

<b>Mandia v EF Intl. Academy, Inc.</b>
2024 NY Slip Op 35059(U)
December 10, 2024
Supreme Court, Westchester County
Docket Number: Index No. 67616/2022
Judge: Lewis J. Lubell
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER - MDPM PART

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

P R E S E N T:

**HON. LEWIS J. LUBELL**  
**JUSTICE OF THE SUPREME COURT**

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MAURO MANDIA and ROBERT SULLIVAN,  
As Administrators of the Estate of C.M., Deceased,

**DECISION & ORDER**

Plaintiffs,

Index No. 67616/2022

-against-

Seq. No. 12

EF INTERNATIONAL ACADEMY, INC.,  
EF EDUCATION FIRST, INC., DR. VLADIMIR  
D. KUSKOVSKI, WAYNE WALTON, CHELSEA  
LOVECE, JENNA KORN, STEPHANIE KENDRICK,  
JACKLYN MAKI, JOHN DOES (1-10) and  
JANE DOES (1-10),

Defendants.

-----X  
LUBELL, J.

The following papers were considered on this motion by the plaintiffs for an order to have a proposed subpoena so-ordered by the court and issued to the New York State Education Department, Office of the Professions, and for such other and further relief this court deems appropriate.

- Notice of Motion
- Affirmation in Support of George Bochetto, Esq.
- Exhibits A through G
- Affirmation in Opposition of Donald J. Gentile, Esq.
- Exhibits 1 through 3
- Reply Affirmation of George Bochetto, Esq.
- Exhibit H
- NYSCEF File

Upon the foregoing papers and the proceedings herein, the motion is decided as follows:

The plaintiffs commenced this action by filing a summons and complaint on or about

October 28, 2022, seeking to recover damages against the defendants for wrongful death, false imprisonment, negligent infliction of emotional distress, intentional infliction of emotional distress, negligent retention, supervision and training, social worker malpractice, and knowing and willful failure to report child abuse and/or maltreatment. Plaintiffs allege that the decedent C.M. was attending defendant EF Academy International Boarding Schools program in Thornwood, New York ("EF Academy"), when he was dismissed for academic dishonesty. According to the complaint, while waiting for his parents to travel to the United States from Italy, C.M. committed suicide. The complaint alleges that EF Academy and its agents knew that C.M. was at risk for suicide but recklessly kept him in isolation, which directly caused his death. Issue was thereafter joined. Defendants' prior motion to dismiss the complaint pursuant to CPLR 3211(a)(1) was denied by decision and order entered May 25, 2023 (Murphy, J.). Defendants served and filed their verified answer on or about May 31, 2023. In addition, the plaintiffs' prior motion to amend the complaint to add additional allegations and a cause of action for negligence per se against defendants Chelsea Lovece ("Lovece") and EF Academy was denied by decision and order of this court, entered on July 10, 2024.

On or about February 13, 2024, the plaintiffs commenced a separate action, under Index No. 57156/2024, against EF Academy, EF Education First, Inc., Stephanie Hendrick and Jacklyn Maki. The complaint sought to recover damages for wrongful death and nursing malpractice. The plaintiff's moved to consolidate the two actions. By decision and order of this court, entered September 3, 2024 (Lubell, J.), the plaintiff's motion was granted. Thereafter by order entered September 6, 2024 (Lubell, J.), the two actions were consolidated under the within caption.

As is relevant here, the plaintiffs now seek to have this court so-order a subpoena issued to the New York State Education Department, Office of Professions ("NYSED") for the production of documents related to defendant Lovece's social work licenses, to wit, her Master Social Work License ("LMSW") issued on August 17, 2016 and her Clinical Social Work License ("LCSW") issued on November 8, 2022. Chelsea Lovece ("Lovece") was employed by EF Academy as the Director of Mental Health Services since August 2019, during the relevant period herein.<sup>1</sup> The defendants do not oppose discovery related to Lovece's LMSW, but oppose any discovery related to her LCSW. More particularly, the discoverability of the following items are in dispute:

1. The complete file pertaining to Chelsea May Lovece's Clinical Social Work License No. 094442.
3. A complete copy of all Clinical Social Work applications submitted by Chelsea May Lovece in connection with her Clinical Social Work License No. 094442.
5. A verification and certification of Chelsea May Lovece's Clinical Social Work License No. 094442.
7. Any complaints relating to Chelsea May Lovece's Clinical Social Work License No. 094442.

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<sup>1</sup> The NYSED takes no position on the plaintiffs' motion and has advised that it awaits the so-ordered subpoena (NYSCEF Doc. No. 156).

9. Any documents relating to any disciplinary proceedings initiated or performed against Chelsea May Lovece in connection with her Clinical Social Work License No. 094442.

11. Any documents relating to any investigations against Chelsea May Lovece in connection with her Clinical Social Work License No. 094442.

In support of their motion, plaintiffs contend that Lovece's LMSW and LCSW licensure are relevant to their claims for social worker malpractice. They argue that even though defendant Lovece's clinical social work license was issued after CM's death, her application and the related requested documents are relevant because defendant was required to complete approximately 2,000 hours in clinical social work practice under the supervision of a qualified supervisor in order for her to receive a clinical social work license. The plaintiffs argue that since Lovece was the full-time Director of Mental Health Services at EF Academy, documents regarding whether she completed any clinical social work practice hours at EF Academy are relevant. Therefore, according to the plaintiffs, the information sought in the subpoena was both relevant to the scope of her practice as a social worker at EF Academy, as well as relevant being relevant as to any supervision she received while practicing there. According to the plaintiffs, the information provided as part of her application for LCSW involves her scope of practice as a social worker at EF Academy and clinical hours obtained during the school years attended by CM. Further, the plaintiffs argue that there is no reason to believe that any materials would infringe upon the social worker/client privilege.

In opposition, the defendants argue that they only object to requests nos. 1, 3, 5, 7, 9 and 11. Defendants argue that Lovece's clinical license is irrelevant because it was issued almost nine months after CM's death and would also invade Lovece's privacy. Defendants argue that learning the identity of Lovece's clinical supervisor has no probative value regarding her LMSW services because she never performed any social work services with CM under anyone's supervision at EF Academy. Further, even if the requested documents showed that she rendered supervised clinical social work services to CM—which she outright denies—such services constituted the lawful, properly supervised practice of social work. According to the defendants, Lovece submitted documentation to the NYSED related to her completion of required client contract hours of post-MSW supervised experience in diagnosis, psychotherapy, and assessment-based treatment plans, none of which was performed at EF Academy. Further, any counseling services that Lovece provided to students other than CM are confidential and have no relation to the counseling services provided to CM. Further, the information actually contained in her application included only general information such as date ranges, location and the name of the clinical supervisor who oversaw the hours. Lastly, contrary to the plaintiffs' contentions, defendants argue that Lovece could provide unsupervised social work services such as school counseling as an LMSW.

Lovece submitted an affirmation in opposition. According to Lovece, she periodically met with CM while he was a student at EF Academy and provided school counseling services to him as a LMSW. She was not supervised while engaging in school counseling with CM because the school counseling she provided to CM was within the scope of her practice as an LMSW. At her

deposition, she described her counseling sessions with students as brief, solution-focused sessions with an emphasis on improving student outcomes and sometimes engaging in crisis management. She never engaged in any clinical services with CM. As she testified at her deposition and reiterated in her affirmation in opposition to this motion, Lovece asserts that she never practiced psychotherapy with CM but only practiced school counseling services. She never discussed CM with her clinical supervisor, never counted the time she spent meeting with CM towards her supervised clinical hours for her LCSW application and never provided any information regarding CM to her clinical supervisor. As she testified at her deposition and reiterated in her affirmation in opposition to this motion, Lovece asserts that her supervised clinical hours submitted in connection with her LCSW application did not relate to or concern any of the interactions that she had with CM.

In reply, the plaintiffs again contend that Lovece's LCSW application includes critical information about her practice at EF Academy and the clinical services she provided at EF Academy prior to her application. As the full-time Director of Mental Health at EF Academy, a reasonable inference to draw is that Lovece fulfilled the 2,000 clinical hours required for her application as LCSW during her employment at EF Academy prior to 2022, which would have required clinical supervision. Plaintiffs point out that Lovece's affirmation is silent as to where she obtained the 2,000 client hours if not during her employment at EF Academy. Plaintiffs assert that they are entitled to information that will prove or disprove whether Lovece used her employment at EF Academy while CM was in attendance to perform clinical services to obtain any of the 2,000 hours required. While she testified that she only practiced school counseling services, whether she provided or failed to provide clinical services at EF Academy to CM is material and necessary to the plaintiffs' prosecution of their social worker malpractice claim. Plaintiffs argue that it is material for them to ascertain the true scope of the social work services Lovece provided at EF Academy and to CM.

CPLR 3101(a) requires "full disclosure of all matter material and necessary in the prosecution or defense of an action." The phrase "material and necessary" is "to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason" (*Allen v Crowell-Collier Publishing Co.*, 21 NY2d 403 [1968]; *Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]). Although the discovery provisions of the CPLR are to be liberally construed, "a party does not have the right to uncontrolled and unfettered disclosure" (*Merkos L'Inyonei Chimuch, Inc. v Sharf*, 59 AD3d 408 [2d Dept 2009]; *Gilman & Ciocia, Inc. v Walsh*, 45 AD3d 531 [2d Dept 2007]). The trial court has broad discretion to supervise discovery and to determine whether information sought is material and necessary in light of the issues in the matter (*Auerbach v Klein*, 30 AD3d 451 [2d Dept 2006]; *Feeley v Midas Properties, Inc.*, 168 AD2d 416 [2d Dept 1990]).

Pursuant to CPLR 3101(a)(4), a party may obtain discovery from a nonparty in possession of material and necessary evidence, so long as the nonparty is apprised of the circumstances or reasons requiring disclosure. Thus, to obtain nonparty discovery, a party must show only that the nonparty discovery is "material and necessary" to the prosecution or defense of the action (*see Matter of Kapon v Koch*, 23 NY3d 32 [2014]). Discovery from a nonparty can be sought by use of a subpoena (*see Velez v Hunts Point Multi-Service Center, Inc.*, 29 AD3d 104, 108 [1<sup>st</sup> Dept

2006]). The notice requirement of CPLR 3101(a)(4) “obligates the subpoenaing party to state, either on the face of the subpoena or in a notice accompanying it, ‘the circumstances or reasons such disclosure is sought or required.’ The subpoenaing party must include that information in the notice in the first instance” (*Kapon v Koch*, 23 NY3d at 39; *see DiBuono v Abbey, LLC*, 163 AD3d 524 [2d Dept 2018]; *Bianchi v Galster Management Corp.*, 131 AD3d 558, 559 [2d Dept 2015]). After compliance with CPLR 3101(a)(4)’s notice requirement is established, disclosure from a nonparty requires no more than a showing that the requested information is relevant to the prosecution or defense of the action (*see Matter of Kapon v Koch*, 23 NY3d at 38; *see also DiBuono v Abbey, LLC*, 163 AD3d at 535; *Ferolito v Arizona Beverages USA, LLC*, 119 AD3d 642, 643 [2d Dept 2014]; *Jacobs v Johnston*, 97 AD3d 538, 538–539 [2d Dept 2012]).

In relevant part, pursuant to CPLR 2307 a subpoena duces tecum to be served upon a department or bureau of the state requiring the production of any books, papers or other things, shall be issued by a justice of the supreme court in the district in which the book, paper or other thing is located or by a judge of the court in which an action for which it is required is triable. Such subpoena must be served upon such department or bureau and the adverse party at least 24 hours before the time fixed for the production of such records. No personal appearance to certify such item or items shall be required of such department or bureau unless the court orders otherwise (CPLR 2307).

While the viability of a cause of action sounding in tort for social worker malpractice here is not before the court at this time, as has been stated by the federal courts, “the tort of ‘social work malpractice’ exists in a skeletal form under New York law” (*Richards v City of New York*, 433 F Supp 2d 404, 430 [SDNY 2006]; *see also Vail v City of New York*, 2020 WL 12763 [SDNY 2020]; *Tylena M v Heartshare Childrens Servs*, 390 F Supp 2d 296, 316-317 [SDNY 2005]; *Dunn v Catholic Home Bureau*, 142 Misc2d 316 [NY County, Sup Ct, 1989]). The Legislature has provided standards for licensing qualified individuals as “certified social workers” (Education Law §7704), and the provision for all professions contained in Article 130 apply to Article 154—Social Work (Education Law §7700). Under Article 130, practicing one’s profession fraudulently, incompetently or negligently constitutes professional misconduct (Education Law §6509[2]). A licensed master social workers may not make or render diagnoses or prognoses, formulate or develop treatment plans, interpret tests and measures of psychosocial functioning or provide psychotherapy unless they are doing so under the supervision of a psychiatrist, psychologist or licensed clinical social worker (*see Education Law §7701(1)(d)*; 8 NYCRR §74.6). More particularly, Education Law § 7701(1)(A) provides that “[t]he practice of licensed master social work shall mean the professional application of social work theory, principles, and the methods to prevent, assess, evaluate, formulate and implement a plan of action based on client needs and strengths, and intervene to address mental, social, emotional, behavioral, developmental, and addictive disorders, conditions and disabilities, and of the psychosocial aspects of illness and injury experienced by individuals, couples, families, groups, communities, organizations, and society.” Further, the “practice of licensed master social work is subsumed into the practice of licensed clinical social work” (*see Education Law §7701[2][a]*). The scope of practice of licensed clinical social work includes “the diagnosis of mental, emotional, behavioral, addictive and developmental disorders and disabilities and of the psychosocial aspects of illness, injury, disability and

impairment undertaken within a psychosocial framework” (Education Law §7701[2][b]). In order to qualify for a license as a licensed clinical social worker, an applicant must fulfill specific requirements, including “have at least three years full-time supervised post-graduate clinical social work experience in diagnosis, psychotherapy, and assessment-based treatment plans, or its part-time equivalent, obtained over a continuous period not to exceed six years, under the supervision, satisfactory to the department, of a psychiatrist, a licensed psychologist, or a licensed clinical social worker in a facility setting or other supervised settings approved by the department” (Education Law §7704[2][c]). Further, “the full-time experience shall consist of not less than 2,000 client contact hours over a continuous period of at least 36 months and not to exceed six years” (8 NYCRR §74.3[a]). Therefore, there exists a clear statutory framework within which to address whether EF Academy and Lovece departed from the standard of conduct of the profession.

Here, applying the *Kapon* reasoning to the facts in the present case, this Court finds that the plaintiffs have demonstrated that the documents related to Lovece’s LCSW license are material and necessary to their prosecution of this action, and more particularly their claim for social worker malpractice. Since CM was under the care of Lovece well within the 36-month period prior to her submission of her LCSW (November 2020 through his death in February 2022), her LCSW file will disclose whether clinical social work services were being provided at EF Academy by Lovece during that time and whether she was supervised by other personnel. The documents requested are relevant to understand the scope of the nature of the clinical services and care and treatment, if any, defendant Lovece might have provided to CM specifically and EF Academy students in general. Further, Lovece’s curriculum vitae as exchanged during discovery, indicates that between August 2016 (when she received her license in master social work) and November 2022 (when she received her license in clinical social work), the only opportunity that she would have had to obtain the statutorily required 2,000 hours in clinical social work experience to apply for the LCSW license would have been while employed at EF Academy, while treating CM (NYSCEF Doc. No. 160). The LCSW application file will contain information regarding the scope, nature, location and timing of the social work services she provided in the years prior to her application while employed at EF Academy. As demonstrated by the Form 4B Certification required as part of the application, Lovece would have to certify that she completed 2,000 hours of “post-MSW supervised experience in diagnosis, psychotherapy and assessment-based treatment” (NYSCEF Doc. No. 167). Plaintiffs correctly point out that Lovece’s affirmation is silent as to where she obtained the statutorily required 2,000 client hours. Since CM was under her care in the years leading up to her LCSW application (November 2020 through February 2022), Lovece’s LCSW file will disclose whether clinical social work services were being provided by her at EF Academy during the relevant time. This is especially the case where Lovece’s deposition testimony would appear to be inconsistent as to her services at EF Academy during the relevant period. While Lovece testified that she only practiced unsupervised school counseling and only counseled CM or any other students at EF Academy within the scope of her license as a LMSW, her application may indicate otherwise and therefore is relevant to the social worker malpractice claims asserted by plaintiffs. Accordingly, the plaintiffs motion must be granted.

All other arguments raised, and evidence submitted have been considered by this Court notwithstanding the specific absence of reference thereto.

Accordingly, it is hereby

**ORDERED** that plaintiffs' motion is granted, and this court shall so order the proposed subpoena herewith; and it is further

**ORDERED** that plaintiffs shall serve a copy of this decision and order, with notice of entry and so-ordered subpoena, upon the New York State Department of Education, Office of the Professions, Department of Professional Licensing Services, within five days of entry; and it is further

**ORDERED** that plaintiffs shall serve a copy of this decision and order, with notice of entry, upon the defendants within five days of entry; and it is further

**ORDERED** that proof of service of this decision and order with notice of entry shall be filed with the court within three (3) days after service has been completed; and it is further

**ORDERED** that all parties shall appear for a Compliance Conference on **January 16, 2025** at 2:00 PM.

The foregoing constitutes the decision and order of this Court.

**Dated: White Plains, New York  
December 10, 2024**



**HON. LEWIS J. LUBELL  
JUSTICE OF THE SUPREME COURT**