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An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released February 23 – 27, 2026, and Posted on the New York Appellate Digest Website on Monday, March 2, 2026. The Entries in the Table of Contents Link to the Summaries Which Link to the Full Decisions on the Official New York Courts Website. Click on “Table of Contents” in the Header on Any Page to Return There. Right Click on the Citations to Keep Your Place in the Reversal Report. Copyright 2026 New York Appellate Digest, Inc.

Weekly Reversal
Report
February 23 – 27,
2026

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HERE THE “PRIMARY JURISDICTION DOCTRINE” DID NOT APPLY TO REQUIRE A STAY TO ALLOW THE PUBLIC SERVICE COMMISSION (PSC) TO DETERMINE WHETHER “STRAY VOLTAGE” WAS CAUSING INJURY TO PLAINTIFF’S CATTLE AND, IF SO, HOW BEST TO MITIGATE OR REMEDIATE; THE PSC HAS NO SPECIAL EXPERTISE REGARDING THE EFFECTS OF STRAY VOLTAGE ON CATTLE; THE ISSUES ARE BEST HANDLED BY A COURT, DESPITE THE COMPETING EXPERT OPINIONS (THIRD DEPT).

The Third Department, reversing Supreme Court, in a full-fledged opinion by Justice Garry, determined the “primary jurisdiction doctrine” did not require that the civil action be stayed to allow the Public Service Commission (PSC) to determine whether “stray voltage” was harming plaintiff’s cattle and, if so, how the problem can be mitigated or remediated. Plaintiff, a cattle farmer, sued defendant electric company (which services the farm) alleging that “stray voltage” has caused “behavioral changes [in the cattle], decreased milk production, fertility issues and other health problems.” The Third Department held that the Public Service Commission was not better suited to deal with the issues presented by “stray voltage” than the court:

Assuming, without deciding, that the regulatory scheme is an appropriate means to address some of the issues underlying these tort claims ... , compliance with

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regulatory standards is not dispositive as to due care Upon a stay and referral, the PSC [Public Service Commission] would have only the authority to determine whether defendant is presently operating in compliance with its administrative standards, which set forth minimum, generalized safety requirements. As PSC asserts and as evidenced by the opinions and reports of plaintiffs’ experts, the duty of care with respect to stray voltage on dairy farms may be quite different from this regulatory floor. The PSC also admittedly has no expertise in the impact of stray voltage on cattle and has advised that it would be necessary to seek out the opinion(s) of its own experts if tasked with evaluating whether any stray voltage here is “harmful” or merits mitigation beyond the aforementioned standards. * * *

As plaintiffs argue, the claims at issue, which do not arise from the PSC’s rules, regulations or policies, are common-law tort claims, requiring determinations as to familiar concepts such as duty and causation, and are inherently judicial As with other complicated areas of tort, the necessary expertise is initially supplied by the parties’ experts. To the extent that the divergence between those experts on scientific principles may necessitate additional guidance, Supreme Court possesses the authority to utilize a referee or court-appointed neutral expert to aid in the review of complex litigation where appropriate (see CPLR 4001, 4212 . . .). In sum, although the PSC’s opinion as to the existence, origin or degree of stray voltage may be informative, resolution of plaintiffs’ claims do not first require resolution of issues placed within the agency’s special competence. [Frasier v Niagara Mohawk Power Corp., 2026 NY Slip Op 01110, Third Dept 2-26-26](#)

Practice Point: Consult this opinion for insight into when the “primary jurisdiction doctrine” should be applied to stay a court proceeding to allow an agency to investigate and offer guidance on the underlying issues. Here the Third Department held that the Public Service Commission did not have expertise on the issues underlying the trial, so the “primary jurisdiction doctrine” did not require that the civil action be stayed pending a PSC investigation.

February 26, 2026

ADMINISTRATIVE LAW, CIVIL PROCEDURE.

PETITIONER, A PROTECTION AND ADVOCACY AGENCY FOR DISABLED PERSONS, WAS NOT ENTITLED TO UNFETTERED ACCESS TO RECORDS OF ABUSE KEPT BY RESPONDENT JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS; THE PRIVACY INTERESTS OF THE DISABLED PERSONS REQUIRE THAT PERSONS FOR WHOM THE RECORDS ARE SOUGHT BE SPECIFICALLY IDENTIFIED ALLOWING RESPONDENT TO DETERMINE WHETHER ANY OF THE GROUNDS FOR RELEASE OF THE RECORDS DESCRIBED IN THE FEDERAL DEVELOPMENTAL DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT APPLY (THIRD DEPT).

The Third Department, reversing Supreme Court, in a full-fledged opinion by Justice Mackey, determined that the petitioner, a protection and advocacy (P & A) agency representing persons with developmental disabilities, did not have the right to unfettered access to records of abuse investigations by the respondent Justice Center for the Protection of People with Special Needs. Before access to such records can be granted, the respondent must be provided with the name of the allegedly abused person. At that point the respondent can determine whether any of the grounds for release of the records is applicable:

Our inquiry here distills to whether petitioner is entitled — in executing its investigatory, oversight function as a P & A entity — to unqualified access to records pertaining to the abuse and/or neglect of persons with developmental disabilities within subject facilities, or whether respondents properly conditioned such access upon satisfaction of the disclosure requirements delineated under the DD Act [Developmental Disabilities Assistance and Bill of Rights Act (see 42 USC § 15001 et seq.)]. * * *

Satisfaction of the disclosure requirements under the DD Act thus necessitate the identification of the subject individual to either secure necessary consent or determine if circumstances otherwise permit disclosure. The result is “a carefully calibrated system that t[akes] into consideration both the privacy interests of developmentally disabled persons and the need for P & A organizations to examine

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records in order to pursue their statutory functions” Here, although petitioner’s request for records advised that it had received complaints regarding a particular facility subject to respondents’ oversight, it did not identify the subject(s) of the complaints or provide respondents any information that would allow respondents to determine whether one of the four circumstances enumerated in the DD Act applied. Nothing in the federal statutory language supports petitioner’s contention that it is permitted unqualified access to records in furtherance of its investigatory role. To the contrary, petitioner’s access is expressly conditioned upon satisfaction of one of the four above-detailed scenarios, which necessitate the identification of the individual(s) whose records are sought [Matter of Disability Rights N.Y. v State Justice Ctr. for the Protection of People with Special Needs, 2026 NY Slip Op 01111, Third Dept 2-26-26](#)

February 26, 2026

CIVIL PROCEDURE, CIVIL RIGHTS LAW, JUDGES.

THE TRANSGENDER PETITIONER’S REQUEST TO SEAL THE RECORDS OF THE NAME-CHANGE PROCEEDINGS SHOULD HAVE BEEN GRANTED; CRITERIA EXPLAINED (THIRD DEPT).

The Third Department, reversing Supreme Court’s denial of petitioner’s request to seal the court records, determined petitioner’s transgender status justified the sealing of the records of the name-change proceedings:

... “[W]hether to grant or deny a sealing request under Civil Rights Law § 64-a depends solely upon the potential for harm to the applicant arising from public access to a court record of the applicant’s name change proceeding” and “a court abuses its discretion by relying upon real or theoretical ‘public interest concerns’ to deny a Civil Rights Law § 64-a sealing request” Said directly, “[t]o decline to seal the record despite the applicant’s showing of jeopardy is to place the applicant at risk of the very harms the statute is meant to guard against”

Petitioner in this case affirmed his transgender status and indicated that he was seeking to change his name to one that reflects his male gender identity in conformance with the name he uses in his personal and professional life. Petitioner

also expressed fear that exposure to the records from this proceeding would effectively expose his transgender status and expose him to increased risk for hate crimes, harassment and other discrimination. Those circumstances warrant entitlement to have the record of his name change proceeding sealed pursuant to Civil Rights Law § 64-a [Matter of Abigail X., 2026 NY Slip Op 01104, Third Dept 2-26-26](#)

February 26, 2026

CIVIL PROCEDURE, EVIDENCE.

ALTHOUGH THERE WAS PROOF THE 90-DAY NOTICES WERE MAILED TO THE PRO SE PLAINTIFFS, THERE WAS ALSO PROOF THE MAIL WAS NOT DELIVERED AND WAS RETURNED; WITHOUT PROOF PLAINTIFFS ACTUALLY RECEIVED THE 90-DAY NOTICES, THE COURT SHOULD NOT HAVE DISMISSED THE ACTION FOR WANT OF PROSECUTION (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the motion to dismiss the action for want of prosecution should not have been granted. Although there was proof defendants (the Cohens) mailed the 90-day notices to the pro se plaintiffs, there was no proof the notices were received (the mailings were returned):

In August 2023, more than a year after the expiration of the stay, the Cohens moved ... pursuant to CPLR 3216 to dismiss the complaint for failure to prosecute. In support of the motion, the Cohens submitted evidence that in August 2022 they mailed 90-day demands pursuant to CPLR 3216(b)(3) to the plaintiffs, who were then pro se, by certified mail. The Cohens also submitted evidence, however, that the mailings were returned to them. The United States Postal Service tracking history submitted by the Cohens indicated that one delivery was attempted and that five days later a reminder was sent to schedule redelivery before the mailings were returned to the sender. * * *

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CPLR 3216 permits a court to dismiss an action for want of prosecution only after the court or the defendant has served the plaintiff with a written demand requiring the plaintiff “to resume prosecution of the action and to serve and file a note of issue within [90] days after receipt of such demand” “Notably, the time within which the plaintiff must act runs from the receipt, and not the service of the demand” Here, in support of their motion, the Cohens submitted proof that the 90-day demands were not received by the plaintiffs. [Kurbanov v Cohen, 2026 NY Slip Op 01044, Second Dept 2-25-26](#)

Practice Point: To support a motion to dismiss for want of prosecution, the defendant must prove the 90-day notice was actually received by the pro se plaintiff. Proof of mailing is not enough.

February 25, 2026

CRIMINAL LAW, EVIDENCE.

THE PEOPLE DID NOT DEMONSTRATE DEFENDANT’S VEHICLE WAS PROPERLY IMPOUNDED; THEREFORE THE ITEMS SEIZED DURING THE SUBSEQUENT INVENTORY SEARCH SHOULD HAVE BEEN SUPPRESSED; CONVICTIONS VACATED (SECOND DEPT).

The Second Department, reversing the denial of defendant’s suppression motion and vacating the convictions, determined the People did not demonstrate the proper procedure for impounding defendant’s vehicle (which was subjected to an inventory search) was followed:

The People failed to establish the lawfulness of the impoundment of the defendant’s vehicle and subsequent inventory search At a suppression hearing, the arresting officer equivocated on whether or not the vehicle was parked legally on the street, and he did not testify as to the posted time limits pertaining to the parking space at which the defendant had pulled over. Although the officer testified that he had to impound the vehicle to safeguard it at the precinct station house and “for further investigation,” the People presented no evidence demonstrating any history of burglary or vandalism in the area where the defendant had pulled over the vehicle. Thus, the People failed to establish that the impoundment of the

vehicle was in the interests of public safety or part of the police’s community caretaking function Moreover, the People failed to present any evidence as to whether the New York City Police Department had a policy regarding impoundment of vehicles, what that policy required, or whether the arresting officer complied with that policy when he impounded the defendant’s vehicle

Accordingly, the impoundment of the defendant’s vehicle was unlawful, and the physical evidence that was recovered from the vehicle during the inventory search subsequent to that impoundment must be suppressed as fruits of the unlawful impoundment [People v McClarin, 2026 NY Slip Op 01076, Second Dept 2-25-26](#)

Practice Point: Consult this decision for insight into the valid grounds and procedures for impounding a vehicle and the consequences of improperly impounding a vehicle. Here all the items seized in an inventory search after the improper impoundment were suppressed and the convictions were vacated.

February 25, 2026

CRIMINAL LAW, FAMILY LAW, APPEALS, EVIDENCE.

ALTHOUGH THE EVIDENCE WAS DEEMED LEGALLY SUFFICIENT, THE EVIDENCE OF THE INTENT TO COMMIT ASSAULT SECOND, WHICH INVOLVED INJURY TO POLICE OFFICERS, DID NOT SURVIVE A WEIGHT-OF-THE-EVIDENCE ANALYSIS; THE TWO JUVENILES WERE FIXATED SOLEY UPON FIGHTING EACH OTHER THROUGHOUT THE BRIEF INCIDENT (FIRST DEPT).

The First Department, reversing (modifying) Family Court in this juvenile delinquency proceeding, in a full-fledged opinion by Justice Rodriguez, determined the assault second adjudications were not supported by the weight of the evidence. Two juveniles were fighting each other and police officers were injured trying to break-up the fight. The First Department found that, because the juveniles were fixated only on fighting each other throughout the incident there

was insufficient evidence of an intent to interfere with the officers’ performance of their duty:

... Penal Law § 120.05 (3) provides: “A person is guilty of assault in the second degree when: . . . 3. With intent to prevent [an] officer . . . from performing a lawful duty, . . . he or she causes physical injury to such [] officer.” Accordingly, a person is guilty of the offense when their conscious objective or purpose is to prevent an officer from performing their lawful duty, the person acts in a manner consistent with that intent, and the officer is injured . . . * * *

The record . . . lacks any indication that appellant directed his actions at the officers, whether by turning around, throwing an elbow backward, or in some other way

Similarly, the evidence at the hearing did not show beyond a reasonable doubt that appellant had even a chance to recognize and consciously disregard the officers’ directives. [Matter of Cynque T., 2026 NY Slip Op 01147, First Dept 2-26-26](#)

Practice Point: Consult this decision for insight into the factors considered under a weight-of-the-evidence analysis of criminal intent.

February 26, 2026

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

THE FEDERAL CHILD-PORNOGRAPHY CRIME OF WHICH DEFENDANT WAS CONVICTED WAS BASED ON CONDUCT WHICH HAD NOT BEEN CRIMINALIZED BY A NEW YORK STATUTE AT THE TIME OF DEFENDANT’S CONVICTION; THEREFORE DEFENDANT SHOULD NOT HAVE BEEN ADJUDICATED A SEX OFFENDER UNDER SORA (FIRST DEPT).

The First Department, vacating Supreme Court’s sex offender adjudication, over an extensive dissent, determined that the federal crime of which defendant was convicted was not encompassed by New York State criminal law at the time of defendant’s conviction. The defendant sent images of adult bodies engaged in

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sexual conduct with his 16-year-old cousin's (the victim's) face superimposed on the images:

Defendant was convicted under 18 USC § 1466A(a)(1)(A) which proscribes images created, adapted or modified to appear as though an identifiable minor is engaging in sexual conduct, otherwise known as “morphed” child pornography. We agree with our dissenting colleague that defendant's actions were deplorable. Nevertheless, we are constrained to find that this conduct does not give rise to criminal liability under the analogous New York State statute, Penal Law § 263.15, as it existed at the time of [defendant's] conviction. Therefore, the court erred in adjudicating defendant a sex offender. [People v Lewis, 2026 NY Slip Op 01016, First Dept 2-24-26](#)

Practice Point: Here defendant was convicted of a federal child-pornography offense for conduct which was not covered by a New York criminal statute. Therefore defendant could not be adjudicated a sex offender based on the federal conviction.

February 24, 2026

FORECLOSURE, CIVIL PROCEDURE.

UNDER THE FORECLOSURE ABUSE PREVENTION ACT (FAPA), A DEFENDANT CAN RENEW A SUMMARY JUDGMENT MOTION AFTER A JUDGMENT OF FORECLOSURE AND AFTER THE TIME FOR APPEAL HAS EXPIRED AS LONG AS THE SALE HAS NOT YET BEEN CONDUCTED (FIRST DEPT).

The First Department, reversing Supreme Court, determined the defendant's motion for renewal of its summary judgment motion in this foreclosure proceeding should have been granted. The motion was based upon the retroactive application of the Foreclosure Abuse Prevention Act (FAPA). Renewal should be granted after a judgment of foreclosure and after the time for appeal has expired if the sale has not yet been conducted:

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Generally, “a motion for leave to renew based upon an alleged change in the law must be made prior to the entry of a final judgment, or before the time to appeal has fully expired” However, in *Article 13 LLC v Ponce De Leon Fed Bank*, the Court of Appeals clarified the application of the Foreclosure Abuse Prevention Act (FAPA), finding that it applies retroactively and to all foreclosure actions in which “a final foreclosure sale had not been enforced prior to its effective date, including actions pending at the time of its effective date”

A judgment of foreclosure and sale is deemed enforced when the sale is concluded Therefore, the only way to effectuate the retroactive application of FAPA after a judgment has been entered and the time to appeal has expired, is by filing a motion to renew before the sale is conducted Based on a change in the law with the enactment of the FAPA, [defendant’s] motion for leave to renew pursuant to CPLR 2221(e)(2), was timely [21st Mtge. Corp. v Jin Hua Lin, 2026 NY Slip Op 01116, First Dept 2-26-26](#)

Practice Point: The Foreclosure Abuse Prevention Act (FAPA) allows a defendant to renew a motion for summary judgment after a judgment of foreclosure and after the time for appeal has expired if the foreclosure sale has not yet been conducted.

February 26, 2026

LABOR LAW-CONSTRUCTION LAW, EVIDENCE.

PLAINTIFF WAS STRUCK BY A STEEL BAR WHICH FELL DURING AN ATTEMPT TO HOIST IT WITH EXCAVATING EQUIPMENT; PLAINTIFF WAS ENTITLED TO SUMMARY JUDGMENT ON THE LABOR LAW 240(1) CAUSE OF ACTION; PLAINTIFF DID NOT NEED TO DEMONSTRATE THE EXACT CAUSE FOR THE BAR’S FALLING, NOR DID HE NEED TO SPECIFY THE EQUIPMENT WHICH SHOULD HAVE BEEN USED (FIRST DEPT).

The First Department, reversing Supreme Court, determined plaintiff was entitled to summary judgment on the Labor Law 240(1) cause of action. Plaintiff was struck by a steel bar which apparently fell over as it was about to be hoisted by an

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excavation machine. Plaintiff did not need to demonstrate the exact circumstances under which the bar fell, nor did he need to specify the type of equipment which should have been used to hoist the bar:

Plaintiff was injured as he and his coworkers were making bases for cement columns by using a drilling/excavation machine to remove steel bars that had been drilled into the ground. Plaintiff testified that when removing the bars, a fabric sling was tied to the top of the bar, a hook was placed into the sling, and the drilling/excavation machine lifted the bar away. As the last bar was being removed, it fell and hit plaintiff. According to plaintiff's testimony, the bar was standing vertically on the drilling machine and was not secured before the machine moved it.

Supreme Court should have granted plaintiffs' motion for summary judgment on liability on their Labor Law § 240(1) claim. Plaintiffs demonstrated prima facie entitlement to summary judgment on this claim by submitting evidence establishing that the steel bar was not secured while the excavation/drilling machine was hoisting it out of the ground Even though plaintiff testified that he did not see the precise moment that the bar began to fall and was unsure whether a sling was attached to the bar at the time of the accident, he was not obliged to show the exact circumstances under which the object fell

Furthermore, because the equipment used to hoist the steel bar failed to prevent it from falling, plaintiffs were also not obliged to specify the type of safety device that defendants should have provided [Valarezo v HP Jamsta Hous. Dev. Fund Co. Inc., 2026 NY Slip Op 01148, First Dept 2-26-26](#)

Practice Point: To be entitled to summary judgment on a Labor Law 240(1) falling-object cause of action, plaintiff need not demonstrate the precise circumstances which caused the object to fall.

February 26, 2026

LANDLORD-TENANT, MUNICIPAL LAW.

PURSUANT TO THE HOUSING STABILITY AND TENANT PROTECTION ACT (HSTPA) AND NEW YORK CITY'S RENT STABILIZATION LAW (RSL), THE TENANT WAS ENTITLED TO BUT WAS NEVER OFFERED A RENEWAL LEASE UNDER THE TERMS OF THE PRIOR LEASE SIGNED BY HIS GRANDMOTHER; THE LANDLORD'S HOLDOVER AND EVICTION PETITION SHOULD HAVE BEEN DISMISSED (FIRST DEPT).

The First Department, reversing Appellate Term, determined the landlord's holdover and eviction petition should have been dismissed. The tenant was entitled to a renewal lease pursuant to the Rent Stabilization Law and the Housing Stability and Tenant Protection Act (HSTPA). The landlord never provided a renewal lease:

The Housing Stability and Tenant Protection Act (HSTPA) was enacted on June 14, 2019 and became effective immediately The HSTPA restricts a landlord's right to withdraw a previously offered preferential rent, even if properly preserved in the lease. Specifically, Rent Stabilization Law § 26-511(c)(14) provides that for "any tenant who . . . is or was entitled to receive a renewal or vacancy lease" as of the date of the HSTPA's enactment, "the amount of rent for such housing accommodation that may be charged and paid shall be no more than the rent charged to and paid by the tenant prior to that renewal, as adjusted by the most recent applicable guidelines increases and any other increases authorized by law."

... . * * *

Where a landlord fails to offer a renewal lease, the rights under the expiring lease continue to apply (Rent Stabilization Code (9 NYCRR) § 2523.5[d] ["(T)he failure to offer a renewal lease pursuant to this section shall not deprive the tenant of any protections or rights provided by the RSL and this Code and the tenant shall continue to have the same rights as if the expiring lease were still in effect"]).

Where a renewal lease is not made in a timely fashion, "courts have repeatedly upheld . . . allowing the renewal lease increase to take effect only prospectively"

... .

... [T]he tenant's succession rights under the prior lease signed by the tenant's grandmother continued to apply until he was offered a renewal lease on November

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7, 2019 after the passage of the HSTPA. As the HSTPA applies to tenant's succession rights, his cross-motion dismissing the petition should have been granted on the basis that he was entitled to a lease at the amount of rent paid under the prior lease signed by his grandmother (Rent Stabilization Law § 26-511[c][14]). [Matter of West Side Marquis LLC v Maldonado, 2026 NY Slip Op 01023, First Dept 2-24-26](#)

Practice Point: Consult this decision for insight into the application of the Housing Stability and Tenant Protection Act (HSTPA) and NYC's Rent Stabilization Law (RBL).

February 24, 2026

NEGLIGENCE, MUNICIPAL LAW, CIVIL PROCEDURE, EVIDENCE.

HERE THE SCHOOL DISTRICT HAD ACTUAL KNOWLEDGE OF THE NATURE OF EACH NEGLIGENT-SUPERVISION CLAIM WITHIN 90 DAYS OF THE INCIDENTS; WHERE A SCHOOL HAS TIMELY ACTUAL KNOWLEDGE OF THE FACTS UNDERLYING A CLAIM, THE ABSENCE OF AN ADEQUATE EXCUSE FOR FAILING TO TIMELY FILE A NOTICE OF CLAIM IS NOT A BAR TO GRANTING LEAVE TO FILE A LATE NOTICE (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the petition for leave to file a late notice of claim against defendant school district should be granted. The petition alleged negligent supervision a student who was assaulted, harassed, and bullied on specific occasions. There were contemporaneous incident reports. The school district, therefore, had knowledge of the nature of the claims within 90 days of each incident:

... [T]he petitioner established that the School District had actual knowledge of the essential facts constituting the claim within 90 days of each incident included in the notice of claim. The petitioner submitted, among other things, incident reports and documentation of investigations conducted by the School District within days of the incidents ... , police reports that documented communications and an

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investigation by school officials ... , an electronic communication between the petitioner and a school official ... , and an “[a]ction [p]lan” created pursuant to a meeting between the petitioner and school officials where the alleged wrongful conduct and the plans to monitor the students and address the conduct were discussed

As the petitioner demonstrated that the School District acquired timely knowledge of the essential facts constituting the claim, the petitioner met her initial burden of showing that the School District would not be prejudiced by the late notice of claim In opposition to the petitioner’s initial showing, the School District failed to come forward with particularized evidence showing that the late notice had substantially prejudiced its ability to defend the claim on the merits

Although the petitioner failed to demonstrate a reasonable excuse for her failure to timely serve the notice of claim, “where, as here, there is actual knowledge and an absence of prejudice, the lack of a reasonable excuse will not bar the granting of leave to serve a late notice of claim” [Matter of Polito v North Babylon Sch. Dist., 2026 NY Slip Op 01067, Second Dept 2-25-26](#)

Practice Point: In the context of a petition for leave to file a late notice of claim against a school district, the absence of a reasonable excuse for timely filing the claim may be overlooked where it is demonstrated the school had timely knowledge of the facts underlying the claims.

February 25, 2026

NEGLIGENCE, VEHICLE AND TRAFFIC LAW, EVIDENCE.

A POLICE CAR RESPONDING AN EMERGENCY CALL SWERVED INTO A TURN LANE TO PASS A CAR AND STRUCK A SKATEBOARDER; THERE WERE QUESTIONS OF FACT WHETHER THE OFFICER ACTED WITH “RECKLESS DISREGARD FOR THE SAFETY OF OTHERS” (SECOND DEPT).

The Second Department, reversing Supreme Court, determined (1) the “reckless disregard” standard for liability applied to this accident involving a police car and a

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skateboarder, and (2) the county defendants did not eliminate all questions of fact about whether the “reckless disregard” standard was met. The officer was responding a call from a woman in labor with complications. The officer struck the skateboarder, who was in a turn lane, when the officer swerved into the turn lane to pass a car:

The “reckless disregard” standard demands more than a showing of a lack of “due care under the circumstances” “It requires evidence that the actor has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow and has done so with conscious indifference to the outcome” “This standard requires a showing of more than a momentary lapse in judgment”

Here, the defendants established that the reckless disregard standard of Vehicle and Traffic Law § 1104 was applicable to Degere’s [the officer’s] conduct because he was responding to a radio call of a woman going into labor with complications However, the defendants failed to establish their prima facie entitlement to judgment as a matter of law dismissing the complaint because their moving papers failed to eliminate all issues of material fact regarding whether Degere acted recklessly by either traveling at a high speed in the center turn lane in a school zone with poor lighting conditions or abruptly merging into the center turn lane without first looking to his left or activating his turn signal [Moccasin v Suffolk County, 2026 NY Slip Op 01049, Second Dept 2-25-26](#)

Practice Point: Consult this decision for insight into what constitutes “reckless disregard for the safety of others” within the meaning of Vehicle and Traffic Law 1104 in the context of a police officer responding to an emergency call.

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