



Sudden Cardiac Arrest Association

POWER AND PASSION... SAVING LIVES

A recent article in the *Brooklyn Daily Eagle* reported that "Brooklyn appeals court limits liability of school in student's death" and featured a large photograph of an automated external defibrillator at the top of the article. This layout could potentially leave the impression in a reader's mind that the use of the defibrillator, or the lack of use of the defibrillator, might have been a factor in causing the death of a student.

The facts of this case are indeed tragic, but the legal lesson learned is very relevant to those of us who have been touched by sudden cardiac arrest and to help the public understand the legal protection given by the law to those who respond to cases of seemingly apparent sudden cardiac arrest. On September 13, 2006, Schermiela Palmer, an 11th grade student at Beach Channel High School in Queens, New York, was walking and running around a track in her physical education class. After completing a lap, Schermiela collapsed and died and her parents thereafter brought a wrongful death claim against the City of New York, New York City Board of Education and Beach Channel High School alleging, among other things, negligent supervision. The first claim was that the School's staff negligently supervised Schermiela prior to her collapse based upon a claim that her physical education teacher denied Schermiela's request to stop and rest after she completed the first lap. The Appellate Division, Second Department (an intermediate level Appellate Court in New York State) allowed the case to proceed to trial on these grounds as "Schools are under a duty to adequately supervise the students in their charge and they will be held liable for foreseeable injuries proximately related to the absence of adequate supervision."

Schermiela's parents further claimed, that the defendants were in violation of Education Law 917 (1) which, in part, states that "[s]chool districts... shall provide and maintain on-site in each instructional school facility automated external defibrillator "AED" equipment... to ensure ready and appropriate access for use during emergencies." (It is unclear from a reading of the decision itself as to

whether or not an AED was present on the school grounds, although the article describing the case states that "It appears from court papers that Beach Channel High School did not have an AED device on hand which, Palmer's parents say, would have save their daughter's life had one been readily available. As such, the parents' argument continued, the lack of an AED device contributed to the death of their child.") A basic principle of negligence law is that for a defendant to be liable, he or she must be negligent (failure to use that degree of care that a reasonable person under the same circumstances would exercise, that is doing something that a reasonable person would not do or failing to do something that a reasonable person would do) and that the negligence must be a proximate cause of the injury sustained by the plaintiff or the decedent. Under the facts of this case, the court found that "the defendants established that any alleged failure to provide ready and appropriate access to an automated external defibrillator (hereinafter AED) was not a proximate cause of the decedent's injuries" as there was evidence that Schermiela was breathing and had a pulse until seconds before EMS personnel arrived and the Court therefore dismissed the claim alleging a violation of Education Law 917(1). Furthermore, the defendants submitted evidence that an AED should not be used on an individual who is breathing and has a pulse and the plaintiffs failed to refute that evidence. The reported decision appears to be silent as to whether or not there was an AED present and available to be used, but the Court did not address that issue because it held that the failure to use the AED was not a proximate cause of Schermiela's death since she was breathing and had a pulse during the period of time in question. In essence, the Appellate Division Second Department allowed the case to go to trial on the issue of whether the defendants were negligent prior to the decedent's collapse solely on the issue of whether Schermiela was inadequately supervised prior to her collapse. The court dismissed that portion of the parents' claim of negligence dealing with the failure to use of an AED prior to the arrival of EMS.

Schermiela's parents additionally asserted that the school was negligent immediately following her collapse in failing to perform CPR, use an AED on the

decedent or timely call the 911 emergency telephone number. The court found that the defendants had submitted evidence that the school's staff did check to see if Schermiela was breathing and had a pulse (she did) and that she was breathing and had a pulse until seconds before EMS arrived. The defendants were further able to establish that CPR should not be performed on, or an AED used on an individual who is breathing and has a pulse and that 911 was promptly called.

This case points out the importance, especially amongst High School coaches, trainers and their staff, to have in place an Emergency Response Plan to properly prepare for emergencies such as this.

For those of us who have been touched by sudden cardiac arrest, it is important for the public to understand that liability arising out of the use of an AED is not easily, nor ordinarily, imposed by law, despite public perception to the contrary and that fear of liability is largely unfounded. In those circumstances where AEDs are deployed, lay rescuers are given legal protection from liability by State and Federal Good Samaritan Laws unless they are grossly negligent, which means that they have acted in wanton disregard for the safety of the individual who they are actually trying to save. Therefore, there is no ethical, moral, legal or public policy reason why AEDs should not be placed in as many locations as possible nor should there be any fear in attempting to use them in an attempt to save a life.

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