

**A.R. v Democracy Prep Pub. Schs.**

2025 NY Slip Op 34898(U)

December 10, 2025

Supreme Court, New York County

Docket Number: Index No. 160804/2022

Judge: Phaedra F. Perry-Bond

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35

Justice

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INDEX NO. 160804/2022

A.R., a minor by her parent and legal guardian SEALEMA ALLEN

MOTION DATE 04/14/2023

Plaintiff,

MOTION SEQ. NO. 001

- v -

DEMOCRACY PREP PUBLIC SCHOOLS, HARLEM PREP HIGH SCHOOL, GREGORY DANIEL, MR. SMILEY, MS. RAMI

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for DISMISS

Upon the foregoing documents, Defendants Democracy Prep Public Schools, Inc., incorrectly sued as Democracy Prep Public Schools ("Democracy Prep"), Harlem Prep High School ("Harlem Prep"), Gregory Daniel ("Daniel"), Eric Smiley incorrectly sued as Mr. Smiley, ("Smiley"), and Emmalee Reaney, incorrectly sued as Ms. Rami, Dean's ("Reaney") (collectively "Defendants") motion to dismiss Plaintiff A.R., a minor, by her parent and legal guardian Sealema Allen's ("Plaintiff") Complaint is denied. Plaintiff's cross motion seeking leave to amend her Complaint is granted in part and denied in part.

I. Background

Plaintiff alleges that on September 28, 2021, she was sexually assaulted by a fellow student in a stairwell at Harlem Prep. At the time of the incident, Plaintiff was thirteen years old. Allegedly, a few days after the incident, Plaintiff learned the alleged perpetrator took a video of his assault and circulated it on social media without Plaintiff's consent. Mr. Smiley and Ms. Reaney, deans

of Harlem Prep, and Mr. Daniel, Harlem Prep's principal, allegedly learned of the video and knew about the assault. Nonetheless, they allegedly allowed the alleged perpetrator of Plaintiff's assault to remain enrolled. Allegedly, no school official contacted the police, and instead Plaintiff's mother filed a police report. As a result of Defendants' alleged failure to respond to the incident, Plaintiff allegedly experienced fear for her safety and humiliation, and was forced to transfer to another high school in the middle of her freshman year. Plaintiff now sues Defendants for negligence, negligent and intentional infliction of emotional distress, negligent hiring, training, retention and supervision, and alleged violations of 42 U.S.C. § 1983. Defendants move pre-answer to dismiss. Plaintiff opposes and cross-moves seeking leave to amend her complaint.

## II. Discussion

### A. Defendants' Motion to Dismiss

Defendants' motion to dismiss is denied. As a preliminary matter, Defendants' arguments regarding Plaintiff's alleged failure to serve a notice of claim are unavailing. The Second Department has recently held, as a matter of first impression, that charter schools are not subject to notice of claim requirements (*see A.P. v John W. Lavelle Preparatory Charter School*, 228 AD3d 138, 142-143 [2d Dept 2024]). In reaching this conclusion, the Second Department found that charter schools were intentionally omitted by the Legislature when drafting and amending the entities subject to notice of claim requirements pursuant to Education Law § 3813 (*see also L.R. v Evergreen Charter School*, 232 AD3d 923, 924 [2d Dept 2024]). In the absence of any contrary controlling authority, the Court finds no reason to depart from the Second Department's well-reasoned analysis regarding Education Law § 3813 and General Municipal Law § 50-e's application to tort claims against charter schools.

To the extent Defendants argue that Harlem Prep High School is not the proper legal name of the entity operating the school where Plaintiff was allegedly assaulted, this point is moot. The management agreement makes clear that the proper legal name is Democracy Prep New York Charter Schools, which is an education corporation chartered by the New York State Board of Regents (*see* NYSCEF Doc. 8). Plaintiff has cross moved seeking leave to amend to correct this error and does not include Harlem Prep High School in the proposed amended complaint. Likewise, Defendant's argument that "Democracy Prep Public Schools" should be dismissed is moot because this entity is not included in Plaintiff's proposed amended complaint. Defendant's argument that Plaintiff's intentional infliction of emotional distress claim is duplicative of Plaintiff's negligence claim is unavailing at this pre-answer and pre-discovery juncture. At this stage, and pursuant to CPLR 3014, Plaintiff is entitled to plead multiple causes of action in the alternative (*see Brown v Riverside Church in City of New York*, 231 AD3d 104, 111 [1st Dept 2024]). Therefore, Defendant's motion to dismiss is denied, to the extent it is not moot by virtue of Plaintiff's cross motion seeking leave to amend.

#### **B. Plaintiff's Cross Motion to Amend**

Plaintiff's cross motion seeking leave to amend is granted in part and denied in part. Defendants oppose the cross motion on two grounds. First, Defendants argue Harlem Prep Charter School, is not a legal entity with the capacity to sue or be sued. As explained above, the management agreement submitted by Defendants on their motion makes clear that the proper legal entity who operated Plaintiff's school is Democracy Prep New York Charter Schools. Therefore, leave to amend to include Harlem Prep Charter School as a defendant is denied. Defendants also argue leave to amend should be denied because that the correctly named Defendant, Democracy Prep New York Charter Schools, was not served with a notice of claim. However, notice of claim

requirements do not apply to charter schools (*see A.P. v John W. Lavelle Preparatory Charter School*, 228 AD3d 138, 142-143 [2d Dept 2024]; *see also L.R. v Evergreen Charter School*, 232 AD3d 923, 924 [2d Dept 2024]). Therefore, the cross motion seeking leave to amend is granted, except that leave to amend to include Harlem Prep Charter School as a named defendant is denied.

Accordingly, it is hereby,

ORDERED that Defendants’ motion to dismiss is denied; and it is further

ORDERED that Plaintiff’s cross motion seeking leave to amend is granted, and within twenty days of entry, counsel for Plaintiff shall serve an Amended Complaint via NYSCEF identical to the proposed pleadings annexed to the motion papers (NYSCEF Doc. 15) except that leave to include “Harlem Prep Charter School” as a Defendant is denied, and any reference to “Harlem Prep Charter School” as a named Defendant in the pleadings shall be stricken; and it is further

ORDERED that the Defendants shall serve an Answer to the Amended Complaint within 20 days from the date of said service; and it is further

ORDERED that the caption of the action is amended to read as follows:

SUPREME COURT OF THE STATE OF NEW YORK

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A.R., a minor by her parent and legal guardian  
SEALEMA ALLEN,

Index No.: 160804/2022

*Plaintiff,*

-against-

DEMOCRACY PREP NEW YORK CHARTER SCHOOLS;  
GREGORY DANIEL, PRINCIPAL; ERIC SMILEY, DEAN, and  
EMMALEE REANEY, DEAN,

*Defendants*

-----X and it is further

ORDERED that within ten days of entry, Plaintiff shall serve a copy of this Order with notice of entry upon the Trial Support Office, and shall file the notice required by CPLR § 8019(c) and a completed Form EF-22 with the County Clerk in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website), and the Trial Support Office shall thereupon amend the court records accordingly; and it is further

ORDERED that the parties shall meet and confer immediately and submit a proposed preliminary conference order to the Court via e-mail, but in no event shall the proposed preliminary conference order, be submitted any later than February 10, 2026. Alternatively, if the parties wish to explore early resolution of this matter through the Court's sponsored ADR program, they shall notify the Court via e-mail so the appropriate referral order can be issued; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

12/10/2025

DATE

HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:

CASE DISPOSED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE