



BULLY FIGHTING

Parents of picked-on children take schools to court

By CHRISTIAN NOLAN

Few bullying cases have received more attention nationally than that of Phoebe Prince, an Irish teenager who attended school in South Hadley, Mass. – until she committed suicide earlier this year after being picked on by classmates.

Since then, parents, school districts and even lawyers have put more attention toward protecting young people from bullies. Massachusetts has enacted an anti-bullying law. Connecticut continues to update its law, which requires schools to offer anti-bullying instruction and control abusive behavior.

Nationally, lawsuits are popping up every month. But instead of suing the bully, many of the suits are filed by parents against the school districts for allegedly turning a blind eye. Prince's family is contemplating such an action.

Just last month, the Howard County Board of Education in Baltimore was sued by the parents of a sixth-grader who was continually shoved into lockers and stabbed with pencils.

In Ohio, Eric Mohat, 17, was continually the target of anti-gay slurs. One bully told him in class, "Why don't you go home and shoot yourself; no one will miss you." So Mohat did. Now his parents are suing school administrators in federal court for not stepping in.

Connecticut has not had any recent high-profile tragedies. But, in recent years, a number of lawsuits have been filed in which parents have accused school officials of failing to get involved when their son or daughter was bullied.

"There are going to have to be more cases as time progresses," said attorney Alyce Alfano of Klebanoff & Alfano P.C. in West Hartford, noting the high volume of inquir-



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Attorney Thomas Mooney said schools that take no action in response to a complaint are at greater legal risk than schools that suspend alleged bullies. 'Intervention is helpful from a liability standpoint,' he said.

ing parents calling their firm for advice.

Alfano typically represents families in disputes against boards of education. She said many bullying concerns are settled just by bringing the two parties together before a lawsuit is ever needed to be filed. "There's not a lot [of lawsuits] and we don't encourage filing lawsuits here unless there's no other way," said Alfano. "It's certainly not something a family with a kid who's been bullied wants to undertake."

Roughing The Kicker

Two of Alfano's clients, however, couldn't

reach any kind of resolution with the Berlin Board of Education. And there's still a chance it could become the first case of its type in Connecticut to go to trial.

Louise and Robert Dornfried, on behalf of their 17-year-old son, filed a lawsuit in 2006 accusing school officials of not protecting the teen from being bullied by his football teammates.

Dornfried, a kicker, claims he was harassed and physically bullied to the point he needed medical treatment for anxiety and emotional distress. He went to the team's

coach about the problem but was allegedly told to “toughen up” and that he was “too sensitive.”

According to the lawyer representing the Berlin Board of Education, Frederick O’Brien, of Hartford’s Regnier, Taylor, Curran & Eddy, the school board was dismissed as a defendant in 2008 after arguing that, as a governmental entity, it was immune from negligence claims.

There is an exception to governmental immunity doctrine; an injured plaintiff can bring a negligence suit against public officials if it can prove that an identifiable person faced imminent harm. But a judge ruled that the exception did not apply to a voluntary after-school program such as a football team, and he dismissed negligence charges against the Berlin coach, athletic director and school principal.

That left a recklessness claim. The defense attempted to have that dismissed as well, but New Britain Superior Court Judge Robert Young denied the motion earlier this month. Unless a settlement is reached in coming months, the case could go to trial.

With the recklessness claim, attorney Alfano is attempting to argue that the school officials were aware of the bullying but did nothing to stop it, an argument she said is crucial for any lawsuit that tries to hold school boards liable for bullying.

“The school, in order to be held responsible for ongoing acts of bullying, has to have known,” Alfano said. She added that liability stems from what the district did when it knew about the bullying, or what officials failed to do.

Alfano said parents and children have to directly bring bullying problems to school officials in order to later bring a claim, and “it’s difficult for a kid at any age to say this is what kids are saying to me.”

‘Blame The School’

Thomas Mooney, who leads Shipman & Goodwin’s school law practice in Hartford, said school districts have become very concerned about liability issues.

“It’s as much a concern over legal fees as it is damages,” said Mooney, whose firm represents 90 districts statewide. Mooney said

even a lawsuit that doesn’t get off the ground may still cost the district money for legal representation.

“Sometimes when there’s a [bullying] problem, it’s easier to bring a lawsuit and blame the school than anything else,” Mooney said. “Suing another family is not as likely to result in some sort of financial settlement.”

Mooney agreed that parents can circumvent the governmental immunity doctrine by proving that educators should have known a particular child faced imminent harm. That could happen, for example, if a school administrator is told that a threat had been made toward a student and does not address it at all, and then the bullied student is beaten up in the school hallway.

Conversely, Mooney said if the beating took place off school grounds, or the bullying occurred online over a period of time (so-called cyberbullying), then school officials would likely be exempt from liability because they could not know a student was facing immediate harm.

Mooney further explained that if educators take action, such as suspending a bully from school for a couple days, and another incident occurs later, the parents of the victimized child cannot claim in a lawsuit that the school did not address the matter. “Intervention is helpful from a liability standpoint,” said Mooney.

Mooney said it’s no coincidence that most of these bullying lawsuits settle or don’t make it to trial. He said it would be tough for plaintiffs to prove that specific bullying incidents took place in a certain time period, and that school officials should have known about them.

“These are very complex cases factually,” said Mooney. But, he added: “If [school districts] can’t get rid of a bullying case on a motion for summary judgment, it’s going to cost a great deal to litigate.”

Apology Offered

Other parents bringing bullying lawsuits in Connecticut have had mixed results.

In 2005, the Greenwich Board of Education settled with the parents of a child who was allegedly bullied even after complaints were made to school officials. The settlement did not include any monetary damages. “The

fact that they apologized is important because they needed to acknowledge that they didn’t handle this properly,” the girl’s mother said after the settlement.

In 2006, Superior Court Judge Angela Robinson dismissed a claim by the parents of a Hamden public school student for failing to address the bullying of their son in fourth grade.

The following year, the father of an elementary student who was bullied sued the town of Bethany and its board of education. The father claims the school was made aware of bullying but that at recess the child was hit in the back of the head with a ball.

The defendants attempted to dismiss the claim under the governmental immunity doctrine, but this time the judge sided with the plaintiffs, ruling that inadequate supervision might have put the child in imminent peril. The case is pending.

That same year, however, a judge ruled that the imminent harm exception should not apply in the case of Judith Scruggs, who sued Meriden school officials after her son committed suicide. The mother was later charged with criminal neglect for creating an unsafe and unhealthy home, but the charges were dismissed by the state Supreme Court.

Sonja Trainor, senior staff attorney for the National School Board Association, said courts nationwide are seeing more bullying lawsuits. “But there are not a lot of rulings and unfortunately very little guidance at the appellate level on how much liability school districts have,” Trainor said. She said 45 states now have anti-bullying statutes “so school districts are just sort of learning rules in the face of these regulations.”

Due to governmental immunity issues, Trainor explained that some lawyers file suit in federal court and allege discrimination – whether by race or sexual orientation. She said many of the claims get dismissed, though the federal judge tells the plaintiffs they can try again in state courts.

Alfano, the West Hartford plaintiff’s lawyer, says the lawsuits are being filed to raise awareness of bullying, not to make a quick buck. “Our goal is not to earn money for the families of bullied kids, it is to protect kids from being bullied,” said Alfano. ■