

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

NICHOLAS A. FULLENWEIDER,

Plaintiff,

v.

SUMMONS

Index No.: _____

BUFFALO CITY SCHOOL DISTRICT,
712 City Hall
65 Niagara Square
Buffalo, New York 14202

Child Victims Act Proceeding
22 NYCRR 202.72

LAFAYETTE INTERNATIONAL HIGH SCHOOL,
f/k/a LAFAYETTE HIGH SCHOOL,
370 Lafayette Avenue
Buffalo, New York 14213

FREDERICK D. GANTER,
2213 Wilton Park Drive
Wilton Manors, FL 33305-1442

Defendants.

TO THE ABOVE-NAMED DEFENDANTS:

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 plaintiff's attorney(s) 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 case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Erie County is designated as the place of trial on basis of residence of the plaintiff, who resides in Erie County, New York.

Dated: March 11, 2020
Hamburg, New York



Daniel J. Chiacchia, Esq.
CHIACCHIA & FLEMING, LLP
Attorneys for Plaintiff
5113 South Park Avenue
Hamburg, New York, 14075
Telephone: (716) 648-3030

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

NICHOLAS A. FULLENWEIDER,

Plaintiff,

COMPLAINT

v.

Index No.:

BUFFALO CITY SCHOOL DISTRICT,
LAFAYETTE INTERNATIONAL HIGH SCHOOL,
f/k/a LAFAYETTE HIGH SCHOOL,
FREDERICK D. GANTER,

Defendants.

Plaintiff, NICHOLAS A. FULLENWEIDER, by his attorneys Chiacchia & Fleming, LLP, brings this action against BUFFALO CITY SCHOOL DISTRICT, LAFAYETTE INTERNATIONAL HIGH SCHOOL, formerly known as LAFAYETTE HIGH SCHOOL and FREDERICK D. GANTER, and alleges, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR 301 and 302, in that each Defendant either resides in New York or conducts or, at relevant times conducted, activities in New York that give rise to the claims asserted herein.

2. Venue for this action is proper in the County of Erie pursuant to CPLR 503 in that one or more Defendant resides or has their principal place of business in this County and a substantial part of the events or omissions giving rise to the claims asserted herein occurred here.

3. This action is brought pursuant to CPLR § 214-G, as added by the New York

State Child Victims Act, which has revived claims of child sexual abuse for a period of one year beginning on August 14, 2019, six months after the effective date of the section (February 14, 2019). This action is timely.

PARTIES

4. Plaintiff NICHOLAS A. FULLENWEIDER, (“Plaintiff”), is an individual residing in Erie County, New York.

5. Defendant BUFFALO CITY SCHOOL DISTRICT (“BCSD”) was and continues to be a municipal entity and educational institution existing by the laws of the State of New York.

6. Defendant LAFAYETTE INTERNATIONAL HIGH SCHOOL, formerly known as LAFAYETTE HIGH SCHOOL (“LAFAYETTE”), was a High School in Buffalo, New York which was managed, overseen, controlled, directed, and operated by Defendant BCSD.

7. Defendant FREDERICK D. GANTER (“GANTER”) was an assistant principal and employee of Defendants LAFAYETTE and BCSD at all relevant times and events herein.

8. At all relevant times and events, NICHOLAS A. FULLENWEIDER was a student at Lafayette High School.

FACTS COMMON TO ALL CLAIMS

9. At all relevant times and events, Defendant GANTER was plaintiff’s assistant principal at Defendant LAFAYETTE, and therefore an authority figure with direct control over plaintiff’s successes or failures in school.

10. Upon information and belief, during all times relevant to the allegations set for herein, Defendant GANTER was under the direct supervision, employ, and /or control of the Defendants LAFAYETTE and BCSD.

11. Through his positions at, within, or for Defendants LAFAYETTE and BCSD, Defendant GANTER was put in direct contact with Plaintiff, a student at Defendant LAFAYETTE. Defendant GANTER was assigned to instruct him. It was under these circumstances that Plaintiff came to be under the direction and control of Defendant GANTER, who used his position of authority and trust over Plaintiff to have unpermitted sexual contact with Plaintiff.

12. On numerous occasions, during the years from approximately 1989 through 1990, while Plaintiff was a minor, Defendant GANTER, while acting as an assistant principal, instructor, counselor, trustee, director, officer, employee, agent, servant and/or volunteer of Defendants LAFAYETTE and BCSD, sexually assaulted, sexually abused and/or had unpermitted sexual contact with Plaintiff in violation of the laws of the State of New York. The sexual abuse, sexual harassment and sexual contact occurred repeatedly for several months, beginning when Plaintiff was approximately 16 years old and ending when he was approximately 17 years old.

13. Defendants LAFAYETTE and BCSD knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Defendant GANTER who sexually assaulted, sexually abused, sexually harassed and had unpermitted sexual contact with Plaintiff.

14. Defendants LAFAYETTE and BCSD had the responsibility to supervise and/or direct staff at Defendant LAFAYETTE, and specifically, had a duty not to aid a pedophile such as Defendant GANTER, by assigning, maintaining and/or appointing him to a position with access to minors.

15. All Defendants, individually, jointly and/or severally, violated various New York

statutes, including, but not limited to N.Y. Soc. Serv. Law §§ 413 and 420, which require school officials and teachers to report suspected cases of child abuse and impose liability for failure to report.

16. Plaintiff suffered personal physical and psychological injuries and damages as a result of Defendant GANTER's actions, as well as other damages related thereto, as a result of his childhood sexual abuse.

17. As a direct result of the Defendants' conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, problems sleeping, concentrating, low self-confidence, low self-respect, low self-esteem, feeling of worthlessness, feeling shameful and embarrassed, feeling alone and isolated, feeling helpless and hopeless, problems with sexual intimacy, relationship problems, trust issues, feeling confused and angry, the feeling that the good things have been ruined, feeling sad and depressed, feeling anxiety, feeling dirty, used, and damaged, having flashbacks, feeling like he took the wrong road, feeling that his innocence was stolen, and feeling that his life was ruined. Plaintiff was prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and, on information and belief, has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Defendant GANTER's sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm he suffered as a result.

CAUSES OF ACTION

**FIRST CAUSE OF ACTION
Negligent Hiring/Retention/Supervision/Direction**

18. Plaintiff repeats and realleges each and every allegation set forth in the foregoing as if fully set forth herein.

19. The sexual abuse of children by adults, including teachers, is foreseeable.

20. By establishing, staffing, and/or operating Lafayette High School, and Defendant BCSD encouraging the enrollment and instruction of Plaintiff in said school, accepting him as a student, and holding Lafayette High School out to be a safe environment for learning and engaging in youth activities, Defendants LAFAYETTE and BCSD entered into an express and/or implied duty to provide a reasonably safe environment for Plaintiff and assumed the duty to protect and care for him.

21. Defendants LAFAYETTE and BCSD negligently hired, retained, directed, and supervised Defendant GANTER when they knew or should have known that he posed a threat of sexual abuse to children.

22. Defendants LAFAYETTE and BCSD knew or should have known of Defendant GANTER propensity for the conduct which caused Plaintiff's injuries prior to the injuries' occurrence.

23. Defendant GANTER sexually assaulted, sexually abused and/or had unpermitted sexual contact with Plaintiff on Defendant LAFAYETTE and BCSD's premises, including in Defendant GANTER's office.

24. Defendants LAFAYETTE and BCSD owed a duty of care to all persons, including Plaintiff, who were likely to come within the influence of Defendant GANTER in his role as an assistant principal, instructor, counselor, trustee, director, officer, employee, agent,

servant and/or volunteer, to insure that Defendant GANTER did not abuse his authority as a principal, instructor, counselor, trustee, director, officer, employee, agent, servant and/or volunteer to injure minors by sexual assault, battery, and/or abuse.

25. At all times material hereto, Defendants' actions were willful, wanton, malicious, reckless and/or outrageous in their disregard for the rights and safety of Plaintiff.

26. As a direct and proximate result, Plaintiff has suffered and will continue to suffer the injuries described herein.

27. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative, for compensatory damages, and for punitive damages, together with interest and costs.

**SECOND CAUSE OF ACTION
Negligence/Gross Negligence**

28. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

29. Defendants knew, or were negligent in not knowing, that Defendant GANTER posed a threat of sexual abuse to children.

30. The acts of Defendant GANTER described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his employment, appointment, and/or agency with the Defendants LAFAYETTE and BCSD.

31. Defendants LAFAYETTE and BCSD owed Plaintiff, at the relevant times a minor, a duty to protect him from Defendant GANTER's sexual deviancy, both prior to and/or subsequent to Defendant GANTER's misconduct.

32. Defendants' willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damage set forth herein

at length.

33. Defendants LAFAYETTE and BCSD:
 - a. gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others;
 - b. failed adequately to supervise the activities of Defendant GANTER;
 - c. permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct and/or allowed other tortious conduct by persons, whether or not their servants and/or agents and/or employees, upon premises or with instrumentalities under their control; and
 - d. allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint, to occur.

34. At all times material hereto, with regard to the allegations contained herein, Defendant GANTER was under the direct supervision, employ and/or control of Defendants LAFAYETTE and BCSD.

35. At all times material hereto, Defendants' actions were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to conduct equivalent to criminality.

36. As a direct and/or indirect result of said conduct, Plaintiff has suffered the injuries and damages described herein.

37. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to the Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

THIRD CAUSE OF ACTION
Breach of Fiduciary Duty

38. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

39. Through his positions at Defendants LAFAYETTE and BCSD, Defendant GANTER was put in direct contact with Plaintiff, then a minor student at Lafayette High School, specifically being assigned to instruct him. It was under these circumstances that Plaintiff came to be under the direction and control of Defendant GANTER, who used his position of authority and trust over Plaintiff to sexually assault, sexually abuse and sexually harass him.

40. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and all the Defendants herein.

41. Pursuant to their fiduciary relationship, Defendants were entrusted with the well-being, care, and safety of Plaintiff.

42. Pursuant to their fiduciary relationship, Defendants assumed a duty to act in the best interests of Plaintiff.

43. Defendants breached their fiduciary duties to Plaintiff.

44. At all times material hereto, Defendants' actions and/or inactions were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff.

45. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

46. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

**FOURTH CAUSE OF ACTION
Breach of Non-Delegable Duty**

47. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

48. Plaintiff, when he was a minor, was placed in the care of Defendants for the purposes of, *inter alia*, providing plaintiff with a safe environment to receive a lay education, training, guidance and/or counseling. There existed a non-delegable duty of trust between Plaintiff and Defendants.

49. Plaintiff was a vulnerable child when placed within the care of the Defendants.

50. As a consequence, Defendants were in the best position to prevent Plaintiff's abuse, and to learn of Defendant GANTER's repeated sexual abuse of Plaintiff and stop it.

51. By virtue of the fact that Plaintiff was sexually abused as a student, Defendants LAFAYETTE and BCSD breached their non-delegable duty to Plaintiff.

52. At all times material hereto Defendant GANTER was under the direct supervision, employ and/or control of the Defendants LAFAYETTE and BCSD.

53. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

54. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

**FIFTH CAUSE OF ACTION
Fraudulent Concealment**

55. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

56. Defendants LAFAYETTE and BCSD allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint, to occur.

57. Defendants LAFAYETTE and BCSD knew or should have known of Defendant GANTER's propensity for the conduct which caused Plaintiff's injuries prior to the injuries' occurrence.

58. Defendants LAFAYETTE and BCSD had a duty to report any reasonable suspicion of child abuse.

59. Defendants LAFAYETTE and BCSD owed a duty of care to all persons, including Plaintiff, who were likely to come within the influence of Defendant GANTER in his role as an assistant principal, instructor, counselor, trustee, director, officer, employee, agent, servant and/or volunteer, to insure that Defendant GANTER did not abuse his authority as an assistant principal, instructor, counselor, trustee, director, officer, employee, agent, servant and/or volunteer to injure minors by sexual assault, battery, and/or abuse.

60. Defendants LAFAYETTE and BCSD breached their duty by knowingly and willfully failing to report reasonable suspicion of abuse by Defendant GANTER of children in their care.

61. Defendants LAFAYETTE and BCSD breached their duty by knowingly and willfully failing to disclose reasonable suspicions of abuse by Defendant GANTER of children in their care to current or prospective students.

62. By knowingly and willfully failing to inform other current and prospective students of the abuse of Defendant GANTER, Defendants LAFAYETTE and BCSD intended to defraud other current and prospective students.

63. When Plaintiff chose to attend Lafayette High School, he reasonably relied upon

the Defendants' representation that Defendants would look out for Plaintiff's well-being, care, and safety.

64. While attending Lafayette High School, Plaintiff was sexually assaulted, sexually abused, sexually harassed and had unpermitted sexual contact by Defendant GANTER and has suffered injuries and damages described herein.

65. At all times material hereto, said Defendants' actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

66. As a direct result of Defendants' conduct, Plaintiff has suffered the injuries and damages described herein.

67. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

SIXTH CAUSE OF ACTION
Negligent Infliction of Emotional Distress

68. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

69. As described aforesaid, the actions of Defendants, their predecessors and/or successors, agents, servants and/or employees were conducted in a negligent and/or grossly negligent manner.

70. Defendants' actions endangered Plaintiff's safety and caused him to fear for his own safety.

71. As a direct and proximate result of Defendants' actions, which included but were

not limited to, negligent and/or grossly negligent conduct, Plaintiff suffered the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

72. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

SEVENTH CAUSE OF ACTION
Intentional Infliction of Emotional Distress

73. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

74. During the approximate time period from 1989 through 1990, Defendants LAFAYETTE and BCSD allowed Defendant GANTER unrestricted access to Plaintiff and willfully and/or intentionally ignored suspicious behavior and/or complaints against Defendant GANTER of sexual assault, sexual abuse and sexual contact.

75. During the time period referenced above, Defendants LAFAYETTE and BCSD willfully and/or intentionally ignored Plaintiff's safety by requiring Plaintiff to be under the supervision of Defendant GANTER by himself before, during and after school.

76. Defendants LAFAYETTE and BCSD were deliberately indifferent to the risk of sexual assault, sexual abuse, and sexual contact posed to Plaintiff by being alone with Defendant GANTER.

77. Defendants willfully and/or intentionally created a hostile and unsafe school environment that no child would be able to tolerate.

78. Defendants LAFAYETTE and BCSD, in order to avoid embarrassment, scandal, and negative publicity, intended to cause Plaintiff shame, humiliation and extreme emotional distress so he would stay silent, and not report the abuse.

79. Defendants behaved in a manner toward Plaintiff that was so outrageous as to exceed all reasonable bounds of decency.

80. Defendants knew with substantial certainty or should have known that their behavior would cause Plaintiff to be a victim of sexual assault, sexual abuse and sexual contact.

81. Defendants knew with substantial certainty or should have known that their behavior would cause severe emotional distress to Plaintiff.

82. The foregoing acts of Defendants caused Plaintiff physical, mental and emotional distress.

83. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

EIGHTH CAUSE OF ACTION

Breach of Statutory Duty to Report Abuse under Soc. Serv. Law §§ 413, 420

84. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

85. Pursuant to N.Y. Soc. Serv. Law §§ 413 and 420, Defendants had a statutorily imposed duty to report reasonable suspicion of abuse of children in their care.

86. Defendants breached that duty by knowingly and willfully failing to report reasonable suspicion of abuse by Defendant GANTER of children in their care.

87. As a direct and/or indirect result of said conduct, Plaintiff has suffered injuries and damages described herein.

88. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

WHEREFORE, plaintiff respectfully requests judgment against Defendants herein in sums which exceed the jurisdictional limit of all lower courts which would otherwise have jurisdiction in this action, including compensatory damages, punitive damages, prejudgment interest to the extent permitted by law; costs, disbursements and fees of this action, including attorneys' fees, to the extent permitted by law; and any other relief as the Court deems just and proper.

Dated: March 11, 2020
Hamburg, New York



Daniel J. Chiacchia, Esq.
CHIACCHIA & FLEMING, LLP
Attorneys for Plaintiff
5113 South Park Avenue
Hamburg, New York 14075
Telephone: (716) 648-3030