ORIGINAL

SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. CATHERINE M. BARTLETT, A.J.S.C.

SUPREME COURT : STATE OF NEW YORK
COUNTY OF ORANGE

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SHARON LENNON, as Mother and Natural Guardian of CAITLIN LENNON, an infant under the age of fourteen years and CHRISTOPHER DIMEDIO, as Father and Natural Guardian of CARA C. DIMEDIO, an infant under the age of fourteen years,

Plaintiffs,

-against-

CORNWALL CENTRAL SCHOOL DISTRICT and DAISY MELENDEZ,

Defendants.

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To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry,

Index No. 9465/2011
Motion Date: May 30, 2012
(adjourned to May 31, 2012)

The following papers numbered 1 to 11 were read on plaintiff's motion to compel the production of school records of Ryan A., an infant, for the past five years for *in camera* inspection:

Notice of Motion-Affirmation in Support-Exhibits 1-3

Affirmation in Opposition of John J. McKenna, Esq.-Exhibits. 4-6

Affirmation in Opposition of Frank D. Lombardi, Esq. 7

Reply Affirmation to John J. McKenna Esq.'s Opposition-Exhibits 8-9

Reply Affirmation to Frank D. Lombardi Esq.'s Opposition-Exhibits 10-11

Upon the foregoing papers, it is ORDERED that the motion is disposed of as follows:

This is an action for personal injuries stemming from an incident which occurred on a

school trip in which it is alleged that the plaintiffs were separately injured by Ryan A., son of defendant Melendez. Plaintiffs allege that Ryan A. has been a repeated discipline problem in school and his behavior on the day of the incident which allegedly caused the plaintiffs' injuries was known to the school district prior thereto for which proper measures were not taken to avoid the problems which ensued. In fact, it is alleged that Ryan A. previously was disciplined in relation to a physical altercation with the infant plaintiff Lennon some years earlier, a fact which is allegedly known to the school district since he was disciplined for that prior incident. Plaintiffs' case is predicated in part on the school district's alleged failure to properly supervise Ryan A.

Defendants oppose the application essentially arguing that plaintiffs failed to make out a sufficient case warranting the release of the school records in the first instance.

CPLR §3101(a) states in pertinent part: "There shall be full disclosure of all mater material and necessary in the prosecution or defense of an action, regardless of the burden of proof, by: (1) a party, or the officer, director, member, agent or employee of a party; . . ." In interpreting this statute, the Court of Appeals stated unequivocally in *Allen v Crowell-Collier Publishing Co.*, 21 NY2d 403, 406-407 (1968), that:

> the words "material and necessary", are, in our view, to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason. CPLR 3101 (subd.(a)) should be construed, as the leading text on practice puts it, to permit discovery of testimony "which is sufficiently related to the issues in litigation to make the effort to obtain it in preparation for trial reasonable (3 Weinstein-Korn-Miller, N.Y.Civ.Prac., par. 3101.07, p.31-13)".

See, Hoenig v Westphal, 52 NY2d 605, 608 (1981). Moreover, the *Allen* Court held that " 'The

purpose of disclosure procedures . . . is to advance the function of a trial to ascertain truth and to accelerate the disposition of suits' and, . . . '(i)f 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 the prosecution or defense' [citation omitted]." *Allen,* 21 NY2d at 407.

According to Professor David D. Siegel:

> It is often said that the disclosure devices may not be used by a party merely to conduct a "fishing expedition", i.e. merely to see what beneficial things might be inadvertently discovered from the other side. Lip service is still occasionally paid to that shibboleth. The contention is often thrown up as a defense against reasonable disclosure, but it doesn't work. If the seeking party is within the criterion of CPLR 3131(a) and beyond the immunities of (b), ©, and (d), and if nothing unusual can be shown to invoke the court's protective order powers under CPLR 3103, as with a showing that the disclosure devices are being used for harassment or delay, the party entitled to this disclosure and the waving of the "fishing expedition" sign will be unavailing . . .
>
> If it is relevant, that party is clearly entitled to find it out by asking any questions reasonably calculated to elicit data about the transaction or occurrence that grounds the suit and its background and incidents. If the English language chooses to label such a pursuit a "fishing expedition", then west must in candor (and perhaps relief) acknowledge that a "fishing expedition" into one's adversary's case is precisely what the CPLR invites. The broad scope assigned to disclosure by the Allen case [citation omitted] invites that conclusion.

N.Y. C.P.L.R. 3101, Practice Commentaries, C3101:8 (1991).

Schools are under a duty to supervise students adequately and can be liable for a foreseeable injury proximately related to the lack of adequate supervision, *Brandy B. v Eden Central School District*, 15 NY3d 297 (2010); *Mirand v New York*, 84 NY2d 44(1994); *Rivera v Board of Educ.*

of City of Yonkers, 19 AD3d 394 (2nd Dept. 2005). In determining whether the duty to provide adequate supervision has been breached in the context of injuries caused by the acts of fellow students, it must be established that the school authorities had sufficiently specific knowledge or notice of the dangerous conduct that caused the injury, that is, that the fellow student's acts could reasonably have been anticipated, *Brandy B. v Eden Central School District*, 15 NY3d 297, 302; *Mirand v New York, supra*; *Lawes v Board of Education*, 16 NY2d 302 (1965); *Baker v Trinity-Pawling School*, 21 AD3d 272, 274 (1st Dept. 2005).

In the context of an injury sustained by one student as a result of the conduct of another student, notice may arise from relevant entries in a student's disciplinary record, or from previous disputes between the students involved in the altercation, *McLeod v New York*, 32 AD3d 907, 908 (2nd Dept. 2006); *Morman v Ossining Union Free School Dist.*, 297 AD2d 788, 789 (2nd Dept. 2002); *see Velez v Freeport Union Free School Dist.*, 292 AD2d 595, 596 (2nd Dept. 2002).

In this case, plaintiffs were required to show that the school district had prior knowledge about Ryan A.'s behavior such that it would be on notice that his prior behavior would potentially lead to the behavior he demonstrated in this case and whether the school district should have taken other steps to have prevented this particular incident. Plaintiffs demonstrated a prior incident between Ryan A. and one of the infant plaintiffs. The school district and Ryan A.'s mother refuse to produce Ryan A.'s school records and plaintiffs lack access to them. Given the plaintiffs' showing, at least in the context of discovery, plaintiffs' request for Ryan A.'s past five years of school records is reasonably calculated to plead to discoverable information which would assist plaintiffs in demonstrating an essential element of their case, or in the alternative, demonstrate that such an element is absent therefrom. *See, Staten v City of New York*, 90 AD3d

893, 895 (2nd Dept. 2011); *Graham v West Babylon Union Free School District*, 262 AD2d 605, 606 (2nd Dept. 1999); *Moores v City of Newburgh School Dist.*, 213 AD2d 527, 528 (2nd Dept. 1995). Therefore, plaintiffs' motion is granted and defendants are ordered to supply to the Court for its *in camera* inspection, Ryan A.'s school records for the past five years within 21 days from the date of this order.

The foregoing constitutes the decision and order of the court.

Dated: June 5, 2012
Goshen, New York

ENTER

HON. CATHERINE M. BARTLETT
A.J.S.C.
JUDGE NY STATE COURT OF CLAIMS
ACTING SUPREME COURT JUSTICE