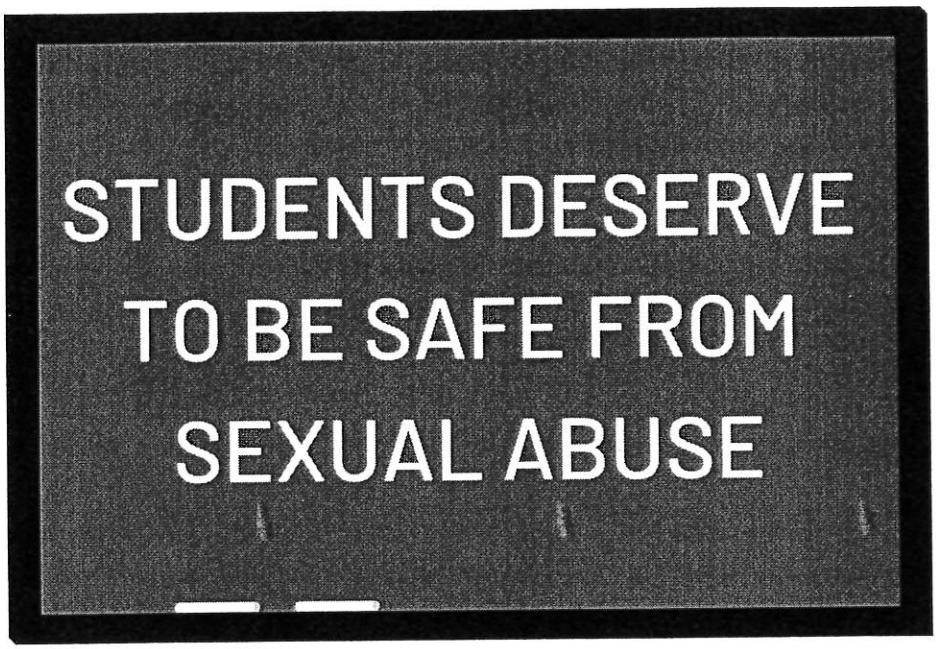
HB391

Modifications to Governmental Immunity Provisions



1

Schools must have a policy prohibiting sexual abuse of students

2

The policy must be reasonably calculated to protect students from sexual abuse

3

Schools must take reasonable measures to enforce their policy prohibiting sexual abuse

HB391

House Sponsor: Ken Ivory
Senate Sponsor: Deidre Henderson

2017 UT App 221

THE UTAH COURT OF APPEALS

DAVID DRAKE LARSEN,
Appellant,
v.
DAVIS COUNTY SCHOOL DISTRICT,
Appellee.

Opinion
No. 20160099-CA
Filed November 30, 2017

Second District Court, Farmington Department
The Honorable John R. Morris
No. 150700222

Erik M. Ward, Lindy W. Hamilton, and Robert W. Gibbons, Attorneys for Appellant

Sean D. Reyes and Peggy E. Stone, Attorneys for Appellee

JUDGE RYAN M. HARRIS authored this Opinion, in which JUDGES KATE A. TOOMEY and JILL M. POHLMAN concurred.

HARRIS, Judge:

¶1 Plaintiff David Drake Larsen alleges that in 2013, when he was sixteen years old, one of his high school teachers (Teacher) initiated a romantic relationship with him, beginning with "flirtatious conversations" and text messages, and eventually culminating in sexual intercourse. In 2015, Larsen sued the Davis County School District (the District), asserting that the District was negligent in its hiring, supervision, and retention of Teacher, and seeking recovery for damages he claims to have sustained as a result of his relationship with Teacher. The district court dismissed Larsen's lawsuit, determining that the District was immune from suit pursuant to the Governmental Immunity Act of Utah (the Act). Because we conclude that the Act, under either

CONCLUSION

¶41 It might seem counterintuitive that our law provides no civil remedy against a school district that is alleged to have negligently hired and retained a teacher who has illegal sexual contact with her minor students. But this conclusion is, in our view, compelled by the Act and by Utah Supreme Court precedent.

¶42 Decades ago, after reluctantly dismissing a somewhat similar case, our supreme court invited legislative action by noting its "sympath[y]" toward citizens in Larsen's position, and by declaring that it is "unfortunate that any parent who is required by state law to send his or her child to school lacks a civil remedy against negligent school personnel who fail to assure the child's safety at school." *Ledfors v. Emery County School Dist.*, 849 P.2d 1162, 1167 (Utah 1993). In the intervening years, however, our legislature has not amended the Act to expressly provide for such a remedy. Under the language of the Act—under either one of two possible interpretations, and as the Act has been interpreted by our supreme court—the District is entirely immune from suit for the acts alleged here. Accordingly, the district court correctly dismissed Larsen's complaint.

¶43 Affirmed.