

STATE OF NEW YORK
COUNTY OF ULSTER

SUPREME COURT

JOHN DOE and JOHN DOE II,

Plaintiffs,

DECISION and ORDER
Index No.: EF2020-1189

-against-

WILLIAM J. DEDERICK and
KINGSTON CITY SCHOOL DISTRICT,

Defendants.

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JUSTIN CORCORAN, J.S.C.

This action is brought by pseudonymous plaintiffs pursuant to the Child Victims Act (CPLR 214-g ["CVA"]) alleging they were sexually abused by the same teacher, defendant William J. Dederick, who was employed by defendant Kingston City School District ("the district"). Plaintiff John Doe alleges that from 1982 through 1984, when he was 14 to 16 years old, defendant Dederick sexually abused him at the district's high school and at the respective homes of Doe and Dederick. John Doe II alleges that Dederick abused him in 1984 when he was fourteen years old during two private tutoring sessions. Plaintiffs allege that school faculty members and administrators widely knew that Dederick invited students to his house to drink alcohol and watch pornography, and that Dederick was involved in sexually inappropriate relationships with other minor male students of the district.

As against the district, John Doe asserts causes of action for negligence, negligent hiring and retention, and negligent supervision. John Doe II asserts one cause of action for negligent hiring and retention. Following joinder of issue, plaintiffs sought production of records, including the entire personnel file of (1) four district employees who, by the

district's admission, were accused of sexual misconduct while employed by the school district and (2) three district employees (also involved in inappropriate behavior with students, but for whom the district has no record of formal complaints), and "notice witnesses" who purportedly knew about inappropriate conduct between teachers and students during the time plaintiffs were abused. These employees include (i) a teacher who was close friends with Dederick and also hosted students at his home, provided them with alcohol, and showed them pornography; (ii) a district employee allegedly shifted from school to school because of inappropriate behavior with students; and (iii) a former teacher and union official whose personnel file may have information concerning allegations of abuse against union members and the district's response to those allegations.¹

After engaging in the requisite good faith efforts to resolve the issues raised in the motion, plaintiffs now move pursuant to CPLR 3124 to compel production of records alleged to have been improperly withheld. Plaintiffs criticize how the district handled claims of sexual abuse against its staff and claim that it knew or should have known that Dederick had a propensity to engage in the sexual abuse of children. Plaintiffs contend the full personnel files of other district employees accused of sexual misconduct are likely to contain relevant information about the district's response to similar allegations against its employees, including whether the district maintained a pattern and practice of negligent hiring, retention, and supervision. Plaintiffs argue that access to these files is particularly necessary based on the district's representation that it does not possess 19 of Dederick's performance evaluations between 1973 through 1998.² Plaintiffs believe the "missing" performance evaluations would shed light on how the district handled any allegations against Dederick. As this evidence is unavailable, plaintiffs maintain that the full personnel files of others accused of misconduct is necessary and material to prove how the district handled similar allegations. With respect to the other requested personnel files, the district

¹ The full names of the employees have been redacted in the NYSCEF filings. The parties have provided the Court with unredacted versions of their papers for ease of reference.

² Specifically, the district lacks any personnel file for Dederick for the years 1973-1983, 1984-1986, 1991-1994, 1996, and 1998.

responded that its search yielded no relevant information; plaintiffs contend the district should not be permitted to unilaterally determine what is relevant to their claims.

The district objects to providing the disputed discovery, claiming plaintiffs' requests are overbroad and nothing more than a fishing expedition which is not based on good faith or prior discovery. The district claims it has produced documents about the allegations of sexual abuse made against the four other accused employees, but objects to producing their entire personnel files because the allegations against three of these employees were made in 2003, 2014 and 2020 respectively (long after the abuse alleged by plaintiffs), and thus, are too attenuated to reveal how the district handled similar allegations during the period of alleged abuse in this case. The fourth employee complaint, however, concerns allegations of misconduct that occurred in 1984.

The district further contends that it reviewed the complete personnel files of the other district employees, and they do not contain any information about 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. The district also contends that plaintiffs' broad requests are unduly burdensome as these records contain hundreds of pages which must be reviewed and redacted to protect against the disclosure of confidential information such as social security numbers and health information.³

Discussion

"New York has long favored open and far-reaching pretrial discovery." *DiMichel v. South Buffalo Ry. Co.*, 80 NY2d 184, 193 (1992), cert denied sub nom *Poole v. Consolidated Rail Corp.*, 510 US 816 (1993). "CPLR 3101 mandates full disclosure of all matter material and necessary in the prosecution or defense of an action. 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. If there is any possibility that the information is sought in good faith for possible use as evidence-in-chief or in rebuttal or for cross-examination, it should be considered evidence material in

³ Plaintiffs contend that this confidential information is already shielded by the confidentiality agreement entered into between all parties. NYSCEF Doc. No. 105.

the prosecution or defense...The party seeking discovery bears the burden of proving that the discovery request is reasonably calculated to yield material and necessary information.” *Harmon v. Diocese of Albany*, 204 AD3d 1270, 1271 (3d Dept. 2022) (internal citations and quotations omitted). Despite its broad scope, the right to disclosure is not unlimited. *Forman v. Henkin*, 30 NY3d 656, 661 (2018); *Geffner v. Mercy Med. Ctr.*, 83 AD3d 998, 998 (2d Dept. 2011); *Dolback v. Reeves*, 265 AD2d 625, 625-626 (3d Dept. 1999). “It is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims.” *Mendives v. Curcio*, 174 AD3d 796, 797-798 (2d Dept. 2019).

Plaintiffs have failed to demonstrate that the personnel files of the former union official and the teacher rumored to have been shifted between schools are reasonably calculated to lead to the discovery of information bearing on their claims.⁴ To require the district to provide these files, even for *in camera* review, would open the door to almost anyone who worked at an institution where an alleged abuser was employed on the theory that their files may contain relevant evidence. Plaintiffs are entitled to liberal discovery; however, wholesale review of these two employees’ entire personnel files, based on rumors and speculation, is unwarranted.

Plaintiffs’ remaining requests relate to other district employees credibly accused of sexual misconduct. The Appellate Division, Third Department has held that the personnel files of other credibly accused members employed by the same institution as the alleged abuser may be relevant to whether the institution had constructive notice of the perpetrator’s proclivities, and whether the institution maintained a practice of retaining assailants credibly accused of child sexual abuse. *Harmon v. Diocese of Albany*, supra at 1270; *Melfe v. R.C. Diocese of Albany*, 196 AD3d 811 (3d Dept 2021). Contrary to the district’s contentions, simply because a document was prepared after plaintiffs’ reported abuse does not foreclose the possibility that it contains information material to the claims

⁴ These individuals are referenced in paragraphs 16 and 17 of plaintiff’s “affirmation in support of motion to compel discovery pursuant to CPLR 3124 and of good faith effort” (NYSCEF Doc. No. 149).

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