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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS
SHORT-FORM ORDER**

Present: Arthur W. Lonschein, Justice IA Part 9

**Crystal Stoudmire, Infant by her Mother and
Natural Guardian, Gwendolyn Stoudmire,
and Gwendolyn Stoudmire, Individually,**

Plaintiffs,

-against-

**The City of New York and The Board of
Education of the City of New York,**

Defendants.

Index Number..25017/97

Motion Date...8/29/2000

Motion Cal.
Number.....89

Trial Cal.
Number.....

The defendants move to dismiss the plaintiff's action, which claims defendants were negligent in failing to protect the plaintiff from an assault by a fellow student. The defendants have moved for summary judgment. The motion is granted, and the complaint is dismissed.

At the time of the incident complained of, the infant plaintiff was a student at Cardozo High School. Following a classroom altercation with another student, Cherise Young (spelled by the defendants as Sherice Young), the infant plaintiff was brought into the Dean's office, together with Ms Young. There was a further altercation, during which Ms Young pushed the infant plaintiff through a plate glass partition, causing injury.

As to the defendant City of New York, it is clear that no liability may attach, as the City does not own or operate the schools. That is the function of the Board of Education.

As to the defendant Board, the allegation is of a failure to exercise sufficient supervision. It is well settled that schools are not insurers of the safety of the students, and are not liable for every incident in which a student injures another (Garcia v City of NY, 222 AD2d 192). They do, however, owe a duty to adequately supervise their students, and will be held liable for damages resulting from the failure to do so (see, Mirand v City of NY, 84 NY2d 44). This normally requires a showing that the school had actual or constructive notice of prior acts of the student causing the injury. An injury caused by the impulsive, unanticipated act of a fellow student will not give rise to a finding of negligence unless the school had notice of prior conduct that would have put a reasonable person on notice to protect against the injury-causing act.

Here, the school clearly had notice that the two students had been involved in a classroom argument, which would have put it on notice that a further argument might ensue. Whether the actions taken by the school are adequate are generally questions of fact (Garcia v City of NY, supra). Here, however, there is uncontroverted deposition testimony from the school Dean that the two girls were brought into his office in order to obtain each girl's side of the story, and that he thought that he "could mediate the problem and deal with it." In fact, his testimony was that he was in fact

attempting to mediate the dispute when the two girls began arguing again. It was his testimony that the infant plaintiff stood up and moved towards Ms Young, who pushed her into the partition. This happened within a matter of seconds. The plaintiff offers no testimony to dispute that the Dean was supervising the situation when she herself initiated the further confrontation with Ms Young, or that the situation turned from a relatively peaceful mediation into a physical confrontation very quickly.

This uncontroverted testimony establishes as a matter of law that there was no failure to supervise. It cannot be viewed as unreasonable for a school official to attempt to mediate a dispute which, however loud it may have been in the classroom, had not yet become physical. No grounds are offered to support the argument that the Dean should have foreseen that a violent confrontation would follow.

Moreover, even if the immediate presence of the Dean is somehow viewed as inadequate supervision, the rapidity with which the confrontation occurred compels the conclusion that no amount of supervision could have prevented it. This breaks the causal nexus between the supposed lack of supervision and the injury (see, Convey v. City of Rye School Dist., ___ AD2d ___, 710 N.Y.S.2d 641).

Dated: November 17, 2000

J.S.C.