

<b>ARK55 v Archdiocese of N.Y.</b>
2022 NY Slip Op 33230(U)
September 19, 2022
Supreme Court, New York County
Docket Number: Index No. 950049/2019
Judge: Alexander Tisch
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ALEXANDER TISCH** PART 18

*Justice*

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ARK55,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK, SOCIETY OF JESUS  
A/K/A JESUIT FATHERS AND BROTHERS A/K/A U.S.A.  
NORTHEAST PROVINCE OF THE SOCIETY OF JESUS  
A/K/A THE NEW YORK PROVINCE OF THE SOCIETY OF  
JESUS A/K/A SOCIETY OF JESUS OF U.S.A.  
NORTHEAST PROVINCE A/K/A THE SOCIETY OF JESUS  
JESUIT FATHERS, LOYOLA SCHOOL, DOES 1-5 WHOSE  
IDENTITIES ARE UNKNOWN TO PLAINTIFF

Defendant.

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INDEX NO. 950049/2019

MOTION DATE 12/04/2020

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 47, 48, 49, 50, 52, 54, 58, 59, 60

were read on this motion to/for DISMISS.

Upon the foregoing documents, defendant Loyola School (defendant or Loyola) moves to dismiss the complaint pursuant to CPLR 3211 (a) (5) and (7).

In determining dismissal under CPLR Rule 3211 (a) (7), the “complaint is to be afforded a liberal construction” (Goldfarb v Schwartz, 26 AD3d 462, 463 [2d Dept 2006]). The “allegations are presumed to be true and accorded every favorable inference” (Godfrey v Spano, 13 NY3d 358, 373 [2009]). “[T]he sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail” (Guggenheimer v Ginzburg, 43 NY2d 268, 275 [1977]). Additionally, “[w]hether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss” (EBC I, Inc. v Goldman, Sachs & Co., 5 NY3d 11, 19 [2005]).

Plaintiff's complaint alleges that "[f]rom approximately 1986 to 1988, when Plaintiff was approximately 14 to 16 years old, Fr. Farrand engaged in unpermitted sexual contact with Plaintiff" (NYSCEF Doc No 20 at ¶ 22). Plaintiff alleges that s/he was a student at Loyola (id. at ¶ 1); that Father Farrand was a Roman Catholic cleric employed by the defendants (id. at ¶ 18); and that plaintiff and his/her family came in contact with Farrand "as an agent and representative of Defendants, and at Loyola School" (id. at ¶ 20).

The complaint asserts a general negligence claim (first cause of action), a negligent training and supervision claim (second cause of action), and negligent retention (third cause of action).

"Schools are under a duty to adequately supervise the students in their charge and they will be held liable for foreseeable injuries proximately related to the absence of adequate supervision" (Mirand v City of New York, 84 NY2d 44, 49 [1994]). The defendants' "duty to students arises from its physical custody over them. When that custody ceases, and the child passes out of the school's authority such that the parent is free to reassume control, the school's custodial duty ceases" (Colon v Board of Educ. of City of N.Y., 156 AD2d 131 [1st Dept 1989], citing Pratt v Robinson, 39 NY2d 554, 560 [1976]; see Stephenson v City of New York, 19 NY3d 1031, 1034 [2012]). Here, the complaint fails to plead where any of the alleged sexual contact took place and, consequently, whether Loyola should be held responsible for violating that duty of care (cf. Johansmeyer v New York City Dept. of Educ., 165 AD3d 634, 634-37 [2d Dept 2018]). The allegation that plaintiff "came in contact with Fr. Farrand" through and/or at the school, is not enough (see, e.g., "John Doe 1" v Board of Educ. of Greenport Union Free Sch. Dist., 100 AD3d 703, 705 [2d Dept 2012]).

The complaint insufficiently alleges a required element for a negligent hiring, training, supervision and/or retention claim that a sufficient “nexus or connection” exists “between the defendant's negligence in [hiring, retaining, supervising, or training] the offending employee and the plaintiff's injuries” (Roe v Domestic & Foreign Missionary Socy. of the Prot. Episcopal Church, 198 AD3d 698, 701 [2d Dept 2021]; Gonzalez v City of New York, 133 AD3d 65, 70 [1st Dept 2015] [“what the plaintiff must demonstrate is a connection or nexus between the plaintiff's injuries and the defendant's malfeasance”]; see also Anonymous v Dobbs Ferry Union Free School Dist., 290 AD2d 464, 464-65 [2d Dept 2002]). As noted above, the allegation that plaintiff “came in contact with Fr. Farrand” as an agent and representative of Loyola, and physically at Loyola, is not enough to establish a nexus for this claim (see, e.g., K.I. v New York City Bd. of Educ., 256 AD2d 189, 189-192 [1st Dept 1998]).

Other alleged breaches, such as those found in paragraph 33 of the complaint, are not actionable because the scope of the legal duty is limited, or is otherwise duplicative of the duty of care owed *in loco parentis* or under the theory of negligent supervision, training, and/or retention.

“It is well established that before a defendant may be held liable for negligence it must be shown that the defendant owes a duty to the plaintiff” (Pulka v Edelman, 40 NY2d 781, 782 [1976]). “In the absence of duty, there is no breach and without a breach there is no liability” (*id.*). As stated above, “[s]chools are under a duty to adequately supervise the students in their charge and they will be held liable for foreseeable injuries proximately related to the absence of adequate supervision” (Mirand, 84 NY2d at 49). Failure to provide adequate training is no different — and in this regard, it cannot be said that the school was expected to actively implement policies and procedures or otherwise train its employees or students “regarding all

manner of potential criminal or inappropriate behavior by their employees or others” (Higgins v Zenker Corp., 2019 NY Slip Op 30802[U], \*7-8 [Sup Ct, Suffolk County 2019]). “Schools are not insurers of safety” (Mirand, 84 NY2d at 49), and this Court declines to extend a duty of care to its employees or students “for failure to train regarding a limitless universe of potential illegal or inappropriate actions by employees, resulting in insurer-like liability on the part of any employer” (Higgins, 2019 NY Slip Op 30802[U] at \*7-8). Rather, Loyola can only be liable for failing to supervise, train, and/or retain if/when it is established that it had knowledge of Father Farrand’s propensity to commit sexual assaults and failed to act (see, e.g., Kenneth R., 229 AD2d at 163 [“There is no common-law duty to institute specific procedures for hiring employees unless the employer knows of facts that would lead a reasonably prudent person to investigate the prospective employee”]).

Accordingly, it is hereby ORDERED that the motion of defendant LOYOLA SCHOOL to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General

Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that service of this order upon the Clerk of the Court and/or the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (see section J).<sup>1</sup>

This constitutes the decision and order of the Court.



<u>9/19/2022</u>			<u>ALEXANDER TISCH, J.S.C.</u>
DATE			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> GRANTED IN PART
		<input type="checkbox"/> DENIED	<input 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

<sup>1</sup> The *Protocol* is accessible at the “E-Filing” page on the court’s website: [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh).