

## Progressive Discipline Comparative Analysis

### Objective

The objective of this risk management review is to analyze recent national court decisions involving families suing their child's school districts for failure to adequately supervise and protect their child. This will allow the School District Advisory Committee to develop specific risk management best practices, products and services to either prevent or mitigate future losses for Connecticut school districts based on lessons learned.

### Descriptions of *Dextraze v. Bernard*<sup>1</sup> and *Gambrill v. Bd. Of Educ. Of Dorchester Cnty*<sup>2</sup>

Incident	Dextraze v. Bernard	Resulting School District Action	Gambrill v. Bd. Of Educ. Of Dorchester Cnty	Resulting School District Action
1	Between October 2020 and January 2011, Student A was the aggressor in a "number instances of misbehavior, including conduct that violated the school's sexual harassment and anti-bullying policies."	Student A received no progressive punishment beyond detention.	On October 25 <sup>th</sup> , S. was attacked by two students while in class with a substitute teacher. The attack resulted in a concussion to S. and, during this time, S. also told school administrators that she was having issues with two other students as well.	The school completed a Student Behavior Report for each of the two aggressors in the attack, ultimately resulting in in-school suspensions. School administration also met with S. and her parents to change S.'s schedule to minimize contact with the students S. identified.
2	In January 2011, another complaint was filed against Student A.	Student A received a suspension from school.	In late November, one of the violent aggressors of the October 25 <sup>th</sup> attack "walked out in the hall without permission to verbally attack [S.] who was standing in line across the hall ... saying, 'come on and fight me' and other inappropriate words."	School administration again issued the student an in-school suspension and also arranged for external mediation between S. and the student, at which both students' mothers were present.
3	In April 2011, Student A was exhibiting significant behavioral problems, including involvement in a fight during this month.	No behavioral plan was developed for Student A.	In mid-December, another student grabbed S. by the neck and flipped her backwards. S. struck her head on a table, resulting in another concussion.	This happened under the supervision of another substitute teacher who, according to S.'s family's complaint, "ignored it because [he] was complaining of a headache."
4	In November 2011, Student A pushed a student in the hallway.	Student A received a three-day suspension.	When S. returned to school on December 19 <sup>th</sup> , she yelled at the student from the previous incident and "ran up and punched [the student] in the face."	School administration completed behavior reports for both students and issued each a two-day out of school suspension. On December 20 <sup>th</sup> , S.'s parents notified the Board of Education of their concerns regarding S.'s safety at school. To ensure S.'s safety going forward, the administration (1) issued S. a "flash pass" that she could use to immediately go to guidance or administration if she felt a conflict may escalate; (2) changed her locker location upon the parents' request; (3) changed her schedule as requested; and (4) continued to pursue external mediation as a possible solution.
5	January 2012, Student A assaulted Student B in the hallway, breaking Student B's jaw in two places and dislocating his teeth.	The school referred Student A to support services in the form of a school psychologist.	On January 17 <sup>th</sup> , another student reported that S. threatened to fight her and bumped into her on purpose.	School administration spoke to both students and issued a school-based "cease and desist."
6			On January 23 <sup>rd</sup> , nurse's records indicate that another student hit S.	Unknown.
7			On January 25 <sup>th</sup> , S. was sent to the school nurse after eating lip balm and hand sanitizer. S. claimed that students dared her, but the teacher who sent S. to the nurse said that she "didn't believe anyone dared [S.]. I believe [S.] did this all on her own to get attention. [S.] was causing a major disruption, and unfortunately, she was enjoying every bit of it."	None.

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<sup>1</sup> *Dextraze v. Bernard*, [https://casetext.com/case/dextraze-v-bernard?q=Dextraze%20v.%20Bernard&PHONE\\_NUMBER\\_GROUP=C&sort=relevance&p=1&type=case&tab=keyword&jxs=&resultsNav=false](https://casetext.com/case/dextraze-v-bernard?q=Dextraze%20v.%20Bernard&PHONE_NUMBER_GROUP=C&sort=relevance&p=1&type=case&tab=keyword&jxs=&resultsNav=false)

<sup>2</sup> *Gambrill v. Bd. Of Educ. Of Dorchester Cnty.*, [https://casetext.com/case/gambrill-v-bd-of-educ-of-dorchester-cnty?q=Brandon%20Gambrill%20v.%20Board%20of%20Education%20of%20Dorchester%20County&PHONE\\_NUMBER\\_GROUP=C&sort=relevance&p=1&type=case&tab=keyword&jxs=](https://casetext.com/case/gambrill-v-bd-of-educ-of-dorchester-cnty?q=Brandon%20Gambrill%20v.%20Board%20of%20Education%20of%20Dorchester%20County&PHONE_NUMBER_GROUP=C&sort=relevance&p=1&type=case&tab=keyword&jxs=)

## Descriptions of Dextraze v. Bernard and Gambrell v. Bd. Of Educ. Of Dorchester Cnty - *continued*

Incident	Dextraze v. Bernard	Resulting School District Action	Gambrell v. Bd. Of Educ. Of Dorchester Cnty	Resulting School District Action
8			On February 3 <sup>rd</sup> , S. went to the nurse after an altercation with the same student who instigated <b>Incident 3</b> . S.'s parents allege that no one notified them of this incident and, later on February 3 <sup>rd</sup> , S.'s father sent an email to the district expressing his disappointment.	The district responded to S.'s father's email saying, "[School administration] is still conducting the investigation ... At the same time, I have also talked to a couple of students and there was 'no creditable evidence' of any assault on the student." School administration's investigation then concluded that no teachers had witnessed the alleged incident.
9			Later in February, a student smashed a cupcake on S.'s face after S. was following her and others around, calling them names.	School administration issued the student an in-school suspension.
10			On May 8 <sup>th</sup> , the student from <b>Incident 2</b> ran out of her classroom, attacked S., and a full-blown fistfight ensued.	The student was suspended with a recommendation of expulsion, and law enforcement was notified.

Key Factors and other notable information Case #1

Key Factors and other notable information Case 2

## Comparative Analysis

The On May 10th, S.'s parents filed a five-count Complaint with the Circuit Court, alleging:

1. Violation of S.'s State constitutional right to a "thorough and efficient" education.
2. Violation of S.'s State constitutional right to due process.
3. Pattern of improper conduct.
4. Negligent hiring, training, retention and supervision.
5. General negligence against the teachers and their employer.

Counts 1 and 3 were voluntarily dismissed by the parents; the Circuit Court granted summary judgment as to the remaining counts, citing the Paul D. Coverdell Teacher Liability Protection Act of 2001.

The two scenarios discussed in this risk management review exhibit a dichotomy of approaches that school staff took to appropriately maintain order and discipline students for their behavior. The courts found that the school district in Scenario 1 had prior knowledge of the "poor conduct" of Student A, failed to adequately supervise him and intervene in a timely manner, and that this failure to supervise constituted a proximate cause of the subsequent assault.

Conversely, the school district in Scenario 2 were determined to take reasonable steps to increase supervision of S. and the other students involved in the ongoing harassing conduct and progressively disciplined the parties involved.

The Paul D. Coverdell Teacher Liability Protection Act of 2001, cited in Scenario 2, provides that no teacher in a school shall be liable for harm caused by an act or omission on behalf of the school if the teacher was acting within the scope of employment or responsibilities relating to providing educational services, subject to specified requirements and exceptions. This also limits punitive damages and liability for non-economic loss.<sup>3</sup>

The ruling in Scenario 2 explained that "the purpose of [the Paul D. Coverdell Teacher Liability Protection Act of 2001] is to provide teachers, principals, and other school professionals the tools they need to undertake reasonable actions to maintain order, discipline, and an appropriate educational environment ... No reasonable jury could conclude that the Defendants were negligent in supervising [S.] and other students ... [N]o reasonable jury could find that the ... defendant ... breached [its] duty to protect her from foreseeable harm."<sup>4</sup>

## Key Recommendations/Action Item

CIRMA Risk Management is seeking feedback from the School District Advisory Committee on the two scenarios presented, as well as on recommendations and best practices that Connecticut school districts can utilize to manage their liability. Following the meeting, any additional thoughts or comments should be directed to Ian Havens at [ihavens@ccm-ct.org](mailto:ihavens@ccm-ct.org).

For more information on this topic, please contact your CIRMA Risk Management Consultant. Visit our training schedule at [CIRMA.org](http://CIRMA.org) for a list of current training programs.

<sup>1</sup> <https://www.congress.gov/bill/107th-congress/senate-bill/316>

<sup>2</sup> Gambrell v. Bd. Of Educ. Of Dorchester Cnty., [https://casetext.com/case/gambrell-v-bd-of-educ-of-dorchester-cnty?q=Brandon%20Gambrell%20v.%20Board%20of%20Education%20of%20Dorchester%20County&PHONE\\_NUMBER\\_GROUP=C&sort=relevance&p=1&type=case&tab=keyword&jxs=](https://casetext.com/case/gambrell-v-bd-of-educ-of-dorchester-cnty?q=Brandon%20Gambrell%20v.%20Board%20of%20Education%20of%20Dorchester%20County&PHONE_NUMBER_GROUP=C&sort=relevance&p=1&type=case&tab=keyword&jxs=)