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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2829-22

VINCENT LAQUIDARA and JOSEPH LAQUIDARA, as the Executor of the Estate of LUCY LAQUIDARA,

Plaintiffs-Respondents,

v.

WESTWOOD REGIONAL SCHOOL DISTRICT, CHARLES SEIPP, individually and in his official capacity, and SHEILA LICHTSTEIN, individually and in her official capacity,

Defendants-Appellants,

and

KELLY PAREDES,[1] individually and in her official capacity,

Defendant.

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[1] Kelly Paredes was never served, resulting in the administrative dismissal of the complaint against her.

Argued September 12, 2023 – Decided October 19, 2023

Before Judges Sumners and Rose.

On appeal from an interlocutory order of the Superior Court of New Jersey, Bergen County, Law Division, Docket No. L-0056-20.

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

Jason D. Attwood argued the cause for appellants Westwood Regional School District and Sheila Lichtstein (Pashman Stein Walder Hayden, PC, attorneys; Jason D. Attwood, on the briefs).

Shelia E. O'Shea-Criscione argued the cause for respondents (Carcich O'Shea, LLC, attorneys; Shelia E. O'Shea-Criscione, of counsel and on the brief).

PER CURIAM

On March 8, 2023, we issued two orders granting leave to appeal and summarily vacating the Law Division's January 13, 2023 order denying summary judgment motions by defendants Westwood Regional Board of Education, Charles Seipp, and Sheila Lichtstein to dismiss a complaint by plaintiffs Vincent Laquidara and Joseph Laquidara, as the Executor of the Estate of Lucy Laquidara. Plaintiffs alleged causes of action under the Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -42, and the Tort Claims Act (TCA),

N.J.S.A. 59:1-1 to 12-3, arising from Vincent's[2] attendance at Westwood Middle School between 2011 and 2012. In addition, "[w]e remand[ed] the matter to the motion court for further consideration of defendants' summary judgment motions and a clear statement of its decisions on those motions that 'correlates' the factual findings and legal conclusions with respect to the specific legal issues raised by defendants' motions." The motions sought dismissal of the complaint based on the LAD, TCA, and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1480. We did not retain jurisdiction.

After the motion court reaffirmed its prior ruling with a new order and a written decision on April 6 denying summary judgment, we granted defendants leave to appeal.

The Westwood Regional Board of Education and Lichtstein argue:

> POINT I
>
> THE TRIAL COURT'S LEGAL ANALYSIS AS TO PLAINTIFFS' LAD CLAIMS WAS INCOMPLETE AND FUNDAMENTALLY FLAWED.
>
> > A. The Trial Court Did Not Conduct Any Legal Analysis as to Plaintiffs' LAD Retaliation Claim.
> >
> > B. Plaintiffs' LAD Discrimination Claim Fails as a Matter of Law.

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[2] Because plaintiffs have the same last name, we use their first names for convenience and to avoid confusion. We mean no disrespect.

C. The Trial Court Misapplied the Law as to Plaintiffs' Claim of Hostile School Environment.

POINT II

THE TRIAL COURT MISSAPPLIED AND OTHERWISE OVERLOOKED THE LAW GOVERNING PLAINTIFFS' TORT CLAIMS.

POINT III

THE TRIAL COURT ERRED IN DECLINING TO DISMISS THE CLAIMS AGAINST SHEILA LICHTSTEIN.

A. Sheila Lichtstein Is Not Subject to Aiding and Abetting Liability.

B. Sheila Lichtstein Is Entitled to Good Faith Immunity as to Plaintiffs' Tort Claims.

Seipp argues:

POINT I

THE TRIAL COURT'S DECISION FAILS TO ACKNOWLEDGE THIS COURT'S HOLDING IN J.T.[3] THAT AN IEP[4] GOVERNS A STUDENT'S PLACEMENT AND NO PRIMA FACIE LAD CLAIM CAN EXIST ABSENT DEVIATION FROM THE IEP'S PROVISIONS.

A. The IDEA Framework.

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[3] J.T. v. Dumont Pub. Schs., 438 N.J. Super. 241 (App. Div. 2014).

[4] Individualized Education Plan

PLAINTIFFS' CIVIL CONSPIRACY CLAIM FAILS AS A MATTER OF LAW.

Based upon our review of the record, the parties' arguments, and applicable law, we reverse the motion court's order denying summary judgment to defendants. We conclude defendants are entitled to summary judgment because there are no genuine issues of material fact and plaintiffs neither established a prima facie LAD claim nor satisfied the requirements under the TCA to sustain tort claims.

I.

We review "the grant of a motion for summary judgment de novo, applying the same standard used by the trial court." Samolyk v. Berthe, 251 N.J. 73, 78 (2022) (citing Woytas v. Greenwood Tree Experts, Inc., 237 N.J. 501, 511 (2019)). Summary judgment is proper if the record demonstrates "no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment . . . as a matter of law." Burnett v. Gloucester Cnty. Bd. of Chosen Freeholders, 409 N.J. Super. 219, 228 (App. Div. 2009) (quoting R. 4:46-2(c)).

To determine whether there are genuine issues of material fact, we consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a

rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 406 (2014) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)). "An issue of material fact is 'genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.'" Grande v. St. Clare's Health Sys., 230 N.J. 1, 24 (2017) (quoting Bhagat v. Bhagat, 217 N.J. 22, 38 (2014)).

Factual issues of an unsubstantial nature are insufficient to preclude the granting of summary judgment. See Brill, 142 N.J. at 540. Brill instructs the court that if the evidence in the record "is so one-sided that one party must prevail as a matter of law, the trial court should not hesitate to grant summary judgment." Ibid. (citation and internal quotations marks omitted).

With these principles in mind, we separately address defendants' arguments seeking dismissal of plaintiffs' claims set forth in their third amended complaint — count one, violation of the LAD based on an alleged failure to accommodate; count two, LAD retaliation; count three, negligent infliction of emotional distress; count four, intentional infliction of emotional distress; count five, hostile educational environment under the LAD; and count six, civil

conspiracy — concluding the motion court should have granted summary judgment dismissing plaintiffs' complaint.

II.

We first address plaintiffs' claim in count five that defendants created a hostile educational environment in violation of the LAD by failing to respond to Vincent's claims of bullying by other students. Plaintiffs cite L.W. ex rel. L.G. v. Toms River Reg'l Schs. Bd. of Educ., where our Supreme Court adopted a modified version of the standard for actionable hostile work environment adopted in Lehmann v. Toys 'R' Us, Inc., 132 N.J. 587, 603-04 (1993), holding that:

> [I]n the educational context, to state a claim under the LAD, an aggrieved student must allege [(1)] discriminatory conduct that would not have occurred "but for" the student's protected characteristic, [(2)] that a reasonable student of the same age, maturity level, and protected characteristic would consider sufficiently severe or pervasive enough to create an intimidating, hostile, or offensive school environment, and [(3)] that the school district failed to reasonably address such conduct.
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> [189 N.J. 381, 402-03 (2007).]

Plaintiffs claim Vincent was bullied due to defendants' failure to provide him an adequate educational program. Based on our de novo review of the record, plaintiffs did not establish a prima facie LAD claim of hostile

educational environment to avoid summary judgment dismissal of their complaint.

During Vincent's attendance at Westwood Regional Middle School, his disability classified him to have an IEP which provided him with special educational services.[5] Vincent alleges that, while in the sixth grade in 2011, he was bullied approximately twenty-four times by fellow classmates because of his obsessive-compulsive disorder.[6] He, however, specifies only the following incidents where his classmates: (1) told him to "shut up" when he tried to join a conversation regarding their Christmas lists; (2) laughed at him in Spanish class for not being able to do "basic stuff"; and (3) made fun of him because he pulled out his eyebrows.[7] He claims he reported the incidents to guidance counselors. However, only the eyebrow incident was investigated after a formal

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[5] According to the record, Vincent eventually graduated from Pascack Valley Regional High School in 2018 and was expected to graduate from Montclair State University in December 2022.

[6] Vincent suffered from other maladies, which need not be detailed to resolve this appeal.

[7] Although Vincent asserts he was subjected to additional bullying in the fifth grade, his own deposition testimony does not bear that out. He testified that he was not subject to any serious bullying in the fifth grade. Rather, he recalled that any interactions he had with other students were "playful" in nature and not serious.

complaint was made, resulting in disciplining and counseling of the offending students.

Although Vincent contends there were a multitude of bulling incidents, we can only consider the three he specified. Defendants cannot challenge, nor address, allegations which are conclusory and without specifics: who, when, where, and what was said. We therefore conclude plaintiffs have not shown that the first two singular incidents—being told to "shut up" and getting laughed at in Spanish class—satisfy the first two L.W. prongs. Even accepting Vincent's claim that nothing happened after he told school officials about these two incidents, he has not established that they constitute discriminatory conduct that would not have occurred "but for" his classification, nor that they are severe and pervasive enough to create a hostile or offensive school environment. As to the eyebrow incident, even if we agree that plaintiffs satisfied the first two L.W. prongs, the third prong was not satisfied because Vincent's complaint was addressed when the student harassers were disciplined, and there is no allegation that the eyebrow humiliation was repeated.

Additionally, personal liability cannot be sustained against the individual defendants. School psychologist Lichtstein cannot be held liable for the alleged bullying given plaintiffs' failure to show she had any knowledge of its existence

and failed to do anything about the misconduct. See Cicchetti v. Morris Cnty. Sheriff's Off., 194 N.J. 563, 595 (2008) (holding a plaintiff must demonstrate the individual defendant engaged in "active and purposeful conduct" in furtherance of others' discriminatory acts to impose individual liability for a LAD claim). For the same reason, school principal Seipp cannot be held liable for the "shut up" comment and Spanish class incidents. And, as noted, in his role as school principal, Seipp oversaw the discipline of students regarding the eyebrow incident.

Hence, we disagree with the motion court's denial of summary judgment. The court failed to properly analyze all three L.W. prongs. There are no genuine disputes of material facts that, as a matter of law, prevent dismissal of plaintiffs' LAD hostile educational environment claim. Plaintiffs failed to establish a prima facie claim due to bullying.

III.

We next address plaintiffs' LAD claim in count one. Plaintiffs assert defendants discriminated against Vincent by not accommodating their initial request for home instruction after he refused to return to school at the start of seventh grade due to "a valid medical diagnosis which prevented him from attending school."

A.

The LAD declares that it is unlawful discrimination to, among other things, refuse, withhold, or deny an opportunity, or to discriminate in furnishing it, on account of disability. N.J.S.A. 10:5-12(f)(1); N.J.A.C. 13:13-4.3. Accordingly, under the LAD, a claimant "must show that he or she (1) had a disability; (2) was otherwise qualified to participate in the activity or program at issue; and (3) was denied the benefits of the program or otherwise discriminated against because of his or her disability." J.T., 438 N.J. Super. at 264 (citations omitted). The claimant must also show "whether the accommodation was reasonable." Ibid. (citing Lasky v. Moorestown Twp., 425 N.J. Super 530, 539, 542-44 (App. Div. 2012)).

There is no question the Board was obligated under the IDEA to provide an appropriate education to Vincent because of his classified status.

> The IDEA ensures that all children with disabilities have available to them a free appropriate public education (FAPE) in the least restrictive environment that provides special education and related services to meet their unique needs and prepare them for further education, employment, and independent living, and ensures that the rights of such children and their parents are protected. See 20 U.S.C. § 1400(d)(1)(A), (B). New Jersey has adopted a statute, N.J.S.A. 18A:46-1 to -55, and regulations, N.J.A.C. 6A:14-1.1 to -9.2, to comply with the extensive goals and procedures

> established in the IDEA in order to receive significant federal funding. See 20 U.S.C. § 1412.
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> [Id. at 257 (footnote omitted) (citations reformatted).]

A classified child's education placement is dictated by an "IEP, a comprehensive written plan developed by a team consisting of the student's parents, teachers, and representatives of the local educational agency." Ibid. (citing 20 U.S.C. § 1414(d)(B)). The IEP is designed "to tailor the educational services in order to meet the special needs resulting from the student's disability and to ensure that the student receives the benefits of a FAPE." Ibid. (citing 20 U.S.C. § 1412(a)(1), (4)). The IEP is developed by the child study team. See 34 C.F.R. § 300.324 (2023); N.J.A.C. 6A:14-3.7.[8] The IDEA requires that, to the extent possible, children with disabilities be educated in the least restrictive environment. J.T., 438 N.J. Super. at 258 (citing 20 U.S.C. § 1412(a)(5); N.J.A.C. 6A:14-1.1(b)(5)).

If a parent seeks to challenge a placement under the IDEA, administrative remedies must be exhausted "before filing an action seeking redress in a state or

[8] The child study team consists of the parent(s); at least one general education teacher; the student's special education teacher; an individual "who can interpret the instructional implications of evaluation results"; the case manager; and a school representative, such as a special education administrator or principal. N.J.A.C. 6A:14-2.3(k)(2).

federal court." Blunt v. Lower Merion Sch. Dist., 767 F.3d 247, 270 (3d Cir. 2014); J.T., 438 N.J. Super. at 259-60. An administrative "impartial due process hearing" will be held. Blunt, 767 F.3d at 269 (citations omitted); see J.T., 438 N.J. Super. at 259 (holding a due process hearing "in New Jersey entails a full-fledged adjudicatory hearing at the Office of Administrative Law, or they can file an administrative complaint with the designated state education agency, which must investigate and issue a decision within sixty days" (citing 34 C.F.R. § 300.152)).

There are, however, limited exceptions to requiring exhaustion of administrative remedies, particularly:

> • where exhaustion would be futile or inadequate (see Honig v. Doe, 484 U.S. 305, 328 (1988));
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> • where the issue presented is a purely legal question;
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> • where the administrative agency cannot grant relief (for example, due to lack of authority); and
>
> • an emergency situation, such as where exhaustion of administrative remedies would cause "severe or irreparable harm" to the litigant.
>
> [Blunt, 767 F.3d at 271 (citation reformatted).]

B.

In September 2012, when Vincent began the seventh grade, he refused to attend school. His IEP provided for a modified curriculum and specialized instruction with "extended practice and review . . . to learn new skills" in language arts. Efforts by Paredes, Vincent's guidance counselor, to get him back in school by reaching out to his mother, Lucy,[9] were unsuccessful.

On September 27, Seipp told Lucy to request in-home instruction. On October 3, Lucy sent a letter to Seipp, "requesting that Vincent receive in[-home] academic support." Vincent's child study team met the next day and determined his IEP should be amended to place him in a resource classroom rather than home instruction. Vincent's treating medical providers including Jessica Shea, the Director of the Children's Mobile Response Unit at CarePlus NJ (where Vincent was receiving treatment), also agreed that home instruction was not appropriate. Thus, there was no medical basis to provide home instruction. Further, neither Lucy nor Joseph, Vincent's father, legally challenged the child study team's decision.

Despite the resource classroom placement, Vincent did not return to school. Also, although Lucy contacted the local police department in early October to remediate Vincent's truancy after Seipp threatened to initiate truancy

[9] Lucy passed away during the pendency of the trial court litigation.

proceedings, he remained out of school. Vincent's truancy continued for more than one month after his IEP was revised. Seipp responded to Vincent's prolonged absence by filing a truancy complaint against Lucy and Joseph. After receiving the summons to appear in municipal court, Joseph deposed "whatever I had to do, I had to get Vincent to school." The truancy summons was later dismissed.

The child study team developed a plan for Vincent to transition back to school by attending "some classes at a time, rather than [a] full schedule." However, the plan failed because Vincent tried to leave school and became physically disruptive, pulling out papers from filing cabinets and dumping them all over the floor. After Lucy went to the school to calm Vincent down, he was hospitalized for five days. Upon Vincent's return home, a child study team meeting was held, resulting in an amendment of the IEP to provide home instruction effective December 21.

C.

Considering the laws governing the LAD claim and the education of classified students, the record does not support a prima facie LAD claim. While there is no doubt plaintiffs satisfied the first two prongs of J.T.—Vincent had a disability and was entitled to a FAPE—the record fails to demonstrate how

Vincent was denied the benefits of an appropriate educational program or otherwise discriminated against because of his disability. See J.T., 438 N.J. Super. at 264. Instead, the record shows the defendants provided Vincent an educational placement that was consistent with his IEP and the IDEA. When Lucy made the request for Vincent's in-home instruction, his IEP was reviewed, and it was determined his placement should be a resource classroom. Vincent's parents did not present a medical report supporting home instruction. Additionally, Vincent's medical providers did not support home instruction at that time. It was not until Vincent was released from the hospital and there was medical support for home instruction that his IEP was amended to place him on home instruction. Therefore, under J.T. and Blunt, because plaintiffs did not seek administrative relief under IDEA after Lucy's initial home instruction request, plaintiffs' LAD claim is not justiciable. See J.T., 483 N.J. Super at 259-60; Blunt 767 F.3d at 269. Moreover, plaintiffs have presented no reason why they should be relieved of their obligation to exhaust the due process administrative remedy. See Blunt, 767 F.3d at 271.

Hence, defendants are entitled to summary judgment dismissal of plaintiffs' LAD failure to accommodate claim. In reaching our conclusion, we part company with the motion's court's determination that there are genuine

issues of material fact regarding the home instruction request. We also disagree with the court's application of the LAD and IDEA in denying defendants summary judgment.

IV.

We next address plaintiffs' LAD retaliation claim in count two asserting defendants retaliated against them because of their complaints about bullying and Vincent's refusal to attend school. Plaintiffs contend defendants' retaliatory actions were: (1) not providing Vincent home instruction; (2) filing truancy charges against Lucy and Joseph for allowing Vincent to stay home; and (3) telling Vincent he would have to stay in school for the entire school day rather than for one class.

A.

A prima facie claim of discriminatory retaliation under the LAD requires a plaintiff to establish that: (1) engagement in protected activity known by the defendant; (2) defendant retaliated against the plaintiff through "a material adverse action"; and (3) there was a causal connection "between the protected activity and the adverse action." L.L. v. Evesham Twp. Bd. of Educ., 710 F. App'x 545, 551 (3d Cir. 2017) (citations omitted); see also Carmona v. Resorts Int'l Hotel, Inc., 189 N.J. 354, 370 (2007); N.J.S.A. 10:5-12(d). Under the

LAD's plain language, protected activities include "oppos[ing] any practices or acts forbidden under [the LAD]," as well as filing a complaint. N.J.S.A. 10:5-12(d).

Once a plaintiff establishes a prima facie case, the defendant must then "articulate a legitimate, non-retaliatory reason for the decision." Young v. Hobart W. Grp., 385 N.J. Super. 448, 465 (App. Div. 2005) (quoting Romano v. Brown & Williamson Tobacco Corp., 284 N.J. Super. 543, 549 (App. Div. 1995)). The plaintiff in turn must then offer proofs of defendants' discriminatory motive, demonstrating "the legitimate reason was merely a pretext for [defendant's] underlying discriminatory motive." Ibid. (quoting Romano, 284 N.J. Super. at 549).

B.

Plaintiffs had a right to request home instruction for Vincent given concerns about his aversion to attend middle school. However, they offered no proofs that defendants retaliated by taking material adverse action against them, e.g., filing truancy charges against Lucy and Jospeh or rejecting home instruction.

Even if plaintiffs demonstrated some casual connection between their conduct and defendants' actions, defendants offered legitimate, non-retaliatory

reasons for filing the truancy charges and not initially placing Vincent on home instruction. Indeed, defendants did not immediately file a truancy complaint. Rather, Seipp filed a truancy complaint against Lucy and Joseph more than a month after Vincent's IEP was revised. N.J.S.A. 18A:38-25 provides: "Every parent, guardian or other person having custody and control of a child between the ages of six and 16 years shall cause such child regularly to attend the public schools of the district . . . ." Under the statute's implementing regulations, a student is deemed "truant" when he or she has accumulated ten or more unexcused absences. N.J.A.C. 6A:16-7.6(a)(4)(iii). In those circumstances, the school "shall . . . [c]ooperate with law enforcement and other authorities and agencies, as appropriate." N.J.A.C. 6A:16-7.6(a)(4)(iii)(3).

Considering there was no question Vincent was truant, defendants were not free to simply ignore the truancy laws. In fact, Joseph deposed that "based on the truancy summons, that whatever I had to do, I had to get Vincent to school." Because Vincent was legally required to attend school, Seipp had the right to demand that Vincent remain in school once he showed up. Plaintiffs offered no proofs showing Seipp's actions were merely a pretext for an underlying discriminatory motive. Further, plaintiffs also offered no proofs that

Lichtstein was involved in the decision to file truancy charges; thus, she cannot be held liable for the charges. See Cicchetti, 194 N.J. at 595.

For the reasons noted above, defendant's initial refusal to provide Vincent home instruction was consistent with the IDEA and there are no proofs that the denial was a pretext for an underlying discriminatory motive. Thus, defendants cannot be held liable.

As for the bullying allegations, plaintiffs had a right to complain. However, they offered no proofs that defendants retaliated by taking adverse action against them for complaining. In fact, as noted, remedial action was taken by disciplining Vincent's harassers regarding the eyebrow incident.

Hence, defendants are entitled to summary judgment dismissal of plaintiffs' LAD retaliation claims. In reaching our conclusion, we disagree with the motion court's determination that there are genuine issues of material fact regarding these claims which bar summary judgment to defendants. We also disagree with the court's application of the LAD in denying defendants summary judgment.

V.

We next turn to plaintiffs' counts three and four common law tort claims seeking pain and suffering damages due to defendants' negligent infliction of

emotional distress and intentional infliction of emotional distress. Because defendants are a public entity and public employees, respectively, plaintiffs must satisfy the requirements of the TCA. See Stewart v. N.J. Tpk. Auth./Garden State Parkway, 249 N.J. 642, 655 (2022) (citing N.J.S.A. 59:1-2).

The TCA "preclud[es] damages for pain and suffering [against a public entity] unless certain circumstances are met." C.W. v. Roselle Bd. of Educ., 474 N.J. Super. 644, 650 (App. Div. 2023) (quoting E.C. by D.C. v. Inglima-Donaldson, 470 N.J. Super. 41, 55 (App. Div. 2021)). N.J.S.A. 59:9-2(d) provides:

> No damages shall be awarded against a public entity or public employee for pain and suffering resulting from any injury; provided, however, 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.

In J.H. v. Mercer Cnty. Youth Det. Ctr, we held "to recover damages for pain and suffering, [a] plaintiff must suffer a permanent injury and his medical expenses must exceed the monetary threshold of $3600." 396 N.J. Super. 1, 20 (App. Div. 2007) (citing N.J.S.A. 59:9-2(d)).

Vincent failed to submit proof of medical bills exceeding the monetary threshold and did not provide any medical expert report to establish he suffered

emotional distress due to defendants' conduct. In his April 2022 deposition, Vincent candidly revealed that he was not being treated by any medical professional and did not need any treatment related to his middle school experiences. He acknowledged it had been at least "a good five years" since he treated with any mental health professional, and he needs no further treatment. Vincent stated his life is not impacted by anything that happened in middle school, he does not need treatment for the middle school incidents, and, notably, he did not provide any medical expert report to establish he suffers from emotional distress attributed to defendants' conduct.

Furthermore, similar to the reasons we determined plaintiffs have not satisfied the TCA tort threshold requirements, plaintiffs have also failed to establish claims of intentional infliction of emotional distress claim or negligent infliction of emotional distress.

To prove a cause of action for intentional infliction of emotional distress, a plaintiff must establish the following elements:

> (1) defendant acted intentionally; (2) defendant's conduct was "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community;" (3) defendant's actions proximately caused [plaintiff] emotional distress; and (4) the emotional distress was "so severe

> that no reasonable [person] could be expected to endure it."
>
> [Delvalle v. Trino, 474 N.J. Super. 124, 142-43 (App. Div. 2022) (second alteration in original) (quoting Segal v. Lynch, 413 N.J. Super. 171, 191 (App. Div. 2021)).]

To establish a claim of negligent infliction of emotional distress, plaintiff must show that: (1) defendant owed a duty to plaintiff; (2) defendant breached that duty; (3) plaintiff suffered severe emotional distress; and (4) defendant's breach proximately caused plaintiff's emotional distress. Dello Russo v. Nagel, 358 N.J. Super. 254, 269 (App. Div. 2003) (citing Decker v. Princeton Packet, Inc., 116 N.J. 418, 429 (1989)).

To address plaintiffs' intentional and negligent infliction of emotional distress claims, we focus solely on the showing of severe emotional distress because both claims require proof of that element. Plaintiffs have not shown severe emotional distress: "a severe and disabling emotional or mental condition which may be generally recognized and diagnosed by trained professionals." See Turner v. Wong, 363 N.J. Super. 186, 200 (App. Div. 2003) (citing Taylor v. Metzger, 152 N.J. 490, 515 (1998)). Severe emotional distress is established where there is a "dramatic impact on [a plaintiff's] everyday activities or . . . ability to function" and there is regular psychiatric counseling. Id. at 201

(citation omitted); see also Harris v. Middlesex Cnty. Coll., 353 N.J. Super. 31, 47 (App. Div. 2002) (holding there was no evidence of severe emotional distress where there is "no allegation of interference with daily activities, no expert report to support claims of emotional devastation or loss of self-esteem, and no evidence of counseling or treatment" (quoting Turner, 363 N.J. Super. at 201)). "Because the severity of the emotional distress raises questions of both law and fact, the court 'decides whether as a matter of law such emotional distress can be found, and the jury decides whether it has in fact been proved.'" Tarr v. Ciasulli, 181 N.J. 70, 77 (2004) (emphasis added) (citation omitted). Given that there are no proofs that Vincent, or his parents, for that matter, suffered any severe emotional distress, plaintiffs have not proffered viable claims of intentional or negligent infliction of emotional distress.

Hence, defendants are entitled to summary judgment dismissal of tort claims. In reaching our conclusion, we disagree with the motion court's determination that there are genuine issues of material fact regarding these claims. We also disagree with the court's application of the TCA in denying defendants summary judgment.

VI.

Finally, we address plaintiffs' claim in count six that based upon the allegations set forth in their complaint defendants "acted with malicious and fraudulent intent, and willfully, agreed among themselves to and did discriminate against Vincent . . . and [Lucy], in violation of the []LAD."

Our Supreme Court described a civil conspiracy as:

> [A] combination of two or more persons acting in concert to commit an unlawful act, or to commit a lawful act by unlawful means, the principal element of which is an agreement between the parties to inflict a wrong against or injury upon another, and an overt act that results in damage.
>
> [Banco Popular N. Am. v. Gandi, 184 N.J. 161, 177 (2005) (quoting Morgan v. Union Cnty. Bd. of Chosen Freeholders, 268 N.J. Super. 337, 364 (App. Div. 1993)).]

To establish conspiracy, one must show "'a single plan, the essential nature and general scope of which [was] known to each person who is to be held responsible for its consequences.'" Morgan, 268 N.J. Super. at 365 (alteration in original) (quoting Hampton v. Hanrahan, 600 F.2d 600, 621 (7th Cir. 1979), rev'd in part on other grounds, 446 U.S. 754 (1980)). Accordingly, a civil conspiracy exists where the purported conspirator understood "the general objectives of the scheme, accept[ed] them, and agree[d], either explicitly or implicitly, to do [their] part to further them." Banco Popular N. Am., 184 N.J.

at 177 (quoting Jones v. City of Chicago, 856 F.2d 985, 992 (7th Cir. 1988)). Notably, the "gist of the claim is not the unlawful agreement, 'but the underlying wrong which, absent the conspiracy, would give a right of action.'" Id. at 177-78 (quoting Morgan, 268 N.J. Super. at 364).

There is no indication in the record that defendants, particularly, Seipp and Lichtstein, agreed to discriminate against Vincent and Lucy contrary to the LAD. Moreover, because there is no merit to the underlying claims, as noted above, the conspiracy allegations are not viable.

Hence, defendants are entitled to summary judgment dismissal of the civil conspiracy claims. In reaching our conclusion, we disagree with the motion court's determination that there are genuine issues of material fact regarding these claims which bar summary judgment to defendants. We also disagree with the court's application of the legal principles governing civil conspiracy claims in denying defendants summary judgment.

Reversed and remanded for entry of summary judgment dismissing plaintiffs' complaint against defendants.

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

CLERK OF THE APPELLATE DIVISION