

SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: HON. JOHN P. DUNNE, Justice

TRIAL/IAS, PART 8

**ANGELICA ALVAREZ, AN INFANT
BY HER MOTHER AND NATURAL GUARDIAN,
MARIA ALVAREZ, AND MARIA ALVAREZ,
INDIVIDUALLY**

Plaintiff(s)

Index No. 9811/04
Motion Seq. No. 1 & 2
Motion submission: 1/3/05
Motion for a Protective
Order re: Discovery and
for Summary Judgment

-against-

**GLEN COVE SCHOOL DISTRICT,
GLEN COVE BOARD OF EDUCATION,
GLEN COVE CITY SCHOOL DISTRICT
SUPERINTENDENT, MARY ELLEN FREELEY,
GLEN COVE CITY MIDDLE SCHOOL PRINCIPAL,
CARL LAPOINTE, AMY LEITMAN, "MARY LOIS",
"MARY ALEX", names being fictitious, parties sued
intending to be Teacher and Teacher's Aide on school
bus when infant Claimant was sexually assaulted,
HUNTINGTON COACH CORP., and ROY K. DAVIS
and HENDRICKSON BUS CORP., and MICHAEL McMAHON
Defendant(s)**

The following papers read on this motion:

Notice of Motion and cross-motion.....XX

Answering Affidavits

ReplyX

Upon the foregoing papers, it is hereby ordered that Defendant, Glen Cove School District's application for a Protective Order against certain discovery and summary judgment is decided as follows:

The instant case arises out of an alleged sexual attack perpetrated against the Plaintiff (infant) by two fellow students. Plaintiff alleges that the students were negligently supervised and as a result, the assault occurred. Defendant, Glen Cove School District denies the allegation. The assault allegedly occurred on a mini bus (school bus).

Plaintiff brought suit against the Movant, Superintendent Mary Ellen Freeley, Principal, Carl Lapointe, the teacher, and two aides who were on the bus.

Plaintiff demands discovery of the employment and personnel records of the Defendant School District Defendants' (personnel), and the disciplinary records of the two alleged assaulting students (unnamed as Defendants' in this action).

Plaintiff has also demanded deposition of the Superintendent Freeley, Principal LaPointe, Amy Leitman, Alexandra Torres and Lois Scanlon. Since the allegations involve these individuals acting within the scope of their employment, Defendants' argue the claims against these individuals should be dismissed on the theory of Respondent Superior.

In addition, Defendants' argue that the discovery demand for the disciplinary and employment records of the individual Defendants' is improper in light of a negligent supervision claim.

Defendants' object to the disclosure by them of the school records of Quashawn Edwards and Dyshawn Fowler since they are not parties to this action, and they are confidential and protected pursuant to the Family Educational and Privacy Act, 20 US Sec. 1232(g). The Defendants' argue that FEPA mandates the authorization of a parent or a judicial subpoena to disclose said records to Plaintiffs'. Defendants' also object to release of all of the school records (i.e., academic and those records not relative to prior assaultive/sexual conduct).

In opposition, Plaintiff argues that the school disciplinary records of the two offending students are material and relevant to establishing whether the school district had prior notice/knowledge of known to be violent student.

Likewise, Plaintiff argues that the records are not prohibited from disclosure pursuant to FEPA , just that they be disclosed pursuant to judicial order.

Plaintiff also argues that the medical records including the drugs taken or prescribed to the two offending students are discoverable as material and relevant on the prior violence issue.

Plaintiff contends that the employment and disciplinary records of Defendants'/employees' are material and relevant to the claim of negligent hiring and negligent supervision.

In response to Defendants' application for summary judgment to dismiss Plaintiffs' complaint as against the individual Defendants', Plaintiff argues that Education Law Sec. 3023 is an indemnification statute. The negligence of individual Defendant's is to be established in order to hold the school district liable under Respondent/Superintendent. Plaintiff argues that the school district's insurance policy may not be adequate to satisfy a rendered judgment.

Plaintiff cross moves for a Court order (subpoena) compelling the disclosure of all investigative reports prepared by Defendants' regarding the incident, and for the Family Court records of the two students covering September 17, 2003, October and November, 2003, before Judge John Marks.

Based upon the foregoing, Defendants' motion for summary judgment dismissing the claims against the individual Defendants' is

denied as premature with leave to resubmit after discovery is completed.

The Defendants' request for a Protective Order as against production of the employment records of the individual school district Defendants' is granted at this time.

Defendants' request for a Protective Order as against production of the disciplinary records of the individual school district Defendant is denied to the extent that an in-camera inspection by the Court is ordered with respect to disciplinary/complaints of negligent supervision, dereliction of duty or witnessing the violent altercation between students for a period of three years prior to the date of this incident with respect to the individuals, LaPointe, Leitman, Torres and Scanlon, only.

The Defendants' are directed to provide those records to the Court for an in-camera inspection on or before April 1, 2005.

The Court denies Defendants' request for a Protective Order with respect to the disciplinary and Family Court records only of the two students', Quashawn Edwards and Dyshawn Fowler. Plaintiff is directed to submit a judicial subpoena for signature to this Court for the above-referenced records. Upon service of same, the individuals and their parents/guardian may move to quash said subpoena. The subpoena makes the records returnable to the Court for an in-camera inspection.

This Court finds that the above procedure is the appropriate one pursuant to FEPA. The Defendant is to provide identification/address information only with respect to Edwards and Fowler.

The issue of the depositions are referred to a Conference before this Court. The remaining items requested to be disclosed, i.e., the academic and medical records of Edwards and Fowler are protected from discovery at this time. Plaintiffs' cross motion for disclosure of the formal findings/report of the incident prepared by the Defendant school district pursuant to Education Law Sec. 2802 (requirement to report and investigate allegations of sexual abuse) is granted to the extent that an in-camera inspection by the Court will be conducted. Defendant is directed to file such documents with the Court on or before April 1, 2005.

It is so Ordered.

Dated: February 7, 2005


Hon. John P. Dunne

ENTERED

FEB 08 2005

NASSAU COUNTY
COUNTY CLERK'S OFFICE