

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NIAGARA

CHRISTINA M. LAPORTA,

Plaintiff,

vs.

NIAGARA FALLS CITY SCHOOL DISTRICT,
NIAGARA FALLS BOARD OF EDUCATION,
GASKILL MIDDLE SCHOOL, NIAGARA
WHEATFIELD CENTRAL SCHOOL
DISTRICT, and PHILIP R. SIMS,

Defendants.

SUMMONS

Plaintiffs designate the County of
NIAGARA as the place of trial. The
basis of venue is the Plaintiff's and
Defendant's County of residence pursuant
to CPLR §503(a), (c).

**TO THE ABOVE NAMED
DEFENDANT:**

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiffs' attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
January 27, 2020

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Attorneys for Plaintiffs

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DEFENDANT'S ADDRESSES:

NIAGARA FALLS CITY SCHOOL DISTRICT

630 66th Street
Niagara Falls, NY 14075

NIAGARA FALLS BOARD OF EDUCATION

630 66th Street
Niagara Falls, NY 14075

NIAGARA WHEATFIELD CENTRAL SCHOOL DISTRICT

5700 West Street
Sanborn, NY 14132

PHILIP R. SIMS

4041 Big Tree Road
Hamburg, NY 14075

GASKILL MIDDLE SCHOOL

c/o NIAGARA FALLS CITY SCHOOL DISTRICT
630 66th Street
Niagara Falls, NY 14075

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NIAGARA

<p>CHRISTINA M. LAPORTA,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>NIAGARA FALLS CITY SCHOOL DISTRICT, NIAGARA FALLS BOARD OF EDUCATION, GASKILL MIDDLE SCHOOL, NIAGARA WHEATFIELD CENTRAL SCHOOL DISTRICT, and PHILIP R. SIMS,</p> <p style="text-align: center;">Defendants.</p>
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COMPLAINT

Index No.:

Plaintiff CHRISTINA M. LAPORTA by and through her undersigned attorneys, as and for her Complaint, alleges as follows:

THE PARTIES

1. Plaintiff is a resident of the County of Erie, State of New York.
2. Plaintiff was born in 1982.
3. At all times from September 1993 through June 1996, plaintiff was a resident of the City of Niagara Falls, Niagara County, New York.
4. At all times from September 1993 through June 1996, plaintiff was less than eighteen years of age.
5. This action is brought pursuant to the New York Child Victim's Act, CPLR § 214-g.
6. Defendant NIAGARA FALLS CITY SCHOOL DISTRICT (hereinafter "NIAGARA DISTRICT") is a municipal and educational corporation organized under the laws

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of New York with a principal place to transact business at 630 Sixty-Sixth Street Niagara Falls, New York.

7. Defendant NIAGARA FALLS BOARD OF EDUCATION (hereinafter “NIAGARA BOE”) is a duly formed Board of Education pursuant to the laws of the State of New York, with a principal place to transact business at 630 Sixty-Sixth Street Niagara Falls, New York.

8. Upon information and belief, Defendant GASKILL MIDDLE SCHOOL (hereinafter “GASKILL”), was, during all times relevant and until on or about the year 2008, a municipal and educational corporation organized under the laws of the State of New York with a principal place to transact business at 910 Hyde Park Boulevard, Niagara Falls, NY 14301

9. Defendant NIAGARA WHEATFIELD CENTRAL SCHOOL DISTRICT (hereinafter “WHEATFIELD DISTRICT”) is a municipal and educational corporation organized under the laws of New York with a principal place to transact business at 5700 West Street, Sanborn, NY 14132

10. Upon information and belief, Defendant PHILIP R. SIMS (hereinafter “SIMS”) is a resident of the Town of Hamburg, Erie County, New York.

BACKGROUND

11. Upon information and belief, in the 1980s, SIMS was a full-time member and employee of the WHEATFIELD DISTRICT teaching staff, teaching Band and Music at a public school institution within the WHEATFIELD DISTRICT.

12. Upon information and belief, Defendant WHEATFIELD DISTRICT had knowledge of Defendant SIMS’ history of acts of sexual assault and/or abuse, prior to SIMS’ abuse of Plaintiff. This Defendant’s failure to report and/or follow up and investigate these prior,

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known, credible allegations of sexual abuse by SIMS prior to SIMS' application for employment with the Defendant NIAGARA DISTRICT, was and is a violation of statutory and common law obligations for same as described herein.

13. Upon information and belief, Defendant WHEATFIELD DISTRICT fired and/or terminated and/or discontinued the employment of SIMS in or about the year 1987 on account of its awareness and/or strong suspicion that Defendant SIMS had inappropriate, illegal, abusive, and non-consensual sexual contact with a minor student within its school district during the course of SIMS' employment with this Defendant.

14. Defendant WHEATFIELD DISTRICT had statutory and common law obligations to report its knowledge of this sexually predatory behavior of one of its staff members and violated that obligation in failing to inform future employers of SIMS, including but not limited to the NIAGARA DISTRICT, about such predatory conduct of SIMS.

15. Had Defendant WHEATFIELD DISTRICT acted in conformity with its statutory and common law obligations to investigate, report, and convey information relating to these prior, known, credible allegations of abuse by SIMS, Plaintiff would not have been injured as alleged herein.

16. Upon information and belief, in or about approximately September 1987 and subsequent thereto, SIMS was a hired as full-time member of the NIAGARA DISTRICT teaching staff, teaching music courses first at what was then known as LaSalle Senior High School, now known as Niagara Falls High School, located at 4455 Porter Road Niagara Falls, New York 14301.

17. Upon information and belief, SIMS taught at LaSalle for four years, from 1987 through 1991.

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18. Upon information and belief, at some point thereafter prior to 1993, SIMS obtained gainful employment as a Band and Music at the Hyde Park Elementary School, located at 1620 Hyde Park Blvd, Niagara Falls, NY 14305, within the NIAGARA DISTRICT.

19. Upon information and belief, from 1987 through 1996 and subsequent thereto, and at all times relevant herein, SIMS was hired by and received gainful employment from the NIAGARA BOE and/or NIAGARA DISTRICT as a full-time member and employee of various educational institutions within the NIAGARA DISTRICT.

20. Upon information and belief, SIMS was a full time member of the GASKILL teaching staff, from 1993 through 1996 and subsequent thereto, teaching Band and Music at the Gaskill Middle School, located at 910 Hyde Park Blvd, Niagara Falls, NY 14301, within the NIAGARA DISTRICT.

21. From in or about September 1992 through June 1993, defendant SIMS was employed by NIAGARA BOE and/or NIAGARA DISTRICT and/or GASKILL as a full-time member of the teaching staff at Hyde Park Elementary School.

22. From in or about September 1992 through June 1993, defendant SIMS was assigned to teach Band and Music classes at Hyde Park Elementary School.

23. From in or about September 1992 through June of 1993, plaintiff was enrolled as a public education student of NIAGARA DISTRICT, enrolled as a fifth grade student at Hyde Park Elementary School.

24. From in or about September 1992 through June 1993, plaintiff attended Band and Music classes at Hyde Park Elementary School; defendant SIMS was one of her assigned instructors.

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25. From in or about September 1992 through June 1993, plaintiff participated in non-classroom Band and Music activities in an educational setting.

26. From in or about September 1992 through June 1996, Defendant SIMS supervised plaintiff's participation in extracurricular Band and Music activities as part of his official teaching duties.

27. From in or about September 1993 through June of 1996, plaintiff was enrolled as a public education student of Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE, enrolled as a sixth through eighth grade student at Gaskill Middle School.

28. From in or about September 1993 through June 1996, plaintiff attended Band and Music classes at Gaskill Middle School; defendant SIMS was one of her assigned instructors.

29. From in or about September 1993 through June 1996, plaintiff participated in non-classroom Band and Music activities, frequently in a one-on-one office environment, in an educational setting.

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

31. On multiple occasions between approximately September 1993 through June 1996, while defendant SIMS was acting in the scope and duties of his employment with GASKILL, NIAGARA DISTRICT, and/or NIAGARA BOE, 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.

32. On multiple occasions between September 1993 through June 1996, 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).

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33. On multiple occasions between September 1993 and June 1996, SIMS engaged in unpermitted, forcible, harmful, and unlawful sexual contact with Plaintiff on school grounds within GASKILL and/or the NIAGARA DISTRICT and/or the NIAGARA BOE.

34. At all relevant times, Defendants gave SIMS unfettered access to minor children in their school without any other adult supervision.

35. Not only did Defendants place Plaintiff in harm's way by improperly holding SIMS out as a teacher and permitting him to have unfettered access to Plaintiff in that role, but they carelessly, negligently, and recklessly, failed to protect Plaintiff from sexual abuse by SIMS, permitted the abuse to occur, failed to supervise SIMS, particularly when Defendant knew or should have known that SIMS should not be around vulnerable children, failed to timely investigate prior known acts of SIMS' misconduct, acted to protect its own self-interest to the detriment of innocent children, including Plaintiff, and are otherwise responsible for SIMS' sexual assault of Plaintiff, and Plaintiff's consequential injuries and damages.

36. At all relevant times, Defendants held SIMS out as qualified to perform the duties of a music teacher for youngsters in a safe and appropriate manner.

37. Upon information and belief, Defendants knew or should have known that SIMS was a danger to minors, like Plaintiff, before SIMS sexually abused Plaintiff.

38. Upon information and belief, Defendants knew or should have known that SIMS was not qualified to perform the duties of a district teacher with access to minor, vulnerable children.

39. Upon information and belief, Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE failed to perform sufficient background investigation into the qualifications and

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history of SIMS, including, *inter alia*, by failing to perform an initial background check into SIMS' history of child sexual abuse from SIMS' prior employer.

40. Upon information and belief, Defendant WHEATFIELD DISTRICT knew about, yet failed to convey, critical background investigation respecting the qualifications and abuse history of SIMS, of which they knew or should have known, to potential employers including GASKILL, NIAGARA DISTRICT and NIAGARA BOE and to the police, in violation of their statutory and common law duties as described herein.

41. Defendant WHEATFIELD DISTRICT knew or should have known that allowing SIMS to have unsupervised and unlimited access with children in its school, particularly vulnerable children like Plaintiff, posed an unacceptable risk of child sexual abuse.

42. Prior to the time of Plaintiff's abuse, Defendants knew or should have known that child sex abuse was a significant potential risk for children in its school.

43. The sexual abuse of Plaintiff by SIMS was foreseeable to Defendants GASKILL, NIAGARA DISTRICT, NIAGARA BOE and WHEATFIELD DISTRICT.

44. Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE owed Plaintiff a reasonable duty of care because they affirmatively solicited children, parents, governments to send children to its schools for their safety and guidance; they undertook custody of minor children, including Plaintiff; and they promoted their schools and programs as being safe for children, and they held out its agents, including SIMS, as safe to work with and around minor children.

45. Defendant WHEATFIELD DISTRICT owed Plaintiff a reasonable duty of care because they affirmatively solicited children, parents, governments to send children to its schools for their safety and guidance; they undertook custody of minor children; they owed statutory and

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common law duties to protect children; and they promoted their schools and programs as being safe for children, and they held out its agents, including SIMS, as safe to work with and around minor children.

46. Defendant GASKILL, NIAGARA DISTRICT, and NIAGARA BOE owed Plaintiff a heightened, fiduciary duty of care because they held themselves out as being able to provide a safe and secure environment for children, including Plaintiff; Plaintiff was entrusted to Defendants' care, and it was expected that Plaintiff would be safe and properly supervised in an environment free from harm and abuse; Plaintiff was a vulnerable child, and unable to protect herself; and Defendant affirmatively assumed a position of empowerment over Plaintiff.

47. Defendants owed Plaintiff a duty to protect her from harm because Defendants' acts and omissions created a foreseeable risk of harm to Plaintiff.

48. Plaintiff has sustained physical, psychological and/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.

49. 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.

50. 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.

51. On or about 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

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against him relating to a 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.

52. On or about 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 he engaged in oral sex with a minor, a person he knew to be under the age of fifteen.

A FIRST CAUSE OF ACTION
AS AGAINST DEFENDANT WHEATFIELD DISTRICT
FOR NEGLIGENCE IN THE HIRING, RETENTION, SUPERVISION, DIRECTION,
FIRING, REPORTING, TRAINING, AND MONITORING OF SIMS

53. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

54. At all relevant times, Defendant WHEATFIELD DISTRICT had a duty to exercise due care in hiring, appointing, assigning, retention, firing, supervision, direction, and reporting of the actions, of SIMS, so as to protect minor children, including current and future students of SIMS, such as Plaintiff, who were likely to and foreseeably would come into contact with him, and/or under his influence or supervision, and to ensure that SIMS did not use his current assigned position or any future assigned position to injure minors by sexual assault, contact or abuse.

55. Defendant WHEATFIELD DISTRICT was negligent and failed to use reasonable care in hiring, appointing, assigning, retention, supervision and direction of SIMS, failed to properly investigate his background and employment history, and/or hired, appointed and/or assigned him to Defendant's school, failed to convey critical information to other potential employers, including Defendants NIAGARA BOE, NIAGARA DISTRICT, and GASKILL about the reasons for which SIMS was terminated, fired, or asked to resign, when this Defendant knew or should have known of facts that would make SIMS a danger to students and future

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students, including Plaintiff, and failed to report to authorities and to prospective future employers of SIMS, including Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE, known acts of prior sexual improprieties of SIMS; and Defendant WHEATFIELD DISTRICT was otherwise negligent.

56. SIMS would not have been in a position to sexually abuse Plaintiff had Defendant WHEATFIELD DISTRICT not been negligent in the hiring, retention, supervision, and direction of SIMS.

57. Defendant WHEATFIELD DISTRICT was careless, reckless and negligent in hiring, employing, retaining, supervising, firing of its employee SIMS when the WHEATFIELD 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.

58. Defendant WHEATFIELD 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 WHEATFIELD 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.

59. Upon information and belief, the WHEATFIELD DISTRICT, by its agents, servants and/or employees had actual knowledge of, or should have known, that its employee SIMS, on multiple occasions, while an employee of its district, abused his position of trust and authority as a teacher, and acting in the scope and duties of his employment by the WHEATFIELD DISTRICT, and sexually abused at least one minor student in an educational

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setting; the sexual abuse constituted sexual offenses as defined in Article 130 of the New York Penal Law.

60. The WHEATFIELD DISTRICT, by its agents, servants and/or employees knew, or should have known, that it was foreseeable that its employee SIMS would continue to sexually abuse children in subsequent positions after being fired or asked to resign, after the conclusion of SIM's employ with the WHEATFIELD DISTRICT.

61. The WHEATFIELD DISTRICT had a duty, both statutorily, pursuant to, *inter alia*, N.Y. Soc. Serv. Law, §§ 413 and 420, and 8 NYCRR §100, and under common law, and assumed a duty to future students who would be taught by SIMS, to inform both the public legal authorities as well as future prospective employers of SIMS, including GASKILL NIAGARA DISTRICT, and NIAGARA BOE of the information that WHEATFIELD DISTRICT knew or should have known about SIMS in the 1980s pertaining to his sexual abuse of children.

62. As a direct and proximate result of Defendant WHEATFIELD DISTRICT's foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

63. By reason of the foregoing, Defendant WHEATFIELD DISTRICT is liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

64. The limited liability provisions of CPLR Article 16 are not applicable.

A SECOND CAUSE OF ACTION
AS AGAINST DEFENDANT WHEATFIELD DISTRICT
FOR VIOLATIONS OF STATUTORY REPORTING OBLIGATIONS

65. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

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

67. 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.

68. N.Y. Soc. Serv. Law, §§ 413 and 420 requires schools, teachers, and other employees to report to authorities any allegations or suspicions of sexual abuse of a child.

69. Upon information and belief, in or about the middle-1980s prior to September 1987, WHEATFIELD DISTRICT became aware that a female student, not the Plaintiff herein, had been sexual abused and/or molested and/or assaulted by SIMS in an educational setting that constituted sexual offenses as defined in Article 130 of the New York Penal Law.

70. Upon information and belief, based on this information, Defendant WHEATFIELD DISTRICT terminated the employment and/or fired and/or requested the resignation of SIMS.

71. Upon information and belief, the WHEATFIELD DISTRICT 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.

72. Upon information and belief, in or about 1987, the WHEATFIELD DISTRICT knew or should have known, that SIMS was seeking employment in the NIAGARA DISTRICT and was asked for background information pertaining to SIMS further to his application for employment.

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73. Upon information and belief, Defendant WHEATFIELD DISTRICT failed to report or convey, and covered up and concealed its actual knowledge of prior acts of sexual assault upon a minor student by SIMS.

74. By failing to discharge their responsibilities under the Education and Social Services Law and the common law, the WHEATFIELD 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 SIMS to continue to perform multiple sex acts with others, including plaintiff, in an educational setting.

75. The actions of the WHEATFIELD DISTRICT were in violation its responsibilities and violated the rights secured to the plaintiff by Article 23-B of the Education Law and N.Y. Social Services Law.

76. As a direct and proximate result of Defendant WHEATFIELD DISTRICT's foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

77. By reason of the foregoing, Defendant WHEATFIELD DISTRICT is liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

78. The limited liability provisions of CPLR Article 16 are not applicable.

A THIRD CAUSE OF ACTION
AS AGAINST DEFENDANTS GASKILL, NIAGARA DISTRICT, AND NIAGARA BOE
FOR NEGLIGENCE IN THE HIRING, RETENTION, SUPERVISION,
TRAINING, AND DIRECTION OF SIMS

79. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

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80. At all relevant times, Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE had a duty to exercise due care in hiring, appointing, assigning, retention, supervision and direction of SIMS, so as to protect minor children, including Plaintiff, who were likely to come into contact with him, and/or under his influence or supervision, and to ensure that SIMS did not use his assigned position to injure minors by sexual assault, contact or abuse.

81. Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE were negligent and failed to use reasonable care in hiring, appointing, assigning, retention, supervision and direction of SIMS, failed to properly investigate his background and employment history, and/or hired, appointed and/or assigned him to Defendant's school, when these Defendants knew or should have known of facts that would make him a danger to children, including Plaintiff; and Defendants were otherwise negligent.

82. Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE were negligent and did not use reasonable care in its supervision and direction of SIMS, failed to monitor his activities, failed to oversee the manner in which he carried out the duties to which Defendant assigned them, even though they knew or should have known that SIMS posed a threat of sexual abuse to minors; allowed the misconduct described above to occur and continue; failed to investigate SIMS' dangerous activities and remove him from its school; failed to have policies and practices in place that would have prevented this abuse; and Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE were otherwise negligent.

83. SIMS would not have been in a position to sexually abuse Plaintiff had Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE not been negligent in the hiring, retention, supervision, and direction of SIMS.

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84. Defendants GASKILL's, NIAGARA DISTRICT's, and NIAGARA BOE's aforesaid actions were negligent, grossly negligent reckless, and/or outrageous in its disregard for the rights and safety of Plaintiff.

85. Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE were careless, reckless and negligent in hiring, employing, retaining and supervising its employee SIMS when these Defendants 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.

86. Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE by their agents, servants and/or employees knew, or should have known, that Defendant SIMS abused his position of trust and authority as an employee of GASKILL, NIAGARA DISTRICT, and NIAGARA BOE and members of their 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.

87. Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE by their agents, servants and/or employees knew, or should have known, that its employee SIMS on multiple occasions between September 1993 through June of 1996 used his position of trust and authority as a teacher and acting in the scope and duties of his employment by Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE sexually abused plaintiff in an educational setting; the sexual abuse constituted sexual offenses as defined in Article 130 of the New York Penal Law.

88. Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE by their agents, servants and/or employees were negligent and did not use reasonable care in their

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training, if any, of minor students and/or parents about the risk of sexual abuse in their institution and facilities, to identify signs of sexual abuse, grooming behaviors, or sexual predators, and to report any suspicion that a minor may be getting abused, maltreated, groomed, or otherwise sexually abused.

89. Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE by their agents, servants and/or employees were negligent and did not use reasonable care in their training, if any, of employees and/or adult staff about the risk of sexual abuse in their school, to identify signs of sexual abuse, grooming behaviors, or sexual predators, and their mandatory duty to report any suspicion that a minor may be getting abused, maltreated, groomed, or otherwise sexually abused.

90. The Plaintiff sustained physical, psychological or other injuries or conditions as a result of the careless, reckless and negligent acts of Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE and their employees.

91. As a direct and proximate result of the Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE's foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

92. By reason of the foregoing, Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE are liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

The limited liability provisions of CPLR Article 16 are not applicable.

A FOURTH CAUSE OF ACTION
AS AGAINST DEFENDANTS GASKILL, NIAGARA DISTRICT, AND NIAGARA BOE
FOR VIOLATION OF STATUTORY REPORTING OBLIGATIONS

93. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

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94. At all relevant times, the regulations of the New York State Educational Commissioner required Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE to employ and assign a full time principal to each school (8 NYCRR §100.2(a)).

95. At all relevant times, these regulations set forth the obligations of schools and teachers, including Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE, to report suspicions and/or allegations of child abuse and to otherwise protect children in their custody.

96. At all relevant times, Article 23-B of the Education Law obligates schools and school districts, including Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE to report to law enforcement authorities allegations of child abuse in an educational setting by a district employee.

97. At all relevant times, N.Y. Soc. Serv. Law, including, *inter alia*, §§ 413 and 420, established the additional obligations of schools, school districts, and teachers, including Defendants GASKILL, NIAGARA SCHOOL DISTRICT, and NIAGARA BOE, to report suspicions and/or allegations of child sexual abuse.

98. Furthermore, the aforementioned regulations and statutes codified the common law duties of schools and school districts to investigate, protect, deter, and report allegations or suspicions of child sexual abuse.

99. Upon information and belief, in or about late-1993 to early-1994, the Plaintiff's mother reported to a teacher at GASKILL that the conduct of SIMS vis-à-vis the Plaintiff was inappropriate, and was in an educational setting that constituted sexual offenses as defined in Article 130 of the New York Penal Law to a District School Principal.

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100. Upon information and belief, the Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE failed to report to law enforcement authorities the allegations of child abuse in an educational setting by a district employee.

101. Upon information and belief, Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE, 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.

102. At all relevant times, the Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE were obligated, pursuant Education Law §1126(1) and N.Y. Soc. Serv. Law §§ 413 and 420, to complete a written report that a child has been subject to sexual abuse in an educational setting.

103. By failing to discharge their responsibilities under the Education Law, Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE, their agents, 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 their employee defendant SIMS to continue perform multiple sex acts upon plaintiff in an educational setting.

104. The actions of Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE were in violation their responsibilities and violated the rights secured to the plaintiff by Article 23-B of the Education Law and N.Y. Soc. Serv. Law §§ 413 and 420.

105. As a direct and proximate result of Defendants GASKILL's, NIAGARA DISTRICT's, and NIAGARA BOE's foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

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106. By reason of the foregoing, Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE are liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

107. The limited liability provisions of CPLR Article 16 are not applicable.

A FIFTH CAUSE OF ACTION
AS AGAINST DEFENDANTS GASKILL, NIAGARA DISTRICT, AND NIAGARA BOE
FOR BREACH OF FIDUCIARY DUTY

108. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

109. At all relevant times, there existed a fiduciary relationship of trust, confidence and reliance between Plaintiff and Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE.

110. The entrustment of Plaintiff to the care and supervision of the Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE while Plaintiff was a vulnerable child, imposed upon these Defendants a fiduciary duty to act in the best interests of Plaintiff.

111. Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE were entrusted with the well-being, care, and safety of Plaintiff, which Defendant had a fiduciary duty to protect.

112. By reason of the foregoing, Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE breached their fiduciary duties to Plaintiff.

113. As a direct and proximate result of Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE's foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

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114. By reason of the foregoing, Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE is liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

115. The limited liability provisions of CPLR Article 16 are not applicable.

A SIXTH CAUSE OF ACTION
AS AGAINST DEFENDANTS GASKILL, NIAGARA DISTRICT, AND NIAGARA BOE
FOR BREACH OF DUTY *IN LOCO PARENTIS*

116. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

117. At all relevant times, Plaintiff was a vulnerable child entrusted to the care of Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE and was under the supervision and control of these Defendants, such that Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE owed her a duty to act *in loco parentis* and to prevent foreseeable injuries.

118. By reason of the foregoing, Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE breached their duty to act *in loco parentis*.

119. As a direct and proximate result of Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE's foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

120. By reason of the foregoing, Defendants GASKILL, NIAGARA DISTRICT, and NIAGARA BOE are liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

121. The limited liability provisions of CPLR Article 16 are not applicable.

A SEVENTH CAUSE OF ACTION
AS AGAINST DEFENDANTS WHEATFIELD DISTRICT,

{00048219}

**GASKILL, NIAGARA DISTRICT, AND NIAGARA BOE FOR
NEGLIGENT, RECKLESS, AND WILLFUL MISCONDUCT**

122. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

123. At all relevant times, Defendants GASKILL, NIAGARA DISTRICT, NIAGARA BOE, and WHEATFIELD DISTRICT affirmatively and/or impliedly represented to minor children, their families and the general public that their employees and agents, including SIMS, posed no risk of sexually abusing children, were appropriately credentialed and qualified, and that children, including Plaintiff, would be safe in their care.

124. Defendants GASKILL, NIAGARA DISTRICT, NIAGARA BOE, and WHEATFIELD DISTRICT knew or should have known this representation was false and that employing SIMS and giving him unfettered access to children, including Plaintiff, posed an unacceptable risk of harm to children.

125. Defendants GASKILL, NIAGARA DISTRICT, NIAGARA BOE, and WHEATFIELD DISTRICT carelessly, negligently and recklessly failed to have in place an appropriate policy and/or practice for making hiring and decisions respecting recommendations to other districts as to the background and qualifications of employees, so as to protect vulnerable students in their care from sexual abuse.

126. Defendants GASKILL, NIAGARA DISTRICT, NIAGARA BOE, and WHEATFIELD DISTRICT carelessly, negligently and recklessly failed to have in place an appropriate policy and/or practice to monitor, supervise or oversee SIMS's interactions with minors, such as Plaintiff, in order to keep them safe from sexual abuse.

127. The careless, negligent and reckless misconduct by Defendants GASKILL, NIAGARA DISTRICT, NIAGARA BOE, and WHEATFIELD DISTRICT as described herein

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was done with utter disregard as to the potential profound injuries which would ensue, and with depraved indifference to the health and well-being of children.

128. As a direct and proximate result of these Defendants' misconduct, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described herein.

129. By the reason of the foregoing, Defendants GASKILL, NIAGARA DISTRICT, NIAGARA BOE, and WHEATFIELD DISTRICT are liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial, together with interest and costs.

130. The limited liability provisions of CPLR Article 16 are not applicable.

AN EIGHTH CAUSE OF ACTION
AS AGAINST DEFENDANTS WHEATFIELD DISTRICT,
GASKILL, NIAGARA DISTRICT, AND NIAGARA BOE FOR
NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS

131. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

132. The sexual abuse of Plaintiff was extreme and outrageous conduct, beyond all possible bounds of decency, atrocious and intolerable in a civilized world.

133. Defendants GASKILL, NIAGARA DISTRICT, NIAGARA BOE, and WHEATFIELD DISTRICT's aforesaid negligent, grossly negligent, and reckless misconduct, endangered Plaintiff's safety and caused her to fear for her own safety.

134. Defendants GASKILL, NIAGARA DISTRICT, NIAGARA BOE, and WHEATFIELD DISTRICT knew or disregarded the substantial probability that SIMS would cause severe emotional distress to Plaintiff.

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135. As a direct and proximate result of these Defendants' foregoing misconduct, Plaintiff suffered severe emotional distress including psychological and emotional injury as described herein.

136. By reason of the foregoing, Defendants GASKILL, NIAGARA DISTRICT, NIAGARA BOE, and WHEATFIELD DISTRICT are liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

137. The limited liability provisions of CPLR Article 16 are not applicable.

A NINTH CAUSE OF ACTION
AS AGAINST DEFENDANT SIMS FOR BATTERY

138. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

139. Defendant SIMS, with intent to do so, engaged in sexual and unlawful acts with Plaintiff which amounted to a series of harmful and offensive contacts to Plaintiff's person.

140. At all relevant times, Plaintiff was a minor and did not consent to these sexual and unlawful acts.

141. As a direct and proximate result of Defendant SIMS' sexual and unlawful acts, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

142. By reason of the foregoing, SIMS is liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial plus interest and costs.

143. The limited liability provisions of CPLR Article 16 are not applicable.

A TENTH CAUSE OF ACTION
AS AGAINST DEFENDANT SIMS FOR ASSAULT

{00048219}

144. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

145. Defendant SIMS, with intent to do so, engaged in sexual and unlawful acts with Plaintiff, which created a reasonable apprehension in Plaintiff of immediate harmful or offensive contact to Plaintiff's person.

146. At all relevant times, Plaintiff was a minor and did not consent to these sexual and unlawful acts.

147. As a direct and proximate result of Defendant SIMS' sexual and unlawful acts, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

148. By reason of the foregoing, Defendant SIMS is liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

149. The limited liability provisions of CPLR Article 16 are not applicable.

AN ELEVENTH CAUSE OF ACTION
AS AGAINST DEFENDANT SIMS FOR
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

150. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

151. Defendant SIMS engaged in sexual and unlawful acts with Plaintiff with intent to cause, or with reckless disregard for the probability of causing, Plaintiff to suffer severe emotional distress.

152. Defendant SIMS' conduct was both extreme and outrageous in character, beyond all possible bounds of decency, atrocious and intolerable in a civilized world.

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153. Defendant SIMS committed these sexual and unlawful acts maliciously, fraudulently, and oppressively with the wrongful intention of injuring Plaintiff and in disregard to Plaintiff's rights.

154. As a direct and proximate result of Defendant SIMS's conduct, Plaintiff suffered severe emotional distress including psychological and emotional injury as described above.

155. By reason of the foregoing, Defendant is liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

156. The limited liability provisions of CPLR Article 16 are not applicable.

WHEREFORE, Plaintiff prays for judgment on all of the preceding Counts as follows:

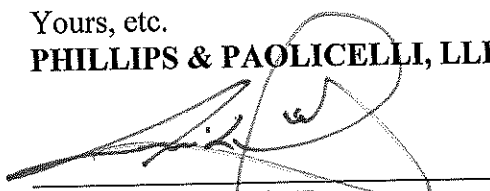
- a. Awarding Plaintiff compensatory damages for her injuries, in an amount to be determined at trial;
- b. Awarding Plaintiff punitive damages for her injuries, in an amount to be determined at trial;
- c. Awarding Plaintiff prejudgment interest, to the extent available by law;
- d. Awarding Plaintiffs costs and disbursements and attorneys' fees to the extent available by law; and
- e. Awarding such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury of all issues triable by jury in this action.

Dated: January 27, 2020

Yours, etc.
PHILLIPS & PAOLICELLI, LLP


By: Ari L. Taub, Esq.

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