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N.J. Schools Sued Over Bullying Can Sue Pupils Responsible, Judge Says

By Charles Toutant

A school district sued under New Jersey's strict antibullying law may bring contribution claims against the students accused of harassing the plaintiff, a judge has ruled in a case of first impression.

Superior Court Judge Yolanda Ciccone denied a motion to dismiss third-party complaints against 13 students in a suit brought against the Hunterdon Central and Flemington-Raritan school districts under the Anti-Bullying Bill of Rights Act, N.J.S.A. 18:37-13.

The 17-year-old plaintiff, known in court papers as V.B., claims the school staff failed to address his complaints about being taunted for being overweight and for his perceived homosexuality.

Ciccone held that a contribution claim is available to the school districts under the Joint Tortfeasor Contribution Law even though the plaintiff brings only statutory claims and no tort claims.

The suit, *V.B. v. Flemington-Raritan Regional Board of Education*, includes a claim under the Law Against Discrimination for failure to accommodate the plaintiff's anorexia.

V.B. claims that while he attended school in the Flemington-Raritan district from 4th until 8th grade, fellow students twice "pantsed" him (pulling down his pants to expose his underwear). They also threw a plate of spaghetti on him in the lunchroom, threw kickballs at his groin in gym class and jabbed him sharply in the side of the abdomen to inflict pain. His mother repeatedly reported the harassment to school administrators but nothing was done, the suit says.

YOLANDA CICCONE

PHOTOS BY CARMEN NATALE

As he entered high school in the Hunterdon Central district, classmates made harassing comments on Facebook, which were removed after he contacted the social media site's operators. V.B. developed anorexia, for which he was hospitalized for three months as a 10th grader. He alleges high school administrators also took minimal actions to respond to his complaints about harassment. At the end of 11th grade, the school district decided to issue his diploma a year early in light of the ongoing harassment.

The suit did not name any of V.B.'s classmates as defendants, although it identified them by initials in a detailed recitation of the incidents of harassment. In bringing third-party complaints against the 11 students, the two school districts claimed that their parents were made aware of their children's conduct and that any failure to act may be deemed willful or wanton behavior. The school districts do not assert third-party liability under the LAD or the Anti-Bullying Act but state that the right of contribution exists under the Joint Tortfeasor Contribution Law whenever one party's injury is caused by the tortious conduct of two or more persons.

Lawyers for the third-party defendants asserted that there can be no contribution because they have not committed any common-law tort. They also asserted parental immunity, claiming the conduct of third-party defendants' parents did not rise to the level of willful or wanton failure to supervise their children.

Ciccone, the assignment judge for Hunterdon, Somerset and Warren counties, said the principles of joint liability allow school districts to seek contribution from those it failed to supervise when they are both responsible for the same harm.

Absent the school district's negligence, the third-party defendants' alleged negligence would not have occurred or would have been significantly limited, she said. "Both acts of negligence were required here for plaintiff to suffer harm," she noted.

Ciccone also said dismissal on the ground of parental immunity was not warranted because very little discovery

has been conducted in the case.

Steven Parness of Methfessel & Werbel in Edison, who represents one of the third-party defendants, says, "While we disagree with the ruling, we respect the court's decision and look forward to moving for summary judgment for our clients at the close of discovery."

Other lawyers for the third-party defendants did not return calls.

Jeffrey Schanaberger of Hill Wallack in Princeton, representing the Flemington-Raritan school district, says he came up with the idea of the third-party claims.

"Our pitch to the court was, had the plaintiff used these very same facts and pled a count for negligent supervision, there would be no question that a right of contribution existed," Schanaberger says. "Our argument was simply that the label the plaintiff chooses to put on this cause of action shouldn't control."

The lawyer for the Hunterdon Central district, Robert Gold of Gold, Albanese & Barletti in Morristown, says bringing the perpetrators into the case is "appropriate when you look at the source of the problem—it's these children who are allegedly abusing the one child."

PHOTO COURTESY OF ROBERT GOLD

ROBERT GOLD

Plaintiff lawyer Brian Cige, a Somerville solo, says the ruling "is going to complicate litigating the case. But beyond the facts of this particular case, I think it's going to send a positive message to parents and kids to be responsible."

David Rubin, a Metuchen lawyer who represents school districts and serves as antibullying coordinator for the Piscataway district, says the ruling leaves open the question of what legal standard those students and their parents can be held to.

"It's a decision, on the face of it, that involves a narrow legal issue, but one that could have widespread practical ramifications in the school community because it exposed the bulliers to potential liability as well," Rubin says. "And maybe if this decision stands, perhaps in some way it will encourage families to be more vigilant about their own children's behavior."

Rubin says the impact of the decision in individual cases would depend on whether an insurance carrier or a school district is calling the shots. Some school districts are reluctant to include children as witnesses in legal proceedings such as tenure hearings, even if it may help the district's position, he says. ■

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