



That Would Never Happen to Us: Structural and Organizational Gaps that can Create Boundary Claims

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Where it's happened before: Alaska School Districts

- Matanuska-Susitna Borough School District
- Bering Strait School District
- Lower Kuskokwim School District
- Fairbanks North Star Borough School District



NOTABLE SETTLEMENTS

A look at student-on-student sex abuse verdicts, settlements

By Michelle R. Smith
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May 22, 2017

The Associated Press reviewed verdicts and settlements across the country in lawsuits brought against schools over student-on-student sexual abuse. Here are some notable recent cases:

HONOLULU

\$5.75 million settlement

This settlement with the state of Hawaii over alleged abuse at the Hawaii School for the Deaf and Blind is the highest known in a student-on-student school sex abuse case, according to Public Justice, a Washington, D.C., nonprofit law firm that tracks such cases. The class-action lawsuit, settled in 2013, contended officials at the only public school in the state for deaf and blind students knew about rapes and sexual abuse among students, failed to do enough to stop them and orchestrated a cover-up. The state denied the allegations. It said when it settled that it was instituting new procedures at the school.

MIAMI

\$5.25 million jury verdict

later settled for an undisclosed sum

The lawsuit brought against Downtown Miami Charter School alleged that an 11-year-old boy forced a 7-year-old boy to perform oral sex on him in the back seat of a transport van and that school officials failed to stop it from happening again. In testimony shown at the 2014 trial, the little boy said he was assaulted twice more in a bathroom after reporting what happened in the van. The second-grader later tried to commit suicide by walking into traffic with his eyes closed. The school said it took prompt, reasonable measures to prevent the children from interacting and argued it was not liable because it could not have foreseen what happened.

DES PLAINES, ILLINOIS

\$1 million in settlements

Five former students alleged that soccer coaches at Maine West High School allowed rampant inappropriate hazing by team members. Their lawsuit said they were sexually assaulted. Two coaches were fired, and one was charged with misdemeanor hazing and battery but not convicted. While it settled with the students for \$200,000 each in November 2016, the school board denied that the district had committed wrongdoing.

HUDSON, MICHIGAN

\$800,000 jury verdict

later settled for an undisclosed sum

A boy said he was sexually harassed and bullied for years by multiple other students beginning in middle school. During the ninth grade at Hudson High School, according to evidence presented at trial, he was assaulted in a locker room when another student rubbed his penis and scrotum against his neck and face. A jury in 2010 awarded the boy \$800,000. Both sides later reached a confidential settlement. A judge overturned the verdict, but the settlement stands.

RAINIERIDGE ISLAND, WASHINGTON

\$300,000 judge's verdict

A 15-year-old boy with Asperger's syndrome was sexually assaulted and harassed dozens of times for months by

HUNTSVILLE, ALABAMA

\$200,000 settlement

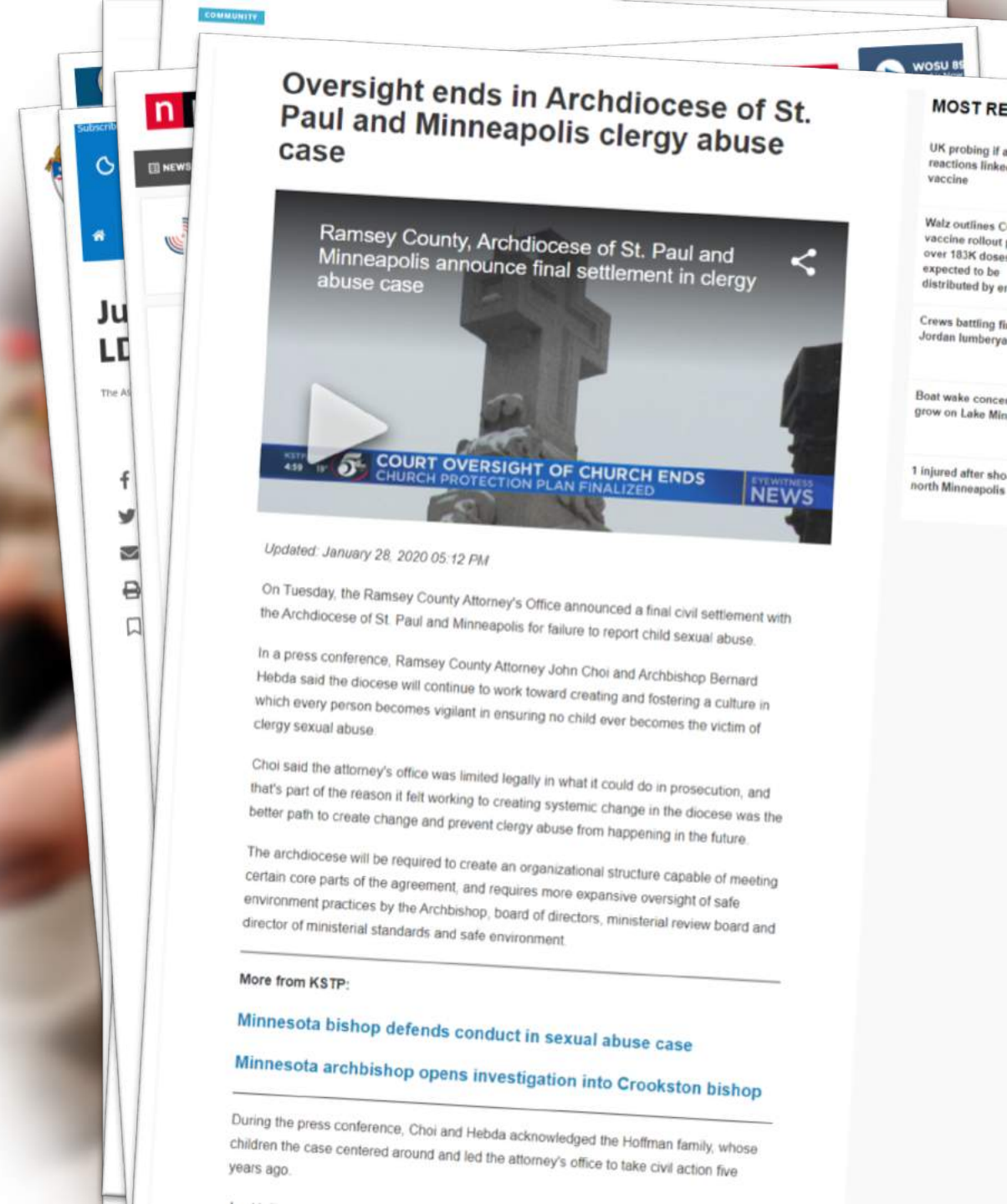
A federal court in Alabama blocked the case of a 14-year-old girl who said she was used as "rape bait" and assaulted in 2010 in a

Where it's happened before: Outside School Districts

- Los Angeles Unified School District
- Various School Districts – Honolulu, Miami, Des Plaines (IL), Hudson (MI), Huntsville (AL)

Where it's happened before: Non-School District Defendants

- Catholic Diocese of Fairbanks
- Boy Scouts of America
- The Church of Jesus Christ of Latter-day Saints
- Archdiocese of Minneapolis-St. Paul



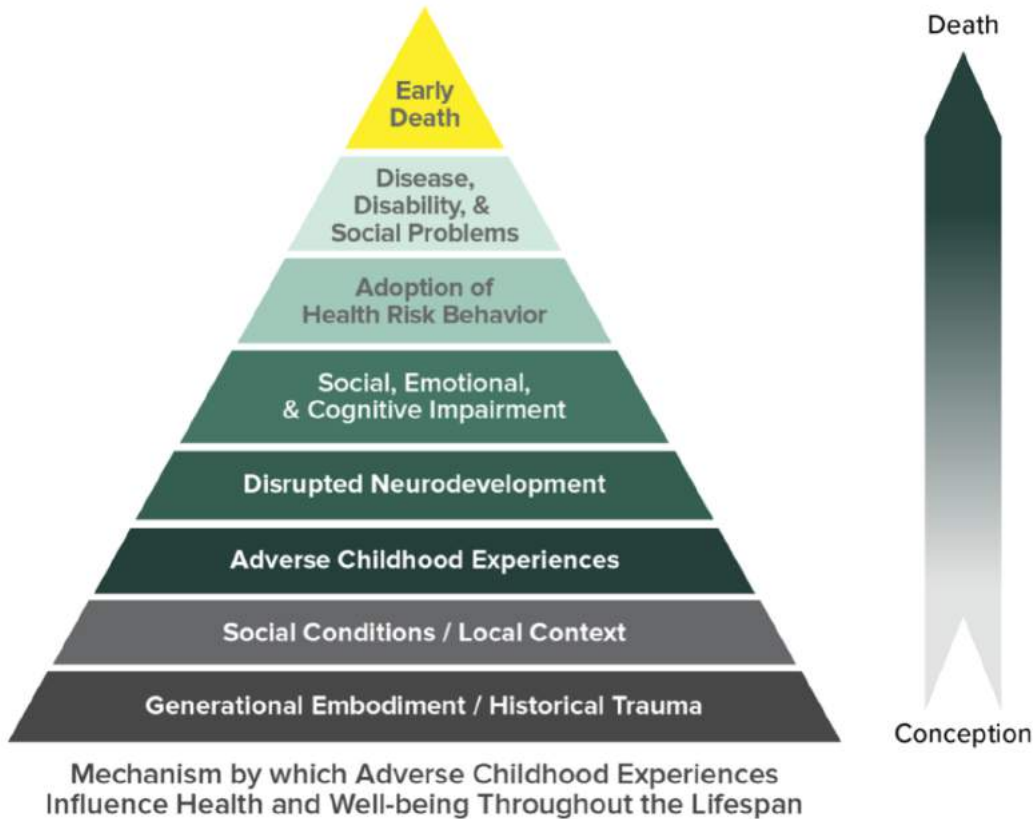


Elements of a Sexual Abuse Lawsuit against a School District

A. Negligence / Negligent Infliction of Emotional Distress.

1. School District had a duty to exercise reasonable care in the hiring, retention, and supervision of its employees.
2. School District breached its duty of care by failing to provide adequate oversight and supervision of employees, by failing to follow up on complaints appropriately, reasonably, and adequately about employees.
3. School District's breach of its duty of care constituted negligence and caused harm to plaintiffs. As a direct result of the negligence of the School District, plaintiffs suffered emotional distress, and other non-economic injury and loss.

Elements of a Sexual Abuse Lawsuit against a School District



B. Damages

1. Economic Damages include loss of future earnings, past and future expenses for medical and psychological treatment, therapy, and counseling without limit.
2. Non-economic Damages (“pain and suffering”) is limited to \$400,000 or \$1,000,000 if permanent physical impairment. AS 09.17.010.
3. Each incident of sexual abuse is a separate claim. *Kodiak Island Borough v. Roe*, 63 P.3d 1009, 1015-16 (Alaska 2003).
4. Punitive Damages (for outrageous acts or reckless indifference) limited to \$500,000 or three times the compensatory damages. AS 09.17.020.
5. Sexual Abuse can cause lifetime impact on victims.

What are the Gaps that Lead to Sexual Abuse of Students by Staff?

- A. Vulnerable Victims who do not make timely reports and who do not understand the abuse.
- B. Well-liked, charismatic abusers who appear to have good relationships with student victims. The sexual abuse is rarely sudden and usually occurs after prolonged grooming.
- C. Personal relationships between administrators and abusers.
- D. Lack of Physical Evidence to corroborate the report.
- E. Lack of Eyewitnesses.
- F. Abusers threaten student victims not to report the abuse.
- G. Abusers rarely confess to the abuse.



What are the Gaps that Lead to Sexual Abuse of Students by Staff?

- H. Parents or guardians conduct initial questioning of victims rather than a neutral, objective, trained interviewer, i.e., Child Advocacy Centers.
- I. Fear or Apprehension to make a report or to get involved—what if I'm wrong?
- J. Failure to Properly Respond to children's reports. Children will typically only report if they feel comfortable reporting it.
 - 1. Believe the child. Do not argue with the child. Remain calm. Remain open. Do not make promises to the child. Do not lie to the child.
 - 2. Report the suspected abuse. Should not investigate before reporting.
 - 3. Support the child. Be available to the child and make the child feel safe.
 - 4. Follow up. Make sure OCS and law enforcement are taking the report seriously.



How to Close the Gaps?

A. Training and Awareness on Sexual Abuse of Children and Mandatory Reporting Requirements

1. Mandatory Reporting Training—AS 47.17.022

(See <http://training.dhss.alaska.gov/mandatoryreporter/training/multiscreen.html>).

2. Who are Mandatory Reporters? AS 47.17.020

(See http://dhss.alaska.gov/ocs/Pages/childrensjustice/reporting/who_mr.aspx)

In July 2019, HB 49 was signed into law. It requires reports of suspected sexual abuse to OCS and law enforcement.

Report Child Abuse & Neglect

Child Abuse Hotline: 1-800-478-4444

or email: reportchildabuse@Alaska.gov

or fax: 907-269-3939

See also Mandatory Reporting App:

<https://dced.maps.arcgis.com/apps/webappviewer/index.html?id=fd93ecc4ae43457c85b84958f2dd2336>

§ 47.17.020. Persons required to report, AK ST § 47.17.020

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Alaska Statutes Annotated
Title 47. Welfare, Social Services, and Institutions
Chapter 17. Child Protection (Refs & Annos)

AS § 47.17.020

§ 47.17.020. Persons required to report

Effective: July 9, 2019
Currentness

(a) The following persons who, in the performance of their occupational duties, their appointed duties under (8) of this subsection, or their volunteer duties under (9) of this subsection, have reasonable cause to suspect that a child has suffered harm as a result of child abuse or neglect shall immediately report the harm to the nearest office of the department and, if the harm appears to be a result of a suspected sex offense, shall immediately report the harm to the nearest law enforcement agency:

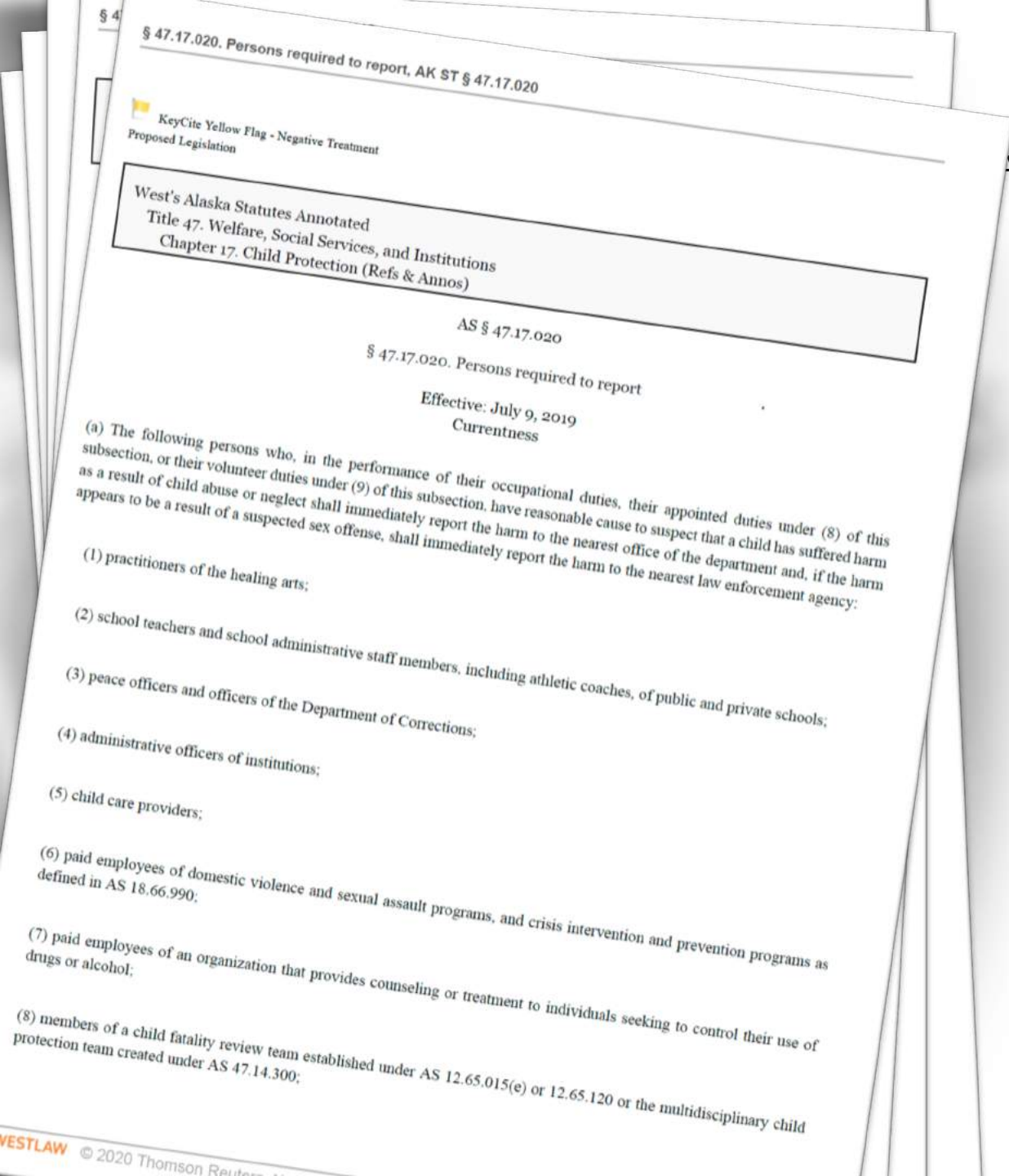
- (1) practitioners of the healing arts;
- (2) school teachers and school administrative staff members, including athletic coaches, of public and private schools;
- (3) peace officers and officers of the Department of Corrections;
- (4) administrative officers of institutions;
- (5) child care providers;
- (6) paid employees of domestic violence and sexual assault programs, and crisis intervention and prevention programs as defined in AS 18.66.990;
- (7) paid employees of an organization that provides counseling or treatment to individuals seeking to control their use of drugs or alcohol;
- (8) members of a child fatality review team established under AS 12.65.015(e) or 12.65.120 or the multidisciplinary child protection team created under AS 47.14.300;

How to Close the Gaps?

A. Training and Awareness on Sexual Abuse of Children and Mandatory Reporting Requirements

3. Reports of Harm are confidential. AS 47.17.040
4. Immunity from civil and criminal liability for making a timely report in good faith. AS 47.17.050
5. Failure to make a timely report of harm to OCS and to law enforcement is a class A misdemeanor.
AS 47.17.068
6. Do not investigate the complaint or concern before reporting it to OCS and law enforcement. AS 47.17.010
7. Must report to OCS and law enforcement if you have reasonable cause to suspect that a child has suffered harm from a suspected sex offense.

AS 47.17.020(a)





How to Close the Gaps?

A. Training and Awareness on Sexual Abuse of Children and Mandatory Reporting Requirements

8. What is “sexual abuse?” Any sexual activity between an adult and a child, including touching a child’s genitals, penetration, oral sex, sexual acts by force, indecent exposure, or production of child pornography. Also includes non-touching acts such as being naked together, mutual masturbation, showing pornographic materials, encouraging a child to engage in sexual acts with others, discussing sexual acts with a child, and being aroused by a child who is partially or fully undressed.
9. In general, “sexual abuse of a minor” requires a child under the age of 16 years old.



How to Close the Gaps?

A. Training and Awareness on Sexual Abuse of Children and Mandatory Reporting Requirements

10. Sexual abuse of a minor in the second degree.
 - a. If a person is in a “position of authority” in relation to a victim, and is at least 18 years old, it is sexual abuse of a minor to engage in sexual penetration with a person who is 16 or 17 years old and at least three years younger than the offender. AS 11.41.436(a)(6).
 - b. This includes consensual acts between a staff member and a student.
 - c. This is a class B felony for each act of sexual penetration. AS 11.41.436(b).
 - d. The penalty for a first offense is five (5) to fifteen (15) years for each sexual act. AS 12.55.125(i)(3)(A).
 - e. Requires registration as a sex offender for 15 years. AS 12.63.020(a)(1)(B).



How to Close the Gaps?

A. Training and Awareness on Sexual Abuse of Children and Mandatory Reporting Requirements

11. “Position of authority” means an employer, youth leader, scout leader, coach, teacher, counselor, school administrator, religious leader, doctor, nurse, psychologist, guardian ad litem, babysitter, or a substantially similar position, and a police officer or probation officer. AS 11.41.470(5).

12. Alaska Supreme Court: “The jury may consider a broader list of authority figures or roles, but the roles must be substantially similar, not slightly similar, to the list.” *State v. Thompson*, 435 P.3d 947, 955 (Alaska 2019).

13. A certificated employee may not engage in sexual conduct with a former student taught, coached or supervised by the employee, including for one year after the student graduates or ceases attending high school. 20 AAC 10.020. Code of Ethics and Teaching Stds.



How to Close the Gaps?

- B. Adopting and enforcing policies to prevent grooming behaviors.
 - 1. AASB Model Board Policy 5141.42 – Professional Boundaries of Staff with Students
 - 2. AASB Model Administrative Regulation 5141.42 – Boundary Invasions, Reporting Violations, and Administrative Follow Up.
 - 3. AASB Model Exhibit 5141.42.1 – School Employee Training Handout
 - 4. AASB Model Exhibit 5141.2 – Administrative Response Checklist



How to Close the Gaps?

- B. Adopting and enforcing policies to prevent grooming behaviors.
 - 5. AASB Model Exhibit 5141.2 – Administrative Response Checklist
 - a. Do not investigate the report before reporting.
 - b. Do not inform the employee of the report....CBA?
 - c. Report the allegations to law enforcement and OCS.
 - d. Contact insurer.
 - e. Contact legal counsel.
 - f. Develop plan.
 - g. Notify parent or guardian.
 - h. Administrative leave.
 - i. Develop communications plan.

II. FACTS AND PROCEEDINGS

Bret Maness alleges that the defendants committed a series of sexual assaults against him in the 1970s, when he was still a child. He further alleges that, although the defendants used a combination of date rape drugs and hypnosis to cause him to forget these incidents, he recovered memories of the assaults shortly before filing his complaint.

Maness filed a complaint in the Anchorage superior court on October 30, 2007, seeking “general and special” damages for “intentional and/or negligent torts” and intentional infliction of emotional distress. Defendants James Serfling, Michael Gordon, and Shelley Gordon deny all of his allegations.¹

Serfling and the Gordons moved for summary judgment on the ground that Maness’s claims are barred by the statute of limitations. Maness opposed their motions, arguing that, because he recovered repressed memories of the sexual assaults less than a year before filing his complaint, the discovery rule applies, and his claims are not time-barred. To rebut Maness’s argument, Serfling produced an affidavit from

demonstrates that there is no genuine factual dispute and that it is entitled to judgment as a matter of law.⁴ When considering an order granting summary judgment, we must draw all reasonable inferences from the facts in favor of the non-moving party.⁵ We review a grant of summary judgment de novo.⁶

[2] We review the superior court’s construction of the Alaska and federal Constitutions de novo.⁷

IV. DISCUSSION

A. Because Maness Did Not Support His Allegations Of Repressed Memory Syndrome With Expert Testimony, His Claims Are Time-Barred.

[3] [4] [5] Maness argues that his claims are timely under AS 09.10.065(a) and AS 09.10.140(b),⁸ which apply to claims based on sexual abuse or sexual assault. However, both of these statutes were enacted long after the events he describes in his complaint,⁹ and neither applies

Maness v. Gordon, 325 P.3d 522 (2014)

retroactively.¹⁰ Therefore, Maness’s claims are barred under the two-year statute of limitations for torts,¹¹ unless he can establish that the discovery rule applies.

*526 [6] Under the discovery rule, where an element of a claim is not “immediately apparent,” the statute of limitations does not begin to run until a reasonable person would have enough information to alert him that he “has a potential cause of action or should begin an inquiry to protect ... her rights.”¹² Maness alleges that, from the date the alleged sexual assaults occurred until shortly before he filed his complaint, he suffered from repressed memory syndrome, a psychological condition that blocked his access to memories of the assaults. Relying on caselaw from other jurisdictions, he argues that the discovery rule tolled the statute of limitations until he recovered the repressed memories.

[7] On appeal, Maness argues that requiring an indigent plaintiff “to hire an expert witness or suffer a summary judgment dismissal” violates the due process clauses of the Alaska and United States Constitutions. Accordingly, he asks that this court remand his case “with the instruction that Mr. Maness is not required to produce any expert affidavit or testimony.”

[8] Under both state and federal law, we analyze a due process claim by comparing the private interest involved and the risk of erroneous deprivation of that interest against the government’s interest, including the fiscal and administrative burdens of additional procedural safeguards.²¹

In this case, the private interest involved is the right of access to the courts to pursue a personal injury claim. This right is important but not fundamental.²² Accordingly, while courts

How to Close the Gaps?

C. Statute of Limitations.

1. In 2001, the legislature eliminated the statute of limitations for lawsuits based on any conduct which would constitute felony sexual abuse of a minor. AS 09.10.065(a).
2. In 2014, the Alaska Supreme Court ruled that the change to the statute of limitation is not retroactive. *Maness v. Gordon*, 325 P.3d 522, 525 (Alaska 2014).
3. Retain old insurance policies.

Questions?



Clinton M. Campion

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