

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF ERIE

<p>PB-47 DOE,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>AMHERST CENTRAL SCHOOL DISTRICT, and SMALLWOOD DRIVE ELEMENTARY SCHOOL,</p> <p style="text-align: center;">Defendants.</p>
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**SUMMONS**

Plaintiff designates the County of ERIE as the place of trial. The basis of venue is the Plaintiff's and Defendants' 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  
July 29, 2020

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*Attorneys for Plaintiffs*

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**DEFENDANTS' ADDRESSES:**

**AMHERST CENTRAL SCHOOL DISTRICT**

55 Kings Highway  
Amherst, New York 14226

**SMALLWOOD DRIVE ELEMENTARY SCHOOL**

300 Smallwood Drive  
Amherst, NY 14226

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**COMPLAINT**

Index No.:

Plaintiff PB-47 DOE, by and through his undersigned attorneys, as and for his Complaint, alleges 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-47 DOE, when he was a fifth grade student at Defendant SMALLWOOD DRIVE ELEMENTARY SCHOOL (hereinafter "SMALLWOOD"), was repeatedly sexually abused and assaulted by Trent Hariaczyi (hereinafter "Hariaczyi"), who at the time of the abuse was an employee of Defendants AMHERST CENTRAL SCHOOL DISTRICT (hereinafter "ACSD") and SMALLWOOD.
3. Plaintiff was approximately 10 years old when the sexual abuse occurred, in approximately the winter months during the 1999-2000 school year, when the Plaintiff was in fifth grade.
4. Defendants ACSD and SMALLWOOD held Hariaczyi out as a teacher and as the person in charge of conducting an After School Program ("ASP") for fifth grade students identified by the school as being academically gifted.

5. Hariaczyi's abuse of Plaintiff occurred while he was acting in his assigned role as the ASP teacher. Upon information and belief, Hariaczyi had neither the training, education, nor expertise of an ASP teacher, and he was unqualified to serve in that role.

6. Hariaczyi's sexual abuse of Plaintiff took place on the premises of SMALLWOOD, on the second floor of the elementary school building. The sexual abuse, which was extreme, and took place over the course of several months.

7. Not only did Defendants ACSD and SMALLWOOD place Plaintiff in harm's way by improperly holding Hariaczyi out as an ASP teacher and permitting him to have unfettered and unsupervised and secluded access to Plaintiff in that role, but they carelessly, negligently, and recklessly, failed to protect Plaintiff from sexual abuse by Hariaczyi, permitted the abuse to occur, failed to supervise Hariaczyi, failed to timely investigate Hariaczyi's misconduct, acted to protect their own self-interest to the detriment of innocent children, and are otherwise responsible for Hariaczyi's sexual assault of Plaintiff, and Plaintiff's consequential injuries and damages.

**PARTIES**

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

9. Plaintiff was born in 1989.

10. Defendant ACSD 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 55 Kings Highway, Amherst, New York 14226.

11. At all relevant times, Defendant ACSD oversaw, managed, controlled, directed and operated public schools, within the ACSD, including Defendant SMALLWOOD.

12. At all relevant times, Defendant SMALLWOOD was and still is a public elementary school, organized pursuant to the laws of the State of New York and located at 300 Smallwood Drive, Amherst, NY 14226.

13. At all relevant times, Defendant SMALLWOOD was and still is under the direct authority and control of Defendant ACSD.

14. At all relevant times, Defendant ACSD owned the premises where Defendant SMALLWOOD was located.

15. At all relevant times, Defendant ACSD oversaw, managed, controlled, directed and operated Defendant SMALLWOOD.

16. At all relevant times, Hariaczyi was an employee of ACSD and/or SMALLWOOD, assigned to the position of teacher and teacher/director of the ASP for fifth grade children in or about the year 2000.

#### **FACTUAL ALLEGATIONS**

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

18. From approximately 1994 through 2000, for grades kindergarten through fifth grade, Plaintiff attended SMALLWOOD.

19. At all relevant times, Hariaczyi was under the direct supervision, employ and control of the Defendants ACSD and SMALLWOOD.

20. At all relevant times, Hariaczyi's duties and responsibilities included teaching students and overseeing and providing "gifted" students with extracurricular activities and further education after school on SMALLWOOD's premises.

21. At all relevant times Defendants ACSD and SMALLWOOD held Hariaczyi out as a qualified teacher and/or teacher, director, and supervisor of ASP activities for students.

22. Notwithstanding Hariaczyi's lack of qualifications to be permitted to remain on school grounds, unsupervised, with minor students after school hours, Defendants ACSD and SMALLWOOD authorized and allowed Hariaczyi to oversee an ASP for minor students, including Plaintiff, to be alone with them, and to have unfettered and unsupervised access to them on Defendants' property.

23. Beginning in or about January of 2000, when Plaintiff was in 5<sup>th</sup> grade, Hariaczyi, acting in the course and scope of his employment with Defendants ACSD and SMALLWOOD, undertook to teach Plaintiff and other children during after school hours once or twice per week.

24. At all relevant times, Defendants ACSD and SMALLWOOD authorized and permitted Hariaczyi to perform these activities with Plaintiff on school premises, behind closed doors and without any other adult supervision.

25. At the aforementioned time and place, and believing that Hariaczyi was a qualified professional teacher and/or teacher, director, and supervisor of ASP activities, Plaintiff remained after school and attended SMALLWOOD'S sanctioned ASP which was taught and directed by Hariaczyi.

26. During one such session, Plaintiff was awarded the "honor" of student of the week, and was offered candy for such accomplishment, which would be given to him after the remaining students had left the building.

27. After the remainder of the students had left, Hariaczyi began to discuss with the Plaintiff a sex education course that had been earlier given to the SMALLWOOD fifth grade students around that same time.

28. Cloaked with the authority of a school teacher and/or teacher, director, and supervisor of ASP activities and adult, Hariaczyi told Plaintiff that he could help him understand the material covered by the sex education course.

29. At that time, and on numerous occasions thereafter, on the premises of SMALLWOOD, Hariaczyi engaged in unpermitted, forcible, and harmful sexual contact with Plaintiff.

30. Upon information and belief, Hariaczyi took and/or created photographic images or videos of the Plaintiff which were pornographic in nature without the knowledge and against the will of the Plaintiff.

31. By his words and/or actions, Hariaczyi coerced Plaintiff to acquiesce in his continued sexual misconduct, and to not report him to anyone.

32. In addition, Plaintiff's status as a vulnerable child and student put pressure on Plaintiff not to report Hariaczyi's abuse.

33. Defendants knew or should have known that Hariaczyi was a danger to minors, like Plaintiff, before he sexually abused Plaintiff.

34. On or about March 8, 2006, after a superseding indictment was filed in the United States District Court for the Eastern District of California, in which Hariaczyi was charged with Possession of Material Involving the Sexual Exploitation of Minors, in violation of 18 U.S.C. 2252(a)(4), Hariaczyi pleaded guilty and was sentenced to twenty one months in federal prison. *See United States v. Hariaczyi*, Case No. 1:02-cr-05301-020.

35. Defendants ACS D and SMALLWOOD knew or should have known that Hariaczyi was not qualified to perform the duties of a teacher and/or teacher, director, and

supervisor of ASP activities and that he should not have been permitted to remain alone with vulnerable children.

36. Defendants ACSD and SMALLWOOD knew or should have known that allowing Hariaczyi to have unsupervised and unlimited access with students posed an unacceptable risk of child sex abuse.

37. Prior to the time of Plaintiff's abuse by Hariaczyi, Defendants knew or should have known that there was a specific danger of child sex abuse for children in their institutions and programs, particularly after school programs which, by their very nature, have limited and/or no supervision by other adults/teachers.

38. The sexual abuse of Plaintiff by Hariaczyi was foreseeable.

39. All of the sexual abuse detailed is and was in violation of New York Penal Code Section 130.

40. Defendants ACSD and SMALLWOOD owed Plaintiff a reasonable duty of care because they affirmatively solicited children and parents to send their children to SMALLWOOD; they undertook custody of minor children, including Plaintiff; they promoted their facilities and ASPs as being safe for children; they held out their agents, including Hariaczyi, as safe to work with, be around, and to be unmonitored and unsupervised around minor students after school hours; they encouraged parents and children to spend time with their agents, including after school; and/or authorized their agents, including Hariaczyi, to provide after school services to children.

41. Defendants ACSD and SMALLWOOD 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 himself; and Defendants affirmatively assumed a position of empowerment over Plaintiff.

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

43. As a result of the foregoing, Plaintiff has suffered and continues to suffer great physical and mental pain and anguish, severe and permanent emotional distress, psychological injuries, fear and anxiety; 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.

44. 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.

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

**COUNT I**  
**NEGLIGENT HIRING, RETENTION, SUPERVISION, AND DIRECTION**

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

47. At all relevant times Defendants ACSD and SMALLWOOD had a duty to exercise due care in hiring, appointing, assigning, retention, supervision and direction of Hariaczyi, 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 Hariaczyi did not use his assigned position to injure minors by sexual assault, contact or abuse.

48. Defendants ACSD and SMALLWOOD were negligent and failed to use reasonable care in hiring, appointing, assigning, and retention, of Hariaczyi, failed to properly investigate his background and employment history, and/or hired, appointed and/or assigned him to Defendants' elementary school, when Defendants knew or should have known of facts that would make him a danger to children; and Defendants were otherwise negligent.

49. Defendants were negligent and did not use reasonable care in their supervision and direction of Hariaczyi, 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 Hariaczyi posed a threat of sexual abuse to minors; allowed the misconduct described above to occur and continue; failed to investigate Hariaczyi'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.

50. Hariaczyi would not have been in a position to sexually abuse Plaintiff had Defendants ACSD and SMALLWOOD not been negligent in the hiring, retention, supervision, and direction of Hariaczyi

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

52. Defendants ACSD and SMALLWOOD's aforesaid actions were willful, wanton, malicious, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff.

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

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

**COUNT II**  
**NEGLIGENT, RECKLESS, AND WILLFUL MISCONDUCT**

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

56. At all relevant times, Defendants ACSD and SMALLWOOD affirmatively and/or impliedly represented to minor children, their families and the general public that employees and agents working in the ACSD, including Hariaczyi, did not pose a risk of sexually abusing children, and that children, including Plaintiff, would be safe in their care.

57. Defendants ACSD and SMALLWOOD knew or should have known this representation was false and that employing Hariaczyi and giving him unfettered access to children, including Plaintiff, posed an unacceptable risk of harm to children, particularly during after school hours when no other teachers or staff were around to oversee his activities.

58. Defendants ACSD and SMALLWOOD 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.

59. Defendants ACSD and SMALLWOOD carelessly, negligently and recklessly failed to have in place an appropriate policy and/or practice to monitor, supervise or oversee

Hariaczyi's interactions with minor students such as Plaintiff, in order to keep them safe from sexual abuse, particularly during after school hours when no other teachers or staff were around to oversee his activities.

60. The careless, negligent and reckless misconduct by Defendants ACSD and SMALLWOOD 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.

61. 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.

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

**COUNT III**  
**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

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

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

65. Defendants ACSD's and SMALLWOOD's aforesaid negligent, grossly negligent and reckless misconduct, endangered Plaintiff's safety and caused him to fear for his own safety.

66. Defendants ACSD and SMALLWOOD knew or disregarded the substantial probability that Hariaczyi would cause severe emotional distress to Plaintiff.

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

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

**COUNT IV**  
**PREMISES LIABILITY**

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

70. At all relevant times, Defendants ACSD and SMALLWOOD owned, operated, and/or controlled the premises known as SMALLWOOD, including the areas where the sexual abuse of Plaintiff occurred.

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

72. Defendants ACSD and SMALLWOOD 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.

73. Defendants ACSD and SMALLWOOD 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 Hariaczyi. Defendants ACSD and SMALLWOOD thereby breached their duty of care of Plaintiff.

74. 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.

75. 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.

**COUNT V**  
**BREACH OF FIDUCIARY DUTY**

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

77. At all relevant times, there existed a fiduciary relationship of trust, confidence and reliance between Plaintiff and Defendants ACSD and SMALLWOOD. The entrustment of Plaintiff to the care and supervision of the Defendants ACSD and SMALLWOOD while Plaintiff was a vulnerable child and during an after hours program operated and promoted by Defendants when supervision of the adult staff was sharply limited or non-existent, imposed upon these Defendants a fiduciary duty to act in the best interests of Plaintiff.

78. Defendants ACSD and SMALLWOOD were entrusted with the well-being, care, and safety of Plaintiff, which Defendants had a fiduciary duty to protect.

79. By reason of the foregoing, Defendants ACSD and SMALLWOOD breached their fiduciary duties to Plaintiff.

80. As a direct and proximate result of Defendants ACSD's and SMALLWOOD'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 liable to Plaintiff for compensatory and punitive damages in an amount to be determined at trial, plus interest and costs.

**COUNT VI**  
**BREACH OF DUTY IN LOCO PARENTIS**

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

83. At all relevant times, Plaintiff was a vulnerable child entrusted to the care of Defendants ACSD and SMALLWOOD, 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.

84. By reason of the foregoing, Defendants ACSD and SMALLWOOD breached their duties to act *in loco parentis*.

85. As a direct and proximate result of Defendants ACSD's and SMALLWOOD's foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

86. 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.

**COUNT VII**  
**BREACH OF STATUTORY DUTIES TO REPORT**

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

88. 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.

89. Defendants breached their statutory duty by failing to report reasonable suspicion of sexual abuse by Hariaczyi.

90. As a direct and proximate result of Defendants ACSD's and SMALLWOOD's foregoing breaches, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

91. 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.

**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**

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

Dated: July 29, 2020

Yours, etc.  
**PHILLIPS & PAOLICELLI, LLP**




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