

Supreme Court backs bid by family to sue Cape school district

Girl had reported abuse on bus

By John R. Ellement
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The US Supreme Court ruled yesterday that a Hyannis family can sue the Barnstable school district for gender discrimination and civil rights violations, a decision that left educators fearing they would be spending more time in the courts than in classrooms.

In a unanimous ruling, the court said Lisa and Robert Fitzgerald have a constitutional right to bring a civil rights lawsuit against the Barnstable schools and educators directly involved in the case for treatment of their daughter, Jacqueline, in 2000-2001.

"Future principals and superintendents will realize they need to do the right thing," Robert Fitzgerald said in a telephone interview.

According to Fitzgerald and court papers, their daughter rode a bus to elementary school when she entered kindergarten in the fall of 2000. Each time she wore a dress - and she wore a dress as often as three days a week - a third-grade boy bullied her into lifting up her skirt, Fitzgerald said. The boy also allegedly bullied her into pulling down her underpants, the court said.

The Fitzgeralds alerted school officials, who concluded they could not substantiate the girl's claims, the court said. The administration, led at that time by Superintendent Russell Dever, suggested putting the girl on another bus or putting empty seats between the girl and older students. He balked at taking action against the boy.

Furious, the Fitzgeralds began driving their daughter to school - which they continue to do - and sued in federal court, citing both Title IX and federal civil rights law. Title IX bars sex discrimination in schools that receive federal money.

Lower courts sided with the school district, ruling the Fitzgeralds could not use the federal civil rights law to hold school officials personally liable. The lower courts said the Fitzgeralds could sue only under Title IX, which would not allow them to seek damages.

The Fitzgeralds appealed to the US Supreme Court, which yesterday said the lower courts got it wrong.

"We conclude that Title IX was not meant to be an exclusive mechanism for addressing gender discrimination in schools," said Supreme Court Justice Samuel Alito Jr., writing for the court. "Congress did not affirmatively intend Title IX to preclude such claims."

Alito also wrote that the Fitzgeralds have the right to sue individuals under the equal protection clause of the Constitution.

School administrators fear that the court's ruling will now increase litigation and severely restrict educators' willingness to make decisions on day-to-day matters involving students for fear of being sued.

"Our principals and our teachers - the vast majority of them are acting in good faith," said Francisco M. Negrón, Jr., counsel for the National School Boards Association. "The fear for school districts is that principals and teachers, when they are acting in good faith, they may be somewhat reticent to act because there is the potential now to be held personally liable."

The current Barnstable superintendent, Patricia Grenier, and the district's Boston attorneys did not return telephone calls seeking comment yesterday.

The Washington-based attorney for the Fitzgeralds said the court made it clear that teachers and school administrators will be held individually responsible for failing to protect the civil rights of all their students.

"It's a success for people who have been badly treated by schools," Charles Rothfeld said in an telephone interview. "The hope is that . . . the administration will be more responsive to credible claims that people have been the victim of discrimination."

Fitzgerald and his Boston attorney, Wendy Kaplan, said they intend to push forward with their lawsuit.

He also said that Jacqueline Fitzgerald has not ridden a school bus - except for one field trip - since February 2001.

Fitzgerald said his daughter wept tears of joy yesterday after learning of the victory.

"She was overcome with happiness," he said. "She was so happy that the court recognized she was standing up for something that needs to be stood up for."

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