

<b>Shin v Binet</b>
2021 NY Slip Op 31412(U)
April 22, 2021
Supreme Court, New York County
Docket Number: 155437/2018
Judge: J. Mabelle Sweeting
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. J. MACHELLE SWEETING PART IAS MOTION 62

Justice

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INDEX NO. 155437/2018

CAROLINE SHIN, ELENI GIANNOUSIS,

01/20/2021,

Plaintiff,

MOTION DATE 02/04/2021

- v -

MOTION SEQ. NO. 007 008

JOHN BINET, DAVID MORRISON, THE NEW YORK CITY DEPARTMENT OF EDUCATION

DECISION + ORDER ON MOTIONS

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156

were read on this motion to/for ORDER OF PROTECTION

The following e-filed documents, listed by NYSCEF document number (Motion 008) 157, 158, 159, 160, 161, 162, 163, 164, 165, 166

were read on this motion to/for DISCOVERY

Pending before the court are two motions. The first is Motion #007, wherein defendants New York City Department of Education ("DOE") and Principal David T. Morrison (collectively, the "City") seek a protective order limiting the scope of the deposition testimony sought through a non-judicial Subpoena Duces Tecum served by Plaintiffs upon Richard Cintron on January 5, 2021. The second is Motion #008, wherein plaintiffs CAROLINE SHIN and ELENI GIANNOUSIS seek to compel discovery pursuant to CPLR §3124, and in particular, but not exclusively, to compel the production of all complaints of harassment and/or dishonesty and sexually inappropriate conduct (both substantiated and unsubstantiated) made by students, teachers, parents and employees of the DOE about John Binet and David T. Morrison for the period

of January 1, 2014 to present; to compel the production of all complaints made by the Plaintiffs (whether substantiated or not); as well as to strike Defendants' Answer pursuant to CPLR § 3126.

Pursuant to the aforementioned filings, and the oral arguments made before the undersigned on April 22, 2021, this court finds as follows:

**Motion #7: Defendant's Request for a Protective Order**

The City seeks a protective order for the deposition of Richard Cintron. Specifically, the City wants to: 1) limit complaints to those about harassment and dishonesty; 2) prohibit questions about complaint procedures for students related to sexual misconduct; 3) prohibit questions about "per session"; and 4) prohibit questions about factual allegations in the Second Amended complaint not specifically identified in the subpoena.

Defendant City's motion seeking an order limiting examination with respect to items #1-4 above is:

- 1) Denied. This court previously ruled, and reiterates here, that disclosure is to include all complaints (both substantiated and unsubstantiated) of harassment and/or dishonesty and sexually inappropriate conduct.
- 2) Denied. Plaintiff may inquire about complaint procedures for students related to sexual misconduct.
- 3) Denied. Plaintiff may inquire about "per session" (which refers to overtime).
- 4) Denied. Plaintiff may inquire about factual allegations in the Second Amended complaint as the complaint was attached to the subpoena.

Examination of DOE witnesses by plaintiffs counsel on these issues applies to all DOE employees and does not require further motion, application or leave of court.

**Motion #8: Subpoena to UFT and Modification of December 19, 2019 Order**

Defendants shall produce substantiated and unsubstantiated complaints of harassment, dishonesty and sexually inappropriate conduct against defendants John Binet and David Morrison filed with and maintained by the UFT.

Although not required, the plaintiffs are granted leave to serve a new subpoena on the UFT (upon notice to Dominique Saint-Fort, Esq.). Alternatively, Defendant City may serve the subpoena upon the UFT to obtain the records which shall, in turn, be produced to the plaintiffs or the plaintiffs may rely on their prior subpoena, (with a copy of this order attached). A response to the subpoena (in whichever method it is served) shall be served no later than 60 days from the date of service.

In addition to the production of records as indicated above from UFT, defendants shall produce substantiated and unsubstantiated complaints of harassment, dishonesty and sexually inappropriate conduct against defendants John Binet and David Morrison that are filed, maintained and in the possession of the DOE.

To the extent that the December 19, 2019 order held that plaintiffs were only entitled to substantiated complaints of harassment and dishonesty against the individual defendants such order is modified to include the production of substantiated and unsubstantiated complaints of harassment, dishonesty and sexually inappropriate conduct against defendants John Binet and David Morrison and defendants shall produce such records that are filed, maintained and in the possession of the DOE.

Such records shall be produced no later than June 7, 2021.

DISCOVERY

It was stipulated and agreed that plaintiffs do not need to re-serve their demands dated October 2, 2018 and that the City will supplement their response (dated November 27, 2018) in conformance with this court's order. The City's supplemental response shall be served no later than June 7, 2021.

SANCTIONS

Plaintiff's request for sanctions against the City or to Strike the City's answer is DENIED as the City's actions were neither willful nor contumacious to support such relief.

This is the order of this court

4/22/2021  
DATE

  
J. MACHELLESWEETING, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE