

# **Doe v. Wolcott: Child Abuse Mandated Reporters and School District Liability**

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## **Education Law Notes**

06.30.2014

Connecticut General Statute Section 17a-101a sets forth 1) the obligation of certain school employees to report to the Department of Children and Families whenever they have reasonable suspicion of child abuse or neglect, and 2) the penalties (both civil and criminal) for a “mandated reporter” for failing to make such a report. A question that arises within the context of tort law is whether the mandated reporter’s duty to report is “discretionary” or “ministerial.” The answer could result in a school district’s exposure to civil damages if a court determines that the duty is ministerial. However, if the duty is discretionary, generally speaking, the school district has recourse to the doctrine of governmental immunity.

A 2002 opinion by Connecticut’s Attorney General (2002 WL 31402150) stated that the mandated reporter statute does not impose a *per se* or automatic obligation on mandated reporters to report prohibited behavior in every situation, but rather requires a report whenever the mandated reporter has a “reasonable suspicion,” based on his or her professional judgment and all the information available to him or her, including the ages of the parties involved, that a child has been abused or neglected. Given that a mandated reporter’s act of reporting is based upon such a “reasonable suspicion” should the act of reporting be viewed as “discretionary”? The Superior Court in *Doe v. Town of Wolcott*, 57 Conn. L. Rptr. 756 (March 4, 2014) (Shapiro, Judge) said, no, it is a “ministerial” duty.

In *Doe*, the plaintiff alleges that when he attended an elementary school in Wolcott in the early 1980s, he was the victim of sexual abuse by an art teacher. In bringing suit against the Wolcott Board of Education (and the Town of Wolcott), the plaintiff alleges that the Board “knew, should have known or could have known upon investigation” that an elementary school art teacher employed by it was sexually molesting and photographing minors (such as the plaintiff) on the premises of the elementary school as well as off the premises.

The Town and the Board moved to strike the complaint, asserting that certain of the alleged acts were discretionary acts and, therefore, are barred by the doctrine of governmental immunity. In denying the motion to strike, the Superior Court held that state laws governing reports of abuse and neglect “do not admit of any exercise of judgment or discretion” on the part of a school employee who is a mandated reporter, and also “do not require that the employee know for sure that the child is being sexually molested or exploited, only that the [employee] has ‘reasonable cause to suspect or believe’ that the child has been so abused.” As such, these laws “involve a mandatory duty, one that is ministerial rather than discretionary” and that the school

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district is not entitled to governmental immunity when the district official fails to adhere to this duty.

The Court also held that the allegations of misconduct as to school children on school premises are sufficient to invoke the special duty of care owed to children by a school district. Furthermore, in light of the allegations as to failures of mandated reporters to take steps to make reports, the ministerial nature of this duty makes governmental immunity inapplicable.

*Doe v. Town of Wolcott* is a “lower” court decision, and it concerns a ruling on an initial motion to strike. Nevertheless, it is not unreasonable to see this as a harbinger of things to come. Our society’s intolerance of adults in responsible positions failing to report child abuse, may not stop at fines and penalties related to a class A misdemeanor, being imposed on the mandated reporter. Cases such as *Doe* may open the door to an award of significant money damages against municipal boards of education.

Every board of education in Connecticut has to have a policy concerning the mandated reporting of child abuse or neglect. A policy without vigilant adherence, training and enforcement is an empty gesture. This lower court’s decision in *Doe* is still subject to review by higher courts. The plaintiff still has to prove that a duty existed, that it was breached and that damages should be awarded. Nevertheless, any school district that underestimates the risk associated with this developing area of tort law, does so at its peril.

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