

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

-----X

JOHN DOE,

Plaintiff,

COMPLAINT

-against-

HOLLAND CENTRAL SCHOOL DISTRICT; and HOLLAND
MIDDLE SCHOOL,

Index No. _____

Defendants.

-----X

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Plaintiff, JOHN DOE, by and through undersigned counsel, respectfully shows to this Court and alleges as follows:

INTRODUCTION

This is a revival action brought pursuant to the New York Child Victims Act, CPLR § 214-g. The Plaintiff, when he was a minor, was repeatedly sexually assaulted and abused by Carl Penziul (hereinafter “Penziul”), a teacher employed by Holland Central School District assigned to Holland Middle School.

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, JOHN DOE, is a citizen and resident of the State of New York. Plaintiff brings this Complaint anonymously because of the sensitive nature of the allegations of child sexual abuse in the Complaint, which is a matter of the utmost intimacy. Plaintiff fears embarrassment and further psychological damage if his identity as a victim of child sexual abuse were to become publicly known.

2. Defendant, Holland Central School District (“HCS D”), is a public-school district with a principal place of business at 103 Canada Street, Holland, NY 14080. At all times relevant and material hereto, Holland Central School District owned, operated, maintained and/or controlled Defendant Holland Middle School (“The School” or “Holland Middle School”) located at 11720 Partridge Road, Holland, NY 14080.

3. At all times relevant and material hereto, Penziul was an employee, independent contractor, and/or agent of Holland Central School District and worked as a teacher at The School.

4. This Court has subject matter jurisdiction of this action pursuant to Article VI of the New York Constitution.

5. Personal jurisdiction lies over Defendants as they are present and domiciled in the State of New York.

6. Venue of this action lies in Erie County and a substantial part of the events or omissions giving rise to the claim occurred in Erie County or the Defendant resides in Erie County.

DUTY

7. At all times relevant and material hereto, HCS D and The School were in a special relationship with Plaintiff of school-student, such that they owed a duty to protect Plaintiff from foreseeable harms on school grounds, during school-related activities and when in the presence of their employees/agents. Defendants had a duty to act as a reasonable parent would in the circumstances. In this regard Defendants were *in loco parentis* with the Defendants’ students, including Plaintiff.

8. At all material times, HCS D and The School owed a duty to use reasonable care to protect the health, safety, care, and well-being of the minor Plaintiff while he was under the care, custody or in the presence of Defendants. These duties encompassed the protection and

supervision of Plaintiff, and otherwise providing a safe environment for Plaintiff while on school premises.

9. At all times relevant and material hereto, Defendants and Penziul were in a special relationship of employer – employee, in which they owed a duty to control the acts and conduct of Penziul to prevent foreseeable harm.

10. Defendants owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of Plaintiff while he was under the care, custody or in the presence of HCSD and Holland Middle School. Their duties encompassed using reasonable care in the hiring, retention, and supervision of Penziul and the duty to otherwise provide a safe environment for Plaintiff.

11. Defendants had a duty to exercise reasonable care in the training of faculty, teachers and staff in the prevention of sexual abuse and protection of the safety of students in its care.

12. Defendants had a duty to establish and implement policies and procedures in the exercise of reasonable care for the prevention of sexual abuse and protection of the safety of the students in its care.

BACKGROUND AND SEXUAL ASSAULTS OF PLAINTIFF

13. At all times relevant and material hereto, Plaintiff was a student at Holland Middle School in Holland, New York.

14. At all times relevant and material hereto, Penziul was a teacher at Holland Middle School and Plaintiff's class co-advisor. Penziul used his position as a teacher/class co-advisor to befriend and groom Plaintiff, gaining his trust and confidence.

15. Penziul's sexual assault and abuse of the Plaintiff occurred when Plaintiff was approximately thirteen (13) or fourteen (14) years old. These acts of sexual assault and abuse occurred during the approximate time period of 1980-1981.

16. Penziul's sexual assaults and abuse of the Plaintiff included, but were not limited to, fondling Plaintiff's genitalia, and other inappropriate touching and squeezing of Plaintiff's genitalia.

17. Penziul's above-described acts of sexual assault and abuse occurred on the premises of Holland Middle School.

NOTICE – FORESEEABILITY

18. Upon information and belief, Penziul was at all relevant times a serial sexual predator who sexually assaulted and abused Plaintiff and many other students during his employment with Defendant HCSD at Holland Middle School.

19. Upon information and belief, teachers at Holland Middle School suspected Penziul was acting inappropriately with male students. Teachers at Holland Middle School were aware that Penziul would stay at the homes of male students while their parents were away. Penziul would also take particular students places and purchase gifts for them.

20. Despite this, Defendants took no action whatsoever against Penziul, and as a result, Penziul continued to sexually assault and abuse Plaintiff and other students.

21. Plaintiff reported Penziul's sexual assaults and abuse to Herb Arnold, the superintendent and/or principal at Holland High School in approximately 1980-1981.

22. At all relevant times, the Defendants knew or in the exercise of reasonable care should have known that Penziul had a propensity for the conduct which caused injury to Plaintiff, particularly that he had a propensity to engage in the sexual assault and abuse of children.

23. At all relevant times, it was reasonably foreseeable to the Defendants that Penziul would commit acts of child sexual abuse or assault on a child.

24. At all relevant times, the Defendants knew or should have known that Penziul was unfit, dangerous, and a threat to the health, safety and welfare of the minors entrusted to his counsel, care and/or protection.

25. At all relevant times, it was reasonably foreseeable to the Defendants that Penziul would commit acts of child sexual abuse or assault on a child.

BREACH

26. Defendants failed to warn Plaintiff and similarly situated individuals that they were at risk of sexual abuse.

27. Despite knowledge of Penziul's serious threat to the health, safety and welfare of minors, Defendants continued to provide Penziul with unfettered access to minors, including Plaintiff, needlessly endangering his health, safety and welfare.

28. Defendants provided Penziul the opportunity to commit foreseeable acts of child sexual abuse or assault.

29. Defendants breached their duty to protect Plaintiff by allowing Penziul to serve as a teacher, giving him access to students despite such knowledge of his dangerous sexual propensities, and by failing to institute any supervision of Penziul's contacts with students.

30. Defendants breached their duties by failing to use reasonable care to provide a safe environment for Plaintiff where he would be free from the unwanted sexual advances and dangerous propensities of Penziul as an employee/agent of Defendants.

31. Defendants breached their duties by failing to take corrective action or adequately investigate reports or allegations of sexual misconduct by Penziul.

32. As a direct and proximate result of Defendants' breach of their duties, Plaintiff was sexually assaulted and abused by Penziul while he was a student at Holland Middle School.

33. Defendants' breaches of its duties included: (i) failing to protect Plaintiff from sexual assault and lewd and lascivious acts committed by their agent and employee; (ii) failing to establish policies and procedures that were adequate to protect the health, safety and welfare of students and protect them from sexual abuse; (iii) failing to implement and enforce policies and procedures that were adequate to protect the health, safety and welfare of students and protect them from sexual abuse; (iv) hiring, retaining and/or failing to supervise Penziul when they knew or should have known that he posed a substantial risk of harm to children; and (v) failing to adequately monitor and supervise students on the premises of Holland Central School District, specifically Holland Middle School.

34. Defendants concealed their knowledge that Penziul was unsafe.

NATURE OF CONDUCT ALLEGED

35. This action alleges physical, psychological and emotional injuries suffered as a result of conduct which would constitute a sexual offense on a minor as defined in Article 130 of the New York Penal Law, including without limitation, conduct constituting rape (consisting of sexual intercourse) (N.Y. Penal Law §§ 130.25 – 130.35); criminal sexual act (consisting of oral

or anal sexual conduct) (N.Y. Penal Law §§ 130.40 – 130.53); and/or sexual abuse (consisting of sexual contact) (N.Y. Penal Law §§ 130.55 – 130.77).

36. The limitation of liability set forth in CPLR Art. 16 is not applicable to the claim of personal injury alleged herein, by reason of one or more of the exemptions provided in CPLR § 1602, including without limitation, that Defendants acted with reckless disregard for the safety of others, including Plaintiff.

COUNT I – NEGLIGENCE
(Against Defendants HCSD and The School)

37. Plaintiff repeats and realleges Paragraphs 1 through 40 above.

38. Defendants acts, conduct and omissions show a negligent, grossly negligent, reckless, wanton, or willful disregard for the health, safety and welfare of Plaintiff and other children.

39. As a direct and proximate result of Defendants’ aforementioned acts, conduct and omissions, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

WHEREFORE, Plaintiff demands Judgment against Defendants HCSD and Holland Middle School for compensatory damages, punitive damages, attorneys’ fees, interest, costs and such other and further relief as this Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a Jury Trial in this action.

Dated: New York, New York
July 30, 2020

Respectfully submitted,

HERMAN LAW
434 W. 33rd St., Penthouse
New York, NY 10001
Tel: 212-390-0100

By: _____


Jeff Herman

jherman@hermanlaw.com

Daniel G. Ellis

dellis@hermanlaw.com

Stuart S. Mermelstein

smermelstein@hermanlaw.com

Jason S. Sandler

jsandler@hermanlaw.com