

## Client Alert **Starting the Clock on Claims**

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### Education Law

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On July 3, 2015, Arizona’s notice of claim statute (A.R.S. § 12-821.01) will be amended to apply to claims against all “public schools,” including charter schools. That’s good news for charter schools, because the notice of claim statute establishes prerequisites for filing a lawsuit against charter schools that will give you early notice of potential lawsuits and establish a procedural hurdle for people who sue your school.

**What is a notice of claim generally?** A notice of claim is a prerequisite for filing most civil lawsuits that seek monetary damages against a public entity, public school or public employee. Anyone who has a claim for money against a public school – including a charter school – must send a notice of claim to the school within 180 days (roughly 6 months) after the claim accrues. Claims for other types of relief, such as a declaratory judgment or an injunction, do not require a notice of claim. If a claimant does not meet the deadline, the lawsuit is “barred.” A.R.S. § 12-821.01(A).

**What does the notice of claim need to include?** The notice of claim must be written – it is typically a letter from the claimant’s lawyer to your school board – and it must include enough factual detail so that you can understand the basis for the claim and investigate it. It must also include a specific dollar amount that the claimant would be willing to accept as settlement for the claim; approximate amounts or ranges for a settlement do not comply with the statute’s requirements. A.R.S. § 12-821.01(A).

**What is the deadline for sending a school a notice of claim?** The notice of claim must be served on the school within 180 days after the claim “accrues.” A claim accrues when the claimant knows or should have known about the basis for the claim. A.R.S. § 12-821.01(B). A claimant does not need to know *all* of the facts about his or her claim for the 180 days to begin to run; they just need to know that a “wrong [has] occurred and caused injury” and that the charter school may have been responsible. *Thompson v. Pima County*, 243 P.3d 1024 (Ariz. Ct. App. 2010). A claim does not begin to accrue for purposes of the notice of claim statute until the claimant has exhausted all administrative remedies, for example, until the EEOC has issued a decision regarding any employment discrimination claims. A.R.S. § 12-821.01(C).

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**What should I do if I receive a notice of claim?** After reading the notice of claim, you may want to investigate the claim to determine if there is any validity to it. Before starting an investigation, you should consider talking to your lawyer. If the lawyer investigates the claim, the investigation may be privileged, while if you or another school employee performs the investigation, you may have to tell the claimant everything you learn. If you have or may have insurance coverage for the claim, you should also immediately tender notice of the claim to your insurance carrier. Finally, alert your governing board about the notice of claim, if they did not receive a copy of it from the claimant.

**How can I respond to a notice of claim?** You can accept the settlement offer, decline the settlement offer, or simply not respond at all. The offer to settle expires 60 days after it is made, unless you deny it first in writing. A.R.S. § 12-821.01(E). If you do not want to settle the claim for the amount requested or engage in settlement negotiations, there is no downside to not responding. If the notice of claim does not meet the statutory requirements, *do not inform the claimant of the problems!* You don't want to give the claimant an opportunity to fix the mistakes with the notice of claim, because you can raise the failure to strictly comply with the notice of claim requirements as a basis to have the case dismissed if the claimant later sues you. If one of your employees is also named as a defendant in a lawsuit against your school, the case against the employee may also be dismissed if the claimant failed to file a notice of claim against the employee. Of course, this depends on the type of claim against the employee and whether the employee is considered a "public employee."

**Why the amendment is good for charter schools.** Charter schools will soon enjoy the same protections and notice about potential lawsuits that district schools have long enjoyed. The notice of claim statute gives your school the chance to investigate and assess liability, to engage in settlement discussions if you want to before a lawsuit is filed, and to better plan your budget. It also gives you a basis on which to have a lawsuit against your school dismissed right away. If you are sued, make certain that your lawyer is aware of any notice of claim that was served on you or that a notice of claim was never served on you. The notice of claim is one more tool in your tool bag to limit claims against your school.

If you have questions about notices of claim, we are here to help you!