SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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J.J.,

Plaintiff,

-against-

MINEOLA SCHOOL DISTRICT and MINEOLA MIDDLE SCHOOL,

Defendants.

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Part CVA-R
Index No. 900067/2021
Mot. Seq. Nos. 003-004

DECISION AND ORDER

LEONARD D. STEINMAN, J.

The following submissions, in addition to any memoranda of law submitted by the parties, have been reviewed in preparing this Decision and Order:

Defendant's Notice of Motion, Affirmation & Exhibits…….....1
Plaintiff's Affirmation in Opposition & Exhibits.....2
Defendant's Reply.....3
Plaintiff's Notice of Motion, Affirmation & Exhibits.....4
Defendant's Affirmation in Opposition.....5

In this action, plaintiff alleges that she was sexually abused in 2014 by her middle school science teacher employed by defendant Mineola School District. The District now moves for summary judgment pursuant to CPLR 3212. For the reasons set forth below, the motion is granted.

BACKGROUND

The abuse allegedly occurred during school at two different times. First, the teacher, Harold McLaughlin, would perform a science experiment concerning weight distribution in front of entire classes and their teachers, in which he would lie face up on a bed of nails and have students sit on his body—including his groin.[1] Plaintiff sat on his groin. The principal

[1] One non-party witness testified that during the experiment McLaughlin had a student sit on McLaughlin's face, which was turned to the side. Plaintiff testified this only occurred during lunch-learning sessions, described *infra*. For purposes of this motion, the court will assume it occurred during both activities.

became aware of the experiments and asked McLaughlin to stop performing them due to the potential danger but McLaughlin did not abide by this instruction.[2]

McLaughlin also had lunch sessions once or twice a week with certain students. The principal was aware of such sessions—they were lunch-learning sessions that every teacher was mandated to provide. During these sessions, McLaughlin would play a game in which he would lie on the floor face up and have students sit on top of him and try to prevent him from standing up. McLaughlin's hands would be at his side—the object was to see if he could stand up without using his hands. During the game plaintiff would sit on his groin. Others would sit elsewhere, including on his head/face. McLaughlin and the students were fully clothed and McLaughlin never touched plaintiff with his hands on any intimate part of her body. Plaintiff asserts that McLaughlin's classroom's door window was covered with paper, and during the lunch sessions would be locked. The covering was against school policy and the principal once instructed McLaughlin to remove it (there is no evidence that he did not comply with this instruction). Plaintiff never told a District employee about the game and is unaware of any complaints made by anyone at the time.

LEGAL ANALYSIS

It is the movant who has the burden to establish an entitlement to summary judgment as a matter of law. *Ferrante v. American Lung Assn*., 90 N.Y.2d 623 (1997). "CPLR §3212(b) requires the proponent of a motion for summary judgment to demonstrate the absence of genuine issues of material facts on every relevant issue raised by the pleadings, including any affirmative defenses." *Stone v. Continental Ins. Co*., 234 A.D.2d 282, 284 (2d Dept. 1996). Where the movant fails to meet its initial burden, the motion for summary judgment should be denied. *US Bank N.A. v. Weinman,* 123 A.D.3d 1108 (2d Dept. 2014).

[2] The facts as set forth by the court are consistent with evidence submitted by plaintiff. In the context of a summary judgment motion, a court is to view the evidence in a light most favorable to the opposing party and give such party the benefit of every favorable inference. *Sheryll v. L & J Hairstylists of Plainview, Ltd*., 272 A.D.2d 603 (2d Dept. 2000). This court is making no findings of fact.

Once a movant has shown a *prima facie* right to summary judgment, the burden shifts to the opposing party to show that a factual dispute exists requiring a trial, and such facts presented by the opposing party must be presented by evidentiary proof in admissible form. *Zuckerman v. New York*, 49 N.Y.2d 557 (1980); *Friends of Animals, Inc. v. Associated Fur Mfrs., Inc*., 46 N.Y.2d 1065 (1979).

Plaintiff alleges a number of claims in her complaint: (1) negligent hiring, retention and supervision (Count I); (2) negligence (Count II); (3) negligent infliction of emotional distress (Count III); (4) premises liability (Count IV); (5) breach of fiduciary duty (Count V); (6) breach of duty *in loco parentis* (Count VI); and (7) breach of statutory duties to report (Count VII).

COUNTS III, IV, V and VI

Plaintiff's claims alleging negligent infliction of emotional distress, premises liability, breach of duty *in loco parentis*, and breach of fiduciary duty are duplicative of plaintiff's claim alleging that the District was negligent in its oversight of plaintiff while she was at school. Each of these claims arise from the same facts, stem from the same duty to supervise and do not allege distinct damages. *Lawrence K. v. Westchester Day School*, 196 A.D.3d 637 (2d Dept. 2021); *Fay v. Troy City School District*, 197 A.D.3d 1423 (3d Dept. 2021)(plaintiff may recover for emotional distress caused by defendants' alleged conduct under cause of action for negligence); *see also Mulligan v. Long Island Fury Volleyball Club*, 178 A.D.3d 1056 (2d Dept. 2019)(upholding negligent supervision claim but dismissing breach of fiduciary duty cause of action); *Torrey v. Portville Central School*, 66 Misc.3d 1225(A)(Sup.Ct. Cattaraugus Co. 2020). Therefore, these claims are dismissed.

Count VII

Plaintiff alleges that the District breached its alleged duty to report McLaughlin's abuse under New York's Social Services Law §§413 and 420. In *Hanson v. Hicksville Union Free School District*, 209 A.D.3d 629 (2d Dept. 2022), the Second Department held that a schoolteacher generally is not a "person legally responsible" for a student's care and, as a result, a school district has no duty under the Social Services Law to report a teacher's

sexual abuse of a student. *Hanson*, 209 A.D.3d at 631. Applying the rationale of *Hanson* to the facts of this action, McLaughlin was not a person legally responsible for plaintiff's care and this claim is dismissed.

COUNTS I and II

A necessary element of a cause of action alleging negligent retention or supervision of an employee is that the employer knew or should have known of the employee's propensity for the conduct which caused the injury. *Johansmeyer v. New York City Dept. of Educ.*, 165 A.D.3d at 635. The employer's negligence lies in having placed the employee in a position to cause foreseeable harm, harm which would most probably have been spared the injured party had the employer taken reasonable care in making decisions respecting the hiring and retention of the employee. *Id.* at 635-36.

Similarly where, as here, a complaint also alleges negligent supervision of a minor stemming from injuries related to an individual's intentional acts, "the plaintiff generally must demonstrate that the school knew or should have known of the individual's propensity to engage in such conduct, such that the individual's acts could be anticipated or were foreseeable." *Nevaeh T. v. City of New York*, 132 A.D.3d 840, 842 (2d Dept. 2015), *quoting Timothy Mc. v. Beacon City Sch. Dist.*, 127 A.D.3d 826, 828 (2d Dept. 2015); *see also Mirand v. City of New York*, 84 N.Y.2d at 49. "[S]chools and camps owe a duty to supervise their charges and will only be held liable for foreseeable injuries proximately caused by the absence of adequate supervision." *Osmanzai v. Sports and Arts in Schools Foundation, Inc.*, 116 A.D.3d 937 (2d Dept. 2014); *see also Doe v. Whitney*, 8 A.D.3d 610, 611 (2d Dept. 2004).

The District has established, *prima facie*, that it was not on notice of McLaughlin's propensity to abuse its students. In response, plaintiff asserts that the District was on actual notice of McLaughlin's abuse and propensity to abuse students because teachers and the principal observed the bed of nails science experiment. But plaintiff's description of the experiment—which took place under the watchful eye of both students and teachers—would not put a reasonable person on actual or constructive notice that McLaughlin had a

propensity to sexually abuse students. A defendant is on notice of an employee's propensity to engage in tortious conduct when it knows or should know of the employee's tendency to engage in such conduct. *Moore Charitable Foundation v. PJT Partners, Inc.*, __N.Y.3d __, WL 3956576 (2023). "[T]he notice element is satisfied if a reasonably prudent employer, exercising ordinary care under the circumstances, would have been aware of the employee's propensity to engage in the injury-causing conduct." *Id*. at *4.

Plaintiff has not satisfied this test by pointing to the bed of nails experiment. And as a matter of law the covered door window, while not permitted by the school, was not enough either by itself or coupled with knowledge of the experiment, to put a reasonable person on notice that abuse might be occurring inside McLaughlin's classroom during the lunch-learning sessions. The principal testified that he walked around the school building "all the time" and observed students with teachers in the classrooms during lunch. He was unaware of any abuse taking place in McLaughlin's classroom, where Mclaughlin met not just with plaintiff but a group of students. *Cf. Ghaffari v. North Rockland Cent. School Dist*., 23 A.D.3d 342 (2d Dept. 2005)(school district not negligent by allowing teacher to meet privately with student); *Dia CC v. Ithaca City School Dist.*, 304 A.D.2d 955, 956 (3d Dept. 2003)(same); *Mary KK v. Jack LL*, 203 A.D.2d 840 (3d Dept. 1994)(same, behind locked doors).

As a result, the District's motion for summary judgment is granted and the action is dismissed.[3]

[3] Plaintiff has moved to vacate the Note of Issue, which she filed following the issuance of an order issued by this court pursuant to CPLR 3216 after the Preliminary Conference Order discovery deadline was not honored. Plaintiff claims that she needs additional non-party depositions of three teachers to establish that they observed the bed of nails experiment. But this court has presumed that the experiment was observed by teachers and occurred as plaintiff testified. As a result, the depositions are not needed to oppose the District's summary judgment motion and the motion to vacate is now denied as moot.

Any other relief requested not specifically addressed herein is denied.

This constitutes the Decision and Order of this court.

Dated: August 29, 2023
Mineola, New York

ENTER:

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LEONARD D. STEINMAN, J.S.C.
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