

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

AB 501 DOE,

Plaintiff,

v.

NIAGARA FALLS CITY SCHOOL DISTRICT;
NIAGARA MIDDLE SCHOOL; NIAGARA
FALLS HIGH SCHOOL

Defendant(s).

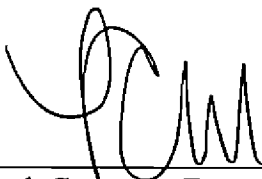
Index No. _____

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 27, 2019



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**STATE OF NEW YORK
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AB 501 DOE,

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NIAGARA FALLS CITY SCHOOL
DISTRICT; NIAGARA MIDDLE SCHOOL;
NIAGARA FALLS HIGH SCHOOL,

Defendants.

Index No. _____

COMPLAINT

DEMAND FOR JURY TRIAL¹

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

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

or affairs.

4. At all times material, Defendant Niagara Falls City 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, Niagara Falls High School was and continues to be a public school owned, controlled, supervised, operated and managed by Defendant Niagara Falls City School District.

6. At all times material, Patrick Kuciewski was an employee of Defendant Niagara Falls City 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 Niagara Falls City School District is situated in Niagara 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, Kuciewski was employed by Defendant Niagara Falls City School District and remained under the direct supervision, employ, and control of Defendant Niagara Falls City School District.

11. Defendant Niagara Falls City School District placed Kuciewski in positions where he had access to and worked with children as an integral part of his work. Specifically, Defendant

Niagara Falls City School District placed and retained Kuciewski at Niagara Falls High School as the Director of the Instrumental Music Program.

12. At all times material, Plaintiff was a student in the Niagara Falls City School District.

13. Plaintiff, as a minor and vulnerable child, was dependent on Defendant Niagara Falls City School District and Kuciewski. Defendant Niagara Falls City School District had custody of Plaintiff and was entrusted with the safety of Plaintiff and, therefore, had responsibility and authority over Plaintiff.

14. From approximately 1995-1999, when Plaintiff was approximately 12-16 years old, Kuciewski engaged in unpermitted sexual contact with Plaintiff.

15. Defendant Niagara Falls City School District knew or should have known that Kuciewski was a danger to children before Kuciewski sexually assaulted Plaintiff.

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

17. Defendant Niagara Falls City School District knew or should have known that there was a risk of the sexual abuse of children attending Niagara Falls High School. At the very least, Defendant Niagara Falls City 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 Niagara Falls High School.

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

19. Defendant Niagara Falls City School District owed Plaintiff a duty of reasonable care because they had superior knowledge about the risk that Kuciewski 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 Niagara Falls City School District owed a duty to Plaintiff to protect Plaintiff from harm because Defendant Niagara Falls City School District's actions created a foreseeable risk of harm to Plaintiff. As a vulnerable child attending Niagara Falls High School, Plaintiff was a foreseeable victim. As a vulnerable child who Kuciewski had access to through Kuciewski's employment with Defendant Niagara Falls City School District, Plaintiff was a foreseeable victim.

21. Defendant Niagara Falls City School District also breached its duty to Plaintiff by actively maintaining and employing Kuciewski in a position of power and authority through which Kuciewski had access to children, including Plaintiff, and power and control over children, including Plaintiff.

22. Defendant Niagara Falls City School District breached its duties to Plaintiff. Defendant Niagara Falls City 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 Niagara Falls City School District's breach of its duties include, but are not limited to: failure to protect Plaintiff from a known or reasonably foreseeable danger, 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 to engage or timely engage certified health professionals

23. Defendant Niagara Falls City School District also breached its duty to Plaintiff by failing to warn Plaintiff and Plaintiff's family of the risk that Kuciewski posed. Defendant further failed to warn Plaintiff or Plaintiff's family of Defendant Niagara Falls City School District's knowledge of the occurrence of child sexual abuse.

24. Defendant Niagara Falls City School District additionally violated their legal duty by failing to report known and/or suspected abuse of children by Kuciewski and/or its other agents to the police and law enforcement.

25. Defendant Niagara Falls City 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 Niagara Falls City 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 other 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, upon 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 Niagara Falls City School District owed Plaintiff a duty of reasonable care to protect the Plaintiff from injury.

29. Defendant Niagara Falls City School District owed Plaintiff a duty of reasonable care because Defendant Niagara Falls City School District had a special relationship with Plaintiff.

30. Defendant Niagara Falls City 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 Niagara Falls City 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 Niagara Falls City 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 Niagara Falls City School District owed Plaintiff a duty to protect Plaintiff from harm because Defendant Niagara Falls City School District had a special relationship with Kuciewski.

32. By representing Kuciewski out as safe to work with children, and by undertaking the custody, supervision of, and/or care of the minor Plaintiff, Defendant Niagara Falls City School

District entered into a fiduciary relationship with the minor Plaintiff. As a result of Plaintiff being a minor, and by Defendant Niagara Falls City School District's undertaking of the care and guidance of then vulnerable minor Plaintiff, Defendant Niagara Falls City School District held a position of empowerment over Plaintiff.

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

34. By accepting custody of the minor Plaintiff, Defendant Niagara Falls City 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 Niagara Falls 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 Niagara Falls City 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 Niagara Falls City School District also owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from foreseeable dangers. Defendant Niagara Falls City 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 Niagara Falls High School and by accepting the

enrollment and participation of the minor Plaintiff as a participant in its educational programs, Defendant Niagara Falls City School District owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from generally foreseeable dangers.

37. Defendant Niagara Falls City School District owed Plaintiff a duty to protect Plaintiff from harm because Defendant Niagara Falls City School District was aware of Plaintiff's presence on its property and aware that Kuciewski posed a dangerous condition on Defendant Niagara Falls City School District's property.

38. Defendant Niagara Falls City School District breached its duties to Plaintiff by failing to use reasonable care. Defendant Niagara Falls City School District's failures include, but are not limited to, failing to properly supervise Kuciewski, 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, Kuciewski was employed by Defendant Niagara Falls City School District and was under Defendant Niagara Falls City School District's direct supervision, employ and control when he/she committed the wrongful acts alleged herein. Kuciewski engaged in the illegal conduct while acting in the course and scope of his employment with Defendant Niagara Falls City School District and/or accomplished the sexual abuse by virtue of his/her job-created authority.

42. Defendant Niagara Falls City School District negligently hired and/or negligently

placed Kuciewski in a position to cause foreseeable harm which Plaintiff would not have been subjected to had Defendant Niagara Falls City School District taken reasonable care in its pre-hiring investigation of Kuciewski.

43. Defendant Niagara Falls City School District knew or should have known of Kuciewski'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, Kuciewski was employed by Defendant Niagara Falls City School District and was under each Defendant Niagara Falls City School District's direct supervision, employ, and control when he committed the wrongful acts alleged herein. Kuciewski engaged in the wrongful conduct while acting in the course and scope of his employment with Defendant Niagara Falls City School District and/or accomplished the sexual abuse by virtue of his job-created authority.

47. Defendant Niagara Falls City School District had a duty, arising from its employment of Kuciewski, to ensure that Kuciewski did not sexually molest children.

48. Further, Defendant Niagara Falls City 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 Niagara Falls City School District was negligent in the training,

supervision, and instruction of its employees. Defendant Niagara Falls City 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 Niagara Falls City School District was additionally negligent in failing to supervise, monitor, chaperone, and/or investigate Kuciewski and/or in failing to create, institute, and/or enforce rules, policies, procedures, and/or regulations to prevent Kuciewski's sexual abuse of Plaintiff.

51. In failing to properly supervise Kuciewski, and in failing to establish such training procedures for employees and administrators, Defendant Niagara Falls City 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 Niagara Falls City School District became aware or should have become aware of Kuciewski's propensity for child sexual abuse, and failed to take any further action to remedy the problem and failed to investigate or remove Kuciewski from working with children.

55. Defendant Niagara Falls City School District negligently and/or recklessly retained Kuciewski with knowledge of Kuciewski's propensity for the type of behavior which resulted in

Plaintiff's injuries in this action.

56. Defendants negligently and/or recklessly retained Kuciewski in a position where he had access to children and could foreseeably cause harm which Plaintiff would not have been subjected to had Defendant Niagara Falls City School District acted reasonably.

57. In failing to timely remove Kuciewski from working with children or terminate the employment of Kuciewski, Defendant Niagara Falls City 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



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