

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PHILLIP NORDO et al.	:	
	:	
Plaintiffs,	:	CIVIL ACTION
	:	NO. 00-1609
v.	:	
	:	
SCHOOL DISTRICT OF PHILADELPHIA	:	
et al.	:	
	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J.

June 5, 2000

Presently before the Court is the Defendants' Motion to Dismiss. For the reasons stated below, the Motion is Denied.

I. BACKGROUND

This is an action under 42 U.S.C. § 1983 for violation of Plaintiffs' rights under the Fourteenth Amendment. The Plaintiffs are the parents of two minor children who have allegedly been subjected to physical and verbal assaults while attending the Thomas Holmes Elementary School in Philadelphia.¹ The Defendants are the School District of Philadelphia ("District"); David Hornbeck ("Hornbeck"), the superintendent of the District; Caroline Garvin ("Garvin"), the principal of the Thomas Holmes Elementary School during the relevant time period; and Janet Leach ("Leach"), an employee of the District. The facts are taken from the Complaint, and assumed to be true and correct for purposes of this motion. One of the two

1. The Plaintiffs include Phillip and Theresa Nordo, the parents of their minor son, Joseph Nordo and Kimberly and Kevin Doyle, the parents of Ashley Doyle.

children, Ashley Doyle, was mentally challenged and the victim of continuous harassment from fellow students in the school yard. Mrs. Theresa Nordo, while picking up her child Joseph at the Holmes school in February, 2000, witnessed an attack on Ashley. Mrs. Nordo informed both Mrs. Doyle and the school officials of the assault she had witnessed. In March 2000, Mrs. Nordo again witnessed a serious harassment of Ashley Doyle. When her son Joseph attempted to help Ashley Doyle, both children were assaulted. Mrs. Nordo was likewise attacked and subjected to racial insults when she sought to extricate Joseph and Ashley from the crowd of students assaulting them. During this entire incident, Defendant Leach was in the school yard and did not take any corrective action. Mrs. Nordo and Mrs. Doyle then met with officials of the Holmes school, including Defendant Garvin. Although school officials promised to protect the two children, the Plaintiffs allege that no safeguards were put into place. When they attempted to have the two children transferred to a "safer" school, a District employee informed them that they could not do so. After the District failed to take measures to protect the children, and refused to allow them to transfer, the Plaintiffs kept their children home from school because they were concerned about their children's safety.

II. LEGAL STANDARD

When deciding to dismiss a claim pursuant to Rule 12(b)(6) a court must consider the legal sufficiency of the complaint and dismissal is appropriate only if it is clear that "beyond a doubt ... the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." McCann v. Catholic Health Initiative, 1998 WL 575259 at *1 (E.D. Pa. Sep. 8, 1998) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). The court assumes the truth of plaintiff's allegations, and draws all favorable inferences therefrom. See, Rocks v. City of Philadelphia,

868 F.2d 644, 645 (3d Cir. 1989). However, conclusory allegations that fail to give a defendant notice of the material elements of a claim are insufficient. See Sterling v. SEPTA, 897 F.Supp 893, 895 (E.D. Pa.1995). The pleader must provide sufficient information to outline the elements of the claim, or to permit inferences to be drawn that these elements exist. Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d. Cir. 1993). The Court must determine whether, under any reasonable reading of the pleadings, the law allows the plaintiff a remedy. See, Nami v. Fauver, 82 F.3d 63, 65 (3d. Cir. 1996).

III. DISCUSSION

To make out a cause of action under § 1983, a plaintiff must show that (1) the defendants acted under color of law; and (2) their actions deprived him of rights secured by the Constitution or federal statutes. See Kost v. Kozakiewicz, 1 F.3d at 184. The Defendants were acting under color of law as they were all school officials during the relevant time period. The Court must examine whether Plaintiffs have adequately stated a claim for a deprivation of rights secured by the Constitution or federal statute. The Plaintiffs argue that they have alleged facts to support a claim to the violation of the Fourteenth Amendment right to bodily integrity.

The Court finds that Plaintiffs have adequately stated a constitutional claim under § 1983 using the state-created danger theory. Generally, the state is not responsible for violence by private individuals. However, when state actors knowingly place a person in danger, the due process clause of the Constitution has been held to render them accountable for the foreseeable injuries that result from their conduct whether or not the victim was in formal state custody. See Johnson v. Dallas Indep. Sch. Dist., 38 F.3d 198, 201 (5th Cir.1994). In Kneipp v. Tedder, the Third Circuit adopted the state-created danger theory as a "viable mechanism for establishing a

constitutional claim" under §1983. 95 F.3d 1199, 1211 (3d Cir. 1996). The Kneipp court applied a four-part test, originally articulated in Mark v. Borough of Hatboro, 51 F.3d 1137, 1152 (3d Cir.1995), which imposes liability on a state actor if:

(1) the harm ultimately caused was foreseeable and fairly direct; (2) the state actor acted in willful disregard for the safety of the plaintiff; (3) there existed some relationship between the state and the plaintiff; and (4) the state actors used their authority to create an opportunity that otherwise would not have existed for the third party's crime to occur.

The Plaintiffs have clearly stated that there was a relationship between the state and the two minor children. See Compl. ¶¶ 39, 45. Likewise the requirement that the state actor willfully disregard plaintiffs' safety is clearly alleged. Id. at ¶¶ 42, 48. The Complaint also references to occasions when the Plaintiffs met with school officials and informed them of the direct threat to their respective children. Therefore, the harm alleged to have occurred can be seen as both foreseeable and directly resulting from the alleged willful disregard to the children's safety. As to the fourth element, the Third Circuit has explained that this element concerns "whether the state has in some way placed the plaintiff in a dangerous position that was foreseeable, and not whether the act was more appropriately characterized as an affirmative act or an omission." Morse v. Lower Merion School District, 132 F.3d 902, 915 (3d Cir. 1997). Plaintiffs certainly allege that the state has placed the minor children in a dangerous position that was foreseeable through "their policies and procedures" which included not protecting the students from others and refusing to transfer them to another school. See Compl. ¶¶ 31, 35-37, 41, 47.

IV. CONCLUSION

The Plaintiffs have adequately alleged a claim under § 1983. Therefore, the Defendants Motion will be Denied.

An appropriate order follows.

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ORDER

AND NOW, this 5th day of June, 2000, upon consideration of the Defendants' Motion to Dismiss (Docket No. 2), and the Plaintiffs' Response thereto (Docket No. 3); it is hereby **ORDERED** that the Motion is **DENIED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.