| **J.M. v Riverside Hawks** |
| --- |
| 2026 NY Slip Op 30474(U) |
| February 5, 2026 |
| Supreme Court, New York County |
| Docket Number: Index No. 950244/2019 |
| Judge: Sabrina Kraus |
| Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service. |
| This opinion is uncorrected and not selected for official publication. |

# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

**PRESENT:** **HON. SABRINA KRAUS** **PART** **CVA 1**

***Justice***

---------------------------------------------------------------------------------X

J. M.,

Plaintiff,

- v -

RIVERSIDE HAWKS, THE RIVERSIDE CHURCH IN THE CITY OF NEW YORK, RIVERSIDE HAWKS, HOPE, HEALTH AND HOOPS CORPORATION

Defendants.

---------------------------------------------------------------------------------X

**INDEX NO.** 950244/2019

**MOTION DATE** 11/26/2025, 1/26/2026

**MOTION SEQ. NO.** 004

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 1, 2, 20, 56, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167

were read on this motion to/for JUDGMENT - SUMMARY.

## BACKGROUND

Plaintiff commenced this action under the Child Victims Act ("CVA") seeking damages for child sexual abuse allegedly perpetrated by former Riverside Hawks basketball coach Ernest Lorch ("Lorch") while participating in a youth basketball program run by defendants Riverside Hawks, Hope, Health and Hoops Corp. and The Riverside Church in the City of New York (collectively, "the Riverside Defendants").

Plaintiff asserts one cause of action for negligence against each defendant.

## FACTS

The following information is undisputed from the record.

The Riverside Defendants hosted a youth basketball program called the "Riverside Hawks" which was run by Lorch as head coach. Reverend Robert Polk hired Lorch for the



[* 1]

Riverside Defendants after Reverend Wallace Short, Lorch's college roommate, gave Lorch a positive recommendation. Lorch was also a Sunday School teacher at Riverside, and he served on the Board of Trustees for the Riverside Church.

The following information derives from Plaintiff's testimony.

Plaintiff met Lorch after trying out and being accepted onto the Riverside Hawks team in either February 1977 or 1978. Not long after Plaintiff joined the team, Lorch requested that Plaintiff bring his report card to basketball practice. After practice concluded, Lorch called Plaintiff into his office and admonished him for getting a "C" on his report card. Lorch then directed Plaintiff to drop his shorts, and Lorch paddled Plaintiff's naked buttocks.

Lorch's abuse of Plaintiff escalated the week thereafter. After practice, Lorch invited Plaintiff into his office, discussed Plaintiff's performance at school, and then asked Plaintiff to drop his shorts. This time Lorch then began to fondle Plaintiff's buttocks, and he then attempted to anally penetrate Plaintiff with his penis. After this unsuccessful attempt, Lorch rubbed his penis in between Plaintiff's buttocks and ejaculated onto him.

Lorch's abuse of Plaintiff continued in his office six or seven more times over the course of the year. The abuse ranged from Lorch masturbating in front of Plaintiff to Lorch having Plaintiff masturbate Lorch or perform oral sex upon him.

Plaintiff acknowledged that he never told anyone about the abuse when he was a child, only later telling his wife and a close friend.

## RELEVANT PROCEDURAL HISTORY

On November 1, 2023, this Court dismissed Plaintiff's second cause of action for intentional infliction of emotional distress under CPLR § 3211(a)(7) (NYSCEF Doc No. 66).

**PENDING MOTIONS**

On January 5, 2026, the Riverside Defendants moved to dismiss Plaintiff's complaint in its entirety pursuant to CPLR § 3212 (NYSCEF Doc No. 77 [mot. seq. 004]).

On January 30, 2026, Plaintiff cross-moved for an order (1) denying the Riverside Defendants' motion; (2) finding that the Riverside Defendants' motion constitutes frivolous conduct; (3) finding that the Riverside Defendants are collaterally estopped from relitigating issues of notice, agency and control; and (4) awarding sanctions pursuant to 22 NYCRR § 130-1.3 for attorneys' fees and costs for the time spent opposing the Riverside Defendants' motion (NYSCEF Doc No. 103 [mot. seq. 004]).

The motions were fully briefed and marked submitted.

The motions are consolidated herein and determined as set forth below.

**DISCUSSION**

Summary judgment is a drastic remedy reserved for cases where "no material and triable issue of fact is presented" (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). To prevail on summary judgment, the movant must establish *prima facie* entitlement to judgment as a matter of law, tendering evidence in admissible form demonstrating the absence of any triable issues of fact (CPLR § 3212(b); *Matter of New York City Asbestos Litig.*, 33 NY3d 20, 25–26 [2019]). A defendant's initial burden on summary judgment cannot be satisfied by "merely point[ing] to perceived gaps" in the plaintiff's proof "rather than submitting evidence showing why" the plaintiff's claim must fail (*Matter of New York City Asbestos Litig.*, 174 AD3d 461, 461 [1st Dept 2019] [alteration in original]).

When the movant meets this burden, summary judgment will be denied only when the nonmovant provides evidence in admissible form demonstrating the existence of triable issues of

fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). However, "[m]ere conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient" to overcome a motion for summary judgment (*Justinian Capital SPC v WestLB AG*, 28 NY3d 160, 168 [2016] [alteration in original]). Courts view the evidence in a light most favorable to the nonmovant, according the nonmovant "the benefit of every reasonable inference" (*Negri v Stop & Shop, Inc.*, 65 NY2d 625, 626 [1985]).

***Riverside Fails to Establish Entitlement to Judgment as a Matter of Law based on their alleged Lack of Notice***

The Riverside Defendants argue that Plaintiff's negligent retention and supervision claims must fail because they were not on actual or constructive notice of Lorch's abusive propensities or conduct. They further allege lacking any records of complaints against Lorch. This argument essentially relies on perceived gaps in Plaintiff's proof as movant fails to make a prima facie showing as a matter of law that they had no notice.

When an employer owes a duty to a third party under the theory of negligent hiring, retention and supervision, the plaintiff must demonstrate that "an employer knew of its employee's harmful propensities, that it failed to take necessary action, and that this failure caused damage to others" (*Waterbury v New York City Ballet, Inc.*, 205 AD3d 154, 160 [1st Dept 2022], citing *Gonzalez v City of New York*, 133 AD3d 65, 67–68 [1st Dept 2015]). For the causation element to be satisfied, "the employer's negligence must be a proximate cause of the plaintiff's injury" (*id.* at 162, citing *Gonzalez*, 133 AD3d at 67, 70, 71).

Knowledge that is acquired by an agent acting within the scope of their agency is imputed to the agent's principal and the principal is bound by such knowledge although the information is never actually communicated to the principal (*Center v Hampton Affiliates, Inc.*, 66 NY2d 782, 784 [1985]; *see also A.M. v Holy Resurrection Greek Orthodox Church of*

*Brookville*, 190 AD3d 470, 470–71 [1st Dept 2021]; *R.L. v Holland Cent. Sch. Dist.*, 2025 NY App Div LEXIS 7557, at *5 [4th Dept 2025]). Thus, if agents for the Riverside Defendants were "acting on [the Riverside Defendants'] behalf" when they learned of the subject abuse, the notice of those agents imputes onto the Riverside Defendants (*see A.M.*, 190 AD3d at 470–71).

The Riverside Defendants cite evidence indicating that several of their employees and basketball players never witnessed or knew about Lorch's abusive propensities or conduct. These individuals include, among others, the Reverend responsible for hiring Lorch as a volunteer basketball coach, a player and coach on the basketball team from the early 1970s to the 1980s, and a maintenance worker who worked at Riverside from 1972 to 2023.

However, The Riverside Defendants' own submissions include the deposition of a former Riverside coach who heard rumors that Lorch was "touching some of the kids" (NYSCEF Doc No. 79, at 6; NYSCEF Doc No. 90, at 26, 28). That same coach testified that "[e]verybody in the basketball world knew that" there were "rumors of inappropriate behavior" at Riverside's basketball program (NYSCEF Doc No. 90, at 29). Importantly, rumors of an employee's sexual misconduct are sufficient to require an employer to further investigate the veracity of the rumors (*see Harper v Buffalo City Sch. Dist.*, 242 AD3d 1600, 1601–02 [4th Dept 2025]).

The Riverside Defendants also cite the deposition of another Riverside coach who testified that he witnessed Lorch reach into children's shorts and pull up their jockstraps (NYSCEF Doc No. 91, at 21–22, 24–25). This testimony raises a triable issue of fact as to whether the Riverside Defendants were on actual notice of Lorch's abuse.

Plaintiff also alleges that Lorch repeatedly sexually abused him over the course of a year in Lorch's office on the Riverside Defendants' property. The "frequency of the alleged abuse" which "always occurred inside" the same areas of the Riverside Defendants' property, could be

found by a trier of fact to constitute constructive notice and does not "eliminate triable issues of fact as to whether (Riverside) should have known of the abuse" (*Sayegh v City of Yonkers*, 228 AD3d 690, 692 [2d Dept 2024]).

Riverside Defendants' motion is therefore denied as they have not made a *prima facie* case that there was no "opportunity or reason to know about" Lorch's abusive propensities or conduct (*Nellenback v Madison County* 44 NY3d 329 (2025).

Assuming *arguendo* that the Riverside Defendants had established a *prima facie* case, Plaintiff cites evidence in opposition from which a jury could find Riverside was on actual and/or constructive notice of Lorch's conduct including :

> (1) Many of the players in the Riverside basketball program reported that Lorch made them show their genitals under the pretense that he was checking to see if their jockstrap was on correctly. These jockstrap checks occurred either in the gym, the locker room or in a room alone with Lorch—often in the presence of other teammates or with another coach nearby (*e.g.* NYSCEF Doc No. 133, Ex. 29, at 101–04; NYSCEF Doc No. 135, Ex. 31, at 145–46, 245–46).
>
> (2) Many of the players reported that Lorch would paddle their bare buttocks in his office as a form of discipline for being late to practice or failing to wear a jockstrap. Lorch's paddle was hung up visibly in his office. The paddling was audible through Lorch's office door. (NYSCEF Doc No. 135, Ex. 31, at 182–83; NYSCEF Doc No. 138, Ex. 34, at 64–65, 75–76; NYSCEF Doc No. 142, Ex. 38, at 58–59).
>
> (3) Lorch would openly grab, rub and hold players' buttocks during practice and in the locker room (*e.g.* NYSCEF Doc No. 135, Ex. 31, at 214–15; NYSCEF Doc No. 138, Ex. 34, at 99–100).
>
> (4) In the mid-1970s, former player Mitchell Schuler testified that he discussed the abuse with assistant coach Mike Williams. Williams said that Lorch "liked boys" and to "watch out for him." Williams also told Schuler that he once walked in on Lorch touching a player's genitals in the church. Williams also said that if he reported the abuse, he "would have gotten fired" (NYSCEF Doc No. 135, Ex. 31, at 286–89).
>
> (5) Former Riverside player Ellis Williams testified that he told assistant coach Bill Blocker about "the things that Lorch was doing" and that Blocker responded, "[D]on't worry about it. You want to play. Keep your mouth shut." (NYSCEF Doc No. 131, Ex. 27, at 104–05).

Finally, the Court is unpersuaded by the Riverside Defendants' argument in reply that the assistant basketball coaches were not their agents such that their alleged notice of Lorch's abuse would not be imputed to them. It is undisputed from the record that the Riverside Defendants authorized Lorch to work as the Riverside Hawks' basketball coach and that Lorch was on the Board of Trustees for the Riverside Church. These facts could lead a jury to conclude that Lorch was an agent of the Riverside Defendants. Whether the assistant coaches were also the Riverside Defendants' agents is a triable issue of fact as "questions of agency and of its nature and scope are questions of fact to be submitted to the jury under proper instructions by the court" (*Garcia v Herald Tribune Fresh Air Fund, Inc.*, 51 AD2d 897, 897 [1st Dept 1976]).

Based on the foregoing, Riverside Defendants' motion for summary dismissal of Plaintiffs' negligent failure-to-warn claim is also denied as their sole argument for dismissal is that they lacked actual or constructive notice of Lorch's abusive propensities or conduct.

***The Court Denies the Motion to Dismiss Plaintiff's Claim Based Under In Loco Parentis.***

The Riverside Defendants argue that they owed no duty to Plaintiff under the doctrine of *in loco parentis* as the doctrine only applies to schools. The Court disagrees.

The doctrine of *in loco parentis* provides that a defendant who assumes the physical custody of children must undertake a duty to supervise them with "such care of them as a parent of ordinary prudence would observe in comparable circumstances" (*John Doe 42 v Yeshiva Univ.*, 2026 NY App Div LEXIS 228, at *4 [1st Dept, Jan. 20, 2026], quoting *Hoose v Drumm*, 281 NY 54, 58 [1939]; *Harper v Buffalo City Sch. Dist.*, 242 AD3d 1600, 1600 [4th Dept 2025]). While the "ordinarily prudent parent" standard most commonly applies to schools, various Departments in this State have also held that the standard applies also to noneducational persons and organizations that assume physical custody of children (*e.g. Wynn v Little Flower Children's*

*Servs.*, 106 AD3d 64, 69 [1st Dept 2013] [childcare provider]; *Gonzales v Munchkinland Child Care, LLC*, 89 AD3d 987, 987 [2d Dept 2011] [daycare center]; *Mary Ann "ZZ" v Blasen*, 284 AD2d 773, 775 [3d Dept 2001] [adult friend assuming a supervision of plaintiff's daughter]).

***Riverside Defendants' Motion to Dismiss Plaintiff's Negligent Failure-to-Train Claim as to Their Employees.***

The elements of a negligent failure-to-train claim are that (1) a defendant-employer negligently failed to train its employees by violating applicable "laws, rules, regulations, and best practices" and (2) the negligent failure to train the employee was the proximate cause of a plaintiff's injuries (*Dobroshi v Bank of Am., N.A.*, 65 AD3d 882, 885 [1st Dept 2009]). Mere evidence of lax practices is insufficient to establish a negligent failure-to-train claim (*see Nellenback v Madison County*, 2025 NY LEXIS 507, at *11–*12 [Apr. 17, 2025]).

The Court agrees with the Riverside Defendants' first argument that the Plaintiff's claim based in the failure to train the Riverside *players* on the prevention of sexual abuse is a novel claim unsupported by case law. In opposition, Plaintiff fails to raise any triable issue of fact by only arguing that the cause of action occurs in a "range of contexts" and citing cases that apply the claim for a defendant's failure to train an *employee* (*see* NYSCEF Doc No. 105, at 18).

However, Plaintiff's cause of action is also based in the Riverside Defendants' alleged negligence in the training of their employees. While the Riverside Defendants argue that they did not violate any applicable statutes, regulations or best practices at the time of the subject abuse requiring them to train employees on the prevention of sexual misconduct, they cite no evidence in their moving papers establishing the appropriate standard of care at that time. They also do not submit evidence that they adhered to that standard with their employees.

The Riverside Defendants' reliance on *Nellenback v Madison County* is misplaced as well. The Court of Appeals in *Nellenback* acknowledged that the parties of that case had agreed

that there were evolving best practices on sexual misconduct prevention training, but the Court of Appeals nevertheless held that the dismissal of that plaintiff's failure-to-train claim hinged upon the defendant's establishing its lack of actual or constructive notice of the employee's abusive propensities or conduct (*see id.* at *12–*13).

Accordingly, the Court denies the Riverside Defendants' motion for summary dismissal of Plaintiff's claim for the negligent failure to train their employees as they have not met their *prima facie* burden.

***The Court Grants the Riverside Defendants' Motion to Dismiss Plaintiff's Negligent Hiring Claim.***

The Riverside Defendants argue that Plaintiff's claim based in negligent hiring fails as a matter of law because they had no actual or constructive notice of Lorch's abusive propensities or conduct prior to his being hired as a basketball coach. The Court agrees.

"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" (*Kenneth R. v Roman Catholic Diocese of Brooklyn*, 229 AD2d 159, 163 [2d Dept 1997] [*granting defendant's CPLR § 3211(a)(7) motion to dismiss a negligent hiring claim on the basis that the defendant had no knowledge of the applicant's abusive propensities and therefore no reason to investigate the applicant's background further*]). A cause of action for negligent hiring must be based upon "some foundation upon which the question of foreseeability of harm may be predicated, i.e., at least a minimal showing as to the existence of actual or constructive notice" (*Dolgas v Wales*, 215 AD3d 51, 56 [3d Dept 2023] [*affirming dismissal of a negligent hiring cause of action*]). Further, "[a]n employer is under no duty to inquire as to whether an employee has been convicted of crimes in the past" (*Nouel v 325 Wadsworth Realty LLC*, 112 AD3d 493, 493 [1st Dept 2013] [*affirming summary dismissal of a*

*negligent hiring claim even when the employee had a criminal record for sexual misconduct but the defendant-employer nevertheless had no notice of his propensity for sexual misconduct*]).

Dismissals of causes of action for the negligent hiring of an employee generally hinge upon whether the prospective employer had any reason to further investigate the applicant's propensity for tortious conduct. The Fourth Department in *Blanchard v Moravia Central School District* held that a defendant met its initial burden on summary judgment when it submitted the employee's application materials and letters of recommendation lacking any information about his propensity to sexually abuse children (229 AD3d 1098, 1100 [4th Dept 2024]). Similarly, the First Department in *K.I. v New York City Board of Education* reversed the trial court's denial of a defendant's motion for summary judgment (256 AD2d 189, 191 [1st Dept 1998]). The First Department disagreed with the plaintiff's argument that the principal's failure to conduct a background check was negligent because "a routine background check would not have revealed [the employee's] propensity to molest minors" and that the principal "had no duty to investigate further" after only having interviewed the employee and reviewing the employee's reference for the position (*id.* at 191–92).

In support of dismissal, the Riverside Defendants cite following undisputed evidence. Lorch was originally hired as Youth Department staff member and Sunday School teacher by the Reverend Robert Polk when Reverend Polk met with Lorch after receiving a positive recommendation of Lorch from Reverend Wallace Short. Reverend Polk also did not have "any knowledge of Mr. Lorch's prior experience working with children" prior to Lorch's being hired (NYSCEF Doc No. 80, at 2; NYSCEF Doc No. 165, at 7). The Riverside Defendants have thus made a *prima facie* case that Plaintiff's negligent hiring claim fails as a matter of law.

Plaintiff cites no evidence in opposition indicating that the Riverside Defendants knew or should have known of Lorch's propensity to abuse minors prior to his being hired. Plaintiff's argument in opposition only cites evidence tending to show that the Riverside Defendants may have been on notice after Lorch became their volunteer basketball coach.

Accordingly, the Court grants the Riverside Defendants' motion for summary dismissal of Plaintiff's negligent hiring claim.

***The Court Grants the Riverside Defendants' Motion to Dismiss Plaintiff's Claim for Negligent Failure to Provide a Safe and Secure Environment.***

The Court grants the Riverside Defendants' motion for summary dismissal of Plaintiff's claim for negligent failure to provide a safe and secure environment as the claim is duplicative of Plaintiff's negligent retention and supervision claim (*e.g. John Doe 42 v Yeshiva Univ.*, 2026 NY App Div LEXIS 228, at *4 [1st Dept, Jan. 20, 2026]; *see also Brophy v Big Bros. Big Sisters of Am., Inc.*, 224 AD3d 866, 869 [2d Dept 2024] [*holding the same under CPLR § 3211(a)(7)*]).

***The Court Denies Plaintiff's Cross-Motion for an Award of Sanctions.***

Plaintiff argues that the Riverside Defendants were collaterally estopped from litigating the issues of notice, agency and control and that their motion is frivolous. Plaintiff then argues that he should be awarded sanctions for the cost of opposing the Riverside Defendants' motion and of the filing his own cross-motion. The Court disagrees.

Collateral estoppel precludes a party from relitigating an issue "which has previously been decided against [that party] in a proceeding in which [that party] had a fair opportunity to fully litigate the point" (*Matter of Dunn*, 24 NY3d 699, 704 [2015]). To successfully assert the doctrine of collateral estoppel, the prior proceeding being asserted as a bar must have been disposed "on the merits" (*Clearwater Realty Co. v Hernandez*, 256 AD2d 100, 101 [1st Dept 1998]). Contrary to Plaintiff's argument, "[t]he denial of a motion for summary judgment is not a

bar to a similar motion in a subsequent action because it is not an adjudication on the merits" (*Neighborhood Partnership Hous. Dev. Fund v Blakel Constr. Corp.*, 34 AD3d 303, 304 [1st Dept 2006], citing *Clearwater Realty Co.*, 256 AD2d at 101; *see also Horvath v Red Frog Events, LLC*, 227 AD3d 780, 781 [2d Dept 2024] [*holding that the trial court erred in denying a defendant's motion on the basis of collateral estoppel when the disposition of the prior proceeding was a denial of the defendant's motion for summary judgment*]). The previous denials of the Riverside Defendants' prior motions involving issues possibly related to this matter does not bar them under collateral estoppel from relitigating the issues here.

Additional as some relief was granted to defendants on this motion, it can not be said to be entirely frivolous.

Accordingly, the Court denies Plaintiff's cross-motion in its entirety.

## CONCLUSION

WHEREFORE it is hereby:

ORDERED that the motion of the Riverside Defendants is granted to the extent that J.M.'s claims for negligent hiring and negligent failure to provide a safe and secure environment are dismissed, and it is otherwise denied; and it is further

ORDERED that the cross-motion of J.M. is denied; and it is further

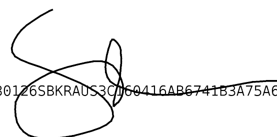
ORDERED that all other requests for relief are denied; and it is further

ORDERED that, within twenty (20) days from entry of this order, defendants shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119, New York, NY 10007); and it is further

ORDERED that the case is reassigned to Justice Alexander M. Tisch for trial and the parties are directed to reach out to Justice Tisch's chambers to schedule a pre-trial conference; and it is further

ORDERED that such service upon the Clerk shall be made 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 at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of this Court.



20260205130126SBKRAUS3C160416AB6741B3A75A6378EC96D871

| 2/5/2026 | | | | | |
|---|---|---|---|---|---|
| DATE | | | SABRINA KRAUS, J.S.C. | | |
| CHECK ONE: | ☐ CASE DISPOSED | | ☐ NON-FINAL DISPOSITION | | |
| | ☐ GRANTED | ☐ DENIED | X GRANTED IN PART | ☐ OTHER | |
| APPLICATION: | ☐ SETTLE ORDER | | ☐ SUBMIT ORDER | | |
| CHECK IF APPROPRIATE: | X INCLUDES TRANSFER/REASSIGN | | ☐ FIDUCIARY APPOINTMENT | ☐ REFERENCE | |