And The Defense Wins

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DRI members **Matthew G. Moffett** and **Wayne S. Melnick**, partners at **Gray, Rust, St. Amand, Moffett & Brieske LLP** in Atlanta, Georgia, won an important victory for the defense of school districts and administrators. On May 21, 2012, U.S. District Court Judge Harold W. Murphy, Jr., of the Northern District of Georgia granted summary judgment to a Georgia school district and high school principal who had been sued by the parents of a 17-year-old student who had committed suicide. The plaintiff-parents had alleged that the district and the principal had been deliberately indifferent to their child and allowed him to be "bullied to death."

The facts of this case received national attention when the plaintiff-parents were one of the featured stories in the internationally released documentary *Bully* and engaged in a media-driven campaign to vilify the district and the principal. In a detailed 186-page opinion, the court found that summary judgment was appropriate on plaintiffs' federal § 1983 Due Process, § 1983 Equal Protection and § 504/Americans with Disability Act claims, as well as plaintiffs' state law public nuisance claim.

The decedent, Tyler Long, was a student at Murray County (Georgia) High School and had multiple mental health diagnoses, including Asperger's Syndrome (a diagnosis on the autism scale). As a result of this, Tyler had an Individualized Education Plan (IEP), which allowed him particular accommodations to ensure that he was provided the Free Appropriate Public Education required by federal law. Each year, the IEP team, including the plaintiff-parents, met to ensure that Tyler's educational needs were being met and that the accommodations provided were appropriate.

Over the course of Tyler's school career in Murray County, the district was made aware of several events that might possibly be characterized as "bullying." In accordance with the district procedures, each event brought to the school's attention was investigated and dealt with, whether it involved instituting new general behavior guidelines, warning and/or counseling the students involved or suspending the offending students where appropriate. The record was clear, however, that the administration dealt with every situation of which it was made aware and that no student involved with any alleged "bullying" of Tyler that was brought to the administration's attention ever had any further negative involvement with Tyler. Although the plaintiff-parents made the school aware of some of these bullying events in Tyler's 9th and 10th grade years, after November of his 10th grade year, the plaintiff-parents never informed the school of any negative interaction and the only communications from the plaintiff-parents to the administration were positive.

Unfortunately, Tyler hung himself at home in October of his 11th grade year. The suicide note mentioned nothing about bullying. Despite this, the plaintiff-parents quickly started making accusations that bullying at school caused Tyler to commit suicide and that the high school was awash in a "culture of bullying." Soon after Tyler's death, the plaintiff-parents had whipped this rural Georgia community into a mob-like mentality, organizing town hall meetings covered by the local media where the "bullying problem" was discussed. Following Tyler's death, students started coming out of the woodwork, claiming that Tyler had been subjected to "daily" bullying, even though none of them had ever reported it to a teacher or administrator.

The plaintiffs filed a federal lawsuit against the school district and the high school principal alleging violations of § 1983 (both alleging violations of substantive due process and equal protection), a violation of § 504 of the Rehabilitation Act and the Americans with Disabilities Act and a state law public nuisance claim (alleging that the "culture of bullying" at the high school was the public nuisance at issue).

More than 40 depositions were taken and six different experts were identified on various topics, such as bullying, school administration, forensic psychiatry, suicidology and scientific procedures. While discovery was ongoing, the plaintiff-parents were involved with the filming of the *Bully* documentary. This movie, which unfairly painted a very one-sided version of the facts as presented by the plaintiff-parents, never presented or addressed the position of the defendants. Making matters worse, the film was released while the motion for summary judgment was pending, further bringing significant media attention to this case. While the case was pending, the plaintiff-parents appeared on various television shows including *The Ellen Show*, *Good Morning America*, *Nightline* and *20/20*.

In a detailed 186-page order, which included over 100 pages of factual findings, the district court judge granted the defense's summary judgment motion. The judge found that the plaintiffs' § 1983 Substantive Due Process claim was not viable because the plaintiffs could not demonstrate that the district or principal had an affirmative duty of care that was violated. Following 11th Circuit precedent, the court determined that public schools and public school administrators do not have a Constitutional duty to protect students from privately inflicted harm and that the "special danger" or "state-created danger" theory was no longer good law. The court also found that the plaintiffs had abandoned their § 1983 Equal Protection claim.

In granting summary judgment on the § 504/ADA claim, the district court found that despite the plaintiffs' allegations, even viewing the evidence in the light most favorable to the plaintiff-parents, it could not be said that the defendant's response to any alleged disability harassment of Tyler constituted deliberate indifference. The court noted that the plaintiff-parents failed to provide even one example of a reported incident where the defendants failed to respond or where the response was unreasonable. Reviewing each and every allegation of deliberate indifference made by the plaintiff-parents, the court noted that the record was contrary to the allegations. Significantly, the court found that the defendant's disciplinary responses successfully deterred students from harassing Tyler again and that no student who received school discipline ever caused problems for Tyler again and as such, the response to the reported incidents was "100 percent effective." Similarly, the court could not find that the defendants knew their remedial action was in any way ineffective for not only the same reasons, but also because based on the positive communications coming from the plaintiff-parents, the district and principal could have reasonably believed their efforts to combat any harassment were succeeding. Finally, because the defendants took affirmative steps to address bullying and disability harassment through teacher training and student education, there could be no finding of deliberate indifference. Thus, the court concluded that although there may have been evidence of negligence, this was not enough to demonstrate deliberate indifference, as is required in a § 504/ADA case. Finally, the court dismissed the state law public nuisance claim finding that sovereign immunity barred same.

The importance of this federal decision cannot be understated. The current media frenzy—attempting to link bullying as a cause of suicide, combined with the rash of unfortunate youth-suicides that have recently occurred—have coalesced to form a dangerous combination, resulting in a slew of cases filed against public schools and public school administrators. Hopefully, this decision can stand as a bulwark against these type of claims, where districts and administrators are doing the best they can for our nation's youth.