

**M.G. v Bronx Global Learning Inst. for Girls Charter Sch.**

2019 NY Slip Op 32213(U)

March 27, 2019

Supreme Court, Bronx County

Docket Number: 21091/2019E

Judge: Julia I. Rodriguez

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF THE BRONX

-----X **Index No. 33394/2018E**  
M.G., an infant by her Mother and Natural Guardian **21091/2019E**  
S.R. and S.R., individually,  
Plaintiffs,

-against-

**DECISION & ORDER**

Bronx Global Learning Institute For Girls Charter  
School, The Shirley Rodriguez-Remeneski School.

Defendant.

Present:  
Hon. Julia I. Rodriguez  
Supreme Court Justice

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Recitation, as required by CPLR 2219(a), of the papers considered in review of plaintiffs' order to show cause to file late notice of claim and defendant's motion to dismiss, pursuant to CPLR 3211(a)(2) and (a)(7), for failure to timely file a notice of claim.

<u>Papers Submitted</u>	<u>Numbered</u>
<b>OSC, Petition &amp; Exhibits</b>	<b>1</b>
<b>Kapelman Affirmation</b>	<b>2</b>
<b>Affirmation in Opposition &amp; Exhibits</b>	<b>3</b>
<b>Affidavit of Birmania Matalon in Opposition</b>	<b>4</b>
<b>Memorandum of Law in Opposition</b>	<b>5</b>
<b>Reply Affirmation</b>	<b>6</b>
<b>Notice of Motion &amp; Affirmation</b>	<b>7</b>
<b>Memorandum of Law</b>	<b>8</b>
<b>Affirmation in Opposition &amp; Exhibits</b>	<b>9</b>
<b>Reply Affirmation</b>	<b>10</b>

In the instant matter, 14-year-old petitioner/plaintiff, M.G. alleges that defendant Bronx Global Learning Institute for Girls Charter School, the Shirley Rodriguez-Remeneski School ("the School") was negligent in connection with the employment of a teacher who committed a criminal sexual offense against her while she was a student at the School. As a result of his misconduct, the teacher was convicted of Promoting a Sexual Performance by a Child (CPL §263.15), a class D felony, and is currently incarcerated.

Petitioners/Plaintiffs now move by order to show cause for leave to file a late notice of claim. Defendant does not oppose the granting of this relief with respect to the infant-plaintiff only.

Defendant separately moves for the dismissal of all claims brought by S.R., the infant-plaintiff's mother, pursuant to CPLR 3211(a)(2) and (a)(7), on the ground that she failed to file a Notice of Claim<sup>1</sup> as required by Education Law §3813 and General Municipal Law §50-e.

As plaintiffs' counsel points out, on January 24, 2019, the New York state legislature passed the Child Victim's Act (S. 2440, A. 2683) which extends the statute of limitations and eliminates the notice of claim requirement prior to the commencement of an action in certain cases. Defense counsel contends that the Child Victim's Act gives only the child victim the benefit of an extended statute of limitations and elimination of the notice of claim requirement, and does not apply to parental derivative claims.

In pertinent part, the Child Victim's Act provides:

... AN ACT to amend the criminal procedure law, in relation to the statute of limitations in criminal prosecution of a sexual offense committed against a child; ... to amend the general municipal law, in relation to providing that the notice of claim provisions shall not apply to such actions; ... to amend the education law, in relation to providing that the notice of claim provisions shall not apply to such actions; ...

...

§5. Subdivision 8 of section 50-e of the general municipal law ... is amended to read as follows:

8. Inapplicability of section. ... (b) This section shall not apply to any claim made for physical, psychological, or other injury or condition suffered as a result of conduct which would constitute a sexual offense as defined in article one hundred thirty of the penal law committed against a child less than eighteen years of age, ... or the use of a child in a sexual performance as defined in section 263.05 of the penal law committed against a child less than eighteen years of age.<sup>2</sup>

<sup>1</sup>In reply papers, defendant clarified that the motion to dismiss relates solely to S.R.'s claims.

<sup>2</sup>The court notes that, although the teacher was convicted under CPL §263.15, M.G.'s claims would also constitute a sexual offense as defined in CPL §263.05.

The Child Victim's Act adds similar language to Education Law §3813.

In the verified complaint, S.R. alleges that "as a result of the negligence of the defendant . . . the plaintiff S.R., has incurred expenses for the care and treatment of the infant and has lost the services, society, comfort and companionship of her child and has herself sustained mental anguish without any negligence of her part contributing thereto . . ."

Notably, the Child Victim's Act eliminates the requirement for serving a notice of claim under General Municipal Law §50-e and Education Law §3813 for "*any claim made for physical, psychological, or other injury or condition suffered as a result of conduct which would constitute a sexual offense.*" As S.R. is claiming that she suffered injury, including mental anguish, as a result of the sexual offense committed against her daughter, and the Act does not expressly limit claims to those of the sexual offense victim, by its terms, the Act eliminates the notice of claim requirements under both the General Municipal Law and the Education Law with respect to S.R.'s claim as well as the claims of the infant-plaintiff, M.G. Also, it would be illogical to eliminate the notice requirement for the child victim but maintain it for a parent's derivative claim based upon the same offense.

Defendant contends that the Act only extends the statute of limitations for claims of the child victim, and not for a parental derivative claim, hence, the notice of claim requirement should not be eliminated as to the parental derivative claim. The amendment to CPLR §208 adds a paragraph (b) which states, in pertinent part:

(b) Notwithstanding any provision of law which imposes a period of limitation to the contrary . . . with respect to all civil claims or causes of action brought by any person for physical, psychological or other injury or condition suffered by such person as a result of conduct which would constitute a sexual offense . . . against such person. . .

Notably, by its terms, the amendment to CPLR §208 extends the statute of limitations for civil claims brought by any person for injuries suffered by *that* person as a result of conduct which would constitute a sexual offense against *that* person. As such, the new paragraph (b) makes a distinction between claims of sexual offense victims and the derivative claims of others against whom no sexual offense is alleged to have been committed. As no such distinction

appears in the language amending either General Municipal Law §50-e or Education Law §3813, the Court assumes that no such distinction was intended with respect to the elimination of the notice of claim requirement.

In any event, upon application, the court, in its discretion, may extend the time to serve a notice of claim. N.Y. Educ. Law §3813; N.Y. Gen Mun. Law §50-e(5). In determining whether to grant the extension, the court shall consider, in particular, whether the school acquired actual knowledge of the essential facts constituting the claim within three months after the claim arose or within a reasonable time thereafter. Here, S.R. made complaints to the School of ongoing misconduct on December 18, 2017. The teacher was suspended on December 19, 2017 and ultimately fired on that same date for violating the terms of his suspension by contacting M.G by text. The following statements in S.R.'s affidavit are uncontroverted: On December 19, 2017, M.G. received a text from the teacher stating that an investigation was school policy and that they would be alright as long as she loved him and didn't say anything. When S.R. showed the text to the School's principal thereafter, sexually explicit photos and videos were also discovered on M.G.'s phone. The School then called the police and the teacher was arrested on or about December 21, 2017. After the teacher's arrest, which garnered much media attention, M.G. was subjected to cyber-bullying by other students at the School who in text messages called her a "slut" and said that she should perform sexual acts on the teacher or cut her own wrists. In January of 2018, S.R. called a guidance counselor at the School and informed her of what the other students were doing. Notably, the School did not submit an affidavit of anyone with personal knowledge of the facts. Based upon the foregoing, it seems clear that the School had actual knowledge of the essential facts constituting petitioners'/plaintiffs' claims either within three months after those claims arose or within a reasonable time thereafter.

Given that the Child Victim's Act is to be applied retrospectively and, notwithstanding the court's opinion that S.R. is not required to serve a notice of claim, in an abundance of caution, upon the foregoing facts, the court finds that sufficient basis exists to extend the time for petitioners/plaintiffs to serve a late notice of claim.

Accordingly, petitioners' order to show cause under Index No. 21091/2019E is **granted**, and it is ORDERED that the notice of claim submitted with the motion is deemed timely served upon the defendant.

Defendant's motion to dismiss S.R.'s claims under Index No. 33394/2018E, pursuant to CPLR (a)(2) and (a)(7), is **denied**.

**The clerk is directed to follow all appropriate protocols given the infancy of petitioner/plaintiff M.G. and the nature of the subject matter.**

Dated: Bronx, New York

~~March 27 2018~~

3/27/2019

  
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Hon. Julia I. Rodriguez, J.S.C.