

SUPREME COURT - STATE OF NEW YORK  
IAS PART 32 - SUFFOLK COUNTY

**PRESENT:**

Hon. W. GERARD ASHER  
Justice of the Supreme Court

MOTION DATE 12-23-15  
ADJ. DATE 03-29-16  
Mot. Seq. # 001 MG

|   |   |  |
|---|---|--|
| -----X                                      |   |  |
| Brent Gingrich, as parent/legal guardian of | : | Law Offices of Frederick K. Brewington |
| Samantha Gingrich (a minor),                | : | Attorneys for Plaintiff                |
|   | : | 556 Peninsula Boulevard                |
| Petitioner,                                 | : | Hempstead, New York 11550              |
|   | : |  |
| - against -                                 | : | Bond Schoeneck & King                  |
|   | : | Attorneys for Respondents              |
| William Floyd School District and William   | : | 1010 Franklin Avenue, Suite 200        |
| Floyd High School,                          | : | Garden City, New York 11531            |
|   | : |  |
| Respondent.                                 | : |  |
| -----X                                      |   |  |

Upon the following papers numbered 1 to 17 read on this motion to file late Notice of Claim; Notice of Motion/ Order to Show Cause and supporting papers 1-10; Notice of Cross Motion and supporting papers \_\_\_\_\_; Answering Affidavits and supporting papers 11-13; Replying Affidavits and supporting papers 14-17; Other \_\_\_\_\_; (and after hearing counsel in support and opposed to the motion) it is,

**ORDERED** that petitioner's motion to serve and file a late Notice of Claim as required by law as a condition precedent to the commencement of an action against the respondents and further allowing the Notice of Claim deemed *nunc pro tronc* is granted.

In exercising its discretion under General Municipal Law §50-e[5], the Court is to consider (1) whether the petitioner has a reasonable excuse for the failure to serve a timely notice of claim, (2) whether the municipality acquired actual notice of the essential facts of the claim within ninety (90) days after the claim arose or within a reasonable time thereafter, and (3) whether the delay would substantially prejudice the municipality's maintaining its defense on the merits (*Matter of Mounsey v City of New York*, 68 AD3d 998). These requirements are intended to protect public corporations against stale claims and to give them an opportunity to timely and efficiently investigate tort claims (*Matter of Peterson v New York City Dept of Environmental Protection*, 66 AD3d 1027).

Petitioner's motion arises primarily out of a physical assault on the petitioner's daughter by a fellow William Floyd High School student on January 12, 2015 and February 24, 2015. Both alleged assaults occurred on school grounds during school hours. Additionally, the Suffolk County Police were called to the school during both incidents and resulting in violations of two Orders of Protection by the alleged attacker.

In opposition, counsel for William Floyd School District argues that petitioner fails to offer any excuse for the long delay in seeking to file a Notice of Claim but does recognize that the district is aware of the assault alleged in the petition. Respondent fails to address that the petitioner, prior to obtaining counsel attempted to remedy the situation with the school on several different occasions. It appears that these attempts failed resulting in the retaining of counsel to pursue the matter.

Accordingly, in the Court's opinion, the petitioner has demonstrated that the respondent acquired actual knowledge of the essential facts constituting the claim. Furthermore, petitioner has met their burden of demonstrating that the respondent would not be substantially prejudiced by the delay.

Wherefore, service of late Notice of Claim is warranted, the petition is granted, and the Court deems that the Notice of Claim is served *nunc pro tranc*.

Dated: April 17, 2016

W. Gerard Asher

J.S.C.

**HON. W. GERARD ASHER**

FINAL DISPOSITION

NON-FINAL DISPOSITION