DOCKET NO. NNH-CV23-6131160	SUPERIOR COURT
FINNEGAN KNOWLTON	J.D. OF NEW HAVEN
V.	AT NEW HAVEN
TOWN OF BRANFORD, ET AL	MAY 20, 2024

MEMORANDUM OF DECISION RE
MOTION TO STRIKE (#114) AND OBJECTION (#119)

The issue before this Court is the defendant's Motion to Strike and Memorandum in Support (#114), and the plaintiff's Memorandum in Opposition (#119). The defendant asserts that each count of the revised complaint dated June 16, 2023 should be stricken because plaintiff's claims are barred by the doctrine of governmental immunity and/or fail to state a claim for which relief may be granted and/or that indemnification does not apply. For the reasons articulated herein, the defendants' Motion to Strike (#114) as to each count is denied, and plaintiff's Objection (#119) is sustained.

FACTS AND PROCEDURAL HISTORY

This case arises out of several incidents of alleged bullying against plaintiff by fellow students during the period of February to June 2022. Plaintiff was in the seventh grade in the Branford school system at the time of the incidents. The plaintiff filed a revised complaint on June 16, 2023 (#107). The defendant filed a Motion to Strike (#114) on August 16, 2023 and the plaintiff filed an Objection (#119) on October 11, 2023. Oral arguments were held on February 15, 2024.

DISCUSSION

Practice Book § 10-39, in relevant part, provides that a party may use a motion to strike to contest the legal sufficiency of any allegations of a complaint. For purposes of a motion to strike, the facts alleged in the complaint, but not its legal conclusions, are deemed to be admitted. *Hughes v. Board of Education of City of Waterbury*, 221 Conn. App. 325, 329-330 (2023). A motion to strike may also be used to raise a defense of governmental immunity. "It is fundamental that in determining the sufficiency of a complaint challenged by a defendant's motion to strike, all well-plead facts and those facts necessarily implied from the allegations are taken as admitted. . . . Indeed, pleadings must be construed broadly and realistically, rather than narrowly and technically." *Violano, et al. v. Fernandez, III, et al.*, 280 Conn. 310, 318 (2012). (Internal quotation marks and citations omitted.) "[W]here it is apparent from the face of the complaint that the municipality was engaging in a governmental function while performing the acts and omissions complained of by the plaintiff, the defendant is not required to plead governmental immunity as a special defense and may attack the legal sufficiency of the complaint through a motion to strike." *Ibid.* at 321. (Internal quotation marks and citations omitted.)

"Under [Section] 52-557n(a)(2)(B), a municipality and its agents are not liable for violations of discretionary duties, but are liable for violations of ministerial duties." (Internal quotation marks omitted; internal citations omitted.) *Doe v. Board of Education of the Town of Westport, et al*., 213 Conn. App. 22, 48 (2022). "It is well established that '[Sections] 52-557n abandons the common-law principle of municipal sovereign immunity and establishes the circumstances in which a municipality may be liable for damages. . . . One such circumstance is a negligent act or omission of a municipal officer acting within the scope of his or her

employment or official duties. . . . . [Section] 52-557n (a) (2) (B), however, explicitly shields a municipality from liability for damages to person or property caused by the negligent actions or omissions which require the exercise of judgment or discretion as an official function of the authority expressly or impliedly granted by law." *Doe v. Town of Madison*, 340 Conn. 1, 35-37 (2021). (Internal quotation marks and citations omitted.)

"Generally, a municipal employee is liable for the misperformance of ministerial acts, but has a qualified immunity in the performance of governmental acts. . . . Governmental acts are preformed wholly for the direct benefit of the public and are supervisory or discretionary in nature. . . . The hallmark of a discretionary act is that it requires the exercise of judgment. . . . In contrast, [m]inisterial refers to a duty which is to be performed in a prescribed manner without the exercise of judgment or discretion. . . . Municipal officials are immunized from liability for negligence arising out of their discretionary acts in part because of the danger that a more expansive exposure to liability would cramp the exercise of official discretion beyond the limits desirable in our society. . . . Discretionary act immunity reflects a value judgment that – despite injury to a member of the public – the broader interest in having government officers and employees free to exercise judgment and discretion in their official functions, unhampered by fear of second-guessing and retaliatory lawsuits, outweighs the benefits to be had from imposing liability for that injury. . . . In contrast, municipal officers are not immune from liability for negligence arising out of their ministerial acts, defined as acts to be performed in a prescribed manner without the exercise of judgment or discretion. . . . This is because society has no analogous interest in permitting municipal officers to exercise judgment in the performance of ministerial acts." *Violano, et al. v. Fernandez, III, et al.*, 280 Conn. at 318-19.

(Citations omitted; internal quotation marks omitted.) See also *Northrup v. Witknowski*, 332 Conn. 158, 167-68 (2019).

The crux of the defendant's motion to strike is that Counts One, Two and Three of the revised complaint (#107) dated June 16, 2023 fail to allege a cause of action, and that defendants are entitled to governmental immunity. Defendants also allege that the Fourth Count related to indemnification pursuant to C.G.S. 7-465 is insufficient because 7-101a does not provide for a private right of action and 7-465 is not applicable absent plaintiff establishing individual liability.

The court finds that Counts One, Two and Three are properly pled based on C.G.S. 52-557n, negligence. Contrary to defendant's argument, plaintiff does not allege a separate cause of action under the anti-bullying statute, 10-222d. Plaintiff alleges that he was subjected to numerous events of bullying, some of which occurred at the school and some of which occurred outside of school. Plaintiff alleges that numerous events of bullying, as defined by 10-222d(a)(1), were reported to the principal (defendant Reynolds) and/or assistant principal (defendant Anaclerio) of plaintiff's school. It is alleged that none of the defendants took any effective action to protect the minor child from ongoing bullying, including an alleged failure to report, failure to properly supervise the minor plaintiff and other students, and failure to develop and implement a safe school climate plan.

C.G.S. 10-222d(b) requires each local and regional board of education to "develop and implement a safe school climate plan to address the existence of bullying . . . in its school. . . ." "Under subsection (b) of [Section] 10-222d, each plan 'shall' contain certain requirements, as

set forth in subdivisions (1) through (18). 'These requirements, generally, enable the reporting of instances of bullying, mandate school officials to forward and investigate these reports to a specialist, who would then notify the parents of the students, and direct the adoption of a comprehensive prevention and intervention strategy.'" *Doe 1 v. Board of Education of Twon of Westport*, 213 Conn. App. 22, 37-38 (2022), citing *Palosz v. Greenwich*, 184 Conn. App. 201, 210-211, cert denied, 330 Conn. 9030 (2018). Under 10-222d(c), each local and regional board of education shall submit a safe school climate plan to the Department of Education for review and approval and compels each Board of Education to require each school in the district to complete and submit an assessment of its policy to the Department of Education pursuant to 10-222h. *Ibid*. at 38, city *Palosz v. Greenwich*, *supra* at 211.

The revised complaint is based on allegations that the defendants were negligent in that they failed to require the proper implementation of the safe school climate plan pursuant to 10-222g; they failed to properly care for and supervise plaintiff when he was in the school's care; they failed to properly arrange for training and supervision of employees regarding protection of minor children from short-term or ongoing bullying; and other related allegations. The allegations are properly pled in negligence.

Section 10-222l provides for qualified statutory immunity "to a local board of education for actions taken in connection with a policy developed and implemented pursuant to [Section] 10-222d. In particular, [Section] 10-222l(c) provides in relevant part: '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 provided in this subsection does not apply to acts or omissions constituting gross, reckless, wilful or wanton misconduct.' Section 10-222l was adopted in 2011, nine years after [Section] 10-222d was first enacted." *Palosz v. Greenwich*, *supra* at 211-13. Here, the plaintiff sufficiently pled negligence based on the alleged failures of the defendants to comply with their duty to the plaintiff regarding bullying behavior.

Defendants also assert that the motion to strike should be granted because they are entitled to governmental immunity, asserting that no exception is applicable to this case. "[W]here it is apparent on the face of the complaint that the municipality was engaging in a governmental function while performing the acts and omissions complained of by the plaintiff, the defendant is not required to plead governmental immunity as a special defense and may attack the legal sufficiency of the complaint through a motion to strike." *Coe v. Board of Education*, 301 Conn. 112, 116, n.4 (2011), citing *Doe v. Board of Education*, 76 Conn. App. 296, 299 n. 6 (2003). Governmental immunity is properly raised by the defendants in their Motion to Strike. *Borelli v. Renaldi*, 336 Conn. 1, 20-21 (2020).

The parties both agree that governmental immunity applies to discretionary acts, in contrast with ministerial acts. Plaintiff alleges that the duty to supervise students is a ministerial act for which the defendants cannot exercise discretion because they are required to adhere to anti-bullying policies enacted by the Board of Education. The defendants assert that the duty to supervise students is a discretionary act for which governmental immunity applies. Plaintiff further asserts, assuming arguendo that the duty to supervise was discretionary, that plaintiff

was an identifiable victim subject to imminent harm, one of the exceptions to immunity. The defendants argue that the plaintiff was not an identifiable victim subject to imminent harm as defined by the exception to governmental immunity.

Supervision of students is a discretionary act. *Heigl v. New Canaan*, 218 Conn. 1, 8 (1991); *Doe v. Board of Education*, 76 Conn. App. 296, 300 (2003). However, "[p]ublic schoolchildren are 'an identifiable class of beneficiaries' of a school system's duty of care for purposes of the imminent harm to identifiable persons exception." *Hughes v. Board of Education of City of Waterbury*, *supra*, 221 Conn. App. at 331-32, quoting *Martinez v. New Haven*, 328 Conn. 1, 11-12 (2018). The plaintiff has sufficiently pled that he was an identifiable victim subject to imminent harm. Plaintiff has sufficiently pled: (1) imminent harm due to the on-going bullying events against him; (2) the plaintiff was identifiable because school employees had been notified of the repeated incidents of bullying and he was a student under the supervision of the school; and (3) the principal and assistant principal were public officials to whom it was apparent that their failure to protect plaintiff from future incidents of bullying was likely to subject the plaintiff (victim) to that harm in the future. All three factors have been sufficiently pled, and all three must be proven for the exception to apply. Moreover, the Connecticut Supreme Court has "construed this exception to apply not only to identifiable individuals but also to narrowly defined identified classes of foreseeable victims." (Internal quotation marks omitted.) *Borelli v. Renaldi*, 336 Conn. 1, 28-29 (2020), citing *Durrant v. Board of Education*, 284 Conn. 91, 100 (2007). Plaintiff has sufficiently alleged facts, if provable, which support a cause of action.

The court also rejects the defendants' argument that Count Three does not sufficiently allege negligent acts of municipal employees. Count Three clearly sets forth sufficient allegations of negligent acts by municipal employees; i.e., the individually named defendants. Lastly, defendants' argument regarding Count Four requires little attention. Contrary to the defendants' argument, Count Four sufficiently alleges indemnification, and is derivative of the negligence alleged in Counts One, Two and Three. The plaintiff has sufficiently alleged that the breach of duty by the defendants was the proximate cause of the plaintiff's injuries. *Wu v. Town of Fairfield*, 204 Conn. 435 (1987). The complaint, construed in favor of the plaintiff, sets forth sufficient allegations regarding indemnification.

CONCLUSION

For the reasons articulated herein, the defendant's Motion to Strike (#114) is denied as to each count of the revised complaint dated June 16, 2023. The plaintiff's Objection (#119) is sustained.

GOODROW, J.

Juris Number 434439