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DONALD LACLAIR

Plaintiff

v.

TEANECK BOARD OF EDUCATION (d/b/a
TEANECK PUBLIC SCHOOLS and d/b/a
BENJAMIN FRANKLIN MIDDLE SCHOOL);
RHETTA MAIDE a/k/a RHETTA ACKERMAN;
DEFENDANT DOE 1-10;
DEFENDANT DOE INSTITUTION 1-10

Defendants

NEW JERSEY SUPERIOR COURT
LAW DIVISION
BERGEN COUNTY

DOCKET NO.: BER-L- 5692-21

CIVIL ACTION

**OPPOSITION OF PLAINTIFF, DONALD
LACLAIR TO MOTION TO DISMISS
PLAINTIFF'S COMPLAINT FILED BY
DEFENDANT, TEANECK BOARD OF
EDUCATION**

I. SUMMARY OF FACTS AND ALLEGATIONS IN PLAINTIFFS' COMPLAINTS

This case involves the child sexual abuse of Donald LaClair by Rhetta Maide a/k/a Rhetta Ackerman, his teacher, at defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School). [*Exhibit "A" – Plaintiff's Amended Complaint*]. Plaintiff has respectively sued the Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School) and Rhetta Maide a/k/a Rhetta Ackerman (hereinafter referred to as Ms. Ackerman) in the Superior Court of New Jersey, Bergen County. Plaintiff's Complaint at bar was filed on August 26, 2021. Plaintiff filed an Amended Complaint on November 24, 2021. Ms. Ackerman filed an Answer to the Amended Complaint on January 11, 2021. On December 27, 2011, defendant, Teaneck Board of Education, filed a partial Motion to Dismiss Plaintiff's Complaint for Failure to State a Cause of Action Pursuant to R. 4:6-2(e).

Plaintiff, Donald LaClair, set forth in excruciating detail in paragraphs 32 through 54 of the Complaint (and set forth in pages 2 through 5 of Plaintiff's Opposition Brief) the heinous details of the multiple episodes of child sexual abuse he suffered at the hands of Rhetta Ackerman.

Donald LaClair's Sexual Abuse by Rhetta Ackerman

Plaintiff, Donald LaClair (DOB: 02/11/1960) was a minor, and was approximately age fourteen (14) years old in 1974. *[Exhibit "A" at ¶32]*. In 1974-1976, Donald LaClair was a student at the Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School). *[Exhibit "A" at ¶33]*. Defendant, Rhetta Ackerman, was a teacher (and employee, agent and/or apparent/ostensible/aided agent) at Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School). *[Exhibit "A" at ¶34]*.

The sexual abuse of Donald LaClair by Rhetta Ackerman first began in approximately September of 1974 when Donald was fourteen (14) years old and a student at Benjamin Franklin Middle School. The sexual abuse occurred from September 1974 and continued until the Spring 1976 for approximately two (2) years. *[Exhibit "A" at ¶35]*.

Defendant, Rhetta Ackerman, was Donald LaClair's 7th grade English teacher at Benjamin Franklin Middle School. From Donald's perspective, Ms. Ackerman was a young and attractive woman. To the best of Don's knowledge, Don's 7th grade school year was Rhetta's first year teaching. She was very friendly and students often gathered around her in her classroom to seek her praise and approval. Don and his friends typically hung out in Rhetta's classroom after school in 7th and 8th grade nearly every day. Rhetta Ackerman drove a White Corvette car, and she was perceived by Don and other students as the "cool teacher." *[Exhibit "A" at ¶36]*.

During this time when Don was 13 years old, Don's parents were going through a contentious divorce. His parents still lived together while getting divorced rendering Don's home life chaotic and unsettled. Don's siblings were often out of the house at time of the divorce avoiding the familial disharmony, so Don was often the only child living at home. *[Exhibit "A" at ¶37]*.

Don attended Benjamin Franklin Middle School from 7th through 9th grades before continuing his education at Teaneck High School in 10th grade. [Exhibit "A" at ¶38]. One day at the beginning of school in 9th grade (September 1974), Rhetta Ackerman offered to drive Don home after school. Before Don exited her white Corvette to go into his parents' house, Rhetta Ackerman asked if she could kiss Don. Ms. Ackerman then proceeded to lick Don's lips seductively and kiss Don. Don then exited her car and entered his home. [Exhibit "A" at ¶39].

Shortly thereafter, Rhetta Ackerman invited Don to her apartment in Queens, New York, where she lived with her husband. When Don visited Rhetta Ackerman, Don, Rhetta Ackerman's husband (Gary), and Rhetta smoked pot and listened to music. No sexual abuse occurred during this initial visit. Rhetta Ackerman asked Don not to say anything about the visit to the other students or anyone else. Don did not tell his parents where he was going. At this point, Rhetta Ackerman gave Don her private phone number, and she encouraged Don to call her "Rhetta" when outside the presence of the other students. Rhetta Ackerman was married the entire time that she sexually abused Don. [Exhibit "A" at ¶40].

When Don's parents were engaged in marital discord, Don typically called Rhetta and asked her to pick him up. On at least one occasion, Rhetta picked Don up after his parents had had a bad disagreement. [Exhibit "A" at ¶41]. In November 1974, Rhetta invited Don back to her apartment. Rhetta's husband, Gary, was at the apartment and then left for work. When Gary left, Rhetta told Don: *"If you don't kiss me soon, I'm going to have to ask you to leave."* Don was nervous, but he kissed Rhetta. The sexual abuse escalated very quickly. Rhetta Ackerman removed her clothes, removed Don's clothes and the two of them proceeded to have intercourse at Rhetta's apartment. On this date, Don lost his virginity to Rhetta Ackerman. This was Don's first sexual experience in his life and he was only fourteen (14) years old. Thereafter, Don went to Rhetta's apartment every Saturday and engaged in sexual intercourse with Rhetta. [Exhibit "A" at ¶42].

During the school work week, Rhetta Ackerman typically waited for Don to finish his sports practice (football, basketball and/or baseball), and she would pick him up in her car and drive to Memorial Park located nearby. At Memorial Park, Don and Rhetta engaged in sexual activity in Rhetta's

car. The sexual abuse at Memorial Park included mutual masturbation, mutual oral sex and intercourse. After this sexual abuse took place, Rhetta customarily drove Don home. Don's parents who were consumed with their divorce never questioned why Rhetta was always driving Don home. [Exhibit "A" at ¶43].

Rhetta and Don mainly engaged in sexual intercourse at Rhetta's apartment. Rhetta moved to Fort Lee, NJ in the summer of 1975. During this time, Don visited her apartment and they hung out by the apartment pool. During this summer, Rhetta Ackerman also supplied to Don illicit drugs/narcotics, and the two of them took those drugs, which included Quaaludes, cannabis and cocaine. Customarily, Rhetta would pick Don up with her car after her husband went to work. They would do drugs and engage in sexual acts at Rhetta's apartment. [Exhibit "A" at ¶44].

On one occasion, Don and Rhetta were in Rhetta's vehicle parked in a Synagogue parking lot where Rhetta had just performed oral sex to Don. A police officer pulled up and asked if everything was okay and they both assured the police officer that all was fine. [Exhibit "A" at ¶45].

During the time the abuse occurred, Don also went on outings with Rhetta and her husband. Don attended basketball games and concerts with Rhetta and her husband. [Exhibit "A" at ¶46].

Rhetta repeatedly warned and cautioned Don that she would lose her job if Don told anyone about their sexual behavior. She made it very clear that Don could not tell anyone. [Exhibit "A" at ¶47].

In the Spring 1975, Rhetta had a water color painting commissioned. The painting was of Don pitching a baseball during a high school game. Rhetta wrote dates on the back of the painting that were important to their relationship. Rhetta also gave Don one of her gold bracelets for Don to wear. [Exhibit "A" at ¶48].

It was known in the community that Rhetta and Don were in a relationship with each other during the time that Don was a student at Benjamin Franklin Middle School and in 10th grade at Teaneck High School. Rhetta and Don were inseparable. [Exhibit "A" at ¶34]. Other teachers at Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School) were aware that Rhetta and John were in a relationship together. Mark Gruber, a social studies teacher, in 9th grade, in

front of the whole class, called Don out and stated to Don: “*You want her [Rhetta] to be your girlfriend, don’t you.*” Don threatened physical violence against Mr. Gruber for embarrassing him in front of the class. Don was sent to the vice principal’s office where he told the vice principal why he threatened Mr. Gruber. Don also suspected Donna Harrington, another teacher in 7th grade, the teaching partner with Rhetta, also knew about the sexual relationship between Rhetta and Don. Other teachers, students and administrators knew or certainly should have known that Don and Rhetta were in an inappropriate relationship. *[Exhibit “A” at ¶50].* Throughout the two (2) year sexual abuse of Don by Rhetta Ackerman, Don and Rhetta customarily kissed openly in the parking lot of Benjamin Franklin Middle School. *[Exhibit “A” at ¶51].*

In 10th grade, Don was trying to date girls his own age, and Rhetta Ackerman became very jealous and would try to “interfere.” Don’s girlfriends were students at the school and Rhetta was not nice to Don’s girlfriends. Don told Rhetta that he wanted to date other girls his own age and eventually Don cut off the relationship with Rhetta in the Spring of 1976. Rhetta was upset, but they remained friendly. Periodically, over the years, Don has reached out to Rhetta, because he still has feelings for her as she was his first childhood love and sexual experience at the age of only fourteen (14) year old. *[Exhibit “A” at ¶52].*

Rhetta Ackerman sexually abused Donald LaClair over approximately two (2) years from September 1974 to the Spring of 1976. The same type and manner of sexual abuse described and outlined above occurred repeatedly over the period. Overall, it is estimated that Rhetta Ackerman sexual abused Don in excess of two hundred (200) times. *[Exhibit “A” at ¶53].*

These interactions with Rhetta Ackerman were the first sexual experiences of Don’s life – namely, engaging in mutual masturbation, oral sex and sexual intercourse, and utilizing drugs with his teacher, Rhetta Ackerman, and being sexually violated by the teacher beginning at the age of fourteen (14) years old. *[Exhibit “A” at ¶54].*

Allegations of Agency in Plaintiff's Complaint

Plaintiff pled Ms. Ackerman was the agent, ostensible agent and/or aided agent of defendant, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), and that they hired, certified, retained, supervised, managed, oversaw, directed, administered and/or otherwise controlled Ms. Ackerman during the relevant times. [Ex. "A" at ¶ 14]. Plaintiff pled that defendant, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), are derivatively liable for the conduct of Ms. Ackerman under theories of respondeat superior, master-servant, agency and/or right of control. [Ex. "A" at ¶ 14- 19; see also Ex. "A" at ¶58]. Plaintiff pled that Ms. Ackerman was a serial molester and sexual abuser of children during a time when he was the agent of defendant, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), and was under their assignment, supervision, management, oversight, direction, administration and/or control. [Ex. "A" at ¶ 58]. Plaintiff also specifically pled that defendant, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), knew or should have known that Ms. Ackerman sexually abused children and/or was not fit to serve as a teacher, employee, agent, servant, representative, and/or ostensible agent. Ex. "A" at ¶ 61]. Moreover, defendant, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), knew that or should have known that Ms. Ackerman had been abusing and/or was abusing plaintiff and/or other children at various locations visited by and/or related to school activities, events, and/or duties, including Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School). [Ex. "A" at ¶ 62]. Lastly, defendant, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), took no action and/or failed to take timely and adequately action to warn or otherwise protect children, including plaintiff from defendant, Ms. Ackerman. [Ex. "A" at ¶ 63].

Plaintiffs' detailed Complaints set forth several counts against the defendant, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), including:

- Count 1 – Negligence;
- Count 2 – Negligent Supervision;
- Count 3 – Negligent Hiring, Supervision and Retention;
- Count 4 – Gross Negligence;
- Count 5 – Reckless Disregard Infliction of Emotional Distress;
- Count 6 – Breach of Fiduciary Duty;
- Count 7 – Law Against Discrimination, Violation of N.J.S.A. Section 10:5-1, et seq. Sexually Hostile Environment and Discrimination, and
- Count 8 – Punitive Damages.

Defendant, Teaneck Board of Education's Motion to Dismiss

Defendant, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School) has filed a partial Motion to Dismiss Plaintiff's Complaint. Specifically, defendant, Teaneck Board of Education, argues that plaintiff's Counts I (Negligence), V (Reckless Disregard Infliction of Emotional Distress), VI (Breach of Fiduciary Duty), and VII (Violation of NJ LAD) must be dismissed pursuant to R. 4:6-2(e) for failure to state a claim upon which relief may be granted because:

- (1) the Legislature has not amended the two-year statute of limitations for causes of action arising under the New Jersey Law Against Discrimination (NJ LAD);
- (2) plaintiff's negligence claim is unrecognized under N.J.S.A. 59:2-1.3(a);
- (3) plaintiff's cause of action for 'breach of fiduciary duty' is procedurally barred;
- (4) and plaintiff's cause of action for intentional infliction of emotional distress should fail on both procedural and substantive grounds.

For the reasons set forth in detail below, defendant, Teaneck Board of Education's motion to dismiss counts I, V, VI, and VII of plaintiff's complaint should be denied.

II. LEGAL ARGUMENT

STANDARD OF REVIEW

The Standard of Review for a Motion to Dismiss Requires the Court to Search the Complaint in Depth and with Liberality to Determine if a Cause of Action Can be Gleaned Even from an Obscure Statement, Particularly if Further Discovery is Taken, and Every Reasonable Inference Must be Accorded Plaintiff Before a Motion to Dismiss Can be Granted.

New Jersey R. 4:6-2 governs the review of Motions to Dismiss and states as follows:

Every defense, legal or equitable, in law or fact, to a claim for relief in any complaint, counterclaim, cross-claim, or third-party complaint shall be asserted in the answer thereto, except that the following defenses may at the option of the pleader be made by motion, with briefs.... (e) failure to state a claim upon which relief can be granted...If a motion is made raising any of these defenses, it shall be made before pleading if a further pleading is to be made. No defense or objection is waived by being joined with one or more other defenses in an answer or motion. Special appearances are superseded. If, on a motion to dismiss based on the defense numbered (e), matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided by R. 4:46, and all parties shall be given reasonable opportunity to present all material pertinent to such a motion.

The New Jersey Supreme Court has stated that the standard informing decisions on a motion to dismiss for failure to state a claim, is that on a motion under this rule the complaint **must be searched in depth and with liberality to determine if a cause of action can be gleaned even from an obscure statement, particularly if further discovery is taken. Every reasonable inference is therefore accorded the plaintiff and the motion granted only in rare instances and ordinarily without prejudice.** Printing Mart v. Sharp Electronics, 116 N.J. 739, 746 (1989); see also Dimitrakopoulos v. Borrus Goldin, 237 N.J. 91, 107-18 (2019); See also Pressler and Verniero, 2020 N.J. Court Rules, comment 4.1.1 on R. 4:6-2(e) at page 1674-1675. Moreover, a Complaint should not be dismissed under this rule where a cause of action is suggested by the facts and theory of action may be articulated by amendment of the complaint. Printing Mart v. Sharp Electronics, *supra*, 116 N.J. at 746.

THE NEW JERSEY SUPREME COURT IN HARDWICKE AND ITS PROGENY, INCLUDING THE ADOPTION OF THE RESTAEMENT (2ND) OF AGENCY § 219 CLEARLY ESTABLISHED THAT A PUBLIC ENTITY CAN BE HELD VICARIOUSLY LIABLE UNDER COMMON-LAW FOR THE INTENTIONAL ACTS OF ITS PUBLIC EMPLOYEES IN CHILD SEX ABUSE CASES

The general rule is that an employer cannot be held vicariously liable for the tortious intentional conduct of its employee when that conduct is committed outside the scope of employment. However, there are time-honored and well-recognized exceptions to this general rule that have been embraced by New Jersey law for decades and to which this Court is compelled to follow. One of these exceptions is that in limited circumstances where remedial legislation and important public policy concerns are involved, the employer can be held vicariously liable for its employee's intentional conduct outside the scope of employment under the Restatement (2nd) of Agency § 219(2)(d).

Child sex abuse lawsuits are clearly treated differently than non-child sex abuse cases. The Supreme Court in Hardwicke has unequivocally stated that an institution can be held vicariously liable for the intentional actions of its employees when it comes to sex abuse cases, especially in sex abuse cases involving children. Here, as specifically pled in Plaintiffs' Complaint, Rhetta Ackerman was a teacher for defendant, and she repeatedly sexually abused Don LaClair by leveraging her power as a teacher on behalf of the defendant, Teaneck Board of Education. This behavior by Rhetta Ackerman is the textbook definition of "*aided agency*" as articulated in the Hardwicke decision and under the Restatement (2nd) of Agency § 219. Pursuant to Hardwicke and the Restatement (2nd) of Agency § 219, plaintiff is permitted to assert viable agency claims, including common-law vicarious liability under respondeat superior theories against defendants.

In Hardwicke v. American Boychoir School, 188 N.J. 69, 902 A.2d 900 (2006), the New Jersey Supreme Court established precedent that recognized and adopted the Restatement (2nd) of Agency §219 solidifying that an employer is liable for the actions of its agent, even if outside of the scope of employment, if that agent was purporting to act on behalf of the principal or was "*aided*" in the commission of the tort by his position as an agent. In Hardwicke, the New Jersey Supreme Court applied the Restatement (2nd) of Agency §219 to a case involving child sexual abuse and held that the

school could be liable for sexual abuse of a student even though the acts of sexual abuse of a student occurred beyond the school property/premises and were “outside the scope of agency.” Hardwicke arose from allegations against a boarding school by a former student who had been sexually abused years earlier by the music teacher. Id. The abuse took place both while the boy was a student at the school and over the summer beyond the parameters of the school. Id. at 904. The school asserted, *inter alia*, that it could not be liable for the abuser’s acts because they were outside of the scope of employment. Id. at 902. With regard to the allegations of abuse that occurred over the summer, the trial court (prior to the New Jersey Supreme Court review) dismissed those claims because the plaintiff was the abuser’s “personal guest” and the abuser was not acting within the scope of his employment. Id.

The Supreme Court of New Jersey, however, reversed the lower court’s decision, and held that the school could be vicariously liable for the acts of an abuser under the modern principles of agency. Id. at 919. The Supreme Court further held that Restatement (2nd) of Agency § 219 (1958) applies to cases involving child sexual abuse in that the application of this section of the Restatement forwards the goals of protecting vulnerable children from victimization. Id. at 920. These important legal precedents, namely Hardwicke and the Restatement (2nd) of Agency § 219, reflect the important public policy of New Jersey to protect vulnerable children from being victimized by ubiquitous sexual predators systemically present in virtually every institution in our society. This important public policy was recently reaffirmed in New Jersey with the adoption of New Jersey Senate Bill 477, amending N.J.S. 2A: 14-2a (expanding the Statute of Limitations for minors sexually abused to age 55) and 14-2b (creating a two-year Statute of Limitations window for minors sexually abused).

Hardwicke and the **Restatement (2nd) of Agency § 219** exemplify the important social and public policy principles emphasized and reaffirmed through the recent Statute of Limitation amendments to **N.J.S. 2A: 14-2a** and **N.J.S. 2A: 14-2b**. Of particular importance, the Restatement (2nd) of Agency § 219, which was adopted and embraced by the New Jersey Supreme Court in Hardwicke, provided for the protection of minor children victimized by sexual abuse and forwards the

goals of protecting these children from sexual predators and the institutions that directly or passively condone and/or are complicit in a culture that allows such behavior without reasonable consequences. Id. at 920.

The Restatement (2nd) of Agency §219(2) sets forth the circumstances under which an employer is responsible for the acts of its employee acting “outside the scope of their employment” noting that only one of the following four subsections needs to be satisfied:

- (2) A master is not subject to liability for the torts of his servants acting outside the scope of their employment, **unless...**
- (a) the master intended the conduct or the consequences,
 - (b) **the master was negligent or reckless,**
 - (c) the conduct violated a non-delegable duty of the master, **or**
 - (d) **the servant purported to act or to speak on behalf of the principal and there was reliance upon apparent authority [*ostensible agency*], or he was aided in accomplishing the tort by the existence of the agency relationship [*aided agency*].**

Restatement (2nd) of Agency § 219 (1958)(emphasis added).

Based on Restatement § 219(2)(d), the New Jersey Supreme Court found that the school could be liable under agency law for the abuse of the student that took place over the summer because the teacher had used his position [*i.e. aided agency*] as leverage to gain access to and exert power and control over the victim during the summer. Id.

Recognition of this exception to the general rule has again been recently reinforced by the New Jersey Appellate Division. In the recent published Appellate Division decision, E.S. v. Brunswick Inv. Ltd. Partnership, 2021 NJ Super LEXIS 2193 (App. Div. August 27, 2021), the Appellate Division discussed that in limited circumstances involving child sexual abuse, New Jersey Courts have applied vicarious liability through the Restatement (2nd) of Torts, including 219(2)(d) utilizing the concept of aided agency. In E.S., the Court was asked to determine, in part, whether a property management company could be held vicariously liable for its worker who sexually abused two children at the property. Although the Appellate Division did not permit the application of the Restatement (2nd) of Agency

219(2)(d) in that setting involving a property manager, the Court pointed out that its reasoning behind its holding was predicated upon the fact that there was **no** in loco parentis relationship. However, the Appellate Division in E.S. explained and identified the limited circumstances where New Jersey Courts have or should continue to apply the Restatement (2nd) of Agency § 219(2)(b) (i.e. direct employer negligence) or 219(2)(d) (i.e. vicarious liability using the concept of aided agency). The Appellate Division stated, in part, as follows:

These two subsections of the Restatement are conceptually different. In Aguas v. State, in the context of a sexual harassment complaint, the Court clarified that claims implicating Section 219(2) of the Restatement “are often discussed in tandem, [but] are analytically distinct from and independent of one another.” 220 N.J. 494, 512, 107 A.3d 1250 (2015). “The first is a *direct cause of action* against the employer for negligence or recklessness under Restatement Section 219(2)(b).” Ibid. (emphasis added) (citing Gaines v. Bellino, 173 N.J. 301, 312-314, 801 A.2d 322 (2002)). **“The second is a claim for vicarious liability under Restatement Section 219(2)(d).”** Ibid. (emphasis added) (citing Gaines, 173 N.J. at 312-314).

The Court has applied Section 219(2)(b) and (d) of the Restatement to hold an employer potentially liable for the acts of its employee outside the scope of his employment only in limited circumstances. In each instance, the Court did so to serve the clear purpose of remedial legislation.

Id. at 11-12.

The Court further noted in E.S. that the legal analysis must take into consideration “**the context of claims brought pursuant to remedial legislation**” such as LAD and Senate Bill 477, which remedial statutes have been enacted and designed specifically to further the public policy of protecting children vulnerable to sexual abuse by those in loco parentis, such as teachers. E.S. also discusses the distinction between the Restatement sub-sections 219(2)(b) which deals with the employer’s direct negligent behavior, such as its negligent hiring, supervision and retention, and sub-section 219(2)(d) which deals with the employer’s vicarious liability utilizing the concept of aided agency:

Plaintiff cites no published New Jersey decision that adopted Section 219(2)(b) of the Restatement to impose direct liability on an employer for the tortious conduct of an employee outside the scope of his employment **other than in the context of claims brought pursuant to remedial legislation such as the LAD, CEPA or the CSAA**, and our research reveals none. See Davis, 414 N.J. Super.

at 11 (noting “the legal principles set forth in the Restatement are intended to be summaries of the common law” and “liability under [such remedial legislation] is solely a matter of statutory construction”). *Id.* at 14-15.

...

We note once again, however, that except in the context of causes of action under remedial statutory schemes, plaintiff fails to cite any published New Jersey decision that relied on § 219(2)(d) of the *Restatement* as a basis for vicarious liability, and we have found none in our research. We also note our concern that an overly broad application of Section 219(2)(d) in other settings treads perilously close to imposing strict liability on an employer. *Davis*, 414 N.J. Super.at 16. *Id.* at 21.

...

Our Court has never applied the aided-by-agency exception to employer nonliability in any circumstance other than those remedial statutes designed to eradicate workplace discrimination and harassment, to protect conscientious employees, or to protect children from abuse by those in loco parentis. We need not anticipate whether the Court would apply the exception in other circumstances. *Id.* at 25-26. (emphasis added).

The *E.S.* Court noted specifically that in *Hardwicke*, the application of Restatement (2nd) of Agency § 219 permits vicarious liability for plaintiff’s common-law tort claims based on child sex abuse by a music director:

Lastly, in *Hardwicke*, the Court considered whether the defendant school could be vicariously liable under the CSAA for sexual assaults committed against a former student by the school's musical director. 188 N.J. at 74. After concluding the school could be a "passive abuser" under the statute, *Id.* at 91-94, **the Court considered whether the school could be vicariously liable for the plaintiff's common law tort claims based on the musical director's sexual assaults. *Id.* at 100-101. Once again, relying in part on the strong public policy undergirding the CSAA, the Court held:**

The considerations that informed our analyses in *Lehmann* and *Abbamont* apply equally to claims predicated on facts indicating child abuse. . . . [T]he CSAA recognizes the vulnerability of children and demonstrates a legislative intent to protect them from victimization. In our view, common-law claims based on child abuse are supported by the same compelling rationale. The CSAA imposes responsibility on those in the best position to know of the abuse and stop it; application of section 219 of the *Restatement* to plaintiff's common-law claims advances those goals. *Id.* at 102

Id. at 13-14, citing *Hardwicke v. American Boychoir School*, 188 N.J. 69, 102, 902 A.2d 900 (2006).

Again, it is worth repeating and giving the full analysis set forth in *Hardwicke*:

In **Hardwicke v. American Boychoir School, 188 N.J. 69, 902 A.2d 900 (2006)**, the New Jersey Supreme Court specifically addressed the issue of imposing vicarious liability on defendant institutions for child sexual abuse perpetrated by the institution's employee. The Court stated:

The School asserts, also, that plaintiff's common-law claims against it must fail because the School cannot be held vicariously liable for the intentional acts of its employees. **Plaintiff, relying on section 219 of the Restatement (2nd) of Agency (1958), and Lehmann v. Toys 'R' Us, Inc., 132 N.J. 587, 615-27, 626 A.2d 445 (1993), responds that modern principles of agency law permit his vicarious liability claims. Under section 219 of the Restatement an employer is not liable for the torts of an employee acting outside the scope of the employment unless "the conduct violated a non-delegable duty of the [employer], or ...the[employee] purported to act...on behalf of the [employer] and there was reliance upon apparent authority, or [the employee] was aided in accomplishing the tort by the existence of the agency relation."** Restatement, *supra*, Section 219(2)(c) to (d); see *Lehmann*, *supra*, 132 N.J. at 619-620, 622-623, 626 A.2d 445. (emphasis added).

In *Lehmann*, we adopted section 219 as the framework for evaluating employer liability in hostile environment sexual harassment claims brought under LAD. *Id.* at 619-620, 626 A.2d 445. We explained that an employer could be held vicariously liable under section 2(d) even when the employee was acting outside the scope of his or her employment "if an employer [had] delegate[d] the authority to control the work environment to a supervisor and [the] supervisor abuse[d] [the] delegated authority." *Id.* at 620, 626 A.2d 445 (citations omitted). That inquiry, we stated, requires the fact-finder to determine that: (1) the employer gave the authority to the supervisor to control the situation about which the plaintiff complains; (2) the supervisor exercised that authority; (3) the exercise of authority resulted in a violation of the LAD; and (4) the authority delegated by the employer to the supervisor aided the supervisor in injuring the plaintiff. *Ibid.*

A year later, the Court extended its holding in *Lehmann* to claims brought under the Conscientious Employee Protection Act (CEPA), N.J.S.A. 34:19-1 to -8. *Abbamont v. Piscataway Twp. Bd. of Educ.*, 138 N.J. 405, 417, 650 A.2d 958 (1994). We reasoned that:

[b]oth CEPA and LAD effectuate important public policies. Each seeks to overcome the victimization of employees and to protect those who are especially vulnerable in the workplace from the improper or unlawful exercise of authority by employers. In both contexts, employers are best situated to avoid or eliminate impermissible vindictive employment practices, to implement corrective measures, and to adopt and enforce employment policies that will serve to achieve the salutary purposes of the respective legislative mandates. *Id.* at 418. 650 A.2d 958.

The considerations that informed our analyses in *Lehmann* and *Abbamont* apply equally to claims predicated on facts indicating child abuse. As stated earlier, *supra* at 90-91. 902 A.2d at 913, the CSAA (Child Sexual Abuse Act) recognizes the vulnerability of children and demonstrates a legislative intent to protect them from victimization. In our view, common-law claims based on child abuse are supported by the same compelling rationale. The CSAA imposes responsibility on those in the best position to know of the abuse and stop it; application of section 219 of the Restatement to plaintiff's common-law claims advances those goals.

This same issue of whether an employer can be held vicariously liable for the sexual abuse acts of its employee outside the scope of employment was again recently revisited in the U.S. District Court of New Jersey. In *Doe v. The Roman Catholic Archdiocese of Newark, et al.*, 2:20-cv-13623-MCA-LDW (U.S. Dist. Sept. 30, 2021) [*Exhibit "B"*], the Church Defendants argued, in pertinent part, that plaintiff's complaint in a sex abuse case should be dismissed because former Archbishop and Cardinal Theodore McCarrick was acting outside the scope of his employment, and therefore, the Church Defendants could not be vicariously liable for his sex assaults against plaintiff. The Church Defendants also argued that they could not be liable for the criminal actions of their employee, McCarrick [*Exhibit "B" at p. 5*]. Judge Madeline Arleo Cox denied defendants' Motion, including on this issue. Relevant to this issue, Judge Arleo Cox wrote:

Generally, the New Jersey Supreme Court applies Section 219(2) agency principles under select circumstances¹ in "a discrete effort to realize and effectuate the policies giving rise to those statutory schemes rather than an endorsement of applying §219(2)(d) to all respondeat superior situations." *Siemens Bldg. Techs., Inc. v. PNC Fin. Servs. Grp., Inc.*, 226 F. App'x 192, 198 (3d. Cir. 2007). However, in *Hardwicke v. Am Boychoir School*, the New Jersey Supreme Court chose to apply the above section "to claims predicated on facts indicating child abuse." 188 N.J. 69, 102 (2006). It noted that "the CSAA recognizes the vulnerability of children and demonstrates a legislative intent to protect them from victimization," and thus "**common-law claims based on child abuse are supported by the same compelling rationale.**" *Id.* Given the policy rationales articulated in *Hardwicke* – and further embodied by the New Jersey Legislature's broad expansion of the statute of limitations through the CVA – this Court presumes that the New Jersey Supreme Court would apply Section 219(2) to all claims arising from sexual assault or abuse of a minor, rather than only those arising under the CSAA.

¹ For example, the New Jersey Supreme Court applies Section 219(2) to New Jersey Law Against Discrimination hostile work environment claims and New Jersey Conscientious Employee Protection Act claims. See *Lehmann v. Toys 'R' Us*, 132 N.J. 587 (1993); *Abbamont v. Piscataway Twp. Bd. of Educ.*, 138 N.J. 405 (1994).

The New Jersey Supreme Court has explained “that an employer could be held vicariously liable under [Section 219(2)(d)] even when the employee was acting outside the scope of his or her employment” if four predicates are satisfied:

(1) the employer gave the authority to the supervisor to control the situation about which the plaintiff complains; (2) the supervisor exercised that authority; (3) the exercise of authority resulted in a violation of the LAD; and (4) **the authority delegated by the employer to the supervisor aided the supervisor in injuring the plaintiff.**

Hardwicke, 188 N.J. at 101-02 (quoting Lehmann, 132 N.J. at 620)). **Stated differently, “for an employee to be aided by his employment in committing a wrongful act, he must have taken advantage of some special mechanism afforded to him by his employment” or “the employment must have provided the employee a position of special authority making the victim particularly vulnerable to the wrongful act.”** Yucis v. Sears Outlet Stores, LLC, 813 F. App’x 780, 786 (3d. Cir. 2020).

In this case, the Court finds that Plaintiff sufficiently pled that McCarrick was in a position of special authority to make Plaintiff a victim, such that the Court will not dismiss the vicarious liability claim at this early stage.

Here, as specifically pled in plaintiffs’ Complaints, Rhetta Ackerman was a teacher of defendant, Teaneck Board of Education, and she sexually abused Don LaClair by leveraging her power and agency position as a teacher on behalf of defendant. The above is the textbook definition of “*aided agency*” as articulated in the Hardwicke decision and under the Restatement (2nd) of Agency § 219. Pursuant to Hardwicke and the Restatement (2nd) of Agency § 219, plaintiff is permitted to assert viable agency claims, including vicarious liability under respondeat superior theories against defendant, Teaneck Board of Education.

In the case at bar, given that plaintiffs’ child sexual abuse claims are issued in the context of remedial legislation designed to protect children sexually abused, plaintiff should be permitted to assert a claim for common-law vicarious liability against the defendant employer, Teaneck Board of Education, for the tortious child sex abuse conduct of its employee-teacher, Rhetta Ackerman, who stood in loco parentis to the plaintiff-student². In E.S., the property manager employee did not stand in loco parentis

² “Courts have similarly recognized the unique role that educators play in the care of students. Cf. Frugis v. Bracigliano, 177 N.J. 250, 268, 827 A.2d 1040 (2003) (observing that “[w]hile their children are educated during the day, parents transfer to school officials the power to act as the guardians of those

with the child victims of sexual abuse as he was merely an administrative worker for a property management company. However, the E.S. court clearly distinguished its ruling from an in loco parentis school situation such as is present in the matter at hand. In addition, E.S. was a Summary Judgment Motion where there was no evidence developed to support the vicarious liability claims under the Restatement. Here, this Court is confronted with a Motion to Dismiss during the incipient stages of litigation, and plaintiff should be entitled to the opportunity to develop facts through discovery support of the allegations of vicarious liability.

The recent Appellate Division published decision in E.S. explains that in limited circumstances involving child sexual abuse, New Jersey Courts have applied vicarious liability through the Restatement (2nd) of Torts, including 219(2)(d) utilizing the concept of aided agency, especially where remedial legislation is involved, such as statutes pled and relied upon by plaintiffs herein, like Senate Bill 477 and the Law Against Discrimination (LAD).

THE RECENT CASE OF *E.C. v. Leo Inglima-Donaldson, Bradley Donaldson, and Bloomfield Board of Education*, A-2752-20 (App. Div. 2020) (Approved for Publication December 16, 2021) AND ITS ANALYSIS OF N.J.S.A. 59:2-1.3 MAKES CLEAR THAT A PUBLIC ENTITY CAN BE HELD VICARIOUSLY LIABLE UNDER COMMON-LAW FOR THE INTENTIONAL ACTS OF ITS PUBLIC EMPLOYEES IN CHILD SEX ABUSE CASES

On December 16, 2021, the Appellate Division rendered a published decision that dealt directly with the issue of vicarious liability in child sex abuse cases against public entities. [*Exhibit "C" – E.C. v. Leo Inglima-Donaldson, Bradley Donaldson, and Bloomfield Board of Education*, A-2752-20 (App. Div. 2020) (Approved for Publication December 16, 2021)]. The E.C. decision is extraordinarily significant to the within matter because the E.C. Court unequivocally set forth the public policy in child sex abuse cases and the legislative intent in the child sex abuse cases as it relates to public entities, particularly N.J.S.A. 59:2-1.3(a)(1). The E.C. decision held that "N.J.S.A. 59:2-1.3(a)(1) was intended to deprive public

young wards"); see also Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 654, 115 S.Ct. 2386, 2391, 132 L. Ed. 2d 564, 575 (1995) (stating that "[w]hen parents place minor children in private schools for their education, the teachers and administrators of those schools stand *in loco parentis* over the children entrusted to them"). Hardwicke v. American Boychoir School, 188 N.J. 69, 92 902 A.2d 900 (2006).

entities of their Tort Claims Act immunities when the sexual misconduct suffered by the plaintiff was caused by a willful, wanton or grossly negligent act of the public entity or public employee, as the statute expressly states; and N.J.S.A. 59:2-10 is a Tort Claims Act immunity that is disabled in cases like this by N.J.S.A. 59:2-1.3(a)(1).” Id. at 20. Accordingly, it is plaintiff’s contention as set forth more fully below that defendant Teaneck Board of Education in this case cannot rely upon the Tort Claims Act for immunity against vicarious liability as the E.C. Court has specifically ruled that N.J.S.A. 59:2-10 is an immunity now disabled by the recent New Jersey Senate Legislation.

In E.C. v. Leo Inglima-Donaldson, Bradley Donaldson, and Bloomfield Board of Education, A-2752-20 (App. Div. 2020) (Approved for Publication December 16, 2021), the plaintiff was the victim of the sexual abuse of a teacher employed by the Bloomfield Board of Education. In E.C., the Board appealed the partial denial of its summary judgment motion and argued that the new statute, N.J.S.A. 59:2-1.3(a), which disables immunities provided by the Tort Claims Act, did not apply unless the public entity and the public employee had engaged in “willful, wanton or grossly negligent” conduct. Id. at 2-3. The Board also argued that even if triggered, N.J.S.A. 59:2-1.3(a) deprives the public entity only of its Tort Claim Act immunities, and not two defenses under the Act – namely, (1) the permanent injury threshold under N.J.S.A. 59:9-2(d), and (2) the declaration that a public entity “is not liable for the acts or omissions of a public employee constituting a crime...” under N.J.S.A. 59:2-10. The Board attempted unsuccessfully to argue that these two defenses are not “immunities” which would be deemed abolished, but rather remain applicable defenses. Id. at 3.

The Appellate Division held that although the permanent injury threshold is not an immunity, but rather a limitation on damages, and consequently, 59:9-2(d) applied in the E.C. case. However, important to the case at hand, the Appellate Court in E.C. definitively noted that N.J.S.A. 59:2-10 is an immunity now disabled in sexual abuse cases and consequently, the Appellate Court dismissed the Board’s misguided argument. Id. at 3.

The Appellate Division provided an in-depth examination and discussion of N.J.S.A.

59:2-1.3(a):

N.J.S.A. 59:2-1.3(a) was one part of a group of laws enacted to expand the rights of victims of sexual assaults and other sexual misconduct...In addressing the fact that victims might also encounter sexual misconduct involving public entities and public employees, the Legislature disabled Tort Claim Act immunities in circumstances defined by N.J.S.A. 59:2-1.3(a) and eliminated the procedural notice-of-claim requirements in cases like this. See N.J.S.A. 59:8-3(b). We thus consider the meaning and scope of N.J.S.A. 59:2-1.3(a) as illuminated by the Legislature's stated desire to expand the rights of victims of sexual assaults and other sexual misconduct.

Id. at 6.

To further this intent, the Legislature enacted the statute in question, declaring [n]otwithstanding any provision” of the Tort Claims Act “to the contrary," Tort Claims Act immunities would not apply to insulate from civil liability:

(1) . . . a public entity or public employee . . . as a result of a sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined [in N.J.S.A. 2A:30B-2], or sexual abuse as defined in [N.J.S.A. 2A:61B-1] being committed against a person which was caused by a willful, wanton or grossly negligent act of the public entity or public employee; and

(2) . . . a public entity . . . as a result of a sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in [N.J.S.A. 2A:30B-2], or sexual abuse as defined in [N.J.S.A. 2A:61B-1] being committed against a minor under the age of 18, which was caused by the negligent hiring, supervision or retention of any public employee.

N.J.S.A. 59:2-1.3(a)

Id. at 7-8. (emphasis added).

The Court then rejected the defendant Board’s argument that for a public entity to lose its immunities under N.J.S.A. 59:2-1.3(a), the public entity’s conduct must also be willful, wanton or grossly negligent. Id. at 9. The Court stated:

The focus here is on subsection (1) and on the board's argument that the trial judge incorrectly interpreted this statute by holding that a public entity's immunities will be disabled whenever a public employee's conduct was willful, wanton or grossly negligent. The board contends that for a public entity to lose its immunities under this provision, the public entity's conduct must also be willful, wanton or grossly negligent. The board

argues this despite the statute's declaration that such conduct need be attributed only to "the public entity or public employee." N.J.S.A. 59:2-1.3(a)(1) (emphasis added). **We find the board's logic to be faulty for a few reasons.**

Id. at 9. (emphasis added).

First, as we just noted, the statute's plain language expresses that the public entity's immunities will be disabled when the sexual offense was caused by the willful, wanton or grossly negligent conduct of the public entity "or" public employee. Ibid. In essence, the board would have us interpret this statute as if the conjunctive "and" appears in place of the disjunctive "or." We disagree and assume the Legislature meant what it said when it declared that the willful, wanton or grossly negligent conduct could be provided by either the public employee or the public entity.

Id. at 9-10. (emphasis added).

Second, ... The board argues the phrase "willful, wanton or grossly negligent" – if attributable to only the public entity or public employee – is rendered redundant here. Stated another way, the board argues that if the "willful, wanton or grossly negligent" requirement is satisfied when only a public employee has so acted, the phrase becomes unnecessary because the statute also depends on the commission of a sexual assault or any other crime of a sexual nature, all of which inherently carry that same or more egregious state of mind. By including the "willful, wanton or grossly negligent" phrase after describing the types of offenses that trigger N.J.S.A. 59:2-1.3(a)(1), the board argues the Legislature must have meant that the phrase would apply to both public entities and public employees.

It may be true the phrase "willful, wanton or grossly negligent" becomes unnecessary when a public employee is the sex offender, but subsection (1) encompasses much more than that particular instance.

Id. at 10-11.

In an extremely well-reasoned decision, the Appellate Court emphasized the important and critical public policy behind the enactment of the child sex abuse legislation and legislative intent of N.J.S.A. 59:2-1.3(a)(1):

In these examples, there may be no public employee at fault; the requirement urged by the board – that a plaintiff must show both the public entity and a public employee engaged in willful, wanton or grossly negligent conduct – would be insurmountable, and the disabling of Tort Claims Act immunities in that situation would be illusory. There is nothing in the statute or its legislative history to suggest the Legislature intended such an understanding of N.J.S.A. 59:2-1.3(a)(1).

In short, it may be true that when the sex offender is a public employee, parts of the statute prove unnecessary to the way in which the statute functions, but it does not logically follow that we should twist the meaning of the Legislature's otherwise unambiguous use of the disjunctive to make those sometime redundant words fit this one instance. As we have shown, there are other circumstances in which all the words and

phrases have meaning and render perfectly sensible the Legislature's use of the word "or." **If we were to adopt the board's suggested interpretation of N.J.S.A. 59:2-1.3(a)(1) so that it might more comfortably fit the public-employee-as-sex-offender situation, we would make more difficult if not insurmountable a plaintiff's pursuit of the remedy provided in N.J.S.A. 59:2-1.3(a)(1) in all other instances.**

Id. at 12.

The Appellate Court further explained the public policy of the child sex abuse legislation and legislative intent of N.J.S.A. 59:2-1.3(a)(1):

We reject the board's argument. By disabling Tort Claims Act immunities in sexual misconduct cases, the Legislature undoubtedly intended to make the plaintiff's pursuit of a remedy realistic rather than illusory [See Footnote 6].

⁶ The Legislature understood that this provision would increase the liability of public entities. The Office of Legislative Services reported to the Legislature that the bill would "expose the State, school districts, and local units of government to civil claims" and that there would be an added fiscal impact for, among other things, "substantial settlements and judgments against affected governments." Assembly Budget Committee Statement with Committee Amendments, Assembly Bill No. 5392 (June 17, 2019).

Third, as noted earlier, n.3, above, when the Governor signed into law the original abbreviated version of N.J.S.A. 59:2-1.3(a), he did so with the assurance from the bill's sponsors that it would introduce and swiftly pass a bill that would "correct an error" about public entity liability. **The Governor viewed the May 2019 version of N.J.S.A. 59:2-1.3(a) as "inadvertently fail[ing] to establish a standard of proof for cases involving claims filed against public entities" and that the new bill would "correct this omission by clarifying that public entities should be held to the same standard of liability that is applied to religious and nonprofit organizations," with the added comment that "[a]pplying a different standard would be unjustified."** Governor's Statement Upon Signing Senate Committee Substitute for Senate Bill No. 477 (May 13, 2019).

Id. at 13. (emphasis added).

The Court then ruled:

We are satisfied from the intent revealed by the Governor's statement and by N.J.S.A. 59:2-1.3(a)(1) itself, that when the wrongful state of mind is provided by the public employee's sexual offense, there is no need for a plaintiff to establish that the public entity also engaged in willful, wanton or grossly negligent conduct.

Fourth, subsection (2) of N.J.S.A. 59:2-1.3(a) further reveals that the Legislature did not seek to create such a high bar to the disabling of Tort Claims Act immunities for public entities in subsection (1). When considering the disabling of immunities in a claim against a public entity – regardless of whether the crime was committed by a public employee – arising from the public entity's hiring, supervision or retention of any public

employee, the Legislature imposed on the public entity only a simple negligence standard. **This seems wholly inconsistent with the interpretation of subsection (1) offered by the board that both the involved public employee and the public entity must be found to have engaged in willful, wanton or grossly negligent conduct to disable their immunities.**

Id. at 15. (emphasis added).

...

In the final analysis, our decision rests on the well-established precept that statutes must be interpreted to "discern and effectuate" the legislative intent. Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592 (2012). This requires consideration of the statute's plain language, which is best understood when the words used are given "their ordinary meaning and significance." DiProspero v. Penn., 183 N.J. 477, 492 (2005). We conclude that while, in some instances, a portion of N.J.S.A. 59:2-1.3(a)(1) may be redundant, **the entire provision – when understood in light of the various types of situations in which it will apply – sensibly and reasonably imposes an obligation on a plaintiff to show the "willful, wanton or grossly negligent" conduct of only the public entity "or" public employee, but not both – just as the statute expressly declares. We assume that the Legislature intended that courts would interpret the word "or" appearing in subsection (1) as meaning "or."**

Id. at 16. (emphasis added).

The Appellate Division in E.C., next set forth the critical analysis for determining the scope of N.J.S.A. 59:2-1.3(a)(1) and its application to other provisions of the Tort Claims Act, defining the term "immunity" as used in the Tort Claims Act and holding that all immunities previously espoused in the Act were now abolished in situations involving childhood sexual abuse:

In permitting this interlocutory appeal we not only sought to determine the scope of N.J.S.A. 59:2-1.3(a)(1), but also whether N.J.S.A. 59:2-10 and N.J.S.A. 59:9-2(d) should be understood to be immunities, which would render them inapplicable, or merely as limitations of liability, which would still apply to claims like this.

Id. at 16.

The word "immunity" is not defined by the Tort Claims Act, and N.J.S.A. 59:2-1.3(a) does not specify what provisions of the Tort Claims Act it intended to disable. N.J.S.A. 59:2-1.3(a)(1) states only that the "immunity from civil liability" provided by the Tort Claims Act would not apply in cases in which a sexual assault or other sexual crime formed the basis for the complaint. Nevertheless, we proceed by assuming the phrase "immunity from civil liability" was intended by the

Legislature to mean exactly what it suggests: an "exemption from a duty [or] liability." Black's Law Dictionary 898 (11th Ed. 2019). This view comports not only with common usage and dictionary definitions but also with how the word "immunity" has been historically understood by courts. See McDonald v. City of Chicago, 561 U.S. 742, 813-15 (2010).

Since an immunity is an exemption from liability, and not a limitation of liability, we examine the two provisions of the Tort Claims Act that the board claims are not immunities. We conclude that N.J.S.A. 59:2-10 is an immunity, but N.J.S.A. 59:9-2(d) is not.

The board's argument about N.J.S.A. 59:2-10 has no merit. The board relies heavily if not exclusively on the statute's label – "Public employee conduct – Limitation on entity liability" (emphasis added) – but this argument exalts form over substance. We are instead persuaded by the statute's text: "A public entity is not liable for the acts or omissions of a public employee constituting a crime, actual fraud, actual malice, or willful misconduct." Ibid. (emphasis added). This statute does not express when a public entity will be liable for the wrongful conduct of its employee or to what extent; it states, without exception, that a public entity will not be held liable for, among other things, an employee's crimes. To hold that N.J.S.A. 59:2-10 remains applicable in those cases in which N.J.S.A. 59:2-1.3(a)(1) also applies would leave in place the very obstacle the Legislature intended to remove. We cannot imagine the Legislature intended such a result.

Id. at 17-18. (emphasis added).

The Appellate Division in E.C. then declined to address whether the Board could be held vicariously liable given the Court's interpretation:

They also argue whether the board can be held vicariously liable in these circumstances; the board claims the trial judge should have followed the reasoning of Davis v. Devereaux Found., 209 N.J. 269 (2012), and plaintiffs assert the judge properly applied the principles announced in Hardwicke v. Am. Boychoir Sch., 188 N.J. 69 (2006).

...

...[W]e decline at this time to consider the remaining issues about how our interpretation will impact this claim.

...

We also exercise our discretion in choosing not to consider now either the viability of plaintiffs' claim that the board may be held vicariously liable or the impact of N.J.S.A. 59:9-2(d) on plaintiffs' claim; we leave those issues to further development in the trial court.

Id. at 19-21.

The Court in E.C. held: “Nevertheless, having carefully considered the parties' arguments, we conclude that: N.J.S.A. 59:2-1.3(a)(1) was intended to deprive public entities of their Tort Claims Act immunities when the sexual misconduct suffered by the plaintiff was caused by a willful, wanton or grossly negligent act of the public entity or public employee, as the statute expressly states; N.J.S.A. 59:2-10 is a Tort Claims Act immunity that is disabled in cases like this by N.J.S.A. 59:2-1.3(a)(1); and N.J.S.A. 59:9-2(d) is not a Tort Claims Act immunity and remains applicable in cases like this.” Id. at 20.

The E.C. Appellate Court decision is binding on this Trial Court. First, the Appellate Court in E.C. gave an in-depth explanation of the legislative intent and public policy history of child sex abuse legislation. The E.C. Appellate decision then unequivocally held that a public entity can be held responsible for the intentional conduct of its public employee, and such responsibility was not dependent on whether the public entity had also acted in a willful, wanton, or grossly negligent manner. Second, the Appellate Court defined the scope of N.J.S.A. 59:2-1.3(a) and differentiated between immunities versus limitations of liability. Noting conclusively that in the context of child sexual abuse claims, immunities previously espoused under the Tort Claims Act had now been disabled pursuant to recent New Jersey Senate Legislation. Indeed, the Appellate Court’s ruling as to the Board’s misguided reliance upon N.J.S.A. 59:2-10 is paramount. The Appellate Court said in no uncertain terms:

To hold that N.J.S.A. 59:2-10 remains applicable in those cases in which N.J.S.A. 59:2-1.3(a)(1) also applies would leave in place the very obstacle the Legislature intended to remove. We cannot imagine the Legislature intended such a result.

Without question, it is clear that this logic applies to all previously issued Tort Claim Act immunity provisions, whether it be N.J.S.A. 59:2-10 or N.J.S.A. 59:2-2 or any other Tort Claim Act provision invoking an immunity. The clear intent of the Legislators and now the clearly binding opinion of the Appellate Court is that the previously recorded Tort Claim Act Immunities, in the context of child

sexual abuse claims, have been abolished. The plain reading language of NJSA 59:2-1.3(a)(1) clearly provides for vicarious liability - once the Appellate Court embraced the obvious disjunction "or" as the Legislators' intent, there can be no other logical conclusion.

SB 477 SPECIFICALLY CREATED A 2 YEAR WINDOW FOR PROVIDING A CAUSE OF ACTION FOR ALL CLAIMS RELATED TO CHILD SEXUAL ABUSE. N.J.S. § 2A:14-2b.

On May 13, 2019, New Jersey Governor Phil Murphy signed Senate Bill S477 into law, which became effective as of December 1, 2019. [*Ex. "D" – 2018 N.J. S.N. 477, Enacted May 13, 2019*].

The SB 477 legislation amended a variety of statutes, including the Child Sex Abuse Act (CSAA), statute of limitations (SOL) provisions, the Charitable Immunity Act (CIA), and the Tort Claim Act (TCA) with the specific goal to provide a remedy for victims of child sex abuse. SB 477 specifically created a 2-year window for providing a cause of action for all claims related to child sexual abuse. N.J.S. § 2A:14-2b.

Commencement of actions regardless of statute of limitations (a) and (b) states:

a. Notwithstanding the statute of limitations provisions of *N.J.S.2A:14-2*, section 2 of *P.L. 2019, c.120 (C.2A:14-2a)*, section 1 of *P.L.1964, c.214 (C. 2A:14-2.1)*, or any other statute, **an action at law for an injury resulting from the commission of sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of *P.L. 1992, c. 7 (C. 2A:30B-2)*, or sexual abuse as defined in section 1 of *P.L. 1992, c. 109 (C. 2A:61B-1)*, that occurred prior to the effective date [Dec. 1, 2019] of *P.L. (2019, c. 120 (C.2A:14-2a et al.)*, and which action would otherwise be barred through application of the statute of limitations, may be commenced within two years immediately following the effective date.**

b. To the extent applicable, any action brought during the two-year period pursuant to subsection a. of this section shall be subject to the provisions of subsection c. of section 1 of *P.L.1959, c.90 (C.2A:53A-7)* and *P.L. 2005, c. 264 (C. 2A:53A-7.4 et seq.)*, as amended by *P.L. 2019, c. 120 (C.2A:14-2a et al.)*.

[*Exhibit "E" – N.J.S. §2A:14-2b*]

The new law SB 477 also states that it applies to "**every action** at law for injury resulting from the commission of sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of *P.L. 1992, c.7 (C.2A:30B-2)*...against a minor under the age of 18 **that occurred prior to, or after the effective date of *P.L. 2019, c. 120 (C. 2A:14-2a et al.)***..." (emphasis added). [*Ex. "D"*].

THE EXPLICIT LANGUAGE OF N.J.S.A. 59:2-1.3 STATES THAT THE IMMUNITY FROM CIVIL LIABILITY SHALL NOT APPLY TO AN ACTION WHERE THE SEXUAL ABUSE WAS “CAUSED BY” THE PUBLIC ENTITY’S DIRECT NEGLIGENCE IN THE “HIRING, SUPERVISION OR RETENTION OF ANY PUBLIC EMPLOYEE,” OR “CAUSED BY” THE “WILLFUL, WANTON OR GROSSLY NEGLIGENT ACTS” OF A PUBLIC EMPLOYEE.

With signing the law, Governor Murphy pointed out “I am also signing the bill based on a commitment from the bill’s sponsors to introduce and swiftly pass a bill that will correct an error in the section of the bill relating to the liability of public entities. This section inadvertently fails to establish a standard of proof for cases involving claims filed against public entities.” [*Ex. “F” – Governor’s Statement Upon Signing Senate Committee Substitute for Senate Bill No. 477*].

On August 9, 2019, the “clean-up bill” amending the New Jersey Tort Claims Act was amended following the legislation in May 2019.

N.J.S.A. Section 59:2-1.3 Liability for public entity, employee, states, in pertinent part:

N.J.S.A § 59:2-1.3

a. Notwithstanding any provision of the “New Jersey Tort Claims Act,” N.J.S. 59:1-1 et seq., to the contrary:

- (1) **immunity from civil liability** granted by that act to a public entity or public employee **shall not apply to an action** at law for damages **as a result of a sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of P.L. 1992, c.7 (C.2A:30B-2), or sexual abuse as defined in section 1 of P.L. 1992, c.7 (C.2A:30B-2), or sexual abuse as defined in section 1 of P.L. 1992, c. 109 (C.2A:61B-1) being committed against a person, which was caused by a willful, wanton or grossly negligent act of the public entity or public employee; and**
- (2) **immunity from civil liability** granted by that act to a public entity **shall not apply to an action** at law for damages **as a result of a sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of P.L. 1992, c. 7 (C.2A:30B-2), or sexual abuse as defined in section 1 of P.L. 1992, c. 109 (C.2A:61B-1) being committed against a minor under the age of 18, which was caused by the negligent hiring, supervision or retention of any public employee.**

b. Every action at law involving a public entity or public employee as described in subsection a. of this section shall be subject to the statute of limitations set forth in section 2 of *P.L. 2019, c. 120 (C. 2A:14-2a)*, and may be brought during the two-year period set forth in subsection a. of section 9 of *P.L. 2019, c. 120 (C.2A:14-2b)*, notwithstanding that the action would otherwise be barred through application of the statute of limitations.

[Exhibit “G” – N.J.S.A. §59:2-1.3]

1. PLAINTIFF’S COUNT VII PURSUANT TO THE NEW JERSEY LAW AGAINST DISCRIMINATION (NJ LAD) IS NOT TIME-BARRED

Defendant, Teaneck Board of Education’s argument that “the Legislature has not Amended the Two-Year Statute of Limitations for Causes of Action Arising under the New Jersey Law Against Discrimination” (Defendant’s Headnote on page 8 of their brief) is blatantly false. Defendant has conveniently (or perhaps deceptively) failed to cite or appreciate N.J.S. §2A:14-2b in their brief at all. Meanwhile, N.J.S.A. 59:2-1.3 explicitly references N.J.S. §2A:14-2b and its applicability to actions against public entities in child sex abuse cases. Defendant also makes a slight of hand argument throughout its brief by stating that N.J.S.A. 59:2-1.3 only provides for two counts or causes of action: “negligent hiring, supervision or retention of any public employee” and “willful, wanton or grossly negligent act of the public entity or public employee.” (See defendant’s brief at p. 2³). Contrary to defendant’s assertions, N.J.S.A. 59:2-1.3 does not limit plaintiff to only a “claim” or “count” for “negligent hiring, supervision, or retention of a public employee” or “willful, wanton, or grossly negligent act of a public employee.” Rather, the explicit language of N.J.S.A. 59:2-1.3 states that the immunity from civil liability of a public entity shall not apply to an action where the sexual abuse was **“caused by”**

³ Defendant’s brief erroneously states: The basis of the present motion to dismiss is on the procedural grounds that the recent statutory amendment to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. extending the statute of limitations for sexual abuse claims against public entities and public employees is, by its plain meaning, only applicable to a specific cause of action asserting that sexual abuse “was caused by a willful, wanton or grossly negligent act of the public entity or public employee” and to a specific cause of action asserting that sexual abuse was caused “by the negligent hiring, supervision or retention of any public employee.” See N.J.S.A. 59:2-1.3.

As a matter of law, therefore, the narrow statutory amendment to the statute of limitations in N.J.S.A. 59:2-1.3 cannot be interpreted as applying to causes of action separate from the two specific causes of action expressly outlined by the New Jersey Legislature in N.J.S.A. 59:2-1.3. In the present matter, however, Plaintiff has asserted four causes of action against the Board for which the New Jersey Legislature has not expressly amended the two-year statute of limitations.

the public entity's direct negligence in the "hiring, supervision or retention of any public employee," or "**caused by**" the "willful, wanton or grossly negligent acts" of a public employee rendering the public entity vicariously liable. This distinction in language is important to appreciate how the defendant, Teaneck Board of Education's assertion is flawed. Clearly, the legislators intended to expand, not restrict, the rights of survivors/victims to file a variety of legal claims or counts provided the sexual abuse was "**caused by**" any of the direct or vicarious behaviors outlined above. The Teaneck Board's effort to foreclose plaintiff from asserting claims or counts that derive from the specific conduct referenced in N.J.S.A. 59:2-1.3 serves to negate the precise intent of the remedial legislation enacted in New Jersey. It is a woefully misguided and self-serving myopic view of the Tort Claims Act. The Teaneck Board fails to appreciate that the various counts pled by Plaintiff, including but not limited to the LAD, all emanate from sexual abuse "**caused by**" the Board's "negligent hiring, supervision or retention" of teacher Ackerman or "**caused by**" the "willful, wanton or grossly negligent acts" of Ackerman for which the Board is vicariously liable under Hardwicke and the Restatement (2nd) of Agency_§ 219(2)(d) if Ackerman was "*aided*" by her agency position of power as a teacher to commit the sexual abuse in question. Consequently, all these claims and counts filed by Plaintiff are permissible against a public entity. The sexually abusive behavior through the Board's negligent supervision of Ackerman or vicariously through the gross negligence of Ackerman aided by her agency position of power as a teacher created a hostile environment under the LAD. Accordingly, these claims (including the LAD) are all permitted by the express language and change in the statute of limitations under SB 477, N.J.S. §2A:14-2b, N.J.S.A. 59:2-1.3, and the case law interpreting same. As such, defendant's assertion that plaintiff's LAD claim should be dismissed as time-barred is totally without merit and should be denied.

2. PLAINTIFF’S “COUNT I – NEGLIGENCE” STATES A PERMISSIBLE CLAIM AGAINST A PUBLIC ENTITY FOR CHILD SEXUAL ABUSE UNDER NEW JERSEY LAW

Defendant, Teaneck Board of Education, next contends that plaintiff cannot bring a negligence claim against it under the Tort Claims Act and has cited outdated case law – namely, case law issued prior to the recent passage of SB 477 and the changes made to the Tort Claims Act – N.J.S.A. 59:2-1.3. As set forth above, Plaintiff’s Count I includes claims that derive from sexual abuse “caused by” the Board’s negligent hiring, supervision or retention of Ms. Ackerman or “caused by” the willful, wanton or grossly negligent acts of its employee. Indeed, certain subparagraphs in Count I clearly fall under the umbrella of claims for negligent hiring, supervision, or retention of an employee that defendant concedes is permitted under N.J.S.A. 59:2-1.3. By way of brief example, see the below subparagraphs to Count I:

- a. Failing to properly screen teachers, employees, agents, servants, representatives, and ostensible/aided agents adequately before placing them in close contact with children;
- b. Failure to properly investigate complaints of sexual abuse, inappropriate behavior and/or other abusive behavior;
- ...
- k. Failure to properly train teachers, employees, agents, servants, representatives, and/or ostensible/aided agents to identify signs of child molestation or inappropriate sexually related behavior to children by fellow teachers, employees, associates, and/or individuals within its control, oversight, supervision, and/or ostensible/aided control;
- ...
- m. Negligent retention of and/or failure to terminate Rhetta Ackerman, other defendants, and/or other sexually inappropriate and/or abusive individuals from or associated with the Teaneck Public Schools and/or Benjamin Franklin Middle School ’s schools, promoting a culture and environment of complicity, denial and deception regarding child abuse within the business;
- ...
- p. Recklessly, negligently and/or carelessly failing to have proper and effective policies and procedures to require adequate observation, management, oversight, and supervision of the relationship between Donald LaClair and Rhetta Ackerman, and/or other defendants;
- r. Recklessly, negligently and/or carelessly failing to recognize Rhetta Ackerman’s

conduct and behavior prior to the events in question and/or as described herein as creating a risk of sexual abuse toward children, including, but not limited to, Donald LaClair;

- s. Recklessly, negligently and/or carelessly failing to have proper policies and procedures to require adequate observation, management, oversight, and supervision of Donald LaClair and Rhetta Ackerman, and/or other defendants;

These subparagraphs and many others fall under the categories of Board's "negligent hiring, supervision or retention of a public employee." In addition, plaintiff's Count I includes claims that derive from sexual abuse "caused by" the "willful, wanton or grossly negligent acts" of the Board's public employee. Accordingly, plaintiff's Count 1 titled "Negligence" is permitted by the express language in N.J.S.A. 59:2-1.3 and case law. Accordingly, defendant's Motion to Dismiss Plaintiff's Count I is without merit and should be denied.

3. PLAINTIFF'S COUNT VI CLAIM FOR BREACH OF FIDUCIARY DUTY IS NOT TIME-BARRED AND IS PERMISSIBLE UNDER NEW JERSEY LAW

To avoid redundancy, plaintiff relies on the arguments set forth in the previous section arguing that the LAD claim (Count VII) should not be dismissed.

Moreover, in addressing the bases for a claim sounding in a breach of fiduciary duty, the New Jersey Supreme Court stated in F.G. v MacDonnell, 150 N.J. 550, 563-564 (1997) as follows:

The essence of a fiduciary relationship is that one party places trust and confidence in another who is in a dominant or superior position. A fiduciary relationship arises between two persons when one person is under a duty to act for or give advice for the benefit of another on matters within the scope of their relationship. Restatement (Second) of Torts Section 874 cmt. A (1979); see In re Stroming's Will, 12 N.J. Super. 217, 224, 79 A.2d 492 (App. Div.), certif. denied, 8 N.J. 319, 85 A.2d 272 (1951) (stating essentials of confidential relationship "are reposed confidence and the dominant and controlling position of the beneficiary of the transaction"); Blake v. Brennan, 1 N.J. Super. 446, 453, 61 A.2d 916 (Ch. Div. 1948) (describing "the tests [as] whether the relationship between the parties were of such a character of trust and confidence as to render it reasonably certain that the one party occupied a dominant position over the other"; Bogert, Trusts and Trustees 2d Section 481 (1978) (stating "[t]he exact limits of the term 'fiduciary relation' are impossible of statement. Depending upon the circumstances of the particular case or transaction, certain business, public or social relationships may or may not create or involve a fiduciary character.") **The fiduciary's obligations to the**

dependent party include a duty of loyalty and a duty to exercise reasonable skill and care. Restatement (Second) of Trusts Sections 170, 174 (1959). Accordingly, the fiduciary is liable for harm resulting from a breach of the duties imposed by the existence of such a relationship. Restatement (Second) of Torts Section 874 (1979).

Don was a child at defendant, Teaneck Board of Education's school. Defendant, Teaneck Board of Education, had a duty to hire, supervise, manage, and oversee its teachers to ensure that they were not harming students in any way, including with heinous sexual abuse. Plaintiff clearly had a fiduciary relationship with the Teaneck Board of Education, and clearly the basis for the breach of fiduciary duty claim emanates from and/or was caused by the negligent hiring, supervision or retention of a public employee or caused by the willful, wanton or grossly negligent act of the public entity or public employee. Accordingly, defendant's assertion that plaintiff's breach of fiduciary claim is improper or should be dismissed as time-barred is totally without merit and should be denied.

4. PLAINTIFF'S CLAIM FOR RECKLESS DISREGARD INFLICTION OF EMOTIONAL DISTRESS IS BOTH A VIABLE CLAIM UNDER NEW JERSEY LAW AND IS NOT TIME-BARRED BY THE STATUTE OF LIMITATIONS.

Again, to avoid redundancy, plaintiff relies on the arguments set forth in the previous sections arguing that the LAD claim (Count VII) and Breach of Fiduciary Duty (VI) should not be dismissed. Preliminarily, defendant, Teaneck Board of Education, erroneously states that plaintiff's claim is for "intentional" infliction of emotional distress. This is a subtle misrepresentation of plaintiff's claim, which is actually framed as "reckless disregard" infliction of emotional distress. [*Exhibit "A" at Page 24*]. In the same manner that a plaintiff can register a claim for negligent infliction of emotional distress or intentional infliction of emotional distress, so too can a plaintiff issue a claim for emotional distress caused by reckless disregard. Defendant contends that plaintiff cannot file his emotional distress claim because it is not enumerated in N.J.S.A. 59:2-1.3. Again, this argument circles back to those issued by defendant above. As previously noted, this claim, like the others, falls under this umbrella of permissible actions "caused by" the negligent hiring, supervision or retention of a public employee or "caused by" the willful, wanton or grossly negligent acts of the public entity or public employee.

LEVY BALDANTE FINNEY & RUBENSTEIN, P.C.

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Attorney I.D. 031391983/025892005

DONALD LACLAIR

Plaintiff

v.

TEANECK BOARD OF EDUCATION (d/b/a
TEANECK PUBLIC SCHOOLS and d/b/a
BENJAMIN FRANKLIN MIDDLE SCHOOL);
RHETTA MAIDE a/k/a RHETTA ACKERMAN;
DEFENDANT DOE 1-10;
DEFENDANT DOE INSTITUTION 1-10

Defendants

NEW JERSEY SUPERIOR COURT
LAW DIVISION
BERGEN COUNTY

DOCKET NO.: BER-L- 5692-21

CIVIL ACTION

**CERTIFICATION OF JOHN W. BALDANTE,
ESQUIRE ON BEHALF OF PLAINTIFF,
DONALD LACLAIR’S OPPOSITION TO
MOTION TO DISMISS PLAINTIFF’S
COMPLAINT FILED BY DEFENDANT,
TEANECK BOARD OF EDUCATION**

I, John W. Baldante, Esq. of full age being duly sworn according to law upon my oath and say:

1. I am a partner with the law firm of Levy, Baldante, Finney & Rubenstein, P.C., in the above-captioned matter and have firsthand knowledge of the facts set forth in this certification.
2. To avoid burdening the Court with reading redundant information, plaintiff relies on and incorporates herein by reference the facts and legal arguments set forth in detail in his Opposition Brief to Defendant, Teaneck Board of Education’s Motions to Dismiss Plaintiff’s Complaint and this Certification. This short Certification seeks to identify the documents referenced in the Brief.
3. This case involves the child sexual abuse of Donald LaClair by Rhetta Maide a/k/a Rhetta Ackerman, his teacher, at defendant, Teaneck Board of Education (and d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School). Plaintiff has respectively sued the Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School) and Rhetta Maide a/k/a

Rhetta Ackerman (hereinafter referred to as Ms. Ackerman) in the Superior Court of New Jersey, Bergen County. Plaintiff's Complaint at bar was filed on August 26, 2021. Plaintiff filed an Amended Complaint on November 24, 2021. Ms. Ackerman filed an Answer to the Amended Complaint on January 11, 2021.

4. On December 27, 2011, defendant, Teaneck Board of Education, filed a partial Motion to Dismiss Plaintiff's Complaint for Failure to State a Cause of Action Pursuant to R. 4:6-2(e).

5. The following are the list of documents referenced in Plaintiff's Opposition Brief to Defendants' Motions to Dismiss Plaintiff's Complaint:

- A. *[Exhibit "A" – Plaintiff's Complaint]*.
- B. *[Exhibit "B" – Doe v. The Roman Catholic Archdiocese of Newark, et al., No. 20-cv13623-MCA-LDW (U.S. Dist. N.J. Sept. 30, 2021)]*.
- C. *[Exhibit "C" – E.C. v. Leo Inglima-Donaldson, Bradley Donaldson, and Bloomfield Board of Education, A-2752-20 (App. Div. 2020) (Approved for Publication December 16, 2021)]*.
- D. *[Exhibit "D" – 2018 N.J. S.N. 477, Enacted May 13, 2019]*.
- E. *[Exhibit "E" – N.J.S. §2A:14-2b]*
- F. *[Exhibit "F" – Governor's Statement Upon Signing Senate Committee Substitute for Senate Bill No. 477]*.
- G. *[Exhibit "G" – N.J.S.A. §59:2-1.3, Enacted August 9, 2019]*.

6. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

LEVY, BALDANTE, FINNEY & RUBENSTEIN, P.C.

By: /s/ John W. Baldante
John W. Baldante, Esquire
Attorney for Plaintiff

Dated: January 25, 2022

CERTIFICATION OF SERVICE

I, John W. Baldante, Esquire/Mark R. Cohen, Esquire, do hereby certify that on January 25, 2022, we forwarded via E-Courts Plaintiff, Donald LaClair's Opposition to Partial Motion to Dismiss Plaintiff's Complaint filed by defendant, Teaneck Board of Education. In addition, copies were electronically sent to all parties.

LEVY, BALDANTE, FINNEY, & RUBENSTEIN, P.C.

BY: /s/ John W. Baldante
John W. Baldante, Esquire

DATE: January 25, 2022

EXHIBIT “A”

LEVY BALDANTE FINNEY & RUBENSTEIN, P.C.

BY: John W. Baldante, Esquire

Mark R. Cohen, Esquire

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Attorney for Plaintiff

Attorney I.D. 031391983/025892005

DONALD LACLAIR

Plaintiff

v.

TEANECK BOARD OF EDUCATION (d/b/a
TEANECK PUBLIC SCHOOLS and d/b/a
BENJAMIN FRANKLIN MIDDLE SCHOOL);
RHETTA MAIDE a/k/a RHETTA ACKERMAN;
DEFENDANT DOE 1-10;
DEFENDANT DOE INSTITUTION 1-10

Defendants

NEW JERSEY SUPERIOR COURT
LAW DIVISION
BERGEN COUNTY

DOCKET NO.: BER-L- 5692-21

CIVIL ACTION

**AMENDED COMPLAINT;
DEMAND FOR JURY TRIAL;
DESIGNATION OF TRIAL COUNSEL;
CERTIFICATION PURSUANT TO R. 4:5-1**

Plaintiff, Donald LaClair, (hereinafter also referred to as “Mr. LaClair” and/or “Don LaClair” and/or “Donald” and/or “Don” and/or “Plaintiff”), residing at 3 Still Pond Terrace, West Nyack, NY 10994, by way of Amended Complaint against the defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Rhetta Maide a/k/a/ Rhetta Ackerman (hereinafter referred to as “Ms. Ackerman” and/or “Rhetta”), Defendant Doe 1-10, and Defendant Doe Institution 1-10, say as follows:

PARTIES AND VENUE

1. Plaintiff, Donald LaClair, is currently a citizen and resident of New York, residing at 3 Still Pond Terrace, West Nyack, NY 10994.

2. At the time of his abuse, plaintiff was a minor and a resident of or near Teaneck, Bergen County, New Jersey, and the sexual abuse took place in and/or near Teaneck, New Jersey and Fort Lee, New Jersey and/or Queens, New York, among other locations.

3. At all times material hereto, defendant, Teaneck Board of Education (d/b/a Teaneck Public Schools (a/k/a Teaneck School District)) was/is a board of education for a public school district. At all times material hereto, defendant, Teaneck Board of Education (d/b/a Teaneck Public Schools), is a comprehensive community public school district serving students in pre-kindergarten through twelfth grade in Teaneck, Bergen County, NJ. As of the 2017-2018 school year, the district and its seven schools had an enrollment of 3,707 students and 358.4 classroom teachers (on an FTE basis), for a student-teacher ratio of 10.3:1. The district is classified by the New Jersey Department of Education as being in District Factor Group “GH”, the third highest of eight groupings. District Factor Groups organize districts statewide, ostensibly to allow comparison by common socioeconomic characteristics of the local districts. https://en.wikipedia.org/wiki/Teaneck_Public_Schools.

4. Defendant, Teaneck Board of Education (d/b/a Teaneck Public Schools), is a public school district organized and existing under the laws of the State of New Jersey, with a principal place of business/administrative address located at 655 Teaneck Road, Teaneck, NJ 07666. Teaneck Public Schools operates under the supervision of the State Board and/or the Commissioner of Education of the State of New Jersey, and is deemed a place/places of public accommodation as defined by N.J.S.A. 10:5-5(1).

5. At all times material hereto, defendant, Teaneck Board of Education (d/b/a Benjamin Franklin Middle School) was/is a Middle school located in Teaneck, NJ. Currently, Benjamin Franklin Middle School serves approximately 542 students in grades 5-8. At the time of the subject matter, Benjamin Franklin Middle School had students grades 7 through 9 at the middle school.

6. Defendant, Teaneck Board of Education (d/b/a Benjamin Franklin Middle School), is a public school organized and existing under the laws of the State of New Jersey, with a principal place of business/administrative address located at 1315 Taft Road, Teaneck, NJ 07666. Benjamin Franklin Middle School operates under the supervision of the State Board and/or the Commissioner of Education of the State of New Jersey, and is deemed a place/places of public accommodation as defined by N.J.S.A. 10:5-5(1).

7. Defendant, Rhetta Maide a/k/a Rhetta Ackerman, is a citizen and resident of New Jersey, residing at 546 Dorchester Drive, Riverdale, NJ 07675-6114.

8. At all times material hereto, Rhetta Ackerman, was a teacher at defendants, Teaneck Public Schools and/or Benjamin Franklin Middle School.

9. Individual defendants in the above caption case identified as Defendant Doe 1-10 (said names being fictitious, and hereinafter referred to as “Defendant Doe”), were, at all relevant times, employees and/or agents of the Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School) , involved in the operation of the schools and/or Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School) and the hiring, admitting, assigning, retaining, and supervising of teachers and/or individuals, including Rhetta Ackerman. The identification of these individuals is not known by the plaintiff at this time in the absence of discovery. Plaintiff reserves the right to substitute the name(s) for those agents designated as Defendant Doe when and if such information becomes available.

10. Institutional/corporate defendants in the above caption case identified as Defendant Doe Institution 1-10 (said names being fictitious, and hereinafter referred to as “Defendant Institution”) were, at all relevant times, incorporated and/or established associations, corporations, institutions, entities, schools, facilities, or other establishments that employed, hired, certified, assigned, retained, supervised, managed, oversaw, directed, administrated, and/or otherwise controlled one or more of the defendants at or during all relevant times. These Defendant Institutions were/are vicariously and derivatively liable for the negligent conduct of the aforementioned defendants under the theories of respondeat superior, master-servant, agency, and/or right of control.

11. Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, Defendant Doe Institution 1-10, were empowered to supervise and control all employees and/or agents within Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), including defendants, Rhetta Ackerman.

12. Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, Defendant Doe Institution 1-10, had/has access to and knowledge of information regarding the sexual misconduct of employees and/or agents, including knowledge of pedophilia and/or sexually abusive conduct of individuals within the Teaneck Public Schools and/or Benjamin Franklin Middle School's educational business, including defendant, Rhetta Ackerman.

13. At all relevant times, defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, Defendant Doe Institution 1-10 in this action were acting by and through themselves in their individual capacities, and/or additionally by and through their actual and/or ostensible/aided agents, servants, employees, which include entities and/or individuals over whom they had control or right of control.

14. At all times material hereto, defendants, Rhetta Ackerman was acting as an teacher, employee, agent, servant, representative and/or ostensible/aided agent hired, certified, assigned, retained, supervised, managed, overseen, directed, administrated, and/or otherwise controlled by and for one or more of the Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School) , Defendant Doe 1-10, Defendant Doe Institution 1-10, and was engaged to perform services for the Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, Defendant Doe Institution 1-10, and was subject to the Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, Defendant Doe Institution 1-10's oversight, supervision, management, direction, control, ostensible/aided control, and/or right to control the physical conduct required to perform such services.

15. The defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, Defendant Doe Institution 1-10, were the principals of Rhetta Ackerman, and the defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, Defendant Doe Institution 1-

10, acted only through the natural persons who were its employees, agents, servants, representatives, and/or ostensible/aided agents hired, certified, assigned, retained, supervised, managed, overseen, directed, administrated, and/or otherwise controlled by and for said defendants.

16. Rhetta Ackerman acted as the teacher, employee, agent, servant, representative, and/or ostensible/aided agent of the defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, Defendant Doe Institution 1-10, acted negligently while in the scope of his duties or authority, such that the negligence as a matter of law charged to the principal, here the defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, and Defendant Doe Institution 1-10.

17. At all times material hereto, the defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, Defendant Doe Institution 1-10, are deemed negligent for the wrongdoing to the same extent as the employer, employee, agent, servant, representative, and/or ostensible/aided agent, Rhetta Ackerman.

18. Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, Defendant Doe Institution 1-10, through its employee, teacher, agent, and servant, had authority and responsibility to address discrimination and harassment (sexual or otherwise) and to institute corrective measures, and who had actual or constructive knowledge of harassment and discrimination in the school, and who despite such knowledge, failed to adequately respond to stop harassment and discrimination against the plaintiff and took affirmative steps which resulted directly in severe sexual harassment and assaults of the plaintiff.

19. Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, Defendant Doe Institution 1-10, were responsible for promulgation and enforcement of all policies, customs and practices for the schools and school district.

20. As recognized by the United States Department of Education in a July 1, 1998 press release, “Schools owe students a safe environment that is conducive to learning and that affords children equal educational opportunity regardless of sex.”

21. Plaintiff, Donald LaClair, was a student at defendant, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School) in approximately 1974-1976.

22. Plaintiff, Donald LaClair, suffered extraordinary and severe harm due to the sexual assaults committed during 1974-1976 by defendant, Rhetta Ackerman, and the sexually hostile environment at Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School) that was created by defendant, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), which the defendants failed to correct and to properly address despite their actual and/or constructive knowledge thereof and due to the negligence outlined below.

23. Before and/or during the school year of 1974-1976, defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), actually knew and/or had reason to know that defendants, Rhetta Ackerman, engaged in a sexual offense of flagrantly lewd and inappropriate conduct and/or sexual abuse/assault which would violate the laws of New Jersey.

24. Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), failed to take appropriate actions to protect plaintiff against sexual harassment/abuse at Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School) despite having actual notice of the past lewd and/or inappropriate conduct and/or sexual abuse by defendants, Rhetta Ackerman, all in violation of the rights guaranteed to plaintiff by the laws of New Jersey.

25. Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), acted individually and through its employees and agents whose names and identities are not currently known, all of which acted with actual or apparent authority and all

of whom aided in carrying out and/or permitting the sexual harassment/abuse and assaults of the plaintiff by the actions and inactions of defendants.

26. Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), acting through its administrators, and other employees and agents, knew and/or should have known about the specific misconduct and sexual harassing conduct committed by defendant, Rhetta Ackerman, and was deliberately or recklessly indifferent to this conduct, as demonstrated by the specific failures described below, thereby exposing and continuing to expose students in general, and plaintiff in particular, to a sexually hostile educational environment.

27. Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), should have been aware of the misconduct and sexual harassment committed by Defendant Rhetta Ackerman, for which plaintiff asserts claims pursuant to the New Jersey Law Against Discrimination (“LAD”) violations.

28. Defendants, through their actions and inactions described herein, and through a pattern of deliberate and/or reckless indifference, created and permitted a severe, pervasive, and persistently sexually hostile environment, in violation of New Jersey’s Law Against Discrimination (“LAD”).

29. During and/or before 1974-1976, defendants, Teaneck Public Schools and/or Benjamin Franklin Middle School, knew and/or had reason to know that defendants, Rhetta Ackerman, posed a risk to students and other male students and yet permitted him to serve as public school teacher in their school system.

30. The indifference of defendants, Teaneck Public Schools, Benjamin Franklin Middle School, to the risks posed by defendant, Rhetta Ackerman, and its affirmative acts created and/or permitted the opportunity for Rhetta Ackerman to commit sexual abuses of plaintiff, which resulted in a sexually and hostile educational environment.

31. Venue is properly laid in the Superior Court of Bergen County, New Jersey pursuant to R.4:3-2(a) and/or (b).

FACTUAL SUMMARY

32. At all times material hereto, Plaintiff, Donald LaClair (DOB: 02/11/1960) was a minor, and was approximately age fourteen (14) years old in 1974.

33. In 1974-1976, Donald LaClair was a student at the Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School).

34. At all times material hereto, defendant, Rhetta Ackerman, was a teacher (and employee, agent and/or apparent/ostensible/aided agent) at Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School).

35. The sexual abuse of Donald LaClair by Rhetta Ackerman first began in approximately September of 1974 when Donald was fourteen (14) years old and a student at Benjamin Franklin Middle School. The sexual abuse occurred from September 1974 and continued until the Spring 1976 for approximately two (2) years.

36. Defendant, Rhetta Ackerman, was Donald LaClair's 7th grade English teacher at Benjamin Franklin Middle School. From Donald's perspective, Ms. Ackerman was a young and attractive woman. To the best of Don's knowledge, Don's 7th grade school year was Rhetta's first year teaching. She was very friendly and students often gathered around her in her classroom to seek her praise and approval. Don and his friends typically hung out in Rhetta's classroom after school in 7th and 8th grade nearly every day. Rhetta Ackerman drove a White Corvette car, and she was perceived by Don and other students as the "cool teacher."

37. During this time when Don was 13 years old, Don's parents were going through a contentious divorce. His parents still lived together while getting divorced rendering Don's home life chaotic and unsettled. Don's siblings were often out of the house at time of the divorce avoiding the familial disharmony, so Don was often the only child living at home.

38. Don attended Benjamin Franklin Middle School from 7th through 9th grades before continuing his education at Teaneck High School in 10th grade.

39. One day at the beginning of school in 9th grade (September 1974), Rhetta Ackerman offered to drive Don home after school. Before Don exiting her white Corvette to go into his parents' house, Rhetta Ackerman asked if she could kiss Don. Ms. Ackerman then proceeded to lick Don's lips seductively and kiss Don. Don then exited her car and entered his home.

40. Shortly thereafter, Rhetta Ackerman invited Don to her apartment in Queens, New York, where she lived with her husband. When Don visited Rhetta Ackerman, Don, Rhetta Ackerman's husband (Gary), and Rhetta smoked pot and listened to music. No sexual abuse occurred during this initial visit. Rhetta Ackerman asked Don not to say anything about the visit to the other students or anyone else. Don did not tell his parents where he was going. At this point, Rhetta Ackerman gave Don her private phone number, and she encouraged Don to call her "Rhetta" when outside the presence of the other students. Rhetta Ackerman was married the entire time that she sexually abused Don.

41. When Don's parents were engaged in marital discord, Don typically called Rhetta and asked her to pick him up. On at least one occasion, Rhetta picked Don up after his parents had had a bad disagreement.

42. In November 1974, Rhetta invited Don back to her apartment. Rhetta's husband, Gary, was at the apartment and then left for work. When Gary left, Rhetta told Don: "*If you don't kiss me soon, I'm going to have to ask you to leave.*" Don was nervous, but he kissed Rhetta. The sexual abuse escalated very quickly. Rhetta Ackerman removed her clothes, removed Don's clothes and the two of them proceeded to have intercourse at Rhetta's apartment. On this date, Don lost his virginity to Rhetta Ackerman. This was Don's first sexual experience in his life and he was only fourteen (14) years old. Thereafter, Don went to Rhetta's apartment every Saturday and engaged in sexual intercourse with Rhetta.

43. During the school work week, Rhetta Ackerman typically waited for Don to finish his sports practice (football, basketball and/or baseball), and she would pick him up in her car and drive to Memorial Park located nearby. At Memorial Park, Don and Rhetta engaged in sexual activity in Rhetta's

car. The sexual abuse at Memorial Park included mutual masturbation, mutual oral sex and intercourse. After this sexual abuse took place, Rhetta customarily drove Don home. Don's parents who were consumed with their divorce never questioned why Rhetta was always driving Don home.

44. Rhetta and Don mainly engaged in sexual intercourse at Rhetta's apartment. Rhetta moved to Fort Lee, NJ in the summer of 1975. During this time, Don visited her apartment and they hung out by the apartment pool. During this summer, Rhetta Ackerman also supplied to Don illicit drugs/narcotics, and the two of them took those drugs, which included Quaaludes, cannabis and cocaine. Customarily, Rhetta would pick Don up with her car after her husband went to work. They would do drugs and engage in sexual acts at Rhetta's apartment.

45. On one occasion, Don and Rhetta were in Rhetta's vehicle parked in a Synagogue parking lot where Rhetta had just performed oral sex to Don. A police officer pulled up and asked if everything was okay and they both assured the police officer that all was fine.

46. During the time the abuse occurred, Don also went on outings with Rhetta and her husband. Don attended basketball games and concerts with Rhetta and her husband.

47. Rhetta repeatedly warned and cautioned Don that she would lose her job if Don told anyone about their sexual behavior. She made it very clear that Don could not tell anyone.

48. In the Spring 1975, Rhetta had a water color painting commissioned. The painting was of Don pitching a baseball during a high school game. Rhetta wrote dates on the back of the painting that were important to their relationship. Rhetta also gave Don one of her gold bracelets for Don to wear.

49. It was known in the community that Rhetta and Don were in a relationship with each other during the time that Don was a student at Benjamin Franklin Middle School and in 10th grade at Teaneck High School. Rhetta and Don were inseparable.

50. Other teachers at Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School) were aware that Rhetta and John were in a relationship together. Mark Gruber, a social studies teacher, in 9th grade, in front of the whole class, called Don out and stated to Don: *"You want her [Rhetta] to be your girlfriend, don't you."* Don threatened physical violence against Mr.

Gruber for embarrassing him in front of the class. Don was sent to the vice principal's office where he told the vice principal why he threatened Mr. Gruber. Don also suspected Donna Harrington, another teacher in 7th grade, the teaching partner with Rhetta, also knew about the sexual relationship between Rhetta and Don. Other teachers, students and administrators knew or certainly should have known that Don and Rhetta were in an inappropriate relationship.

51. Throughout the two (2) year sexual abuse of Don by Rhetta Ackerman, Don and Rhetta customarily kissed openingly in the parking lot of Benjamin Franklin Middle School.

52. In 10th grade, Don was trying to date girls his own age, and Rhetta Ackerman became very jealous and would try to "interfere." Don's girlfriends were students at the school and Rhetta was not nice to Don's girlfriends. Don told Rhetta that he wanted to date other girls his own age and eventually Don cut off the relationship with Rhetta in the Spring of 1976. Rhetta was upset, but they remained friendly. Periodically, over the years, Don has reached out to Rhetta, because he still has feelings for her as she was his first childhood love and sexual experience at the age of only fourteen (14) year old.

53. Rhetta Ackerman sexually abused Donald LaClair over approximately two (2) years from September 1974 to the Spring of 1976. The same type and manner of sexual abuse described and outlined above occurred repeatedly over the period. Overall, it is estimated that Rhetta Ackerman sexual abused Don in excess of two hundred (200) times.

54. These interactions with Rhetta Ackerman were the first sexual experiences of Don's life – namely, engaging in mutual masturbation, oral sex and sexual intercourse, and utilizing drugs with his teacher, Rhetta Ackerman, and being sexually violated by the teacher beginning at the age of fourteen (14) years old.

55. It is further believed that plaintiff was abused in additional ways and/or on additional occasions, but has emotionally suppressed partially and/or in whole these additional details and/or episodes of abuse.

56. Rhetta Ackerman engaged in a calculated series of manipulation and grooming of Plaintiff as described and outlined above.

57. Rhetta Ackerman abused and molested plaintiff, Donald LaClair, while he was a minor during the period described above.

58. During his tenure as a teacher, employee, agent, servant, representative and/or ostensible/aided agent hired, certified, assigned, retained, supervised, managed, overseen, directed, administrated, and/or otherwise controlled by and for one or more of the defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, and Defendant Doe Institution 1-10, Rhetta Ackerman, was a serial molester and sexual abuser of children, including plaintiff, Donald LaClair.

59. Defendants, Rhetta Ackerman, committed his acts of sexual abuse and molestation against plaintiff, Donald LaClair, in and around Teaneck, New Jersey, Fort Lee, New Jersey, Queens, New York, as well as other locations.

60. Rhetta Ackerman's sexual abuse of plaintiff gradually increased in frequency and intensity over time and included, but was not limited to, plaintiff being sexually abused by Rhetta Ackerman, his teacher, engaging in mutual masturbation, oral sex and sexual intercourse, and utilizing drugs with his teacher, Rhetta Ackerman, and being sexually violated by the teacher beginning at the age of fourteen (14) years old.

61. At all material times hereto, defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, Defendant Doe Institution 1-10, knew or should have known that Rhetta Ackerman sexually abused children and/or was not fit to serve as employee, agent, servant, representative and/or ostensible/aided agent.

62. At all material times hereto, defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, Defendant Doe Institution 1-10, knew or should have known that Rhetta Ackerman had been and/or was abusing plaintiff

and/or other children at Teaneck Public Schools and/or Benjamin Franklin Middle School, and other locations visited by and/or related to the Teaneck Public Schools and/or Benjamin Franklin Middle School 's school/education activities, events, and/or duties.

63. At all material times hereto, defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, Defendant Doe Institution 1-10, took no action and/or or failed to timely and adequately take action to warn or otherwise protect children of the Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, Defendant Doe Institution 1-10, including plaintiff, from defendants, Rhetta Ackerman.

64. At all times material hereto, as a result of the sexual abuse perpetrated by Rhetta Ackerman, Donald developed depression, anxiety, feelings of worthlessness, shame, and anger issues.

65. At all times material hereto, as a result of the sexual abuse perpetrated by Rhetta Ackerman, Donald has felt enormous shame, humiliation, embarrassment, and self-loathing, and was extremely confused and conflicted about the role of sex, love, and intimacy in his life.

66. At all times material hereto, as a result of the sexual abuse perpetrated by Rhetta Ackerman, Donald suffered from extreme difficulty navigating intimate relationships, and he has experienced and continues to experience bouts of anger, difficulties when involved in relationships with women and attempting to be intimate in the context of these relationships with women.

67. At all times material hereto, as a result of the sexual abuse perpetrated by Rhetta Ackerman, throughout the years in an effort to quell these negative emotions generated by the sexual abuse, Donald misguidedly resorted to consuming and abusing drugs and/or alcohol, and engaged in destructive and dysfunctional behaviors.

68. At all times material hereto, as a result of the sexual abuse perpetrated by Rhetta Ackerman, Donald suffered great permanent harm, including, but not limited to, the following: severe emotional distress, extreme trauma, depression, anxiety, mental health issues, post-traumatic stress disorder, humiliation, embarrassment, fear, shame, emotional dissociation, and/or loss of self-esteem and self-worth, all of which has and/or will continue to require counseling, therapy, and/or other treatment.

69. Also, as a result of the sexual abuse set forth above and its consequential trauma and harm, Plaintiff has suffered a severe impairment and disruption of his enjoyment of life, identity, intimacy with loved ones, sexuality, and/or belief structure, including, but not limited to, the impairment and disruption of his relationship with members of his family, friends, acquaintances, and/or others.

70. Also, as a result of the sexual abuse set forth above and its consequential trauma and harm, the Plaintiff suffered from destructive and dysfunctional behaviors, including, but not limited to, drug use and/or alcohol abuse and/or other mental health issues, all of which have required and/or will require counseling, therapy, and/or other treatment.

71. Also, as a result of the sexual abuse set forth above and its consequential trauma and harm, the Plaintiff has incurred significant past loss of wages and future loss of earning capacity to his permanent detriment.

72. Plaintiff's youth, together with the power imbalance and authoritative inequity between the plaintiff and defendants, created a culture and social dynamic that weakened plaintiff's ability to resist Rhetta Ackerman.

73. The sexual abuse set forth above and its consequential trauma and harm, in turn, caused plaintiff to suppress and/or emotionally dissociate his feelings about his traumatic experience(s), thereby exacerbating its devastating psychological, physical, and social consequences.

74. Plaintiff was not fully aware of the causal relationship between the sexual abuse set forth above, and its consequential trauma and harm, until recently, and continues to endure and/or discover trauma and harm relative to the sexual abuse at the present time, which inflictions of trauma and harm shall and will continue in the future.

75. Other victims' declarations and/or revelations of their experiences with sexual abuse and corresponding damages caused by such abuse prompted Plaintiff to realize he is not alone, and to acknowledge, address, and/or discover the connection between his abuse and his corresponding emotional distress, social dysfunction and/or other damages and to speak out concerning same.

76. Now, in conformity with N.J. Stat. Section 2A:14-2a, Statute of Limitations for Action at Law resulting from Certain Sexual Crimes [*Effective December 1, 2019*], plaintiff brings the within action for damages.

77. As alleged in greater detail herein above and/or below, all of plaintiff's harm and damages were caused by the culpable acts and/or omissions of defendants.

78. As set forth more fully herein, the negligence, gross negligence, recklessness, and/or punitive behavior of the defendants, jointly and severally, was a direct and proximate cause of harm and damages to plaintiff.

79. Plaintiff's injuries and/or damages were caused solely by the negligence, gross negligence, recklessness, and/or punitive behavior of the defendants, as set forth more fully herein, and were not caused or contributed thereto by any negligence, gross negligence, recklessness and/or punitive behavior on the part of the Plaintiff.

COUNT I – NEGLIGENCE

Plaintiff, Donald LaClair

v.

**Defendants, Teaneck Board of Education
(d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School)
Rhetta Maide a/k/a Rhetta Ackerman,
Defendant Doe 1-10, and Defendant Institutions 1-10**

80. The previous paragraphs set forth above are incorporated herein by reference.

81. The recklessness, negligence and/or carelessness of Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Rhetta Ackerman, Defendant Doe 1-10, Defendant Doe Institution 1-10, by and through their actual or apparent teachers, employees, agents, servants, representatives, and/or ostensible/aided agents hired, certified, assigned, retained, supervised, managed, overseen, directed, administrated, and/or otherwise controlled by and for said defendants, consisted of, among other things, the following:

- a. Failing to properly screen teachers, employees, agents, servants, representatives, and ostensible/aided agents adequately before placing them in close contact with children;
- b. Failure to properly investigate complaints of sexual abuse, inappropriate behavior and/or other abusive behavior;
- c. Providing “cover” and/or rationalizations for inappropriate/abusive misconduct by applying euphemistic and false designations to and/or contrived and imagined explanations for their conduct and/or the reasons for same;
- d. Minimizing, ignoring or excusing inappropriate or questionable behavior and/or misconduct by teachers, employees, agents, servants, representatives, and ostensible/aided agents over a period of months, years and/or decades;
- e. Failure to properly and/or adequately warn parents, children, and/or the public at large, including, but not limited to, plaintiff and similarly situated children, and their parents and/or family members, regarding the inappropriate behavior and/or misconduct of Rhetta Ackerman, other defendants, and/or other abusive teachers, employees, agents, servants, representatives, and/or ostensible/aided agents, despite knowledge of the dangers they presented and the harmful and complicit culture and environment created by such failures to warn;
- f. Assigning employees, agents, servants, representatives, and/or ostensible/aided agents known to have engaged in questionable and/or inappropriate behavior or misconduct and/or known to be pedophiles and/or sexual predators, including but not limited to, Rhetta Ackerman, and/or other defendants, to a position in the business where said individual(s) had/have regular contact with children;

- g. Failure to report criminal activity, including child abuse, to appropriate law enforcement agencies;
- h. Negligent failure to provide a safe environment and protective culture to children within the schools, and/or other external locations operated, visited, and/or owned and/or operated by defendants, Teaneck Public Schools, Benjamin Franklin Middle School, Rhetta Ackerman, Defendant Doe 1-10, Defendant Doe Institution 1-10;
- i. Failure to implement and maintain proper and effective policies and procedures to prevent sexual abuse of and/or other abusive behavior toward children;
- j. Negligently maintaining custody, supervision and protection of children placed in their care by virtue of their authority and solicitation of minors to participate in their business and/or activities;
- k. Failure to properly train teachers, employees, agents, servants, representatives, and/or ostensible/aided agents to identify signs of child molestation or inappropriate sexually related behavior to children by fellow teachers, employees, associates, and/or individuals within its control, oversight, supervision, and/or ostensible/aided control;
- l. Negligent reliance on persons who claimed they could treat child molesters and/or sexually abusive individuals;
- m. Negligent retention of and/or failure to terminate Rhetta Ackerman, other defendants, and/or other sexually inappropriate and/or abusive individuals from or associated with the Teaneck Public Schools and/or Benjamin Franklin Middle School 's schools, promoting a culture and environment of complicity, denial and deception regarding child abuse within the business;
- n. Failure to exercise due care under the relevant circumstances;
- o. Recklessly, negligently and/or carelessly failing to observe, manage, direct, oversee, and supervise the relationship between Plaintiff, Donald LaClair, and Rhetta Ackerman;
- p. Recklessly, negligently and/or carelessly failing to have proper and effective policies and procedures to require adequate observation, management, oversight, and supervision of the relationship between Donald LaClair and Rhetta Ackerman, and/or other defendants;
- q. Recklessly, negligently and/or carelessly failing to recognize Rhetta Ackerman's conduct and behavior prior to the events in question and/or as described herein as creating a risk of sexual abuse toward children, including, but not limited to, Donald LaClair;
- r. Recklessly, negligently and/or carelessly failing to have proper policies and procedures to require adequate observation, management, oversight, and supervision of Donald LaClair and Rhetta Ackerman, and/or other defendants;

- s. Failing to investigate complaints that Rhetta Ackerman was behaving inappropriately and/or touching children inappropriately, including, but not limited to, Donald LaClair;
- t. Recklessly, negligently and/or carelessly failing to identify Rhetta Ackerman as a sexual abuser;
- u. Recklessly, negligently and/or carelessly failing to investigate behavior of Rhetta Ackerman that put the defendants on notice and/or should have placed defendants on notice that Rhetta Ackerman was and/or might have been a potential pedophile and/or sexual predator;
- v. Recklessly, negligently and/or carelessly failing to identify Rhetta Ackerman was a potential pedophile and/or sexual predator;
- w. Failure to use due care under the circumstances; and/or
- x. Negligence as may be proven from facts now exclusively in the possession of defendants, which may be ascertained after the filing of this Complaint.

82. Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Rhetta Ackerman, Defendant Doe 1-10, Defendant Doe Institution 1-10, were negligent under the facts as detailed within this complaint in that these defendants failed to use that degree of care, precaution and vigilance which a reasonably prudent person or entity would use under the same or similar circumstances, including, but not limited to, the negligent affirmative acts detailed in this complaint which a reasonably prudent person or entity would not have done, and also the negligent omission or failure to act and/or take precautions as detailed in this complaint which a reasonably prudent person or entity would have done or taken under these circumstances.

83. Rhetta Ackerman’s actions as described herein are evidence of negligence per se in that these actions violated a provision of New Jersey Statute, known as the Child Sexual Abuse Act (“CSAA”), N.J.S.A. 2a:61b-1, et al., which statute sets up a standard of conduct that Rhetta Ackerman violated per se.

84. Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Rhetta Ackerman, Defendant Doe 1-10, Defendant Doe Institution 1-10, are vicariously liable for both the negligent and intentional acts of Rhetta Ackerman, their employee(s), under the CSAA, which recognizes the vulnerability of children and demonstrates a

legislative intent to protect said children from victimization, and imposes responsibility upon those individuals and institutions in the best position to know of and stop the abuse to said children, such as the defendants herein.

WHEREFORE, Plaintiff, Donald LaClair, demands judgment against defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Rhetta Ackerman, Defendant Doe 1-10, Defendant Doe Institution 1-10, jointly and severally, in an amount in excess of Fifty Million Dollars (\$50,000,000.00), exclusive of prejudgment interest, costs and damages for pre-judgment delay, attorney's fees, and such other legal and equitable relief as the Court deems appropriate.

COUNT II – NEGLIGENT SUPERVISION

Plaintiff, Donald LaClair

v.

**Defendants, Teaneck Board of Education
(d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School)
Rhetta Maide a/k/a Rhetta Ackerman,
Defendant Doe 1-10, and Defendant Institutions 1-10**

85. The previous paragraphs set forth above are incorporated herein by reference.

86. Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Rhetta Ackerman, Defendant Doe 1-10, Defendant Doe Institution 1-10, knew or should have known of the need to properly and effectively observe, manage, direct, oversee, and/or supervise employees, agents, servants, representatives, and/or ostensible/aided agents in their relationships with young children.

87. Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), knew or should have known of the particular risk posed by Rhetta Ackerman based on, among other things, her inappropriate and/or questionable conduct, her history of sexually abusing children, and/or her behavior indicative of an intent to isolate, groom, and/or facilitate

sexually contacting and/or abusing a young minor child, included, but was not limited to, forcing plaintiff to engage in mutual masturbation, oral sex, sexual intercourse, and drug use with his teacher, Rhetta Ackerman, and being sexually violated by the teacher beginning at the age of fourteen (14) years old.

88. Rhetta Ackerman's sexual abuse of plaintiff gradually increased in frequency and intensity over time and included, but was not limited to, forcing plaintiff to engage in mutual masturbation, oral sex, sexual intercourse, and drug use with his teacher, Rhetta Ackerman, and being sexually violated by the teacher beginning at the age of fourteen (14) years old.

89. The negligence, carelessness, and/or recklessness of Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, Defendant Doe Institution 1-10, for the conduct of their actual or apparent employees, agents, servants, representatives, and/or ostensible/aided agents, in the hiring, certifying, assigning, observation, retaining, supervision, management, oversight, direction, administration, and/or otherwise control of Rhetta Ackerman consists of one or more of the following:

- a. Negligent hiring, certifying, assigning, observation, retaining, supervision, management, oversight, direction, administration, and/or otherwise control of individuals in the employ of Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School);
- b. Failing to use due care in hiring, certifying, assigning, observation, retaining, supervision, management, oversight, direction, administration, and/or otherwise control of Rhetta Ackerman and her respective relationship with plaintiff, Donald LaClair; and
- c. Failing to investigate and supervise Rhetta Ackerman and her relationship with Donald LaClair.

WHEREFORE, Plaintiff, Donald LaClair, demands judgment against Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Rhetta Ackerman, Defendant Doe 1-10, Defendant Doe Institution 1-10, jointly and severally, in an amount in excess of Fifty Million Dollars (\$50,000,000.00), exclusive of prejudgment interest, costs and damages for pre-judgment delay, attorney's fees, and such other legal and equitable relief as the Court deems appropriate.

COUNT III – NEGLIGENT HIRING AND RETENTION

Plaintiff, Donald LaClair

v.

**Defendants, Teaneck Board of Education
(d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School)
Rhetta Maide a/k/a Rhetta Ackerman,
Defendant Doe 1-10, and Defendant Institutions 1-10**

90. The previous paragraphs set forth above are incorporated herein by reference.

91. Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, Defendant Doe Institution 1-10, knew and/or should have known prior to and/or contemporaneous with the relevant time frame during which Donald LaClair was sexually abused by Rhetta Ackerman that plaintiff and other young children affiliated and/or associated with the school were vulnerable to and potential victims of sexual abuse.

92. Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Rhetta Ackerman, Defendant Doe 1-10, Defendant Doe Institution 1-10, also knew and/or should have known prior to and/or contemporaneous with the relevant time frame during which Donald LaClair was sexually abused by Rhetta Ackerman that the access to vulnerable youths, together with the trust and authority placed in his position, makes the position an enticing vocation to pedophiles, sexual predators, and/or others seeking to abuse and exploit children.

93. Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, Defendant Doe Institution 1-10, owed a duty to exercise reasonable care in the hiring, certifying, assignment, control, selection and/or retention of employees, agents, servants, representatives, and/or ostensible/aided agents, situated in and/or located at the Defendants, Teaneck Public Schools, Benjamin Franklin Middle School, Defendant Doe 1-10, Defendant Doe Institution 1-10, and specifically a duty to be on high look out for possible pedophiles, sexual predators, and others seeking to abuse and exploit children.

94. Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, Defendant Doe Institution 1-10, failed to exercise reasonable care in the hiring, certifying, assignment, control, selection and/or retention of Rhetta Ackerman as a teacher, employee, agent, servant, representative, and/or ostensible/aided agent, among other things, the following:

- a. Failing to conduct a thorough and proper background check of Rhetta Ackerman;
- b. Failing to thoroughly and reasonably investigate Rhetta Ackerman’s sexual history;
- c. Failing to learn of or investigate Rhetta Ackerman’s history of sexual impropriety with young boys and her proclivity to sexually abuse young boys;
- d. Failing to conduct a thorough and proper interview with Rhetta Ackerman;
- e. Failing to investigate whether Rhetta Ackerman had any inappropriate sexual interest in young boys;
- f. Failing to use due care in the selection of Rhetta Ackerman as a teacher rendering services, and interacting with children;
- g. Failing to use due care in the retention of Rhetta Ackerman as a teacher and/or providing service near young vulnerable children;
- h. Recklessly, negligently and/or carelessly failing to adequately check Rhetta Ackerman’s background, before employment and/or entrustment with teaching children;
- i. Recklessly, negligently and/or carelessly failing to have policies and procedures in place to screen individuals for the possibility of being sexual predators.

WHEREFORE, Plaintiff, Donald LaClair, demands judgment against Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Rhetta Ackerman, Defendant Doe 1-10, Defendant Doe Institution 1-10, jointly and severally, in an amount in excess of Fifty Million Dollars (\$50,000,000.00), exclusive of prejudgment interest, costs and damages for pre-judgment delay, attorney’s fees, and such other legal and equitable relief as the Court deems appropriate.

COUNT IV – GROSS NEGLIGENCE

Plaintiff, Donald LaClair

v.

**Defendants, Teaneck Board of Education
(d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School)
Rhetta Maide a/k/a Rhetta Ackerman,
Defendant Doe 1-10, and Defendant Institutions 1-10**

95. The previous paragraphs set forth above are incorporated herein by reference.

96. Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Rhetta Ackerman, Defendant Doe Institution 1-10, were grossly negligent under the facts as detailed within this Complaint in that these defendants acted or failed to act: with complete disregard of the rights, safety, and well-being of others; in a palpably unreasonable manner; in an outlandish fashion; with discriminatory behavior; and/or failed to exercise slight care or diligence under these circumstances.

WHEREFORE, Plaintiff, Donald LaClair, demands judgment against Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Rhetta Ackerman, Defendant Doe 1-10, Defendant Doe Institution 1-10, jointly and severally, in an amount in excess of Fifty Million Dollars (\$50,000,000.00), exclusive of prejudgment interest, costs and damages for pre-judgment delay, attorney's fees, and such other legal and equitable relief as the Court deems appropriate.

COUNT V – RECKLESS DISREGARD INFLICTION OF EMOTIONAL DISTRESS

Plaintiff, Donald LaClair

v.

**Defendants, Teaneck Board of Education
(d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School)
Rhetta Maide a/k/a Rhetta Ackerman,
Defendant Doe 1-10, and Defendant Institutions 1-10**

97. The previous paragraphs set forth above are incorporated herein by reference.

98. The actions and/or inactions of Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Rhetta Ackerman, Defendant Doe 1-10, Defendant Doe Institution 1-10, jointly, severally, and/or through the conduct of Rhetta Ackerman inflicted emotional distress upon plaintiff in that defendants acted with reckless disregard, in that their actions were done with reckless disregard to a high degree of probability that such behavior would cause emotional distress.

99. The actions and/or inactions of Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Rhetta Ackerman, Defendant Doe 1-10, Defendant Doe Institution 1-10, jointly, severally, and/or through the conduct of Rhetta Ackerman, against plaintiff were extreme and outrageous; with discriminatory behavior; so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency and are regarded as atrocious and utterly intolerable in our civilized community.

100. The actions and/or inactions of Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Rhetta Ackerman, Defendant Doe 1-10, Defendant Doe Institution 1-10, jointly, severally, and/or through the conduct of Rhetta Ackerman, was the direct and/or proximate cause of emotional distress to the plaintiff, which was so severe that no reasonable person could be expected to endure such distress.

101. The conduct of Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Rhetta Ackerman, Defendant Doe 1-10, Defendant Doe Institution 1-10, jointly, severally, and/or through the conduct of Rhetta Ackerman was sufficiently severe to cause genuine and substantial emotional distress and/or mental harm to the average person, including the plaintiff.

102. Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe Institution 1-10, are vicariously liable for the damages caused by Rhetta Ackerman's reckless disregard infliction of emotional distress upon the plaintiff.

WHEREFORE, Plaintiff, Donald LaClair, demands judgment against Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Rhetta Ackerman, Defendant Doe 1-10, Defendant Doe Institution 1-10, jointly and severally, in an amount in excess of Fifty Million Dollars (\$50,000,000.00), exclusive of prejudgment interest, costs and damages for pre-judgment delay, attorney's fees, and such other legal and equitable relief as the Court deems appropriate.

COUNT VI – BREACH OF FIDUCIARY DUTY

Plaintiff, Donald LaClair

v.

Defendants, Teaneck Board of Education

(d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School)

Rhetta Maide a/k/a Rhetta Ackerman,

Defendant Doe 1-10, and Defendant Institutions 1-10

103. The previous paragraphs set forth above are incorporated herein by reference.

104. By virtue of their status as education and/or adult authorities, Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, Defendant Doe Institution 1-10, bore a fiduciary relationship to plaintiff and other children and persons within and/or affiliated, employed, and/or near the school.

105. Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Rhetta Ackerman, Defendant Doe 1-10, Defendant Doe Institution 1-10, had fiduciary duties to avoid harming children and to protect them from harm at the hands of employees, agents, servants, representatives, and/or ostensible/aided agents hired, certified, assigned, retained, supervised, managed, overseen, directed, administrated, and/or otherwise controlled by and for said defendants.

106. Defendants breached their fiduciary duties by acting or failing to act in accordance with their fiduciary duties and/or as alleged in this Complaint.

107. Plaintiff suffered the above-averred harms and damages as a result of Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, Defendant Doe Institution 1-10, breach of their fiduciary duty.

WHEREFORE, Plaintiff, Donald LaClair, demands judgment against Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Rhetta Ackerman, Defendant Doe 1-10, Defendant Doe Institution 1-10, jointly and severally, in an amount in

excess of Fifty Million Dollars (\$50,000,000.00), exclusive of prejudgment interest, costs and damages for pre-judgment delay, attorney's fees, and such other legal and equitable relief as the Court deems appropriate.

COUNT VII – LAW AGAINST DISCRIMINATION, VIOLATION OF N.J.S.A. SECTION 10:5-1 et seq. SEXUALLY HOSTILE ENVIRONMENT AND DISCRIMINATION

Plaintiff, Donald LaClair

v.

**Defendants, Teaneck Board of Education
(d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School)
Rhetta Maide a/k/a Rhetta Ackerman,
Defendant Doe 1-10, and Defendant Institutions 1-10**

108. The previous paragraphs set forth above are incorporated herein by reference.

109. Despite defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, and/or Defendant Doe Institution 1-10, actual and/or constructive knowledge of Rhetta Ackerman's sexually inappropriate and harassing conduct, defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, and Defendant Doe Institution 1-10, failed to reasonably protect plaintiff, Donald LaClair, against harassing conduct on the basis of his sex (male), age (minor), and permitted a hostile education environment.

110. These defendants violated New Jersey's Law Against Discrimination ("LAD"), contained within N.J.S.A. Section 10:5-1 et seq., and such failures created an intimidating, offensive or hostile educational environment for Plaintiff, Donald LaClair, and discriminated against plaintiff based upon his sex (male), age (minor).

111. Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, and/or Defendant Doe Institution 1-10, are vicariously liable for the actions and/or inactions of its supervisory employees.

112. Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, and/or Defendant Doe Institution 1-10, knew, or should have known, of the past lewd conduct and/or sexual abuse committed by Rhetta Ackerman and failed to take effective remedial measures to end his offensive conduct.

113. The harassing conduct would not have occurred, but for the plaintiff's gender (male), age (minor), which is/are a protected category under New Jersey's Law Against Discrimination. At all times material hereto and to the best knowledge of plaintiff, the defendant, Rhetta Ackerman, sexually abused multiple students at Benjamin Franklin Middle School and all of the sexually abused students were young boys of minority age. At all times material hereto, the conduct of defendant, Rhetta Ackerman, sexually infantilized these sexually abused students, including, but not limited to plaintiff, Donald LaClair.

114. The sexual harassment created or permitted by these defendants of Plaintiff was so severe such that any reasonable person would believe that the conditions of education were altered and that the educational environment was intimidating, hostile, offensive or abusive.

115. As a direct and proximate result of the breaches and failures by these defendants, plaintiff was caused to suffer bodily injury, emotional distress/injury, injuries which are likely to be permanent in nature and denial of the full education he was entitled to receive.

116. In the alternative, defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Defendant Doe 1-10, and/or Defendant Doe Institution 1-10, defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Rhetta Ackerman, Defendant Doe 1-10, and/or Defendant Doe Institution 1-10, are liable for damages caused to Plaintiff for the reasons outlined through this Complaint and within this Court and such violations caused Plaintiff's injuries and damages.

117. As a direct and proximate result of defendants' conduct described herein, plaintiff, Donald LaClair, was caused to suffer emotional and physical injuries and symptoms as described in this Complaint, and has incurred and/or will likely incur future expenses for medical and psychological treatment.

WHEREFORE, Plaintiff, Donald LaClair, demands judgment against Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Rhetta Ackerman, Defendant Doe 1-10, Defendant Doe Institution 1-10, jointly and severally, in an amount in excess of Fifty Million Dollars (\$50,000,000.00), exclusive of prejudgment interest, costs and damages for pre-judgment delay, attorney’s fees, and such other legal and equitable relief as the Court deems appropriate.

COUNT IX – PUNITIVE DAMAGES

Plaintiff, Donald LaClair

v.

Defendants, Teaneck Board of Education

(d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School)

Rhetta Maide a/k/a Rhetta Ackerman,

Defendant Doe 1-10, and Defendant Institutions 1-10

118. The previous paragraphs set forth above are incorporated herein by reference.

119. The aforesaid acts of defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Rhetta Ackerman, Defendant Doe 1-10, and/or Defendant Doe Institution 1-10, were committed in outrageous and wanton and willful disregard for the safety, protection, and well-being of minors, including the plaintiff, and including, but not limited to discriminatory behavior; and overall behavior so beyond the pale warranting the imposition of punitive damages.

WHEREFORE, Plaintiff, Donald LaClair, demands judgment against Defendants, Teaneck Board of Education (d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School), Rhetta Ackerman, Defendant Doe 1-10, Defendant Doe Institution 1-10, jointly and severally, for punitive damages and such other legal and equitable relief as the Court deems appropriate.

LEVY, BALDANTE, FINNEY, & RUBENSTEIN, P.C.

By: /s/ John W. Baldante
John W. Baldante, Esquire
Attorney for Plaintiff, Donald LaClair

DATED: November 24, 2021

JURY TRIAL

PLEASE TAKE NOTICE that plaintiff, Donald LaClair, demands a trial by jury on all issues raised herein.

LEVY, BALDANTE, FINNEY, & RUBENSTEIN, P.C.

By: /s/ John W. Baldante
John W. Baldante, Esquire
Attorney for Plaintiff, Donald LaClair

DATED: November 24, 2021

DESIGNATION OF TRIAL COUNSEL

PLEASE BE NOTIFIED that pursuant to Rule 4:25-4, John W. Baldante, Esquire is hereby designated as trial counsel in the aforementioned litigation on behalf of the law firm of Levy, Baldante, Finney, & Rubenstein, P.C.

LEVY, BALDANTE, FINNEY, & RUBENSTEIN, P.C.

By: /s/ John W. Baldante
John W. Baldante, Esquire
Attorney for Plaintiff, Donald LaClair

DATED: November 24, 2021

CERTIFICATION PURSUANT TO RULE 4:5-1

The matter in controversy in this case is not subject to any other action pending in any Court or arbitration proceeding, nor is any other action or arbitration proceeding contemplated.

LEVY, BALDANTE, FINNEY, & RUBENSTEIN, P.C.

By: /s/ John W. Baldante
John W. Baldante, Esquire
Attorney for Plaintiff, Donald LaClair

DATED: November 24, 2021

CERTIFICATION

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

LEVY, BALDANTE, FINNEY, & RUBENSTEIN, P.C.

By: /s/ John W. Baldante
John W. Baldante, Esquire
Attorney for Plaintiff, Donald LaClair

DATED: November 24, 2021

EXHIBIT “B”

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
MADELINE COX ARLEO
UNITED STATES DISTRICT JUDGE

MARTIN LUTHER KING COURTHOUSE
50 WALNUT ST. ROOM 4066
NEWARK, NJ 07101
973-297-4903

September 30, 2021

VIA ECF

LETTER ORDER

Re: John Doe v. The Roman Catholic Archdiocese of Newark, et al.
Civil Action No. 20-13623

Dear Litigants:

Before the Court is Defendants The Roman Catholic Diocese of Metuchen's ("Diocese") and The Roman Catholic Archdiocese of Newark's ("Archdiocese" and together with the Diocese, the "Church Defendants") Motions for Judgment on the Pleadings or, in the Alternative, to Strike Portions of the Complaint. ECF Nos. 33, 38. Plaintiff John Doe ("Plaintiff") opposes the Motions. ECF No. 47. For the reasons explained below, the Church Defendants' Motions are **DENIED**.

I. BACKGROUND

This matter arises from Plaintiff's allegations of sexual abuse by Theodore E. McCarrick ("McCarrick"), a Bishop for the Diocese and Archbishop for the Archdiocese during the relevant time.

A. McCarrick's History as Bishop of Metuchen and Archbishop of Newark

The following facts are alleged in the Complaint, ECF No. 1 ("Compl.").

In 1958, McCarrick was ordained as a priest by the Archdiocese of New York, Compl. ¶ 34, and he held numerous religious assignments for his first twenty-five years as a cleric. See generally id. ¶¶ 35-36, 38, 44-46. Around 1980 or 1981, several Catholic Church officials considered various candidates, including McCarrick, for the Bishop of Metuchen position. Id. ¶ 53. Despite alleged knowledge of McCarrick's history of sexual abuse of young men and propensity to sexually abuse minor boys, the Diocese appointed McCarrick as Bishop in 1981. Id. ¶¶ 58-60.

In 1984, McCarrick purchased a beach house in Sea Girt, New Jersey, on behalf of the Diocese and pursuant to his spending authority as Bishop. Id. ¶ 67. The Complaint alleges that McCarrick used the beach house for sexual encounters with minor boys, seminarians, and young men, all with the knowledge of the Diocese, Archdiocese, and other Catholic Church officials. Id. ¶¶ 68-70. Around 1985 or 1986, a mother of several children delivered a letter to every Roman

Catholic cardinal in the United States accusing McCarrick of sexually abusing minors. Id. ¶¶ 71-72.

McCarrick was appointed Archbishop of the Newark Archdiocese in 1986, a position he held until 2000. Id. ¶ 91. He lived in a private residence at the Cathedral Basilica of the Sacred Heart in Newark. Id. ¶ 136. Throughout his tenure as both Bishop and Archbishop, McCarrick wielded exclusive authority over the business and spiritual affairs of each diocese, including the power to investigate and punish clerics known to have engaged in sexual abuse or misconduct. See, e.g., id. ¶¶ 225, 271-73.

B. McCarrick's History with Plaintiff

Plaintiff and his siblings were raised in a Roman Catholic family in New York. Id. ¶ 122. McCarrick was a close friend of Plaintiff's family from the time Plaintiff was a young child. Id. ¶ 121. The Complaint alleges that beginning in 1985, when Plaintiff was twelve years old, Plaintiff's parents often surrendered temporary custody of Plaintiff to McCarrick for overnight stays. Id. ¶¶ 127-29. In 1985, while McCarrick was Bishop of Metuchen, Plaintiff stayed with McCarrick at the Metuchen Rectory. Id. ¶ 129. The following day, Plaintiff alleges, McCarrick took him to the Diocesan Sea Girt beach house and sexually abused him for the first time. Id. ¶¶ 129-130.

The Complaint alleges that from 1985 to 1988, McCarrick sexually abused Plaintiff at the beach house approximately nine times, at the Metuchen Rectory approximately three times, and at the Eldred Preserve in the Catskills more than fifty times on weekend trips.¹ Id. ¶¶ 131-35. Once elevated to Archbishop of Newark, McCarrick allegedly sexually abused and anally raped Plaintiff approximately eight times at McCarrick's residence at the Cathedral Basilica of the Sacred Heart, where Plaintiff and his family were occasional congregants.² Id. ¶¶ 136-37. On one occasion, the Complaint alleges, McCarrick raped Plaintiff and then called another priest into his apartment who also sexually abused and raped Plaintiff. Id. ¶¶ 140-41.

The Complaint also alleges that in 1990, while Archbishop of Newark, McCarrick sexually abused Plaintiff during an overnight visit in New York City for a Knights of Columbus dinner, as well as over the course of five nights at a hotel in Ireland during a Catholic Church fundraising trip. Id. ¶¶ 147-50. Plaintiff alleges that Archdiocese officials who received McCarrick's expense reports from the Ireland visit should have known that McCarrick consciously decided to share a room and bed with Plaintiff during that visit. Id. ¶ 151.

Plaintiff alleges that McCarrick had access to him through the Church Defendants' facilities and programs and thus as a "minor child, parishioner, congregant, student, overnight (and day) visitor, and participant in church activities," he was subjected to the ongoing influence of the Church Defendants. Id. ¶¶ 163, 177-78. As a result of McCarrick's continued abuse, Plaintiff's

¹ Plaintiff does not allege that the Eldred Preserve was owned by the Church Defendants.

² At Plaintiff's deposition, he clarified that he attended an event or Mass only once at the Cathedral Basilica. See Certification of Christopher H. Westrick, Esq., Ex. A, ECF No. 39.1.

grades fell, he was kicked out of several high schools, and he suffers from depression, emotional distress, rage, and substance abuse. *Id.* ¶¶ 153-60.

C. Procedural History

On September 30, 2020, Plaintiff filed a Complaint against McCarrick, the Diocese, and the Archdiocese, asserting claims for (1) sexual battery against McCarrick, Compl. ¶¶ 551-62 (“Count I”); (2) vicarious liability (respondeat superior) against the Diocese and Archdiocese for the acts of their agent, McCarrick, *id.* ¶¶ 563-621 (“Count II”); (3) negligence/gross negligence against the Archdiocese and Diocese, *id.* ¶¶ 622-47, 677-702 (“Count III” and “Count VI”); (4) negligent supervision and training against the Archdiocese and Diocese, *id.* ¶¶ 648-62, 703-17 (“Count IV” and “Count VII”); and (5) negligent retention against the Archdiocese and Diocese, *id.* ¶¶ 663-76, 718-31 (“Count V” and “Count VIII”). The Diocese and Archdiocese each answered the Complaint in December 2020, ECF Nos. 12, 16, and now move for judgment on the pleadings or, alternatively, to strike portions of the Complaint. ECF Nos. 33, 38.

II. LEGAL STANDARD

Judgment on the pleadings under Federal Rule of Civil Procedure 12(c) is warranted if “there are no material issues of fact” and the movant “is entitled to judgment as a matter of law.” *Zimmerman v. Corbett*, 873 F.3d 414, 417 (3d Cir. 2017) (citation omitted). The Court “must accept all of the allegations in the pleadings of the [non-moving party] as true and draw all reasonable inferences in favor of the non-moving party.” *Id.* at 417-18. The Court assesses a Rule 12(c) motion “under the same standards that apply to a Rule 12(b)(6) motion” to dismiss. *Id.* at 417 (citation omitted).

In considering a motion to dismiss under Rule 12(b)(6), the facts alleged must be “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A complaint will survive a motion to dismiss if it provides a sufficient factual basis such that it states a facially plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

III. ANALYSIS

The Church Defendants move for judgment on the pleadings, arguing that the Complaint fails to state a claim upon which relief can be granted. The Church Defendants first contend that Plaintiff has not plausibly alleged an *in loco parentis* relationship between Plaintiff and the Church Defendants and that without such a relationship, Plaintiff’s claims are time barred. Next, the Church Defendants maintain that Plaintiff’s claims fail on the merits because McCarrick was acting outside the scope of his employment, and the Church Defendants are not liable for the criminal acts of their employees. Additionally, in the alternative, the Church Defendants seek to strike allegedly immaterial and impertinent information from the Complaint. The Court addresses each argument in turn.

A. The Child Victims Act and Extended Statute of Limitations

The Church Defendants argue that Plaintiff’s claims, which accrued decades ago, are time barred. They contend that while New Jersey’s Child Sexual Abuse Act (“CSAA”) provides for an

extended statute of limitations in certain cases, Plaintiff must establish an in loco parentis relationship between Plaintiff and the Church Defendants to avail himself of the CSAA.³ In opposition, Plaintiff clarifies that he does not assert any claim under the CSAA, but rather seeks to invoke the extended statute of limitations permitted by the Child Victim’s Act (“CVA”), which applies to a wide variety of claims without the need to demonstrate an in loco parentis relationship. The Court agrees with Plaintiff.

In 2019, the New Jersey Legislature extended the statute of limitations for child sexual assault claims and additionally revived expired civil claims for victims of childhood sexual abuse in New Jersey for a two-year period. N.J.S.A. §§ 2A:14-2a, 14-2b. The CVA provides, in relevant part, that

[e]very action at law for an injury resulting from the commission of sexual assault, any other crime of a sexual nature, a prohibited sexual act . . . or sexual abuse as defined in [the CSAA] against a minor under the age of 18 . . . shall be commenced within 37 years after the minor reaches the age of majority, or within seven years from the date of reasonable discovery of the injury and its causal relationship to the act, whichever date is later.

N.J.S.A. § 2A:14-2a. The CVA also states that

an action at law for an injury resulting from the commission of sexual assault, any other crime of a sexual nature, a prohibited sexual act . . . or sexual abuse . . . that occurred prior to [December 1, 2019], and which action would otherwise be barred through application of the statute of limitations, may be commenced within two years immediately following [December 1, 2019].

Id. § 2A:14-2b.

By its plain language, the CVA’s extended statute of limitations applies not just to claims brought under the CSAA, but also to all state law claims arising from injuries caused by sexual assault, including Plaintiff’s instant claims for negligence and vicarious liability against the Church Defendants. See Gavin v. Bd. of Educ., S. Orange-Maplewood Sch. Dist., No. 20-9191, 2021 WL 1050364, at *5 (D.N.J. Mar. 18, 2021) (holding that the CVA’s enhanced limitations period applied to the plaintiff’s common-law claim for negligent supervision against a school board arising from abuse a teacher inflicted on him as a minor). As Plaintiff does not assert a claim under the CSAA, the Court need not consider whether he has adequately pled an in loco parentis relationship. His instant claims for negligence and vicarious liability against the Church Defendants fall comfortably within the broad language of the CVA.

Consequently, the Complaint is not time barred. The Court must therefore proceed to the Church Defendant’s substantive attacks on the merits of Plaintiff’s claims.

³ The CSAA imposes liability for “sexual abuse,” and includes “a parent, resource family parent, guardian or other person standing in loco parentis who knowingly permits or acquiesces in sexual abuse by any other person also commits sexual abuse.” N.J.S.A. § 2A:61B-1(a)(1).

B. Vicarious Liability

The Church Defendants next argue that the Complaint must be dismissed in full because McCarrick was acting outside the scope of his employment and, therefore, the Church Defendants cannot be vicariously liable for his sexual assaults against Plaintiff. The Church Defendants also argue that they cannot be liable for the criminal actions of their employee, McCarrick.

“[T]he doctrine of respondeat superior recognizes a vicarious liability principle pursuant to which a master will be held liable in certain cases for the wrongful acts of his servants or employees.” Carter v. Reynolds, 175 N.J. 402, 408 (2003) (citation omitted). “The imposition of vicarious liability upon employers for the acts of an employee . . . is based upon the idea that the employee is the agent or, ‘arm’ of the employer.” G.A.-H. v. K.G.G., 238 N.J. 401, 415 (2019) (citing Davis v. Devereux Found., 209 N.J. 269, 287 (2012)). “To establish a master’s liability for the acts of his servant, a plaintiff must prove (1) that a master-servant relationship existed and (2) that the tortious act of the servant occurred within the scope of that employment.” Carter, 175 N.J. at 409.

However, the Restatement (Second) of Agency, § 219 (“Section 219”), recognizes exceptions to the rule that a tortious act must occur within the scope of employment:

- (1) A master is subject to liability for the torts of his servants committed while acting in the scope of their employment.
- (2) A master is not subject to liability for the torts of his servants acting outside the scope of their employment, unless:
 - (a) the master intended the conduct or the consequences, or
 - (b) the master was negligent or reckless, or
 - (c) the conduct violated a non-delegable duty of the master, or
 - (d) the servant purported to act or to speak on behalf of the principal and there was reliance upon apparent authority, or he was aided in accomplishing the tort by the existence of the agency relation.

Plaintiff argues that Section 219(2)(d) applies to his claims for vicarious liability because McCarrick was aided in accomplishing his intentional torts of sexual battery against Plaintiff by the existence of the agency relationship. Compl. ¶¶ 590, 594.

Generally, the New Jersey Supreme Court applies Section 219(2) agency principles under select circumstances⁴ in “a discrete effort to realize and effectuate the policies giving rise to those

⁴ For example, the New Jersey Supreme Court applies Section 219(2) to New Jersey Law Against Discrimination hostile work environment claims and New Jersey Conscientious Employee Protection Act claims. See Lehmann v. Toys ‘R’ Us, 132 N.J. 587 (1993); Abbamont v. Piscataway Twp. Bd. of Educ., 138 N.J. 405 (1994).

statutory schemes rather than an endorsement of applying § 219(2)(d) to all respondeat superior situations.” Siemens Bldg. Techs., Inc. v. PNC Fin. Servs. Grp., Inc., 226 F. App’x 192, 198 (3d Cir. 2007). However, in Hardwicke v. Am. Boychoir Sch., the New Jersey Supreme Court chose to apply the above section “to claims predicated on facts indicating child abuse.” 188 N.J. 69, 102 (2006). It noted that “the CSAA recognizes the vulnerability of children and demonstrates a legislative intent to protect them from victimization,” and thus “common-law claims based on child abuse are supported by the same compelling rationale.” Id. Given the policy rationales articulated in Hardwicke—and further embodied by the New Jersey Legislature’s broad expansion of the statute of limitations through the CVA—this Court presumes that the New Jersey Supreme Court would apply Section 219(2) to all claims arising from sexual assault or abuse of a minor, rather than only those arising under the CSAA.

The New Jersey Supreme Court has explained “that an employer could be held vicariously liable under [Section 219(2)(d)] even when the employee was acting outside the scope of his or her employment” if four predicates are satisfied:

- (1) the employer gave the authority to the supervisor to control the situation about which the plaintiff complains;
- (2) the supervisor exercised that authority;
- (3) the exercise of authority resulted in a violation of the LAD; and
- (4) the authority delegated by the employer to the supervisor aided the supervisor in injuring the plaintiff.

Hardwicke, 188 N.J. at 101-02 (quoting Lehmann, 132 N.J. at 620). Stated differently, “for an employee to be aided by his employment in committing a wrongful act, he must have taken advantage of some special mechanism afforded to him by his employment” or “the employment must have provided the employee a position of special authority making the victim particularly vulnerable to the wrongful act.” Yucis v. Sears Outlet Stores, LLC, 813 F. App’x 780, 786 (3d Cir. 2020).

In this case, the Court finds that Plaintiff sufficiently pled that McCarrick was in a position of special authority to make Plaintiff a victim, such that the Court will not dismiss the vicarious liability claim at this early stage. The Complaint alleges numerous Catholic Church policies surrounding the authoritative role of bishops and archbishops and the regulatory framework for reporting sexual abuse and any ensuing investigations. See, e.g., Compl. ¶¶ 267-68. While McCarrick knew Plaintiff before his roles as Bishop and Archbishop for the Church Defendants, Plaintiff alleges that the sexual misconduct did not begin until McCarrick assumed those roles. Id. ¶¶ 121, 129. The Complaint further alleges that as Bishop, McCarrick was the only authority during the relevant times who could trigger an investigation into sexual abuse of a minor, and that McCarrick frequently reminded Plaintiff that in his role as Bishop, he was directly in charge of the Church and the only person capable of addressing his own misconduct. Id. ¶¶ 271, 576, 585-89.

Given the Complaint’s well-pled allegations that McCarrick used his position in the Church to carry out assaults during his tenure with the Church Defendants, the Court finds that Plaintiff has adequately stated a claim for vicarious liability. The Motions are denied as to Count II.

C. Negligence Claims

Plaintiff's remaining causes of action against the Church Defendants assert negligence or gross negligence, negligent supervision and training, and negligent retention.⁵ The Church Defendants argue that they did not owe a duty to Plaintiff, and thus they cannot be liable under any negligence theory. The Court disagrees.

“To sustain a cause of action for negligence, a plaintiff must establish four elements: ‘(1) a duty of care, (2) a breach of that duty, (3) proximate cause, and (4) actual damages.’” Townsend v. Pierre, 221 N.J. 36, 51 (2015) (quoting Polzo v. Cnty. of Essex, 196 N.J. 569, 584 (2008)). “Negligence differs from gross negligence only in degree, not in kind.” W.H. v. R.C., No. 19-13538, 2020 WL 1041390, at *6 (D.N.J. Mar. 4, 2020) (quoting Monaghan v. Holy Trinity Church, 275 N.J. Super. 594, 599 (App. Div. 1994)). Plaintiff must therefore meet the same elements to establish either claim.

“Courts consider several factors when determining whether a duty of care is owed: fairness and public policy; foreseeability; the relationship between the parties; the nature of the conduct at issue; ‘and the ability to alter behavior to avoid injury to another.’” G.A.-H., 238 N.J. at 414 (quoting Robinson v. Vivirito, 217 N.J. 199, 208 (2014)). “‘Foreseeability of the risk of harm is the foundational element in the determination of whether a duty exists,’ but ‘the determination of the existence of a duty is [ultimately] a question of fairness and public policy.’” Id. (quoting J.S. v. R.T.H., 155 N.J. 330, 337, 339 (1998)).

In addition, New Jersey courts “expressly recognize the tort of negligent hiring or retention of an incompetent, unfit or dangerous employee and hold that one may be liable for injuries to third persons proximately caused by such negligence.” Di Cosala v. Kay, 91 N.J. 159, 174 (1982). Here too, the foreseeability of harm plays an integral role: Plaintiff must allege that the employer (a) “kn[ew] of its employee’s . . . dangerous attributes when it . . . retain[ed] its employee;” and (b) “should have reasonably foreseen the likelihood that the employee through his employment would come into contact with members of the public, such as the plaintiff, under circumstances that would create a risk of danger to such persons because of the employee’s qualities.” Id. at 177.⁶

Drawing all reasonable inferences in favor of Plaintiff, the Complaint adequately alleges that the Church Defendants owed Plaintiff a duty of care. Plaintiff’s claims for negligence assert that (a) the Church Defendants owed a duty to protect Plaintiff from foreseeable harm as a “vulnerable child participating in the programs and activities” offered by the Church Defendants to minors, see, e.g., Compl. ¶¶ 163, 177-78, and as a minor visiting the Church Defendants’ properties, including the Sea Girt beach house, the Metuchen rectory, and the Cathedral Basilica, see id. ¶¶ 637, 694, (b) the Church Defendants breached that duty by granting McCarrick access to children through his position as Bishop and Archbishop and by failing to supervise and

⁵ Given the significant factual and legal overlap pleaded for these respective claims, the Court considers all negligence claims together.

⁶ The same analysis applies to Plaintiff’s claim for negligent supervision. See, e.g., Doe 3 v. Bd. of Educ. of Vocational-Tech. Sch. Dist. in Cnty. of Gloucester, No. 17-13793, 2018 WL 3218692, at *3 (D.N.J. July 2, 2018).

negligently retaining McCarrick despite being on notice of his propensity to sexually abuse minors, *id.* ¶¶ 58, 667-68, 723-26; and (c) this breach caused Plaintiff to be abused and suffer severe harm, *id.* ¶ 160.

To establish the foreseeability of this harm, Plaintiff points to both the Church Defendants' general policies and facts specific to McCarrick. For example, the Complaint contains allegations that the Catholic Church and Church Defendants were aware of general incidents of abuse within the Catholic Church and operated under a general policy of concealment. *See, e.g., id.* ¶¶ 59, 269-70. Plaintiff also alleges that the Church Defendants were aware of McCarrick's propensity for sexual misconduct against minor boys when it retained and supervised him. *See, e.g., id.* ¶¶ 58, 66. These facts support the inference that the Church Defendants should have reasonably foreseen that, through his employment, McCarrick would have access to members of the public and participants in church programs—like Plaintiff—under circumstances that would create a risk of danger to Plaintiff because of McCarrick's qualities.

Therefore, the Court finds Plaintiff has adequately stated claims for negligence. Counts III to VIII may proceed against the Church Defendants.

D. Motion to Strike

The Church Defendants last argue that the Court should strike allegations from the Complaint related to immaterial and impertinent information regarding the church's history, McCarrick's personal history, church law, McCarrick's actions against third parties, and unrelated events that occurred decades after Plaintiff's abuse stopped. They argue that the interest of justice demands the Court to relax the deadline for filing a motion to strike because it will save judicial resources and it will prevent the dioceses from being prejudiced. The Court disagrees.

Federal Rule of Civil Procedure 12(f) permits a court to “strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” The court may act “on its own” or “on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.” Fed. R. Civ. P. 12(f). “Because of the drastic nature of the remedy, however, motions to strike are usually ‘viewed with disfavor’ and will generally ‘be denied unless the allegations have no possible relation to the controversy and may cause prejudice to one of the parties, or if the allegations confuse the issues.’” *Garlanger v. Verbeke*, 223 F. Supp. 2d 596, 609 (D.N.J. 2002) (quoting *Tonka Corp. v. Rose Art Indus., Inc.*, 836 F. Supp. 200, 217 (D.N.J. 1993)).

The Court finds that the Church Defendants' motions to strike are untimely. As motions to strike are viewed with disfavor, and because the Court finds there is no prejudice to the Church Defendants, the Court will not act sua sponte to strike any portions of the Complaint.

IV. CONCLUSION

For the reasons stated above, the Church Defendants' Motions for Judgment on the Pleadings or, in the alternative, to Strike Portions of the Complaint, ECF Nos. 33, 38, are **DENIED**.

SO ORDERED.

/s Madeline Cox Arleo
MADELINE COX ARLEO
UNITED STATES DISTRICT JUDGE

EXHIBIT “C”

RECORD IMPOUNDED

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2752-20

E.C., a minor, by his guardians,
D.C. and S.C., and D.C. and
S.C., individually,

Plaintiffs-Respondents,

v.

LEO INGLIMA-DONALDSON,
BRADLEY DONALDSON,

Defendants-Respondents,

APPROVED FOR PUBLICATION

December 16, 2021

APPELLATE DIVISION

and

BLOOMFIELD BOARD OF
EDUCATION,

Defendant-Appellant,

and

COUNTY OF ESSEX, and STATE
OF NEW JERSEY,

Defendants.

Argued October 19, 2021 – Decided December 16, 2021

Before Judges Fisher, Currier and DeAlmeida.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-1419-18.

Roshan D. Shah argued the cause for appellant (Anderson & Shah, LLC, attorneys; Roshan D. Shah, of counsel and on the briefs; Joseph E. Lanzot and Erin Donegan, on the briefs).

Robert R. Fuggi, Jr. argued the cause for respondent E.C., a minor by his guardians D.C. and S.C. (Fuggi Law Firm, PC, attorneys; Robert R. Fuggi, Jr., of counsel and on the brief; Michael R. Napolitano, on the brief).

The opinion of the court was delivered by

FISHER, P.J.A.D.

In 2019, the Legislature expanded public-entity civil liability for claims based on sexual assaults and other sexual misconduct by enacting N.J.S.A. 59:2-1.3(a), which disables in those instances the immunities provided by the Tort Claims Act.¹ In this action, plaintiff E.C. alleges he was the victim of the sexual misconduct of a teacher employed by the Bloomfield Board of Education. In appealing the partial denial of its summary judgment motion, the board argues that this new statute does not apply unless the public entity – and not just the public employee – has engaged, in the words of the statute, in "willful, wanton

¹ N.J.S.A. 59:1-1 to 12-3.

or grossly negligent" conduct. The board also argues that even if triggered, N.J.S.A. 59:2-1.3(a) deprives the public entity only of its Tort Claims Act immunities, and not two defenses under the Act – the verbal threshold, N.J.S.A. 59:9-2(d), and the declaration that a public entity "is not liable for the acts or omissions of a public employee constituting a crime . . .," N.J.S.A. 59:2-10 – that the board argues are not immunities and remain applicable. We agree the verbal threshold is not an immunity and applies here, but we otherwise reject the board's arguments and affirm the denial of summary judgment.

I

The board hired defendant Leo Inglima-Donaldson in May 2008 to begin working as a teacher at Bloomfield High School in September 2008. As part of the hiring process, the board conducted a criminal background check on Inglima-Donaldson; no red flags went up. During his employment, Inglima-Donaldson consistently received "excellent" teaching evaluations and was named head coach of the high school's cross-country track team in 2014.

In October 2016, law enforcement learned J.M., a sixteen-year-old, had disclosed to his therapist that he and Inglima-Donaldson had been sexually involved. Inglima-Donaldson was arrested, and the board suspended and ultimately terminated his employment. Inglima-Donaldson was indicted in June

2017 and charged with, among other things, aggravated sexual assault and endangering the welfare of J.M. and another minor, K.F.

During the investigation, law enforcement officials obtained statements from eight members of the track team, including plaintiff E.C., who was attending Bloomfield High School when the events involving J.M. and K.F. occurred. During the initial investigation, E.C. did not report anything to the prosecutor's office, but he later described several instances in which Inglima-Donaldson engaged in lewd and inappropriate conduct:

- in December 2015 or January 2016, Inglima-Donaldson was playing "hide and seek" with the team with the lights off and his pants down;
- in December 2015 or January 2016, Inglima-Donaldson drove E.C. home from practice and when they were alone, he put his hand on E.C.'s thigh and groin in a sexual manner;
- in late May or early June 2016, Inglima-Donaldson said after practice, "let's all get naked and go home";
- in late summer of 2016, Inglima-Donaldson and his partner brought the team members to a friend's house, where Inglima-Donaldson undressed and jumped in the pool, asking the student team members to join him;
- in October 2016, while on a team run, Inglima-Donaldson had the student team members change shorts in front of him; and

- in October 2016, Inqlima-Donaldson brought student team members back to his home after practice and had them play "naked twister."

More than a year after Inqlima-Donaldson's October 2016 arrest, E.C.'s parents filed this action for damages on his behalf and their own behalf. After a motion to dismiss, the completion of discovery, and a motion for summary judgment, only one claim remained²: plaintiffs' claim that the board should be held vicariously liable for Inqlima-Donaldson's actions. In denying summary judgment on that claim, the trial judge determined that: N.J.S.A. 59:2-1.3(a)(1) was triggered by Inqlima-Donaldson's wrongful acts; this triggering deprived the board of its Tort Claims Act immunities; and N.J.S.A. 59:2-10 and N.J.S.A. 59:9-2(d) are immunities and therefore do not apply to E.C.'s claims.

² Plaintiffs' complaint contained twenty-four counts. The board's motion to dismiss eliminated all but seven counts, which asserted: the board's negligent hiring, supervision, and retention of Inqlima-Donaldson; the board's vicarious liability for Inqlima-Donaldson's actions; negligent infliction of emotional distress on E.C.; negligent infliction of emotional distress on D.C. and S.C.; and loss of consortium. On the summary judgment motion's return date, plaintiffs' counsel advised of the withdrawal of the consortium claim. The judge granted summary judgment in the board's favor on all the other claims except the vicarious liability claim.

We granted leave to appeal to consider whether the trial judge accurately construed these statutes when he denied in part the board's summary judgment motion.

II

N.J.S.A. 59:2-1.3(a) was one part of a group of laws enacted to expand the rights of victims of sexual assaults and other sexual misconduct. Along with this amendment to the Tort Claims Act, the Legislature provided a significantly greater time period in which a minor victim of sexual misconduct may commence a civil action. See N.J.S.A. 2A:14-2(a); N.J.S.A. 2A:30B-6; N.J.S.A. 2A:61B-1. In addressing the fact that victims might also encounter sexual misconduct involving public entities and public employees, the Legislature disabled Tort Claim Act immunities in circumstances defined by N.J.S.A. 59:2-1.3(a) and eliminated the procedural notice-of-claim requirements in cases like this. See N.J.S.A. 59:8-3(b). We thus consider the meaning and scope of N.J.S.A. 59:2-1.3(a) as illuminated by the Legislature's stated desire to expand the rights of victims of sexual assaults and other sexual misconduct.

To further this intent, the Legislature enacted the statute in question,³ declaring that "[n]otwithstanding any provision of" the Tort Claims Act "to the

³ The Legislature initially enacted a version far less complex than that now in effect. The original version stated, in its entirety:

Notwithstanding any other provision of law to the contrary, including but not limited to the "New Jersey Tort Claims Act," N.J.S. 59:1-1 et seq., a public entity is liable in an action at law for an injury resulting from the commission of sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in [N.J.S.A. 2A:30B-2], or sexual abuse as defined in [N.J.S.A. 2A:61B-1].

[L. 2019, c. 120 (May 13, 2019).]

The amended version, L. 2019, c. 239 (Aug. 9, 2019), which is the version now in effect, significantly revamped the same concept in light of Governor Murphy's statement at the time that he signed the bill into law based on the Legislature's commitment "to introduce and swiftly pass a bill that will correct an error . . . relating to the liability of public entities." Governor's Statement Upon Signing Senate Committee Substitute for Senate Bill No. 477 (May 13, 2019). That error, according to the Governor's statement, was that the original version did not "clarify[] that public entities should be held to the same standard of liability that is applied to religious and nonprofit organizations." Ibid. As we will shortly demonstrate, this statement further reveals the error in the board's argument.

The new version, which included the "willful, wanton and grossly negligent" standard, also broke down its limitation of the New Jersey Tort Claims Act broadly described in the May 13, 2019 version into two parts – subsections (a) and (b) – and then broke subsection (a) into two parts – subsections (1) and (2) – that are quoted in the text above.

contrary," Tort Claims Act immunities would not apply to insulate from civil liability:

(1) . . . a public entity or public employee . . . as a result of a sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined [in N.J.S.A. 2A:30B-2], or sexual abuse as defined in [N.J.S.A. 2A:61B-1] being committed against a person which was caused by a willful, wanton or grossly negligent act of the public entity or public employee; and

(2) . . . a public entity . . . as a result of a sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in [N.J.S.A. 2A:30B-2], or sexual abuse as defined in [N.J.S.A. 2A:61B-1] being committed against a minor under the age of 18, which was caused by the negligent hiring, supervision or retention of any public employee.

The focus here is on subsection (1)⁴ and on the board's argument that the trial judge incorrectly interpreted this statute by holding that a public entity's immunities will be disabled whenever a public employee's conduct was willful,

⁴ As noted earlier, the trial judge granted summary judgment in favor of the board on plaintiffs' negligent hiring, supervision, and retention claims. Plaintiffs did not seek leave to appeal those parts of the order that granted summary judgment, and, therefore, the soundness of those determinations is not before us at this time but certainly not foreclosed from review once a final judgment is entered in the trial court. The same is true for all other interlocutory orders entered in the trial court; our discretionary allowance of an interlocutory appeal does not give any party either the right or obligation to file an appeal of other interlocutory orders. See Barr v. Bishop Rosen & Co., Inc., 442 N.J. Super. 599, 605 (App. Div. 2015).

wanton or grossly negligent. The board contends that for a public entity to lose its immunities under this provision, the public entity's conduct must also be willful, wanton or grossly negligent. The board argues this despite the statute's declaration that such conduct need be attributed only to "the public entity or public employee." N.J.S.A. 59:2-1.3(a)(1) (emphasis added). We find the board's logic to be faulty for a few reasons.

First, as we just noted, the statute's plain language expresses that the public entity's immunities will be disabled when the sexual offense was caused by the willful, wanton or grossly negligent conduct of the public entity "or" public employee. Ibid. In essence, the board would have us interpret this statute as if the conjunctive "and" appears in place of the disjunctive "or."⁵ We disagree and assume the Legislature meant what it said when it declared that the willful, wanton or grossly negligent conduct could be provided by either the public

⁵ Although the board has not made the argument, we are mindful there have been times when our courts have recognized a legislative intent to use "and" and "or" interchangeably. See Howard v. Hardwood's Restaurant Co., 25 N.J. 72, 88 (1957); Murphy v. Zink, 136 N.J.L. 235, 239 (Sup. Ct. 1947), aff'd o.b., 136 N.J.L. 635 (E. & A. 1948). This particular statute, however, was the subject of an almost immediate revision, see n.3, above, with, among other things, the phrase "the public entity or public employee" being inserted after a description of the type of claim that would trigger the statute. This strongly suggests to us that the Legislature was focused on the narrow task before it after enacting a version of this statute that was immediately recognized as in need of revision.

employee or the public entity. It is not our role to "rewrite a plainly-written enactment of the Legislature []or presume that the Legislature intended something other than that expressed by way of the plain language." O'Connell v. State, 171 N.J. 484, 488 (2002).

Second, the board invokes the tenet of statutory construction that "full effect should be given, if possible, to every word of a statute" and courts should "[]not assume that the Legislature used meaningless language." Gabin v. Skyline Cabana Club, 54 N.J. 550, 555 (1969); see also McCann v. Clerk of Jersey City, 167 N.J. 311, 321 (2001). The board argues the phrase "willful, wanton or grossly negligent" – if attributable to only the public entity or public employee – is rendered redundant here. Stated another way, the board argues that if the "willful, wanton or grossly negligent" requirement is satisfied when only a public employee has so acted, the phrase becomes unnecessary because the statute also depends on the commission of a sexual assault or any other crime of a sexual nature, all of which inherently carry that same or more egregious state of mind. By including the "willful, wanton or grossly negligent" phrase after describing the types of offenses that trigger N.J.S.A. 59:2-1.3(a)(1), the board argues the Legislature must have meant that the phrase would apply to both public entities and public employees.

It may be true the phrase "willful, wanton or grossly negligent" becomes unnecessary when a public employee is the sex offender, but subsection (1) encompasses much more than that particular instance. For example, subsection (1) would apply when a public entity is an occupier of real property – like a school – and provides woefully inadequate security, thereby allowing a predator to enter the school and commit a sexual crime against a student. In that circumstance, the acts or omissions of the public entity would have to be assessed through application of the willful, wanton or grossly negligent standard. And all the language of subsection (1) has meaning in that circumstance: the sex crime element would be provided by the outsider's unlawful act, and the plaintiff would then need to demonstrate the public entity's willful, wanton or grossly negligent conduct.

Friedman v. Martinez, 242 N.J. 450 (2020) provides another helpful example. If the public entity is the owner of a building that hires an outside contractor to provide janitorial services, and a janitor commits a sexual offense against an individual to whom the public entity owed a duty of care, subsection (1)'s requirement of a sex crime would have been met by the non-public-employee offender and the right of the public entity to immunity under subsection (1) would turn on whether its failure to protect its employees was

willful, wanton, or grossly negligent. In these examples, there may be no public employee at fault; the requirement urged by the board – that a plaintiff must show both the public entity and a public employee engaged in willful, wanton or grossly negligent conduct – would be insurmountable, and the disabling of Tort Claims Act immunities in that situation would be illusory. There is nothing in the statute or its legislative history to suggest the Legislature intended such an understanding of N.J.S.A. 59:2-1.3(a)(1).

In short, it may be true that when the sex offender is a public employee, parts of the statute prove unnecessary to the way in which the statute functions, but it does not logically follow that we should twist the meaning of the Legislature's otherwise unambiguous use of the disjunctive to make those sometime redundant words fit this one instance. As we have shown, there are other circumstances in which all the words and phrases have meaning and render perfectly sensible the Legislature's use of the word "or." If we were to adopt the board's suggested interpretation of N.J.S.A. 59:2-1.3(a)(1) so that it might more comfortably fit the public-employee-as-sex-offender situation, we would make more difficult if not insurmountable a plaintiff's pursuit of the remedy provided in N.J.S.A. 59:2-1.3(a)(1) in all other instances.

We reject the board's argument. By disabling Tort Claims Act immunities in sexual misconduct cases, the Legislature undoubtedly intended to make the plaintiff's pursuit of a remedy realistic rather than illusory.⁶

Third, as noted earlier, n.3, above, when the Governor signed into law the original abbreviated version of N.J.S.A. 59:2-1.3(a), he did so with the assurance from the bill's sponsors that it would introduce and swiftly pass a bill that would "correct an error" about public entity liability. The Governor viewed the May 2019 version of N.J.S.A. 59:2-1.3(a) as "inadvertently fail[ing] to establish a standard of proof for cases involving claims filed against public entities" and that the new bill would "correct this omission by clarifying that public entities should be held to the same standard of liability that is applied to religious and nonprofit organizations," with the added comment that "[a]pplying a different standard would be unjustified." Governor's Statement Upon Signing Senate Committee Substitute for Senate Bill No. 477 (May 13, 2019).

⁶ The Legislature understood that this provision would increase the liability of public entities. The Office of Legislative Services reported to the Legislature that the bill would "expose the State, school districts, and local units of government to civil claims" and that there would be an added fiscal impact for, among other things, "substantial settlements and judgments against affected governments." Assembly Budget Committee Statement with Committee Amendments, Assembly Bill No. 5392 (June 17, 2019).

N.J.S.A. 2A:53A-7 was amended in May 2019 with the other changes to the laws concerning the claims of sexual offense victims. The amendments to this statute, however, retained the existing declaration that immunity would not be granted to religious or nonprofit organizations for damage "caus[ed] . . . by a willful, wanton or grossly negligent act of commission or omission, including sexual assault [and] any other crime of a sexual nature." N.J.S.A. 2A:53A-7(c).⁷

In a slightly different way, this statute describes the state of mind and then describes the types of acts included rather than, as with N.J.S.A. 59:2-1.3(a)(1), where the wrongful sexual acts that disable Tort Claims Act immunity are delineated and then followed by a description of the same necessary state of mind. The way in which the Legislature described when a religious or nonprofit organization will not be immune more clearly demonstrates that the standard of care can be supplied by the sexual offense (as N.J.S.A. 2A:53A-7(c) states, the standard of care "includ[es]" the sexual offenses described) and does not need to stand alone or separate from the sexual offense. We are satisfied from the intent revealed by the Governor's statement and by N.J.S.A. 59:2-1.3(a)(1) itself, that when the wrongful state of mind is provided by the public employee's sexual

⁷ N.J.S.A. 2A:53A-7(c) was amended to include within this description of triggering sexual offenses, the prohibited sexual act defined in N.J.S.A. 2A:30B-2, and sexual abuse as defined in N.J.S.A. 2A:61B-1.

offense, there is no need for a plaintiff to establish that the public entity also engaged in willful, wanton or grossly negligent conduct.

Fourth, subsection (2) of N.J.S.A. 59:2-1.3(a) further reveals that the Legislature did not seek to create such a high bar to the disabling of Tort Claims Act immunities for public entities in subsection (1). When considering the disabling of immunities in a claim against a public entity – regardless of whether the crime was committed by a public employee – arising from the public entity's hiring, supervision or retention of any public employee, the Legislature imposed on the public entity only a simple negligence standard. This seems wholly inconsistent with the interpretation of subsection (1) offered by the board that both the involved public employee and the public entity must be found to have engaged in willful, wanton or grossly negligent conduct to disable their immunities. The Legislature did not impose that high standard on public entities in subsection (2), a fact that strongly suggests the Legislature had no intention to impose that standard in all situations to which subsection (1) would apply as the board's argument that "or" be viewed as "and" in subsection (1) would require.

In the final analysis, our decisions rests on the well-established precept that statutes must be interpreted to "discern and effectuate" the legislative intent.

Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592 (2012). This requires consideration of the statute's plain language, which is best understood when the words used are given "their ordinary meaning and significance." DiProspero v. Penn, 183 N.J. 477, 492 (2005). We conclude that while, in some instances, a portion of N.J.S.A. 59:2-1.3(a)(1) may be redundant, the entire provision – when understood in light of the various types of situations in which it will apply – sensibly and reasonably imposes an obligation on a plaintiff to show the "willful, wanton or grossly negligent" conduct of only the public entity "or" public employee, but not both – just as the statute expressly declares. We assume that the Legislature intended that courts would interpret the word "or" appearing in subsection (1) as meaning "or."

III

In permitting this interlocutory appeal we not only sought to determine the scope of N.J.S.A. 59:2-1.3(a)(1), but also whether N.J.S.A. 59:2-10 and N.J.S.A. 59:9-2(d) should be understood to be immunities, which would render them inapplicable, or merely as limitations of liability, which would still apply to claims like this.

The word "immunity" is not defined by the Tort Claims Act, and N.J.S.A. 59:2-1.3(a) does not specify what provisions of the Tort Claims Act it intended

to disable. N.J.S.A. 59:2-1.3(a)(1) states only that the "immunity from civil liability" provided by the Tort Claims Act would not apply in cases in which a sexual assault or other sexual crime formed the basis for the complaint. Nevertheless, we proceed by assuming the phrase "immunity from civil liability" was intended by the Legislature to mean exactly what it suggests: an "exemption from a duty [or] liability." Black's Law Dictionary 898 (11th Ed. 2019). This view comports not only with common usage and dictionary definitions but also with how the word "immunity" has been historically understood by courts. See McDonald v. City of Chicago, 561 U.S. 742, 813-15 (2010).

Since an immunity is an exemption from liability, and not a limitation of liability, we examine the two provisions of the Tort Claims Act that the board claims are not immunities. We conclude that N.J.S.A. 59:2-10 is an immunity but N.J.S.A. 59:9-2(d) is not.

The board's argument about N.J.S.A. 59:2-10 has no merit. The board relies heavily if not exclusively on the statute's label – "Public employee conduct – Limitation on entity liability" (emphasis added) – but this argument exalts form over substance. We are instead persuaded by the statute's text: "A public entity is not liable for the acts or omissions of a public employee constituting a crime, actual fraud, actual malice, or willful misconduct." Ibid. (emphasis

added). This statute does not express when a public entity will be liable for the wrongful conduct of its employee or to what extent; it states, without exception, that a public entity will not be held liable for, among other things, an employee's crimes. To hold that N.J.S.A. 59:2-10 remains applicable in those cases in which N.J.S.A. 59:2-1.3(a)(1) also applies would leave in place the very obstacle the Legislature intended to remove. We cannot imagine the Legislature intended such a result.

On the other hand, we agree with the board that N.J.S.A. 59:9-2(d) is not an immunity but only a limitation on liability since it states that "[n]o damages shall be awarded against a public entity or public employee for pain and suffering resulting from an injury" with the added proviso that

this limitation on the recovery of damages for pain and suffering shall not apply in cases of permanent loss of a bodily function, permanent disfigurement or dismemberment where the medical treatment expenses are in excess of \$3,600.00.

[Emphasis added.]

By its very language N.J.S.A. 59:9-2(d) does not purport to free a public entity from liability. It instead limits the damages that may be awarded once a public entity is held liable by precluding damages for pain and suffering unless certain circumstances are met. Because this verbal threshold only impacts the award

that may result from a claim and not whether the claim may be maintained against the public entity, we reject the argument that N.J.S.A. 59:9-2(d) is an immunity.

IV

The judge incorrectly determined that N.J.S.A. 59:9-2(d) is an immunity but he also alternatively found plaintiffs provided sufficient evidence of a permanent injury to hurdle the verbal threshold. That alternate disposition prompted the parties to argue here about how the verbal threshold impacts this case. They also argue whether the board can be held vicariously liable in these circumstances; the board claims the trial judge should have followed the reasoning of Davis v. Devereaux Found., 209 N.J. 269 (2012), and plaintiffs assert the judge properly applied the principles announced in Hardwicke v. Am. Boychoir Sch., 188 N.J. 69 (2006).

Although our order did not limit the scope of the arguments the parties could present in this interlocutory appeal, our intention in granting leave to appeal was to resolve the novel questions about the meaning and impact of N.J.S.A. 59:2-1.3(a) in cases like this and whether N.J.S.A. 59:2-10 and N.J.S.A. 59:9-2(d) are immunities or limitations of liability. Having resolved the statutory interpretation issues, we decline at this time to consider the

remaining issues about how our interpretation will impact this claim. In so holding, we acknowledge that the parties retain the right to seek appellate review of those other issues on entry of a final judgment in the trial court.

* * *

We lastly observe that the board's arguments were not entirely implausible and N.J.S.A. 59:2-1.3(a) could have been drawn with greater precision. We take comfort in the knowledge that if we have misconstrued its intent, the Legislature has the power to clarify its intent by amendatory enactments. See Plastic Surgery Ctr., PA. v. Malouf Chevrolet-Cadillac, Inc., 241 N.J. 112, 113 (2020). Nevertheless, having carefully considered the parties' arguments, we conclude that:

- N.J.S.A. 59:2-1.3(a)(1) was intended to deprive public entities of their Tort Claims Act immunities when the sexual misconduct suffered by the plaintiff was caused by a willful, wanton or grossly negligent act of the public entity or public employee, as the statute expressly states;
- N.J.S.A. 59:2-10 is a Tort Claims Act immunity that is disabled in cases like this by N.J.S.A. 59:2-1.3(a)(1); and
- N.J.S.A. 59:9-2(d) is not a Tort Claims Act immunity and remains applicable in cases like this.

We also exercise our discretion in choosing not to consider now either the viability of plaintiffs' claim that the board may be held vicariously liable or the impact of N.J.S.A. 59:9-2(d) on plaintiffs' claim; we leave those issues to further development in the trial court.

We affirm the denial of the board's summary judgment motion and remand for further proceedings. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION

EXHIBIT “D”

2018 N.J. S.N. 477

Enacted, May 13, 2019

Reporter

2019 N.J. ALS 120; 2019 N.J. Laws 120; 2019 N.J. Ch. 120; 2018 N.J. S.N. 477

NEW JERSEY ADVANCE LEGISLATIVE SERVICE > NEW JERSEY 218TH LEGISLATURE - SECOND REGULAR SESSION > P.L. 2019, CHAPTER 120 > SENATE, NO. 477

Synopsis

An Act concerning certain civil actions, and amending and supplementing various parts of the statutory law.

Text

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.N.J. Stat. § [2A:14-2](#) is amended to read as follows:

Actions for injury caused by wrongful act, appointment of guardian ad litem.

2A:14-2

- a. Except as otherwise provided by law, every action at law for an injury to the person caused by the wrongful act, neglect or default of any person within this State shall be commenced within two years next after the cause of any such action shall have accrued; except that an action by or on behalf of a minor that has accrued for medical malpractice for injuries sustained at birth shall be commenced prior to the minor's 13th birthday.
- b. In the event that an action by or on behalf of a minor that has accrued for medical malpractice for injuries sustained at birth is not commenced by the minor's parent or guardian prior to the minor's 12th birthday, the minor or a person 18 years of age or older designated by the minor to act on the minor's behalf may commence such an action. For this purpose, the minor or designated person may petition the court for the appointment of a guardian ad litem to act on the minor's behalf.

C.2A:14-2a Statute of limitations for action at law resulting from certain sexual crimes against a minor

2.a.

- (1) Every action at law for an injury resulting from the commission of sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of [P.L.1992, c.7 \(C.2A:30B-2\)](#), or sexual abuse as defined in section 1 of [P.L.1992, c.109 \(C.2A:61B-1\)](#) against a minor under the age of 18 that occurred prior to, on or after the effective date of [P.L.2019, c.120 \(C.2A:14-2a\)](#) et al.) shall be commenced within 37 years after the minor reaches the age of majority, or within seven years from the date of reasonable discovery of the injury and its causal relationship to the act, whichever date is later.
- (2) To the extent applicable, any action for an injury that occurred prior to the effective date of [P.L.2019, c.120 \(C.2A:14-2a\)](#) et al.) shall be subject to the provisions of subsection c. of section 1

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of P.L.1959, c.90 ([C.2A:53A-7](#)) and [P.L.2005, c.264](#) ([C.2A:53A-7.4](#) et seq.), as amended by [P.L.2019, c.120](#) ([C.2A:14-2a](#) et al.).

b.

- (1) Every action at law for an injury resulting from the commission of sexual assault or any other crime of a sexual nature against a person 18 years of age or older that occurred prior to, on or after the effective date of [P.L.2019, c.120](#) ([C.2A:14-2a](#) et al.) shall be commenced within seven years from the date of reasonable discovery of the injury and its causal relationship to the act.
- (2) To the extent applicable, any action for an injury that occurred prior to the effective date of [P.L.2019, c.120](#) ([C.2A:14-2a](#) et al.) shall be subject to the provisions of subsection c. of section 1 of P.L.1959, c.90 ([C.2A:53A-7](#)), as amended by [P.L.2019, c.120](#) ([C.2A:14-2a](#) et al.).

Nothing in this section is intended to preclude the court from finding that the statute of limitations was tolled in an action because of the plaintiff's mental state, physical or mental disability, duress by the defendant, or any other equitable grounds. Such a finding shall be made after a plenary hearing. The court may order an independent psychiatric evaluation of the plaintiff in order to assist in the determination as to whether the statute of limitations was tolled.

c.

- (1) Every action at law for an injury that is commenced pursuant to this section shall proceed on an individual basis, and not proceed on behalf of a class in a class action, due to the particular circumstances, source of injury and its discovery, and damages relating to each occurrence or occurrences of sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of [P.L.1992, c.7](#) ([C.2A:30B-2](#)), or sexual abuse as defined in section 1 of [P.L.1992, c.109](#) ([C.2A:61B-1](#)) against either a minor under the age of 18 or a person 18 years of age or older.
- (2) Any private, contractual arrangement intending to settle claims for occurrences described in paragraph (1) of this subsection on a class basis is against public policy and shall be void and unenforceable.

3. Section 6 of [P.L.1992, c.7](#) (N.J. Stat. § [2A:30B-6](#)) is amended to read as follows:

C.2A:30B-6 Commencement of action

6. In any action for injury based on [P.L.1992, c.7](#) ([C.2A:30B-1](#) et seq.), the cause of action shall accrue at the time of reasonable discovery of the injury and its causal relationship to the act. The action shall be subject to the statute of limitations set forth in section 2 of [P.L.2019, c.120](#) ([C.2A:14-2a](#)).

4. Section 1 of [P.L.1992, c.109](#) (N.J. Stat. § [2A:61B-1](#)) is amended to read as follows:

C.2A:61B-1 Definitions; accrual of actions; proceedings

1.a. As used in this act:

- (1) "Sexual abuse" means an act of sexual contact or sexual penetration between a child under the age of 18 years and an adult. A parent, resource family parent, guardian or other person standing in loco parentis who knowingly permits or acquiesces in sexual abuse by any other person also commits sexual abuse, except that it is an affirmative defense if the parent, resource family parent, guardian or other person standing in loco parentis was subjected to, or placed in, reasonable fear of physical or sexual abuse by the other person so as to undermine the person's ability to protect the child.
- (2) "Sexual contact" means an intentional touching by the victim or actor, either directly or through clothing, of the victim's or actor's intimate parts for the purpose of sexually arousing or sexually

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gratifying the actor. Sexual contact of the adult with himself must be in view of the victim whom the adult knows to be present.

- (3) "Sexual penetration" means vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the adult or upon the adult's instruction.
 - (4) "Intimate parts" means the following body parts: sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person.
 - (5) "Injury or illness" includes psychological injury or illness, whether or not accompanied by physical injury or illness.
- b. In any civil action for injury or illness based on sexual abuse, the cause of action shall accrue at the time of reasonable discovery of the injury and its causal relationship to the act of sexual abuse. Any such action shall be subject to the statute of limitations set forth in section 2 of [P.L.2019, c.120 \(C.2A:14-2a\)](#).
- c. (Deleted by amendment, [P.L.2019, c.120](#))
- d.
- (1) Evidence of the victim's previous sexual conduct shall not be admitted nor reference made to it in the presence of a jury except as provided in this subsection. When the defendant seeks to admit such evidence for any purpose, the defendant must apply for an order of the court before the trial or preliminary hearing, except that the court may allow the motion to be made during trial if the court determines that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence. After the application is made, the court shall conduct a hearing in camera to determine the admissibility of the evidence. If the court finds that evidence offered by the defendant regarding the sexual conduct of the victim is relevant and that the probative value of the evidence offered is not outweighed by its collateral nature or by the probability that its admission will create undue prejudice, confusion of the issues, or unwarranted invasion of the privacy of the victim, the court shall enter an order setting forth with specificity what evidence may be introduced and the nature of the questions which shall be permitted, and the reasons why the court finds that such evidence satisfies the standards contained in this section. The defendant may then offer evidence under the order of the court.
 - (2) In the absence of clear and convincing proof to the contrary, evidence of the victim's sexual conduct occurring more than one year before the date of the offense charged is presumed to be inadmissible under this section.
 - (3) Evidence of the victim's previous sexual conduct shall not be considered relevant unless it is material to proving that the source of semen, pregnancy or disease is a person other than the defendant. For the purposes of this subsection, "sexual conduct" shall mean any conduct or behavior relating to sexual activities of the victim, including but not limited to previous or subsequent experience of sexual penetration or sexual contact, use of contraceptives, living arrangement and life style.
- e.
- (1) The court may, on motion and after conducting a hearing in camera, order the taking of the testimony of a victim on closed circuit television at the trial, out of the view of the jury, defendant, or spectators upon making findings as provided in paragraph (2) of this subsection.
 - (2) An order under this section may be made only if the court finds that the victim is 16 years of age or younger and that there is a substantial likelihood that the victim would suffer severe emotional or mental distress if required to testify in open court. The order shall be specific as to whether the victim will testify outside the presence of spectators, the defendant, the jury, or all of them and shall be based on specific findings relating to the impact of the presence of each.

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- (3) A motion seeking closed circuit testimony under paragraph (1) of this subsection may be filed by:
- (a) The victim or the victim's attorney, parent or legal guardian;
 - (b) The defendant or the defendant's counsel; or
 - (c) The trial judge on the judge's own motion.
- (4) The defendant's counsel shall be present at the taking of testimony in camera. If the defendant is not present, he and his attorney shall be able to confer privately with each other during the testimony by a separate audio system.
- (5) If testimony is taken on closed circuit television pursuant to the provisions of this act, a stenographic recording of that testimony shall also be required. A typewritten transcript of that testimony shall be included in the record on appeal. The closed circuit testimony itself shall not constitute part of the record on appeal except on motion for good cause shown.

f.

- (1) The name, address, and identity of a victim or a defendant shall not appear on the complaint or any other public record as defined in P.L.1963, c.73 ([C.47:1A-1](#) et seq.). In their place initials or a fictitious name shall appear.
 - (2) Any report, statement, photograph, court document, complaint or any other public record which states the name, address and identity of a victim shall be confidential and unavailable to the public.
 - (3) The information described in this subsection shall remain confidential and unavailable to the public unless the victim consents to the disclosure or if the court, after a hearing, determines that good cause exists for the disclosure. The hearing shall be held after notice has been made to the victim and to the defendant and the defendant's counsel.
 - (4) Nothing contained herein shall prohibit the court from imposing further restrictions with regard to the disclosure of the name, address, and identity of the victim when it deems it necessary to prevent trauma or stigma to the victim.
- g. In accordance with [R.5:3-2](#) of the Rules Governing the Courts of the State of New Jersey, the court may, on its own or a party's motion, direct that any proceeding or portion of a proceeding involving a victim sixteen years of age or younger be conducted in camera.
- h. A plaintiff who prevails in a civil action pursuant to this act shall be awarded damages in the amount of \$10,000, plus reasonable attorney's fees, or actual damages, whichever is greater. Actual damages shall consist of compensatory and punitive damages and costs of suit, including reasonable attorney's fees. Compensatory damages may include, but are not limited to, damages for pain and suffering, medical expenses, emotional trauma, diminished childhood, diminished enjoyment of life, costs of counseling, and lost wages.

5. Section 1 of P.L.1959, c.90 (N.J. Stat. § [2A:53A-7](#)) is amended to read as follows:

C.2A:53A-7 Immunity from liability for negligence

- 1.a. No nonprofit corporation, society or association organized exclusively for religious, charitable or educational purposes or its trustees, directors, officers, employees, agents, servants or volunteers shall, except as is hereinafter set forth, be liable to respond in damages to any person who shall suffer damage from the negligence of any agent or servant of such corporation, society or association, where such person is a beneficiary, to whatever degree, of the works of such nonprofit corporation, society or association; provided, however, that such immunity from liability shall not extend to any person who shall suffer damage from the negligence of such corporation, society, or association or of its agents or servants where such person is one unconcerned in and unrelated to and outside of the benefactions of such corporation, society or association.

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Nothing in this subsection shall be deemed to grant immunity to any health care provider, in the practice of his profession, who is a compensated employee, agent or servant of any nonprofit corporation, society or association organized exclusively for religious, charitable or educational purposes.

- b. No nonprofit corporation, society or association organized exclusively for hospital purposes or its trustees, directors, officers or volunteers shall, except as is hereinafter set forth, be liable to respond in damages to any person who shall suffer damage from the negligence of any agent or servant of such corporation, society or association, where such person is a beneficiary, to whatever degree, of the works of such nonprofit corporation, society or association; provided, however, that such immunity from liability shall not extend to any person who shall suffer damage from the negligence of such corporation, society, or association or of its agents or servants where such person is one unconcerned in and unrelated to and outside of the benefactions of such corporation, society or association; but nothing herein contained shall be deemed to exempt the agent, employee or servant individually from their liability for any such negligence.
- c. Nothing in this section shall be deemed to grant immunity to: (1) any nonprofit corporation, society or association organized exclusively for religious, charitable, educational or hospital purposes, or its trustee, director, officer, employee, agent, servant or volunteer, causing damage by a willful, wanton or grossly negligent act of commission or omission, including sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of [P.L.1992, c.7 \(C.2A:30B-2\)](#), or sexual abuse as defined in section 1 of [P.L.1992, c.109 \(C.2A:61B-1\)](#); (2) any trustee, director, officer, employee, agent, servant or volunteer causing damage as the result of the negligent operation of a motor vehicle; or (3) an independent contractor of a nonprofit corporation, society or association organized exclusively for religious, charitable, educational or hospital purposes.

6. Section 2 of [P.L.2005, c.264](#) (N.J. Stat. § [2A:53A-7.5](#)) is amended to read as follows:

C.2A:53A-7.5 Application of act

- 2.a. The provisions of this supplementary act, [P.L.2005, c.264 \(C.2A:53A-7.4](#) et seq.), shall apply prospectively and also shall be applicable to all civil actions for which the statute of limitations has not expired as of the effective date of this act, and subsequently, not expired as of the effective date of [P.L.2019, c.120 \(C.2A:14-2a](#) et al.), including the statute of limitations set forth in N.J.S.[2A:14-2](#), section 2 of [P.L.2019, c.120 \(C.2A:14-2a\)](#), section 1 of P.L.1964, c.214 ([C.2A:14-2.1](#)), or any other statute. These applicable actions include but are not limited to matters filed with a court that have not yet been dismissed or finally adjudicated as of the effective date of this act or [P.L.2019, c.120 \(C.2A:14-2a](#) et al.).
- b. Notwithstanding the provisions of subsection a. of this section, the provisions of [P.L.2005, c.264 \(C.2A:53A-7.4](#) et seq.) shall apply to all civil actions for an injury resulting from an act that occurred prior to the effective date of [P.L.2019, c.120 \(C.2A:14-2a](#) et al.), and these actions shall be subject to the statute of limitations set forth in section 2 of [P.L.2019, c.120 \(C.2A:14-2a\)](#).

C.59:2-1.3 Liability for public entity

- 7. Notwithstanding any other provision of law to the contrary, including but not limited to the "New Jersey Tort Claims Act," N.J.S.[59:1-1](#) et seq., a public entity is liable in an action at law for an injury resulting from the commission of sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of [P.L.1992, c.7 \(C.2A:30B-2\)](#), or sexual abuse as defined in section 1 of [P.L.1992, c.109 \(C.2A:61B-1\)](#).

8. N.J.S.N.J. Stat. § [59:8-3](#) is amended to read as follows:

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Claims for damages against public entities; inapplicability.**59:8-3**

Claims for damages against public entities. a. Except as otherwise provided in this section, no action shall be brought against a public entity or public employee under this act unless the claim upon which it is based shall have been presented in accordance with the procedure set forth in this chapter.

b. The procedural requirements of this chapter shall not apply to an action at law for an injury resulting from the commission of sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of [P.L.1992, c.7 \(C.2A:30B-2\)](#), or sexual abuse as defined in section 1 of [P.L.1992, c.109 \(C.2A:61B-1\)](#).

C.2A:14-2b Commencement of actions regardless of statute of limitations

9.a. Notwithstanding the statute of limitations provisions of N.J.S.[2A:14-2](#), section 2 of [P.L.2019, c.120 \(C.2A:14-2a\)](#), section 1 of P.L.1964, c.214 ([C.2A:14-2.1](#)), or any other statute, an action at law for an injury resulting from the commission of sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of [P.L.1992, c.7 \(C.2A:30B-2\)](#), or sexual abuse as defined in section 1 of [P.L.1992, c.109 \(C.2A:61B-1\)](#), that occurred prior to the effective date of [P.L.2019, c.120 \(C.2A:14-2a](#) et al.), and which action would otherwise be barred through application of the statute of limitations, may be commenced within two years immediately following the effective date.

b. To the extent applicable, any action brought during the two-year period pursuant to subsection a. of this section shall be subject to the provisions of subsection c. of section 1 of P.L.1959, c.90 ([C.2A:53A-7](#)) and [P.L.2005, c.264 \(C.2A:53A-7.4](#) et seq.), as amended by [P.L.2019, c.120 \(C.2A:14-2a](#) et al.).

c.

(1) Every action at law for an injury that is commenced pursuant to this section shall proceed on an individual basis, and not proceed on behalf of a class in a class action, due to the particular circumstances, source of injury and its discovery, and damages relating to each occurrence or occurrences of sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of [P.L.1992, c.7 \(C.2A:30B-2\)](#), or sexual abuse as defined in section 1 of [P.L.1992, c.109 \(C.2A:61B-1\)](#) against either a minor under the age of 18 or a person 18 years of age or older.

(2) Any private, contractual arrangement intending to settle claims for occurrences described in paragraph (1) of this subsection on a class basis is against public policy and shall be void and unenforceable.

C.2A:14-2c Effective date

10. The provisions of this amendatory and supplementary act, [P.L.2019, c.120 \(C.2A:14-2a](#) et al.), shall take effect on December 1, 2019. These provisions shall be inapplicable to any civil action governed solely by the statute of limitations of another jurisdiction.

History

Approved by the Governor May 13, 2019

Effective date: December 1, 2019

2018 N.J. S.N. 477

Sponsor

Vitale

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EXHIBIT “E”

[N.J. Stat. § 2A:14-2b](#)

This section is current through New Jersey 219th Second Annual Session, L. 2021, c. 272, and J.R. 8

LexisNexis® New Jersey Annotated Statutes > Title 2A. Administration of Civil and Criminal Justice (Subts. 1 — 12) > Subtitle 3. Limitations; Adverse Possession (Ch. 14) > Chapter 14. Limitations; Adverse Possession (Arts. 1 — 5) > Article 1. Various Actions (§§ 2A:14-1 — 2A:14-15)

§ 2A:14-2b. Commencement of actions regardless of statute of limitations

- a. Notwithstanding the statute of limitations provisions of [N.J.S.2A:14-2](#), section 2 of [P.L.2019, c.120 \(C.2A:14-2a\)](#), section 1 of P.L.1964, c.214 ([C.2A:14-2.1](#)), or any other statute, an action at law for an injury resulting from the commission of sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of [P.L.1992, c.7 \(C.2A:30B-2\)](#), or sexual abuse as defined in section 1 of [P.L.1992, c.109 \(C.2A:61B-1\)](#), that occurred prior to the effective date [Dec. 1, 2019] of [P.L.2019, c.120 \(C.2A:14-2a](#) et al.), and which action would otherwise be barred through application of the statute of limitations, may be commenced within two years immediately following the effective date.
- b. To the extent applicable, any action brought during the two-year period pursuant to subsection a. of this section shall be subject to the provisions of subsection c. of section 1 of P.L.1959, c.90 ([C.2A:53A-7](#)) and [P.L.2005, c.264 \(C.2A:53A-7.4](#) et seq.), as amended by [P.L.2019, c.120 \(C.2A:14-2a](#) et al.).
- c.
- (1) Every action at law for an injury that is commenced pursuant to this section shall proceed on an individual basis, and not proceed on behalf of a class in a class action, due to the particular circumstances, source of injury and its discovery, and damages relating to each occurrence or occurrences of sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of [P.L.1992, c.7 \(C.2A:30B-2\)](#), or sexual abuse as defined in section 1 of [P.L.1992, c.109 \(C.2A:61B-1\)](#) against either a minor under the age of 18 or a person 18 years of age or older.
- (2) Any private, contractual arrangement intending to settle claims for occurrences described in paragraph (1) of this subsection on a class basis is against public policy and shall be void and unenforceable.

History

L. [2019, c. 120](#), § 9, effective December 1, 2019.

N.J. Stat. § 2A:14-2b

Annotations

Notes

Publisher's Notes

The bracketed material was added by the Publisher to provide a reference.

Effective Dates

Section 10 of L. [2019, c. 120](#) provides: "The provisions of this amendatory and supplementary act, [P.L.2019, c.120](#) ([C.2A:14-2a](#) et al.), shall take effect on December 1, 2019. These provisions shall be inapplicable to any civil action governed solely by the statute of limitations of another jurisdiction." Chapter 120, L. 2019 was approved on May 13, 2019.

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EXHIBIT “F”

**GOVERNOR'S STATEMENT UPON SIGNING
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 477**

Today I am signing Senate Committee Substitute for Senate Bill No. 477, which significantly extends the statute of limitations for sexual abuse claims and creates a two-year filing window for sexual abuse claims that would otherwise be time-barred by the statute of limitations that goes into effect upon the bill's enactment. I recognize that this issue has evoked strong passions on both sides, as supporters of the bill rightly note that it greatly increases the ability of victims of sexual abuse to pursue justice through the court system. Opponents argue that by exposing religious and nonprofit organizations to potentially massive financial liabilities, the bill may have the unintended effect of inhibiting these organizations from providing the services that many vulnerable New Jerseyans rely on. I take these concerns seriously, but I cannot deny victims the ability to seek redress in court for sexual abuse that often leaves trauma lasting a lifetime. I am confident that our judicial system is the right forum to assess these claims fairly and impartially.

I am also signing the bill based on a commitment from the bill's sponsors to introduce and swiftly pass a bill that will correct an error in the section of the bill relating to the liability of public entities. This section inadvertently fails to establish a standard of proof for cases involving claims filed against public entities. If unaddressed, the lack of clarity would create uncertainty and likely lead to additional litigation. I have received assurances that the Legislature will correct this omission by clarifying that public entities should be held to the same standard of liability that is applied to religious and nonprofit organizations. Applying a different standard would be unjustified.

I thank the bill's sponsors for their commitment to tackling this issue, as well as the advocates on both sides for their activism and engagement. I continue to believe that vigorous debate based on policy -- even when dealing with sensitive and controversial issues -- makes our State's democracy stronger.

Date: May 13, 2019

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor

EXHIBIT “G”

[N.J. Stat. § 59:2-1.3](#)

This section is current through New Jersey 219th Second Annual Session, L. 2021, c. 188 (except c. 185), and J.R.

3

LexisNexis® New Jersey Annotated Statutes > Title 59. Claims Against Public Entities (Subts. 1 — 3) > Subtitle 1. New Jersey Tort Claims Act (Chs. 1 — 12) > Chapter 2. Immunity and Liability; Public Entity (§§ 59:2-1 — 59:2-11)

§ 59:2-1.3. Liability for public entity, employee

a. Notwithstanding any provision of the “New Jersey Tort Claims Act,” [N.J.S.59:1-1](#) et seq., to the contrary:

(1) immunity from civil liability granted by that act to a public entity or public employee shall not apply to an action at law for damages as a result of a sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of [P.L.1992, c.7 \(C.2A:30B-2\)](#), or sexual abuse as defined in section 1 of [P.L.1992, c.109 \(C.2A:61B-1\)](#) being committed against a person, which was caused by a willful, wanton or grossly negligent act of the public entity or public employee; and

(2) immunity from civil liability granted by that act to a public entity shall not apply to an action at law for damages as a result of a sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of [P.L.1992, c.7 \(C.2A:30B-2\)](#), or sexual abuse as defined in section 1 of [P.L.1992, c.109 \(C.2A:61B-1\)](#) being committed against a minor under the age of 18, which was caused by the negligent hiring, supervision or retention of any public employee.

b. Every action at law involving a public entity or public employee as described in subsection a. of this section shall be subject to the statute of limitations set forth in section 2 of [P.L.2019, c.120 \(C.2A:14-2a\)](#), and may be brought during the two-year period set forth in subsection a. of section 9 of [P.L.2019, c.120 \(C.2A:14-2b\)](#), notwithstanding that the action would otherwise be barred through application of the statute of limitations.

History

L. [2019, c. 120](#), § 7, effective December 1, 2019; amended by [2019, c. 239](#), § 1, effective December 1, 2019.

Annotations

Notes

Effective Date Notes

Section 2 of L. [2019, c. 239](#) provides: “This act shall take effect on December 1, 2019, the same day that [P.L.2019, c.120 \(C.2A:14-2a\)](#) et al.) takes effect, and shall apply to any cause of action filed on or after that date, as well as any cause of action filed prior to that effective date that has not yet been finally adjudicated or dismissed by a court as of that effective date.” Chapter 239, L. 2019, was approved on Aug. 9, 2019.

Amendment Notes

2019 amendment, by Chapter 239 rewrote the section.

N.J. Stat. § 59:2-1.3

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