

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

AB 513 DOE,

Plaintiff,

v.

MARYVALE UNION FREE SCHOOL
DISTRICT,

Defendant.

Index No.

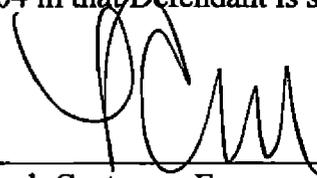
SUMMONS

TO THE ABOVE-NAMED DEFENDANT:

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.

Venue is proper pursuant to CPLR §504 in that Defendant is situated in Erie County.

Dated: June 2, 2020



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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 defendant is barred from disclosing Petitioner's true identity to the general public pursuant to an Amended Order of the Honorable Deborah A. Chimes, J.S.C. dated August 13, 2018 which is attached hereto.

PARTIES

- 2. At all times material to this Complaint, Plaintiff resided in the State of New York.
- 3. Whenever reference is made to any Defendant entity, such reference includes that entity, affiliates, predecessors, and successors. In addition, whenever reference is made to any act, deed, or transaction of any entity, the allegation means that the entity engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of the entity's business or affairs.

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

4. At all times material, Defendant Maryvale Union Free School District (“Maryvale”) 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, the Maryvale Elementary School was a public school owned, controlled, supervised, operated and managed by Defendant Maryvale.

6. At all times material, Stanley Bratt (“Bratt”) was an employee of Defendant Maryvale.

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 Maryvale is situated in Erie County.

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

FACTS

10. At all times material, Bratt was employed by Defendant Maryvale and remained under the direct supervision, employ, and control of Defendant Maryvale.

11. Defendant Maryvale placed Bratt in positions where he had access to and worked with children as an integral part of his work. Specifically, Defendant Maryvale placed and retained Bratt at Maryvale Elementary School as a music teacher.

12. At all times material, Plaintiff was a student at the Maryvale Elementary School in Cheektowaga, New York.

13. Plaintiff, as a minor and vulnerable child, was dependent on Defendant Maryvale and Bratt. Defendant Maryvale and Bratt had custody of Plaintiff and was entrusted with the safety of Plaintiff and, therefore, had responsibility for and authority over Plaintiff.

14. From approximately 1969-1971, when Plaintiff was approximately 9 to 11 years old, Bratt engaged in unpermitted sexual contact with Plaintiff.

15. Defendant Maryvale knew or should have known that Bratt was a danger to children before Bratt sexually assaulted Plaintiff.

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

17. Defendant Maryvale knew or should have known that there was a risk of the sexual abuse of children attending the Maryvale Elementary School. At the very least, Defendant Maryvale 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 the Maryvale Elementary School.

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

19. Defendant Maryvale owed Plaintiff a duty of reasonable care because they had superior knowledge about the risk that Bratt 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 Maryvale owed a duty to Plaintiff to protect Plaintiff from harm because Defendant Maryvale's actions created a foreseeable risk of harm to Plaintiff. As a vulnerable child attending school in the Maryvale Elementary School, Plaintiff was a foreseeable victim. As a vulnerable child who Bratt had access to through Bratt's employment with Defendant Maryvale, Plaintiff was a foreseeable victim.

21. Defendant Maryvale also breached its duty to Plaintiff by actively maintaining and employing Bratt in a position of power and authority through which Bratt had access to children, including Plaintiff, and power and control over children, including Plaintiff.

22. Defendant Maryvale breached its duties to Plaintiff. Defendant Maryvale 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 Maryvale's breach of its duties include, but are not limited to: failure to protect Plaintiff from a known danger, or reasonably foreseeable failure to have sufficient policies and procedures to prevent child sex abuse, failure to properly implement policies and procedures to prevent child sex abuse, failure to take reasonable measures to make sure that policies and procedures to prevent child sex abuse were working, failure to adequately inform families and children of the risks of child sex abuse, failure to investigate risks of child sex abuse, failure to have any outside agency test its safety procedures, failure to protect the children attending its programs from child sex abuse, failure to adhere to the applicable standard of care for child safety, failure to investigate the amount and type of information necessary to represent the school and its employees as safe, failure to train its

employees properly to identify signs of child sexual abuse by fellow employees, and failure to engage or timely engage certified mental health professionals.

23. Defendant Maryvale also breached its duty to Plaintiff by failing to warn Plaintiff and Plaintiff's family of the risk that Bratt posed. Defendant further failed to warn Plaintiff and Plaintiff's family of Defendant Maryvale's knowledge of the occurrence of child sexual abuse.

24. Defendant Maryvale and/or its other agents violated their legal duty by failing to report known and/or suspected abuse of children by Bratt to law enforcement.

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

AS AND FOR A FIRST CAUSE OF ACTION:
NEGLIGENCE

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

27. Defendant Maryvale owed Plaintiff a duty of reasonable care to protect the Plaintiff from injury.

28. Defendant Maryvale owed Plaintiff a duty of reasonable care because Defendant Maryvale had a special relationship with Plaintiff.

29. Defendant Maryvale 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. Defendant Maryvale had a duty to establish measures of protection not necessary for persons who are older or better able to safeguard themselves.

30. By representing Bratt as safe to work with children, and by undertaking the custody and supervision of the minor Plaintiff, Defendant Maryvale had a fiduciary relationship with the minor Plaintiff. As a result of Plaintiff being a minor, and by Defendant Maryvale's undertaking of the care and guidance of then vulnerable minor Plaintiff, Defendant Maryvale held a position of empowerment over Plaintiff.

31. Defendant Maryvale had an *in loco parentis* relationship with Plaintiff and owed Plaintiff a duty to protect Plaintiff from injury.

32. By establishing, operating and/or administrating the Maryvale Elementary 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 virtue of its fiduciary relationship with Plaintiff, Defendant Maryvale entered into an express and/or implied duty to properly supervise Plaintiff and provide a reasonably safe environment for children attending its schools.

33. By establishing and operating the Maryvale Elementary School and by accepting the enrollment and participation of the minor Plaintiff in its educational programs, Defendant Maryvale owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from generally foreseeable dangers. Defendant Maryvale 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.

34. Defendant Maryvale owed Plaintiff a duty to protect Plaintiff from harm because Defendant Maryvale was aware of Plaintiff's presence on its property and aware that Bratt posed a danger on Defendant Maryvale's property.

35. Defendant Maryvale breached its duties to Plaintiff by failing to use reasonable care. Defendant Maryvale's failures include, but are not limited to, failing to properly supervise Bratt, failing to properly supervise Plaintiff and failing to protect Plaintiff from a known danger.

36. 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

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

38. At all times material, Bratt was employed by Defendant Maryvale and was under Defendant Maryvale's direct supervision, employ and control when he committed the wrongful acts alleged herein. Bratt engaged in the illegal conduct while acting in the course and scope of his employment with Defendant Maryvale and/or accomplished the sexual abuse by virtue of his job-created authority.

39. Defendant Maryvale negligently hired and/or negligently placed Bratt in a position to cause foreseeable harm which Plaintiff would not have been subject to had Defendant Maryvale taken reasonable care in its pre-hiring investigation of Bratt.

40. Defendant Maryvale knew or should have known of Bratt's propensity for the type of behavior which resulted in Plaintiff's injuries.

41. 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**

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

43. At all times material, Bratt was employed by Defendant Maryvale and was under Defendant Maryvale's direct supervision, employ, and control when he committed the wrongful acts alleged herein. Bratt engaged in the wrongful conduct while acting in the course and scope of his employment with Defendant Maryvale and/or accomplished the sexual abuse by virtue of his job-created authority.

44. Defendant Maryvale had a duty, arising from its employment of Bratt, to ensure that Bratt did not sexually abuse children.

45. Further, Defendant Maryvale 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.

46. Defendant Maryvale was negligent in the training, supervision, and instruction of its employees. Defendant Maryvale 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.

47. Defendant Maryvale was additionally negligent in failing to supervise, monitor, chaperone, and/or investigate Bratt and/or in failing to create, institute, and/or enforce rules, policies, procedures, and/or regulations to prevent Bratt's sexual abuse of Plaintiff.

48. Defendant Maryvale further failed to establish policies, procedures, training, manuals and other instructive materials and failed to publish such materials to all employees and administrators.

49. 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

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

51. Defendant Maryvale became aware or should have become aware of Bratt's propensity for child sexual abuse and failed to take any further action to remedy the problem and failed to investigate or remove Bratt from working with children.

52. Defendant Maryvale negligently and/or recklessly retained Bratt with knowledge of Bratt's propensity for the type of behavior which resulted in Plaintiff's injuries in this action.

53. Defendant negligently and/or recklessly retained Bratt in a position where he had access to children and could foreseeably cause harm which Plaintiff would not have been subjected to had Defendant Maryvale acted reasonably.

54. In failing to timely remove Bratt from working with children or terminate the employment of Bratt, Defendant Maryvale negligently and/or recklessly failed to exercise the degree of care that a reasonably prudent parent would have exercised under similar circumstances, and created an increased risk of future harm.

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

AS AND FOR A FIFTH CAUSE OF ACTION:
BREACH OF STATUTORY DUTY TO REPORT

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

57. Defendants became aware or should have become aware of suspected incidents of child abuse and/or maltreatment by Bratt, and failed to take any action to report, remedy or otherwise investigate the child abuse and/or maltreatment and remove Bratt from working near or with access to children.

58. Pursuant to New York Social Services Law § 413, Defendants had a mandatory duty to report suspected abuse or maltreatment of Plaintiff.

59. Defendants and/or its agents violated this statutory duty by failing to report known and/or suspected abuse of children, including Plaintiff, by Bratt to law enforcement.

60. As a direct result of the foregoing, Plaintiff was prevented from receiving the benefit of a thorough investigation and prompt medical attention, and has sustained, and will continue to sustain physical, emotional, and psychological injuries, along with pain and suffering.

61. Plaintiff's damages are the direct result of Defendants failure to report and are fully recoverable pursuant to New York Social Services Law § 420.

PRAYER FOR RELIEF

WHEREFORE, based on the foregoing causes of action, Plaintiff prays for judgment against Defendant 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: June 2, 2020



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