

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ALBANY

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P.S. an infant under the age of 14 years, by his mother
And natural guardian, Xayviona Spencer and Xayviona
Spencer, individually,

Plaintiff,

-against-

KIPP ALBANY COMMUNITY PUBLIC
CHARTER SCHOOL, KIPP TECH VALLEY
CHARTER SCHOOLS, AND FRANCINE
RUFFIN

Defendants.

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SUMMONS

Index No:

The basis of venue is the location of
tortious conduct and is the place of
business of defendant

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 (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 in the Complaint.

Dated: Schenectady, New York
May 18, 2023

Daniel R. Smalls, Esq.
SMALLS LAW PLLC
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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ALBANY

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P.S. an infant under the age of 14 years, by his mother
And natural guardian, Xayviona Spencer and Xayviona
Spencer, individually,

Plaintiff,

-against-

KIPP TECH VALLEY CHARTER SCHOOLS;
KIPP ALBANY COMMUNITY PUBLIC
CHARTER SCHOOL AND FRANCINE RUFFIN,

Defendants.

-----X

VERIFIED COMPLAINT

Index No:

The basis of venue is the location of
tortious conduct and is the place of
business of defendant

Plaintiff P.S. by his mother and natural guardian, XAYVIONA SPENCER, by and through his attorneys, SMALLS LAW, for his Complaint, alleges upon personal knowledge, as well as upon information and belief, as to himself and upon information and belief as to other matters, against the defendants KIPP ALBANY COMMUNITY PUBLIC CHARTER SCHOOL, KIPP TECH VALLEY CHARTER SCHOOLS (herein after collectively referred to as “defendants”) and FRANCINE RUFFIN.

1. That this is an action for personal injuries to recover damages for the claims herein alleged and perpetrated against plaintiff P.S. by defendants’ adult agents and employees and defendant Francine Ruffin.

2. That upon information and belief, during the time of the alleged assault, defendants were responsible for ensuring the well-being of plaintiff P.S.

3. That plaintiff P.S. alleges that, as a result of the negligent actions and omissions of defendants, discussed further herein, he suffered abuse of the type set forth in Article 120 of the New York State Penal Law.

4. That it is hereby alleged pursuant to CPLR §1603 that the foregoing causes of action are exempt from the operation of CPLR §1601 by reason of one or more exemptions provided in CPLR § 1602, including but not limited to the exception for cases where a person is held liable for causing a plaintiff's injury by having acted with reckless disregard for the safety of others (CPLR §1602(7)); and, the exception for any parties found to have acted knowingly or intentionally and in concert to cause the acts or failures upon which liability is based (CPLR § 1602(11)).

PARTIES

5. That plaintiff P.S. was born in 2017.

6. That plaintiff P.S. is a resident of the State of New York.

7. That at all times material, defendant KIPP TECH VALLEY CHARTER SCHOOLS was the parent company of defendants and was an organization or entity which includes, but is not limited to, civil corporations, decision making entities, officials, and employees, authorized to conduct business and conducting business in the State of New York as a not-for-profit corporation, with its principal place of business located at 502 North Road, Troy, New York 12180.

8. That at all times material, defendant KIPP ALBANY COMMUNITY PUBLIC CHARTER SCHOOL was a New York State not-for-profit corporation with its principal place of business located at 65 Krank Street, Albany, New York 12202.

9. That at all times material, Defendant FRANCINE RUFFIN was a teacher at KIPP ALBANY COMMUNITY PUBLIC CHARTER SCHOOL with the primary duty to watch directly over the students and is directly involved with the care, custody and control of each student in the class that she directly oversee located at 77 Lark Street, Albany, New York 12206.

10. That whenever reference in this complaint is made to any defendant entity, such reference includes the entity, as well as its parent companies, subsidiaries, affiliates, predecessors, and successors, as well as its agents and employees.

11. That upon information and belief, at all times material, defendants were responsible for hiring, training and supervising each and every individual working with students of KIPP ALBANY COMMUNITY PUBLIC CHARTER SCHOOL.

12. That upon information and belief, at all times material, defendants had the authority to admonish, discipline and terminate each and every individual working with students of KIPP ALBANY COMMUNITY PUBLIC CHARTER SCHOOL.

13. That upon information and belief, at all times material, defendants were responsible for implementing and enforcing policies aimed at preventing the assault of the students of KIPP ALBANY COMMUNITY PUBLIC CHARTER SCHOOL.

14. That upon information and belief defendants employed defendant FRANCINE RUFFIN.

15. That upon information and belief, during her employment with defendants, Defendant FRANCINE RUFFIN supervised and taught students at KIPP ALBANY COMMUNITY PUBLIC CHARTER SCHOOL.

VENUE

16. That is Court has jurisdiction over this matter and Albany County is the proper venue because it is the county in which a substantial part of the events or omissions giving rise to the claim occurred.

FACTUAL ALLEGATIONS

17. That upon information and belief, at all times relevant herein, Plaintiff P.S. was 6 years old.

18. That upon information and belief, on or about May 2, 2023, P.S. attended KIPP ALBANY COMMUNITY PUBLIC CHARTER SCHOOL located in Albany.

19. On or about May 2, 2023, P.S. was standing in line for the bathroom while other student were bullying P.S. and P.S. asked them to stop.

20. At that moment, defendant FRANCINE RUFFIN violently grabbed P.S by his wrist and neck at which point Defendant FRANCINE RUFFIN's nails penetrated skin of P.S.

21. Defendant FRANCINE RUFFIN picked P.S. by his neck and arms until his feet were off of the floor and then put him in a closet.

22. Upon information and belief, Defendant FRANCINE RUFFIN has put other students in the closet.

23. Based upon information and belief, on or about May 4, 2023, Defendant FRANCINE RUFFIN was arrested and charged with a felonious count of strangulation in second and endangering the welfare of a child.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS, PLAINTIFF ALLEGES NEGLIGENT HIRING, SUPERVISION AND RETENTION

24. That Plaintiff P.S. repeats and realleges each and every allegation set forth above as though set forth fully herein.

25. That upon information and belief, at all times material, defendants KIPP TECH VALLEY CHARTER SCHOOLS; KIPP ALBANY COMMUNITY PUBLIC CHARTER

SCHOOL owed a duty to the public and students, as well as to Plaintiff, to hire individuals to staff KIPP ALBANY COMMUNITY PUBLIC CHARTER SCHOOL who did not pose a risk of endangering the welfare or wellbeing of students.

26. That upon information and belief, at all times material, defendants KIPP TECH VALLEY CHARTER SCHOOLS; KIPP ALBANY COMMUNITY PUBLIC CHARTER SCHOOL owed a duty to the public and student, as well as to Plaintiff P.S., to supervise the individuals employed at KIPP ALBANY COMMUNITY PUBLIC CHARTER SCHOOL, including Defendant FRANCINE RUFFIN, to ensure said agents and employees were not engaging in activity that endangered the welfare or wellbeing of the students.

27. That upon information and belief, at all times material, defendants owed a duty to the public and students, as well as to Plaintiff P.S., to terminate from their employment any employee or agent found to have endangered (or found to have a propensity to endanger) the welfare or wellbeing of any student.

28. That upon information and belief, both prior to and during the time Defendant FRANCINE RUFFIN assaulted Plaintiff P.S., defendants had actual and/or constructive notice that Defendant FRANCINE RUFFIN endangered the welfare and wellbeing of students KIPP ALBANY COMMUNITY PUBLIC CHARTER SCHOOL.

29. That upon information and belief, both prior to and during the time Defendant FRANCINE RUFFIN assaulted Plaintiff P.S., defendants had actual and/or constructive notice of the propensity of Defendant FRANCINE RUFFIN to assault and endanger the safety and wellbeing of infant students.

30. That upon information and belief, defendant breached their duties to exercise reasonable care in their hiring, supervision and retention of Defendant FRANCINE RUFFIN

31. That upon information and belief, as a direct and proximate cause of defendants negligent hiring, supervision and retention, Plaintiff P.S. has sustained in the past and will sustain in the future, pain and suffering, serious psychological and emotional distress, mental anguish, embarrassment and humiliation.

32. That upon information and belief, the conduct of defendants was reckless, extreme and outrageous, grossly unjust and aimed at the public and students as well as at Plaintiff P.S., entitling plaintiff to an award of punitive damages.

33. That defendants are vicariously liable for the negligent acts and omissions of their agents.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST
DEFENDANTS, PLAINTIFF ALLEGES NEGLIGENT,
SUPERVISION OF HIMSELF**

34. That Plaintiff P.S. repeats and realleges each and every allegation set forth above as though set forth fully herein.

35. That Plaintiff P.S. was a minor when he was entrusted to the care, control and supervision of defendants for educational services.

36. That defendants owed a duty to safeguard the Plaintiff P.S. from injuries by providing plaintiff with the supervision and care that one would expect a reasonably prudent parent to provide to his own child.

37. That upon information and belief, defendants possessed actual and/or constructive notice that Plaintiff P.S. was suffering or would have suffered physically abuse while attending KIPP ALBANY COMMUNITY PUBLIC CHARTER SCHOOL.

38. That upon information and belief, defendants possessed actual and/or constructive notice that FRANCINE RUFFIN was physically abusing Plaintiff P.S. and other students and also that FRANCINE RUFFIN had a propensity to engage in acts that endangered the welfare and wellbeing of youth.

39. That upon information and belief, other students continued to suffer abuse perpetrated by FRANCINE RUFFIN after defendants acquired actual and/or constructive notice that FRANCINE RUFFIN abused Plaintiff.

40. That upon information and belief, defendants breached their duty to safeguard Plaintiff P.S. in the manner expected of a reasonably prudent parent.

41. That upon information and belief, as a direct and proximate result of defendants' negligent supervision of Plaintiff P.S., plaintiff has sustained in the past and will sustain in the future, pain and suffering, serious psychological and emotional distress, mental anguish, embarrassment and humiliation.

42. That upon information and belief, the conduct of defendant was reckless, extreme and outrageous, grossly unjust and aimed at the public as well as at Plaintiff P.S., entitling plaintiff to an award of punitive damages.

43. That the defendants are vicariously liable for the negligent acts and omissions of their agents.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST
DEFENDANTS, PLAINTIFF ALLEGES NEGLIGENCE IN
DEFENDANTS' ENACTMENT AND ENFORCEMENT OF
ADEQUATE ABUSE PREVENTION PROCEDURES**

44. That Plaintiff P.S. repeats and realleges each and every allegations set forth above as though set forth fully herein.

45. That upon information and belief, prior to and during the time of Plaintiff P.S.'s abuse, defendants owed the students of the KIPP ALBANY COMMUNITY PUBLIC CHARTER SCHOOL, including plaintiff, a duty to enact and follow policies and procedures designed to prevent the occurrence of abuse at the KIPP ALBANY COMMUNITY PUBLIC CHARTER SCHOOL.

46. That upon information a belief, prior to and during the time of Plaintiff P.S.'s abuse, defendants owed the students of KIPP ALBANY COMMUNITY PUBLIC CHARTER SCHOOL, including plaintiff, a duty to enact policies and procedures to facilitate the safe, efficient and effective reporting of allegations of abuse occurring at the KIPP ALBANY COMMUNITY PUBLIC CHARTER SCHOOL or involving individuals regularly present at the KIPP ALBANY COMMUNITY PUBLIC CHARTER SCHOOL.

47. That upon information and belief, prior to and during the time of Plaintiff P.S.'s abuse, defendant owed the students of the KIPP ALBANY COMMUNITY PUBLIC CHARTER SCHOOL, including plaintiff, a duty to reasonably investigate any and all reports of abuse occurring at the KIPP ALBANY COMMUNITY PUBLIC CHARTER SCHOOL or involving individuals regularly present at the KIPP ALBANY COMMUNITY PUBLIC CHARTER SCHOOL.

48. That upon information and belief, defendant breached their duty to enact and follow policies and procedures designed to prevent the occurrence of abuse at the KIPP ALBANY COMMUNITY PUBLIC CHARTER SCHOOL.

49. That upon information and belief, defendants breached their duty to enact policies and procedures to facilitate the safe and efficient reporting of allegations of abuse occurring at the KIPP ALBANY COMMUNITY PUBLIC CHARTER SCHOOL or involving individuals regularly present at the KIPP ALBANY COMMUNITY PUBLIC CHARTER SCHOOL.

50. That upon information and belief, the conduct of defendant was reckless, extreme and outrageous, grossly unjust and aimed at the public as well as at Plaintiff P.S., entitling plaintiff to an award of punitive damages.

51. The defendants are vicariously liable for the negligent acts and omissions of their agents.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST
DEFENDANTS, PLAINTIFF ALLEGES ASSAULT**

52. That Plaintiff P.S. repeats and realleges each and every allegations set forth above as though set forth fully herein.

53. Defendants' physical abuse of Plaintiff was entirely unjustified and constitutes an intentional assault upon Plaintiff.

54. Defendants', by their conduct, placed Plaintiff in fear of imminent harm and offensive conduct.

55. As a proximate result of Defendants' intentional, wanton, reckless, grossly negligent, and deliberately indifferent actions, Plaintiff was caused to be unlawfully assaulted, battered, placed in substantial fear for his life, sustained bodily injuries, mental torment, night

terrors and nightmares, depression, fear, loss of enjoyment of life, and other physical, mental and psychological injuries, other special damages, and has suffered great mental anguish, all to Plaintiff's damage, in an amount to be determined at trial.

**AS AND FOR A FOURTH CAUSE OF ACTION AGAINST
DEFENDANTS, PLAINTIFF ALLEGES BATTERY**

56. That Plaintiff P.S. repeats and realleges each and every allegations set forth above as though set forth fully herein.

57. Battery is the intentional, wrongful physical contact with another person without consent.

58. Defendants' intentional physical abuse of Plaintiff was entirely unjustified, done without Plaintiff's consent, and constituted a battery upon Plaintiff.

59. As a proximate result of Defendants' intentional, wanton, reckless, grossly negligent, and deliberately indifferent actions, Plaintiff was caused to be unlawfully assaulted, battered, placed in substantial fear for his life, sustained bodily injuries, mental torment, night terrors and nightmares, depression, fear, loss of enjoyment of life, and other physical, mental and psychological injuries, other special damages, and has suffered great mental anguish, all to Plaintiff's damage, in an amount to be determined at trial.

**AS AND FOR A FIFTH CAUSE OF ACTION AGAINST
DEFENDANTS, PLAINTIFF ALLEGES INTENTIONAL
INFLECTION OF EMOTIONAL DISTRESS (Against All Defendants)**

60. That Plaintiff P.S. repeats and realleges each and every allegations set forth above as though set forth fully herein.

61. Defendants acted with extreme and outrageous conduct, which intentionally and/or recklessly caused severe emotional distress and bodily harm to Plaintiff.

62. Defendants', in their assault and abuse of Plaintiff, acted with extreme and outrageous conduct that would shock the conscience of a reasonable person when they brutally assaulted Plaintiff and did not provide immediate medical attention. This conduct was atrocious and transcended all bounds of decency, such that this conduct would be utterly intolerable in a civilized society.

63. Plaintiff suffered severe emotional distress, including severe mental anguish, due to Defendants' intentional and/or reckless, extreme, and/or outrageous conduct.

64. As a proximate result of Defendants' intentional, wanton, reckless, grossly negligent, and deliberately indifferent actions, Plaintiff was caused to be unlawfully assaulted, battered, placed in substantial fear for his life, sustained bodily injuries, mental torment, night terrors and nightmares, depression, fear, loss of enjoyment of life, and other physical, mental and psychological injuries, other special damages, and has suffered great mental anguish, all to Plaintiff's damage, in an amount to be determined at trial.

**AS AND FOR A SIXTH CAUSE OF ACTION AGAINST
DEFENDANT FRANCINE RUFFIN, PLAINTIFF ALLEGES FALSE
IMPRISONMENT**

65. That Plaintiff P.S. repeats and realleges each and every allegations set forth above as though set forth fully herein.

66. On or about May 2, 2023, Defendant FRANCINE RUFFIN detained P.S. in the school closet.

67. Plaintiff P.S. did not consent to being detained in said closet and said detention was not willful.

68. That said detention violated Penal Law § 135.05 and was therefore unlawful.

69. Plaintiff suffered severe emotional distress, including severe mental anguish, due to Defendant's intentional and/or reckless, extreme, and/or outrageous conduct.

70. As a proximate result of Defendant's intentional, wanton, reckless, grossly negligent, and deliberately indifferent actions, Plaintiff was caused to be unlawfully imprisoned and sustained mental torment, night terrors and nightmares, depression, fear, loss of enjoyment of life, and other mental and psychological injuries, and has suffered great mental anguish, all to Plaintiff's damage in an amount to be determined at trial.

CONCLUSION

71. That upon information and belief, the above-captioned defendants acted jointly and severally and caused Plaintiff P.S. to suffer an indivisible injury.

WHEREFORE, Plaintiff P.S. demands judgment against defendants on the foregoing causes of action in an amount that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction and in an amount to be proven and determined at the trial of this action, together with the costs and disbursements of this action and such further and different relief that the Court may deem to be just and proper.

Dated: Schenectady, New York
May 18, 2023

Daniel R. Smalls, Esq.

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