

# **Bond Case Briefs**

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## **SCHOOLS - NEW YORK**

### **Guga v. Watertown Bd. of Educ.**

**Supreme Court, Appellate Division, Fourth Department, New York - January 3, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 00030**

Parent of injured student filed application for leave to serve a late notice of claim against school board, school district, and school for daughter's injuries. The Supreme Court granted application. School defendants appealed.

The Supreme Court, Appellate Division, held that leave to file late notice of claim was warranted.

Parent alleged that school assumed affirmative duty of ensuring that daughter would be placed on school bus after school and transported home in order to avoid potential confrontation with students who had threatened older child, and that school breached duty by failing to instruct daughter to take bus home or even to make her aware of potential danger, as a result of which she walked home and was assaulted by two students off school property.

Parent established reasonable excuse for delay, she was unaware of serious nature of injury and its permanency during 90-day period and submitted medical records demonstrating progressive and worsening nature of injury. Six-month period between assault and application was comparatively short period of delay, school had notice of essential facts constituting claim, and late service would not substantially prejudice school in maintaining defense on merits.

It is well settled that key factors for the court to consider in determining an application for leave to serve a late notice of claim are whether the claimant has demonstrated a reasonable excuse for the delay, whether the respondents acquired actual knowledge of the essential facts constituting the claim within 90 days of its accrual or within a reasonable time thereafter, and whether the delay would substantially prejudice the respondents in maintaining a defense on the merits.