UE on Appeal

Significant appeals undertaken by United Educators (UE) on behalf of our members

July 2025

Decisions Featured in This Issue:

United Educators

Supreme Court of the State of New York Appellate Division

Multiple Sexual Abuse Incidents Other School Employees Could Have Seen May Establish Constructive Notice

In a 3-2 opinion, New York's Appellate Division for the Second Judicial Department held that a plaintiff's testimony about multiple instances of sexual abuse in the back of a classroom (sometimes with other students present) and in a school hallway was sufficient for a jury to conclude the school district knew, or should have known, about the abuse.

Student Alleges Frequent Molestation by Teacher in a Classroom and Hallway

In 2003 and 2004, high school student Megan Stanton was sexually abused by her math teacher, Erwin Faralan. In 2008, Faralan was criminally convicted for his conduct. In February 2020, Stanton filed a lawsuit against the Longwood Central School District under New York's Child Victims Act, alleging, among other things, that the district was negligent in hiring, retaining and supervising Faralan, and in supervising her.

In her deposition, Stanton testified that because she struggled with math, Faralan tutored her before, during, and after school during her sophomore and junior years. In the fall of her junior year, in the classroom and in front of other students, Faralan told her she was "very pretty" and hugged her when she returned from school after a family member's death.

According to Stanton, Faralan first sexually assaulted her at her home in the fall of 2003. After that, he directed her to sit in the back of his classroom during her tutoring sessions, where he would molest her while she sat at a desk doing math work, sometimes with other students in the classroom. As time went on, he began playing sexually explicit music in the classroom and winking at her. At some point, he began having Stanton sit in the hallway during one-on-one tutoring sessions, where he also would molest her.

Stanton testified that over the course of her junior year, Faralan abused her at school 12 to 20 times.

Stanton further testified she heard rumors that Faralan abused other girls at school and that she saw him engage in flirtatious behavior with another girl he tutored. She also testified that during her senior year, a teacher whose classroom was next to Faralan's commented that Faralan was "too friendly with his students."

After discovery, the district filed a motion for summary judgment, arguing it lacked actual or constructive notice of Faralan's propensity for sexual abuse.

In addition to relying upon Stanton's testimony, the district submitted with its motion:

- A deposition transcript of a fellow math teacher, who testified he never heard about inappropriate behavior by Faralan and stated that Faralan had a good rapport with his students
- An affidavit from the Principal asserting he never received complaints about Faralan or heard any rumors about Faralan's inappropriate behavior

The trial court granted the district's motion for summary judgment and dismissed the causes of action for negligent hiring, retention, and supervision of Faralan, and negligent supervision of Stanton.

Stanton appealed.

Allegations of Frequent Abuse That Others Could Have Observed May Defeat Summary Judgment

Under New York law, to establish a cause of action based on negligent hiring, retention, or supervision, a plaintiff must show the employer knew or should have known of the employee's propensity for the conduct that caused the injury. To establish a cause of action for negligent supervision of a student for injuries caused by an individual's intentional acts, a plaintiff also must show the school knew or should have known of the individual's propensity to engage in the conduct such that the acts could be anticipated or foreseeable.

In a 3-2 decision, the appellate majority held that the district, which had moved for summary judgment, had failed to meet its *prima facie* burden of demonstrating it was not negligent with respect to the hiring, retention, and supervision of Faralan and the supervision of Stanton. Specifically, the court found that "given the frequency of the abuse, which occurred several times per week over an extended period of time" in a classroom and hallway, a factfinder could determine the district had constructive notice and thus was negligent.

The dissent, however, noted the district provided evidence demonstrating it had never received complaints about Faralan's conduct and it had complied with all proper licensing, hiring, and classroom observation practices. The dissent further noted that Stanton's testimony established that any incidents that occurred at school were either in the presence of other students, but not observed by those students, or took place in a public hallway and "were specifically designed to avoid suspicion." Furthermore, Stanton never informed any members of the school's administration or anyone else about the sexual abuse while it was occurring.

Concerned about a "slippery slope," the dissent stated that in the absence of other factors, the "nature and frequency of alleged abuse," standing alone, should not be sufficient to create a triable issue of fact on constructive notice. "To hold otherwise would essentially preclude the granting of any motions for summary judgment dismissing the complaint where the plaintiff merely alleges that abuse occurred."

The Bottom Line

A school's liability for alleged sex abuse committed by a current or former employee often turns on whether the school knew, or should have known, the alleged perpetrator had a propensity to sexually abuse students. In New York, some negligence claims based on sexual abuse may now survive a summary judgment motion that attacks the question of notice if there is evidence the alleged abuse occurred frequently in spaces that could have been observed by other school employees — even if there is no evidence that it was observed.

Stanton v. Longwood Cent. Sch. Dist., Case No. 2023-08768 (N.Y. App. Dec. 24, 2024).

Related UE Resources

- Youth Protection K-12 Resource Collection
- Protecting Children Course Collection for K-12
- Checklist Series (K-12): Protecting Children From Educator Sexual Misconduct
- Checklist (K-12): Improving Sexual Abuse Prevention and Response Efforts
- Educator Sexual Misconduct at Independent Schools: Insights from UE Claims

Court Enforces Former Professor's Oral Agreement to Resolve Claims Against University

The U.S. Court of Appeals for the Second Circuit affirmed the district court's order compelling enforcement of an oral settlement agreement a professor and his former employer entered into at a settlement conference, despite the professor's second thoughts about settling his lawsuit.

Professor Claims University's Denial of His Reappointment and Subsequent Termination Was Retaliatory

In January 2012, Professor Sarsvatkumar Patel joined Long Island University's (LIU's) College of Pharmacy's (College) Division of Pharmaceutical Sciences (Division) as a tenure-track Assistant Professor. The position required annual applications for reappointment through his sixth year, at which point he would be eligible to apply for tenure.

During the end of Patel's third year at LIU, he asked to take paternity leave under the Family Medical Leave Act (FMLA). Although his leave was approved, he alleged the Division Director told him "nobody takes this kind of leave" and that his parental leave could affect his prospects for tenure. This led Patel to return from his leave early.

In January 2015, prior to beginning his FMLA leave, Patel provided an affidavit in support of a former LIU faculty member who had filed a race, national origin, and gender-based discrimination lawsuit against LIU.

In May 2015, the Faculty Review Committee voted in favor of Patel's third reappointment, but the College Dean and the Division Director recommended against his reappointment. In August 2015, Patel was informed he would not be reappointed and his employment with LIU would end Aug. 31, 2016.

In April 2017, Patel filed a lawsuit against LIU alleging his nonrenewal and termination were retaliatory in violation of Title VII, the FMLA, the New York State Human Rights Law, and the New York City Human Rights Law.

In December 2021, the parties attended a virtual settlement conference before a magistrate judge and reached an oral agreement that involved LIU's payment of a monetary amount to Patel in exchange for a full release of his claims and dismissal of the lawsuit. Although the settlement conference was not transcribed or recorded, the magistrate judge issued a short minute entry stating, "A settlement was reached. The parties shall file a stipulation of dismissal by 1/20/2022."

After the settlement conference, Patel had second thoughts. The parties attempted a second settlement conference that yielded no resolution.

Thereafter, LIU moved to enforce the oral agreement reached at the initial conference. Over Patel's objections, the district court fully adopted the magistrate judge's recommendations and granted LIU's motion.

Patel appealed the court's decision.

Court Applies *Winston* Factors to Uphold Enforcement of Oral Settlement Agreement

Although Patel conceded an oral agreement was reached at the December 2021 settlement conference, he contended the parties did not intend to be bound by that agreement until a written agreement was executed.

In determining whether the oral agreement was binding, the court considered the four factors articulated by the Second Circuit in a 1985 decision, *Winston v. Mediafare Ent. Corp.*:

1. Whether there has been an express reservation of the right not to be bound in the absence of a writing
2. Whether there has been partial performance of the contract
3. Whether all the terms of the alleged contract have been agreed upon
4. Whether the agreement at issue is the type of contract that is usually committed to writing

No single factor is determinative.

The court found the first factor favored enforcement because Patel's expectation the agreement later would be memorialized in writing did not, in and of itself, suggest he did not intend to be bound absent a written agreement. Rather, Patel needed to show "forthright, reasonable signals" that he meant to be bound only by a written agreement. The record merely reflected that Patel had a "change of heart" after doing additional research and speaking to his lawyer about confidentiality.

However, the court found the second factor pertaining to partial performance weighed somewhat against enforcement as neither party began to perform: LIU had not issued its payment, and Patel had not executed a release or moved to withdraw his lawsuit.

The third factor favored enforcement, as there were no open material terms remaining after the oral agreement was reached. The court rejected Patel's argument that the confidentiality provision was an open material term to be resolved, finding no evidence to suggest confidentiality was a material point that needed to be fleshed out while drafting a written agreement. Instead, confidentiality only was discussed in passing at the settlement conference.

Albeit a closer call, the court also found the fourth factor — whether the agreement would usually be reduced to writing — favored enforcement. There was no dispute that an oral agreement was reached and, by way of a minute entry, the settlement agreement was recorded on the public docket, which "ensured the parties' acceptance was considered and deliberate." The court further found no clear error in the district court's determination that the parties' agreement — a payment in exchange for a full release of claims — was not so complex as to normally require a writing.

Having found three of the four *Winston* factors favored enforcement of the oral settlement agreement and that the one factor weighing against enforcement — the lack of partial performance — was "attributable to Patel's reneging on the otherwise enforceable oral agreement," the Second Circuit held that a binding oral agreement to settle the case was reached at the December 2021 conference, thereby affirming the district court's enforcement of the agreement.

The Bottom Line

As this case demonstrates, an oral agreement reached at a settlement conference or mediation may be enforceable under certain circumstances. However, to the extent possible and to avoid later disputes, the best practice is for the parties to sign a term sheet or other written documentation that memorializes the material terms agreed upon — or for the court to state on the record the material terms of the settlement and affirm the parties' agreement — prior to concluding a settlement conference or mediation.

Patel v. Long Island Univ., Case No. 23-7381 (2d Cir. Nov. 13, 2024) (summary order), *cert. denied* (U.S. May 27, 2025).

Wisconsin Court of Appeals

Malicious Prosecution Claim Based on University Employee's Alleged False Statements To Police Survives Motion To Dismiss

In a per curiam *decision, an appeals court determined allegations that a university employee made false statements to law enforcement officers at the scene of an accident, which allegedly caused criminal charges to be filed against the driver, could be grounds for a malicious prosecution claim.*

Injured Driver in Car Accident on Campus Faces Criminal Charges

Shawn McCaigue and his mother were in a severe car crash in front of the chapel at Lawrence University in Appleton, Wis. Rebecca Klich, a Safety Officer at the university, arrived at the scene and allegedly instigated an incident that caused further injury to the mother — and then tried to blame McCaigue for it.

According to McCaigue, Klich:

- Grabbed his mother by the arm and exacerbated her head injury
- Tried to take his car keys
- Told 911 that McCaigue was "agitated and extremely confused"
- Falsely stated McCaigue "grabbed [Klich's] face and broke her glasses"

He further alleged that when local law enforcement arrived, Klich's statements "wound up" Sgt. Brandon Edwards, causing Edwards to punch McCaigue in the head twice rather than getting him medical care. McCaigue also alleged that after an ambulance transported him to the hospital, Sgt. Carrie Peters tried to cover up Edwards' actions by telling the emergency room doctor McCaigue did not have a head injury. As a result, the hospital staff failed to properly diagnose and treat him.

McCaigue was charged with a felony and a misdemeanor, which were later dropped, and "put in chapter 51" — an emergency detention and involuntary commitment procedure for people who have a mental illness.

Subsequently, McCaigue filed a *pro se* lawsuit against the university, and Klich. He asserted claims for negligent hiring, supervision, and training against the university. He also asserted claims for, among other things, intentional infliction of emotional distress (IIED) and malicious prosecution against the university and Klich.

The trial court granted the defendants' motion to dismiss for failure to state a claim upon which relief could be granted.

McCaigue appealed.

University Safety Officer's Conduct Too Remote to Support Negligence and IIED Claims

Claims for IIED and negligent hiring, supervision, and training require a plaintiff to establish the defendant's conduct caused the harm the plaintiff suffered. The court agreed with the trial court that public policy barred these claims because McCaigue's injuries were too remote from Klich's alleged conduct. In assessing remoteness, the court considered the time, place, or sequence of events McCaigue alleged and whether the chain of causation was direct or broken.

Even accepting the allegations in McCaigue's complaint as true, the court concluded that following Klich's alleged conduct, Edwards exercised his discretion in deciding to punch McCaigue, Peters exercised her discretion in deciding to lie to hospital staff, and hospital staff exercised their discretion in both deciding whether to examine McCaigue and what to include in his medical records.

The court concluded Klich's conduct was "simply too remote from McCaigue's alleged injuries to permit recovery."

Private Citizens' Actions May Result in Liability for Malicious Prosecution

The court, however, found the trial court erred in dismissing the claim for malicious prosecution.

In Wisconsin, a claim for malicious prosecution requires proof of six elements:

1. A prior judicial proceeding against the plaintiff took place.
2. The proceeding was by or at the instance of the defendant.
3. The proceeding terminated in favor of the plaintiff.
4. The defendant acted with malice in instituting the proceeding.
5. There was a "want of probable cause" for instituting the proceeding.
6. The proceeding caused the plaintiff injury or damage.

The court easily found McCaigue met the first and third elements by alleging he was charged with a felony and a misdemeanor and that the criminal charges were later dropped.

On the second element, the court determined McCaigue sufficiently alleged the criminal proceeding was "at the instance of Klich" by alleging the criminal charges against him were filed because of Klich's actions in making misleading statements to law enforcement officers about his conduct. In so doing, the court rejected the trial court's conclusion that McCaigue failed to satisfy this element because Klich did not "prosecute" McCaigue, determining a law enforcement officer's report that is relied upon for bringing charges against a plaintiff is enough to support a malicious prosecution claim.

On the fourth element, the court found McCaigue adequately alleged Klich acted with malice. "Malice in fact" exists when the defendant acts from motives of ill will in instituting criminal proceedings against the plaintiff. "Malice at law" exists when the defendant's "primary purpose was something other than the social one of bringing an offender to justice."

By alleging Klich tried to injure his mother and then lied to law enforcement to cover up her actions by placing the blame on him instead, McCaigue adequately alleged malice.

On the fifth element, a complaint must allege a want of "probable cause" for the institution of the proceeding, meaning a lack of the "quantum of evidence" that would lead a reasonable layperson to believe the plaintiff committed the crime. If the allegations were accepted as true, but for Klich lying to the police about McCaigue's conduct and breaking her glasses, there would not have been sufficient evidence to lead a reasonable layperson to believe he committed a crime.

On the sixth and final element, the complaint alleged that because of the criminal charges against him, McCaigue had to hire a criminal defense attorney, come to Appleton by bus, and stay at a hotel five times. The court determined the complaint sufficiently alleged injury or damage to satisfy this element.

Therefore, the court concluded McCaigue's allegations were sufficient to state a claim for malicious prosecution and remanded the case to the trial court for further proceedings on that claim.

The Bottom Line

The Wisconsin court of appeals' *per curiam* decision shows the actions of a university employee in a non-police role can support a claim of malicious prosecution against the university and employee. Educational institutions conducting training on criminal investigations on campus should emphasize that comments made to law enforcement as well as others that are not truthful or well-documented can result in civil liability for malicious prosecution.

McCaigue v. Lawrence Univ., Case No. 2023AP1979 (Wisc. App. Dec. 3, 2024).

U.S. Court of Appeals for the Seventh Circuit

Too Early to Determine if Qualified Immunity Bars Coach's First Amendment Claim

The Seventh Circuit Court of Appeals dismissed the defendants' appeal of the denial of qualified immunity for lack of jurisdiction, finding a further factual record was needed to determine whether qualified immunity would protect them from a football coach's allegations that he was removed him from his role and terminated after he posted personal speech on his office door.

Football Coach Reassigned and Terminated After Posting Controversial Sign

As alleged in the amended complaint in this action, in July 2020, Kurt Beathard was rehired as Offensive Coordinator for Illinois State University's (ISU) football team under Head Coach Brock Spack and Athletic Director (AD) Larry Lyons. Beathard had been coaching for 25 years and previously had worked successfully at ISU.

Shortly after, in the wake of George Floyd's death, some of the football players threatened to boycott team practice and several sessions were canceled. In August 2020, the Athletic department printed posters in support of the Black Lives Matter movement. Posters featured photographs of ISU student-athletes and said "#BlackLivesMatter." Several football coaches placed the poster on their office doors.

When Beathard discovered someone also placed the poster on *his* door, he replaced it with a handwritten poster stating, "All Lives Matter to Our Lord & Savior Jesus Christ." While students were not allowed in the coaches' office area due to the COVID-19 pandemic, Beathard alleged another coach who wanted to replace him as offensive coordinator took a photo of Beathard's poster and showed players.

Beathard alleged "some" players "apparently" found the message offensive and threatened to continue boycotting team practice.

During a Zoom address to ISU student-athletes about the boycott problem, Lyons made a similar statement that "All [ISU] Redbird Lives Matter," which caused controversy on campus. (About a month later, Lyons announced his retirement.)

On Aug. 29, 2020, after the poster had been on Beathard's door for a couple weeks, Spack asked Beathard to remove it. Beathard complied.

On Sept. 1, 2020, after a practice session was canceled, Spack told Beathard that Beathard was in trouble because of the poster.

The next day, Spack called Beathard into his office and said Beathard was being removed from the Offensive Coordinator role because Spack didn't "like the direction of the offense."

In his complaint, Beathard characterized the statement as "100% pretext" because Spack previously complimented his work and the team had not played games yet that year (and never did because of COVID-19). Spack told Beathard that Lyons was involved in the decision and would be in touch with him regarding a future assignment.

Two other coaches replaced Beathard as co-offensive coordinators, while Beathard was given an assignment he characterized as "make-work." His contract was not renewed at the end of the season, ending his employment at ISU.

Beathard sued Lyons and Spack, alleging they improperly removed him from his role as Offensive Coordinator and terminated his employment for exercising his right to free speech. They filed a motion to dismiss, arguing the complaint failed to set forth a viable First Amendment claim and that they were entitled to qualified immunity.

The district court denied the motion to dismiss for failure to state a claim and did not address the qualified immunity question. The court stated, "It is often not advisable … to consider qualified immunity at the pleadings stage," and denied the motion to dismiss on that issue, "with leave to reassert on a more fully developed record."

The defendants immediately appealed the portion of the district court's decision denying qualified immunity.

Orders Delaying, but Not Denying, Qualified Immunity Are Not Immediately Appealable

The general rule is all claims of error must be raised in a single appeal following the entry of a final judgment in a lawsuit. However, orders denying qualified immunity are an exception, consistent with the goal of sparing public officials from the burden of defending a lawsuit and standing trial if the rights they were accused of violating were not clearly established at the time they acted.

By contrast, orders postponing a decision on qualified immunity are not ordinarily appealable. While the district court stated it was "denying" the defendants' motion to dismiss on qualified immunity grounds, it also made clear that further factual development was needed beyond the allegations of Beathard's complaint to properly inform its assessment. As the Seventh Circuit noted, the qualified immunity analysis is fact-driven, and federal pleading rules do not require plaintiffs to set out all the facts that might bear on the analysis in their complaints.

More Facts Needed to Assess Whether Plaintiff's First Amendment Rights Were "Clearly Established"

To establish a First Amendment claim, Beathard would need to show he engaged in protected speech and show a causal connection between his speech and the adverse action against him. Speech is protected under the First Amendment only if it is personal, rather than official speech, on a matter of public concern and if, pursuant to the Supreme Court's *Pickering* balancing test, the interest in speaking on the matter "out-weighed [the speaker's] public employer's interest in the efficiency of the public services it performs through its employees."

The defendants argued qualified immunity protected them from the First Amendment lawsuit because it would not have been clear to them in fall 2020 that:

- Beathard's speech was protected as personal rather than official speech.
- They could not discharge him based on the disruption his speech fomented among team members.

In denying the defendants' motion to dismiss on the merits, the district court noted the complaint alleged the message Beathard posted on his office door was protected by the First Amendment because it was personal speech on a matter of public concern, rather than official speech associated with his job responsibilities.

Relying in part on a 2022 U.S. Supreme Court decision holding that a high school football coach's prayer on the playing field immediately after games ended was private rather than official speech, the district court concluded Beathard was expressing his personal views unrelated to his official job duties. The court stated, "Plaintiff was not paid by the University to decorate his door or to use it to promote a particular viewpoint, he was employed to coach football."

The district court, however, concluded that without further discovery and development of the facts, it only could conduct the *Pickering* balancing test by engaging in speculation. The Seventh Circuit noted that this rationale further illustrated why the district court thought it necessary to postpone a decision on qualified immunity.

While qualified immunity can be resolved on the pleadings where the relevant issues are legal or abstract, it is difficult to assess at that stage when the merits of a claim turn on the application of a fact-intensive balancing test.

The defendants argued Beathard's complaint acknowledged that his speech caused dissention among the ranks of the school's football players and, pursuant to *Pickering*, a public employer may discipline an employee for personal speech that interferes with its mission. However, parsing the factual allegations, the Seventh Circuit found Beathard disputed whether his speech actually caused substantial disruption and included nothing concrete in his complaint about the impact of his message on team players or how that factored into the defendants' decision to remove him as Offensive Coordinator.

Thus, the Seventh Circuit agreed with the district court's conclusion that it needed more information about the defendants' rationale to determine if the decision was consistent with *Pickering*, and, if not, whether that would have been clear to the defendants at the time. The court dismissed the appeal for lack of jurisdiction and remanded the case for further factual development.

The Bottom Line

Recognizing that qualified immunity is meant to spare a public official from the burden of litigation as well as an adverse monetary judgment at trial, the Seventh Circuit made a suggestion for discovery and motions practice on remand: Prioritize development of the record on issues relevant to the qualified immunity defense and prioritize the filing of a motion for summary judgment focused solely on that issue. Only if qualified immunity was denied on summary judgment would the parties need to complete further discovery and engage in a later round of summary judgment focused on those remaining issues. Public officials seeking to minimize the burdens of litigation may want to keep this suggestion in mind if a qualified immunity decision cannot be made at the motion to dismiss stage.

Beathard v. Lyons et al., 129 F.4th 1027 (7th Cir. Feb. 27, 2025).

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