

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER

.....-X Index No. EF2020-1189

JOHN DOE I and JOHN DOE II,

Plaintiffs,

**REPLY AFFIRMATION IN
SUPPORT OF MOTION TO
COMPEL DISCOVERY
PURSUANT TO CPLR §
3124 AND OF GOOD FAITH
EFFORT**

-against-

WILLIAM J. DEDERICK, et al,

Defendants.

Before:
Hon. Justin Corcoran

.....-X

DANIEL R. LAZARO, ESQ., an attorney duly admitted to the practice of law in the State of New York, hereby affirms under penalty of perjury:

1. I am an attorney with the law firm Buchanan Ingersoll & Rooney PC, attorneys for Plaintiffs John Doe I and John Doe II in the above-captioned action, and as such I am fully familiar with all the facts and circumstances in this case. I submit this Reply Affirmation in support of Plaintiffs’ motion for an order pursuant to CPLR § 3124, directing Defendant Kingston City School District to produce *entire personnel files* of [REDACTED]

[REDACTED] as requested through Plaintiffs’ Second Set of Document Requests dated September 4, 2021 and Plaintiffs’ January 25, 2023 Letter to Kingston City School District regarding the District’s deficient responses to Plaintiffs’ First Set of Interrogatories and First Set of Document Requests.

2. As detailed in my August 29, 2023 Affirmation – and a key point the District merely glosses over in its Opposition – one major theme of Plaintiffs’ Amended Complaint centers on how the District handled claims of sexual abuse alleged against its staff throughout the relevant

time period (1975 to 1988).¹

3. Put another way, Plaintiffs aim to prove the District's continued pattern and practice of negligent retention and negligent supervision as one of the factors that led to Dederick's continued employment at the District.

4. Thus, Plaintiffs seek the *entire* personnel files for various employees in order to ascertain and identify any potential pattern and practice as it relates to negligent retention and negligent supervision of District employees.

5. As the District stated in its Opposition, "[t]he 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)." Plaintiffs have done just that.

6. As Plaintiffs have sought all along concerning these employees, Plaintiffs' complete review of these entire personnel files is paramount to understand the context surrounding inappropriate conduct in order to establish a pattern and practice of negligent retention and negligent supervision of its employees.

7. As it concerns the files of [REDACTED], the evidence provided in my Affidavit shows the link between not only the District's prior notice of Dederick's alleged propensity to sexually abuse students but also the pattern and practice of negligent retention and negligent supervision of its employees. For example, [REDACTED] was a

¹ See e.g. Amended Complaint at ¶ 50 (alleging that the District "knew or, in the exercise of reasonable care, should have known that Dederick had a propensity for the conduct which caused injury to JOHN DOE and JOHN DOE II – in particular, that he had a propensity to engage in sexual abuse of children"); ¶ 53 (alleging other teachers at Kingston High School cautioned John Doe about spending extracurricular time with Dederick because it was rumored Dederick was "into young boys."); ¶¶ 56-94 (detailing causes of action for negligence, negligent hiring and retention, and negligent supervision against the District).

former guidance counselor – a member of the faculty tasked with providing a safe and nurturing environment for students and with interacting with other faculty administrators. That [REDACTED] and Dederick were close friends and interacted with students together only supports Plaintiffs' need for his complete personnel records as it may highlight what information the District was made aware of concerning Dederick's (or others') behavior through its guidance counselor.

8. The personnel files for these District employees are of particular import because the District has admitted 19 years of Dederick's performance evaluations are missing. As this crucial evidence is unavailable, the personnel files of others accused of misconduct involving students, the District's handling of those allegations, and the files of District personnel surrounding Dederick at the time of his employ is highly relevant to prove how the District handled allegations against Dederick and others.

9. Plaintiffs seek to prove, among other things, that "there was widespread knowledge among School faculty members and administrators" of Dederick's inappropriate behavior (Amended Complaint at ¶ 27), and that the District was negligent in its training, supervision, retention, and instruction of Dederick because the District failed to timely educate, train, supervise, and monitor Dederick. (Amended Complaint at ¶ 86).

10. As Dederick's records have mostly gone missing, a limited option left to Plaintiffs are to obtain files surrounding Dederick's employment and files of other District employees who have been alleged of similar wrongdoing.

11. Employment files surrounding Dederick's employment would certainly include [REDACTED] who were all employed by the District during the relevant time frame connected to Dederick.

12. Additionally, as it concerns [REDACTED]

██████████, the District's argument that Plaintiffs' reliance *Harmon v. Diocese of Albany* is misplaced because the Court there limited disclosure to files occurring within the time period of abuse in the complaint is belied by the fact that by already producing *portions* of personnel files of ██████████, ██████████ (conduct that by the District's own admission occurred after the allegations in the Complaint), the District has opened the door to further discovery under *Harmon*. See *Harmon v Diocese of Albany*, 204 AD3d 1270, 1274 [3d Dept 2022] ("Defendants have made what they knew about sexual abuse within the Diocese central to their case, and the court properly found that defendants themselves opened the door to discovery of what they knew about the clergy sex abuse problem.").

13. Thus, the District's objection to produce complete personnel files of ██████████, ██████████ on grounds that inappropriate conduct occurred several years after the relevant time period in this case is waived by the fact that the District actually did produce the portions of their respective files relating to that inappropriate conduct, however limited that production may be.

14. Lastly, the District's argument that producing entire "personnel files for ██████████ ██████████ without any limitation is overbroad and unduly burdensome" is not so. The District has the files in its possession and it is not clear how producing them would be overbroad or unduly burdensome.

15. By its own admission in its Opposition, the District has already compiled and reviewed all of these records in their entirety. See Affidavit of A. Reinhardt at ¶¶ 7-9 (affirming the District already reviewed "approximately half of the files contained in the archived personnel files," the District's entire archived payroll records, and the personnel and payroll records for current employees); Affidavit at ¶ 13 (affirming the District's review of complete personnel files

of [REDACTED]); Opposition at ¶ 19 (affirming the District reviewed [REDACTED] entire personnel file to extract particular records); ¶ 21 (affirming that the District already reviewed personnel files of [REDACTED] to conclude that their files do not contain allegations of inappropriate conduct); ¶ 26 (affirming the content and substance of [REDACTED] personnel file).

16. Thus, the burden to produce complete employment files at this stage is *de minimis*.

17. And the District's argument that confidential information would have to be redacted to protect against the disclosure of confidential information is covered by the Stipulation and Order for the Production and Exchange of Confidential Information ("Confidentiality Agreement") entered into between all Parties (NYSCEF Doc. No. 105).

For the reasons explained herein, Plaintiffs John Doe I and John Doe II respectfully request that Plaintiffs' motion be granted, that Defendant Kingston City School District be compelled to produce the entire personnel files of [REDACTED] [REDACTED], as requested through Plaintiffs' Second Set of Document Requests dated September 4, 2021 and Plaintiff's January 25, 2023 Letter to Kingston City School District regarding the District's deficient responses to Plaintiffs' First Set of Interrogatories and First Set of Document Requests; and for such other and further relief as this Court deems just and proper.

Dated: New York, New York
September 26, 2023

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