

**STATE OF NEW YORK  
SUPREME COURT: COUNTY OF ERIE**

AB 500 DOE,

Plaintiff,

v.

KENMORE-TOWN OF TONAWANDA  
UNIFIED FREE SCHOOL DISTRICT aka  
KEN-TON SCHOOL DISTRICT; KENMORE  
WEST HIGH SCHOOL,

Defendant(s).

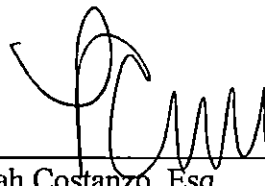
Index No. \_\_\_\_\_

**SUMMONS**

**TO THE ABOVE NAMED DEFENDANT(S):**

**PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED** to answer the Complaint, a copy of which is hereby served upon you, and to serve a copy of your Answer to the Complaint upon the undersigned attorneys listed below within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment by default will be taken against you for the relief demanded herein.

Dated: September 24, 2019



\_\_\_\_\_  
Leah Costanzo, Esq.  
**STEVE BOYD, PC**  
40 North Forest Road  
Williamsville, NY 14221  
Telephone: (716) 400-0000  
lcostanzo@steveboyd.com

Jeffrey R. Anderson  
J. Michael Reck  
**JEFF ANDERSON & ASSOCIATES, P.A.**  
52 Duane Street, 7th Floor  
New York, NY 10007  
Telephone: (646) 759-2551  
jeff@andersonadvocates.com  
mreck@andersonadvocates.com

*Counsel for Plaintiff*

**STATE OF NEW YORK  
SUPREME COURT: COUNTY OF ERIE**

AB 500 DOE,

Plaintiff,

v.

KENMORE-TOWN OF TONAWANDA  
UNIFIED FREE SCHOOL DISTRICT aka  
KEN-TON SCHOOL DISTRICT; KENMORE  
WEST HIGH SCHOOL,

Defendants.

Index No. \_\_\_\_\_

**COMPLAINT**

**DEMAND FOR JURY TRIAL<sup>1</sup>**

Plaintiff, by and through Plaintiff's attorneys, states and alleges as follows:

**PSEUDONYM**

1. Plaintiff is authorized to file the instant action under a pseudonym and defendants are barred from disclosing Petitioner's true identity to the general public pursuant to an Amended Order of the Honorable Deborah A. Chimes, J.S.C. dated August 13, 2018 which is attached hereto.

**PARTIES**

2. At all times material to this Complaint, Plaintiff resided in the State of New York.

3. Whenever reference is made to any Defendant entity, such reference includes that entity, affiliates, predecessors, and successors. In addition, whenever reference is made to any act, deed, or transaction of any entity, the allegation means that the entity engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of the entity's business or affairs.

<sup>1</sup> Pursuant to §4 of the New York Child Victims Act, Plaintiff is entitled to a trial preference.

4. At all times material, Defendant Kenmore-Town of Tonawanda Unified Free School District was and continues to be a public school district located in the County of Erie and State of New York.

5. At all times material, Kenmore West High School was and continues to be a public school owned, controlled, supervised, operated and managed by Defendant Kenmore-Town of Tonawanda Unified Free School District.

6. At all times material, Michael Indian was an employee of Defendant Kenmore-Town of Tonawanda Unified Free School District.

### JURISDICTION

7. This Court has jurisdiction pursuant to C.P.L.R. § 301 as Defendant is a quasi-municipal corporation created and organized by state legislatures and charged with the administration of public schools in the State of New York and because the unlawful conduct complained of herein occurred in New York.

8. Venue is proper pursuant to C.P.L.R. § 504 in that Defendant Kenmore-Town of Tonawanda Unified Free School District is situated in Erie County.

9. This complaint is brought under the Child Victims Act and, as such, the filing of a Notice of Claim is not required.

### FACTS

10. At all times material, Indian was employed by Defendant Kenmore-Town of Tonawanda Unified Free School District and remained under the direct supervision, employ, and control of Defendant Kenmore-Town of Tonawanda Unified Free School District.

11. Defendant Kenmore-Town of Tonawanda Unified Free School District placed Indian in positions where he had access to and worked with children as an integral part of his work.

Specifically, Defendant Kenmore-Town of Tonawanda Unified Free School District placed and retained Indian at Kenmore West High School as a Track Coach.

12. At all times material, Plaintiff was a student at Kenmore West High School.

13. Plaintiff, as a minor and vulnerable child, was dependent on Defendant Kenmore-Town of Tonawanda Unified Free School District and Indian. Defendant Kenmore-Town of Tonawanda Unified Free School District had custody of Plaintiff and was entrusted with the safety of Plaintiff and, therefore, had responsibility for and authority over Plaintiff.

14. In approximately 1989, when Plaintiff was approximately 17 years old, Indian engaged in unpermitted sexual contact with Plaintiff.

15. Defendant Kenmore-Town of Tonawanda Unified Free School District knew or should have known that Indian was a danger to children before Indian sexually assaulted Plaintiff.

16. Prior to the sexual abuse of Plaintiff, Defendant Kenmore-Town of Tonawanda Unified Free School District learned or should have learned that Indian was not fit to work with children. Defendant Kenmore-Town of Tonawanda Unified Free School District, by and through their agents, servants and/or employees, became aware, or should have become aware of Indian's propensity to commit sexual abuse and of the risk to Plaintiff's safety. At the very least, Defendant Kenmore-Town of Tonawanda Unified Free School District knew or should have known that they did not have sufficient information about whether or not its employees, more specifically, Indian, were fit to work with children.

17. Defendant Kenmore-Town of Tonawanda Unified Free School District knew or should have known that there was a risk of the sexual abuse of children attending Kenmore West High School. At the very least, Defendant Kenmore-Town of Tonawanda Unified Free School

District knew or should have known that they did not have sufficient information about whether or not there was a risk of child sex abuse for children attending Kenmore West High School.

18. Instead, Defendants negligently deemed that Indian was fit to work with children and/or that any previous misconduct was fixed or cured and/or that Indian would not sexually assault children and/or that Indian would not injure children.

19. Defendant Kenmore-Town of Tonawanda Unified Free School District owed Plaintiff a duty of reasonable care because they had superior knowledge about the risk that Indian posed to Plaintiff, the risk of abuse in general in its schools and/or the risks that its facilities posed to minor children.

20. Defendant Kenmore-Town of Tonawanda Unified Free School District owed a duty to Plaintiff to protect Plaintiff from harm because Defendant Kenmore-Town of Tonawanda Unified Free School District's actions created a foreseeable risk of harm to Plaintiff. As a vulnerable child attending Kenmore West High School, Plaintiff was a foreseeable victim. As a vulnerable child who Indian had access to through Indian's employment with Defendant Kenmore-Town of Tonawanda Unified Free School District, Plaintiff was a foreseeable victim.

21. Defendant Kenmore-Town of Tonawanda Unified Free School District also breached its duty to Plaintiff by actively maintaining and employing Indian in a position of power and authority through which Indian had access to children, including Plaintiff, and power and control over children, including Plaintiff.

22. Defendant Kenmore-Town of Tonawanda Unified Free School District breached its duties to Plaintiff. Defendant Kenmore-Town of Tonawanda Unified Free School District failed to use ordinary care in determining whether its facilities were safe and/or determining whether it had sufficient information to represent its facilities as safe. Defendant Kenmore-Town of

Tonawanda Unified Free School District's breach of its duties include, but are not limited to: failure to protect Plaintiff from a known danger, or reasonably foreseeable failure to have sufficient policies and procedures to prevent child sex abuse, failure to properly implement policies and procedures to prevent child sex abuse, failure to take reasonable measures to make sure that policies and procedures to prevent child sex abuse were working, failure to adequately inform families and children of the risks of child sex abuse, failure to investigate risks of child sex abuse, failure to have any outside agency test its safety procedures, failure to protect the children attending its programs from child sex abuse, failure to adhere to the applicable standard of care for child safety, failure to investigate the amount and type of information necessary to represent the school and its employees as safe, failure to train its employees properly to identify signs of child sexual abuse by fellow employees, and failure to engage or timely engage certified mental health professionals.

23. Defendant Kenmore-Town of Tonawanda Unified Free School District also breached its duty to Plaintiff by failing to warn Plaintiff and Plaintiff's family of the risk that Indian posed. Defendant further failed to warn Plaintiff and Plaintiff's family of Defendant Kenmore-Town of Tonawanda Unified Free School District's knowledge of the occurrence of child sexual abuse.

24. Defendant Kenmore-Town of Tonawanda Unified Free School District additionally violated their legal duty by failing to report known and/or suspected abuse of children by Indian and/or its other agents to the police and law enforcement.

25. Defendant Kenmore-Town of Tonawanda Unified Free School District was negligent and/or made representations to Plaintiff and Plaintiff's family during each and every year of Plaintiff's attendance during plaintiff's minority.

26. As a direct result of Defendant Kenmore-Town of Tonawanda Unified Free School District's negligence as described herein, Plaintiff has suffered, and will continue to suffer, great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, humiliation and/or physical, personal and psychological injuries. Plaintiff was prevented, and will continue to be prevented, from performing normal daily activities and obtaining the full enjoyment of life; and/or has incurred and will continue to incur expenses for psychological treatment, therapy, and counseling, and, on information and belief has and/or will incur loss of income and/or loss of earning capacity.

**AS AND FOR A FIRST CAUSE OF ACTION:**

**NEGLIGENCE**

27. Plaintiff incorporates all consistent paragraphs of this Complaint as if fully set forth under this count.

28. Defendant Kenmore-Town of Tonawanda Unified Free School District owed Plaintiff a duty of reasonable care to protect the Plaintiff from injury.

29. Defendant Kenmore-Town of Tonawanda Unified Free School District owed Plaintiff a duty of reasonable care because Defendant Kenmore-Town of Tonawanda Unified Free School District had a special relationship with Plaintiff.

30. Defendant Kenmore-Town of Tonawanda Unified Free School District also had a duty arising from its special relationship with Plaintiff, Plaintiff's parents, and other parents of young, vulnerable children, to properly train and supervise its employees. The special relationship arose because of the high degree of vulnerability of the children entrusted to Defendant Kenmore-Town of Tonawanda Unified Free School District's care. As a result of the high degree of vulnerability and risk of sexual abuse inherent in such a special relationship, Defendant Kenmore-



Town of Tonawanda Unified Free School District had a duty to establish measures of protection not necessary for persons who are older or better able to safeguard themselves.

31. Defendant Kenmore-Town of Tonawanda Unified Free School District owed Plaintiff a duty to protect Plaintiff from harm because Defendant Kenmore-Town of Tonawanda Unified Free School District had a special relationship with Indian.

32. By representing Indian as safe to work with children, and by undertaking the custody, supervision of, and/or care of the minor Plaintiff, Defendant Kenmore-Town of Tonawanda Unified Free School District entered into a fiduciary relationship with the minor Plaintiff. As a result of Plaintiff being a minor, and by Defendant Kenmore-Town of Tonawanda Unified Free School District's undertaking of the care and guidance of then vulnerable minor Plaintiff, Defendant Kenmore-Town of Tonawanda Unified Free School District held a position of empowerment over Plaintiff.

33. Further, Defendant Kenmore-Town of Tonawanda Unified Free School District, by holding itself out as being able to provide a safe environment for children, accepted this position of empowerment. Defendant Kenmore-Town of Tonawanda Unified Free School District thus entered into a fiduciary relationship with Plaintiff. Defendant Kenmore-Town of Tonawanda Unified Free School District exploited its position of empowerment, putting Plaintiff at risk to be sexually assaulted.

34. By accepting custody of the minor Plaintiff, Defendant Kenmore-Town of Tonawanda Unified Free School District established an *in loco parentis* relationship with Plaintiff and in so doing, owed Plaintiff a duty to protect Plaintiff from injury.

35. By establishing, operating and/or administrating Kenmore West High School, accepting the minor Plaintiff as a participant in its programs, holding its facilities and programs

out to be a safe environment for Plaintiff, accepting custody of the minor Plaintiff *in loco parentis*, and by establishing a fiduciary relationship with Plaintiff, Defendant Kenmore-Town of Tonawanda Unified Free School District entered into an express and/or implied duty to properly supervise Plaintiff and provide a reasonably safe environment for children attending its schools. Defendant Kenmore-Town of Tonawanda Unified Free School District also owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from foreseeable dangers. Defendant Kenmore-Town of Tonawanda Unified Free School District had the duty to exercise the same degree of care over minor students under its control as a reasonably prudent parent would have exercised under similar circumstances.

36. By establishing and operating Kenmore West High School and by accepting the enrollment and participation of the minor Plaintiff as a participant in its educational programs, Defendant Kenmore-Town of Tonawanda Unified Free School District owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from generally foreseeable dangers.

37. Defendant Kenmore-Town of Tonawanda Unified Free School District owed Plaintiff a duty to protect Plaintiff from harm because Defendant Kenmore-Town of Tonawanda Unified Free School District was aware of Plaintiff's presence on its property and aware that Indian posed a dangerous condition on Defendant Kenmore-Town of Tonawanda Unified Free School District's property.

38. Defendant Kenmore-Town of Tonawanda Unified Free School District breached its duties to Plaintiff by failing to use reasonable care. Defendant Kenmore-Town of Tonawanda Unified Free School District's failures include, but are not limited to, failing to properly supervise Indian, failing to properly supervise Plaintiff and failing to protect Plaintiff from a known danger.

39. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering.

**AS AND FOR A SECOND CAUSE OF ACTION:**

**NEGLIGENT HIRING**

40. Plaintiff incorporates all consistent paragraphs of this Complaint as if fully set forth under this court.

41. At all times material, Indian was employed by Defendant Kenmore-Town of Tonawanda Unified Free School District and was under Defendant Kenmore-Town of Tonawanda Unified Free School District's direct supervision, employ and control when he/she committed the wrongful acts alleged herein. Indian engaged in the illegal conduct while acting in the course and scope of his employment with Defendant Kenmore-Town of Tonawanda Unified Free School District and/or accomplished the sexual abuse by virtue of his/her job-created authority.

42. Defendant Kenmore-Town of Tonawanda Unified Free School District negligently hired and/or negligently placed Indian in a position to cause foreseeable harm which Plaintiff would not have been subjected to had Defendant Kenmore-Town of Tonawanda Unified Free School District taken reasonable care in its pre-hiring investigation of Indian.

43. Defendant Kenmore-Town of Tonawanda Unified Free School District knew or should have known of Indian's propensity for the type of behavior which resulted in Plaintiff's injuries.

44. As a result of the foregoing, Plaintiff sustained physical, emotional and psychological injuries, along with pain and suffering.

**AS AND FOR A THIRD CAUSE OF ACTION:**  
**NEGLIGENT TRAINING AND SUPERVISION**

45. Plaintiff incorporates all consistent paragraphs of this Complaint as if fully set forth under this count.

46. At all times material, Indian was employed by Defendant Kenmore-Town of Tonawanda Unified Free School District and was under each Defendant Kenmore-Town of Tonawanda Unified Free School District's direct supervision, employ, and control when he committed the wrongful acts alleged herein. Indian engaged in the wrongful conduct while acting in the course and scope of his employment with Defendant Kenmore-Town of Tonawanda Unified Free School District and/or accomplished the sexual abuse by virtue of his job-created authority.

47. Defendant Kenmore-Town of Tonawanda Unified Free School District had a duty, arising from its employment of Indian, to ensure that Indian did not sexually molest children.

48. Further, Defendant Kenmore-Town of Tonawanda Unified Free School District had a duty to train and educate employees and administrators and establish adequate and effective policies and procedures calculated to detect, prevent, and address inappropriate behavior and conduct between its employees and children.

49. Defendant Kenmore-Town of Tonawanda Unified Free School District was negligent in the training, supervision, and instruction of its employees. Defendant Kenmore-Town of Tonawanda Unified Free School District failed to timely and properly educate, train, supervise, and/or monitor its agents or employees with regard to policies and procedures that should be followed when sexual abuse of a child is suspected or observed.

50. Defendant Kenmore-Town of Tonawanda Unified Free School District was additionally negligent in failing to supervise, monitor, chaperone, and/or investigate Indian and/or

in failing to create, institute, and/or enforce rules, policies, procedures, and/or regulations to prevent Indian's sexual abuse of Plaintiff.

51. In failing to properly supervise Indian, and in failing to establish such training procedures for employees and administrators, Defendant Kenmore-Town of Tonawanda Unified Free School District failed to exercise the care that a reasonably prudent parent would have exercised under similar circumstances.

52. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering.

**AS AND FOR A FOURTH CAUSE OF ACTION:**  
**NEGLIGENT RETENTION**

53. Plaintiff incorporates all consistent paragraphs of this Complaint as if fully set forth under this count.

54. Defendant Kenmore-Town of Tonawanda Unified Free School District became aware or should have become aware of Indian's propensity for child sexual abuse, and failed to take any further action to remedy the problem and failed to investigate or remove Indian from working with children.

55. Defendant Kenmore-Town of Tonawanda Unified Free School District negligently and/or recklessly retained Indian with knowledge of Indian's propensity for the type of behavior which resulted in Plaintiff's injuries in this action.

56. Defendants negligently and/or recklessly retained Indian in a position where he had access to children and could foreseeably cause harm which Plaintiff would not have been subjected to had Defendant Kenmore-Town of Tonawanda Unified Free School District acted reasonably.

57. In failing to timely remove Indian from working with children or terminate the employment of Indian, Defendant Kenmore-Town of Tonawanda Unified Free School District

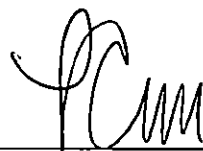
negligently and/or recklessly failed to exercise the degree of care that a reasonably prudent parent would have exercised under similar circumstances.

58. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering.

**PRAYER FOR RELIEF**

WHEREFORE, based on the foregoing causes of action, Plaintiff prays for judgment against Defendant(s) in an amount that will fully and fairly compensate Plaintiff for Plaintiff's injuries and damages, and for any other relief the Court deems appropriate. The amount of damages sought in this Complaint exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

DATED: September 27, 2019



---

Leah Costanzo, Esq.  
**STEVE BOYD, PC**  
40 North Forest Road  
Williamsville, NY 14221  
Telephone: (716) 400-0000  
lcostanzo@steveboyd.com

Jeffrey R. Anderson  
J. Michael Reck  
**JEFF ANDERSON & ASSOCIATES, P.A.**  
52 Duane Street, 7th Floor  
New York, NY 10007  
Telephone: (646) 759-2551  
jeff@andersonadvocates.com  
mreck@andersonadvocates.com  
*Counsel for Plaintiff*