

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF SCHUYLER

MERISSA GREEN,

Plaintiff,

COMPLAINT

v.

Index No.: \_\_\_\_\_

BOARD OF EDUCATION OF THE WATKINS GLEN  
CENTRAL SCHOOL DISTRICT; WATKINS GLEN  
CENTRAL SCHOOL DISTRICT; and GREG KELAHAHAN,  
as Superintendent of the WATKINS GLEN CENTRAL  
SCHOOL DISTRICT, and HAYLEY CORNISH.

Defendants.

CORNING, NY  
WELCH, DONLON & CZARPLES PLLC

The plaintiff, by and through her attorneys, Welch, Donlon & Czarples, PLLC,  
complaining of the defendants allege as follows:

1. At all times hereinafter mentioned, the plaintiff MERISSA GREEN resided in the  
State of New York and lived in Schuyler County, and was a minor child having reached the age  
of majority on December 10, 2019.

2. Upon information and belief, at all relevant times herein, defendant BOARD OF  
EDUCATION OF THE WATKINS GLEN CENTRAL SCHOOL DISTRICT (hereafter  
“Board”) is the governing body of the District pursuant to Article 37 of the Education Law,  
organized and existing with all of the duties and responsibilities imposed upon it by law, with its  
principal office located at 303 12<sup>th</sup> Street, Watkins Glen, New York 14891.

3. The defendant Board has a duty while pupils are under its control to provide  
adequate supervision and to use reasonable care for their safety.

4. Upon information and belief, at all relevant times herein, defendant WATKINS  
GLEN CENTRAL SCHOOL DISTRICT (hereafter “District”) is a central school district

organized and maintained pursuant to Article 37 of the Education Law and existing with all the duties and responsibilities imposed upon it by law, with its principal office located at 303 12<sup>th</sup> Street, Watkins Glen, New York 14891.

5. The defendant District has a duty while pupils are under its control to provide adequate supervision and to use reasonable care for their safety.

6. Upon information and belief, at all relevant times herein, defendant GREG KELAHAHAN (hereafter "Superintendent") is the Superintendent of Schools and Chief Executive Officer of the District, and has the duties, powers, and responsibilities set forth in Article 37 of the Education Law, including the duty to "enforce all provisions of law and all rules and regulations relating to the management of the schools and other educational, social and recreational activities under the direction of the [Board]". Education Law § 1711(2).

7. The defendant Superintendent has a duty while pupils are under his control to provide adequate supervision and to use reasonable care for their safety.

8. Upon information and belief, at all relevant times herein, defendant HALEY CORNISH resided in the State of New York, and lived in Schuyler County.

9. At all relevant times herein, plaintiff Merissa Green and assailant Hayley Cornish were a minor pupils enrolled at the Watkins Glen High School under the exclusive supervision and control of said District.

#### AS AND FOR A FIRST CAUSE OF ACTION

10. Repeat and reallege the allegations contained in paragraphs 1 through 9 as if more fully set forth at length herein.

11. On or about September 26, 2019, at approximately 12:40 PM during plaintiff Merissa Green's regularly scheduled lunch period at the Watkins Glen High School, plaintiff was physically and verbally assaulted by fellow student, Hayley Cornish.

12. Prior to the aforesaid assault, Hayley Cornish had a documented record of bullying and physical violence toward students at/within the District, including toward plaintiff, Merissa Green, all of which was known to the Board, District and Superintendent (hereafter collectively referred to as "the District").

13. Specifically, on or about September 5, 2019, Hayley Cornish began harassing plaintiff and threatening claimant with physical harm. On Thursday September 19, 2019, Hayley Cornish approached plaintiff during and while at school and threatened physical harm purportedly to take place during the school day and upon school premises.

14. Plaintiff reported the threat to the District and the District resource officer, Mike Champion.

15. Thereafter, on September 20, 2019, Hayley Cornish sent a threatening text message to plaintiff.

16. Plaintiff again advised the District/the District resource officer Mike Champion, of that text message threat.

17. Upon information and belief, the District resource officer Mike Champion advised member(s) of Watkins Glen School staff and or administration of the threats and of plaintiff's fear.

18. On September 26, 2019, while in the Watkins Glen High School Cafeteria, and during the regularly scheduled lunch period of Hayley Cornish and Merissa Green, Hayley Cornish physically assaulted Merissa Green as promised causing severe and, upon information and belief permanent physical, mental, and emotional injuries.

19. The attack was captured on multiple cellular phone cameras which evince the attack was long in duration and brutal in nature.

20. The District lunch-room staff/monitors were supposed to be supervising Haley Cornish and Merissa Green but were nowhere to be found when the attack occurred, i.e., the pupils were left unsupervised.

21. Multiple recordings of the attack were produced and then posted on the internet by students of the District resulting in additional bullying, shaming, ridicule, embarrassment, anxiety, depression, threats of harm, and harassment of plaintiff while under the District's care and control.

22. Upon information and belief, the District knew and or had reason to know that Hayley Cornish planned to assault plaintiff and, despite that knowledge, failed to take reasonable measures to protect plaintiff from said assault and bullying.

23. Upon further information and belief, the District was negligent in its supervision of its student body including Haley Cornish and Merissa Green thus directly resulting in the attack, its long duration, and its brutal nature.

24. Upon further information and belief, the District was negligent in hiring and or training its staff, specifically, the District resource officer and the lunchroom monitors on duty at the time of the assault.

25. Upon further information and belief, the District was negligent in not providing supervision or in failing to sufficiently supervise its pupils occupying the lunchroom on or about September 26, 2019.

26. Upon further information and belief, the District was negligent in permitting the assault and battery to commence and continue for an excessive duration, failing to intervene in the assault and battery, and or in ignoring obvious indicia that the assault and battery was imminent.

27. At all times relevant hereto, the District was on notice of Hayley Cornish's wish/intent to physically and emotionally harm plaintiff on or about September 26, 2019 as well as thereafter on school grounds both in person and over the internet through use of the Districts computers/computer devices and or internet services.

28. At all times relevant hereto, the District knew that Hayley Cornish and her intended victim, Merissa Green, were together in the cafeteria on September 26, 2019 and, moreover, assigned each to be in the aforesaid place at the aforesaid time.

29. At all times relevant hereto, the District failed to provide adequate supervision under the circumstances known to the District at the time.

30. At all times relevant hereto, the District failed to provide to plaintiff basic protection from foreseeable physical, mental, and emotional harm.

31. As a direct result of the lengthy, uninterrupted, brutal beating plaintiff endured, plaintiff suffered a seizure and loss of consciousness, amongst other injuries. Plaintiff required transportation by ambulance to the nearest emergency room located at Schuyler Hospital.

32. Once at Schuyler Hospital plaintiff was treated for severe injuries to her head, neck, face, and left upper extremity. Plaintiff was evaluated and treated for brain injury, neurological injuries, and orthopedic injury to her left wrist. Plaintiff suffered concussion with blurry vision and vomiting. Plaintiff was caused to suffer severe anxiety, fear, depression, and post traumatic stress with nausea and vomiting. Plaintiff's injuries are severe and, upon information and belief, are permanent in nature.

33. Plaintiff has required costly medical treatment and mental health counseling because of the aforesaid negligent acts/omissions of defendant(s).

34. Upon information and belief, plaintiff reasonably expects to incur additional expense for future medical treatment and/or mental health treatment because of the aforesaid negligent acts/omissions of defendant(s).

35. As a result of the aforesaid negligence of defendants, plaintiff has been caused to suffer substantial pain and suffering, severe mental and/or emotional distress, diminished quality of life, and lost future earning capacity.

36. A written Notice of Claim, sworn to by plaintiff Merissa Green, was duly served upon the District on December 12, 2019, being within ninety (90) days after plaintiffs' claim arose, all pursuant to the provisions of § 50-h of the General Municipal Law of New York State. At least thirty (30) days have elapsed since the service of the Notice of Claim and no adjustment or payment of the claim has been made. Moreover, pursuant to executive order of the Governor of New York State tolling statutes of limitations during the COVID-19 pandemic, and or due to infancy of plaintiff, less than the one (1) year and ninety (90) days have elapsed since the event upon which this lawsuit is based.

37. The District failed to use the same degree of care and supervision over pupils under its control as a reasonably prudent parent would use under the same circumstances. That a reasonably prudent parent would have considered that additional supervision was required under all of the circumstances, and that the District had notice, actual or constructive, that Haley Cornish intended to physically attack Merissa Green for a sufficient length of time to permit it to provide additional supervision. Alternatively, the danger to Merissa Green was so obvious and clear as would mandate general supervision as a matter of law.

38. That the acts and or omissions of the District violate the New York State Dignity for All Students Act, amongst other applicable acts, regulations, rules, and laws of the State of New York.

39. That the injuries sustained by the plaintiff exceed the jurisdictional limits of all lower courts.

**AS AND FOR A SECOND CAUSE OF ACTION**

40. Repeat and reallege the allegations contained in paragraphs 1 through 39 as if more fully set forth at length herein.

41. Defendant Haley Cornish, while a pupil under the supervision of the District threatened immediate physical harm upon plaintiff Merissa Green both verbally and in written text.

42. That because of said threats of immediate harm, plaintiff perceived harmful or offensive contact is about to happen.

43. That while Haley Cornish and Merissa Green were pupils under the exclusive supervision, care, and control of the District harmful physical contact did happen when, on or about September 26, 2019, Haley Cornish brutally beat Merissa Green about the head and body and caused loss of consciousness, seizure, brain injury, orthopedic injury, an emotional injury amongst others.

44. That the acts of Haley Cornish described herein were voluntarily performed with intent to physically harm, embarrass, and torment Merissa Green.

45. That Merissa Green suffered severe physical and mental/emotional injuries as a result of the acts of Haley Cornish and or the District as described herein; and, that Haley Cornish intended and desired such result.

46. That the acts of offensive physical contact aforesaid were done for the sole purpose of harming plaintiff and were carried out without plaintiff's consent.

47. That the acts/omissions of defendant were intentional and resulted in severe emotional distress.

48. That as a result of the unwanted physical contact and verbal assault plaintiff has suffered severe physical and emotional pain and injury, incurred past medical expense, reasonably expects to incur future medical expense, and upon information and belief, has suffered lost earning capacity.

49. As a result of the aforesaid negligence of defendants, plaintiff has been caused to suffer substantial pain and suffering, severe mental and/or emotional distress, and diminished quality of life.

50. That the injuries sustained by the plaintiff exceed the jurisdictional limits of all lower courts.

**WHEREFORE**, the plaintiff demands judgment against the defendants, jointly and severally, inclusive of special, general, and punitive damages, in amounts which exceed the jurisdictional limits of all lower Courts which would otherwise have jurisdiction herein together with the cost and disbursements of the action.

Dated: January 5, 2021

WELCH, DONLON & CZARPLES, PLLC



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