

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

MATTHEW C. HOLMES, a Minor by
DENISE HOLMES and RICHARD HOLMES,
his Guardians,
Plaintiff,

v.

LINDA ELIAS, ALFRED STIRBA, III,
JERRY B. STOUT, and
INTERMEDIATE UNIT NO. 21,
Defendants.

Civil Action
No. 96-534

MEMORANDUM

Gawthrop, J.

July 10, 1997

In this case, involving the alleged physical abuse of a young special-education student, Intermediate Unit No. 21 (the Carbon-Lehigh Intermediate Unit, or "Intermediate Unit"), Alfred Stirba, III, and Jerry B. Stout move for summary judgment against the plaintiff, Matthew Holmes, on his claims under the Civil Rights Act of 1871, 42 U.S.C. § 1983, against them. The defendants contend that he has presented no evidence that they violated his civil rights. The individual defendants also maintain that the doctrine of qualified immunity precludes any liability in their individual capacities for the alleged constitutional torts. The plaintiff responds that the defendants failed to protect him from teacher Linda Elias, and also failed to supervise her, she being the person who allegedly physically abused him. Upon the following reasoning, I shall grant the motion as to the claims against Mr. Stirba and Dr. Stout and the

failure-to-protect claim against the Intermediate Unit, but shall deny it as to the failure-to-train claim against the Intermediate Unit.

Background

The plaintiff, a mentally and physically disabled student, alleges that Linda Elias, his teacher and another defendant in this action, physically abused him while he attended a special education class run by the Intermediate Unit. Ms. Elias allegedly slapped the plaintiff, forced him to strike himself with a closed fist, pushed a desk into him, and withheld food from him. The Intermediate Unit had assigned three instructional assistants, or teachers' aides, to Ms. Elias's classroom to assist the students. One of these three aides, Linda Fulmer, an employee of Intermediate Unit No. 20 (the Colonial-Northampton Intermediate Unit), told her supervisor that Ms. Elias had abused the plaintiff. Ms. Fulmer's supervisor reported these allegations to the Intermediate Unit, and the Intermediate Unit responded by starting an investigation, immediately removing Ms. Elias from the classroom, and informing the Allentown Police of the allegations. The Intermediate Unit has since directed Ms. Elias to take further training, and it has permanently removed her from her former class.

Standard

Rule 56(b) provides that "[a] party against whom a claim . . . is asserted . . . may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof." Fed.R.Civ.P. 56(b). "[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). "Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" Id. at 327 (quoting Fed.R.Civ.P. 1).

Claims against the Intermediate Unit

A. Failure to Train or Supervise

The Intermediate Unit first argues that the plaintiff has presented no evidence that its policy or custom caused his alleged injuries.¹ It asserts that its policy prohibits corporal

1. The Intermediate Unit has pleaded sovereign immunity as an affirmative defense. A Pennsylvania intermediate unit, however, does not enjoy sovereign immunity under the Eleventh Amendment. See Arnold v. BLaST Intermediate Unit 17, 843 F.2d 122, 129 (3d Cir. 1988) ("BLaST is amenable to suit under federal law and state
(continued...)

punishment, so Ms. Elias could not have acted pursuant to policy even if she had struck the plaintiff. It also states that it has maintained an affirmative behavior management policy, as mandated by the Pennsylvania Department of Education, and has required employees to file written reports of any suspected cases of child abuse. The plaintiff responds that the Intermediate Unit's practice, custom, or policy of not training its employees caused his injury. I conclude that a genuine issue of material fact exists about whether the Intermediate Unit's alleged failure to train Ms. Elias caused the alleged harm.

The Civil Rights Act of 1871 creates a federal cause of action that enables individuals to seek relief in a federal forum against those persons who, under color of state law, have deprived them of federally secured rights. See 42 U.S.C. § 1983. The Act applies to municipalities. See Monell v. Department of Soc. Servs., 436 U.S. 658, 690 (1978). "Our analysis of the legislative history of the Civil Rights Act of 1871 compels the conclusion that Congress did intend municipalities and other local government units to be included among those persons to whom § 1983 applies," but only for intentional torts committed pursuant to official municipal policy. Id. at 690-91.

Municipalities may not incur vicarious liability under § 1983 for the torts of their employees. Municipalities may face liability, however, if the "execution of a government's policy or

1. (...continued)
tort law").

custom, whether made by its lawmakers or by those whose edicts or acts may be fairly said to represent official policy, inflicts the injury." Id. at 694. In other words, § 1983 may render a municipality liable if the municipality's own policies or customs, undertaken with deliberate indifference to federally secured rights, cause injury. The municipality must commit the constitutional tort "itself."

Failure to train employees can constitute a "policy" sufficient to render a municipality liable under § 1983. City of Canton v. Harris, 489 U.S. 378, 380 (1989). "Only where a failure to train reflects a 'deliberate' or 'conscious' choice by a municipality--a 'policy' as defined by our prior cases--can a city be liable for such a failure under § 1983." Id. at 389. Barring relatively unusual circumstances, however, proof of a single deprivation of civil rights cannot render a municipality liable under § 1983. See Board of County Commissioners of Bryan County v. Brown, --- U.S. ----, ----, 117 S.Ct. 1382, 1391 (1997)(citing Canton, 489 U.S. at 390)("In Canton, we did not foreclose the possibility that evidence of a single violation of federal rights, accompanied by a showing that a municipality has failed to train its employees to handle recurring situations presenting an obvious potential for such a violation, could trigger liability").

The plaintiff has presented evidence that the Intermediate Unit failed to train its employees in the proper use of corporal punishment. Plaintiff's expert, Dr. Kenneth Thurman,

reports that although the Intermediate Unit had policies for such issues as corporal punishment, it had no techniques for training its employees in those policies. See Op. of S. Kenneth Thurman, Ph.D., at 7-8. A municipality may incur liability for a failure to train even in circumstances in which the governmental policy in question satisfies constitutional standards. See Canton, 489 U.S. at 387. Consequently, a genuine issue of material fact exists regarding the adequacy of Ms. Elias's training.

B. Affirmative Duty to Protect

The plaintiff also contends that the Intermediate Unit breached its affirmative duty to protect him. Because the plaintiff has not demonstrated that a special relationship existed between the Intermediate Unit and him, the Intermediate Unit had no duty to protect him from Ms. Elias.

In certain circumstances, state actors have affirmative obligations of care to persons in their custody. See Estelle v. Gamble, 429 U.S. 97 (1976)(Eighth and Fourteenth Amendments require state to provide medical care to persons in its custody); Youngberg v. Romeo, 457 U.S. 307 (1982)(Fourteenth Amendment requires state to ensure reasonable safety of involuntarily committed mental patients). Nevertheless, "[t]he affirmative duty to protect arises not from the State's knowledge of the individual's predicament or from its expressions of intent to help him, but from the limitation which it has imposed on his freedom to act on his own behalf." DeShaney v. Winnebago County

Dep't of Soc. Servs., 489 U.S. 189, 200 (1989). "[I]t is the State's affirmative act of restraining the individual's freedom to act on his own behalf--through incarceration, institutionalization, or other similar restraint of personal liberty--which is the 'deprivation of liberty' triggering the protections of the Due Process Clause." Id.

A school student's relationship with the state, however, differs significantly from that of a prisoner. Ingraham v. Wright, 430 U.S. 651, 670 (1977). A child may return home after school and the child's parents remain his primary caregivers. Id. In Stoneking v. Bradford Area Sch. Dist., 882 F.2d 720, 725 (3d Cir. 1988)(Stoneking II), the Third Circuit abandoned its earlier decision imposing an affirmative duty on school officials to protect students from sexual abuse by teachers. See Stoneking v. Bradford Area Sch. Dist., 856 F.2d 594, 601-602 (3d Cir. 1988)(Stoneking I), vacated sub nom. Smith v. Stoneking, 489 U.S. 1062 (1989). The court did find that the school supervisors could be liable, but on the theory of failing to supervise and train their employees, state actors who had allegedly abused the students. See Stoneking II, 882 F.2d at 725. "'[A]n affirmative constitutional duty to provide adequate protection' must be confined to cases in which a person is taken into state custody against his will." Fialkowski v. Greenwich Home for Children, Inc., 921 F.2d 459, 466 (3d Cir. 1991)(quoting Stoneking II, 882 F.2d at 723)(voluntarily committed patient not in state custody).

Attendance at a public school does not create the "special relationship" between the school district and student that would impose on the district an affirmative duty to protect the student. D.R. by L.R. v. Middle Bucks Area Vocational Tech. Sch., 972 F.2d 1364, 1370-73 (3d Cir. 1992). Despite compulsory attendance laws, parents decide where the education of their children will take place. Id. at 1371. Absent an adjudication of delinquency or dependency, a state cannot compel parents to send their children to schools it runs. See Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary, 268 U.S. 510, 535 (1925)("The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only"). Parents remain their children's primary caregivers and have the authority to remove their children from class. See D.R. by L.R., 972 F.2d at 1371. "In the case of special education students, the parents have even greater involvement since they must approve the precise educational program developed for their child." Id. "[C]ompulsory school attendance laws coupled with the in loco parentis authority of public school officials" do not create "a 'special relationship' between those school officials and their students." Black by Black v. Indiana Area Sch. Dist., 985 F.2d 707, 713 (3d Cir. 1993).²

2. Other circuits have concurred with the Third Circuit's
(continued...)

A special relationship must exist between the plaintiff and the state before the state incurs a duty to protect the plaintiff from either third parties or state actors. See Shaw by Strain v. Strackhouse, 920 F.2d 1135, 1144 (3d Cir. 1990)(state has affirmative duty to protect involuntarily institutionalized patient from state actors). Other circuit courts have found that

2. (...continued)

conclusion that school attendance does not create a special relationship sufficient to impose on school officials an affirmative duty to protect. For example, the Sixth Circuit has held that, despite compulsory attendance laws and the in loco parentis authority of school officials, "the Due Process Clause does not impose an affirmative constitutional duty on the School Board to assume the responsibility of protecting its students against the unconstitutional acts of its employees." Doe v. Claiborne County, 103 F.3d 495, 510 (6th Cir. 1996). See also J.O. v. Alton Community Unit Sch. Dist. 11, 909 F.2d 267, 272 (7th Cir. 1990)(cited with approval in D.R. by L.R., 972 F.2d at 1373)(school officials have no affirmative duty to protect student from sexual molestation by teacher); Maldonado v. Josey, 975 F.2d 727, 731 (10th Cir. 1992), cert. denied, 507 U.S. 914 (1993)(compulsory school attendance law did not give rise to affirmative duty to protect in situation where teacher failed to prevent fatal cloak room accident); Dorothy J. v. Little Rock Sch. Dist., 7 F.3d 729, 732 (8th Cir. 1995)(school attendance not so restrictive as to impose duty to protect on school officials in circumstance in which one student attacked another); Wright v. Lovin, 32 F.3d 538, 540 (11th Cir. 1994)(voluntary school attendance did not create custodial relationship); Sargi v. Kent City Bd. of Educ., 70 F.3d 907, 910-11 (6th Cir. 1995)(compulsory attendance law does not create special relationship where child died from seizure on school bus); Doe v. Hillsboro Indep. Sch. Dist., 81 F.3d 1395, 1405 (5th Cir. 1996), rehearing en banc granted June 17, 1996)(no affirmative duty to protect student from school custodian).

The Fifth Circuit had earlier found that school officials had an affirmative duty to protect school students from sexually abusive teachers. Doe v. Taylor Indep. Sch. Dist., 975 F.2d 137, 145 (5th Cir. 1992), vacated, 15 F.3d 443 (1994). After rehearing en banc, the court found possible liability under a failure-to-supervise theory alone, not an affirmative duty to protect. See Doe v. Taylor Indep. Sch. Dist., 15 F.3d 443, 454 (5th Cir. 1994).

compulsory school attendance laws create no special relationship sufficient to impose on school officials a duty to protect students from other state actors. See J.O., 909 F.2d at 272; Doe v. Hillsboro Indep. Sch. Dist., 81 F.3d at 1405; Doe v. Claiborne County, 103 F.3d at 510. In fact, the Fifth Circuit has held that "[t]he special relationship doctrine is properly invoked in cases involving harms inflicted by third parties, and it is not applicable when it is the conduct of a state actor that has allegedly infringed a person's constitutional rights." Leffall v. Dallas Indep. Sch. Dist., 28 F.3d 521, 529 (5th Cir. 1994).

At bar, none of the evidence creates the inference that a special, custodial relationship existed between the Intermediate Unit and the plaintiff. Instead, the evidence establishes that the plaintiff's parents remained his primary caregivers throughout the period in question.³

Claims against Mr. Stirba and Dr. Stout

A. Individual Supervisory Liability

3. In the absence of a special relationship with the plaintiff, the Intermediate Unit had no duty to protect him from Ms. Elias. The facts in this case differ from those in C.M. v. Southeast Delco School District, 828 F.Supp. 1179, 1189 (E.D. Pa. 1993), which held that school officials who had ignored reports of a teacher's sexual abuse of a student had an affirmative duty to protect the student. Here, the evidence demonstrates that the aides in Ms. Elias's class told no one else at the Intermediate Unit about Ms. Elias's alleged earlier physical abuse of students. The Intermediate Unit learned of the alleged abuse only after the incidents in question took place, and thus had no affirmative duty to protect the plaintiff from his teacher.

Mr. Stirba, one of the Intermediate Unit's supervisors, and Dr. Stout, the Intermediate Unit's director, argue first that the plaintiff has not presented evidence suggesting that they violated his civil rights. The plaintiff responds that Mr. Stirba and Dr. Stout, along with the Intermediate Unit, failed to train and supervise Ms. Elias, Ms. Helffrich, and Ms. Dopera. I conclude that none of the evidence suggests that Mr. Stirba and Dr. Stout acted with deliberate indifference or that any of their acts or omissions caused the plaintiff's injuries.

School officials may incur liability under § 1983 if they, "with deliberate indifference to the consequences, establish[] and maintain[] a policy, practice or custom which directly cause[s a plaintiff's] constitutional harm." Stoneking II, 882 F.2d at 725. "[O]fficials may not with impunity maintain a custom, practice or usage that communicate[s] condonation or authorization of assaultive behavior." Id. at 730. Nevertheless, they may not face vicarious liability for the constitutional torts of their subordinates. While Stoneking II involved sexual, as opposed to physical, abuse, the court noted that sexual molestation, as "an intrusion of the schoolchild's bodily integrity[,]" does not differ substantively "for constitutional purposes from corporal punishment by teachers."⁴ Id. at 727. Discouraging and minimizing reports of misconduct by

4. The court did state, however, that though "some view teacher inflicted corporal punishment" as acceptable, "a teacher's sexual molestation of a student could not possibly be deemed an acceptable practice." Stoneking II, 882 F.2d at 727.

teachers can constitute the condonation or authorization of assaultive behavior. See id. Nonetheless, "the mere failure of supervisory officials to act or investigate cannot be the basis of liability." Id. (citing Chinchello v. Fenton, 805 F.2d 126, 133-34 (3d Cir. 1986)). "[A] plaintiff must do more than show that the defendant could have averted her injury and failed to do so." Black by Black, 985 F.2d at 712.

The difference between the fact patterns in Stoneking II and Black by Black demonstrates that the negligent failure to discover abuse, by itself, does not constitute condonation or approval. In Stoneking II, the evidence showed that the principal and assistant principal had "received at least five complaints about sexual assaults of female students by teachers and staff members." Stoneking II, 882 F.2d at 729. The principal "recorded these and other allegations in a secret file at home rather than in the teachers' personnel files, which a jury could view as active concealment." Id. Continuing to give the accused teachers good reviews, the two school officials "discouraged and/or intimidated students and parents from pursuing complaints, on one occasion by forcing a student to publicly recant her allegations." Id. In other words, the officials had figuratively swept reports of misconduct under the rug and attempted to protect their employees from the consequences of the employees' conduct. The case abounded with cover-up.

In Black by Black, grade-school students sued Superintendent Laird for his alleged failure to supervise a school bus driver who had sexually abused them.⁵ See Black by Black, 985 F.2d at 711-12. When Laird had earlier been confronted with a report of an assistant principal's misconduct, he had "immediately transferred the assistant principal, pending investigation, to a job where he would have no contact with students." Id. at 712. Laird again acted quickly after receiving a complaint about a school bus driver, the very same driver whose conduct gave rise to the Black by Black case itself. He launched an investigation that uncovered no wrongdoing by the bus driver. See id. The court held that, "given Laird's response to the incidents, a finder of fact could not award judgment to the plaintiffs on a Stoneking theory." Id. Although the plaintiffs claimed that Laird should have conducted a more thorough investigation of the driver, the court held that, "[i]n order to establish deliberate indifference on the part of the defendant, 'something more culpable [must be shown] than a negligent failure to recognize [a] high risk of harm' to plaintiffs." Id. at 712-13 (quoting Colburn v. Upper Darby, 946 F.2d 1017, 1025 (3d Cir. 1991))(alteration in original). See also Chincello, 805 F.2d at 133 (courts of appeals that have

5. Although his school district did not employ the accused bus driver, Superintendent Laird apparently had supervisory authority over the driver. The court evaluated his conduct under a Stoneking II theory of supervisory liability. See Black by Black, 985 F.2d at 712.

imposed supervisory liability "have found liability only where there are both (1) contemporaneous knowledge of the offending incident or knowledge of a prior pattern of similar incidents, and (2) circumstances under which the supervisor's inaction could be found to have communicated a message of approval to the offending subordinate")(citations omitted).

There is nothing of record that Mr. Stirba and Dr. Stout condoned Ms. Elias's alleged behavior: they received no reports of her, or other teachers', physical abuse of school children. The record instead demonstrates that the two aides who had allegedly witnessed Ms. Elias's earlier corporal punishment of students told no one else at the Intermediate Unit about it. See Dep. of Barbara Dopera at 43, 69; Dep. of Linda Helffrich at 54. No conduct by Mr. Stirba or Dr. Stout discouraged the aides from voicing objections to Ms. Elias's alleged abuse of students. Asked why they told no one of the alleged abuse, the aides offered no explanation other than that they did not want to create controversy. See Helffrich Dep. at 64. The supervisors acted quickly to remove Ms. Elias from contact with students after Ms. Fulmer's supervisor informed them of the alleged abuse. Mr. Stirba supervised Ms. Elias, wrote annual reports about her, visited her classroom at various, unannounced times during the school year, and stayed for periods varying from a few minutes to over an hour. See Dep. of Dopera at 11-14. The plaintiff's expert opines that Mr. Stirba should have engaged in more of a "continual dialogue" with Ms. Elias, but this criticism creates

at most an inference of negligence, not of deliberate indifference. Op. of Thurman at 8. Even evidence that, in his investigation of a subordinate, a public educator has "'failed by a large margin to meet the standard of care of reasonably prudent educators". . . "will not support an inference of deliberate indifference on the part of [the educator]." Black by Black, 985 F.2d at 713 n.3. This critical opinion cannot and does not show that Mr. Stirba condoned or encouraged Ms. Elias's allegedly abusive behavior.

Assuming arguendo that Mr. Stirba's failure to adopt the "formative approach"⁶ of the plaintiff's Dr. Thurman to supervision could constitute deliberate indifference, I see no evidence suggesting this alleged neglect actually caused the plaintiff's injuries. See Canton, 489 U.S. at 391 ("respondent must still prove that the deficiency in training actually caused the police officers' indifference to her medical needs"). Dr. Thurman writes that he thinks his approach could lessen the likelihood of "behaviors like those alleged of Ms. Elias." Op. of Thurman at 8-9. He does not link Mr. Stirba's conduct to the harm suffered.

There is no evidence that the personal acts or omissions of Dr. Stout caused the plaintiff's injuries. Nor did

6. According to Dr. Thurman, the formative approach to supervision involves the structured supervision of a teacher's classroom and a continual dialogue between the supervisor and the teacher in which the supervisor provides feedback to the teacher. See Op. of Thurman at 8.

Mr. Stirba or Dr. Stout fail to train Ms. Elias, Ms. Dopera, or Ms. Helffrich. The "fail[ure] to make a showing sufficient to establish the existence of an element essential to [a] party's case, and on which that party will bear the burden of proof at trial," mandates the entry of summary judgment. Celotex Corp., 477 U.S. at 322. Consequently, the record lacks evidence of essential elements of the plaintiff's claims against Mr. Stirba and Dr. Stout.

B. Affirmative Duty to Protect

The plaintiff also asserts that Mr. Stirba and Dr. Stout had an affirmative duty to protect him from Ms. Elias and that the court should hold them to the professional-judgment standard, not the deliberate-indifference standard.

As I discussed above, absent a custodial relationship, school officials have no constitutionally mandated affirmative duty to protect their students. Nor does the professional judgment standard applied in Wendy H. v. City of Philadelphia, 849 F.Supp. 367, 372 (E.D. Pa. 1994), here apply, since that standard only applies to professionals obligated to protect persons under state care. See id. See also Youngberg, 457 U.S. at 321-22 (1982); Shaw, 920 F.2d at 1147.

C. Qualified Immunity

Mr. Stirba and Dr. Stout further contend that the doctrine of qualified immunity shields them from liability for

the plaintiff's civil rights claims. The plaintiff responds that they did not fulfill their duties to protect him. Because Mr. Stirba and Dr. Stout have shown that their conduct did not violate any rights of which a reasonable official would have known, they are qualifiedly immune under § 1983.

"[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). This standard involves a fact-specific inquiry. See Anderson v. Creighton, 483 U.S. 635, 641 (1987). "[T]he question is whether a reasonable public official would know that his or her specific conduct violated clearly established rights." Grant v. City of Pittsburgh, 98 F.3d 116, 121 (3d Cir. 1996)(citing Anderson, 483 U.S. at 636-37)(emphasis in original).

An official may act reasonably even where the plaintiff claims deprivation of a clearly established federal right. Here, the plaintiff certainly had a substantive due process right to bodily integrity of which Mr. Stirba and Dr. Stout reasonably should have known at the time of the alleged incidents. See Metzger by Metzger v. Osbeck, 841 F.2d 518, 520 (3d Cir. 1988). Nevertheless, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." Anderson, 483 U.S. at 640. For

example, a school superintendent acted reasonably despite ignoring reports of sexual misconduct by teachers. See Stoneking II, 882 F.2d at 731. His failure to respond to the reports demonstrated "mere 'inaction and insensitivity.'" Id. (quoting Commonwealth of Pennsylvania v. Porter, 659 F.2d 306, 337 (3d Cir. 1981)(en banc), cert. denied, 458 U.S. 1121 (1982)). The superintendent deserved qualified immunity because the record revealed no "affirmative acts by [him] on which [the plaintiff] can base a claim of toleration, condonation or encouragement of sexual harassment by teachers which occurred in one of the various schools within his district." Id.

No evidence indicates that either Mr. Stirba or Dr. Stout knew or should have known that Ms. Elias or other teachers had physically abused students. They in no way discouraged employees, parents, or students from reporting alleged misconduct. See id. at 730. In fact, official policy directed their employees to report suspected abuse. The officials' affirmative acts complied with federal law. Although the plaintiff's expert states that Mr. Stirba should have taken a different approach to his supervision of Ms. Elias, a supervisor may act reasonably with respect to constitutional rights despite his negligence, or "mere 'inaction and insensitivity.'" Id. at 731. Mr. Stirba never condoned or encouraged Ms. Elias's alleged abuse of her students. Additionally, the record establishes that Dr. Stout acted diligently when confronted with Ms. Fulmer's report of Ms. Elias's alleged misconduct. He immediately removed

her from the classroom and required her take further training. Therefore, both Mr. Stirba and Dr. Stout have shown that their conduct met established standards of which they reasonably would have known.

An order of the UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MATTHEW C. HOLMES, a Minor by
DENISE HOLMES and RICHARD HOLMES,
his Guardians,
Plaintiff,

Civil Action
No. 96-534

v.

LINDA ELIAS, ALFRED STIRBA, III,
JERRY B. STOUT, and
INTERMEDIATE UNIT NO. 21,
Defendants.

ORDER

AND NOW, this day of July, 1997, for the reasons described in the accompanying memorandum, the Motion for Partial Summary Judgment on the plaintiff's civil rights claims against the Intermediate Unit No. 21, Alfred Stirba, III, and Jerry B. Stout is GRANTED on the duty-to-protect claim as to all three defendants and on the duty-to-supervise claim as to Jerry Stout and Alfred Stirba, but DENIED as to the Intermediate Unit. JUDGMENT is entered for Stout and Stirba against the plaintiff on the plaintiff's civil rights claims and for the Intermediate Unit and against the plaintiff on the plaintiff's duty-to-protect claim.

BY THE COURT:

Robert S. Gawthrop, III, J.