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Suit: Rape of 9th-grader preventable

New Rochelle student assaulted at school in 2020

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New Rochelle school officials failed to prevent a ninth-grader from being raped by a fellow classmate in a New Rochelle High School stairwell during a school day in January 2020, a lawsuit alleges.

The female victim and her family, who

are not named in the legal papers, argue that high school staff should have been aware the perpetrator was a “known risk” and “posed an immediate danger” to other students, an attorney for the plaintiff, told The Journal News/lohud. In the suit, the family claims the boy had a prior unlawful sexual contact with another student and the school should have been aware.

An investigation into a reported sexual assault at the high school was first reported by lohud.com on Jan. 9, 2020, but very little detail was released at that time by police or school officials. But in the lawsuit filed on March 11, it said the attack was caught on a school security camera in a stairwell.

An unnamed juvenile male was arrested days after the incident. His case has been sealed, according to city police, resulting in few details available about

the charges against him. The case was transferred to family court in early 2020, according to a spokesperson for the Westchester County District Attorney.

According to the Westchester County Attorney’s Office, in May 2020 he admitted to a felony and was ordered in August 2020 to be held in a non-secure setting overseen by the county’s department of social services until Dec. 2021.

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Lawsuit

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The juvenile offender had "prior instances of unlawful sexual conduct" and had bullied the victim since middle school, according to the lawsuit.

The juvenile offender was not where he was supposed to be when the alleged attack occurred, and once it began, school staff failed to stop the assault that was caught on tape, according to the lawsuit, filed last month in New York State Supreme Court.

Unspecified damages are being sought. The New Rochelle City School District and the City of New Rochelle are defendants in the legal action. The student is now an Orange County resident after her family moved as a result of the sexual assault, the plaintiff's attorney, Andrew Buzin, said.

"The first and last thing through my mind is how could this happen, how could that happen within the walls of the school?" Buzin said.

Both the school system and city defended themselves in legal papers. The two entities, in separate filings, stated the plaintiff failed to add all necessary parties to the legal action including the assailant and his family.

Additionally, the legal papers filed by both the city and school district said the plaintiff's conduct was at least partly "culpable" for any injuries suffered as a result of her own alleged sexual assault.

The reported rape took place on Jan. 6, 2020, and the suspect was arrested two days later, according to New Rochelle police. Then-schools Superintendent Laura Feijoo acknowledged in a statement that a student "raised an extremely concerning allegation of sexual assault at the school."

The disturbing claims come only a couple years after the New Rochelle school district looked to overhaul its security following the fatal stabbing of a student less than a mile from the high school and a knife attack in a classroom that left another student wounded. Both 2018 stabbings, within about a week of each other, occurred during the school day.

"The district has obviously had a very difficult time keeping its students safe and it's been that way for a long time," Buzin said. "Based on everything that we've heard, everything that we've seen, the videos that we know exist, we believe we'll be able to establish the school was very negligent."

The juvenile offender had previously been in New York Family Court for another instance of "unwanted sexual contact" with a fellow student, according to the lawsuit. That case was not yet resolved at the time of the Jan. 6, 2020 incident.

New details of attack emerge in lawsuit

The civil complaint stated that the offender had bullied the victim since the seventh grade. The lawsuit went on to describe in detail an attack during the school day and that was apparently caught on security cameras.

According to the lawsuit, the victim left English class to go to the cafeteria around 1:25 p.m., walking by a security guard stationed outside her class. A male student grabbed her by the neck and forced her into a stairwell. There, he began to molest her, eventually choking her and biting her, according to the lawsuit.

The victim pleaded for him to stop, but the assailant raped her and sexually assaulted her, according to the suit. "During the entirety of the attack, (the victim) kept saying, 'NO.'"

After the attack, the victim walked back to class and was approached by the security guard, the lawsuit says.

"Within days, the police had been alerted to the incident, which was captured on

video by the school's security cameras," it says.

The victim needed to go to the hospital for a rape kit and receive medical treatment, the lawsuit states.

"(The victim) has been permanently and significantly traumatized as a result of this incident," the lawsuit states.

Buzin said the offender should have been closely supervised, considering his

past unlawful sexual conduct.

"It's unconscionable to not have protocols and precautions in place to make sure that it doesn't happen," said Buzin.

Two years prior, the Westchester County Attorney's Office said the juvenile was arrested following an incident in October 2018 off school grounds and was charged with unspecified misdemeanor crimes. He was not placed in detention and could still go to school, according to the county attorney's office.

The juvenile admitted to crimes in August 2019 and was assigned to probation pending a disposition, the county attorney's office said. The case was still pending when the 2020 sexual assault. It's unclear what the school district knew about the initial case.

And even if New Rochelle school officials knew about previous criminal charges against the alleged juvenile offender, the school district was still responsible for educating the child.

In such a situation, a school district would have to initiate its own disciplinary proceedings against a student before considering suspension, and may only impose such discipline based on student conduct that occurred in school or has a sufficient effect on the educational process, according to officials at the state Education Department. A suspended student must be provided with alternative instruction like home instruction.

Buzin said the city is named as a defendant because of the police department's possible involvement with school security as part of the internal review done by the district in 2018. He raised the question of whether the city notified the school about the juvenile's past conduct.

The city, in an April 6 legal filing, stated it has no connection to the plaintiff in the lawsuit.

The school district, in a March 31 filing, denied allegations in the complaint and asserted the plaintiff had not provided enough facts to back up their legal action.

Most glaring, the legal papers place some of the blame on the victim in this case.

"That there was no negligence, fault or culpable conduct on the part of the defendant, City School District of New Rochelle, causing the damages alleged in the complaint; furthermore, there was contributory negligence, assumption of risk, contributory fault and/or culpable conduct attributable to the plaintiffs, to the extent of total and/or partial diminution of damages alleged in the complaint," the district's answer states.

The district declined comment because litigation is pending, a school spokesperson said.

The city had a similar clause in its legal papers.

"Whatever damages and/or injuries the plaintiff may have sustained at the time and place alleged in the Complaint, was caused in whole or part, by the culpable conduct of the plaintiff," lawyers for the city wrote.

When contacted, a New Rochelle spokesperson said the city does not comment on pending litigation.

That defense is not uncommon; the Chappaqua school system included similar language in court filings when it was being sued over the sexual abuse by a former Horace Greeley High School drama teacher.

Buzin said the filing was not surprising, but questioned how the district could blame the victim for something that was the fault of another student. He called it "beyond the pale."

"How are you going to not be careful what you say in response, especially when you have the legal system on the criminal side or in the family court side having adjudicated this to where they've determined somebody is at fault and you're going to turn around and blame our client," Buzin said.

Staff reporters Gary Stern and Jon Bandler contributed to this report.

David Propper covers lower Westchester County. Reach him at dpropper@lohud.com and follow him on Twitter: [dg_props](https://twitter.com/dg_props). Our local coverage is only possible with support from our readers.