
SCHOOLS - NEW YORK

Candino v. Starpoint Central School Dist.

Supreme Court, Appellate Division, Fourth Department, New York - March 21, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 01852

Former student brought action against two school districts and their boards of education, and two high schools, alleging that student was exposed to highly contagious virus when he participated in wrestling tournament. The Supreme Court, Erie County, granted student's application for leave to serve late notice of claim. Defendants appealed.

The Supreme Court, Appellate Division, held that granting leave to serve late notice of claim was unwarranted.

Where a claimant does not offer a reasonable excuse for failing to serve a timely notice of claim, a court may grant leave to serve a late notice of claim only if the respondent has actual knowledge of the essential facts underlying the claim, there is no compelling showing of prejudice to the respondent, and the claim does not patently lack merit.

High school student was not entitled to leave to serve late notice of claim against two school districts and their boards of education, and two high schools, alleging that he was exposed to highly contagious virus when he participated in wrestling tournament; even assuming that respondents suffered no prejudice from delay, and that proposed claim against them did not patently lack merit, respondents asserted that, until student made application for leave, they had no knowledge that he had contracted herpes or otherwise had been injured at tournament, and notice of claim filed by another wrestler only provided respondents with constructive knowledge of student's claim, since nothing in that notice established that student was infected at tournament.

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