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March 11, 2016

Honorable Jim Beall
Room 5066, State Capitol

**GOVERNMENT CLAIMS ACT: CHILDHOOD SEXUAL ABUSE: CLAIM
PRESENTATION REQUIREMENT: SCHOOL DISTRICT
PROCEDURES - #1601887**

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Dear Senator Beall:

Before suing a public entity, a plaintiff must present a written claim for damages to the entity, with certain exceptions. For claims that are excepted from this requirement, a local public entity may adopt a procedure governing the presentation of claims, as long as no statute or regulation expressly governs such claims. You have asked whether a school district may adopt such a claim presentation procedure with respect to claims for damages suffered as a result of childhood sexual abuse.

The Government Claims Act¹ (act) governs claims and actions against public entities, including school districts.² As a prerequisite to suing a public entity, the act generally requires a plaintiff to present a timely written claim for damages to the entity (hereafter state claim presentation requirement).³ However, Government Code section 905 (hereafter section 905) excepts certain claims from this requirement, including "[c]laims made pursuant to Section 340.1 of the Code of Civil Procedure for the recovery of damages suffered as a

¹ Gov. Code, div. 3.6 (§ 810 et seq.).

² Gov. Code, § 905.2, subd. (b); Ed. Code, § 35202.

³ Government Code section 911.2, subdivision (a) provides, in pertinent part, that "A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented as provided in Article 2 (commencing with Section 915) not later than six months after the accrual of the cause of action." *Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 209 states that the claim presentation requirement is an element of a plaintiff's cause of action against a public entity, and that the plaintiff's complaint must allege compliance with the claim presentation requirement, or circumstances excusing such compliance.

result of childhood sexual abuse" (hereafter excepted childhood sexual abuse claims).⁴ In turn, Code of Civil Procedure section 340.1 (hereafter section 340.1) provides, in pertinent part, as follows:

"(a) In an action for recovery of damages suffered as a result of childhood sexual abuse, the time for commencement of the action shall be within eight years of the date the plaintiff attains the age of majority or within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse, whichever period expires later, for any of the following actions:

"(1) An action against any person for committing an act of childhood sexual abuse.

"(2) An action for liability against any person or entity who owed a duty of care to the plaintiff, where a wrongful or negligent act by that person or entity was a legal cause of the childhood sexual abuse which resulted in the injury to the plaintiff.

"(3) An action for liability against any person or entity where an intentional act by that person or entity was a legal cause of the childhood sexual abuse which resulted in the injury to the plaintiff."

Turning to whether a school district may adopt its own claim presentation procedure for these excepted childhood sexual abuse claims, Government Code section 935, subdivision (a) allows a school district to adopt its own claim presentation procedure for certain claims excepted from the state claim presentation requirement, providing as follows:

"(a) Claims against a local public entity⁵ for money or damages which are *excepted by Section 905 from Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of this part, and which are not governed by any other statutes or regulations expressly relating thereto*, shall be governed by the procedure prescribed in any charter, ordinance or regulation adopted by the local public entity." (Emphasis added.)

As can be seen, Government Code section 935, subdivision (a) permits a school district to adopt a procedure for the presentation of a claim excepted by section 905 only if it is not governed by a statute or regulation that expressly relates to the claim. The question, then, is whether excepted childhood sexual abuse claims are governed by a statute or regulation.

⁴ § 905, subd. (m).

⁵ Government Code section 900.4 defines "Local public entity" to include "a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State, but does not include the State."

It is fundamental that when the language of a statute is clear, its plain meaning should be followed.⁶ Government Code section 935, subdivision (a) identifies the class of excepted claims subject to a local public entity's claims procedure by referring to the exceptions listed in section 905, but excludes from this class excepted claims that are expressly governed by a statute. Section 905 lists childhood sexual abuse claims among its exceptions, and defines those claims in terms of the statute that establishes the timeframe for victims of childhood sexual abuse to file lawsuits—that is, “[c]laims made pursuant to Section 340.1.”⁷ By definition, then, such claims are expressly governed by statute.⁸ It follows necessarily that such claims do not fall within the class of claims excepted by section 905 for which a local public entity may adopt its own claims procedure. Therefore, we conclude, based upon the plain language of the relevant statutes, that a school district may not adopt its own claim presentation procedure applicable to claims for damages suffered as a result of childhood sexual abuse.⁹

We note that this conclusion is supported by the legislative history of section 905, subdivision (m),¹⁰ which was added by Senate Bill No. 640 (2007-2008 Reg. Sess.) (SB 640) in response to *Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 209 (*Shirk*). In *Shirk*, the California Supreme Court held that section 340.1 did not provide an exception to the state claim presentation requirement.¹¹ The court acknowledged the intent behind section 340.1 of providing a longer timeframe for victims of childhood sexual abuse to file lawsuits, but found insufficient evidence of intent to additionally supplant the state claim presentation requirement.

SB 640, in turn, established an express exception from the state claim presentation requirement for victims of childhood sexual abuse. The Assembly Committee on the Judiciary analysis of that bill states that it “provides that childhood sexual abuse claims against

⁶ *Droeger v. Friedman, Sloan & Ross* (1991) 54 Cal.3d 26, 38.

⁷ § 905, subd. (m).

⁸ This is in contrast to certain exceptions in section 905 that do not cite to specific statutory provisions, such as the exception for claims in connection with which the filing of a notice of lien, statement of claim, or stop notice is required under any law relating to liens of mechanics, laborers, or materialmen. (§ 905, subd. (b).)

⁹ Education Code section 35160 states that a school district may not act in a manner “in conflict or inconsistent with ... any law.”

¹⁰ Courts may consider legislative history to ascertain legislative intent. (*People v. Zambia* (2011) 51 Cal.4th 965, 977.)

¹¹ *Id.* at p. 214. The Senate Floor Analysis of SB 640 states that “This bill is intended to address the *Shirk* decision by expressly providing that childhood sexual abuse actions against public entities are exempted from government tort claims requirements and the six-month notice requirement.” (Sen. Rules Com., Off. of Sen. Floor Analyses, Unfinished Business Analysis of SB 640, as amended July 14, 2008, p. 3.)

local public entities are not subject to the Tort Claims Act.”¹² The analysis also states that the bill “would respond to the *Shirk* decision by specifically exempting Section 340.1 civil actions for childhood sexual abuse from government tort claim requirements, thereby treating Section 340.1 actions against public entities the same as those against private entities.”¹³ Finally, the analysis states that “Section 340.1 sets forth timeframes within which civil actions based upon childhood sexual abuse must be brought.”¹⁴ Legislative history thus demonstrates that childhood sexual abuse claims were not intended to be subject to a claims procedure adopted by a local public entity under the Government Claims Act.

Statements from appellate courts offer further support for this conclusion. One court described section 905, subdivision (m) as follows:

“In apparent recognition of the dilemma faced by families of children abused by public school officials, the law has changed. For claims described in Code of Civil Procedure section 340.1 for the recovery of damages suffered due to childhood sexual abuse occurring after January 1, 2009, the tort claim presentation requirement no longer applies. [Citations.]”¹⁵

Another court has stated in this regard that “Effective January 1, 2009, the government claim presentation requirement no longer applies to claims for childhood sexual abuse. [Citations.]”¹⁶ These statements, together with the legislative history of section 905, subdivision (m), support our conclusion that childhood sexual abuse claims are not subject to a claim presentation requirement adopted by a school district pursuant to Government Code section 935, subdivision (a).

¹² Assem. Com. on Judiciary, Analysis of SB 640, as amended June 9, 2008, p. 1; italics omitted.

¹³ *Id.* at p. 3.

¹⁴ *Id.* at p. 4. With respect to the statute of limitations applicable to an excepted claim, Government Code section 945.8 provides as follows:

“Except where a different statute of limitations is specifically applicable to the public entity, and except as provided in Sections 930.6 and 935, any action against a public entity upon a cause of action for which a claim is not required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division must be commenced within the time prescribed by the statute of limitations that would be applicable if the action were brought against a defendant other than a public entity.”

¹⁵ *S.M. v. Los Angeles Unified School Dist.* (2010) 184 Cal.App.4th 712, 721, fn. 6.

¹⁶ *J.P. v. Carlsbad Unified School District* (2014) 232 Cal.App.4th 323, 333, fn. 6, review den. Feb. 25, 2015.

Consequently, it is our opinion that a school district may not adopt a claim presentation procedure with respect to claims for damages suffered as a result of childhood sexual abuse.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

A handwritten signature in black ink, appearing to read "J. Tosney", written over the printed name of Josh Tosney.

By
Josh Tosney
Deputy Legislative Counsel

JDT:sjk