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Wager v. Moore: When May A College Have A Duty To Protect The Safety Of Its Students?

Education Law Notes

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Generally speaking, from a legal standpoint, the courts have held that colleges and universities do not have a duty to safeguard the safety of their students. However, in *Wager v. Moore, 2013 WL 6989512 (Conn. Super. Dec. 18, 2013),* the Connecticut Superior Court reminded us that there are exceptions to the general rule.

In *Wager*, the plaintiff was a student enrolled at Mitchell College (in New London) in its "disability students services program," which included "academic coaching and counseling." One evening, the plaintiff, who had been drinking alcohol, was leaving her on-campus dormitory to meet friends at another dormitory; as the plaintiff was crossing a street near the College, she was struck by a car. As a result of the collision, the plaintiff suffered numerous injuries. The plaintiff then brought suit against the driver of the car and the College. One of the counts of the complaint alleged that the plaintiff's injuries were caused by Mitchell College's "negligence" in, among other things, supervising its students and designing its campus.

Mitchell College moved to strike the claims against it, asserting that the complaint failed to sufficiently allege that the College owed the plaintiff a duty of care. The College asserted that a college generally has no general duty to guarantee the safety of its students. The Court (via Judge Devine) **denied** the College's motion to strike. The Court noted that Connecticut trial courts had previously denied the existence of a general duty of a college to protect the safety of its students, and further offered: "The premise of modern post-secondary education is that students have both rights and responsibilities and that universities do not have a general duty to insure their safety." *Wager v. Moore, at *2, quoting Pawlowski v. Delta Sigma Phi, 2009 WL 415667, at *2 (Conn. Super. 2009).* However, the Court in *Wager* noted that Connecticut courts have recognized that a duty of care may arise when a college or university **voluntarily and affirmatively** assumes direct responsibility for student safety. *Wager*, *supra.* Examples of such a duty having been found to have arisen include where a university had provided an off-campus shuttle for its students; *McClure v. Fairfield University, 2003 WL 21524786 (Conn. Super. 2003)*; and where university officials had voluntarily brought a student to the hospital in response to a panic attack. *Leary v. Wesleyan University, 2009 WL 865679 (Conn. Super. 2009).* In this context, colleges have a duty to "reasonably render voluntary services." *Wager v. Moore*, *supra.*

The Court in *Wager* agreed with the plaintiff and held that a special relationship different than the usual college/student relationship existed in light of the plaintiff's enrollment in a"disability student services program" offered by Mitchell College. The Court noted: "Just as Fairfield University chose to provide off-

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campus bus services in McClure and just as Wesleyan University officials chose to provide care to the student in Leary, Mitchell College chose to offer a disability student service program to the plaintiff. In light of that choice, the school *has a duty to execute that program in a reasonable manner." Wager v. Moore*, *supra.* As a result of its finding that the College had voluntarily assumed a "special relationship" with the plaintiff and owed her a corresponding duty of care, the Court ruled that the plaintiff's complaint properly alleged the existence of a special duty owed by the College to the plaintiff and would survive at least until another day.

Lessons Learned? Sometimes, the maxim that no good deed goes unpunished holds especially true. While the courts have noted that college students (as opposed to elementary and high school students) have assumed more responsibility for their actions, and while the courts have resisted a rigid extension of the doctrine of in loco parentis onto the college campus, if a college decides to offer a special program that may be viewed as attempting to aid those who may be vulnerable or in need of special assistance, or if a college attempts to offer (gratuitously) certain special services, then the college may have a duty to render such voluntary services in a "reasonable" manner, and may be liable if it is found to have breached a standard of care. In this context, the trusty old cost-benefit analysis will have to guide an institution of higher learning in making an assessment of whether it is worth it to offer a "beyond the normal" service to its students.

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