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Judge Sanctions NYC for Discovery Delays in Lawsuit Over Attempt to Quell Schoolyard Fight

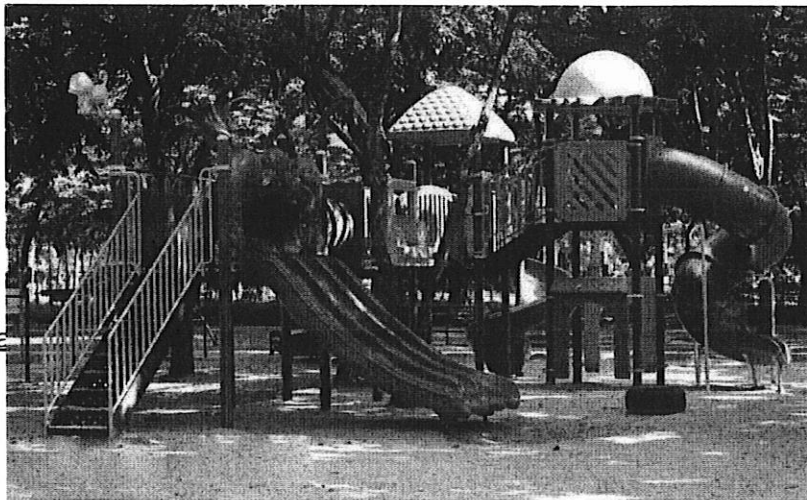
By **Andrew Denney** (/author/profile/Andrew Denney/) | July 03, 2018 at 03:43 PM

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Manhattan **has hit**

(<https://images.law.com/contrib/content/uploads/documents/389/36059/A.L.-Loo-v-City.pdf>) the New York City government with sanctions for what he said was a deliberate failure by city lawyers to produce evidence for a case involving a school aide's failure to break up a playground fight between two students.

The ruling by acting Manhattan Supreme Court Judge Alexander Tisch, which was published last week, is the **second time** (<https://www.law.com/newyorklawjournal/2018/07/02/nyc-sanctioned-for-not-turning-over-interview-with-alleged-excessive-force-victim/>) in recent weeks that a judge has upbraided city lawyers for discovery issues. Last Thursday, a federal judge in Brooklyn sanctioned the city for failing to turn over evidence in a police brutality case.

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In the playground fight suit, which was filed in 2012, the plaintiff alleges that the city was negligent in training a school aide who witnessed the plaintiff get punched in the face by another student but failed to intervene.

The plaintiff demanded in 2014 that the city produce information about the aide's training and a witness who could attest to the training that aides received. But despite repeated assurances that the city would comply with the request over the three following years, it never did so.

When Nicholas Massimo of Massimo & Panetta, who represents the plaintiff, filed a motion for sanctions, city lawyers fired back with claims that the city did not need to provide the evidence and that, in any event, the information sought would be irrelevant to the case.

Tisch begged to differ. In his order to strike the city's answer, the judge said the requested information was relevant to the case, and that time after time, city lawyers failed to follow court orders.

"The pattern of noncompliance represents to the Court that the failure to provide disclosure was willful," Tisch said. "It is evident that defendants failed to set forth any excuse for their delay and other contumacious behavior."

Assistant Corporation Counsel Alana Sisnett appeared in the case for the city.

Nicholas Paolucci, a spokesman for the Law Department, wasn't immediately able to provide a response to a request for comment.

Massimo said in an interview that the discovery issues in the case were not an isolated incident. He said that delaying discovery appears to be a willful litigation tactic by city lawyers and that some courts have tended to be lenient toward the city on discovery compliance compared with other litigants.

"This happens all the time," Massimo said.

Massimo said he has another case against the city where he has run into discovery issues. He represents a woman who got into a car accident with a New York City Police Department cruiser traveling the wrong way on a one-way street in the Bronx; the police contend they were responding to an emergency and Massimo requested audio from the 911 dispatcher to verify the claim.

But three years after the case was filed, the city responded that the relevant audio had been destroyed. Massimo has filed a motion for sanctions in the case.

Last week, U.S. District Judge Kiyo Matsumoto of the Eastern District of New York granted a motion for sanctions in an excessive-force case that barred city attorneys from using audio of an Internal Affairs Bureau interview with the plaintiff, Allen Brown, as well as Brown's original deposition, and ordered the city to pay attorney fees for litigation of the sanctions issue.

Brown filed the suit in 2014 and the city did not produce the audio of the IA's interview with Brown until 2017, after discovery was closed.

Matsumoto said the city's actions were at a "minimum, negligent if not grossly negligent."

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Paolucci told the Law Journal that the discovery issue in the excessive-force case was due to "clerical error."

"We take our discovery obligations seriously and promptly produced IAB records, including a summary of the plaintiff's interview," Paolucci said.

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