

Palosz v. Greenwich (AC 40315)

Brief Summary: The decedent committed suicide after being subjected to unremitting bullying for several years in the Greenwich public school system. The plaintiff alleged that the school board was negligent in failing to comply with the terms of its policy adopted pursuant to the antibullying statute, § 10-222d. The court held that the defendant was acting as an agent of the municipality—thus, not entitled to sovereign immunity—when its employees allegedly failed to comply with the terms of the policy that the defendant adopted in accordance with § 10-222d.

The plaintiff, Anna Izabel Palosz, the coadministrator of the estate of Bartlomiej Palosz, sought to recover damages from the defendants, town of Greenwich and its board of education for the wrongful death of the decedent. The decedent tragically committed suicide on the first day of his sophomore year at Greenwich High School after being subjected to unremitting bullying for several years in the Greenwich public school system. The decedent was fifteen years old and had been enrolled in the Greenwich public school system for seven years. Throughout those years, the defendant was mandated by § 10-222d to develop and implement a safe school climate plan to address the existence of bullying in the Greenwich public school system. It adopted such a plan in 2009 and strengthened it in 2012. The policy requires the defendant to appoint administrators and specialists who are responsible for developing and implementing the policy. It further mandates an employee who has knowledge of a bullying incident to notify the specialist or another school administrator. Upon receipt of the report, the specialist must investigate the incident. If the acts of bullying are verified, the specialist or designee must develop a student safety plan to protect against further bullying, notify the parents of the students and invite the parents to a meeting to discuss the measures being taken. If there are repeated instances of bullying against a single individual, the policy requires the development of a specific written

intervention plan. Furthermore, any student who engages in bullying behavior must be subjected to school discipline. The defendant also has oral policy procedures that require school employees to intervene to protect students from being bullied repeatedly.

The policy was effectuated when the decedent was subjected to severe and continual verbal and physical bullying by his classmates. Greenwich school employees were “long aware” that the decedent was being bullied. However, the defendant’s administrators, and supervisory personnel, and other school employees did not comply with the mandatory provisions of the policy in that they failed to: (1) report the instances of bullying; (2) investigate the repeated instances of bullying; (3) notify the parents of the findings of any such investigation; (4) meet with the parents to communicate appropriate remedial measures being taken by the school to ensure the decedent’s safety and to prevent further acts of bullying; (5) develop a student safety support plan in response to all verified acts of bullying with safety measures to protect against further acts of bullying; (6) develop a written intervention plan to address the repeated instances of bullying; (7) discipline the student or students who bullied the decedent; and (7) properly oversee and implement the provisions of the policies and procedures. The plaintiff further alleged that the defendants, in failing to comply with the policy requirements, engaged in “gross, reckless, wilful or wanton misconduct,” which was a substantial factor in causing the decedent’s death by suicide.

The defendant filed a motion to strike the complaint. The defendant argued that it was entitled to sovereign immunity because it was acting as an agent of the state when it allegedly failed to carry out its state mandated duties under the antibullying statute § 10-222d. The trial court held that the defendant is not entitled to sovereign immunity because it was acting on behalf of the municipality, not the state, when it failed to comply with the policy. It also held that

there is no sovereign immunity for actions or omissions constituting gross, reckless, wilful, or wanton misconduct because the qualified immunity provided to them by General Statutes § 10-222l specifically limits sovereign immunity in that regard. Thus, denying the defendant's motion. The defendants subsequently appealed.

Issue

The issue on appeal was whether the defendant was acting as an agent of the state when its employees allegedly failed to comply with the terms of the policy that the defendant adopted in accordance with § 10-222d.

Holding

The court held that the defendant was not acting as an agent of the state, thus not entitled to sovereign immunity.

Discussion

The doctrine of sovereign immunity recognizes that a state cannot be sued without its consent. The protection afforded by this doctrine extends to agents of the state acting on its behalf. To determine whether the doctrine of sovereign immunity applies to a local school board, the court looks at whether the action would operate to control or interfere with the activities of the state. If the action interferes with the activities of the state, then the school board was acting as an agent of the state and is entitled to sovereign immunity. A local board of education acts as an agent of the state when it performs the duties delegated to it by the state. It acts as an agent of its respective municipality when it performs those functions originally entrusted by the state to the municipality that the municipality has subsequently delegated to the board of education.

The defendants argued that it was acting as an agent of the state when it failed to comply with the policy adopted pursuant to § 10-222d. Section 10-222d (b) mandates local and regional education boards to develop and implement a safe school climate plan to address bullying in schools. The court stated that the state action mandated by § 10-222d begins and ends with developing, implementing, submitting, and assessing the policy. Furthermore, stating that holding the defendant liable for failing to execute the terms of the policy does not operate to control or interfere with the activities of the state. Instead, the defendant acts as an agent of the municipality when it enforces and complies with the policy pursuant to its general powers of control over public schools. It acts as an agent of the municipality because the power of control over public schools is delegated by the municipality pursuant to Section 10-240, which provides that “each town shall through its board of education maintain the control of all the public schools...” Thus, the court stated that the board of education polices the behavior of its students pursuant to § 10-240, not through § 10-222d. Further, the court stated that § 10-222d does not encroach upon the general powers of control delegated to the town by § 10-240. Thus, holding that the defendant was acting as an agent of the municipality, not the state, when its employees allegedly failed to comply with the policy because its duty to police the behavior of its students is provided by the municipality through § 10-240.

Next, the court stated that the defendant’s argument for sovereign immunity is undermined by the qualified statutory immunity provided by § 10-222l. Which provides immunity to local boards of education for actions taken in connection with a policy developed and implemented pursuant to § 10-222d. Section 10-222l (c) provides that “no claim for damages shall be made against a local or regional board of education that implements the safe school climate plan, described in Section 10-222d, and reports, investigates and responds to bullying . . .

if such local or regional board of education was acting in good faith in the discharge of its duties. The immunity in this section does not apply to acts or omissions constituting gross, reckless, wilful or wanton misconduct.” This section was adopted nine years after § 10-222d. The court argued that immunity pursuant to § 10-222l would be irreconcilable with complete protection from suit afforded by the doctrine of sovereign immunity—which the defendant advocated for. It would be irreconcilable because there would not be a need for the legislature to adopt limited immunity under § 10-222l (for conduct done in good faith) if education boards were already protected by sovereign immunity. Furthermore, the limited immunity statute was adopted after § 10-222d, thus, the logical conclusion is that the legislature believed that § 10-222l was necessary because local boards of education were not protected by sovereign immunity when their employees fail to comply with an antibullying policy. Thus, the court concluded that the defendant was not entitled to sovereign immunity and affirmed the trial court’s decision to deny the defendant’s motion to strike the complaint.

The key takeaway from this case is that local boards of education are not immune from liability for failing to comply with the policies they adopt pursuant to the antibullying statute. This is salient because it protects students from their school’s failure to prevent bullying and intervene when one is bullied. Ideally, this ruling will cause school boards to take a more active approach in combatting bullying and consequently, avoiding tragedies like the one in this case.