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Commentary: Why Texas should let parents sue faith-based schools

OPINION

By Janet Heimlich - Special to the American-Statesman

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As parents, when we enroll our children in a school, we entrust it to care for our kids and keep them safe. That's certainly true for private K-12 schools, which can cost \$15,000 to \$25,000 a year. Some parents believe that religiously affiliated schools are particularly trustworthy because of their spiritual teachings.

But, of course, all schools — be they religious or secular — can leave children vulnerable to psychological harm, as well as physical and sexual abuse. Now, there is a case before the Texas Supreme Court in which the Episcopal School of Dallas (ESD) has been alleged to have caused a child emotional trauma, while the school claims that no court has the right to intervene because it is faith-based.

The case involves a lawsuit filed by John Doe, a pseudonym for the father of a minor who was 16 years old at the time of the incident. The father says the Episcopal School of Dallas caused his son emotional trauma by falsely accusing him of — and then expelling him for — violating school rules. ESD says its religious affiliation exempts it from judicial review under the First Amendment.

When the Fifth Court of Appeals in Dallas considered the case, it sided with ESD. Now, the case is before the Texas Supreme Court, which will soon decide whether to grant review and weigh in on the issue. Depending on how the higher court decides, the case could have far-reaching ramifications and potentially affect thousands of children who attend religiously affiliated private schools for generations to come. The Child-Friendly Faith Project, a nonprofit organization I founded in 2012, strongly opposes the Court of Appeals' decision and filed an amicus brief with the Texas Supreme Court.

The lower court's ruling is extremely troubling. If it is allowed to stand, it could potentially leave students in faith-based schools more vulnerable to maltreatment than those in secular schools, which is discriminatory. Furthermore, it would be far too easy for an institution to avoid lawsuits simply by claiming it is faith-based or religiously affiliated.

The Episcopal School of Dallas is a case in point. Despite its legal position as a faith-based school, it enrolls students who come from families of all faiths and philosophical backgrounds and has a curriculum that is largely secular. In fact, while John Doe's child

was attending ESD, none of the school's "principles of honor, respect, and integrity" reflected a religious tenet, and its mission statement — that ESD strives to develop "the educated conscience" of each student—contains no religious or spiritual message. ESD also expressly promised to provide a "reasonable, consistent, and fair disciplinary structure" with no mention of religious doctrine.

Incidentally, this is not the first time that the Episcopal School of Dallas has been accused of disciplining a child in an arbitrary or unethical way. In 2011, a jury awarded more than \$9 million for the school's handling of a case in which a teacher sexually abused a female student. Shockingly, ESD expelled the victim. Ultimately, a jury found that the school had been "grossly negligent" for failing to protect the student.

This failure to keep children safe highlights the fact that all schoolchildren — regardless of what kind of institution they attend, whether it's private, public, religious or secular — must be protected from harm. Therefore, all schools — including private faith-based institutions — must not be exempted from judicial review.

Heimlich is the founder of the Child-Friendly Faith Project in Austin.