

Washington v City School Dist. of Albany
2012 NY Slip Op 32462(U)
September 24, 2012
Sup Ct, Albany County
Docket Number: 7010-10
Judge: Joseph C. Teresi
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STATE OF NEW YORK

COUNTY COURT

COUNTY OF ALBANY

AVERATT WASHINGTON, Individually
and as Parent and Natural Guardian of
DINERO WASHINGTON, an Infant,

Plaintiffs,

-against-

DECISION AND ORDER

INDEX NO. 7010-10

RJI NO. 01-12-105793

THE CITY SCHOOL DISTRICT OF
ALBANY, THE BOARD OF EDUCATION
OF THE CITY SCHOOL DISTRICT OF
ALBANY and THE YOUNG MEN'S
CHRISTIAN ASSOCIATION OF THE
CAPITAL DISTRICT,

Defendants.

APPEARANCES:

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TERESI, J.:

Plaintiff moves for an order pursuant to CPLR § 3124 directing the Albany School District defendants (“District”) to respond to certain discovery demands and to furnish a complete copy of all records in its possession pertaining to “Anthony Hay”, the plaintiff’s alleged infant assailant. The defendants oppose the motion and allege the demand is irrelevant, overly broad and burdensome.

Plaintiff alleges the infant plaintiff was harassed by infant Anthony Hay on October 15, 2009. The plaintiff also maintains the infant plaintiff was assaulted by Anthony Hay at an after school program operated by the District and the YMCA at the Arbor Hill Elementary School on November 2, 2009 and November 10, 2009 despite numerous warnings from the infant plaintiff’s mother. The plaintiff maintains the District was negligent by failing to adequately monitor and/or supervise a known combative/assaultive student. Plaintiff alleges as a result, the infant plaintiff has sustained serious and permanent injuries.

Plaintiff contends it is necessary to obtain a complete copy of the Anthony Hay’s disciplinary records for the academic years 2007-2010 in order to prosecute this action. The plaintiff seeks to ascertain if the District had notice of any aggressive propensities of the alleged infant assailant. The plaintiff alleges the disciplinary records of Anthony Hay are not protected by the Family Education Rights and Privacy Act (“FERPA”). Alternatively, the plaintiff requests the Court to conduct an *in camera* review of the documents provided by the District.

Anthony Hay and/or his parents are not parties to this action or have been served with the instant motion. The defendants maintain any release of the requested records would be in violation of the Family Education Rights and Privacy Act pursuant to 20 U.S.C. § 1232(g). The defendants allege the demand for the disciplinary file of Anthony Hay for the years 2007-

2012 is overly broad, unduly burdensome and totally irrelevant. The District contends it has provided the plaintiff with all statements of Anthony Hay. The District alleges any statements obtained from Anthony Hay by its attorneys are entitled to a qualified privilege. The District claims the discovery demands are totally irrelevant in regard to the issue of foreseeability.

Pursuant to CPLR 3124, it is well established that disclosure provisions are to be liberally construed and a trial court is afforded broad discretion in managing disclosure. (American Association of Bioanalysts v. New York State Department of Health, 12 AD3d 868 [3rd Dept. 2004]; Kavanagh v. Ogden Allied Maintenance Corp., 92 NY2d 952 [1998]). CPLR § 3101(a) requires full disclosure of all evidence material and necessary for the prosecution or defense of an action, regardless of the burden of proof. (Weber v. Ryder TRS, Inc., 49 AD3d 865 [2nd Dept. 2008]; Allen v. Crowell-Collier Pub. Co., 21 NY2d 403 [1968]). CPLR § 3126 authorizes the court to fashion an appropriate remedy, the nature and degree of which is a matter committed to the court's sound discretion and will not be disturbed absent a clear abuse of the court's discretion. (Kumar v. Kumar, 63 AD3d 1246 [3rd Dept. 2009]).

In determining whether the duty to provide adequate supervision has been breached in the context of injuries caused by the acts of fellow students, it must be established that school authorities had sufficient specific knowledge or notice of the dangerous conduct which caused injury and the acts of third-parties could reasonably have been anticipated. (Mirand v. City of New York 84 NY2d 44 [1994]). It is well settled that academic and school records generally are not protected by any privilege and may be discoverable upon a demonstration that they are relevant and material to the action. (Moores v. City of Newburgh School Dist., 213 AD2d 527 [2nd Dept. 1995]). 20 U.S.C. §1232g, commonly known as the "Buckley Amendment", directs the

federal government to withhold funds from educational institutions which permit disclosure of education records without complying with its provisions. The Buckley Amendment was intended to protect records relating to an individual's performance and does not apply to records compiled to "maintain the physical security and safety of the agency or institution." (Culbert v. City of New York, 254 AD2d 385 [2nd Dept. 1998]). The requested disciplinary records are subject to FERPA. However, 20 U.S.C. § 1232(g) is not violated when disclosure is furnished via a judicial order. (Staten v. City of New York, 90 AD3d 893 [2nd Dept. 2011]).

The mother of the alleged infant victim is entitled to the disclosure of records or reports of any incidents of threatening or violent behavior involving Anthony Hay occurring in the District prior to the alleged harassment and assaults. Reports or incidents involving violent behavior may be material and necessary to determine whether school officials had actual or constructive notice of similar conduct, which could constitute a basis of imposing liability. (Mirand v. City of New York, 84 NY2d at 49). The plaintiff has sufficiently established that the records of Anthony Hay may be relevant and their requested disclosure is reasonably calculated to lead to the discovery of material information. (Davis v. Elandem Realty Co., Inc., 226 AD2d 419 [2nd Dept. 1996]).

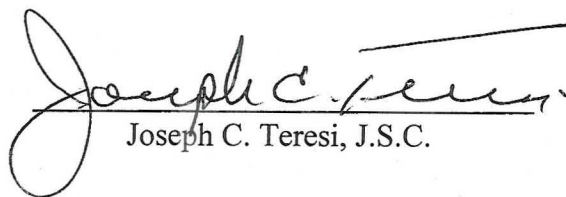
The parents of Anthony Hay shall be put on notice of the plaintiff's disclosure request and served with a copy of this Decision and Order by the District.

This Decision and Order is being returned to the attorneys for plaintiff. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that

section respecting filing, entry and notice of entry.

So Ordered.

Dated: Albany, New York
September 24, 2012



Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

1. Notice of Motion dated August 9, 2012;
2. Affirmation of Peter J. Scagnelli, Esq. dated August 9, 2012 with attached Exhibits A-F;
3. Affirmation of Christopher K. Mills, Esq. dated August 17, 2012 with attached exhibits A & B.