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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. RALPH P. FRANCO,

Justice

TRIAL/IAS, PART 16

RYAN HENDRICKS

NASSAU COUNTY

Plaintiff(s),

INDEX No.: 001861/98

-against- MOTION SEQ. NO: 2

LAWRENCE PUBLIC SCHOOL DISTRICT

Defendant(s).

The following papers read on this motion:

Notice of Motion/ Order to Show Cause.....
Answering Affidavits.....
Replying Affidavits.....

Motion by Defendant for an Order pursuant to CPLR 3212 awarding summary judgment and dismissal of the complaint against Defendant, Lawrence Public School District is **granted.**

Plaintiff brings this action against Defendant School District

alleging breach of duty to provide adequate supervision. Plaintiff alleges he sustained serious personal injuries as a result of the conduct of Clifton A as a student at the school and the alleged failure to provide adequate supervision.

It appears that the Defendant's 120-day deadline to file a motion for summary judgment expired on **April 17, 2000.** The motion for summary judgment was served **May 4, 2000.** In light of the short delay (17 days) and lack of any prejudice to the Plaintiff, the Defendants' request that the Court grant leave to move for summary judgment pursuant to CPLR 3212(a) is granted.

On **October 6, 1997,** at approximately 8:30 A.M., infant Plaintiff, Ryan Hendricks (hereinafter Plaintiff) was on the grounds of Defendant Lawrence Public Schools. At or about that time, Plaintiff, a fourth grader joined an informal pick-up game of soccer involving 60 to 80 students, all fourth and fifth graders enrolled in School #1. The students were supervised by three teachers. Plaintiff testified that at the time of the incident there was a teacher standing 30 to 40 feet away. Plaintiff testified that he played soccer during morning recess between five and ten times prior to the date of the accident while in the

fourth grade. He played soccer with Clifton A during some of those prior occasions.

Plaintiff was injured during the soccer game. According to his testimony, during the General Municipal Hearing held on **February 25, 1998,** Plaintiff testified that as Clifton approached him dribbling the soccer ball, Clifton suddenly pushed him to the ground using his upper arm and shoulder ("like a hockey check") and he fell onto his right arm and broke his radius. During his deposition on **October 5, 1999,** Plaintiff testified that while he was dribbling toward the goal, he was suddenly pushed in the back from behind by Clifton causing him to fall forward and injure his right wrist. There was no warning that Clifton would push him. Neither of the boys communicated with each other prior to the incident.

Plaintiff's attorney characterizes the incident as the product of a long-term campaign of bullying and intimidation by Clifton against Ryan.

Schools are under a duty to adequately supervise the students in their charge and they will be held liable for foreseeable injuries proximately related to the absence of adequate supervision (See:, e.g.,

Lawes v. Board of Educ., 16 N.Y.2d 302, 306; **Decker v. Dundee Cent. School Dist.,** 4 N.Y.2d 462, 464). Schools are not insurers of safety, however, for they cannot reasonably be expected to continuously supervise and control all movements and activities of students; therefore, schools are not to be held liable "for every thoughtless or careless act by which one pupil may injure another", (**Lawes,** 16 N.Y.2d, at 306, Supra, **Ohman v. Board of Educ.,** 300 N.Y. 306, 309).

(**Mirand v. City of New York,** 84 N.Y.2d 44, 49).

The Defendant's duties in this type of case are set forth as follows:

> In determining whether the duty to provide adequate supervision has been breached in the contest of injuries caused by the acts of fellow students, it must be established that school authorities had sufficiently specific knowledge or notice of the dangerous conduct which caused injury; that is, that the third-party acts could reasonably have been anticipated (See:, e.g. **Bertola v. Board of Educ.,** 1 A.D.2d 973). Actual or constructive notice tot he school of prior similar conduct is generally required because, obviously, school personnel cannot reasonably be expected to guard against all of the sudden, spontaneous acts that take

> place among students daily; and injury caused by the impulsive, anticipated act of a fellow student ordinarily will not give rise to a finding of negligence absent proof of prior conduct that would have put a reasonable person on notice to protect against the injury-causing act (See: **Ohman v. Board of Educ.,** 300 N.Y. 306, Supra; **Willow v. City of Binghamton,** 271 App. Div. 402, 406, aff'd. 296 N.Y. 950). (**Mirand v. City of New York,** Supra, at pp. 49-50).

Even once a breach of the supervisory duty is found, liability does not lie unless proximate cause exists. That is, where a student's act is "extraordinary and intervening, thus breaking the causal nexus between a Defendant's negligent act or omission and a Plaintiff's injury," liability does not lie (**Mirand v. City of New York,** Supra, at p. 50; See also: **Schrader v. Board of Education of the Taconic Hills Central School District,** 249 A.D.2d 741, lv to app den, 92 N.Y.2d 806). It is clear that prior to the incident ' "[t]he need for closer supervision could not reasonably have been apprehended' " (**Hanley v. Hanley v. Hornbeck,** 127 A.D.2d 905, quoting **Bertola v. Board of Education of City of New York,** 1 A.D.2d 973; See also: **Ceglia by Ceglia v. Portledge School,** 187 A.D.2d 550. Even

crediting Plaintiffs' version of events, there is insufficient evidence to predicate a finding that the school should have anticipated the sudden act and taken precautions against it at the morning recess.

In any event, "[w]hen an injury results from the acts of an intervening third party which, under the circumstances, could hardly have been anticipated in the reasonable exercise of the school's legal duty to the child, there can be no liability on the part of the school *(Citations omitted)."* **(Hauser v. North Rockland Central School District No. 1,** 166 A.D.2d 553, 554). Here, three teachers were in close proximity to the children when the incident occurred without any warning whatsoever. There was no opportunity for a teacher to intervene. The Plaintiff's injury was clearly the result of an "impulsive unanticipated act" for which the school cannot be held liable. **(Mirand v. City of New York, supra,** at p. 49; See also: **Kennedy v. Seaford Union Free School District No. 6,** 250 A.D.2d 574; **Busby v. Ticonderoga Central Schoo9l District,** 258 A.D.2d 762, lv to app den, 93 N.Y.2d 814; **Malik v. Greater Johnstown Enlarged School District,** 248 A.D.2d 774; **Borelli v. Blind Brook Unified School District,** 244 A.D.2d 305; **Moores v. City of Newburgh**

School District, 237 A.D.2d 265; **DeMunda v. Niagara Wheatfield Board of Education,** 213 A.D.2d 975).

The Court finds that the assignment by the School District of three adults to supervise approximately 80 children during morning recess was adequate and reasonable. The School District could **not** have reasonably anticipated or prevented Clifton's sudden and spontaneous conduct which was the proximate cause of the Plaintiff's injuries.

Dated: August 29, 2000

HON. RALPH P. FRANCO

Hon. Ralph P. Franco