

Lack of Diligence During Discovery Can Be Fatal

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In *Curcio v Roosevelt Union Free School District*, the plaintiff filed a motion for discovery sanctions against an individual and the school district. While the court awarded sanctions against the individual, the court denied plaintiff's motion as to the school district primarily on the basis of plaintiff's lack of diligence in conducting discovery.

When the court entered the Case Management and Scheduling Order (CMSO), it made clear to the parties that it would not extend the discovery deadline. Despite this clear warning, plaintiff waited to serve its written discovery requests until one month after the deadline set by the CMSO and did not begin to depose witnesses until four days before the close of discovery. Without court authorization, the parties continued to conduct discovery well beyond the court's deadline. During this unauthorized discovery period, plaintiff learned about several categories of records that the school district produced late or not at all. Plaintiff sought an adverse inference against the school district.

In denying plaintiff's motion, the court highlighted plaintiff's failure to timely pursue discovery from the school district finding that certain discovery requests by plaintiff left the school district "virtually no time to comply before the close of discovery." Additionally, the court found that plaintiff should have first filed a motion to compel instead of "leap-frogging" right to a motion for sanctions.

The lesson from *Curcio* is clear: the court will help those who help themselves. Don't wait until the last minute to address discovery. Timely pursuit of discovery and appropriate use of a motion to compel can establish the groundwork for a subsequent motion for sanctions.