

**Bryant v New York City Dept. of Educ.**

2010 NY Slip Op 34118(U)

January 29, 2010

Supreme Court, New York County

Docket Number: 115917/2009

Judge: Alice Schlesinger

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK 1A PART 16

-----X  
DEVON BRYANT,

Petitioner,

Index No. 115917/2009  
Motion Seq. No. 001

Against

NEW YORK CITY DEPARTMENT OF EDUCATION,  
DEPARTMENT OF EDUCATION OF THE CITY  
OF NEW YORK, et al.,

Respondents.

-----X  
SCHLESINGER, J.

Petitioner Devon Bryant has commenced this special proceeding seeking leave to serve a late Notice of Claim pursuant to General Municipal Law §50-e(5). Respondents New York City Department of Education, The City of New York, and the named employees (collectively referred to as "The City") have opposed the petition, contending that petitioner has failed to satisfy the requisite statutory criteria.

Background Facts

According to the proposed Notice of Claim (Exh. B to the petition), the underlying claim sounds in negligence. Petitioner Bryant was a student at A. Philip Randolph Campus High School when, on or about April 1, 2009, another student accused Bryant of having cut her hair and scratched her face with scissors while in a stairwell at school.

Dean Williams and Assistant Principal Garcia, named respondents herein, had charges filed against Bryant. Bryant was then arrested on April 2 for possession of a dangerous weapon. In addition, a school suspension hearing was scheduled.

The suspension hearing was held on April 24, 2009. According to the petition, the alleged victim, who had not previously known Bryant, could not positively identify Bryant

as her attacker, and the suspension was dismissed on the merits. In addition, all criminal charges were dismissed on July 17, 2009.

Bryant turned eighteen years of age in June 2009. He contacted an attorney in October 2009. This petition was filed on December 1, 2009.

**Petitioner is Entitled to Leave to Serve a Late Notice of Claim**

Pursuant to General Municipal Law §50–e, subd. 1(a), a claimant commencing a tort action against a public corporation must serve and file a proper Notice of Claim within ninety days after the claim arises. The related action or proceeding must be commenced within one year and ninety days of the event. Gen. Mun. Law §50–l. An application for an extension of time to serve a Notice of Claim may be made before or after the action has been commenced, but not after the one-year and ninety-day statute of limitations has run, unless the statute has been tolled. Gen. Mun. Law §50–e, subd. 5.; *see also, Pierson v. City of New York*, 56 N.Y.2d 950, 954 (1982); *Nunez v. The City of New York*, 307 A.D.2d 218, 219 (1<sup>st</sup> Dep't 2003).

In determining whether leave should be granted to serve a Notice of Claim after the ninety-day period, "the key factors considered are 'whether the movant demonstrated a reasonable excuse for the failure to serve the notice of claim within the statutory time frame, whether the municipality acquired actual notice of the essential facts of the claim within 90 days after the claim arose or a reasonable time thereafter, and whether the delay would substantially prejudice the municipality in its defense. Moreover, the presence or absence of any one factor is not determinative.'" *Velazquez v. The City of New York Health and Hospitals Corp.*, 2010 WL 87387 (App. Div., 1<sup>st</sup> Dep't), quoting *Matter of Dubowy v.*

*City of New York*, 305 AD2d 320, 321 (2003).

Petitioner herein timely filed this application on December 1, 2009, whether the year and ninety days is calculated from the school charges and arrest on April 2, 2009 or the dismissal of those charges on April 24, 2009 and July 17, 2009, respectively. In addition, he has established the requisite criteria for leave to file a late Notice of Claim.

Petitioner's delay in filing was very brief, a few months at most. Measured from the dismissal of the charges in July, the Notice of Claim should have been filed in October but was filed on December 1. Respondent claims that petitioner has offered no excuse, but the delay is attributable presumably to petitioner's young age, as well as some brief delay by counsel. Thus, the Court finds the delay excusable. In any event, the "failure to set forth a reasonable excuse is not, by itself, fatal to the application." *Velazquez, supra*, citing *Matter of Ansong v. City of New York*, 308 AD2d 333, 334 (2003).

Notwithstanding claims by the City's counsel to the contrary, respondents must be deemed to have actual notice of petitioner's claims. Employees of this Department of Education completed an investigation and prepared and gathered records in connection with the incident at the school, the suspension hearing, and the referral to the Police Department. They were fully aware that the charges were dismissed at the suspension hearing. The Police Department similarly conducted an investigation and prepared and gathered records in connection with the criminal charges, which were also dismissed. These records and circumstances suffice to constitute notice of the facts underlying petitioner's claim. See, e.g., *Figueroa v. NYCHHC*, 49 AD3d 454 (1<sup>st</sup> Dep't 2008) (hospital's possession of medical records gave actual notice of facts underlying malpractice

claim); *Nunez v. City*, 307 AD2d 218 (1<sup>st</sup> Dep't 2003) (Police Department's investigation of crime constitutes sufficient notice of facts underlying false arrest claim); *In re Sokolowski*, 173 AD2d 239 (1<sup>st</sup> Dep't 1991) (possession of accident report with details of the occurrence constituted actual notice).

Nor can respondents reasonably claim prejudice resulting from the short delay. They presumably interviewed the relevant witnesses and gathered the essential evidence before proceeding with the suspension hearing. Further, considering the short time that has elapsed, they may well be able to contact any witnesses again.

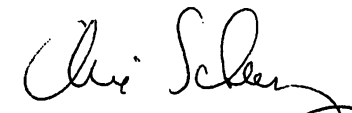
Accordingly, it is hereby


ORDERED AND ADJUDGED that petitioner's motion for leave to serve a late Notice of Claim is granted, and the Notice of Claim is deemed timely served in the proposed form annexed to the moving papers upon petitioner's service of a copy of this order and judgment with notice of entry on the respondent.

This constitutes the decision and judgment of the Court.

Dated: January 21, 2010

JAN 29 2010

  
ALICE SCHLESINGER

  
CLERK

**FILED**  
FEB 29 2010  
NEW YORK  
COUNTY CLERK'S OFFICE