

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

<b>JOHN SCIOTTO and CATHERINE P.</b>	<b>:</b>	<b>CIVIL ACTION</b>
<b>SCIOTTO on behalf of LOUIS</b>	<b>:</b>	
<b>SCIOTTO, a Minor, as his parents and</b>	<b>:</b>	
<b>natural guardians,</b>	<b>:</b>	
	<b>:</b>	
<b>Plaintiffs,</b>	<b>:</b>	
	<b>:</b>	
<b>v.</b>	<b>:</b>	
	<b>:</b>	
<b>MARPLE NEWTOWN SCHOOL</b>	<b>:</b>	
<b>DISTRICT, JAMES SMITH, STU</b>	<b>:</b>	
<b>NATHANS, and GREG FENDLER,</b>	<b>:</b>	
	<b>:</b>	
<b>Defendants.</b>	<b>:</b>	<b>NO. 98-2768</b>

**MEMORANDUM**

**Reed, J.**

**February 9, 1999**

Presently before the Court is the motion of defendants Marple Newtown School District (“the school district”), James Smith (“Smith”), and Stu Nathans (“Nathans”) (collectively “the school defendants”) to dismiss the complaint of plaintiffs John Sciotto and Catherine P. Sciotto, on behalf of Louis Sciotto, a minor, as his parents and natural guardians, pursuant to Federal Rule of Civil Procedure 12 (b)(6) for failure to state a claim upon which relief may be granted. Based on the following reasons, the motion will be denied.

**I. BACKGROUND**

The following facts are taken from the complaint and viewed as true and in the light most favorable to the plaintiffs as the non-moving party. During wrestling practice at Marple

Newtown High School on January 10, 1997, Louis Sciotto was seriously injured when defendant Greg Fendler (“Fendler”) threw him to the floor. (Complaint ¶17). Fendler was a member of the wrestling team at Pennsylvania State University who was permitted and encouraged by the school defendants to participate in the high school wrestling practices. (Complaint ¶¶ 6 and 12). The school defendants directed and encouraged Fendler to wrestle with members of the team whose weight was considerably less than his. (Complaint ¶ 15). When Fendler wrestled with Sciotto on January 10, 1997, Fendler weighed 170 lbs and Sciotto weighed 110 lbs. (Complaint ¶¶ 14 and 16). The plaintiffs claim that the school defendants were warned against the use of adult wrestlers at the high school wrestling team practices prior to the incident on January 10, 1997. (Complaint ¶ 13). As a result of being thrown to the floor by Fendler, Louis Sciotto suffered an acute flexion injury to his cervical spine with dislocation of the C3-C4 facets and a complete spinal cord injury.

The plaintiffs filed a complaint in this Court alleging a claim against the school defendants under 42 U.S.C. § 1983 for the deprivation of Louis Sciotto’s bodily integrity under the due process clause of the Fourteenth Amendment.<sup>1</sup> The basis of their claim is that the defendants knew or should have known that the practice of allowing older, stronger, and heavier adult wrestlers to wrestle with light, younger, high school wrestlers could result in an injury to Louis Sciotto, and that the school defendants acted with willful disregard and reckless indifference to the safety of Louis Sciotto and created a dangerous environment by allowing this practice or custom to continue. (Complaint ¶ 24-26). The plaintiffs allege that the school

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<sup>1</sup> The Sciotto’s also allege a claim against Fendler in Count II of the complaint for assault and battery. This claim is not included in the pending motion to dismiss.

defendants used the color of their authority to permit adult wrestlers to join in the high school practice sessions and to compel the high school wrestlers to wrestle these older, heavier wrestlers. (Complaint ¶ 27). The plaintiffs allege that Louis Sciotto's injury was a direct result of the school defendants' actions. (Complaint ¶ 28).

The school defendants argue in their motion to dismiss that the alleged actions and inactions of the defendants do not constitute a violation of the constitutional rights of Louis Sciotto because the actions or inactions of the school defendants do not shock the conscience, because the plaintiffs have failed to allege any special relationship between Louis Sciotto and the school defendants, and because the plaintiffs have failed to allege that he was anything but a willing and voluntary participant in the wrestling practice. The plaintiffs argue that they have stated a claim in the complaint upon which relief may be granted under the state-created danger theory of § 1983 recognized by the Court of Appeals for the Third Circuit.

## **II. STANDARD FOR A MOTION TO DISMISS UNDER FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6)**

Rule 12(b) of the Federal Rules of Civil Procedure provides that “the following defenses may at the option of the pleader be made by motion: (6) failure to state a claim upon which relief can be granted.” In deciding a motion to dismiss under Rule 12(b)(6), a court must take all well pleaded facts in the complaint as true and view them in the light most favorable to the plaintiff. See Jenkins v. McKeithen, 395 U.S. 411, 421 (1969). A complaint should be dismissed only if “it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” Hishin v. King & Spaulding, 467 U.S. 69, 73 (1984).

### III. ANALYSIS

Section 1983 does not create any substantive rights, but rather provides a remedy for violations of constitutional rights or rights under federal law. See Morse v. Lower Merion School District, 132 F.3d 902, 906-07 (3d Cir. 1997). To state a claim under § 1983, a plaintiff must show that the defendants, acting under color of state law,<sup>2</sup> deprived him of a right under the Constitution. See id. at 907 (citing Parratt v. Taylor, 451 U.S. 527, 535 (1981)).

The plaintiffs allege that the school defendants deprived Louis Sciotto of his constitutional right to bodily integrity under the Fourteenth Amendment. The general rule is that “the state has no affirmative obligation to protect its citizens from the violent acts of private individuals” under the due process clause of the Fourteenth Amendment; however, courts have recognized two exceptions to this rule: the “special relationship” exception and the “state-created danger” theory of liability. Id. at 907. Under the state-created danger theory of liability, “[i]f a state actor affirmatively creates the danger which harms a plaintiff or renders him or her more vulnerable to that danger, it may be liable under § 1983 even though the state actor itself does not directly harm the plaintiff.” Collier by Collier v. William Penn School District, 956 F. Supp. 1209, 1215 (E.D. Pa. 1997). Although the school defendants contend that plaintiffs have failed to state a claim under the special relationship exception outlined in DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189 (1989) at its progeny, the plaintiffs make it clear that they are proceeding under the state-created danger theory of liability.

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<sup>2</sup> The school defendants do not contend that Smith and Nathans are not state actors in their respective positions as the athletic director of the school district and the coach of the Marple Newtown wrestling team. Thus, if the plaintiffs have sufficiently pled a deprivation of Louis Sciotto’s constitutional rights, their claim under § 1983 will survive the motion to dismiss of the school defendants.

In Kneipp v. Tedder, the Court of Appeals for 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).<sup>3</sup> 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.

Kneipp, 95 F.3d at 1208. The Kneipp court also noted that a “deliberate indifference” standard had generally been employed by courts applying a state-created danger theory of liability. Id. at 1208.

In Morse, the Court of Appeals for the Third Circuit addressed “the question of what a plaintiff must plead in order to state a viable claim under the state-created danger theory.” 132 F.3d at 903. Thus, the Morse opinion provides guidance in resolving the pending motion to dismiss. To establish the first element of the state-created danger theory, the harm ultimately caused must be a foreseeable and fairly direct result of the state actors’ actions. See Morse, 132 F.3d at 908. The plaintiffs allege that the school defendants knew or should have known that allowing college wrestlers in a much higher weight class to wrestle younger, lighter high school wrestlers could result in injury to Louis Sciotto. In addition, the plaintiffs allege that Louis Sciotto’s injury was a direct result of the school defendants’ actions. Based on the allegations of

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<sup>3</sup> The development of the special relationship exception and the state-created danger theory since DeShaney has been detailed in many opinions in this circuit and need not be repeated here. See, e.g., Kneipp, 95 F.3d at 1204-1208.

the complaint, this Court cannot conclude that as a matter of law the harm suffered by Louis Sciotto was not foreseeable to the school defendants or that the injury to Louis Sciotto was not a fairly direct result of the school defendants' actions. The plaintiffs may be able to produce evidence supporting their allegations such that a reasonable jury could conclude that it was foreseeable that the school defendants' acts of permitting and encouraging adult wrestlers to participate in the high school wrestling team practices, specifically of directing and encouraging defendant Fendler to wrestle high school wrestlers whose weights were considerably less than his, could cause the injury that Louis Sciotto suffered and that the school defendants' actions were the fairly direct cause of the injury. Thus, the plaintiffs have sufficiently pled the first prong of the state-created danger test.

To satisfy the second prong of the test, that the state actors acted with willful disregard for or deliberate indifference to the plaintiff's safety, the defendants' actions "must evince a willingness to ignore a foreseeable danger or risk." Morse, 132 F.3d at 910. The plaintiffs allege that on numerous occasions prior to January 10, 1997, the school defendants were warned against the use of adult wrestlers at the high school practices, but that they continued inviting the adult wrestlers to participate despite complaints about this practice or custom. (Complaint ¶¶ 13-14, 25). Such actions, the plaintiffs allege, constitute willful disregard and/or reckless indifference to Louis Sciotto's safety. Taking the allegations of the complaint as true, I conclude that a reasonable jury could find that the harm to Louis Sciotto was a foreseeable result of the school defendants' actions, as explained above, and that based on the warnings and complaints that the school defendants received, they knowingly proceeded with this foreseeable danger or risk. Thus, I conclude that the plaintiffs have sufficiently pled that the school defendants acted with

willful disregard or deliberate indifference to Louis Sciotto's safety.

The third element of the state-created danger test in Kneipp requires that the plaintiffs establish a relationship between the state and Louis Sciotto; such a relationship may be based upon the state actors' placing "a discrete plaintiff vulnerable to a foreseeable injury." Mark, 51 F.3d at 1153.<sup>4</sup> A plaintiff need not always allege that the defendants had knowledge that the particular plaintiff had been placed in danger; it may be sufficient to allege that the plaintiff belongs to an identifiable and discrete class of persons subject to the harm. See Morse, 132 F.3d at 913-14. Under either pleading requirement, the plaintiffs' allegations that a particular danger existed to Louis Sciotto (Complaint ¶ 26) and that Greg Fendler was instructed and encouraged to wrestle lighter high school students, a class of persons to which Louis Sciotto belonged, on January 10, 1997 (Complaint ¶¶ 15-16) are sufficient for the third element of the test. (Complaint ¶¶ 15, 26).

The fourth element of the Kneipp test is whether the defendants used their authority to create an opportunity which otherwise would not have existed for the specific harm to occur. In Morse, the Court of Appeals for the Third Circuit 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." 132 F.3d at 915. The school defendants argue that the plaintiffs cannot establish this element because Louis Sciotto was a voluntary participant in the wrestling practices. However, I conclude that the plaintiffs could prove, if the allegations of the complaint are taken as true, a set

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<sup>4</sup> The requirement of a relationship in this context is different than the relationship element of the "special relationship" exception originated in DeShaney. See Morse, 132 F.3d at 910.

a facts to support their allegations that would demonstrate that the school defendants' acts of encouraging and permitting college wrestlers of a heavier weight class to wrestle lighter, younger high school wrestlers and compelling the younger student athletes to engage in such activity placed Louis Sciotto closer to the ultimate harm he suffered, increased his risk of harm, or made him more vulnerable to danger than his participation in wrestling practice would have otherwise. (Complaint ¶ 27). See Morse, 132 F.3d at 915. Thus, plaintiffs have sufficiently plead the fourth element of the state-created danger test.

#### **IV. CONCLUSION**

Based on the foregoing analysis, I conclude that the plaintiffs have sufficiently plead a claim under the state-created danger theory of § 1983. Accordingly, the motion of the school defendants to dismiss will be denied.

An appropriate Order follows.

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<b>SCIOTTO on behalf of LOUIS</b>	:	
<b>SCIOTTO, a Minor, as his parents and</b>	:	
<b>natural guardians,</b>	:	
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<b>Plaintiffs,</b>	:	
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<b>v.</b>	:	
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<b>MARPLE NEWTOWN SCHOOL</b>	:	
<b>DISTRICT, JAMES SMITH, STU</b>	:	
<b>NATHANS, and GREG FENDLER,</b>	:	
	:	
<b>Defendants.</b>	:	<b>NO. 98-2768</b>

**ORDER**

**AND NOW**, this 9<sup>th</sup> day of February, 1999, upon consideration of the motion of defendants Marple Newtown School District, James Smith, and Stu Nathans to dismiss (Document No. 9), the response of plaintiffs John Sciotto and Catherine P. Sciotto, on behalf of Louis Sciotto, a Minor, as his parents and natural guardians (Document No. 12), the supplemental memorandum of law of the defendants (Document No. 16), and the response of the plaintiffs to the defendants' reply memorandum (Document No. 17), and based on the reasoning given in the foregoing Memorandum, it is hereby **ORDERED** that the motion of defendants is **DENIED**. As the Court has determined that oral argument was not necessary for the just, speedy, and inexpensive determination of this motion, the request by the defendants for oral argument is **DENIED**.

**IT IS FURTHER ORDERED** that defendants Marple Newtown School District, James Smith, and Stu Nathans shall answer the complaint no later than **March 9, 1999**.

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**LOWELL A. REED, JR., J.**