

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

PB-19 Doe, _____x

Index No. _____ / 2020

Plaintiff,
-against-

ORCHARD PARK CENTRAL SCHOOL
DISTRICT and ORCHARD PARK
MIDDLE SCHOOL,

SUMMONS

Defendants.

_____x

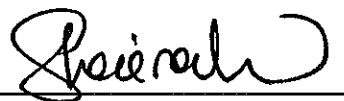
Venue is based in New York County based upon the location and principal place of business of Defendant at Orchard Park Middle School, 60 S Lincoln Ave, Orchard Park, NY 14127.

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 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
March 12, 2020

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ORCHARD PARK CENTRAL SCHOOL DISTRICT
2240 Southwestern Boulevard,
West Seneca, NY 14224

ORCHARD PARK MIDDLE SCHOOL
60 S Lincoln Ave, Orchard Park, NY 14127

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

PB-19 Doe, _____x

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Plaintiff,

-against-

ORCHARD PARK CENTRAL SCHOOL
DISTRICT and ORCHARD PARK
MIDDLE SCHOOL,

COMPLAINT

Defendants.

_____x

Plaintiff PB-19 Doe, by and through his undersigned attorneys, for his Complaint, alleges on personal knowledge as to himself and on information and belief as to other matters, as follows:

NATURE OF THE ACTION

1. This action is brought pursuant to the Child Victims Act, codified at CPLR 214-g.
2. Plaintiff PB-19 Doe, a student at Defendant Orchard Park Middle School, was repeatedly sexually abused and assaulted by Kurt Pitzl, an employee of Defendants Orchard Park Central School District and Orchard Park Middle School.
3. Plaintiff was in 7th grade, and was about 13 years old when the sexual abuse first began in or about 1974.
4. Defendants Orchard Park Central School District and Orchard Park Middle School held Pitzl out as a homeroom and science teacher for students, and Pitzl's abuse of Plaintiff occurred while he was acting in his assigned role of homeroom and science teacher.

5. Pitzl's sexual abuse of Plaintiff took place on the premises of Orchard Park Middle School and elsewhere. The sexual abuse, which was extreme, and took place over several years.

6. Not only did Defendants Orchard Park Central School District and Orchard Park Middle School place Plaintiff in harm's way by improperly holding Pitzl out as a homeroom and science 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 Pitzl, permitted the abuse to occur, failed to supervise Pitzl, failed to timely investigate Pitzl's misconduct, acted to protect their own self-interest to the detriment of innocent children, and are otherwise responsible for Pitzl's sexual assault of Plaintiff, and Plaintiff's consequential injuries and damages.

PARTIES

7. Plaintiff is an individual residing in Erie County, New York.

8. Plaintiff was born in 1961.

9. Defendant Orchard Park Central School District is, and at all relevant times was, a non-profit organization or entity, which includes but is not limited to civil corporations, decision-making entities, officials, and employees, authorized to conduct business and doing business at 2240 Southwestern Boulevard, West Seneca, NY 14224.

10. At all relevant times, Defendant Orchard Park Central School District oversaw, managed, controlled, directed and operated public schools, within the Orchard Park Central School District, including Defendant Orchard Park Middle School.

11. At all relevant times, Defendant Orchard Park Middle School was and still is a public school, organized pursuant to the laws of the State of New York and located at 60 South Lincoln Ave, Orchard Park, NY 14127.

12. At all relevant times, Defendant Orchard Park Middle School was and still is under the direct authority and control of Defendant Orchard Park Central School District.

13. At all relevant times, Defendant Orchard Park Central School District owned the premises where Defendant Orchard Park Middle School was located.

14. Orchard Park Middle School is an “educational setting” as defined by New York Education Law §1125(5).

15. At all relevant times, Defendant Orchard Park Central School District oversaw, managed, controlled, directed and operated Defendant Orchard Park Middle School.

16. At all relevant times, Pitzl was an employee of Orchard Park Central School District and Orchard Park Middle School, assigned to the position of homeroom and science teacher.

FACTUAL ALLEGATIONS

17. Plaintiff repeats and re-alleges all preceding paragraphs of this Complaint.

18. From approximately 1973 through 1977 Plaintiff attended Orchard Park Middle School.

19. At all relevant times, Pitzl was under the direct supervision, employ and control of the Defendants Orchard Park Central School District and Orchard Park Middle School.

20. At all relevant times, Pitzl’s duties and responsibilities included teaching science to students and supervising students during homeroom at Orchard Park Middle School.

21. At all relevant times Defendants Orchard Park Central School District and Orchard Park Middle School held Pitzl out as a qualified homeroom and science teacher for students.

22. Upon information and belief, Pitzl had been hired by Defendants Orchard Park Central School District and Orchard Park Middle School as a homeroom and science teacher.

23. Defendants Orchard Park Central School District and Orchard Park Middle School authorized and allowed Pitzl to teach and supervise minor students, including Plaintiff, to be alone with them, and to have unfettered and unsupervised access to them on Defendants' property.

24. Beginning in or about 1974, when Plaintiff was in 7th grade, Defendant Pitzl, acting in the course and scope of his employment with Defendants Orchard Park Central School District and Orchard Park Middle School acted as Plaintiff's homeroom and science teacher.

25. Cloaked with the authority of a science teacher and adult, Pitzl taught a lesson about sexually transmitted diseases and instructed students to bring any personal marks or sores on their private areas to his attention.

26. Pitzl targeted Plaintiff for grooming; calling him his "puppy," sending him on individual errands, and assigning him special responsibilities in the classroom.

27. Thereafter, on numerous occasions on the premises of Orchard Park Middle School, and elsewhere, Pitzl engaged in unpermitted, forcible, and harmful sexual contact and sexual misconduct with Plaintiff.

28. As the misconduct escalated Pitzl began to ply Plaintiff with drugs and alcohol.

29. Pitzl coerced Plaintiff to acquiesce in his continued sexual misconduct, and to not report him to anyone.

30. In addition, Plaintiff's relationship to Defendants as a vulnerable child and student, put pressure on Plaintiff not to report Pitzl's abuse or his threats.

31. Defendants knew or should have known that Pitzl was a danger to minors, and that he had a propensity to sexually abuse minors like Plaintiff, before he sexually abused Plaintiff.

32. Defendants Orchard Park Central School District and Orchard Park Middle School knew or should have known that Pitzl was not qualified to perform the duties of a homeroom or science teacher.

33. Defendants Orchard Park Central School District and Orchard Park Middle School knew or should have known that allowing Pitzl to have unsupervised and unlimited access with students.

34. Prior to the time of Plaintiff's abuse by Pitzl, Defendants knew or should have known that there was a specific danger of child sex abuse for children in their institutions and programs.

35. The sexual abuse of Plaintiff by Pitzl was foreseeable.

36. Defendants Orchard Park Central School District and Orchard Park Middle School owed Plaintiff a reasonable duty of care because they affirmatively solicited children and parents to send their children to Orchard Park Middle School; they undertook custody of minor children, including Plaintiff; they promoted their facilities and programs as being safe for children, they held out their agents, including Pitzl, as safe to work with and around minor students, they encouraged parents and children to spend time with their agents; and/or authorized their agents, including Pitzl, to provide professional services to children.

37. Defendants Orchard Park Central School District and Orchard Park Middle School 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's parents entrusted Plaintiff to Defendants' care, and expected that Plaintiff would be safe and properly supervised in an environment free from harm and abuse; Plaintiff was a vulnerable minor, and unable to protect herself; and Defendants affirmatively assumed a position of empowerment over Plaintiff.

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

39. As a result of the foregoing, Plaintiff was forced to repeat the 8th grade and ultimately dropped out of school, and has suffered and continues to suffer great physical and mental pain and anguish, severe and permanent emotional distress, psychological injuries, fear and anxiety; substance addiction; was prevented and will continue to be prevented from performing his normal daily activities; was and will continue to be deprived of the enjoyment of life's pleasures; has suffered and will continue to suffer loss of earnings and earning capacity; has incurred and will in the future incur expenses for medical and psychological treatment, and was otherwise damaged in an amount that exceeds the jurisdictional limits of lower courts in this State.

40. To the extent that any Defendant pleads, or otherwise seeks to rely upon Article 16 of the New York Civil Practice Law and Rules (CPLR) to have fault apportioned to another allegedly culpable party, Plaintiff expressly states that Defendants' conduct falls within one or more of the subdivisions of CPLR 1602.

41. Pursuant to the Child Victims Act, a notice of claim is not a prerequisite to the filing of this action.

FIRST CAUSE OF ACTION
NEGLIGENT HIRING, RETENTION, SUPERVISION, AND DIRECTION

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

43. At all relevant times Defendants Orchard Park Central School District and Orchard Park Middle School had a duty to exercise due care in hiring, appointing, assigning, retention, supervision and direction of Pitzl, 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 Pitzl did not use his assigned position to injure minors by sexual assault, contact or abuse.

44. Defendants Orchard Park Central School District and Orchard Park Middle School were negligent and failed to use reasonable care in hiring, appointing, assigning, and retention, of Pitzl, failed to properly investigate his background and employment history, and/or hired, appointed and/or assigned him to Defendants' high school, when Defendants knew or should have known of facts that would make him a danger to children; and Defendants were otherwise negligent.

45. Defendants were negligent and did not use reasonable care in their supervision and direction of Pitzl, failed to monitor his activities, failed to oversee the manner in which he carried out the duties to which Defendants assigned them, even though they knew or should have known that Pitzl posed a threat of sexual abuse to minors; allowed the misconduct described above to occur and continue; failed to investigate Pitzl's dangerous activities and remove him

from their premises; failed to have policies and practices in place that would have prevented this abuse; and Defendants were otherwise negligent.

46. Pitzl would not have been in a position to sexually abuse Plaintiff had Defendants Orchard Park Central School District and Orchard Park Middle School not been negligent in the hiring, retention, supervision, and direction of Pitzl.

47. At all relevant times, Pitzl acted in the course and scope of his employment with Defendants.

48. Defendants Orchard Park Central School District and Orchard Park Middle School's aforesaid actions were willful, wanton, malicious, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff.

49. As a direct and proximate result of the aforesaid misconduct, Plaintiff suffered grave injury, including physical, psychological and emotional injury as described above.

50. By the reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial, together with interest and costs.

SECOND CAUSE OF ACTION
NEGLIGENT, RECKLESS, AND WILLFUL MISCONDUCT

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

52. At all relevant times, Defendants Orchard Park Central School District and Orchard Park Middle School affirmatively and/or impliedly represented to minor children, their families and the general public that employees and agents working in the Orchard Park Central School District, including Pitzl, did not pose a risk of sexually abusing children, and that children, including Plaintiff, would be safe in their care.

53. Defendants Orchard Park Central School District and Orchard Park Middle School knew or should have known this representation was false and that employing Pitzl and giving him unfettered access to children, including Plaintiff, posed an unacceptable risk of harm to children.

54. Defendants Orchard Park Central School District and Orchard Park Middle School carelessly, negligently and recklessly failed to have in place an appropriate policy and/or practice for making hiring and assignment decisions, so as to protect vulnerable students in their care from sexual abuse.

55. Defendants Orchard Park Central School District and Orchard Park Middle School carelessly, negligently and recklessly failed to have in place an appropriate policy and/or practice to monitor, supervise or oversee Pitzl's interactions with minor students such as Plaintiff, in order to keep them safe from sexual abuse.

56. The careless, negligent and reckless misconduct by Defendants Orchard Park Central School District and Orchard Park Middle School as described herein 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., As a direct and proximate result of Defendants' misconduct, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

57. By the reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial, together with interest and costs.

THIRD CAUSE OF ACTION
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

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

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

60. Defendants Orchard Park Central School District's and Orchard Park Middle School's aforesaid negligent, grossly negligent and reckless misconduct, endangered Plaintiff's safety and caused him to fear for his own safety.

61. Defendants Orchard Park Central School District and Orchard Park Middle School knew or disregarded the substantial probability that Pitzl would cause severe emotional distress to Plaintiff.

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

63. By the reason of the foregoing, Defendants Orchard Park Central School District and Orchard Park Middle School are jointly and severally liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

FOURTH CAUSE OF ACTION
PREMISES LIABILITY

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

65. At all relevant times, Defendants Orchard Park Central School District and Orchard Park Middle School owned, operated, and /or controlled the premises known as Orchard Park Middle School, including the areas where the sexual abuse of Plaintiff occurred.

66. At all relevant times, Plaintiff was rightfully present at the aforementioned premises.

67. Defendants Orchard Park Central School District and Orchard Park Middle School had a duty to see that the premises at which Plaintiff was rightfully present were in a reasonably safe condition for the intended use by students, like Plaintiff, whose presence was reasonably anticipated.

68. Defendants Orchard Park Central School District and Orchard Park Middle School willfully, recklessly, and negligently failed to provide a reasonably safe premises that was free from the presence of sexual predators and/or the assault by the occupants of the premises, including Defendant Pitzl. Defendants Orchard Park Central School District and Orchard Park Middle School thereby breached their duty of care of Plaintiff.

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

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

FIFTH CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY

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

72. At all relevant times, there existed a fiduciary relationship of trust, confidence and reliance between Plaintiff and Defendants Orchard Park Central School District and Orchard Park Middle School. The entrustment of Plaintiff to the care and supervision of the Defendants Orchard Park Central School District and Orchard Park Middle School while Plaintiff was a

vulnerable child, imposed upon these Defendants a fiduciary duty to act in the best interests of Plaintiff.

73. Defendants Orchard Park Central School District and Orchard Park Middle School were entrusted with the well-being, care, and safety of Plaintiff, which Defendants had a fiduciary duty to protect.

74. By reason of the foregoing, Defendants Orchard Park Central School District and Orchard Park Middle School breached their fiduciary duties to Plaintiff.

75. As a direct and proximate result of Defendants Orchard Park Central School District's and Orchard Park Middle School's foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

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

SIXTH CAUSE OF ACTION
BREACH OF DUTY IN LOCO PARENTIS

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

78. At all relevant times, Plaintiff was a vulnerable child entrusted to the care of Defendants Orchard Park Central School District and Orchard Park Middle School, and was under the supervision and control of these Defendants, such that these Defendants owed him a duty to act *in loco parentis* and to prevent foreseeable injuries.

79. By reason of the foregoing, Defendants Orchard Park Central School District and Orchard Park Middle School breached their duties to act *in loco parentis*.

80. As a direct and proximate result of Defendants Orchard Park Central School District's and Orchard Park Middle School's foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

81. By reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

SEVENTH CAUSE OF ACTION
BREACH OF STATUTORY DUTIES TO REPORT

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

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

84. Pursuant to Article 23-B of the Education Law, the Defendants were obligated to report to law enforcement authorities allegations of child abuse in an educational setting by a district employee.

85. Defendants breached their statutory duties by failing to report reasonable suspicion of sexual abuse by Pitzl.

86. As a direct and proximate result of Defendants Orchard Park Central School District's and Orchard Park Middle School's foregoing breaches, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

87. By reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

WHEREFORE, Plaintiff prays for judgment as follows:

- a. Awarding Plaintiff compensatory damages for his injuries, in an amount to be determined at trial;
- b. Awarding Plaintiff punitive damages for his 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

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

Dated: March 9, 2019

Yours, etc.

Attorneys for Plaintiffs

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