

R.H. v City of New York
2018 NY Slip Op 33584(U)
July 20, 2018
Supreme Court, Richmond County
Docket Number: 150539/2017
Judge: Thomas P. Aliotta
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF RICHMOND: PART C-2

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 R.H., a minor over the age of fourteen, by her mother
 and natural guardian, ANGELA MCEACHERN and
 ANGELA MCEACHERN, Individually,

HON. THOMAS P. ALIOTTA

IN CAMERA ORDER

Plaintiffs,

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- against -

CITY OF NEW YORK, NEW YORK
 CITY DEPARTMENT OF EDUCATION and
 INTERMEDIATE SCHOOL 61,

Defendants.
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This is an action for personal injuries sustained by the infant plaintiff, M.K., on December 16, 2015 at approximately 11:30 A.M. within Intermediate School 61 located in Staten Island, New York. It is alleged that R.H. was injured when she was assaulted by "A.J.," a female student.

Pursuant to the Preliminary Conference Order dated May 22, 2018, defendants provided to the Court A.J.'s Individualized Education Plan (hereinafter "IEP"), a surveillance video that captured part of the alleged assault, occurrence reports, witness statements, classroom anecdotal notes and various internal and external emails regarding the incident and history between R.H. and A.J. Defendants notified A.J.'s parents by letter dated June 1, 2018¹ that if they objected to the Court's release of any of the records, they were to notify the Court on or before July 2, 2018. The Court has not received a letter of objection from A.J.'s parents or guardians as of the date of this Order.

¹ A copy of the letter was provided to the Court.

The Court must first determine whether disclosure of this material is prevented by 20 U.S.C. § 1232g, which directs the Federal Government to withhold funds from educational institutions which permit disclosure of “education records” without first complying with its provisions (*Culbert v. City of New York*, 254 AD2d 385, 387). The term “education records” includes “information directly related to a student” maintained by the educational institution or its agent and was intended to protect records relating to an individual student's performance but does not include records that are for the purposes of maintaining the physical security and safety of the agency or institution (*Id.*). Therefore, an injured plaintiff is entitled to disclosure of any written reports of the incident which gives rise to the litigation prepared by the defendants in the regular course of business (*Id.*, and see, CPLR 3101 [g]). Further, disclosure of prior similar incidents involving violent behavior that may be material and necessary to determine whether school officials had actual or constructive notice of similar conduct, which could constitute a basis for imposing liability, is also permitted (*Culbert v. City of New York*, 254 AD2d 388).

The disclosure of prior similar incidents is permitted since schools are “under a duty to adequately supervise the students in their charge and they will be held liable for foreseeable injuries proximately related to the absence of adequate supervision” (*Staten v. City of New York*, 90 AD3d 893, citing *Mirand v. City of New York*, 84 NY2d 44, 49). This duty entitles an injured plaintiff to the discovery of any disciplinary records to determine whether the school failed to take reasonable precautions to prevent an incident despite actual or constructive knowledge of a student’s behavioral history (see, *Staten v. City of New York*, 90 AD3d 895). A school or institution is in compliance with 20 U.S.C. 1232g when the requested documents are submitted to the Court for an *in camera* inspection to redact confidential and irrelevant information (see

Culbert v. City of New York, 254 AD2d 388) and a judicial order thereafter authorizes the disclosure (*Staten v. City of New York*, 90 AD3d 895).

Here, the plaintiffs are entitled to the full names and addresses of the students who witnessed this occurrence and the surveillance video footage which were for the purposes of maintaining security and safety within I.S. 61 (*Culbert v. City of New York*, 254 AD2d 387 and see CPLR 3101 [g] and [i]). To protect the confidentiality of the minor students, defendants shall provide the full names and addresses under separate cover from any legal document uploaded to the New York State Case Electronic Filing System. Plaintiff are also entitled to disclosure of the occurrence reports, witness statements, classroom anecdotal notes, and internal and external emails. The Court has redacted the full names of the minor students, their addresses, dates of birth, telephone numbers, identifying school identification numbers and social security numbers. The Court also redacted information regarding the suspension of another student arising from events unrelated to this incident. However, A.J.'s IEP is not discoverable as it does not contain information that is necessary and material to this litigation (*Culbert v. City of New York*, 254 AD2d 388 and *Staten v. City of New York*, 90 AD3d 895).

Accordingly, it is hereby

ORDERED, that defendant shall provide to plaintiff the occurrence reports, witness statements, classroom anecdotal notes and the internal and external emails as redacted by the Court within 15 days of receipt of this Order and the return of the original documents; and it is further

ORDERED, that defendant shall provide to plaintiff the video surveillance within 15 days of receipt of this Order and the return of the original documents; and it is further

ORDERED, that defendants shall provide the full names and addresses under separate cover from any legal document uploaded to the New York State Case Electronic Filing System to protect the confidentiality of the minor students within 15 days of receipt of this Order and the return of the original documents; and it is further

ORDERED, that any non-party subpoena to compel the testimony of minor witnesses must be submitted to the Court for judicial review and approval upon ten (10) days' notice to the students' parents to afford them the opportunity to object to the non-party subpoena; and it is further

ORDERED, that the parties, non-parties, interested parties, all attorneys and/or their agents, servants, or employees, including anyone acting on behalf of the aforesaid persons or entities, are enjoined from disseminating or publishing the information contained in the exchanged documents to any person or entity not a party to this litigation, including all media and social media outlets; and it is further

ORDERED, that any violation of this Order shall be deemed criminal contempt, and if proven shall be treated as such; and it is further

ORDERED, the aforesaid original documents are being returned to the attorneys for defendants to protect the confidential nature of same and will not be part of the public record.

This constitutes the Order of this Court.

Dated: July 20, 2018

ENTER:



HON. THOMAS P. ALIOTTA, J.S.C.