

Trial date set in school bullying lawsuit

By **PATRICK HEALD** Special to this Newspaper | Posted: Friday, June 19, 2015 1:00 am

A lawsuit filed in 2012 against the El Centro Elementary School District alleging the district did not protect a disabled student from bullying is headed to trial.

On Thursday, Imperial County Superior Court Judge Brooks Anderholt set jury selection for Aug. 9, 2016.

The suit is filed as “Brian _____. Et al vs. El Centro Elementary School District.” It was filed by a former student of the district and his father. Since the case involves a minor who was a student in the district, the Imperial Valley Press will not publish the full name of the plaintiffs.

A copy of the complaint filed with the court states that “Brian F” went to school in Mexicali from kindergarten through the fifth grade. He enrolled in ECESD in 2008. In August of that year he enrolled at Kennedy Middle School. According to the lawsuit, that’s when the trouble started.

According to the lawsuit, Brian was referred for special education in March. Brian’s mother told the district he suffered from depression and attention deficit disorder.

The district found that Brian qualified for services under a federal law, which states that no one who is disabled can be the subject of discrimination in any program receiving federal financial assistance, which would include ECESD.

Through the rest of the 2008-2009 school year the lawsuit alleges Brian was the subject of verbal harassment and name-calling. The lawsuit contends the district did nothing to stop the activity.

According to the lawsuit, during the 2009-2010 school year things got worse.

Brian’s father, Hector, said Brian came home from school with scratches and bruises. The lawsuit states Brian’s parents showed the bruises to school officials. Brian filled out an incident report, giving the details of the bullying and naming his attackers.

The lawsuit states the abuse continued. At one point, according to the lawsuit, Brian was forcibly restrained by other students and repeatedly kicked in the legs. Other alleged assaults followed.

According to the lawsuit, as the school year 2009-2010 progressed, school officials were repeatedly



Trial date set in school bullying lawsuit

Imperial Valley Press File Photo

notified of the problems Brian was facing. State law says that schools must have a student safety plan in place, and they must follow the guidelines and procedures spelled out in the plan. The lawsuit contends the district did not do this, instead suggesting that Brian transfer out of one class where he was being harassed.

The class was the only bilingual education program in the school. Since Brian was classified as an English learner, his parents did not want to do that.

According to the lawsuit, in June 2011, Brian was diagnosed with post-traumatic stress disorder, which his clinician said was caused by the bullying to which he was subjected.

Brian's parents filed a claim against the district in June 2011, which was denied. Then they sued the district in November 2012.

The suit also alleges that the reason school officials did not respond to the complaints by Brian's parents is that Brian is Latino, an English learner and was identified as disabled.

From the lawsuit: "On information and belief, Respondents-Defendants (ECESD) received and responded to past instances of harassment perpetuated by students of its District with due diligence, sensitivity, and attention when the harassment targeted English speakers, students without disabilities, and/or involved epithets directed at non-Latino students."

On Thursday, Anderholt also ordered the school district to turn over all complaints by students and parents about bullying if they were filed directly at the schools. Complaints can also be filed at the district, or on the district's website. The district fought releasing the complaints from the schools.

Jeffery Wade Jr. of the law firm Stutz Artiano Shinoff & Holtz, the firm representing the district, told Anderholt the release of the complaints could violate student's rights to privacy.

Anderholt acknowledged the issue was the students' right of privacy versus the plaintiff's right to examine evidence.

Franchesca Verdin of California Rural Legal Assistance agreed to blacking out names, addresses, phone numbers, Social Security numbers and any other information that would identify students. Since the complaints could potentially be introduced as evidence, they would be public record and available for review.

Anderholt agreed to that, and ruled for the plaintiffs.

"The names of the people are not important; it's the incidents that matter," he said. "How else are they (the plaintiffs) going to obtain this information?"

He added that the district might find that the complaints show the district has complied with reporting and response requirements regarding bullying.

“It would seem to me that you need this information too,” Anderholt told Wade.

Anderholt noted the circumstances surrounding the case are unique.

“This is not a run-of-the-mill situation,” he said. “It’s important even to the point of public policy.”

The suit seeks to compel the district to review and revise the districts school safety plan regarding bullying, make sure it complies with state law, retrain staff regarding discrimination issues and keep better records regarding parent and student complaints and the district’s response. It is also asking for general and special damages, although it does not specify an amount.