

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

HALDIS MCEVOY,

Plaintiff,

v.

HARBORFIELDS CENTRAL SCHOOL
DISTRICT; BOARD OF EDUCATION OF
HARBORFIELDS CENTRAL SCHOOL
DISTRICT; OLDFIELD MIDDLE SCHOOL;
AND EUGENE SENZER,

Defendants.

Index No.

VERIFIED COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Haldis McEvoy, by her attorneys Weitz & Luxenberg PC, brings this action against the Harborfields Central School District, Board of Education of Harborfields Central School District, Oldfield Middle School, and Eugene Senzer alleging, on personal knowledge as to herself 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 the Defendants reside in New York.

2. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

3. Venue for this action is proper in the County of Suffolk pursuant to CPLR 503 in that one or more Defendants reside in this County and a substantial part of the events and omissions giving rise to the claim occurred in Suffolk County.

PARTIES

4. Plaintiff Haldis McEvoy (“Plaintiff”) is an individual residing in Chittenden County, Vermont.

5. Defendant Harborfields Central School District (“School District”) is a municipal corporation organized and existing under the laws of the State of New York, with its principal office at 2 Old Field Road in Greenlawn, Suffolk County, New York.

6. Defendant Board of Education of Harborfields Central School District (“Board of Education”) is a municipal corporation organized and existing under the laws of the State of New York, with its principal office at 2 Old Field Road in Greenlawn, Suffolk County, New York.

7. At all relevant times, Defendants School District and the Board of Education oversaw, managed, controlled, directed and operated schools within the School District including Old Field Middle School.

8. Defendant Oldfield Middle School formerly Oldfield Junior High School, is a municipal corporation organized and existing under the laws of the State of New York, with its principal office at 2 Old Field Road, in Greenlawn, New York, Suffolk County.

9. At all relevant times, Defendants School District and the Board of Education managed, supervised, employed, directed and/or controlled teachers working in the School District including Defendant Eugene Senzer.

10. At all relevant times, teachers working in the School District were agents, managers, directors, or employees of Defendants School District and Board of Education.

11. At all relevant times, Defendant Oldfield Middle School managed, supervised, employed, directed and/or controlled teachers working at Oldfield Middle School including Defendant Eugene Senzer.

12. At all relevant times, teachers working at Old Field Middle School were agents, managers, directors, or employees of Defendants Oldfield Middle School, School District, and Board of Education.

13. Defendant Eugene Senzer is an individual residing in Sumner County, Tennessee.

FACTS COMMON TO ALL CLAIMS

14. Plaintiff and her family were residents of Harborfields School District in Greenlawn, New York when she was a child.

15. Plaintiff was enrolled as a student at Oldfield Middle School in Greenlawn, New York for Ninth Grade.

16. During the times relevant to the allegations set forth herein, Defendants Oldfield Middle School, School District, and School Board were responsible for overseeing, managing, controlling, directing and operating Oldfield Middle School.

17. Defendant Eugene Senzer was a music teacher at Oldfield Middle School employed by Defendants Oldfield Middle School, School District, and School Board.

18. Through his position at, within, or for the other Defendants, Defendant Eugene Senzer was put in direct contact with Plaintiff, a minor student at Oldfield Middle School.

19. In approximately 1972, Plaintiff began attending Oldfield Middle School as a Seventh Grade student.

20. Oldfield Middle School, formerly known as Oldfield Junior High School, at all relevant times, was a public school that taught Seventh Grade, Eighth Grade, and Ninth Grade.

21. In spring of 1975, when Plaintiff was approximately fourteen years of age, she was sexually abused by Defendant Eugene Senzer who was her Ninth Grade music teacher at Oldfield Middle School.

22. Defendant Eugene Senzer used encounters, gained through his position at Oldfield Middle School which granted him access to Defendants' minor students, when Plaintiff was approximately fourteen years of age, to sexually assault, sexually abuse, and/or have sexual contact with Plaintiff in violation of the laws of the State of New York.

23. Plaintiff graduated from Oldfield Middle School in the summer of 1975.

24. At all times material hereto, Defendant Eugene Senzer was under the management, supervision, employ, direction and/or control of Defendants Oldfield Middle School, School District, and School Board.

25. Oldfield Middle School, School District, and School Board knew, and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Defendant Eugene Senzer who sexually abused Plaintiff.

26. Defendants Oldfield Middle School, School District, and School Board had the responsibility to manage, supervise, control and/or direct teachers who taught at Oldfield Middle School, and specifically had a duty not to aid pedophiles such as Defendant Eugene Senzer by assigning, maintaining, and/or appointing them to positions with access to minors.

27. Defendants Oldfield Middle School, School District, and School Board had a duty to the Plaintiff to ensure that Defendants Oldfield Middle School, School District, and School Board did not offer opportunities for pedophiles to approach and assault vulnerable minor students. Defendants Oldfield Middle School, School District, and School Board knew and/or should have known that Defendant Eugene Senzer used his position at Oldfield Middle School to harm minor children, including Plaintiff, and to form an acquaintance that could be, and was, used to provide opportunities for sexual abuse.

28. Plaintiff suffered personal physical and psychological injuries and damages as a result of Defendants' actions, as well as other damages related thereto, as a result of her childhood sexual abuse.

29. As a direct result of Defendants' conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and physical manifestations of emotional distress. Plaintiff was prevented from obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Defendants' sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm she suffered as a result.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Negligent Hiring/Retention/Supervision/Direction

(As to Defendants Oldfield Middle School, School District, and School Board)

30. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

31. Defendants Oldfield Middle School, School District, and School Board at all relevant times represented or otherwise indicated to parents of the Harborfields School District that minor children would be physically safe while in the presence of teachers assigned to Oldfield Middle School. Defendants Oldfield Middle School, School District, and School Board entered into an express and/or implied duty to provide that when Plaintiff was a minor and left in the presence of a teacher at Oldfield Middle School Plaintiff would be kept reasonably safe and that that a teacher would not sexually abuse Plaintiff.

32. Defendants Oldfield Middle School, School District, and School Board owed a duty of care to all minor persons, including Plaintiff, who were likely to come in contact with Defendant Eugene Senzer or were under the supervision of Defendant Eugene Senzer, to ensure that Defendant Eugene Senzer did not use his assigned position to injure minors by sexual assault, sexual abuse, or sexual contact in violation of the laws of the State of New York.

33. Defendants Oldfield Middle School, School District, and School Board knew or should have known of Defendant Eugene Senzer's propensity for the conduct which caused Plaintiff's injuries prior to, or about the time of the injuries' occurrence.

34. The sexual abuse of children by adults, including teachers, is a foreseeable result of negligence.

35. Defendant Eugene Senzer sexually assaulted, sexually abused and/or had sexual contact with Plaintiff while assigned to Oldfield Middle School.

36. Defendants Oldfield Middle School, School District, and School Board negligently hired, retained, directed, and supervised Defendant Eugene Senzer as they knew or should have known that Defendant Eugene Senzer posed a threat of sexual abuse to children.

37. Defendants Oldfield Middle School, School District, and School Board were negligent in failing properly to supervise Defendant Eugene Senzer.

38. At all times material hereto, Defendants Oldfield Middle School, School District, and School Board were willful, wanton, malicious, reckless and/or outrageous in their disregard for the rights and safety of Plaintiff.

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

40. 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

(As to Defendants Oldfield Middle School, School District, and School Board)

41. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

42. At all times material hereto, with regard to the allegations contained herein, Defendant Eugene Senzer was under the supervision, employ, direction and/or control of Defendants Oldfield Middle School, School District, and School Board.

43. Defendants Oldfield Middle School, School District, and School Board owed Plaintiff, at the relevant times, a minor, a duty to protect her from Defendant Eugene Senzer's sexual deviancy and the consequent damages, both prior to and/or subsequent to Defendant Eugene Senzer's misconduct.

44. Defendants Oldfield Middle School, School District, and School Board knew, or were negligent in not knowing, that Defendant Eugene Senzer posed a threat of sexual abuse to children.

45. The acts of Defendant Eugene Senzer described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his respective employment, appointment, assignment, and/or agency with Defendants Oldfield Middle School, School District, and School Board.

46. Defendants Oldfield Middle School, School District, and School Board's 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.

47. Defendants Oldfield Middle School, School District, and School Board 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; failed adequately to supervise the activities of Defendant Eugene Senzer; 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, with instrumentalities under their control; and allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint, to occur.

48. At all times material hereto, Defendants Oldfield Middle School, School District, and School Board were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to conduct equivalent to criminality.

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

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

THIRD CAUSE OF ACTION

Breach of Non-Delegable Duty

(As to Defendants Oldfield Middle School, School District, and School Board)

51. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

52. Plaintiff, when she was a minor, was placed in the care and supervision of the Defendants Oldfield Middle School, School District, and School Board for the purposes of, *inter alia*, providing Plaintiff with a safe environment in which to participate in educational, youth, and recreational activities. There existed a non-delegable duty of trust between Plaintiff and Defendants.

53. Plaintiff was a vulnerable child when placed within the care of the Defendants Oldfield Middle School, School District, and School Board.

54. As a consequence, Defendants Oldfield Middle School, School District, and School Board were in the best position to prevent Defendant Eugene Senzer's sexual abuse of Plaintiff, to learn of that sexual abuse of Plaintiff and stop it, and to take prompt steps to provide that Plaintiff received timely therapy to address the harm Plaintiff suffered resulting from Defendant Eugene Senzer's sexual abuse of Plaintiff. Such prompt steps would have mitigated the extent of lifetime suffering Plaintiff has had to endure.

55. By virtue of the fact that Plaintiff was sexually abused as a minor child entrusted to the care of the Defendants Oldfield Middle School, School District, and School Board, Defendants breached their non-delegable duty to Plaintiff.

56. At all times material hereto, Defendant Eugene Senzer was under the supervision, employ, direction and/or control of Defendants Oldfield Middle School, School District, and School Board.

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

58. 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.

FOURTH CAUSE OF ACTION

Breach of Fiduciary Duty

(As to Defendants Oldfield Middle School, School District, and School Board)

59. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

60. While she was a minor, Plaintiff was entrusted by her parents to the control and supervision of Defendant Eugene Senzer, a teacher of the Defendants' Oldfield Middle School, School District, and School Board. During the times that Plaintiff was entrusted to Defendant

Eugene Senzer, Defendant Eugene Senzer was under the supervision and control of Defendants Oldfield Middle School, School District, and School Board.

61. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendants Oldfield Middle School, School District, and School Board. This relationship is based on the entrustment of the Plaintiff while she was a minor child to the care and supervision of the Defendants Oldfield Middle School, School District, and School Board. This entrustment of the Plaintiff to the care and supervision of the Defendants Oldfield Middle School, School District, and School Board, while Plaintiff was a minor child, required these Defendants to assume a fiduciary relationship and to act in the best interests of the Plaintiff and to protect her due to her infancy and vulnerability.

62. Pursuant to their fiduciary relationship, Defendants Oldfield Middle School, School District, and School Board were entrusted with the well-being, care, and safety of Plaintiff.

63. Pursuant to their fiduciary relationship, Defendants Oldfield Middle School, School District, and School Board assumed a duty to act in the best interests of Plaintiff.

64. Defendants Oldfield Middle School, School District, and School Board breached their fiduciary duties to Plaintiff.

65. At all times material hereto, Defendants Oldfield Middle School, School District, and School Board were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff.

66. As a direct result of said conduct, Plaintiff has suffered 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 punitive damages, together with interest and costs.

FIFTH CAUSE OF ACTION

Negligent Infliction of Emotional Distress

(As to Defendants Oldfield Middle School, School District, and School Board)

68. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

69. As described above, the actions of Defendants Oldfield Middle School, School District, and School Board, their predecessors and/or successors, agents, servants and/or employees were conducted in a negligent and/or grossly negligent manner.

70. Defendants Oldfield Middle School, School District, and School Board's actions endangered Plaintiff's safety and caused her to fear for her own safety.

71. As a direct and proximate result of Defendants Oldfield Middle School, School District, and School Board's, which included but were not limited to negligent and/or grossly negligent conduct, Plaintiff suffered 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 punitive damages, together with interest and costs.

SIXTH CAUSE OF ACTION

Breach of Duty *in Loco Parentis*

(As to Defendants Oldfield Middle School, School District, and School Board)

73. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

74. While she was a minor, Plaintiff was entrusted by her parents to the control and supervision of Defendant Eugene Senzer, a teacher of the Defendants' Oldfield Middle School, School District, and School Board. During the times that Plaintiff was entrusted to Eugene Senzer, Defendant Eugene Senzer was under the supervision and control of Defendants Oldfield Middle School, School District, and School Board. These Defendants owe – and owed – a duty to children entrusted to them to act *in loco parentis* and to prevent foreseeable injuries.

75. Defendants Oldfield Middle School, School District, and School Board breached their duty to act *in loco parentis*.

76. At all times material hereto Defendants Oldfield Middle School, School District, and School Board's actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

77. As a direct result of Defendants Oldfield Middle School, School District, and School Board's conduct, Plaintiff has suffered the injuries and damages described herein.

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

SEVENTH CAUSE OF ACTION

Sexual Abuse

(As to Defendant Eugene Senzer)

79. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

80. Defendant Eugene Senzer did sexually assault, sexually abuse, and/or have sexual contact with Plaintiff in violation of the laws of the State of New York.

81. By sexually assaulting, sexually abusing, and/or having sexual contact with Plaintiff, Defendant Eugene Senzer placed Plaintiff in imminent and reasonable apprehension of harmful and offensive contact.

82. By sexually assaulting, sexually abusing, and/or having sexual contact with Plaintiff, Defendant Eugene Senzer acted so as to cause unjustified, harmful and offensive physical contact with Plaintiff.

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

84. 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.

EIGHTH CAUSE OF ACTION
Intentional Infliction of Emotional Distress
(As to Defendant Eugene Senzer)

85. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 29 as if fully set forth herein.

86. Defendant Eugene Senzer's actions endangered Plaintiff's safety and caused her to fear for her own safety.

87. As a direct and proximate result of Defendants Eugen Senzer's actions Plaintiff suffered severe injuries and damages described herein; including but not limited to mental and emotional distress.

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

WHEREFORE Plaintiff, demands judgment against the Defendants on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proven at trial, but in any event in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction; extent permitted by law;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding costs and fees of this action, including attorneys' fees to the extent permitted by law;
- D. Awarding prejudgment interest to the extent permitted by law;
- E. Awarding such other and further relief as to this Court may seem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: August 14, 2019

New York, New York

Respectfully Submitted,

/s/ Samantha Breakstone
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ATTORNEY'S VERIFICATION

STATE OF NEW YORK)

) SS:

COUNTY OF SUFFOLK)

I, the undersigned, am an attorney admitted to practice in the Courts of New York State, and say that:

I am the attorney of record or of counsel with the attorney(s) of record for the plaintiff.

I have read the annexed SUMMONS AND VERIFIED COMPLAINT and know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief. As to those matters, I believe them to be true. My belief, as to those matters therein not stated upon knowledge is based upon the following:

Interviews and/or discussions held with the plaintiff(s) and papers and/or documents in the file.

The reason I make this affirmation instead of the plaintiff is because said plaintiff resides outside the county from where your deponent maintains his office for the practice of law.

Dated: New York, NY
August 14, 2019



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