STUDENT AFFAIRS LAW

Who Is at Fault for Student Falls?

Dennis R. Black

Last year, a 23-year-old Boston University graduate student fell to his death from a third-story fire escape. He had apparently been drinking in his apartment and had joined friends on the fire escape. When his friends went back inside through the window, he stayed behind. Shortly thereafter, he was found dead on the sidewalk below. The *Boston Globe* reported that the death "was at least the sixth time in the past three years a Boston-area college student had died after falling from a building."

When a college student falls, who is to blame? Last year, courts in Kansas and New Jersey both considered cases of alcohol-related student falls from campus buildings.

University of Kansas

In fall 2003, a first-year student at the University of Kansas (KU) was assigned to a room on the seventh floor of a residence hall. As a 17-year-old resident, he and his mother signed a student housing contract that listed safety standards. The rules said residents had to leave the screen on the room's window and could not go out on the ledge.

But within two weeks, he fell from his residence hall room's window. With a blood alcohol content well over the legal drinking limit, he apparently went out on the ledge to smoke.

His parents brought a wrongful death action against KU contending that the residence hall ledge was in a dangerous condition and that the university was negligent for failing to correct the condition or properly warn their son of the danger. A trial court initially dismissed their claim, but his parents appealed in 2009.

The appeals court found the danger of a fall to be "known and obvious," not requiring further warnings. Even if the student lacked actual knowledge of the danger, "he had reason to know of the open and obvious danger which might result from climbing out of seventh-floor dormitory room window in order to stand upon a 2-foot-wide ledge several feet below the window." The university, as a landlord, did not have a duty to take steps to minimize the risk of this obvious danger, the court said.

The court also rejected the parents' in loco parentis argument that KU had further responsibilities to protect their son. In doing so, the court cited Nero, a 1993 Kansas Supreme Court case, which rejected the *in loco parentis* doctrine as "outmoded and inconsistent with the reality of contemporary collegiate life."

The appeals court also said Nero may be extended to reject any obligation on the part of a university to protect its students from their own reckless and negligent acts. As the University points out, to conclude otherwise would contradict Nero's admonition that "a university is not an insurer of the safety of its students."

Fairleigh Dickinson

A 21-year-old student at Fairleigh Dickinson University (FDU) in New Jersey stayed on campus during the summer of 2005 as a resident advisor. Although FDU housing policies banned all alcohol in residence rooms, regardless of the residents' age, the student was living in a suite where residents of age were permitted alcohol for personal consumption. Gatherings with visible alcohol, however, were not allowed, and residents could not make alcohol available for drinking games.

In late June 2005, the RA bought alcohol for a party in his room. About a dozen people, including the RA's underage friends, attended. The party included drinking games, and the intoxicated host was helped to bed by guests.

During the night, the RA must have leaned out his window; he fell to his death from the fourth floor. There had been no housing incident reports or calls to public safety about the party that night.

In 2010, the appellate division of the New Jersey courts considered claims from the RA's family, in which the family maintained that FDU's alcohol policies were inadequate and unenforced, leading to their son's death. At a jury trial, they were awarded $520,000 for his wrongful death. The judge, however, reduced the award by 50 percent. FDU appealed.

In its review, the appeals court concluded that there was not even an allegation that FDU or any of its agents engaged in willful or grossly negligent misconduct. A possibly inadequate alcohol policy or weakness in policy enforcement did not rise to that level of negligence, the court said.

The appeals court found that the student was a beneficiary of the "charitable work" of the school at the time of the fall. State law provided immunity from negligence in certain circumstances to allow organizations to continue to do their work. Since the acts or omissions of FDU were not willful, wanton, or grossly negligent, the New Jersey Charitable Immunities Act was applicable. The award to the family was reversed.

On alert

Although the institutions in the cases mentioned above were not found responsible for the student falls, the recent news from Boston reminds us that such falls are a continuing concern. Be aware of the potential and take steps on campus through design, caution, policy, and enforcement to try to protect certain students from themselves. ●