one contact with students may be directly linked to California educators’ ability or lack thereof to provide their students with a quality education.¹¹⁶

While the true extent of the decision’s impact remains to be seen, it is likely that the cost of defending similar future claims will

108. Maura Dolan, *Student Lawsuits Against Schools Upheld*, L.A. TIMES, Mar. 9, 2012, at AA3 (including comments by Robert A. Olson, an attorney for the William S. Hart School District, who noted that this ruling would “entangle individual administrators in litigation, regardless of whether allegations were true,” which will inevitably affect teachers’ and the districts’ ability to provide quality education to students).

109. *William S. Hart*, 270 P.3d at 710–11.

110. *Id.* at 711.

111. *Id.*

112. *Bd. of Educ. v. Earls*, 536 U.S. 822, 853 (2002) (Ginsburg, J. dissenting) (citation omitted) (“Nationwide, students who participate in extracurricular activities are significantly less likely to develop substance abuse problems than are their less-involved peers.”).

113. Stephanie Klitsch, *Beyond the Basics: How Extracurricular Activities Can Benefit Foster Youth*, NAT’L CENTER FOR YOUTH LAW (Jan. 2, 2013, 6:30 PM), http://www.youthlaw.org/publications/ynl/2010/oct_dec_2010/beyond_the_basics_how_extracurricular_activities_can_benefit_foster_youth/.

114. Abel Vargas, *Choices: To Play Sports or Not to Play Sports*, MODESTO BEE (Jan. 2, 2013), <http://www.modbee.com/2013/01/01/2515885/choices-to-play-sports-or-not.html>.

115. Note, *The Limits of Choice: School Choice Reform and State Constitutional Guarantees of Educational Quality*, 109 HARV. L. REV. 2002, 2011 (1996).

116. Dolan, *supra* note 108.

be exorbitant.¹¹⁷ The funds that may be spent defending these lawsuits might otherwise be allocated to resources and programs for students. Additionally, public school districts may now be denied insurance coverage if an employee knew or should have known about a teacher's illicit conduct and failed to report it, which would further increase the financial burden of litigation for the school district.¹¹⁸

The vague "knew or should have known" *William S. Hart* standard puts every school employee on notice, from the janitor to the superintendent, of his or her duty to report even the most minimally suspicious activity, which makes it imperative for school districts to train all employees on sexual harassment and reporting procedures.¹¹⁹ California already requires employers with fifty or more employees, including public school districts, to provide a minimum of two hours of sexual harassment training every two years.¹²⁰ However, this training is only intended to "provide a minimum threshold" and need not be specifically directed toward the types of sexual misconduct that occur between school employees and students.¹²¹ For example, the Los Angeles Unified School District provides ample information to teachers and administrators regarding reporting policies.¹²² Unfortunately, the information available

117. Although costs of litigation are difficult to determine because of the role of insurance policies, the Berkeley Unified School District recently revealed that it spent \$172,697.15 defending a sexual harassment lawsuit brought by a high school student against a district guidance counselor. Anika Anand, *Berkeley Unified Reveals Spending on Sexual Harassment Case*, CAL. WATCH (Jan. 3, 2013, 12:00 PM), <http://californiawatch.org/dailyreport/berkeley-unified-reveals-spending-sexual-harassment-case-17365>. Of this total, the school paid \$46,281.25. *Id.*

118. Patricia S. Eyres, *California School Districts Liable for Sexual Harassment of Students by Administrative Employees*, INS. THOUGHT LEADERSHIP (Mar. 17, 2012), <http://www.insurancethoughtleadership.com/index.php/site/article/california-school-districts-liable-for-sexual-harassment-of-students-by-adm#axzz27bcFqXlh>; Don Jergler, *Vicarious Liability Ruling May Impact Education Insureds in California*, INS.J. (Mar. 14, 2012), <http://www.insurancejournal.com/news/west/2012/03/14/239526.htm>.

119. Jergler, *supra* note 118.

120. CAL. GOV'T CODE § 12950.1 (2013 West).

121. CAL. GOV'T CODE § 12950.1(f) (2013 West); Karen J. Krogman, Comment, *Protecting Our Children: Reforming Statutory Provisions to Address Reporting, Investigating, and Disclosing Sexual Abuse in Public Schools*, 2011 MICH. ST. L. REV. 1605, 1623 (2011) (noting that while some states do require mandatory training sessions to educate teachers about detecting child abuse, these training sessions are generally not geared toward child abuse in public schools but rather abuse from outside sources).

122. MICHELLE KING & DAVID HOLMQUIST, L.A. UNIFIED SCH. DIST., BUL-5736.2, EMPLOYEE-TO-STUDENT SEXUAL ABUSE AND RELATED INVESTIGATION AND NOTIFICATION

regarding recognizing signs of sexual harassment is limited to the California Education Code's definitions of what sexual harassment may entail.¹²³ Therefore, even with training, it will be difficult to determine what falls within the "should have known" category until more people bring lawsuits against school districts. Given the ambiguity of this standard, it is likely that California courts will see an increase in cases going to trial instead of settling because of this question of fact. This will place an increased litigation burden not only on school districts but also on the already overburdened court system.

D. How the Court Could Have Avoided Ambiguity

If the California Supreme Court had used language similar to that used by the New York Court of Appeals in *Mirand v. City of New York*,¹²⁴ much of the *William S. Hart* decision's ambiguity could have been avoided. In *Mirand*, the Court of Appeals held a New York public school district liable for negligent supervision.¹²⁵ In doing so, the court determined that for a public school district to breach its duty to supervise, the plaintiff must establish that school authorities had "sufficiently specific knowledge or notice" of the conduct that caused the injury.¹²⁶ Such specific knowledge could only be obtained if the school district had notice of prior similar conduct.¹²⁷ Without such notice, the court proposed that school personnel could not reasonably guard against certain acts on school property.¹²⁸ The New York courts have consistently looked for evidence of prior misconduct to determine if a school district is liable for negligent supervision.¹²⁹ Because of the specificity in the New York standard, it more appropriately protects school districts from

POLICY (2012).

123. L.A. UNIFIED SCH. DIST., SEXUAL HARASSMENT POLICY (2010).

124. 637 N.E.2d 263 (N.Y. 1994).

125. *Id.* at 267. Two students sued the board of education for negligent supervision for injuries sustained during an altercation with other students. *Id.* at 264–65.

126. *Id.* at 266.

127. *Id.*

128. *Id.*

129. See *Wilber v. Binghamton*, 66 N.Y.S.2d 250, 253 (App. Div. 1946) (reasoning that there was no evidence that anything occurred prior to the alleged incident to suggest that action should have been taken to avoid the accident); see also *Doe v. Fulton Sch. Dist.*, 826 N.Y.S.2d 543, 544 (App. Div. 2006) ("District[] . . . [failed] to provide adequate supervision in the locker room, even in the absence of notice of a prior sexual assault.").

liability than California's vague "knew or should have known" standard.

V. CONCLUSION

The California Supreme Court's *William S. Hart* decision inappropriately expanded liability for public school districts.¹³⁰ The court may have felt its decision was necessary given the media's skewed representation of sexual harassment and abuse as an epidemic rapidly spreading through California's schools.¹³¹ However, the court could have easily rendered a decision that provided protection for California students and maintained safeguards from liability for public school districts. The court's overly broad language might now lead to increased litigation and associated litigation costs for public school districts. This additional financial burden, and the court's disregard for school districts' ability to provide extracurricular activities and other components of a well-rounded education, could result in a decline in the quality of education and resources available to students. Despite the potential downfalls of this decision, it is still unclear the effect it will have on C.A. and the William S. Hart Union School District.

130. Dolan, *supra* note 108.

131. *See supra* Part IV.B.