

Government Liability Update

Pollak, Vida & Fisher's "Weblawg" of Important Developments in California Public Entity Tort Liability. Edited by Daniel P. Barer, Partner, Pollak, Vida & Fisher



Daniel P. Barer

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Filing a Timely Late-Claim Application Does Not Excuse a Minor from Failing to File a Timely Late-Claim Petition

In *J.M. v. Huntington Beach Union High School District*, published on March 6, 2017, the California Supreme Court affirmed a lower court of appeal decision upholding denial of a Government Code section 946.6 petition for relief from the claims statute. The minor plaintiff was injured in a football game, and did not obtain an attorney or present a claim within six months of the date his cause of action accrued. Nearly a year after accrual, the minor, through an attorney, filed an application with the defendant district for leave to present a late claim. The district did not send out a notice regarding the application. After 45 days, the application was denied by operation of law. More than six months after the date the application was deemed denied, the minor filed his section 946.6 late-claim petition. The trial court denied it as untimely.

Disapproving the earlier case of *E.M. v. Los Angeles Unified School Dist.* (2011) 194 Cal.App.4th 736 (which held that filing a timely late-claim application was sufficient even if the application was denied), the Supreme Court agreed. Interpreting the Government Claim Act's statutes, the court concluded that even if a claimant was a minor throughout the claim-presentation period--and thus entitled to automatic relief if the minor files a timely late-claim application--the minor must still timely petition for relief if the application is denied, either by notice or by inaction. The court further rejected the argument that the district should be estopped because it did not send notice of denial of the application, or that the time to file the petition was equitably tolled. The minor failed to establish any injustice. He simply failed to comply with the claims statutes, missing an easily ascertainable deadline that has been in place for over 50 years.

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