

Anderson v City of Mt. Vernon
2016 NY Slip Op 32672(U)
February 29, 2016
Supreme Court, Westchester County
Docket Number: 70007/2014
Judge: Joan B. Lefkowitz
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To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER-COMPLIANCE PART

-----X
STEPHON ANDERSON and AQUAMARIE FREEMAN,

Plaintiffs,

-against-

DECISION and ORDER
Index No. 70007/2014

THE CITY OF MT. VERNON, MT. VERNON CITY
SCHOOL DISTRICT, CITY OF MT. VERNON BOARD
OF EDUCATION, MT. VERNON PUBLIC SCHOOLS,
and MT. VERNON HIGH SCHOOL,

Motion Date: Feb. 29, 2016
Seq. No. 1

Defendants.

-----X
LEFKOWITZ, J.

The following papers were read on plaintiffs' motion for an order compelling defendants Mt. Vernon City School District, City of Mt. Vernon Board of Education, Mt. Vernon Public Schools and Mt. Vernon High School (collectively hereinafter the "school district") to produce: student/disciplinary files/records for nonparty N.G.¹; complete copies of the superintendent suspension files/records of N.G.; complete copies of the incident report regarding the assault on November 22, 2013 by N.G. on plaintiff Stephon Anderson ("Anderson") and complete copies of the student/disciplinary files/records of Anderson.

- Order to Show Cause
- Affirmation in Support, Exhibits A-B
- School District's Affirmation in Opposition, Exhibit A
- Affidavits of Service

Upon the foregoing papers and the proceedings held on February 29, 2016, this motion is determined as follows:

Plaintiffs allege that on November 22, 2013, while Anderson (then an infant) was on the

¹ To the extent that it is unclear from the record whether the nonparty student accused of attacking Anderson is a minor, his name has been redacted in keeping with court rule 22 NYCRR 202.5(e), and will hereinafter be referred to as N.G..

premises of Mt. Vernon High School (hereinafter the "school"), he was physically assaulted by fellow student and nonparty, N.G., as a result of defendants' negligence. Specifically, plaintiffs allege that Anderson was waiting outside of a classroom for lunch to be delivered for a friend's birthday when he was approached and threatened by several students. Plaintiffs state that security guards came and cleared those students from the hallway. Anderson was then escorted by one of the security officers to the security office. The security officer advised the principal about the threats that were being made towards Anderson. Plaintiffs state that the principal told Anderson that he should leave the school for his own safety. Plaintiffs state that the principal then directed the security officer to take Anderson to his locker to get his things. Plaintiffs state that Anderson was escorted to his locker by the security officer to get his belongings and they returned to the principal's office where Anderson ate his lunch alone. Anderson testified at his deposition that after finishing his lunch, he left the principal's office and returned his lunch tray to the cafeteria. Anderson was attempting to leave the school when he was assaulted by N.G. The principal's deposition testimony states that when he discovered that Anderson had left the room where he was eating lunch, the principal issued an "APB" for Anderson on the walkie-talkie. Plaintiffs also include testimony from the deposition of the school's Safety Officer who testified that after the initial confrontation by N.G. Anderson told school officials, including the principal and the safety officer, that he was scared and was afraid of being "jumped" in the school's courtyard.

On or about November 19, 2014 plaintiffs commenced this action by filing a summons and verified complaint. In the complaint plaintiffs allege, among other things, that the assault was the result of defendants' negligence. Plaintiffs seek damages for Anderson's injuries and a derivative claim on behalf of his mother. On or about November 17, 2015 plaintiff served a notice to produce the following: (1) complete copies of the student disciplinary files/records for N.G.; (2) complete copies of the superintendent suspension files/records for N.G.; (3) complete copies of the incident report regarding the assault on November 22, 2013 by N.G. on Anderson; and (4) complete copies of the student/disciplinary files/records for Anderson.

In support of the motion plaintiffs contend that these items are discoverable and that the burden of demonstrating that particular items are exempt from disclosure is on the opposing party. Plaintiffs argue that the documents requested are material and necessary in that they may show what, if any, additional notice that defendants had prior to the assault. Additionally, plaintiffs argue that academic records are generally not protected by any privilege and may be discoverable upon demonstration that they are relevant to the action. Plaintiffs argue that the fact that the principal segregated Anderson for lunch and escorted him to his locker and then issued an "APB" when he was discovered missing from the principal's office all evidence a concern for Anderson's safety and a concern about an imminent altercation.

In opposition the school district defendants initially argue that pursuant to section 1232g of the General Education Provisions Act (20 U.S.C. 1221, 1232g), commonly known as the Family Educational Rights and Privacy Act (FERPA), they cannot provide nonparty student information without a court order. The school district defendants argue that if they did release nonparty records without the permission of the nonparty student's parent or guardian the

government could withhold federal funds from the school district. The school district defendants also argue that there is a high burden placed on those who seek to overcome significant statutory privacy interests like those protected by FERPA. Additionally, the school district defendants argue that plaintiffs' demands are vague and lack foundation and that plaintiffs have failed to demonstrate sufficient reason for disclosure of the records in light of privacy concerns of N.G. and possibly of other students not involved in the alleged incident.

The school district defendants further argue that should they be compelled to produce the requested documents, an in camera review by the court would be necessary in order to protect the privacy of N.G. and any other students.

With respect to the school district's contentions regarding the Family Educational Rights and Privacy Act of 1974 (20 USC § 1232g), commonly referred to as the Buckley Amendment, that statute was enacted for the purpose of protecting the records of an individual student's academic performance (*Culbert v City of New York*, 254 AD2d 385, 387 [2d Dept 1998]). However, the Buckley Amendment does not apply to records compiled to maintain the security and safety of the educational institution (*see id.*). Moreover, the Buckley Amendment "is not violated when disclosure is furnished via a judicial order" (*Staten v City of New York*, 90 AD3d 893, 895 [2d Dept 2011]). "School records such as those sought by the plaintiff ordinarily are not protected by any privilege, and they are generally discoverable once their relevancy and materiality to the action are established" (*Graham v West Babylon Union Free Sch. Dist.*, 262 AD2d 605, 606 [2d Dept 1999]).

Here, plaintiffs have established that the documents they seek would be material and relevant to their allegations of negligence and are, therefore, discoverable (*see Mirand v City of New York*, 84 NY2d 44, 49 [1994] ["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 sufficiently specific knowledge or notice of the dangerous conduct which caused injury; that is, that the third-party acts could reasonably have been anticipated"]).

The Court is also satisfied that proper notice of this order to show cause was given to N.G.'s parents/guardians (*see Sauerhof v City of New York*, 108 Misc 2d 805 [Supreme Court, Queens County 1981]).

Accordingly, the school district defendants are required to respond to plaintiffs' notice to produce dated November 17, 2015. However, to prevent the disclosure of confidential and/or sensitive information, including the identities of students not involved in the alleged incident, the subject records shall be submitted to the Court for in camera review and, if necessary, redaction (*see Culbert v City of New York*, 254 AD2d 385, 388 [2d Dept 1998] ["since reports of prior violent incidents may include information which is deemed confidential pursuant to provisions other than the Buckley Amendment . . . those reports are to be examined by the Supreme Court in camera and the confidential matter redacted prior to disclosure"]).

Based upon the foregoing it is hereby

ORDERED that plaintiffs' motion is granted to the extent that, on or before March 14, 2016, defendants Mt. Vernon City School District, City of Mt. Vernon Board of Education, Mt. Vernon Public Schools, and Mt. Vernon High School are ordered to provide to the Compliance Part Clerk, for this court's in camera review, the following: (1) complete copies of the student/disciplinary files/records for N.G.; (2) complete copies of the superintendent suspension files/records of N.G.; (3) complete copies of the incident report regarding the assault on November 22, 2013 by N.G. on Stephon Anderson; and (4) complete copies of the student/disciplinary files/records of Stephon Anderson; and it is further,

ORDERED that plaintiffs shall serve all parties and the guardian of nonparty N.G. with a copy of this order with notice of entry within five days of entry; and it is further,

ORDERED that all the parties shall appear for a conference in the Compliance Part, Room 800 of this courthouse located at 111 Dr. Martin Luther King, Jr., Boulevard, White Plains, New York on April 6, 2016 at 9:30 a.m.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
February 29, 2016


HON. JOAN B. LEFKOWITZ, J.S.C.

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Guardian of N.G.
[Name and address redacted]
By Mail

cc: Compliance Part Clerk