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Appellate Court: Student Handbooks are not Contracts and Administrators Afforded Discretion to Manage Bullying

In *Mulvey v. Carl Sandberg HS*, 2016 IL App (1st) 151615, two sisters brought claims against their high school, the school district, and various school officials and coaches alleging that they had suffered bullying at the hands of their basketball teammates. They claimed that they were ignored, harassed, humiliated, physically assaulted, injured, and intimidated by their teammates during their high school tenure. They also alleged that certain teammates teased them on specific occasions, both in person and on social media.

The sisters claimed that the defendants had breached a contract between the students and the school by failing to enforce anti-bullying policies that were included in district handbooks. The sisters' lawsuit also claimed that the defendants willfully

and wantonly disregarded the school district's obligations under the state's anti-bullying law (Section 27-23.7(d) of the School Code).

Regarding the contract claim, the Appellate Court determined that a student handbook lacks the elements necessary for the formation of a contract. Rather, it found that the district's handbooks failed to convey any specific promises. Importantly, the handbooks did not promise students and parents that attendance at the school would guarantee the complete absence of bullying conduct, nor that every student engaging in such conduct would be disciplined in a particular manner.

Additionally, the Appellate Court found that the district's anti-bullying policy "is discretionary in nature and does not mandate a specific response to every set of circumstances." The Appellate Court's decision is aligned to others that have dismissed bullying claims against school districts when school administrators also exercised their discretion. See *Hascall v. Williams*, 2013 IL App (4th) 12113; *Malinski v. Grayslake Community High School District 127*, 2014 IL App (2d) 130685, ¶ 8. Relying upon these earlier decisions, the Appellate Court determined that anti-bullying policies may afford a school

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district with the discretion to determine whether bullying has occurred, what consequences will result, and any appropriate remedial actions.

Even though plaintiffs constructed a variety of theories upon which the school district could have been liable and all these arguments failed, it is not enough to simply maintain a policy and not follow it. Although the Appellate Court immunized the school district from liability in this case, this decision still serves to remind school administrators that district policies must reflect state law and, more importantly, that administrators must implement and follow those policies to avoid liability. In cases involving bullying, a failure to do so may expose school officials to significant liability.

If you have any questions, please contact one of our attorneys in Flossmoor at (708) 799-6766 or in Oak Brook at 630-928-1200.