

**John Doe PF v Massapequa Union Free Sch. Dist.**

2022 NY Slip Op 34602(U)

November 21, 2022

Supreme Court, Nassau County

Docket Number: Index No. 900106/2020

Judge: Leonard D. Steinman

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU**

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**JOHN DOE PF,**

**Plaintiff,**

**-against-**

**MASSAPEQUA UNION FREE SCHOOL DISTRICT,**

**Defendant.**

-----X  
**LEONARD D. STEINMAN, J.**

**Part CVA-R  
Index No. 900106/2020  
Motion Seq. No. 002**

**DECISION AND ORDER**

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The following papers, in addition to any memoranda of law and statements of uncontested material facts, were reviewed in preparing this Decision and Order:

Defendant’s Notice of Motion, Affirmation & Exhibit.....	1
Plaintiff’s Affirmation in Opposition & Exhibits.....	2
Defendant’s Reply.....	3

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At issue in this action is whether a school district has an obligation to act to protect its students from foreseeable harm once it learns that a teacher is a sexual deviant and, if so, whether it matters how or where it learns of this fact. The answer to the first question is obvious and long settled: of course it does. A school district, no less than any other employer, has a common law duty to take appropriate action when it has reason to know that an undue risk of harm exists because of its employee’s harmful propensity. *See Waterbury v. New York City Ballet, Inc.*, 205 A.D.3d 154, 164 (1st Dept. 2022). And common-sense dictates that a school district must act to protect its schoolchildren regardless of how it learns of the danger that threatens them. As a result, the motion of defendant Massapequa Union Free School District (the District) for summary judgment in this action is denied in part, as there are issues of fact as to whether the District was on notice of the propensity of its teacher, John Anglin (now deceased), to sexually abuse its students and whether his continued employment after such notice led to the sexual abuse of plaintiff.

## **BACKGROUND**<sup>1</sup>

Plaintiff attended Parkside Junior High School for three years from seventh grade to ninth grade, approximately in 1958 through 1960. While in seventh grade, he was invited by his social studies teacher, Anglin, to go to Anglin's house after school. Plaintiff did so, arriving at the house on his own. In the house, Anglin proceeded to rub plaintiff's shoulders and back, put his hands down plaintiff's pants, and rubbed his genitals. Thereafter, plaintiff visited Anglin at Anglin's home on four or five more occasions while in Anglin's seventh grade class, and the same pattern of abuse was repeated each time.

Anglin ceased being plaintiff's teacher, but the abuse was repeated on approximately ten more occasions while plaintiff was in the eighth and ninth grades (at Anglin's school). While in eighth grade, Anglin and plaintiff began smoking cigarettes and drinking beer during his visits.

Plaintiff then attended Massapequa High School for grades tenth through twelfth. Anglin transferred to Massapequa High School sometime while plaintiff was a student there although plaintiff was not in his classes. Anglin's abuse of plaintiff continued until the beginning of Anglin's eleventh grade year. In total, plaintiff was abused on six to twelve occasions while he was in high school. All of the abuse occurred at Anglin's house and plaintiff kept their rendezvous secret.

At some point during this time period Anglin moved residences.<sup>2</sup> Anglin had a roommate, George Apuzzi, at his new home. Apuzzi was another teacher employed by the District, beginning in 1960. He initially taught at Parkside Junior High and then transferred in 1961 to another high school in the District—Berner High School—where he taught until

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<sup>1</sup> For purposes of determining a summary judgment motion the court is to view the evidence in a light most favorable to the non-moving party. *Stukas v. Streiter*, 83 A.D.3d 18,22 (2d Dept. 2011). Anglin is now deceased. The District has not conceded that the abuse described herein took place and it may seek to cast doubt upon plaintiff's version of events. Nonetheless, for purposes of the District's motion, the court will credit plaintiff's allegations.

<sup>2</sup> It is unclear from the record precisely when Anglin moved residences and the years when plaintiff attended each of his schools.

1968. Apuzzi witnessed plaintiff's multiple visits with Anglin at their home. Apuzzi also observed incidents, of which there were approximately three, in which Anglin had plaintiff hold down his dog while Anglin applied lotion to the animal's penis and masturbated it until ejaculation. Anglin sought to convince plaintiff to masturbate the dog—stating that the dog had an infection on its penis and that cream had to be rubbed on it—but plaintiff declined. Plaintiff relies on Apuzzi's observations for his assertion that the District had notice of the abuse he endured and Anglin's propensity to commit sexual abuse.

### **LEGAL ANALYSIS**

The District now moves for summary judgment dismissing the complaint. It is the movant who has the burden to establish an entitlement to summary judgment as a matter of law. *Ferrante v. American Lung Assn.*, 90 N.Y.2d 623 (1997). "CPLR §3212(b) requires the proponent of a motion for summary judgment to demonstrate the absence of genuine issues of material facts on every relevant issue raised by the pleadings, including any affirmative defenses." *Stone v. Continental Ins. Co.*, 234 A.D.2d 282, 284 (2d Dept. 1996). Where the movant fails to meet its initial burden, the motion for summary judgment should be denied. *US Bank N.A. v. Weinman*, 123 A.D.3d 1108 (2d Dept. 2014).

A defendant's burden cannot be satisfied merely by pointing to gaps in the plaintiff's proof. *In re New York City Asbestos Litigation (Carriero)*, 174 A.D.3d 461 (1st Dept. 2019); *Vittorio v. U-Haul Co.*, 52 A.D.3d 823 (2d Dept. 2008).

Once a movant has shown a *prima facie* right to summary judgment, the burden shifts to the opposing party to show that a factual dispute exists requiring a trial, and such facts presented by the opposing party must be presented by evidentiary proof in admissible form. *Zuckerman v. New York*, 49 N.Y.2d 557 (1980); *Friends of Animals, Inc. v. Associated Fur Mfrs., Inc.*, 46 N.Y.2d 1065 (1979).

Plaintiff alleges that that the District was negligent in its supervision of him and in its supervision and retention of Anglin. These negligence claims require a finding that the

District was on notice that Anglin had a propensity to engage in the sexual abuse at issue, such that his acts could be anticipated or were foreseeable. *Nevaeh T. v. City of New York*, 132 A.D.3d 840 (2d Dept. 2015). A necessary element of a cause of action alleging negligent retention or supervision of an employee is that the employer knew or should have known of the employee's propensity for the conduct which caused the injury. *Johansmeyer v. New York City Dept. of Educ.*, 165 A.D.3d 634, 635 (2d Dept. 2018). The employer's negligence lies in having placed the employee in a position to cause foreseeable harm, harm which would most probably have been spared the injured party had the employer taken reasonable care in making decisions respecting the hiring and retention of the employee. *Id.* at 635-36.

Similarly where, as here, a complaint also alleges negligent supervision of a child stemming from injuries related to an individual's intentional acts, "the plaintiff generally must demonstrate that the school knew or should have known of the individual's propensity to engage in such conduct, such that the individual's acts could be anticipated or were foreseeable." *Nevaeh T. v. City of New York*, 132 A.D.3d at 842, quoting *Timothy Mc. v. Beacon City Sch. Dist.*, 127 A.D.3d 826, 828 (2d Dept. 2015); see also *Mirand v. City of New York*, 84 N.Y.2d 44 (1994). A school owes its students such care as a parent of ordinary prudence would observe in comparable circumstances. *Doe v. Whitney*, 8 A.D.3d 610, 611 (2d Dept. 2004), quoting *Doe v. Orange-Ulster Bd. of Coop. Educ. Servs.*, 4 A.D.3d 387, 388 (2d Dept. 2004).

A review of caselaw concerning allegations by a student of teacher abuse reveals that whether a school district was on sufficient notice of the teacher's propensities is a *sui generis* inquiry. Sufficient evidence of notice to survive summary judgment was found in *Doe v. Whitney*, where the teacher/abuser often kept the plaintiff in his first-grade classroom during recess and later removed him from his second and third-grade classrooms without explanation. *Doe v. Whitney*, 8 A.D.3d at 611. In *Murray v. Research Foundation of State University of N.Y.*, 283 A.D.2d 995 (4th Dept. 2001), the court denied the defendant school

district's summary judgment motion where a middle school student was let out of classes based upon student passes provided by the abuser, who abused the student in his school office behind closed doors. In *Doe v. Bd. of Educ. of Morris Central School*, 9 A.D.3d 588 (3d Dept. 2004), summary judgment was denied because "inappropriate touching occurred on multiple occasions in two different locations over a period of time [one to three week period]" and, therefore, "it simply [could not] be said, as a matter of law, that there were insufficient facts to put defendants on notice of a potentially harmful situation." *Id.* at 591.

In contrast, in *Dia CC. v. Ithaca City School District*, 304 A.D.2d 955 (3d Dept. 2003), it was held that releasing a student from class to another teacher for one-on-one instruction was not a breach of the duty to supervise as a matter of law. *See also Ghaffari v. North Rockland Cent. School Dist.*, 23 A.D.3d 342 (2d Dept. 2005)(summary judgment granted due to lack of notice where teacher allowed to meet privately with student). It has also been found that a high school student meeting with a teacher "behind locked doors" is not enough to stave off summary judgment "given the degree of trust reposed in teachers and the fact that such meetings are an integral part of the educational process." *Mary KK v. Jack LL*, 203 A.D.2d 840, 842 (3d Dept. 1994).

Here, there is *at a minimum* an issue of fact as to whether Apuzzi's knowledge of Anglin's episodes of masturbating his dog with the assistance of plaintiff was sufficient to put Apuzzi on notice that Anglin had a propensity to commit sexually deviant acts, such as sexually abusing a student.

The more difficult issue is whether Apuzzi's knowledge may be imputed to the District. To answer that question, this court must determine whether Apuzzi had a duty to report to the District the sexual deviancy of Anglin that he witnessed at his home.<sup>3</sup> As stated

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<sup>3</sup> Again, this court assumes for purposes of summary judgment that the deviancy Apuzzi witnessed is sufficient to put a reasonable person on notice of Anglin's propensity to sexually abuse children. Ultimately, this question of fact is for a jury to determine. The issue at hand is whether Apuzzi was obligated to inform the District if the jury were to find this to be sufficient notice.

by the Court of Appeals in *Davis v. South Nassau Communities Hosp.*, 26 N.Y.3d 563 (2015):

“The threshold question in any negligence action is ... [whether the] defendant owe[s] a legally recognized duty of care to [the] plaintiff.” “The question of whether a member or group of society owes a duty of care to reasonably avoid injury to another is [one] of law for the courts.” “Courts resolve legal duty questions by resort to common concepts of morality, logic and consideration of the social consequences of imposing the duty.” A critical consideration in determining whether a duty exists is whether “the defendant's relationship with either the tortfeasor or the plaintiff places the defendant in the best position to protect against the risk of harm.”

Said another way, our calculus is such that we assign the responsibility of care to the person or entity that can most effectively fulfill that obligation at the lowest cost.

*Id.* at 572 (internal citations omitted).

The court in *Davis* recognized that in determining the existence and scope of a duty courts must be cognizant and limited by what is foreseeable but must also exercise their powers to meet the changing needs of society so as to establish acceptable boundaries of behavior. “They are whatever the needs of life in a developing civilization require them to be,” stated the court, quoting Judge Cardozo’s wisdom in *MacPherson v. Buick Motor Co.*, 217 N.Y.382, 391 (1916). *Davis* at 570.

Certainly, Apuzzi’s knowledge that Anglin had a propensity to sexually abuse students would be imputed to the District if Apuzzi gained this knowledge at school. It has long been the law in this State that “[a] teacher owes it to his charges to exercise such care of them as a parent of ordinary prudence would observe in comparable circumstances.” *Hoose v. Drumm*, 281 N.Y. 54 (1939); *see also Garcia v. City of New York*, 222 A.D.2d 192 (2d Dept. 1996); *Lopez v. New York City Department of Education*, 43 Misc.3d 1204(A) (Supreme Ct. Bronx Co. 2014)(school may be liable as a result of guidance counselor’s failure to report issue concerning fellow employee who ultimately abused student).

Teachers are employees of the District with a duty to keep the District’s students safe and report abuse to their superiors. *Shaw v. Village of Hempstead*, 20 A.D.2d 663 (2d Dept. 1964); *see also Cherney v. Board of Educ. of City School Dist. Of City of White Plains*, 31 A.D.2d 764 (2d Dept. 1969). A teacher’s failure to take action to safeguard students does not negate the notice they received or insulate the District from liability. *See, e.g., Mirand v. City of New York*, 84 N.Y.2d 44 (1994). “Agency law presumes imputation even where the agent acts less than admirably, exhibits poor business judgment, or commits fraud.” *Kirschner v. KPMG LLP*, 15 N.Y.3d 446, 465 (2010); *see Nevaeh T. v. City of New York*, 132 A.D.3d at 840 (Department of Education may be liable for negligent acts of employees in connection with plaintiff’s alleged sexual abuse, rejecting the argument that such employees were not acting within the scope of their employment); *see also People v. Gross*, 169 A.D.3d 159, 169 (2d Dept. 2019)(principal bound by knowledge acquired by agent even if information is never actually communicated to it).<sup>4</sup>

There is no logical basis to conclude that Apuzzi’s duty to report Anglin’s sexual deviancy to the District varied depending on how or where he learned of this danger. *See Center v. Hampton Affiliates, Inc.*, 66 N.Y.2d 782, 784 (1985)(agent has “duty to disclose to his principal all the material facts coming to his knowledge with reference to the subject of the agency”); *Skiff-Murray v. Murray*, 17 A.D.3d 807, 810 (3d Dept. 2005)(agent’s knowledge is imputable to principal “regardless of when or how it was obtained” and need not be acquired while performing services for the principal); Restatement [Second] of Agency §276. The foreseen danger was no less present simply because it revealed itself off school grounds. The obligation to safeguard the children at school from the presented risk remained unaltered. Therefore, Apuzzi’s knowledge may be imputed to the District.

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<sup>4</sup> The District argues that federal courts have held in actions brought under Title IX that a school district cannot be deemed to have notice unless the alleged abuse was brought to the attention of a school official with authority to take corrective action. *See Gebser v. Lago Vista Independent School Dist.*, 524 U.S. 274 (1998). But that is not the common law in New York and the Supreme Court was constrained in its decision by the “express remedial scheme under Title IX.” *Id.* at 290.

That all of the abusive acts occurred off school grounds is not without any significance, however, particularly since Anglin was no longer plaintiff's teacher when Apuzzi obtained knowledge of Anglin's propensities. "Generally, liability may not be imposed upon school authorities where all of the improper acts against a student occurred off school premises and outside school hours." *Johansmeyer v. New York City Dept. of Educ.*, 165 A.D.3d at 636. The District's duty to plaintiff arose generally from its physical custody of him—it was not responsible for supervising the plaintiff after the school day ended and he left its premises. *See Stephenson v. City of New York*, 19 N.Y.3d 1031 (2012). As a result, Counts I and III of the complaint, which rely upon the District's duty to supervise plaintiff, must be dismissed. The District had no duty to supervise plaintiff when he clandestinely went to Anglin's home after school hours.

Nonetheless, the District may be liable to plaintiff for its negligent supervision and retention of Anglin if it is determined that such negligence was a proximate cause of the abuse that occurred after the District, through Apuzzi, was placed on notice. The location of the actual abuse under this analysis is inconsequential. The District may be liable for the foreseeable consequences of its negligence, and Anglin's abuse of plaintiff—wherever it occurred—was the very same risk that a jury could find rendered the District negligent for retaining Anglin. *See Bell v. Board of Educ. of the City of N.Y.*, 90 N.Y.2d 944, 947 (1997)("[w]hen the intervening act, intentional act of another is itself the foreseeable harm that shapes the duty imposed, the defendant who fails to guard against such conduct will not be relieved of liability when that act occurs").

Anglin previously had a teacher/pupil relationship with plaintiff of which he then took advantage, and the District may have perpetuated this power dynamic by Anglin's continued employment. They both attended the same high school as teacher and student. But for the District to be held liable a jury must find that Anglin's continued role as a teacher in the District after it received notice was a substantial factor leading to the abuse.

The facts of this action are distinguishable from those in which there was no nexus between the abuser's employment and the abuse. *See, e.g., Roe v. Domestic and Foreign Missionary Society of the Protestant Episcopal Church*, 198 A.D.3d 698 (2d Dept. 2021). Here, unlike in *Roe*, the abuser and victim became acquainted in the classroom at the school and plaintiff asserts this was when Anglin's "grooming" of him commenced. At his deposition, plaintiff described his reaction when Anglin first asked him to come to his house: "I was thrilled. I was absolutely thrilled. A teacher, my own teacher? Teachers were the Lord. To come to his house after school? Oh my god, what a privilege this is." Plaintiff's 10/15/21 Deposition Transcript, pp. 142, 143.

Also distinguishable is *S.C. v. N.Y.C. Dept. of Educ.*, 97 A.D.3d 518 (2d Dept. 2012), in which summary judgment was granted dismissing the complaint. In *S.C.*, the court found that the Department of Education "did not know or have reason to know of the [teacher] abuser's propensity for sexual abuse of minors." *Id.* at 520. Here, a jury may find that the District had such notice. The court in *S.C.* further found that the nexus between the employment and supervision of the teacher and the abuse was severed by time, distance and the intervening act of the victim living with the teacher for approximately two months after running away from home. This was because the abuse commenced at the teacher's home after the plaintiff began living with the teacher, three years after he was the teacher's student and after the plaintiff had switched schools. Here, the abuse commenced when Anglin was the plaintiff's teacher and continued while plaintiff was a student and Anglin taught at the same school.

The inappropriate relationship between plaintiff and Anglin had its genesis in the teacher/pupil relationship that the District created and perpetuated. The District had a duty to ensure that the pupils in its care were safe from the teachers they were instructed to obey and respect. Inaction with the knowledge that a teacher had the propensity to exploit that relationship to commit acts of sexual abuse constitutes the required nexus and breach of duty.

For all of the aforesaid reasons, the motion is granted in part and denied in part. A final pre-trial conference shall be held virtually on **November 29, 2022 at 12:00 p.m.** (TEAMS invitation to follow).

Any applications not specifically addressed herein are denied.

This constitutes the Decision and Order of this court.

Dated: November 21, 2022  
Mineola, New York

**ENTER:**

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**LEONARD D. STEINMAN, J.S.C.**