

Sinapi v Wappingers Cent. Sch. Dist.

2017 NY Slip Op 32853(U)

July 18, 2017

Supreme Court, Dutchess County

Docket Number: 2016/50186

Judge: James V. Brands

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT- STATE OF NEW YORK
DUTCHESS COUNTY

Present:

Hon. JAMES V. BRANDS

Justice.

SUPREME COURT: DUTCHESS COUNTY

LUIGI SINAPI,

Plaintiff,

-against-

WAPPINGERS CENTRAL SCHOOL DISTRICT,

Defendant.
_____X

DECISION AND ORDER

Index No: 2016/50186

Motion Seq. No. 1

The following papers were read and considered on defendant's motion to quash a subpoena duces tecum dated March 17, 2017.

NYSCEF Docs. No. 10-21

This is a personal injury action that arose on November 20, 2014 during a fight between two students at John Jay High School, which is part of the Wappingers Central School District (WCSD). The incident involved a non-party high school student (hereinafter, JS¹) who began punching plaintiff in the school hallway. Plaintiff claims he did not punch JS but he did grab JS by the waist and they both fell to the floor. He further claims a teacher began to separate the two students by grabbing JS. The teacher then let go of JS. Thereafter, JS punched plaintiff in the face causing plaintiff to lose a tooth. (Rubin Aff. ¶3 citing Plaintiff's EBT).

Plaintiff submitted a proposed subpoena duces tecum commanding WCSD to produce the "central office" records of the hearing related to the incident and JS's prior disciplinary records. The subpoena was signed by this court on March 17, 2017.

Defendant filed the instant motion to quash the subpoena pursuant to CPLR §2304. First, counsel contends that plaintiff made overly-broad demands for all incident records and all of JS's disciplinary records without demonstrating that same are material and relevant to this case.

Second, counsel argues that any potential need for disclosure is outweighed by the rights of the non-party minor student JS against disclosing FERPA²-protected records to satisfy

¹ The court is adopting the same abbreviation used by the defendant to reference the other high school student involved in the altercation ("JS").

² "FERPA" references Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g.

plaintiff's overly-broad disclosure demands. WCSD points out that FERPA is intended to protect the privacy rights of students such as JS by limiting transferability and disclosure of student records without their consent (*citing Rios v Read*, 73 F.R.D. 589 [E.D.N.Y. 1977]).

Plaintiff opposed the motion. Counsel argues that "the complaint centers around the alleged negligence of the school district's employees in facilitating the separation of the plaintiff and JS during the school fight". Counsel cites the complaint allegations that WCSD "failed to properly protect and safely keep plaintiff while in its care", "failed to properly supervise and control the students in its care", "failed to properly hire, train and supervise its employees" and "generally failed to exercise care and prudence required [of WCSD] under the circumstances" (*see* Complaint ¶12). Counsel cites the Bill of Particulars to the extent that they alleged WCSD was "negligently facilitating the ability of the attacker to cause severe injuries to the plaintiff" as well as failing to protect and keep plaintiff safe while he was in defendant's care and control, failing to supervise and control students in defendant's care, and "failing to exercise the care and prudence required under the circumstances". (Rubin Aff. ¶5 *citing* Exhibit E at ¶5).

Plaintiff's counsel agreed to limit its prior request "to the extent of limiting the period of time for which he seeks the disciplinary records of JS to three years before the incident" (Rubin Aff. ¶6). Counsel cites case law to support plaintiff's contention that JS's prior violent incidents are relevant to plaintiff's claim against WCSD for failure to adequately supervise students (*citing Moores v. City of Newburgh School District*, 213 AD2d 527 [2nd Dept. 1995]; *Graham v West Babylon Union Free School District*, 262 AD2d 605 [2nd Dept. 1999]; *Egle v Maplebrook School*, 254 AD2d 388 [2nd Dept. 1998]; *Drawbridge v Patchogue-Medford Union Free School District*, 2011 WL 12897605 [Sup. Ct. Nassau Co. 2011]).

In reply, defense counsel refutes plaintiff's factual account of the incident. Counsel reasserts WCSD's position that plaintiff failed to allege JS had any prior disciplinary infractions with the school district so as to establish that disclosure of JS's disciplinary record is reasonably calculated to lead to relevant evidence. Instead, counsel contends that the demand is an impermissible "fishing expedition" that is not based on any prior allegation that WCSD had prior notice of any violent propensity of JS.

Decision:

Plaintiff has alleged a negligent supervision claim against WCSD for failure to adequately supervise the students in its care and control (*see* Doc. No. 1 at ¶12, Doc. No. 17 at ¶5). "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 the injuries; that is, that the third-party acts could have been reasonably anticipated" (*Moores v City of Newburgh-School District*, 213 AD2d 527, 527 [2nd Dept. 1995], *citing Mirand v City of New York*, 84 NY2d 44, 49 [1994]). WCSD's records of any prior altercations involving JS are material and relevant to plaintiff's claim the WCSD failed to adequately supervise JS (*id.*). Similarly, WCSD's records regarding the disciplinary hearing of this altercation at issue is also material and relevant to this litigation.

“It has been demonstrated that although school discipline records are not protected by any privilege, they are not discoverable unless their relevancy and materiality to the action is established.” (*Carroll v Northport-East Union Free School Dist.*, 2012 WL 9392287 [2012]; citing *Graham v West Babylon Union Free School District*, 262 AD2d 605 [2nd Dept. 1999], *Moores v City of Newburgh-School District*, supra.). Based on the foregoing, and in light of the interest of privacy in accordance with the Buckley Amendment codified as 20 U.S.C. 1232g, this Court will direct the production of such records to judicial chambers for in camera review.

Based on the foregoing, it is hereby

ORDERED that within 30 days hereof, WCS D is directed to produce un-redacted records related to JS’s prior altercations/disciplinary matters within the past three years to judicial chambers for in camera inspection. Counsel shall submit an additional copy with any proposed redactions. It is further

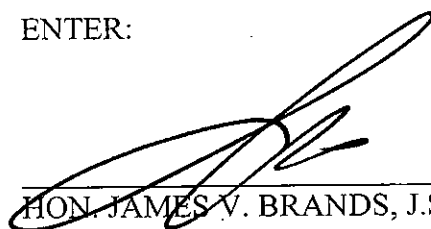
ORDERED that within 30 days hereof, WCS D is directed produce to judicial chambers for in camera inspection any un-redacted transcript/record of the disciplinary hearing related to the November 20, 2014 altercation between plaintiff and JS. Counsel shall submit an additional copy with any proposed redactions. It is further

ORDERED that counsel are directed to appear for a compliance conference at **September 11, 2017 at 9:15a.m.**

The foregoing constitutes the decision and order of this court.

Dated: July 18, 2017
Poughkeepsie, New York

ENTER:



HON. JAMES V. BRANDS, J.S.C.

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Pursuant to CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of entry, the appeal must be taken within thirty days thereof.

When submitting motion papers to Judge Brands' Chambers, please do not submit any copies. Submit only the original papers.