

School Safety Alert

School Hit With \$11M Ruling for Failure to Protect Student From Attacks

Peter Page
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Witnesses testified that at least 50 students crowded around the assault before a teacher arrived

A rural school district in upstate New York has been hit with an \$11.4 million judgment for failing to protect a female high school student who was beaten by three school mates minutes after she asked an assistant principal for protection.

The judgment is the latest of several tort litigation losses nationally by school districts.

Crystal Shelby, now 22, suffered brain injuries from a May 1995 beating by three girls in the hallway of Le Roy High School, located about 25 miles from Rochester, N.Y.

"The lessons here for school districts are: 'Don't disregard a student who asks for help,' and 'You have to be effective in your discipline,'" said plaintiff's counsel Terry D. Smith of Smith, Keller, Miner & O'Shea of Buffalo, N.Y. "The girls who assaulted Crystal were three hard cases who had been disciplined and suspended time and again."

According to attorneys on both sides, the night before the assault Shelby had an argument with the three girls, who explicitly threatened to attack her the following day in school. The following morning Shelby told assistant principal Neil O'Brien that she had been threatened but he took no action and told the girl to proceed to her homeroom. During the liability phase of the bifurcated trial the jury found O'Brien had acted with reckless disregard for Shelby's safety.

The three girls attacked Shelby in the hallway, beating her head with a padlock and slamming her headfirst into a wall.

She suffers hydrocephalus, a condition known in lay terms as water on the brain and characterized by dangerous pooling of fluid in the cranium. She has endured seven hospital stays and six brain surgeries to treat the condition, according to Brian Mahoney, who represented Shelby along with Smith.

Shelby has two shunts in her cranium to drain fluid. She suffers persistent cognitive difficulties.

Defense counsel Paul Riordan of Osborn, Reed & Burke of Rochester, N.Y., said the school district's case was hamstrung when testimony about the exchange of words the night before was excluded. Riordan declined to detail the incident but said "fighting words" were exchanged that

would have given the jury a different view of the case. He also contended that Shelly did not tell O'Brien the reason for the threats.

"Excluding that testimony hurt our defense," he said. "Without the jury hearing what was spoken the night before, the plaintiff looked like an innocent victim and our theory was she instigated this. There is an issue of comparative fault because the plaintiff did not fully portray what happened the night before, so the assistant principal did not have a heightened sense of concern."

Smith said that the three girls stated in pretrial hearings within months of the assault that Shelby had made racially derogatory comments that inflamed them. Judge Kevin Dillon excluded the testimony on the grounds it was prejudicial and had been given long ago, Smith said. "The three girls could not even agree between themselves about what was said and they lied about everything else," he said.

Riordan contended that hallway supervision at the time of the assault was adequate, though he acknowledged that the defense was undermined by the admission that two of three teachers who should have been in the hall were not present. Witnesses testified that at least 50 students crowded around the assault before a teacher arrived.

Smith said an early ruling that bifurcated the trial into separate liability and award phases complicated the plaintiff's case. "The first jury got no information about the severity of her injuries and the second jury got no information about the basis of liability," he said.

Riordan said that Shelby is an A student at a community college and said the district will appeal the judgment as disproportionately large for her disability. *Shelby v Le Roy Central School District*, Case No. 45151 (Genesee, Co., N.Y., Sup. Ct.).

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