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## Protective Parents Push School Districts Into Court

BULLYING LAWSUITS ON RISE, THOUGH PLAINTIFFS SELDOM PREVAIL

By ISAAC AVILUCEA

**B**ullying is not just an issue for schools anymore. It's an issue for the courts.

Legal experts say that, despite slim odds for success, a growing number of parents are pushing forward with lawsuits against school districts for damages stemming from their children's emotional or physical injuries in bullying cases.

"There is more litigation [relating to bullying] than when I started 30 years ago," said Patrice McCarthy, deputy director and general counsel at Connecticut Association of Boards of Education. "There seems to be more parental challenges, more a willingness to say, 'This must be someone else's fault.'"

One recently filed lawsuit is capturing the attention of Connecticut lawyers who focus on education law. The complaint filed in Hartford Superior Court against West Hartford claims that officials at Sedgwick Middle School did not implement and abide by sexual harassment policies adopted by the district's school board.

The lawsuit claims a student was bullied and sexually assaulted by classmates last year while changing for gym class. The suit accuses teachers at the school of causing the assaults to occur through their "negligence and carelessness" and claims the school officials "knew or should have known" that their failure to abide by the district's sexual harassment policy "would subject the minor to imminent harm."

Winona Zimmerlin, a Hartford attorney who specializes in education law, is not



Education attorney Thomas Mooney says that the rise of social media has made the issue of bullying in schools even more complicated.

involved in the case, but she studied the complaint out of interest. Zimmerlin found it noteworthy that Peter O'Keefe, the attorney for the student's family, made a specific claim of "deliberate indifference."

"It's not going to rise and fall on the bullying complaint," Zimmerlin predicted. But the claim, she said, of a deliberate indifference could be a tougher one for the school to defend against than typical bullying cases. "If school officials knew about the situation and didn't do anything about it, that would be a strong theory. This is an issue that could go to the state Supreme Court."

Overall, legal experts say, it's very difficult for parents to win suits against school districts or individual staff members or educators, as municipal entities and personnel are largely shielded from lawsuits because of

governmental immunity doctrines. In 2011, the General Assembly expanded the scope of school districts' responsibilities for maintaining safe learning environments. But Zimmerlin said lawmakers didn't include a provision for a private right of action when the bullying law was revised. Attorneys say a pair of recent Superior Court decisions have gone against parents who tried to sue school boards and district employees after alleging that their children were bullied and assaulted.

In 2013, for example, Paul and Lorraine Mazzo filed a 24-count lawsuit against Fairfield and its board of education for negligence and recklessness on behalf of their daughter, who was attacked by another student at Tomlinson Middle School. The Mazzo girl had been previously bullied by the student. A state court dismissed the lawsuit. "Neither the

plain text of the anti-bullying statute nor its legislative history suggest that the legislature intended to create a private right to action when it enacted the statute,” the judge wrote in dismissing the case.

Thomas Mooney, an attorney at Shipman & Goodwin and author of “A Practical Guide to Connecticut School Law,” said the antibullying statute was enhanced this year to cover previously ambiguous areas; still it doesn’t cover all possible scenarios. “Behavior is complex and to look at any behavior through a prism of definition is limiting,” Mooney said. “Answering the question, ‘Is this bullying?’ isn’t the end of the discussion.”

He noted the expanded use of social media complicates the issue. Bullies have a new way to demean and embarrass their victims, one more thing state law doesn’t specifically account for. “If someone taunted me and beat me up, it’s word of mouth,” he said. “Maybe no one else would know today. But you go on Facebook and say horrible things and everyone knows. It’s not that people are worse people; it’s that the implications are more profound.”

### **‘Knock It Off’**

The West Hartford case alleges the old-fashioned kind of bullying.

The lawsuit offers a number of examples of how the child was bullied, and accuses the school of failing to provide “reasonably safe” conditions. It focuses at one point on an April 24, 2013, incident while students were dressing for gym class. Three of the victim’s classmates allegedly yelled, “Let’s rape [the student].” They grabbed him, pulled him into an unlocked closet while he kicked and screamed in protest. Inside the closet, they sexually assaulted him, the lawsuit says.

While this was happening, a gym teacher barged into the closet and told the students to “knock it off,” but “took no steps” to stop the assault or protect the student, the lawsuit

says. It contends the student was bullied and sexually assaulted by the students a second time the next day. The lawsuit said gym teachers should have known the student was vulnerable to harassment and bullying.

The victim claims to have suffered bruises and scratches on his body and post-traumatic stress disorder. The alleged attackers were prosecuted and temporarily expelled from school. Meanwhile, the victim’s grades slipped and he is “still fearful of future incidents,” the lawsuit states.

## **In 2011, the General Assembly expanded the scope of school districts’ responsibilities for maintaining safe learning environments, but didn’t include a provision for a private right of action.**

The town responded to the lawsuit by claiming governmental immunity. It says the gym teachers weren’t negligent and the “unforeseeable criminal acts of others are a superseding cause that bars liability.”

According to Mooney’s book, there are three exceptions to governmental immunity in such cases: if school officials’ acts involved “malice, wantonness or intent to injure”; if a statute allows the lawsuit; or if “failure to act” results in “imminent harm” to an identifiable person.

McCarthy, the CABA deputy director, said the emphasis is on making teachers and students more aware of what constitutes bullying and its signs. She said school bullying isn’t a new phenomenon, but agreed the topic is getting more attention, in part because of some recent cases that grabbed national headlines.

In Steubenville, Ohio, in 2012, two members of a high school football team raped a

16-year-old girl who was passed out drunk from alcohol. The teens were convicted of the criminal act. But the cyberbullying occurred after the assailants’ friends recorded the sexual assault on a cellphone; soon, it was circulated on social media and through text messages. Taunted by peers and shamed by some community members who blamed her for ruining the football players’ lives, the girl saw her life irrevocably changed.

Connecticut had a similar case. In Torrington, two 13-year-old girls were sexually assaulted by former high school football players. The story attracted national attention when it was reported that the girls were called “whores,” mocked and derided by peers on Twitter.

Mooney pointed to a similar case winding its way through the New York State Court of Appeals and called it the proverbial “collision between First Amendment rights and bullying.”

“Right now, if you go on Facebook and say, ‘Tom Mooney is a dope,’ that could be bullying because you caused me emotional harm,” he said. “But you have the right under the First Amendment.”

Whether school bullying—in cyberspace or face-to-face in school buildings—has become more prevalent is hard to gauge empirically. The state Department of Education’s most recent available numbers, from 2012-13, show 1,431 instances of reported bullying in 148 school districts. A department spokeswoman said the number of bullying-oriented lawsuits aren’t tracked.

But despite the case law and the language of the state antibullying statute, Zimmerlin, the Hartford education lawyer, predicts there will be more lawsuits. “We’ve been hearing about them for 10 years,” she said. “There’s nothing like the threat of being sued for money damages that will make school officials sit up and listen.” ■