

School Safety Alert

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by Judy Greenwald

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Litigation Against School Districts Grows

In Reno, Nev., a gay former student who sued his school district, claiming sexual harassment, received a \$451,000 settlement earlier this month.

In Los Angeles, a teacher won a \$4.35 million jury award in March after she sued her school district, charging students sexually harassed her, though the school district was subsequently granted a new trial.

And in Florida, parents of a 14-year-old who was shot and killed by a classmate outside his school in 1997 won a \$1.6 million jury verdict against the Palm Beach County School District in February.

Sexual harassment and school violence are just two of the growing array of exposures for school districts nationwide. New federal legislation, special-needs children and mold are among some of the emerging issues that pose potential liability for schools, school districts and administrators these days.

Risk managers, insurance pool administrators and attorneys say that in addition to those factors, parents' fierce advocacy on their children's behalf, combined with today's litigious environment and the poor economy, is spurring more lawsuits.

The number of lawsuits is "definitely increasing," said Lee Lloyd, vp of underwriting and chief actuary at Chevy Chase, Md.-based United Educators, a Reciprocal Risk Retention Group. "I think the probability of parents filing lawsuits is much higher than it was five or 10 years ago. There is much less of a belief that teachers are performing in a manner in which they should."

There has been an increase in frivolous lawsuits characterized by "people looking to just get something for the sake of getting something," said Jim deSpelder, risk manager for Okemos, Mich.-based Middle Cities Risk Management Trust, an insurance pool and risk management organization.

The number of lawsuits filed against schools "ebbs and flows in the sense that new theories come down or new approaches, or something like Columbine happens and ... a new bunch of lawsuits are prompted by those kinds of actions," said Martin Semple, an attorney with Semple, Miller, DeLay & Mooney in Denver, who defends school districts.

Dave Harcum, president of the Columbus, Ohio-based Harcum-Hyre Insurance Agency, said while he does not have evidence schools are more of a litigation target than some other industries, "Our society is litigious, and when you're dealing with schools, you're dealing with kids, you're dealing with emotional kinds of things and (schools are) perceived as deep pockets," regardless of whether they in fact are.

"I think the frequency and severity of claims generally in the insurance industry is on the uptick again, so I can't think why schools should be immune from that," agreed Liz Chanzit, a principal with Tillinghast-Towers Perrin in Boston.

Sovereign immunity

Successfully suing schools is not necessarily easy for plaintiffs. Most states either grant public schools some degree of sovereign immunity from lawsuits or have caps, including prohibiting punitive damages, that may not make the expense of a lawsuit worthwhile to a claimant.

In the Florida school shooting verdict, for instance, Florida law limits each parent to no more than a \$100,000 award, said plaintiff attorney Adam Doner of Palm Beach

Gardens, Fla.-based Doner & Gordon. This means that

even if the \$1.6 million jury verdict is upheld on appeal, the Florida Legislature would have to pass special claims relief bill for the award to be taken out of the school budget and collected, he said.

In Michigan, plaintiffs can sue an individual school district employee, but not the district itself, and even then the lawsuit must prove gross negligence, which is a difficult hurdle to overcome, said plaintiff attorney Norman Tucker, of Southfield, Mich.-based Sommers, Schwartz, Silver & Schwartz. Two exceptions are injuries involving school buses and claims involving defects in school buildings, he said, noting the latter is hard to prove.

Piercing the shield

Even in cases where schools may be shielded by sovereign immunity, however, there are still ways plaintiffs get around that protection.

"They've tried to chip away at some of the protections," said Cheryl Sullivan, executive director of the Denver-based Colorado School Districts Self Insurance Pool, which insures 156 school entities in the state.

For instance, one of the exceptions to the sovereign immunity granted under Colorado law, is buildings that have a dangerous condition. But "some courts have broadened that to include playgrounds or athletic fields," so that a person injured at either such site falls under the sovereign immunity exception, said Ms. Sullivan.

In addition, attorneys often try to file lawsuits under federal law, "which takes it out from under the caps that you get in state courts and also isn't subject to governmental immunity," said Mr. Semple.

For instance, employment practices liability continues to be a major problem for schools and "a lot of those suits wouldn't be subject to sovereign immunity or tort caps because they would be brought in federal court," said Ms. Chanzit.

There are two legislative trends in this area "that seem to be moving in opposite directions, and what the exposure is at any given point depends on the particular mix," said attorney David Rubin, a Metuchen, NJ,-based solo practitioner who defends school districts.

The first trend is state and federal legislation, such as in the area of employment discrimination, which has created an "expanding number of scenarios" that not only permit suits against schools, but attract and encourage them, said Mr. Rubin. On the other hand, tort reform efforts may limit school districts' exposure, he said.

Successfully defending such lawsuits can be difficult and expensive for schools.

In the case involving the Nevada student, for instance, "the school district had witnesses who were ready, if necessary, to dispute virtually all of his allegations about what happened to him," said the defense attorney in the case, Michael E. Malloy of Reno-based Walther, Key, Maupin, Oats, Cox & LeGoy.

However, bringing the case to trial "would have been very expensive" and even if the former student had won only a nominal amount in damages, he would likely have been awarded his legal fees, which could have amounted to more than \$1 million, said Mr. Malloy.

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