

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

J.K. v. Viscardi Ctr., Inc.

J.K., 2025 NY Slip Op 06698 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2025) · No. 2024-05593 · Decided December 3, 2025

SUMMARY

The Appellate Division, Second Department affirmed an order dismissing several claims arising from alleged harassment and abuse of a student with a physical disability at a private school. The court held that the complaint did not adequately allege retaliation by the City under Executive Law § 296(7), a City duty to investigate or supervise under Social Services Law § 424, a qualifying gender-motivated violent act, a private right of action under the Dignity for All Students Act, or tortious interference with contract.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Lara J. Genovesi, J.P.; Linda Christopher; Lillian Wan; Lourdes M. Ventura
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	December 3, 2025
DOCKET	2024-05593
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order granting portions of defendants' CPLR 3211(a)(7) motions to dismiss claims for failure to state a cause of action.
STANDARD OF REVIEW	On a CPLR 3211(a)(7) motion, the court accepts the facts alleged in the complaint as true, gives the plaintiff the benefit of every favorable inference, and determines whether the allegations fit within any cognizable legal theory. Bare legal conclusions receive no such consideration.
PRECEDENTIAL VALUE	published

PARTIES

J.K. v. Viscardi Center, Inc., Henry Viscardi School, City of New York,
NYC Board of Education

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QUESTIONS PRESENTED

1. Whether the amended complaint adequately alleged that the City defendants retaliated or discriminated against J.K. in violation of Executive Law § 296(7).
2. Whether Social Services Law § 424 imposed a duty on the City defendants to investigate the alleged harassment and abuse.
3. Whether the complaint alleged a sufficient connection between the Board of Education's alleged failure to investigate before placement and the later harassment and abuse.
4. Whether the alleged conduct constituted a crime of violence motivated by gender under the Victims of Gender-Motivated Violence Protection Law.
5. Whether the Dignity for All Students Act creates a private right of action.
6. Whether the complaint adequately alleged tortious interference with contract against the Viscardi defendants.

HOLDINGS

1. The complaint failed to state a claim under Executive Law § 296(7) because it did not allege that the City defendants retaliated or discriminated against J.K. because he opposed practices forbidden by the Human Rights Law.
2. Social Services Law § 424 did not impose a duty on the City defendants to investigate the alleged harassment and abuse because the school principal was not a person legally responsible for J.K.'s care.
3. The complaint failed to allege a sufficient connection between the Board of Education's alleged failure to investigate before placement and the later harassment and abuse, and the Board's responsibility to review J.K.'s individualized education program did not create a continuing duty to supervise his day-to-day safety at the school.
4. The complaint failed to state a claim under the Victims of Gender-Motivated Violence Protection Law because pulling on J.K.'s trousers did not constitute conduct presenting a serious risk of physical injury and therefore did not allege a crime of violence.
5. There is no private right of action under the Dignity for All Students Act.
6. The tortious-interference claim was properly dismissed because J.K. failed to allege conduct by the Viscardi defendants that caused a breach of a contract between J.K. and a third party.

KEY QUOTATIONS

“'[O]n a motion pursuant to CPLR 3211(a)(7) to dismiss for failure to state a cause of action, the court must accept the facts alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory'” (at 1)

“'there is no private right of action under DASA'” (at 3)

FACTUAL BACKGROUND

In 2013, the NYC Board of Education placed J.K., who had a physical condition, at a private school operated by the Viscardi defendants. J.K. alleged that during his second year, a newly appointed principal harassed and abused him based on race, sex, and physical disability. He also alleged that the City defendants failed to investigate the school before placement and failed to supervise or protect him.

PROCEDURAL HISTORY

J.K. commenced an action alleging negligence, discrimination, violations of the New York State Human Rights Law, the New York City Human Rights Law, the Dignity for All Students Act, tortious interference with contract, and negligent failure to investigate. The Supreme Court, Kings County, granted portions of the City defendants' motion and the Viscardi defendants' motion under CPLR 3211(a)(7). The Appellate Division affirmed the order insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Bernstein v. Jacobson, 238 AD3d 1102, 1103
- 17 Lexington Ave., LLC v. Alison Six Star, LLC, 229 AD3d 484, 486
- Leon v. Martinez, 84 NY2d 83, 87-88
- Geltzer v. City of New York, 237 AD3d 910, 912
- Doe v. Hauppauge Union Free Sch. Dist., 213 AD3d 809, 810
- Lapin v. Verner, 238 AD3d 1128, 1129
- Tarzia v. Brookhaven Natl. Lab., 247 AD2d 605, 606
- Gorman v. Gorman, 88 AD2d 677, 678
- Matter of Yolanda D., 88 NY2d 790, 796
- Hanson v. Hicksville Union Free Sch. Dist., 209 AD3d 629, 631
- Chichester v. Wallace, 150 AD3d 1073, 1075
- I.T.K. v. Nassau Boces Educ. Found., Inc., 177 AD3d 962, 963
- Begley v. City of New York, 111 AD3d 5, 23
- Eskenazi-McGibney v. Connetquot Cent. Sch. Dist., 169 AD3d 8, 12
- Mackey v. Lawrence Union Free Sch. Dist., 225 AD3d 683, 686

- Plymouth Capital, LLC v. Montage Fin. Group, Inc., 230 AD3d 1361, 1363
- Tumayeva v. Geyber, 220 AD3d 634, 635

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