

**S.A. v Jewish Bd. of Family & Children's Servs., Inc.**

2022 NY Slip Op 34628(U)

September 26, 2022

Supreme Court, Westchester County

Docket Number: Index No. 56668/2020

Judge: Leonard D. Steinman

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This opinion is uncorrected and not selected for official publication.

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

-----X  
**S. A.**

**Plaintiff,**

**-against-**

**Part CVA-R  
Index No. 56668/2020  
Mot. Seq. 003**

**THE JEWISH BOARD OF FAMILY AND CHILDREN’S  
SERVICES, INC. f/k/a JEWISH BOARD OF GUARDIANS;  
And THE BOARD OF TRUSTEES OF THE JEWISH  
BOARD OF FAMILY AND CHILDREN’S SERVICES,  
INC.; and THE HAWTHORNE CEDAR KNOLLS UNION  
FREE SCHOOL DISTRICT; and THE BOARD OF  
EDUCATION OF THE HAWTHORNE CEDAR KNOLLS  
UNION FREE SCHOOL DISTRICT,**

**DECISION  
AND ORDER**

**Defendants.**  
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**LEONARD D. STEINMAN, J.**

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

School District Defendants’ Notice of Motion, Affirmation & Exhibits.....1  
Plaintiff’s Affirmation in Opposition & Exhibits.....2  
School District Defendants’ Reply.....3

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In this action, plaintiff alleges that between the years of 1978 to 1979, when he was approximately 14 to 15 years old, he was sexually abused on three separate occasions by a cook at the Hawthorne Cedar Knolls Residential Treatment Facility– a residential facility (hereinafter the “facility”) and seeks damages for his injuries. Plaintiff asserts claims against defendants for negligence and negligent supervision and retention.<sup>1</sup> Defendants The Hawthorne Cedar Knolls Union Free School District and The Board of Education of the Hawthorne Cedar Knolls Union Free School District (hereinafter the “District”) now move

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<sup>1</sup> All other causes of action asserted in plaintiff’s complaint were dismissed by Decision and Order dated May 19, 2021 (J. Jaeger).

for summary judgment pursuant to CPLR 3212. For the reasons set forth below, the motion is granted.

### **BACKGROUND**

Plaintiff claims that in 1978, when he was approximately 14 years old, a cook at the facility entered his bedroom and sexually assaulted him.<sup>2</sup> Plaintiff reported the initial instance of abuse to a “night counselor” at the facility but nothing was done. The cook abused plaintiff on two other occasions thereafter.

At the time of plaintiff’s abuse, the facility was owned and/or operated by defendant Jewish Board of Family and Children’s Services, Inc. (“JBFC”). Although plaintiff attended a school operated by the District on the same property as the facility, the school was in a different building. The District did not have any management role at the facility.

### **LEGAL ANALYSIS**

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

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<sup>2</sup> The facts as set forth by the court are consistent with the evidence submitted by plaintiff, including his deposition testimony. In the context of a summary judgment motion, a court is to view the evidence in a light most favorable to the opposing party and give such party the benefit of every favorable inference. *Sheryll v. L & J Hairstylists of Plainview, Ltd.*, 272 A.D.2d 603 (2d Dept. 2000). This court is making no findings of fact. With respect to the plaintiff’s motion, the court has viewed the facts in a light most favorable to the District.

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).

The District contends that it cannot be held liable because it had no duty to supervise plaintiff at the time of the abuse and did not employ or have control over the abuser or the facility.

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 at 635. 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 840, 842 (2d Dept. 2015), 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 at 49. "[S]chools and camps owe a duty to supervise their charges and will only be held liable for foreseeable injuries proximately caused by the absence of adequate supervision." *Osmanzai v. Sports and Arts in Schools Foundation, Inc.*, 116 A.D.3d 937 (2d Dept. 2014); see also *Doe v. Whitney*, 8 A.D.3d 610, 611 (2d Dept. 2004).

First, the District has sufficiently demonstrated that it did not hire, employ or supervise plaintiff's abuser. Raymond Raefski, Superintendent of the District, attests that, in accordance with its charter, the District solely provided educational services in the school building to students residing at the facility. The District never supervised the students when they were at the facility and did not provide staffing or supervise staff at the facility.

Further, since all the offending conduct took place off school property and outside of school hours, the claim alleging negligent supervision of plaintiff must be dismissed. *Doe v. Hauppauge Union Free School Dist.*, 213 A.D.3d 809, 810 (2d Dept. 2023). A school is not liable for injuries that occur off school property and beyond the orbit of its authority. *See Doe 1 v. Board of Educ. of Greenport Union Free School Dist.*, 100 A.D.3d 703, 705 (2d Dept. 2012); *Vernali v. Harrison Cent. School Dist.*, 51 A.D.3d 782, 783 (2d Dept. 2008). *Cf. Anglero v. New York City Bd. Of Educ.*, 2 N.Y.3d 784 (2004)(court found issue of fact as to whether school was liable for an off-premises assault where several teachers and a safety officer witnessed a previous attack on the victim on school grounds).

In opposition to the District's motion, plaintiff fails to raise an issue of material fact. There is nothing in the record to suggest that the District knew or should have known about abuse that took place off school grounds, after school hours and perpetrated by an individual not employed by the District. Therefore, the District's motion for summary judgment is granted and the complaint is dismissed against the moving defendants.

Any relief requested not specifically addressed herein is denied.

This constitutes the Decision and Order of the court.

Dated: September 26, 2022  
Mineola, New York

**ENTER:**

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