

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ULSTER

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JOHN DOE and JOHN DOE II,

Plaintiff,

Index No.: EF2020-1189

- against -

WILLIAM J. DEDERICK and KINGSTON  
CITY SCHOOL DISTRICT,

Defendants.

**AFFIRMATION IN  
OPPOSITION TO  
PLAINTIFFS' MOTION  
TO COMPEL PURSUANT  
TO CPLR § 3124**

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**VALENTINA LUMAJ**, an attorney duly admitted to the practice of law in the State of New York, under the penalty of perjury, affirms as follows:

1. I am an attorney with the law firm Silverman & Associates, Of Counsel to SHAW, PERELSON, MAY & LAMBERT attorneys for defendant Kingston City School District (the "District") in this action. As such, I am fully familiar with the facts and circumstances surrounding this action based upon both the documents contained in our office file, appearances at the parties' meet and confers, appearances at conferences with the Court, and my own personal handling of the matter.

2. I submit this affirmation and annexed exhibits in opposition to Plaintiffs' motion for an Order pursuant to CPLR § 3214 seeking to compel the production of certain personnel files of former District staff members. Defendants seek dismissal of this motion, and for such other, different, and further relief as this Court deems just and proper.

**RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

3. The above-captioned action is one brought by the anonymous Plaintiffs against defendants William J. Dederick ("Dederick") and the Kingston City School District ("District") pursuant to the New York Child Victims Act, CPLR 214-g, alleging that between 1982 and 1984,

Dederick, a teacher for the District, engaged in sexual abuse of the Plaintiffs both at the District's high school and at locations off of school grounds, that Dederick sexually abused a number of other minor students of the District and that the District knew or should have known between 1982 and 1984 both that Dederick had a propensity to engage in sexual abuse of children and that Dederick was sexually abusing minor students, including the Plaintiffs. The Complaint asserts causes of action against the District sounding in negligence, negligent hiring and retention and negligent supervision of Dederick and the Plaintiffs.

4. Plaintiffs served the District with their first set of interrogatories dated September 3, 2020 and requested, *inter alia*, information regarding any claims or complaints of sexual abuse brought against any employee or independent contractor of the District prior to the institution of the instant lawsuit.

5. In response, the District identified T ■■■ O ■■■, R ■■■ V ■■■, E ■■■ K ■■■, and B ■■■ F ■■■ as former employees who the District knew were accused of inappropriate conduct with students and/or minors. Further, the District agreed to disclose documentation related to those claims to the Plaintiffs.

6. Subsequently, the District produced all documents in its possession containing information regarding the claims of inappropriate conduct made against T ■■■ O ■■■, R ■■■ V ■■■, E ■■■ K ■■■, and B ■■■ F ■■■. At Plaintiffs' request, the District also produced an affidavit from Abbie Reinhardt, the District's Coordinator of Personnel, Benefits, and Payroll, who conducted the search for documents concerning the allegations made against T ■■■ O ■■■, R ■■■ V ■■■, E ■■■ K ■■■, and B ■■■ F ■■■. Ms. Reinhardt set forth in her affidavit that the documents the District produced were all of the documents her office "was able to locate concerning the sexual

abuse allegations made against B ■■■ F ■■■, T ■■■ O ■■■, E ■■■ K ■■■, and R ■■■ V ■■■.” Exhibit A, Reinhardt Affidavit.

7. Thereafter, Plaintiffs requested the entire personnel files for B ■■■ F ■■■, T ■■■ O ■■■, E ■■■ K ■■■, and R ■■■ V ■■■ despite the District’s representation that those files had been reviewed and that all documents concerning the sexual abuse allegations lodged against these individuals were already produced.

8. Further, the District objected on grounds that the sexual abuse allegations against T ■■■ O ■■■, E ■■■ K ■■■, and R ■■■ V ■■■ involved conduct that occurred several years after the relevant time period in this case. Specifically, the allegations against T ■■■ O ■■■ occurred in January 2003, E ■■■ K ■■■ in March 2020, and R ■■■ V ■■■ in April 2014, which is decades after the allegations of abuse in this case.

9. Plaintiffs served the District with a request for documents dated September 4, 2021, requesting, *inter alia*, the personnel files for R ■■■ N ■■■, R ■■■ R ■■■, and H ■■■ S ■■■.

10. In response to Plaintiffs’ September 4, 2021 documents requests, the District objected to producing the personnel files of R ■■■ N ■■■, R ■■■ R ■■■, and H ■■■ S ■■■ on grounds that the personnel files of these individuals have no bearing on the issue of whether the District had prior notice of Dederick’s alleged propensity to sexually abuse students either prior to his hiring or at any time during the relevant period of alleged abuse in this case.

11. The parties participated in several meet and confers to attempt to resolve this discovery issue, however, after discussing the Plaintiffs’ requests, the District maintains its objections to producing the requested personnel files.

**PLAINTIFFS ARE NOT ENTITLED TO THE REQUESTED PERSONNEL FILES**

12. In order to establish their entitlement to the requested personnel records, the Plaintiffs must show that the files contain information that is “material and necessary” to their prosecution of this action. *See Melfe v. Roman Catholic Diocese of Albany, N.Y.*, 196 A.D. 3d 811, 813 (3d Dept. 2021). “The words, ‘material and necessary,’ are to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial”. *Galasso v. Cobleskill Stone Prods., Inc.*, 169 A.D.3d 1344, 1345 (3d Dept. 2019). The party seeking the discovery bears the burden of proving that the discovery request is reasonably calculated to yield material and necessary information. *Dee Catlyn & Derzee, Inc. v. Amedore Land Devs., LLC*, 166 A.D.3d 1137, 1141 (3d Dept. 2018).

13. Plaintiffs’ reliance on *Harmon v. Diocese of Albany*, 204 A.D.3d 1270 (3d Dept. 2022) is misplaced. While the Court did order disclosure of the personnel files of priests credibly accused of sexually inappropriate conduct, the Court limited the disclosure to those “files containing a reference to possible misbehavior that occurred before 1985, when plaintiff’s alleged abuse ended”. *Id.* at 1273.

14. Here, Plaintiffs’ claims are that Dederick sexually abused Plaintiffs from 1982 through 1984 and that the District knew or should have known about the abuse.

15. The Plaintiffs argue that the entire personnel files of B ■■■ F ■■■, E ■■■ K ■■■, R ■■■ V ■■■, and T ■■■ O ■■■ are relevant to their claims because they are “likely” to have information regarding the allegations, the District’s knowledge of the allegations, and the District’s handling of those allegations.

16. However, as the District has previously conveyed to Plaintiffs’ counsel and as the documents already produced make clear, the allegations of inappropriate conduct made against

E ■ K ■, T ■ O ■, and R ■ V ■ occurred in the 2000s and have no bearing whatsoever on how the District handled claims of alleged inappropriate conduct with students either prior to its hiring of Dederick or during the relevant period of abuse in this case (1982-1984).

17. As such, the Plaintiffs cannot show entitlement to the entire personnel files of E ■ K ■, T ■ O ■ and R ■ V ■ as anything contained therein regarding their hiring or retention has absolutely no bearing on the Plaintiffs' claims of abuse in this case.

18. Further, although the allegations against B ■ F ■ involved inappropriate sexual conduct with a student in 1984, the District has already disclosed all documents from B ■ F ■'s personnel file related to those allegations. The District's production of the documents concerning the allegations of sexual abuse against B ■ F ■ include a New York Education Law § 3020-a opinion and determination evidencing that the District brought charges against Mr. F ■ based upon these allegations and that a disciplinary hearing was held to determine whether he was guilty. The § 3020-a decision sets forth that based on the evidence and testimony introduced in the hearing, Mr. F ■ was found not guilty of engaging in inappropriate sexual conduct with a student.

19. The affidavit of Ms. Reinhardt, which was also provided to the Plaintiffs, clearly sets forth that the District searched Mr. F ■'s personnel file as well as the District's litigation file in order to ascertain what documents existed related to the allegations against Mr. F ■. Ms. Reinhardt also clearly sets forth that all such documents have already been disclosed and that there are no other documents related to the allegations of abuse made against Mr. F ■. Exhibit A, Reinhardt Affidavit.

20. Plaintiffs' insistence that they are entitled to the entirety of Mr. F ■'s personnel file is mistaken as they have been provided with the extent of documents that relate to the abuse allegations made against Mr. F ■.

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