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Judge throws out *Bully* case

ATTORNEY FOR teen's parents: Ruling will shield schools from lawsuits, even when children are in an abusive environment

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IN A CASE ABOUT school bullying that gained national attention, a federal judge in Rome ruled that a local school system isn't liable for the suicide of a 17-year-old student, even though the judge said the school system "should have done more" to protect him. ."

U.S. District Judge Harold Murphy of the Northern District of Georgia on Monday granted summary judgment to the Murray County School System, finding that school administrators didn't demonstrate deliberate indifference to the plight of Tyler Long and didn't violate his civil rights by failing to shield him from school bullies.

Tyler's parents, Tina and David Long, sued the school district and Murray County High School's principal in 2010, claiming they were liable for their son's 2009 suicide. The couple has said their son was bullied to death.

Tyler's family and their lawyers had argued that the abuse Tyler suffered at his classmates' hands was best illustrated by the response of some students to news of his death by hanging. On school walls, some students drew a hangman's noose and wrote, "We will not miss you" and "It was your own fault," Murphy noted in the order. Several students also wore nooses around their necks, the judge added.

But school district attorneys had countered that multiple mental health issues, a recent break-up with a girlfriend and personal



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Matthew Moffett, an attorney for the school system, says Judge Murphy's summary judgment affirms that the case wasn't valid and the school did its best for Tyler Long.

anguish over his relationship with his parents that he outlined in a suicide note—not bullying—drove Tyler to suicide.

Tyler had Asperger Syndrome, a developmental disorder that is considered a form of autism characterized by difficulties with social interaction.

Tyler's suicide note, which is part of the public court record in the case, makes no mention of bullying as a reason for his death.

Tyler's suicide plays a prominent role in a

documentary called *Bully* that is playing in movie theaters across the nation. The film opens with video images of a younger, happier Tyler accompanied by his father's voice as he talks about his oldest son's death.

In the documentary and in their federal suit, the Longs said Tyler's classmates spit in his food, knocked books out of his arms, stole things from him, called him offensive names, threw things at him, shoved him repeatedly, punched him, harassed him in the school bath-



Winston Briggs

rooms and slammed him into lockers.

Tyler's mother documented many of the incidents in numerous emails to school administrators over the course of his high school career—but none in the 10 months immediately preceding his death.

The Longs have also launched a national anti-bullying campaign and appeared on numerous national TV programs to tell Tyler's story, including *The Ellen DeGeneres Show*, CNN, and ABC's *20/20*.

Martha Pearson with Harben, Hartley & Hawkins, which serves as general counsel for the Murray County schools, said Tuesday that Murphy's order "reflects that he gave them [the Longs] every benefit of the doubt that the standard of summary judgment allows and concluded that the case was still insufficient to send to a jury.

"The school district is very pleased, obviously, with the grant of summary judgment," she continued. "This was a very tragic event for the Longs and the Murray County High School family. We really hope now that everybody can work together cooperatively to provide students, including [Tyler's] brother and sister, with the very best educational environment that we can."

Co-counsel Matthew Moffett, an attorney with Gray, Rust, St. Amand, Moffett & Brieske in Atlanta, said he, too, agreed with Murphy's order.

"It has been our position from the beginning that this case lacked legal merit," he said. "There was no valid legal case to be brought against this school system. ... The administration and faculty did the best they could to educate Tyler and certainly did all that the law required of them. ... They all grieve over this tragedy."

Atlanta attorney Winston Briggs, the Longs' lead attorney in the case, said he was "fairly shocked and obviously disappointed" by Murphy's ruling for the school district.

"With due respect to Judge Murphy, I think he's applying a higher standard than it should be," Briggs said. "I think the order is a mistake."

Briggs said the Longs "may have an interest in taking it up on appeal." And, he added, "I don't believe this will deter their efforts to continue their anti-bullying message.

Describing the case as "emotionally charged" with "very difficult facts," Murphy said in his order, "There is very little question that Tyler was the victim of severe disability harassment" and that the school district "should have done more to stop the harassment and prevent future incidents."

But he said that the Longs failed to demonstrate that the school district's responses to reports that Tyler was bullied constituted deliberate indifference.

"Deliberate indifference is a difficult, exacting standard," the judge wrote, "and there is simply no evidence of an existence of a clear pattern of inaction or abuse by any school employees."

School administrators, he said, "addressed every reported incident of harassment, collaborated with [Tyler's parents] to develop accommodations for Tyler to prevent future bullying, working to monitor hallways and cafeterias, and implemented anti-bullying programs and policies," wrote Murphy. "At best, [the Longs'] evidence demonstrates that [the school district's] harassment prevention techniques were not always effective, and that [the district] should have done more to protect Tyler and address disability harassment."

But Murphy concluded that a school district isn't deliberately indifferent simply because the measures it takes are ultimately ineffective in stopping harassment.

The judge noted that for nearly a year before Tyler's suicide, school administrators received no reports that Tyler had been bullied or harassed.

"Under those circumstances," Murphy wrote, "even if [the school district and high school principal] could have done more to remedy the culture [of] harassment, the Court cannot find that [the district and principal] ignored clear evidence that their remedial efforts were ineffective."

In their suit, the Longs had claimed that the school district's failure to protect Tyler from psychological and physical abuse had violated his constitutional due process rights.

But Murphy, citing rulings by the U.S.

Court of Appeals for the Eleventh Circuit, found no constitutional violation. The Due Process Clause, he wrote, was intended to prevent government officials from abusing their power, not guarantee an individual protection from harm by private third parties.

The judge also found that although Tyler may have been bullied by his classmates, his constitutional rights hadn't been violated because the school district didn't have a constitutional duty to protect the teen from his fellow students.

Briggs said that Murphy's findings suggest that, "At the end of the day, based on this order, schools in Georgia, at least at this point, are completely immune from liability for other kids bullying kids with disabilities, even if they know about it."

Briggs said that although Murphy's order suggested there was strong evidence that the harassment Tyler experienced was pervasive and so severe that it created an abusive environment at school, he was baffled that the judge refused to let the case go to trial.

"[Tyler] is being abused. It's going on all the time. They [the school district and school administrators] know about it. They have actual knowledge of it, but somehow we don't get to present this to a jury?" Briggs said. "It's very disappointing and shocking. If that's the standard, you can't bring a case against a school, in my opinion. ... At the end of the day, it gets the school off the hook."

The case is *Long v. Murray County School District*, No. 4:10-cv-15 (N.D. Ga.). 