

Short Form Order and Judgment

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable **DICCIA T. PINEDA-KIRWAN**
Justice

IA PART 36

-----X
ANNALISE MUNIZ, AN INFANT UNDER THE
AGE OF 18 YEARS OLD, ETC.,

Petitioner(s),

-against-

NEW YORK CITY DEPARTMENT OF
EDUCATION, ET AL,

Respondent(s).
-----X

Index No.: 710505/17
Motion Date CMP: 10/18/17
(Rcv'd Pt. 36 10/25/17)
Motion Cal. No CMP: 151
Motion Seq. No.: 1

Settlement Conference
Date 11/22/17 #2

The following numbered papers read on this petition for leave to serve a notice of claim upon respondents.

PAPERS	NUMBERED
Notice of Petition-Verified Petition-Exhibits.....	1 - 3
Answering-Affidavits-Exhibits.....	4 - 5
Replying.....	6 - 8
Order - Affidavit of Service.....	9 - 10
Stipulation.....	11

In the interest of judicial economy, as well as the case being ripe for settlement, this matter was set down for a conference for today by order dated October 31, 2017. Despite the Court's best efforts, no settlement was reached.

Now, upon the foregoing cited papers and after conference, it is ordered that the petition to file a late notice of claim pursuant to General Municipal Law § 50-e. is granted.

This is an action to recover for damages allegedly sustained by the infant petitioner, Annalise Muniz, on July 6, 2015, when, as a student in an extracurricular educational program (Program) at the NEST+m School located at 111 Columbia Street, New York, New York (the "School"), she observed a pair of human eyes peering at her through the vents of the girls' lavatory. The Program was operated by respondent New York City Department of Youth and Community Development and the School is operated by respondent New York City Department of Education (DOE).

When a party seeks recovery for damages against a public corporation, a notice of claim must be served within 90 days of the cause of action (*see* General Municipal Law § 50-e[1][a]). Leave to file a late notice of claim after the expiration of the statutory 90 days rests in the Court's discretion (*see Platt v New York City Health & Hospitals Corp.*, 105 AD3d 1026, 1027 [2013]). General Municipal Law § 50-e is to be "applied flexibly" (*Goodwin v New York City Housing Auth.*, 42 AD3d 63, 66 [2007]).

When considering whether to grant leave to file a late notice of claim, there are several factors to be considered, including: 1) whether the public corporation acquired actual knowledge of the essential facts of the claim within the statutory 90-day period or a reasonable time thereafter, 2) whether petitioner had a reasonable excuse for the delay, 3) whether the public corporation will be substantially prejudiced by the delay, and 4) whether the claimant was an infant (*see* General Municipal Law §50-e(5); *Castaneda v Nassau Health Care Corp.*, 89 AD3d 782, 782 [2011]; *Nurse v City of New York*, 87 AD3d 543, 544 [2011]; *Davis v County of Westchester*, 78 AD3d 698, 699 [2010]).

Here, respondents acquired actual knowledge of the claim as within days of the incident, it was reported to a counselor, the Program's director, and School officials, the police conducted an investigation and arrested a School janitor who the School later fired, the DOE distributed a letter notifying parents of the incident, and the infant dropped out of the Program. Additionally, following the occurrence, the infant saw, and continues to see DOE guidance counselors. Thus, the delay in serving a notice of claim is properly excused (*see Allende v City of New York*, 69 AD3d 931, 932-33 [2010]; *Andrew T.B. v Brewster Cent. Sch. Dist.*, 18 AD3d 745, 748 [2005]).

Respondents' arguments regarding failure to provide a reasonable excuse or a nexus between the delay and petitioner's infancy, are without merit and not fatal where as here, respondents had actual knowledge of the essential facts constituting the claim, and failed to demonstrate that they will suffer any prejudice (*see Fox v New York City Dep't of Educ.*, 124 AD3d 887, 889 [2015]; *Rodriguez v Woodhull Sch.*, 105 AD3d 1050, 1051 [2013]).

Accordingly, it is ORDERED and ADJUDGED that the petition for leave to serve a late notice of claim as annexed, is granted and further deemed served.

This constitutes the decision and judgment of the Court.

Date: November 22, 2017



DICCIA T. PINEDA-KIRWAN, J.S.C.