

## How the Child Victims Act will Impact Public Schools

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Last month, the Child Victims Act became law in the State of New York. Although the Act's origins are firmly rooted in the abuse scandal that has plagued the Catholic Church for decades, it is anticipated that the CVA will have a far-reaching and profound impact on nearly all institutions, both public and private, that work with children. Much of the media focus has been on the extended statute of limitations that gives victims of childhood sexual abuse until age fifty-five to commence a civil lawsuit as well as the revival period that provides a one year window for people now over age fifty-five (or for those who prior civil lawsuits were dismissed as untimely) to revive their claims in civil court. But beyond the new limitations period, the CVA makes additional changes to the law that will drastically impact the way public school districts investigate and defend themselves in negligent supervision and/or negligent hiring actions.

### Changes to the Notice of Claim Requirements of the Municipal Law

Any person intending to file a personal injury lawsuit against a municipal entity is generally required, as a pre-requisite, to first file a Notice of Claim within 90 days of the injury-inducing incident. In a typical personal injury lawsuit, the Notice of Claim must identify the injured person(s) seeking redress; the nature of the claim; the time, manner, and place in which the claim arose; and the items of damage or injury(ies) sustained as of the date of the Notice. Under the CVA, municipal defendants are no longer entitled to receive a Notice of Claim prior to the commencement of a formal lawsuit.

Notably, the point of the Notice requirement is to allow the municipal entity an opportunity to investigate the merits of the claim while the information and evidence are most likely to exist, and further, to provide the municipality with an opportunity to resolve or settle the potential claim before the commencement of the formal litigation process. New York's Courts have frequently distinguished the Notice of Claim requirement from a traditional statute of limitations by categorizing it as a "condition precedent" to a lawsuit as opposed to a statutory requirement requiring the commencement of an action within a certain amount of time. Even before the CVA, the municipal law "leveled the playing

field," particularly in matters involving minor-claimants, by allowing injured persons (in some instances) to serve a late Notice of Claim where the injured person came forward in an otherwise reasonable time period beyond the 90 day window and could demonstrate that the defendant was already aware of the occurrence.

One of the most important aspects of the municipal law's pre-suit notice provisions allows the municipal entity to take the testimony of the injured person through a proceeding known as a 50-h examination. A 50-h examination is essentially a pre-suit deposition, wherein both parties have the opportunity to gain more insight about the extent of the claimant's injuries and the incident that is said to have caused those injuries. From a claimant's perspective, it is an opportunity to convey the strength of his or her case and, ultimately, to showcase the fact that the claim would best be settled before the commencement of litigation; from a respondent's perspective it is an opportunity to obtain and preserve important evidence that might otherwise fade with time and to determine the veracity and merit of the claims asserted.

Not only does the CVA exempt claims of sexual abuse (as defined by the CVA) from the Notice of Claim requirements of the General Municipal Law, it also thereby eradicates the opportunity for a 50-h examination. Indeed, a claimant may now, until he or she reaches the age of 55, completely bypass the Notice of Claim and proceed directly to filing a personal injury lawsuit. Although the full impact of this change in the law is yet to be determined, the obvious results are

two fold—first, the eradication of the notice requirement will clearly impact both record retention policies and the way claims are ultimately investigated once a municipality becomes aware of their existence. Not only do memories

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fade with time, but witnesses (and tortfeasors) move, and in some cases, die. Moreover, most school districts in the State of New York retain their student and employee records only for a limited amount of time. The evidentiary challenges of the extended statute of limitations and revival period will indeed present a challenge for plaintiffs and defendants, public or private, moving forward.

Second, the opportunity for pre-suit resolution of sexual tort claims will also be hampered by the new law. Without the opportunity to directly speak to the claimant about his or her claims, and the extent and severity of the injuries asserted, it is unlikely that pre-suit settlement offers will be easily obtained. Instead, it is more likely that the parties will be required to engage in arduous and lengthy discovery in order to truly assess the strength of each party's claims and/or defenses.

### Trial Preference for Revival Claims

It seems likely that the most difficult cases to both prosecute and defend, at least from an evidentiary standpoint, will be those claims raised by people closest to age 55 as well as those made during the upcoming one year revival window. Nevertheless, the CVA provides that these "revival claims" be provided trial preference by the Court system, leaving the parties, and the Court, very little time to grapple with the evidentiary challenges inherent in older sexual tort claims.

### "Independent Contractors" and Volunteers Working in School Systems

Schools that partner with local and/or national businesses to provide innovative programming, host guest-speakers or lecturers, and/or utilize the services of volunteers will do well to not only conduct thorough background checks of all adults allowed to have contact with students, but to also retain documentation of that background check and any student contact these non-employees have. It is important to bear in mind that the CVA extends the timeframe for suit against "any party whose intentional or negligent acts or omissions are alleged to have resulted in the commission of [sexual abuse.]" As such, any school, institution, or municipal program that allows volunteers and/or independent contractors to have contact with children may be named as a defendant in cases arising from sexual abuse alleged to have occurred on school grounds, during school sponsored events, and/or during school programming.

### How Can Municipalities and Schools Protect Themselves?

Best practices in the investigation and documentation of sexual abuse claims are sure to change drastically over the next several years. First and foremost, it is critical that school administrators create an atmosphere that destigmatizes the reporting of sexual abuse for currently enrolled students since earlier reporting will allow schools to more thoroughly investigate and take appropriate action. It is also imperative that local school districts revisit their current record retention policies and plan on maintaining student health, disciplinary, and counseling records, as well as employment records, in a central location for a longer period of time than is currently required. If not already in place, schools should work with their own employees as well as with any independent contractors, guest-speakers, and volunteers to develop policies for reporting and documenting concerns about individual student welfare and/or observations of inappropriate conduct by students and adults alike.

For students already outside of the school system who initiate lawsuits beyond the former statutory period (for public schools, 1 year and 90 days after the plaintiff's 18th birthday), it will be important to immediately develop a strategy with an insurance carrier and/or defense counsel to thoroughly investigate the claim—this means extensive interviewing of potential witnesses and a search for, and preservation of, any and all records related to the individuals involved. Access to counseling, disciplinary, and/or health records will be of particular importance. [B]

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