

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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In the Matter of the Claim of :

J.L. an Infant by his Mother and Natural Guardian
ANONYMOUS PARENT,

Claimant,

-against-

CHAPPAQUA CENTRAL SCHOOL DISTRICT and
CHRISTOPHER SCHRAUFNAGEL,

Respondents.

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AFFIRMATION

Index No.

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MARIE NG, an attorney duly admitted to practice law in the State of New York, affirms the following under penalty of perjury:

1. I am a member of the firm of Sullivan Papain Block McGrath & Cannavo P.C., attorneys for the Claimant herein, and as such am fully familiar with the facts and circumstances herein, based upon a review of the file maintained in our office.

2. This application should be granted for the following reasons:

- a. The application is made within one (1) year and ninety (90) days from the time infant Claimant reaches the age of eighteen (18) years since he has not yet reached the age of eighteen (18) years;
- b. There is a reasonable excuse for the delay in filing a Notice of Claims against Chappaqua Central School District and Christopher Schraufnagel; and
- c. Respondents cannot show that the delay in serving the Notice of Claim will prejudice their maintaining their defense on the merits.

3. The events leading up to the Notice of Claim are set forth in the Affidavit of claimant, J.L.'s mother and natural guardian, ANONYMOUS PARENT, annexed as **Exhibit "A"**².

4. J.L. is presently sixteen (16) years of age. From September 2013 to the present date, J.L. was and is a student at Horace Greeley High School, located at 70 Roaring Brook Road, Chappaqua, New York 10154. Christopher Schraufnagel was a drama teacher employed at that school and gained the trust J.L., from the time J.L. joined the theatre program in September 2013.

5. On June 11, 2015, J.L. approached his parents with another person who had formerly been a student at the school. It was at that time that J.L.'s parents first learned of the sexual abuse, molestation and other inappropriate behavior by Christopher Schraufnagel against J.L. and other students of the school from the time of J.L.'s sophomore year that escalated into kissing, touching, fondling and other "games" by June of 2015.

6. Emails and correspondence were sent by the Respondent relevant to their notice of the facts underlying the proposed claim. They have been annexed as "Exhibit "1" of J.L.'s mother's affidavit in support of this application.

7. The email of June 15, 2015 by the principal of the school generally addressed the "concerns" about the Greeley theater program. The next day, June 16, 2015 correspondence was addressed specifically to J.L.'s parents regarding the report by J.L. to their Assistant Principle of his victimization by "an employee of the Chappaqua Cenral School district" with a finding that "reasonable suspicion that child abuse has occurred". That letter and its enclosure are included in **Exhibit "1"** but is also annexed separately herein as **Exhibit "B"**.

² The Original unredacted Affidavit by ANONYMOUS PARENT together with unredacted "**Exhibit "1"**", is available for an *in camera* inspection by the Court.

Clearly Respondents have been on notice of the specific claims of J.L. since June 15, 2015.

8. The criminal prosecution has been ongoing and the newspaper and media accounts are annexed as *Exhibit "C"*. An Order of Protection for J.L. has been granted by the Court.

9. A copy of the civil Summons and Complaint filed against the Respondents by the parents of three of the other victims on May 18, 2016 is annexed as *Exhibit "D"* and notices/proposed notices of claim by the three and a fourth victim filed on e-law are annexed as *Exhibit "E"*.

10. This application is being made by way of Order to Show Cause to avoid any prejudice to the rights of the Claimant.

11. A copy of the proposed Notice of Claim is annexed as *Exhibit "F"*. The proposed Notice of Claim will be served upon the Respondents together with a separate document providing the complete names on a caption – revealing the identity of the infant claimant and parent with a specific notation, reminding Respondents that identities should “not to be used in any public record and is provided for the purpose of Chappaqua Central School District and Christopher Schraufnagel reference ONLY” - simultaneously with service of the instant application. This would be in accord with Civil Rights Law Sec. 50-b and N.Y. Ct. Rules, Sec. 202.5.

12. Claimant would respectfully request that the Notice of Claim annexed hereto as *Exhibit "F"* be deemed served *nunc pro tunc*.

The instant application is timely.

13. As the accompanying Memorandum of Law indicates, it is within the Court’s discretion to allow the filing of a late Notice of Claim. Courts will grant this type of relief provided that leave is sought prior to the expiration of the statute of limitations for an action

against the municipality. The statute of limitations under these circumstances does not expire until one year and ninety days after the infant Claimant has attained the age of eighteen (18) years. Furthermore, leave will be granted where filing of the late Notice of Claim will not prejudice the Respondents in maintaining its defense on the merits.

14. While at this stage the Court should not make a determination as to whether it is a meritorious claim, since it is not determinative as to whether leave should be granted to file the Notice of Claim. Claimant does however, have meritorious claims against Respondents, CHAPPAQUA CENTRAL SCHOOL DISTRICT and CHRISTOPHER SCHRAUFNAGEL, since it is now apparent that the Respondent employed, hired and were responsible for supervision of the offending teacher, who upon information and belief committed untoward acts, including repeated sexual molestation and assault of the infant Claimant and other students over a protracted period of time.

15. Notwithstanding the negligent hiring, retention and supervision, Respondents had known or should have known of the subject teacher's inappropriate behavior for at least since 2011 - prior to the commencement of the molestation of J.L. and failed to take appropriate action, including investigation, reporting and/or transferring the known information to the authorities before they had no choice. See *Exhibit "E"*). Had Respondent CHAPPAQUA CENTRAL SCHOOL DISTRICT taken appropriate timely action, the damage already done by Respondents' initial wanton and reckless behavior might have been mitigated.

Respondents had actual notice of the underlying claims.

16. Besides, Respondents' general notice of the substance and nature of the subject claims within the initial 90 days following the continuing incidents, Respondents had specific notice of the substance, nature and identity of J.L. as a victim – as confirmed by

Exhibit "B" i.e. by June 15, 2016. Respondent Chappaqua Central School District represented at that time that they had taken action.

17. It is respectfully submitted that this is a meritorious cause of action warranting the granting of permission to deem the Notice of Claim (*Exhibit "F"*) served on the Respondents simultaneously on September 16, 2008 timely filed *Nunc Pro Tunc*.

Good cause exists for the delay in filing the Claims.

18. There is good cause shown for the delay in filing the Notice of Claim. In addition to the fact that the Respondents were already on notice, the infant Claimant was an infant and upon information and belief in a compromised mental and emotional state because of the improper acts committed upon him. Further, his parents' paramount concern was J.L.'s well being and as soon as they were confident that it would be in J.L.'s best interest to move forward, they sought legal advice and are following it through.

There is no prejudice to the Respondents.

19. The infant Claimant, J.L. will be severely prejudiced if he is not granted the relief sought by this application since he will be prevented from having his day in Court, while Respondents, who already had notice will suffer no prejudice from this request.

WHEREFORE, it is respectfully requested that Claimant's motion be granted, in all respects, and that this Court permit Claimant leave to file and serve a late Notice of Claim and deem the Notice of Claim served simultaneously on the Respondents herewith, to be filed *Nunc Pro Tunc*, and that this Court grant such other, further and different relief as it deems just and proper.

Dated: New York, New York
July 19, 2016



MARIE NG