

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

TOPICS

motions to dismiss

civil procedure

civil rights

negligence

appellate procedure

PRACTICE AREAS

New York civil procedure

employment and education discrimination

torts

municipal liability

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

OPINION

PER CURIAM.

J.K. v Viscardi Ctr., Inc. (2025 NY Slip Op 06698) J.K. v Viscardi Ctr., Inc. 2025 NY Slip Op 06698 Decided on December 3, 2025 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on December 3, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department LARA J. GENOVESI, J.P.

LINDA CHRISTOPHER LILLIAN WAN LOURDES M. VENTURA, JJ. 2024-05593 (Index No. 502011/23) [*1]J.K., appellant, v Viscardi Center, Inc., et al., respondents, et al., defendants. Umoh Law Firm, PLLC, New York, NY (Uwem Umoh of counsel), for appellant. Hall Booth Smith, P.C., New York, NY (Matthew J. Koster and William G. Arsenault of counsel), for respondents Viscardi Center, Inc., and Henry Viscardi School.

Muriel Goode-Trufant, Corporation Counsel, New York, NY (Rebecca L. Visgaitis and Martin K. Rowe III of counsel), for respondents City of New York and NYC Board of Education. DECISION & ORDER In an action, inter alia, to recover damages for negligence, the plaintiff appeals from an order of the Supreme Court, Kings County (Sabrina B. Kraus, J.), dated March 4, 2024.

The order, insofar as appealed from, granted those branches of the motion of the defendants City of New York and NYC Board of Education which were pursuant to CPLR 3211(a)(7) to dismiss so much of the first cause of action as alleged a violation of Executive Law § 296(7) and the eleventh cause of action insofar as asserted against them and those branches of the motion of the defendants Viscardi Center, Inc., and Henry Viscardi School which were pursuant to CPLR 3211(a)(7) to dismiss the second, third, and eighth causes of action insofar as asserted against them.

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs. The defendants Viscardi Center, Inc., and Henry Viscardi School (hereinafter together the Viscardi defendants) operate a private school (hereinafter the school) outside of the City of New York.

In 2013, the defendant NYC Board of Education (hereinafter the BOE) placed the plaintiff at the school to accommodate his physical condition. The plaintiff alleged that, in his second year at the school, the Viscardi defendants appointed a school principal who harassed and abused the plaintiff on the basis of his race, sex, and physical disability.

The amended complaint asserted, inter alia, causes of action to recover damages for violations of the New York State Human Rights Law (Executive Law § 290 et seq.), the New York City Human Rights Law (NYCHRL) (Administrative Code of City of NY former § 8-901 et seq.), and the Dignity for All Students Act (DASA) (Education Law § 10 et seq.), and for tortious interference with contract and negligent failure to investigate.

The City and the BOE (hereinafter together the City defendants) moved pursuant to CPLR 3211(a)(7) to dismiss the amended complaint insofar as asserted against them, and the [*2]Viscardi defendants moved pursuant to CPLR 3211(a)(7) to dismiss the amended complaint insofar as asserted against them.

In an order dated March 4, 2024, the Supreme Court, among other things, granted those branches of the City defendants' motion which were pursuant to CPLR 3211(a)(7) to dismiss so much of the first cause of action as alleged a violation of Executive Law § 296(7) and the eleventh cause of action insofar as asserted against them and those branches of the Viscardi defendants' motion which were pursuant to CPLR 3211(a)(7) to dismiss the second, third, and eighth causes of action insofar as asserted against them.

The plaintiff appeals. "[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" (Bernstein v Jacobson, 238 AD3d 1102, 1103, quoting 17 Lexington Ave., LLC v Alison Six Star, LLC, 229 AD3d 484, 486; see Leon v Martinez, 84 NY2d 83, 87-88). "However, allegations consisting of bare legal conclusions are not entitled to any such consideration" (Geltzer v City of New York, 237 AD3d 910, 912, quoting Doe v Hauppauge Union Free Sch.

Dist., 213 AD3d 809, 810). "Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery" (Lapin v Verner, 238 AD3d 1128, 1129 [internal quotation marks omitted]). Executive Law § 296(7) provides, in relevant part, that "[i]t shall be an unlawful discriminatory practice for any person engaged in any activity to which this section applies to retaliate or discriminate against any person because he or she has opposed any practices forbidden under this article."

Here, the amended complaint failed to allege that the City retaliated or discriminated against the plaintiff because he opposed the alleged violations of Executive Law § 296 by the Viscardi defendants' employees, and an affirmation of the plaintiff's attorney, who asserted no personal knowledge of the facts, is without evidentiary value (see Tarzia v Brookhaven Natl.

Lab., 247 AD2d 605, 606; *Gorman v Gorman*, 88 AD2d 677, 678). Accordingly, the Supreme Court properly granted that branch of the City defendants' motion which was to dismiss so much of the first cause of action as alleged a violation of Executive Law § 296(7) insofar as asserted against them.

The Supreme Court also properly granted that branch of the City defendants' motion which was to dismiss the eleventh cause of action insofar as asserted against them. Contrary to the plaintiff's contention, Social Services Law § 424 did not impose a duty on the City to investigate the alleged harassment and abuse because the school principal was not a "person legally responsible" for the plaintiff's care (see Family Ct Act § 1012[e], [f][1]; Social Services Law § 412[1], [2]; *Matter of Yolanda D.*, 88 NY2d 790, 796; *Hanson v Hicksville Union Free Sch.*

Dist., 209 AD3d 629, 631). Furthermore, inasmuch as the plaintiff alleged that he "did not have many problems in his first year" before the Viscardi defendants appointed a new principal, the plaintiff failed to allege any connection between the BOE's alleged failure to investigate the Viscardi defendants before placing the plaintiff at the school and the alleged harassment and abuse (cf. *Chichester v Wallace*, 150 AD3d 1073, 1075), and the BOE's responsibility for reviewing the plaintiff's individualized education program was inadequate to create a continuing duty to supervise the plaintiff's day-to-day safety at the school (see *I.T.K. v Nassau Boces Educ.*

Found., Inc., 177 AD3d 962, 963; *Begley v City of New York*, 111 AD3d 5, 23). The provisions of the NYCHRL cited by the plaintiff were superseded by the Victims of Gender-Motivated Violence Protection Law (Administrative Code § 10-1101 et seq.), which provides that "any person claiming to be injured by a party who commits, directs, enables, participates in, or conspires in the commission of a crime of violence motivated by gender has a cause of action against such party" (id. § 10-1104).

"The term 'crime of violence' means an act or series of acts that would constitute a misdemeanor or felony against the person as defined in state or federal law... if the conduct presents a serious risk of physical injury to another" (id. § 10-1103).

Here, the plaintiff's allegation that the school principal pulled on the plaintiff's trousers was inadequate to allege a serious risk of physical injury. Accordingly, the Supreme Court properly granted that branch of the Viscardi defendants' motion which was to dismiss the second cause of [*3]action insofar as asserted against them. Furthermore, the Supreme Court properly granted that branch of the Viscardi defendants' motion which was to dismiss the third cause of action insofar as asserted against them, as "there is no private right of action under DASA" (*Eskenazi-McGibney v Connetquot Cent.*

Sch. Dist., 169 AD3d 8, 12; see *Mackey v Lawrence Union Free Sch. Dist.*, 225 AD3d 683, 686). Inasmuch as the plaintiff failed to allege any conduct by the Viscardi defendants that resulted in a

breach of a contract between the plaintiff and a third party, the court also properly granted that branch of the Viscardi defendants' motion which was to dismiss the eighth cause of action, alleging tortious interference with contract, insofar as asserted against them (see Plymouth Capital, LLC v Montage Fin.

Group, Inc., 230 AD3d 1361, 1363; Tumayeva v Geyber, 220 AD3d 634, 635). GENOVESI, J.P., CHRISTOPHER, WAN and VENTURA, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court