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Verbal Abuse of Students Revisited

Parents often perceive that their child's teacher has subjected the child to verbal abuse through irate hostility or inadvertent sarcasm. Reflecting the persistence of the resulting litigation, this column addressed this topic in May 1991 and March 2001. These previous snapshots revealed that plaintiff parents have pursued three avenues for legal relief, the first indirectly via school board action and each with descending odds of success for the complaining parent: 1) teacher discipline, including dismissal; 2) liability under state tort law or as a Section 1983 federal civil rights claim; and 3) criminal prosecution.

The Case

In January 2007, J, a student with blindness, came home from school very upset. Ms. V, his special education teacher, had asked him to play his trumpet. The other students clapped and praised him, but Ms. W, his visual impairment teacher, harshly interjected: "Put your trumpet away now! It's too bad you don't practice reading as much as you practice trumpet; why can't you read like this?" Attempting to defuse the situation, Ms. V sent J to his regular classroom for his agenda. When he arrived at the room, he stopped to listen to the teacher addressing the class, but Ms. W came up behind him and loudly yelled" "[J], get your agenda out!" Sensitive to sound due to his reliance on his auditory environment, Ms. W's outburst caused him to cry. Later in the day, Ms. W remarked: "I might as well go work with another student who wants to learn. I don't know why I bother to Braille things for you … until 7 p.m., if your mother is going to read it for you anyway."

J's mother reported the incident to the principal. The principal met with J, who explained that he became upset just being in Ms. W's presence. A week later, Ms. W started to work with J again, which caused him to cry. At the end of the day, Ms. W quietly told J: "I know you went to talk to [the principal] about me; you really hurt my feelings. I cannot believe you told on me to your mother."

J's mother filed suit in federal court

against Ms. W and the district.[1] She claimed that the defendants were liable for money damages not only under the state torts of intentional infliction of emotional distress (IIED) or negligent infliction of emotional distress (NIED), but also or alternatively under Section 1983, a federal civil rights constitutional claim of disability-based hostile environment. The defendants filed a motion for dismissal, arguing that even if the allegations were true, they were insufficient as a matter of law to proceed to trial.

What do you think was the court's decision in this case?

The federal district court in western New York considered these claims in two successive decisions in *Vieira v. Honeoye Central School District*. In 2010, the court granted the motions to dismiss the IIED and Section 1983 claims against these two defendants but denied their dismissal motion for the NIED claim. For the IIED claim, the court ruled that this "smattering of isolated incidents" were insufficient to establish the primary essential element of IIED—extreme and outrageous conduct—on the part of these defendants. For NIED, the court concluded that if further proceedings proved that Ms. W, having reason to know that individuals with blindness are especially sensitive to startling sounds, on more than one occasion frightened J with unexpected yelling, these facts could be reasonably interpreted as meeting the requisite element of negligently putting another person in traumatizing fear of personal safety.

For the Section 1983 disability-based hostile environment claim, the court dismissed the district due to the absence of any alleged policy, custom, or practice that caused the alleged violation. Correspondingly, the court dismissed Ms. W because she would not have known that the alleged conduct, if true, violated federal law.

In 2013, the court reinforced its earlier rulings with regard to IIED and Section 1983 and—reversing its earlier conclusion—added NIED to the dismissed claims. For the Section 1983 claim, the court granted dismissal on a basis different from and substituting for qualified immunity. First, the court reexamined the precedents to determine what had been clearly established in terms of the required elements for a disability-based hostile environment, which includes not only that the plaintiff has a disability, but also that the conduct was so severe or pervasive to prevent access to education and that it was because of the plaintiff's disability. Next, applying these essential elements to the allegations, when viewed for a dismissal motion in the light most favorable to the plaintiff, the court concluded that "[Ms. W's] alleged words and actions

are ill-mannered, uncivil, and abrasive," but are not sufficient to create a hostile environment because of [J's] disability.

Have other decisions similarly extended the pro-defendant trend of state and federal liability cases?
Yes. For tort claims, such as IIED and NIED, a Texas appellate court's decision illustrates another hurdle for plaintiff parents in various states. In *Kobza v. Kutac* (2003), the court concluded that the state's immunity for public school officials, including teachers, applied to claims of both IIED and NIED, thus subjecting the suit to dismissal. Pointing out that the state's immunity applied to discretionary acts, the court reasoned: "Clearly, [the teacher] used poor judgment … However, there is not a prescription or definition of exactly what a teacher must do to establish rapport with a student. It is left to the individual teacher's discretion. The fact that she violated several ethical policies is not dispositive." In a Section 1983 case, a federal district court in Pennsylvania granted the district defendants' motion for summary judgment, concluding that a fifth grade teacher's alleged yelling at one of the students was not conscience shocking, which is the standard for Section 1983 substantive due process claims in the public school context (*S.M. v. Lakeland School District*, 2001).

Although the general trend continues to be a steep uphill slope for plaintiff parents to establish the requisite elements for IIED or Section 1983 claims, the federal district court decision in *J.A. v. Seminole County School Board* (2005) rendered an inconclusive decision in favor of the plaintiff parent, rejecting the district's motion for dismissal and thus preserving these claims for further judicial proceedings. While recognizing that "the bar for asserting a claim for [IIED] is a high one," the court concluded that this case could potentially reach that level due to its special circumstances, including that the verbal abuse was combined with and secondary to shocking and repeated physical abuse of this child with autism and his special education classmates." The court also denied dismissal of the parent's Section 1983 claim of denial of 14th Amendment substantive due process, which generally requires conscience-shocking conduct.

Have more recent decisions continued the previous trend with regard to litigation concerning teacher discipline cases?
Yes. This avenue has continued to be more successful for plaintiff parents, where the school board, after due investigation and procedural protections, has taken disciplinary action. In *Camacho v. City of New York* (2013) a New York appellate court upheld a school board's decision to terminate a tenured teacher for verbally abusing students contrary to district policies and a corrective-action warning. The court concluded that the testimony of other students and the principal provided the requisite factual foundation and that "the penalty imposed was appropriate, where despite [the teacher's] attempts to deal with her problems, including her adherence to therapy and medication ..., [she] was unable to control her emotional outbursts, which resulted in her targeting special education students for insult and ridicule." More recently, the same court upheld the discipline, which under New York City's policies was a $1,500 fine, issued to a teacher for making comments such as "hey good baby" to one of his female students, thus illustrating the overlap of verbal abuse and sexual harassment.

Conclusion
Teachers' verbal abuse of students largely appears to be an internal matter of ongoing professional development, reasonably clear policies, and if necessary, discipline up to and including termination. Developing clear and effective channels for resolving parental complaints is not only an integral part of this internal process, but also a potential prophylactic for parent lawsuits.

In the teacher lawsuits, the courts have been deferential to districts unless their policies and procedures do not provide critical warning. Prudent balance among the interests of students, parents, and teachers is critical. Districts that overreact to parental complaints in terms of teacher discipline may aggravate rather than mitigate the problem. Moreover, overreaction to alleged verbal abuse, especially when it is good-natured joking or sarcasm, can have a chilling effect on a nurturing school climate.

For parental liability suits, the judicial message is clear and may be judiciously shared with parents and their attorneys. The odds are overwhelming that the judiciary will not hold the teacher or the district liable for money damages for what the parent or child may perceive as verbal abuse, unless so severe as to be shocking or outrageous in the less sensitive perspective of a court (typically in combination with flagrant physical abuse). Criminal cases have ebbed to a negligible level based on the comparatively low level of this conduct and the strict standard of proof.

State anti-bullying laws may help provide a norm of verbal conduct toward students. Although the focus is on other students, teachers who go over the line may also—at least by analogy—be considered bullies. However, such state laws typically do not provide a right to sue, thus serving more as part of a coordinated effort at an effective school climate than as an isolated source of litigation. P

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1. "District" is used here generically to refer to the intermediate unit that administered the program and employed Ms. W. In the case, J's parent also sued the local school district and its administrators under the IDEA and Section 504, but the outcome of those claims were not reported and, thus, are not included herein.