

Administrators Not Liable for Student's Drug Overdose Death

It was a nightmare for college administrators and parents. A freshman student, Michele Bash, was found dead in her dormitory room, her death apparently caused by a drug overdose. She had enrolled at Clark University in Massachusetts and had been experiencing some difficulty adjusting to college life. The university had placed her on academic probation, and at least one incident of intoxication had been reported by campus police. Bash's parents had found indications in her online journal that she had been using illegal drugs and communicated that information to college officials. After initial denials, the student finally acknowledged to administrators a one-time-only use of heroin. The Dean of Students reported this information to Bash's parents and told them that she would eliminate heroin from the campus. A month later Bash died after taking heroin.

Bash's father sued Clark and several college administrators for negligence in failing to protect her and prevent her death and for misrepresentation. The latter claim was based on the Dean's assurance to the parents and on a student handbook statement that the University would "ensure the health and safety of the individuals who are living and learning" at Clark. Four of the officials filed counterclaims contending that it was the parents' failure to act that was responsible for Bash's death.

In response to a motion to dismiss the claims filed by these administrators, the trial court ruled that they were not liable. With regard to the alleged misrepresentation, the court held that general health and safety statements in a student publication are not sufficient to create enforceable promises.

A more difficult issue was presented by the negligence claim. The court acknowledged that, as a general rule and in the absence of some "special relationship," a university has no duty to protect students from conditions that it did not create. Colleges no longer act *in loco parentis*, in the sense of having a "parental-like" duty to oversee and protect students. In an earlier Massachusetts case, university officials were found to have a special relationship because they were part of a student's treatment team, were aware of the student's suicidal tendencies, and could reasonably anticipate a suicide attempt. *Shin v. MIT*, No. 02-0403 (Mass.Super.Ct. Jun. 22, 2005). Here, the officials did not have that degree of involvement with Bash and there was no reason to foresee her self-destructive behavior:

[T]hough there is ample evidence to suggest that Ms. Bash was homesick, or looked mad and upset, without additional facts, the risk of death or serious injury resulting from a drug overdose was not so plainly foreseeable that a special relationship existed between the student and the university. In addition . . . this court has grave reservations about the capacity of any university to undertake measures to guard against the risk of a death or serious injury due to the voluntary consumption of drugs . . .

A motion to dismiss the case against Clark and the remaining defendant administrators is pending.

In assessing university officials' liability for failing to protect a student from himself/herself or others, courts are continuing to focus on such key factors as the officials' involvement with the student, whether harm is reasonably foreseeable, and whether reasonable preventive measures were available. While there is no general affirmative duty to protect students, a duty may arise in a given case depending on the results of a careful review of the facts in the context of the foregoing factors.