

EXHIBIT N

STATE OF NEW YORK : COUNTY OF ERIE
SUPREME COURT

AB 514 DOE,

PLAINTIFF, INDEX #805688/2020

-VS-

MOTION

AMHERST CENTRAL SCHOOL DISTRICT,

DEFENDANT,

Virtual Proceedings
Buffalo, New York
April 25, 2022.

HELD BEFORE: HONORABLE DEBORAH A. CHIMES,
SUPREME COURT JUSTICE.

APPEARANCES: LEAH COSTANZO, ESQ.,
Appearing for the Plaintiff.

JULIA HILLIKER, ESQ.,
Appearing for the Defendant.

LISA G. PAZDERSKI,
Supreme Court Reporter.

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1 THE CLERK: In the matter of AB 514 Doe
2 versus Amherst Central School District.
3 Counselors, please note your appearance, beginning
4 with the plaintiff.

5 MS. COSTANZO: Leah Costanzo for the
6 plaintiff AB 514 Doe.

7 MS. HILLIKER: Julia Hilliker on behalf of
8 the defendant Amherst Central School District.

9 THE COURT: All right. Ms. Hilliker, I think
10 you brought the first motion, so, you may proceed.

11 MS. HILLIKER: Thank you, Your Honor. May it
12 please the Court, I will cover the highlights.
13 There was extensive briefing in this matter, but
14 if for any reason I don't touch on one of the
15 points that the Court would like to discuss,
16 please let me know.

17 Here, as the Court knows, there's been five
18 cases against the Amherst School District all sued
19 separately for various plaintiffs at various
20 points in time. Importantly, and for purposes of
21 this action, this plaintiff is the earliest point
22 in time of any of the plaintiffs that brought
23 actions here. So as discussed in our papers, it
24 is important to put what occurred in context based
25 on what the District knew at the time this

1 individual was a student.

2 With that said, plaintiff brings five causes
3 of action: Negligence, negligent hiring,
4 negligent training and supervision, negligent
5 retention and breach of statutory duties to
6 report.

7 (Discussion off the record.)

8 MS. HILLIKER: Thank you, Your Honor. The
9 first four causes of action in plaintiff's
10 complaint all hinge on whether the District was on
11 notice of Koch's propensity to sexually abuse
12 students. The Fourth Department has been very
13 clear in its case law precedent that notice of
14 other types of misconduct is insufficient. It has
15 to specifically be, as the Court detailed in Lisa
16 P., evidence that the teacher in question or the
17 employee in question had a propensity to sexually
18 abuse students.

19 For example, in Lisa P., evidence of the
20 teacher sleeping in a room with students was
21 insufficient notice. The Court emphasized again
22 it has to specifically be notice of sexual
23 misconduct.

24 The record here establishes, without
25 question, that prior to the Spring of 1981, there

1 is no evidence of any kind that the District was
2 on notice of Koch's propensity to engage in sexual
3 misconduct. As this Court knows, plaintiff
4 herself alleges that she did engage in a
5 conversation with Cardina and Podgorski in the
6 Spring of 1981. But setting that aside for a
7 moment, admittedly, that's a credibility
8 determination at that point in time.

9 Prior to that, however, the record is
10 absolutely crystal clear that there's no notice of
11 any kind to the District of Mr. Koch's propensity
12 to engage in that behavior. Accordingly, the
13 District is entitled to summary judgment on
14 negligent hiring, as well as the other negligent
15 causes of action that relate to any conduct prior
16 to that date.

17 After the Spring of 1981 when plaintiff
18 allegedly engaged in the discussion with Cardina
19 and then, allegedly, Mr. Podgorski, plaintiff, by
20 her own testimony, admits that Mr. Koch cut off
21 all conduct at that point. Nothing further ever
22 happened at school. That is a hundred percent
23 supported by the record. There is nothing to the
24 contrary.

25 After that point in time, there are only two

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