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This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 202 SSM 34
In the Matter of Elizabeth Hess,
as Parent and Guardian of Jason
Hess, an Infant,
Respondent,
v.
West Seneca Central School
District,
Appellant,
et al.,
Respondents.

Submitted by Louis B. Dingeldey, Jr., for appellant.
Submitted by Charles H. Cobb, for respondent Hess.

MEMORANDUM:

The order of the Appellate Division should be reversed, with costs, and that part of claimant's application that sought to file a late notice of claim against West Seneca Central School District denied. We agree with the Appellate Division dissenters

that claimant's proposed negligence claim against WSCSD patently lacks merit because WSCSD established that it did not create or have responsibility for the allegedly hazardous condition of the intersection where claimant's son was injured (see Pratt v Robinson, 39 NY2d 554, 560 [1976]; cf. Ernest v Red Cr. Cent. School Dist., 93 NY2d 664, 671 [1999]; see also Matter of Catherine G v County of Essex, 3 NY3d 175, 179 [2004] ["(l)eave is not appropriate for a patently meritless claim"]).

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On review of submissions pursuant to section 500.11 of the Rules, order reversed, with costs, and that part of claimant's application that sought to file a late notice of claim against West Seneca Central School District denied, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided September 2, 2010