

qualified Immunity Shields University From Suit

Holmes v. Poskanzer, LEXIS 13545 (N.D.N.Y. 2008)

42 U.S.C. § 1983, the civil rights statute that allows enforcement of the constitution against government officials, calls for injunctions and damage awards in response to violations of an individual's constitutional rights. The Supreme Court held, in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), that under the doctrine of qualified immunity, government officials are shielded from damage awards "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."

In *Holmes v. Poskanzer*, Northern District Judge Lawrence Kahn ruled that the State University of New York at New Paltz violated the due process rights of two students when they were denied counsel during a disciplinary hearing to advise them about possible self-incrimination issues, since the students were also facing criminal charges related to the incident.

Judge Kahn further ruled, however, that the University was protected from suit by the doctrine of qualified immunity. He found "no case law in the Second Circuit holding that a specific situation required the presence of counsel at a school disciplinary proceeding to satisfy due process. Accordingly, it would not be clear to a reasonable university employee that the procedures in place were insufficient and defendants are entitled to qualified immunity with regard to this issue."

Third Department Holds State Not Liable for Park Drowning

Cohen v. State, 2008 WL 879373 (N.Y.A.D. 3rd Dept. 2008)

Landowners generally have a duty to take reasonable precautions to prevent accidents that may occur as a result of dangerous conditions on their property. This duty attaches to the State for maintenance of its public parks. The duty does not apply, however, to natural geographic phenomena that "can readily be observed by those employing the reasonable use of their senses"□.

In the instant case, four camp counselors wandered approximately one quarter mile from a popular swimming hole to a natural whirlpool not connected to it by footpath. Recent heavy rain had swelled the waters there 15 feet higher than normal, significantly increasing the turbulence of the water. When one jumped in and had difficulty staying afloat, "[the remaining] decedents jumped in to save him. Tragically, all four young men drowned."

The Court noted that it was clear from the record that the counselors were aware of the risks presented by the turbulent currents of such a natural whirlpool. Relying on this and the fact that "the area was not easily accessible from the more commonly used main swimming hole" the Court found the "defendant did not owe a duty to neutralize the danger presented thereby."

## Court Dismisses Rape Victim's Negligence Action Against MTA

Doe v. City of New York, 2008 WL 957974 (NY 2008)

On December 19, 2002, between 9:00 P.M. and 10:00 P.M., a group of men attacked plaintiff and her boyfriend as they were walking along a ramp from Flushing Meadow Park to the Shea Stadium/Willets Avenue subway station. Following the initial attack, plaintiff was dragged down a stairway onto the train tracks, and then taken to what she described as a plastic tent on MTA/LIRR property that the perpetrators identified as their home. There, she was raped before the City police arrived in response to her boyfriend's 911 call. Plaintiff sued the City of New York and the Metropolitan Transit Authority/Long Island Railroad for negligence.

Where a public entity acts as a property owner or landlord, it owes the same duty to maintain its property as would a private landowner, including a duty to maintain property in a reasonably safe condition in light of all the circumstances. A public entity, however, cannot be held liable for the negligent performance of a governmental function unless the injured party has established a special relationship with the entity and, thus, a special duty exists to protect that individual.

The Court found the actions against both the City of New York and the Long Island Railroad are nullified by this immunity. The claim alleged against the City arose from the City's general program of providing security and police protection to members of the general public and therefore could not survive a motion for summary judgment. Likewise, the negligence action against the Long Island Railroad arose from its public policy of contracting with a public hospital to implement a homelessness policy and therefore was dismissed.

## 2nd Circuit Finds No Duty to Warn of Natural Slippery Condition on Jetty

Groom v. Village of Sea Cliff, 2008 WL 1903783 (N.Y.A.D. 2d Dept.)

During a visit to the beach, Jackson, plaintiff's minor child went to look for "fish bones and crabs" on the jetties that were located about thirty feet away from where the Groom family was setting up. The boy was injured when he climbed onto a moss covered portion of a natural concrete jetty. Falling, he was cut on the chest by seashells embedded into the seawall. Plaintiff conceded that the jetty was likely a longstanding natural phenomena predating her family's residence in Sea Cliff.

It is well established that "[a] landowner has a duty to exercise reasonable care in maintaining [its] property in a safe condition under all of the circumstances." In general, landowners have a duty to prevent the occurrence of foreseeable injuries. It is considered foreseeable that children will enter upon premises and "climb about and play" often in ways that imperil their safety. However, a landowner has no duty to warn against open and obvious conditions inherent to the nature of property that could be reasonably anticipated by those using it.

Plaintiff's expert testified that it would have been reasonable to enclose the area where the fall occurred with a fence. However, a landowner has no duty to erect barriers or fences in order to enclose

natural geographical phenomena that do not in some way represent latent dangers or conditions, so as to prevent persons coming upon the land from injuring themselves by entering onto the condition in question. Since plaintiff failed to produce any evidence dispelling inference that the slippery condition was an open and obvious natural condition putting those who climb upon it on notice of its danger, summary dismissal was upheld.

Morris Duffy Alonso & Faley (2008)