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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	**SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY DOCKET NO.: BER-L-5692-21** Civil Action **ORDER**

This matter having come before the Court on the motion of Inglesino, Webster, Wyciskala & Taylor, LLC, on behalf of Defendant, Teaneck Board of Education (Handel T. Destinvil, Esq., appearing), on notice to counsel for Plaintiff and all other defendants who have appeared in this case, for an Order Dismissing the Complaint In Lieu of Filing an Answer for Plaintiff's Failure to State a Claim, and the Court having considered the matter, and for good cause being shown:

IT IS on this 15th day of March, 2021~~1~~2,

ORDERED as follows:

1. Defendant, Teaneck Board of Education's Motion to Dismiss is hereby DENIED.

~~**GRANTED**~~.

2. Counts I, V, VI, and VIII of Plaintiff's November 24, 2021 First Amended Complaint are hereby **DISMISSED WITH PREJUDICE** as against Defendant, Teaneck Board of Education. DENIED

3. As to all active parties represented by counsel of record who are required to file electronically, electronic service of the present Order via eCourts **shall** have the same force and effect as if served in the original paper format, pursuant to N.J.R. 1:32-2A(b).

4. A copy of this Order **shall** be served upon any other remaining parties and counsel of record within 7 days of the date hereof, if not registered in eCourts

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HONORABLE Avis Bishop-Thompson , J.S.C.

☒ Opposed
☐ Unopposed

ORAL ARGUMENT HELD

RIDER attached

LACLAIR DONALD VS TEANECK PUBLIC SCHOO LS

Docket No. BER-L-5692-21

RIDER TO THE ORDER DATED MARCH 15, 2022

Before the court is defendant Teaneck Board of Education's (Board)[1] motion to dismiss the following claims: negligence (count one), reckless disregard infliction of emotional distress (count five), breach of fiduciary duty (count six), and Law Against Discrimination (LAD) (count seven) of plaintiff Donald LaClair's, complaint pursuant to Rule 4:6-2(e).[2] Opposition and reply were reviewed. For the following reasons, the Board's motion to dismiss is **DENIED**.

I. Factual Background and Procedural History

This case arises from the alleged child sexual abuse of LaClair by his former teacher, Rhetta Maide a/k/a Rhetta Ackerman (Ackerman). LeClair started attending Benjamin Franklin Middle School (BFMS) in 1974 when he was fourteen years old. He attended BFMS from approximately 1974 to 1976. Ackerman was LaClair's seventh-grade teacher at BFMS. LaClair alleges that Ackerman sexually abused him from 1974 to 1976. LaClair further alleges that the sexual abuse occurred at various locations, including but not limited to, school premises, public parking lots, and Ackerman's home in Queens, New York and Fort Lee, New Jersey. LaClair avers teachers assigned to BFMS and Teaneck High School (THS) were aware of the continuing relationship between Ackerman and LaClair.

LaClair filed a ten-count complaint against Teaneck Public Schools, BFMS and Ackerman on August 26, 2021, asserting claims for negligence, negligent supervision, negligent

[1] The Board was improperly plead as Teaneck Board of Education d/b/a Teaneck Public Schools and d/b/a Benjamin Franklin Middle School.

[2] In the Board's reply, the arguments related to LaClair's claims for breach of fiduciary duty (count six), and LAD (count seven) were withdrawn.

hiring and retention, gross negligence, intentional infliction of emotional distress, breach of fiduciary duty, sexually hostile environment and discrimination in violation of the LAD, and punitive damages. On November 24, 2021, LaClair filed an amended complaint against the Board, Teaneck Public Schools, BFMS, and Ackerman alleging negligence, negligence supervision, negligent hiring and retention, gross negligence, reckless regard infliction of emotional distress, breach of fiduciary duty, sexually hostile environment and discrimination in violation of the LAD, and punitive damages. Ackerman filed an answer to the amended complaint denying liability on January 11, 2021. The Board filed the instant motion in lieu of an answer on December 27, 2021. Discovery is set to conclude on March 1, 2023.

II. Legal Analysis

A. R. 4:6-2(e) Standard

Under New Jersey's Rules of Practice, Rule 4:6-2(e) allows a party to move to dismiss a complaint if the complaint fails to plead a claim upon which relief can be granted. Such motions, however, should be granted in "only the rarest of instances." Banco Popular N. Am. v. Gandi, 184 N.J. 161, 165 (2005). In reviewing a motion to dismiss, courts are constrained to an examination of the legal sufficiency of the facts alleged on the face of the complaint. R. 4:6-2(e). The New Jersey Supreme Court has mandated that courts must "search the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim." Printing Mart v. Sharp Electronics Corp., 116 N.J. 739 (1989) (citing DiCristofaro v. Laurel Grove Memorial Park, 43 N.J. Super. 244, 252 (App. Div. 1957)). Under this analysis, all facts, reasonable inferences, and implications must be considered in favor of the pleader. Spring Motors Distributors, Inc. v. Ford Motor Co., 191 N.J. Super. 22, 29-30 (App. Div. 1983). So long as the pleading fairly apprises the adverse party of

all claims and issues, the motion to dismiss should be denied. Id.

However, if the complaint states no basis for relief, and discovery would not provide such basis, dismissal is appropriate. Energy Rec. v. Dept. of Env. Prot., 320 N.J. Super. 59, 64 (App. Div. 1999). If a defense raised pursuant to Rule 4:6-2 is asserted, it must occur prior to the party's responsive pleading. Allstate N.J. Ins. Co. v. Cherry Hill Pain & Rehab. Inst., 389 N.J. Super. 130, 137 (App. Div. 2006); Pressler, *Current N.J. Court Rules*, comment 1 on *R.* 4:6-2 (2007).

B. Count One – Negligence

The Board argues that LaClair's negligence claims is not recognized under N.J.S.A. 59:2-1.3(a). N.J.S.A. 59:2-1.3 governs the liability for public entities and states that "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). See N.J.S.A. 59:2-1.3.

The Board next argues that N.J.S.A. 59:2-1.3 provides a statutory cause of action under the Tort Claims Act (TCA). However, the statutory exception to the two-year statute of limitations only applies where a party alleges 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. The Board contends that LaClair has asserted a negligence claim between 1974 through 1976 for which the Legislature has not expressly amended the two-year statute of limitations.

In opposition, LeClair asserts that the Board as a public entity can be held vicariously liable for intentional acts committed by its public employees, in limited circumstances where remedial legislation and important public policy concerns are involved. See Restatement (2nd) of Agency § 219(2)(d). Moreover, it is unequivocal that an institution can be held vicariously liable for the intentional actions of its employee in cases alleging sexual abuse. See Hardwick v. American Boychoir School, 188 N.J. 69, 902 A.2d 900 (2006).

LaClair next argues that the social and public policy of Hardwick and Restatement (2nd) of Agency § 219(2)(d) concerns have been emphasized and reaffirmed in the recent amendments to N.J.S.A. 2A:14-2a and N.J.S.A. 2A:14-2b. LaClair also relies on E.S. v. Brunswick Inv. Ltd., 2021 N.J. Super. LEXIS 2193 (App. Div. 2021) for the application of agency principles in limited circumstances. LaClair points to Doe v. The Roman Catholic Archdiocese of Newark, et al., 2:20-cv-13623-MCA-LDW (U.S. Dist. Sept. 30, 2021) wherein the District Court noted the New Jersey Supreme Court explanation 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 employer if the four predicates in Hardwick are satisfied. A claim for common-law vicarious liability against the defendant employer, the Board, for the child sex abuse conduct by its employee-teacher, Ackerman, who stood in loco parentis to the plaintiff-student has been properly asserted.

Likewsie, the Board's claim of immunity under TCA has been disabled by the recent legislation. See E.C. v. Leo Inglima-Donaldson, 2021 N.J. Super. LEXIS 144 (App. Div. 20201) (holding N.J.S.A. is a limitation on liability and not an immunity.).

In reply, the Board reiterates that LaClair's negligence cause of action is expressly at odds with the expressed statutory purpose of the recent amendments to the TCA, or in the alternative, redundant. The Board further argues that Hardwicke and N.J.S.A. 59:2-1.3 stand for the

proposition that public entities are not liable for simple negligence under the recent statutory amendments to the TCA.

The Board contends that LaClair has failed to allege that he incurred any medical expenses above $1,000 as a result of the alleged intentional infliction of emotional distress, the court should enter an order, pursuant to N.J.S.A. 59:9-2(d), precluding plaintiff from seeking any non-economic damages from the Board for his alleged emotional distress. See N.J.S.A. 59:9-2(d); see also Lascurain v. City of Newark, 349 N.J. Super. 251, 281 (App. Div. 2002).

The court rejects defendant's argument. N.J.S.A. 59:2-1.3(a) expanded the rights of sexual assault victims and sexual abuse or misconduct. This amendment to the TCA provided a significantly greater period in which a minor victim of sexual misconduct may file suit and also disabled TCA immunities. See N.J.S.A. 59:2-1.3(a).

The Legislature clearly expressed its intent by stating, "[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 [*6] 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.

It also bears noting that N.J.S.A. 2A:53A-7 describes a state of mind and then described the types of acts included. On the other hand, N.J.S.A. 59:2-1.3(a)(1) provides a description of

the same state of mind where the wrongful sex acts disable the TCA. Accordingly, when the wrongful state of mind is provided by the public employee's sexual offense, there is no need for a LaClair to establish that the public entity also engaged in willful, wanton or grossly negligent conduct.

C. Count Five – Reckless Disregard Infliction of Emotional Distress

LaClair alleges that he suffered emotional distress in as a result of the alleged sexual abuse. See Amended Complaint, ¶64-75.

Defendant argues that LaClair's emotional distress claim is time-barred "as there is no reasonable reading of N.J.S.A. 59:2-1.3 whereby the Legislative intended for the narrow statutory exemption to apply to a common law [emotional distress] claim". Defendant recasts the argument that there is no vicarious liability by a public entity for intentional torts committed by its employee. Hoag v. Brown, 397 N.J. Super. 34, 54 (App. Div. 2007). Thus, the claim should be dismissed.

In opposition, LaClair relies on Senate Bill S477 which amended the Child Sex Abuse Act, TCA, Charitable Immunity Act, and statute of limitations. Specifically, the creation of a two-year window for all claims related to the child sex abuse allegations. N.J.S.A. 2A:14-2b (1) provides that

> Every action at law for injury resulting from the commission of sexual assault, any other crime of a sexual nature, of a person 18 years of age or older that occurred prior to on or after the effective date of P./ 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, whichever date is later.

The plain language of the statute applies to all state law claims arising from the injuries caused by sexual acts or misconduct which include negligence and emotional distress. See Gavin v. Bd.

of Educ., S. Orange-Maplewood Sch. Dist., No. 209191, 2021 WL 1050364, at *5 (D.N.J. Mar. 18, 2021).

The New Jersey Supreme Court has held that courts will apply retroactively when the Legislature has expressed its, either explicitly or implicitly, that the statute should be so applied when the statute is curative; or when the reasonable expectations of those affected by the statute warrant such application." Gibbons v. Gibbons, 86 N.J. 515 (1981). Here, the Legislature's intent is unequivocal, the amendment is curative and encompasses all claims which relate to sexual abuse and/or sexual misconduct. Defendant fails to appreciate the strong public policy regarding child sex abuse cases. Further, dismissals are only granted in rarest of instances. LaClair is given every reasonable inference that the negligence and reckless disregard infliction of emotional distress arise from sexual abuse or sexual misconduct, which brings the claims within the intent of the remedial legislation. Printing Mart. LaClair's amended complaint suggests a cause of action; and as such, dismissal is inappropriate. For the aforementioned reasons, the Board's motion is **DENIED**.