

STATE OF NEW YORK
SUPREME COURT :: COUNTY OF NIAGARA

T.H. Plaintiff, SUMMONS
-vs- Index No.:

NIAGARA FALLS CITY SCHOOL DISTRICT,
630 66th Street
Niagara Falls, NY 14304,

PHILIP R. SIMS
4041 Big Tree Road
Hamburg, NY 14075

Defendants.

TO THE ABOVE NAMED DEFENDANTS:

YOUR ARE HEREBY SUMMONED AND REQUIRED to serve upon the plaintiff's attorney, at the address stated below, a written Answer to the attached Complaint.


If this Summons is served upon you within the State of New York by personal service you must respond within TWENTY (20) days after service, not counting the day of service. If this Summons is not personally delivered to you within the State of New York, you must respond within THIRTY (30) days after service is completed, as provided by law.

If you do not respond to the attached Complaint within the applicable time limitation stated above, a Judgment will be entered against you, by default, for relief demanded in the Complaint, without further notice to you.

This action is brought in the County of Niagara pursuant to CPLR §504.

DATED: August 20, 2019
Niagara Falls, NY

Yours, etc.


MICHAEL J. SKONEY, ESQ.
VIOLA, CUMMINGS & LINDSAY, LLP
Attorneys for Plaintiff
770 Main Street
Niagara Falls, NY 14301
(716) 285-9555

STATE OF NEW YORK
SUPREME COURT :: COUNTY OF NIAGARA

T.H.,

Plaintiff,

COMPLAINT

-vs-

Index No.:

NIAGARA FALLS CITY SCHOOL DISTRICT,
630 66th Street
Niagara Falls, NY 14304,

PHILIP R. SIMS
4041 Big Tree Road
Hamburg, NY 14075

Defendants.

Plaintiff, by her attorneys, Viola, Cummings & Lindsay, LLP for her cause of action
against defendants state:

The Parties

1. Plaintiff is a resident of City of New York and State of New York.
2. Plaintiff uses her initials only in this summons and complaint pursuant to the provisions of New York Civil Rights Law §50-b (1).
3. That at all time from September 1998 through June 2004, plaintiff was a resident of the City of Niagara Falls, Niagara County, New York.
4. That at all time from September 1998 through June 2004, plaintiff was less than eighteen years of age.
5. That this action is brought pursuant to the New York Child Victim's Act, CPLR § 214-g.

6. That the Defendant NIAGARA FALLS CITY SCHOOL DISTRICT (DISTRICT) is a municipal and educational corporation organized under the laws of New York with a principal place to transact business at 630 Sixty-Sixth Street Niagara Falls, New York.

7. Upon information and belief, defendant PHILIP R. SIMS (SIMS) is a resident of the Town of Hamburg, Erie County, New York.

Background

8. Upon information and belief, at all time mentioned, from before 1998 through May 24, 2004, SIMS was a full-time member of the DISTRICT teaching staff, teaching Band and Music at the Gaskill Middle School.

9. That at all time mentioned from September 1998 through September 2000, plaintiff was enrolled as a public education student of the DISTRICT, attending the Gaskill Middle School.

10. That at all time mentioned from September 2000 through June 2004, plaintiff was enrolled as a public education student of the DISTRICT, attending Niagara Falls High School.

11. That on multiple occasions between September 1998 through November 2003, while defendant SIMS was acting in the scope and duties of his employment by the DISTRICT, defendant SIMS sexually abused plaintiff, a minor student; each act of sexual abuse constituted a sexual offense as defined in Article 130 of the New York Penal Law.

12. That on multiple occasions between September 1998 through November 2003, defendant SIMS sexually abused plaintiff, a minor student; the sexual abuse occurred in an “educational setting” as defined by New York Education Law §1125(5).

13. Plaintiff has sustained physical, psychological or other injuries or conditions as a result of conduct which constitutes a sexual offense as defined by Article 130 of the New York Penal Law.

14. That on or about May 24, 2004, SIMS executed a Waiver of Indictment in County Court, County of Niagara at Lockport, NY in THE PEOPLE OF THE STATE OF NEW YORK vs. PHILIP R. SIMS, SCI No. 2004-405.

15. That on or about May 24, 2004, SIMS executed a plea arrangement in County Court, County of Niagara at Lockport, NY in THE PEOPLE OF THE STATE OF NEW YORK vs. PHILIP R. SIMS, SCI No. 2004-405.

16. That on May 24, 2004, SIMS pled guilty to one count of Sodomy in the Second Degree, in violation of Penal Law§ 130.45 in full satisfaction of any potential charges against him relating to plaintiff in County Court, County of Niagara at Lockport, NY in THE PEOPLE OF THE STATE OF NEW YORK vs. PHILIP R. SIMS, SCI No. 2004-405.

17. That on May 24, 2004 defendant SIMS admitted in County Court, County of Niagara at Lockport, NY that during a period of time between March 2001 and June 2001 engaged in oral sex with plaintiff, a person he knew to be under the age of fifteen.

18. That by operation of law and the provisions of General Municipal Law §50-e (b), plaintiff is not required to serve and file a Notice of Claim upon the DISTRICT.

19. That by operation of law, the provisions of General Municipal Law §50-i are not applicable.

**AND AS FOR A FIRST CAUSE OF ACTION
AGAINST DEFENDANTS PLAINTIFF STATES:
(District's Negligence)**

20. Plaintiff repeats paragraphs 1-19.

21. That the DISTRICT was careless, reckless and negligent in hiring, employing, retaining and supervising its employee SIMS when the DISTRICT knew, or should have known, that SIMS was likely to act in a manner that was dangerous and abusive to plaintiff and similarly situated schoolchildren in an “educational setting.”

22. That the DISTRICT, by its agents, servants and/or employees knew, or should have known, that defendant SIMS abused his position of trust and authority as an employee of the DISTRICT and member of its teaching staff; that defendant SIMS was acting in the scope of his employment as a teacher sexually abused minor students less than seventeen years old; the sexual abuse constituted sexual offenses as defined by Penal Law Article 130.

23. That the DISTRICT, by its agents, servants and/or employees knew, or should have known, that its employee SIMS on multiple occasions between September 1998 through September 2000 used his position of trust and authority as a teacher and acting in the scope and duties of his employment by the DISTRICT sexually abused plaintiff in an “educational setting;” the sexual abuse constituted sexual offenses as defined in Article 130 of the New York Penal Law.

24. That the DISTRICT, by its agents, servants and/or employees knew, or should have known, that its employee SIMS on multiple occasions between September 2000 through November 2003 used his position of trust and authority as a teacher and acting in the scope and duties of his employment by the DISTRICT sexually abused plaintiff in an educational setting;” the sexual abuse constituted sexual offenses as defined in Article 130 of the New York Penal Law.

25. That the plaintiff sustained physical, psychological or other injuries or conditions as a result of the careless, reckless and negligent acts of the DISTRICT and its employees; plaintiff exercised due care.

26. Because of the DISTRICT's negligence, the plaintiff injured and damaged in an amount that exceeds the jurisdictional limits of all lower courts.

27. That the limited liability provisions of CPLR Article 16 are not applicable.

**AND AS FOR A SECOND CAUSE OF ACTION
AGAINST DEFENDANTS, PLAINTIFF STATES:
(District's Statutory Violations)**

28. Plaintiff repeats paragraphs 1-27.

29. The regulations of the New York State Educational Commissioner require The DISTRICT to employ and assign a full time principal to each school [8 NYCRR §100.2(a)].

30. Article 23-B of the Education Law obligates school districts to report to law enforcement authorities allegations of child abuse in an educational setting by a district employee.

31. Upon information and belief, in or about June 2002 the a female student other than T.H. reported one or more occurrences of conduct by SIMS in an "educational setting" that constituted sexual offenses as defined in Article 130 of the New York Penal Law to a District School Principal.

32. Upon information and belief, the DISTRICT and the District School Principal failed to report to law enforcement authorities the allegations of child abuse in an "educational setting" by a district employee.

33. Upon information and belief, in or about November 2003 DISTRICT officials, including members of the Board of Education obtained actual knowledge of allegations multiple sex acts abuse of plaintiff in an “educational setting” by defendant SIMS; each occurrence of sexual abuse of plaintiff by defendant SIMS constituted sexual offenses as defined by Article 130 of the New York Penal Law.

34. Upon information and belief, the DISTRICT, including members of the Board of Education, failed to report, or negligently delayed its reporting, to law enforcement authorities the allegations of child abuse in an “educational setting” by a district employee.

35. Upon information and belief, the defendant DISTRICT was obligated under Education Law § 1126 (1) to complete a written report that a child has been subject to sexual abuse in an educational setting.

36. That by failing to discharge their responsibilities under the Education Law, the DISTRICT, its agent, servants and employees knew of the dangers its employee defendant SIMS posed to minor female students; created a dangerous environment in an “educational setting;” and created opportunities for its employee defendant SIMS to continue perform multiple sex acts with plaintiff in an “educational setting.”

37. That the actions of the DISTRICT were in violation its responsibilities and violated the rights secured to the plaintiff by Article 23-B of the Education Law.

38. As a result of actions and violations of the defendant DISTRICT plaintiff sustained physical, psychological or other injuries or conditions.

39. As a result of actions and violations of the defendant DISTRICT plaintiff has been damaged in an amount that exceeds the jurisdictional limits of all lower courts.

40. That the limited liability provisions of CPLR Article 16 are not applicable.

**AND AS FOR A THIRD CAUSE OF ACTION
AGAINST DEFENDANTS PLAINTIFF STATES:
(Negligence of Sims)**

41. Plaintiff repeats paragraphs 1-40.

42. That from September 1998 through May 2004, defendant SIMS was an employee of the DISTRICT and a full-time member of the teaching staff.

43. That from September 1998 through May 2004, defendant SIMS was assigned to teach Band and Music classes at Gaskill Middle School.

43. That from September 1998 through September 2000, plaintiff attended Band and Music classes at Gaskill Middle School; defendant SIMS was one of her assigned instructors.

44. That from September 1998 through September 2000, plaintiff participated in non-classroom Band and Music activities in an “educational setting.”

45. Defendant SIMS supervised plaintiff’s participation in extracurricular Band and Music activities as part of his official teaching duties.

46. That from September 2000 through May 2004, plaintiff took Band and Music classes at Niagara Falls High School.

47. That from September 2000 through June 2004, plaintiff participated in extracurricular Band and Music activities in an “educational setting.”

48. Defendant SIMS supervised plaintiff’s participation in extracurricular Band and Music activities as part of his official teaching duties.

49. Defendant SIMS provided extracurricular music lessons and guidance to plaintiff,

encouraged her to perform extracurricular music activities including, but not limited to All County Band and other extracurricular music activities that involved District, County and State performances in an “educational setting.”

50. Defendant SIMS was careless, reckless and negligent the performance of his teaching duties and responsibilities in an “educational setting.”

51. That the plaintiff sustained physical, psychological or other injuries or conditions as a result of the careless, reckless and negligent conduct of defendant SIMS in performing his teaching duties and responsibilities; plaintiff exercised due care

52. Because of the negligence of defendant SIMS, plaintiff was injured and damaged in an amount that exceeds the jurisdictional limits of all lower courts.

53. That the limited liability limits of CPLR Article 16 are not applicable.

**AND AS FOR A FOURTH CAUSE OF ACTION
AGAINST DEFENDANTS, PLAINTIFF STATES:
(Sexual Abuse by Sims)**

54. Repeats paragraphs 1-53.

55. That on multiple occasions between September 1998 through September 2000, while defendant SIMS was acting in the scope and duties of his employment by the DISTRICT, defendant SIMS sexually abused plaintiff, a minor student; the sexual abuse constitute sexual offenses as defined in Article 130 of the New York Penal Law.

56. Defendant SIMS sexually abused plaintiff, a minor student, in an “educational setting” as defined by New York Education Law §1125(5).

57. That on multiple occasions between September 2000 through November 2003,

while defendant SIMS was acting in the scope and duties of his employment by the DISTRICT, defendant SIMS sexually abused plaintiff, a minor student; the sexual abuse constitute sexual offenses as defined in Article 130 of the New York Penal Law.

58. Defendant SIMS performed these sex acts with plaintiff, a minor student, in an “educational setting” as defined by New York Education Law §1125(5).

59. That the plaintiff sustained physical, psychological or other injuries or conditions as a result of the multiple sex acts defendant SIMS committed with plaintiff; plaintiff exercised due care.

60. Because of the multiple incidents of sexual abuse of plaintiff by defendant SIMS , plaintiff was injured and damaged in an amount that exceeds the jurisdictional limits of all lower courts.

61. That the limited liability provisions of CPLR Article 16 are not applicable.

WHEREFORE, plaintiff demands judgment against defendants in an amount that exceeds the jurisdictional limits of all lower courts and for such other and further relief as the court deems just and proper.

Dated: August 20, 2019
Niagara Falls, NY

Yours, etc.



MICHAEL J. SKONEY, ESQ.
VIOLA, CUMMINGS & LINDSAY, LLP
Attorneys for Plaintiff
770 Main Street
Niagara Falls, NY 14301
(716) 285-9555