

<b>Lewis v East Ramapo Cent. Sch. Dist.</b>
2012 NY Slip Op 33925(U)
July 19, 2012
Supreme Court, Rockland County
Docket Number: 30994/2012
Judge: Linda S. Jamieson
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NYSCEF DOC. NO. 8

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Disp \_\_\_ Dec x Seq. No. 1 Type petition

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND

**PRESENT: HON. LINDA S. JAMIESON**

-----X  
JANVIER LEWIS,

Petitioner, Index No. 30994/2012

-against-

EAST RAMAPO CENTRAL SCHOOL DISTRICT, DECISION AND ORDER

Respondent.  
-----X

The following papers numbered 1 to 5 were read on this petition:

<u>Paper</u>	<u>Number</u>
Notice of Petition	1
Petition	2
Affirmation and Exhibits <sup>1</sup>	3
Affirmation and Exhibit in Opposition	4
Reply Affirmation	5

Petitioner is a 19-year old woman who was injured on June 23, 2008, the last day of school, when a fellow student at Ramapo High School attacked her while petitioner was waiting for her school bus. She was 15 at the time of the attack. As a result of this attack, petitioner suffered hearing loss in her left ear. She now wears a hearing aid.

<sup>1</sup>Exhibits must be tabbed. Counsel is directed to review the Part Rules.

There is no dispute that immediately after the attack, petitioner went to the school social worker, who escorted her to the nurse's office. When petitioner's parents arrived at the school, they were met by school security and brought to see the Assistant Principal of the Freshman Center at the school. Someone from the school called the police, who advised petitioner to go to the precinct to give a report, which she did. Petitioner states in the petition that she told the social worker and the nurse that there were no school personnel nearby when the attack occurred. Petitioner also states that the attacker was eventually disciplined by the school.

Petitioner never filed a Notice of Claim against the school district. Instead, on February 21, 2012, petitioner filed this petition seeking an order that the Notice of Claim attached to the petition should be deemed timely, or permitting her to serve the Notice of Claim within 90 days. Not surprisingly, respondent objects to this relief.

"General Municipal Law § 50-e(5) gives a court the discretion to grant leave to serve a late notice of claim after considering whether the public corporation or its attorneys ... acquired actual knowledge of the essential facts constituting a claim within the time specified in [the statute] or within a reasonable time thereafter." *Mia Plaza, an Infant by Her Mother and Natural Guardian, Claribel Rodriguez v. New York Health and*

*Hosp. Corp.*, --- N.Y.S.2d ----, 2012 WL 2891165 (1<sup>st</sup> Dept. July 17, 2012). In deciding whether a late notice of claim should be allowed, "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. The failure to set forth a reasonable excuse is not, by itself, fatal to the application." *Velazquez ex rel. Segarra v. City of New York Health and Hospitals Corp.*, 69 A.D.3d 441, 894 N.Y.S.2d 15 (1<sup>st</sup> Dept. 2010).

Here, respondent claims that it did not learn of the legal claim against it until the instant petition was filed. While this may well be true, there is no merit to respondent's assertion that "the District did not investigate the matter at the time as it saw no need to do so in light of what had occurred and the lack of apparent significant injury." First, the school nurse filled out a form called Parent Notification Regarding Hearing. This form shows that there was a potentially significant injury. Second, and not insignificantly, respondent does not contradict petitioner's statement that her attacker was

disciplined by the school. The attacker could not have been disciplined by respondent without an investigation having been conducted beforehand. Nor does respondent contradict petitioner's statement that she told both the nurse and the social worker that no school personnel were present at the time of the attack. Thus, the Court finds that respondent knew of the incident, knew that it was serious enough to warrant disciplining the attacker, and knew that petitioner asserted that no school personnel were present at the time of the attack. There is no surprise here.

Moreover, to the extent that the attacker or any witnesses may have graduated or moved away, this problem does not prejudice respondent any more than it prejudices petitioner - who has the burden of proof. These elements favor allowing the late Notice of Claim. *Lavender v. Garden City Union Free School Dist.*, 93 A.D.3d 670, 939 N.Y.S.2d 568 (2d Dept. 2012) (the most important factor is "whether the public corporation acquired actual notice of the essential facts constituting the claim within 90 days of the accrual of the claim or within a reasonable time thereafter.").

Turning to the issues of whether there is a reasonable excuse for the delay and whether there was a nexus between petitioner's infancy and the delay, the Court finds as follows. Petitioner brought the petition within one year and ninety days


from her 18<sup>th</sup> birthday. Although petitioner does not explain why she waited until the very end of this period to file the petition, this does not make a difference because she did file this petition just before the deadline. Petitioner states that because her parents did not bring this action, she had to wait for her majority (her 18<sup>th</sup> birthday) until she was able to bring it herself. This is not a situation where the petitioner was an infant at the time of the injury, and was still an infant at the time of the application to file a late Notice of Claim - in which case the infancy was merely besides the point. Because here, petitioner's infancy tolled the statute of limitations, *Hinton v. New Paltz Cent. School Dist.*, 50 A.D.3d 1414, 857 N.Y.S.2d 753 (3d Dept. 2008), and she thereafter brought this petition upon her majority, this demonstrates that there was a reasonable nexus between petitioner's infancy and the delay. See, e.g., *Andrew T.B. v. Brewster Cent. School Dist.*, 18 A.D.3d 745, 795 N.Y.S.2d 718 (2d Dept. 2005); *Sanna v. Bethpage Public Schools Union Free School Dist.* 21, 193 A.D.2d 606, 597 N.Y.S.2d 430 (2d Dept. 1993); *Mindy O. v. Binghamton City School Dist.*, 83 A.D.3d 1335, 921 N.Y.S.2d 696 (3d Dept. 2011); *Russo v. Monroe-Woodbury Cent. School Dist.*, 282 A.D.2d 465, 723 N.Y.S.2d 198 (2d Dept. 2001).

Accordingly, the Court grants the motion, and deems the

Notice of Claim to have been served timely.

The foregoing constitutes the decision and order of the Court.

Dated: New City, New York  
July 19, 2012

  
HON. LINDA S. JAMIESON  
Justice of the Supreme Court

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