

**Board of Educ. of the Middle Country Cen.
School Dist. v Board of Educ. of the E.
Meadow Union Free School Dist.**

2007 NY Slip Op 34169(U)

December 19, 2007

Supreme Court, Suffolk County

Docket Number: 0017950/2001

Judge: Emily Pines

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Short Form Order

Index Number: 17950-2001

Supreme Court - State of New York
I.A.S. Term, Part 23, Suffolk County

*Present:***HON. EMILY PINES**

Justice Supreme Court

Original Motion Date: 10-18-2007

Motion Submit Date: 10-18-2007

Motion Sequence No.: 001 MG

_____ X
**BOARD OF EDUCATION OF THE MIDDLE
 COUNTRY CENTRAL SCHOOL DISTRICT AND
 MIDDLE COUNTRY CENTRAL SCHOOL
 DISTRICT,**

Plaintiffs,**-against-**

**BOARD OF EDUCATION OF THE EAST
 MEADOW UNION FREE SCHOOL DISTRICT
 AND EAST MEADOW UNION FREE SCHOOL
 DISTRICT AND BOARD OF EDUCATION OF
 THE SACHEM SCHOOL DISTRICT AND
 SACHEM SCHOOL DISTRICT,**

Defendants.

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ORDERED, that the motion (motion sequence number 001) by plaintiff pursuant to **CPLR §3025(b)** for leave to serve an amended complaint is determined as set forth herein.

This is a consolidated action against defendants for tuition reimbursement relative to certain children placed in foster care outside of their home school district for the years 1997-1998, 1998-1999 and 1999-2000.¹ Plaintiff commenced an action on June 28, 1999 against Board of Education of the East Meadow Union Free School District and East Meadow Union Free School District ("East Meadow") for tuition reimbursement for the subject children for the 1997-1998 school year. Issue was joined in that action by the service of an Answer on or about December 22, 1999. Thereafter, on or about June 29, 2000, plaintiff commenced an action against the Board of Education of the Sachem Central

¹ The names of the children are being omitted from this Decision and Order.

School District and Sachem Central School District ("Sachem") for tuition reimbursement for the subject children for the 1998-1999 school year. Issue was joined by the service of an Answer on or about November 22, 2000. Finally, on or about August 2, 2001, plaintiff commenced an action against both Sachem and East Meadow for tuition reimbursement for the subject children for the 1999-2000 school year. Issue was joined as to East Meadow by its service of an Answer on or about September 11, 2001 and as to Sachem by its service of an Answer and Cross-Claims on or about October 18, 2001. East Meadow served Cross-Claims on or about October 23, 2001. By So-Ordered Stipulation dated May 24, 2007, the parties agreed to consolidate all three actions under the within index number.

Plaintiff now seeks an Order, *inter alia*, adding Sachem as defendants in the tuition reimbursement action relative to the subject children for the 1997-1998 school year. Plaintiff also seeks to add East Meadow as defendants in the tuition reimbursement action relative to the subject children for the 1998-1999 school year. Plaintiff argues that the motion should be granted because the content of the amendment is not prejudicial to the parties and that it can bring the same claims it seeks to add in a separate lawsuit. However, plaintiff argues that since all parties in this proceeding are public school districts, that to deny the motion would cause additional cost to the taxpayers of all three school districts. Plaintiff asserts that defendants will not be prejudiced by the amendments because all the claims arise from the same factual basis asserted in the original complaints seeking the same tuition amounts for the same children. Additionally, plaintiff states that defendants will be given the opportunity to submit answers to the amended pleadings and can assert any affirmative defenses they choose. Finally, although plaintiff recognizes there has been some delay in seeking to amend the pleadings, it argues that such delay alone is not a sufficient basis to deny the motion.

Defendant East Meadow opposes the motion on the ground that the proposed amendment is barred by the statute of limitations. Specifically, East Meadow argues that plaintiff is seeking to assert a time barred additional claim for tuition reimbursement for the 1998-1999 school year. East Meadow asserts that the claim is time barred under **Education Law §3813** because it was not commenced within one year after the cause of action arose. East Meadow acknowledges that **Education Law §3813** provides that the cause of action for tuition reimbursement arises when a demand

for payment is denied, and plaintiff never served a demand for tuition reimbursement for the 1998-1999 school year. However, East Meadow argues that since no such demand was made, it did not have the opportunity to deny the amount claimed, and plaintiff should not be permitted unlimited time to serve a demand and certainly not seven years following the conclusion of the school year at issue. Additionally, East Meadow argues that the claim cannot be saved from the statute of limitations under the relation back doctrine because East Meadow and Sachem are not united in interest and East Meadow should not have known the action would have been brought against them as well. Therefore, East Meadow argues the motion for leave to amend the pleadings should be denied.

Sachem has not interposed any opposition to the motion and according to plaintiff, has consented to the amendment as it relates to them.

In reply, plaintiff argues that since East Meadow did not deny payment of tuition for the 1998-1999 school year, the one year period contained within Education Law §3813(2-b) has not been triggered and the claim against East Meadow is not barred by the statute of limitations. Additionally, plaintiff argues that East Meadow failed to establish that it expressly or constructively rejected plaintiff's claim for the 1998-1999 school year. Therefore, plaintiff asserts that based upon the plain language of **Education Law §3813(2-b)**, the statute of limitations did not begin to run on the cause of action because East Meadow did not deny payment and thus it should be permitted to amend the complaint.

CPLR §3025(b) provides that "A party may amend his pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances." It is well settled that leave to amend a pleading should be freely given unless the proposed amendment is wholly insufficient as a matter of law or patently devoid of merit. **Emilio v. Robinson Oil Corp.**, 28 A.D.3d 417, 813 N.Y.S.2d 465 (2d Dept. 2006); **Melendez v. Bernstein**, 29 A.D.3d 872 (2d Dept. 2006). Whether to grant or deny leave to amend is committed to the discretion of the Supreme Court. **Edenwald Contracting Co., Inc. v. City of New York**, 60 NY2d 957, 471 NYS2d 55 (1983).

Education Law §3813(2-b) provides that "a cause of action against the school district of residence for reimbursement of tuition costs incurred pursuant to subdivision four of section thirty-two hundred two of this chapter by the school district in which a family home at board is located shall arise as of the date *payment for the amount claimed was denied*" (emphasis added).

In the case *sub judice*, plaintiff seeks to amend the Complaint to add a cause of action against Sachem for tuition reimbursement for the 1997-1998 school year and against East Meadow for tuition reimbursement for the 1998-1999 school year. It is undisputed that plaintiff never previously demanded payment from East Meadow for the 1998-1999 school year and hence, East Meadow never denied payment for that year. Therefore, the Court is constrained to conclude that the cause of action for tuition reimbursement for the 1998-1999 school year did not arise and the one year statute of limitations period contained within **Education Law §3813(2-b)** did not begin to run prior to the filing of the instant application. The plain language of this statute dictates this result as it clearly states that the cause of action does not arise until the demand for payment is denied. The Legislature, in adoption of this statute, could have imposed a time frame within which a demand for payment must be made; they chose not to do so.

The Court notes East Meadow has not cited a single case directly on point on this issue. Although they cite ***Brentwood Union Free School District v. City of New York***, 237 A.D.2d 141, 654 N.Y.S.2d 371 (2d Dept. 1997), that case is inapplicable to the facts at bar. There, the Second Department held that the one year statute of limitations began to run at the conclusion of the school year for which the reimbursement was sought and not when defendants had tendered only partial payment of its bill. Here, by contrast, plaintiff never demanded payment for the 1998-1999 school year, until now, when it seeks to add a claim against East Meadow for tuition reimbursement for that period. Again, since it is undisputed that plaintiff never demanded payment and East Meadow never denied payment, **Education Law §3813(2-b)** does not bar the proposed amendment.

Based upon the foregoing and the failure of any defendant to demonstrate any prejudice or surprise in the granting of the amendment, plaintiff's motion for leave to serve the proposed amended complaint annexed to the motion papers is granted in its

entirety. Plaintiff shall serve the amended complaint on all parties within fifteen (15) days from the date herein.

In light of the determination herein, the Court need not reach East Meadow's remaining arguments.

Counsel are reminded that a status conference is scheduled for January 10, 2008 before the undersigned.

The foregoing constitutes the **DECISION** and **ORDER** of the Court.

Dated: December 19, 2007
Riverhead, New York



EMILY PINES
J. S. C.