



## Notice of Claim Requirement and Charter Schools

On January 5, 2023, the Arizona Court of Appeals issued a significant decision, expressly confirming that would-be plaintiffs are precluded from suing charter schools without first satisfying the requirements of Arizona's notice of claim statute ([A.R.S. § 12-821.01](#)).

Notice of Claim Requirements and Protections. Before a claimant can file a lawsuit seeking monetary relief against certain public entities, the notice of claim statute requires the claimant to provide the public entity with a written notice of the claim that includes: (a) enough factual detail so that the public entity can understand the basis for the claim, and (b) a specific dollar amount that the claimant would be willing to accept as settlement for the claim, along with facts that support that amount.

A notice of claim must be filed within 180 days after a claim for monetary damages accrues. A.R.S. § 12-821.01(B). A claim accrues when the claimant knows or should have known about the basis for the claim. *Id.* A notice of claim is not required for other types of relief, such as a declaratory judgment or an injunction. If a claimant fails to comply with any requirement in the notice of claim statute, the claimant's claims are barred.

The public entity is not required to respond at all to a notice of claim unless it wants to accept the settlement demand. If the public entity does not accept the offer within 60 days, the offer is deemed to be denied, and the claimant may file a lawsuit. A.R.S. § 12-821.01(E).

Conflicting Trial Court Decisions. In 2015, Arizona's notice of claim statute was amended to apply to all claims against all "public schools." Although it has been more than seven years since the statute was amended, and although charter schools are "public schools," Arizona trial courts continued to issue inconsistent rulings, with some trial courts determining that the notice of claim statute does *not* apply to charter schools and other courts determining that the statute *does* apply to charter schools. Because trial court decisions are not binding on other trial courts and because trial court decisions are not published in a way that makes them easy to locate, charter schools have not been able to reliably use the failure to comply with the notice of claim statute as a viable defense in lawsuits.

The Recent Court of Appeals Decision. On January 5, 2023, that changed. The Arizona Court of Appeals issued a decision in [UMB Bank, NA v. Parkview School, Inc., No. 1 CA-CV 21-0354](#). In discussing one of the defendant charter school's defenses, the Court noted that "[t]he notice of claim statute requires a plaintiff with a claim

## Education Law



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against a public school to timely file a notice stating sufficient facts to describe the claimed liability, a specific amount for which the claims can be settled, and facts supporting that amount. . . .” *Id.* at p.5. In a footnote to that sentence, the court confirmed that “[c]harter schools are public schools.” *Id.* at p.5, n.2. Because the Court of Appeals’ decision is binding on Arizona trial courts, the *UMB Bank* decision resolves the conflict on this issue and confirms that any prospective plaintiff wishing to bring a claim for monetary damages against a charter school must first file a notice of claim with the charter school.

**Practical Considerations.** If you receive a notice of claim, you should immediately alert your legal counsel and your insurance carrier of the claim. Your lawyer can help you decide how to respond or if you want to respond at all. And if you are sued for monetary damages and you were not served with a notice of claim before the lawsuit, you should raise the lack of a notice of claim as a defense.

## Proposed School Order for Family Law Lawsuits

All too often, schools are caught in the middle of disputes between divorced parents and forced to interpret ambiguous or unhelpful custody orders. A proposed change in the family court could help change that – and now is your chance to provide input!

For more than four years, Judge Bruce Cohen, the Presiding Family Law Judge for the Maricopa County Superior Court, has been working with a group of schools to prepare a form “School Order” to be used to address some of the common issues schools face when dealing with disputes between divorced parents. Those issues include school enrollment/withdrawal, child pickup, access to school grounds, extracurricular activities, curricular disputes, and access to school records, among other things. The proposal to adopt such a form order has been submitted to the Arizona Supreme Court for consideration and approval. The petition (Petition R-23-0007) and School Order form are available here: <https://www.azcourts.gov/Rules-Forum/aft/1382>.

The form School Order would go a long way to resolving some of the issues that many of you have faced before they become issues for you. As Judge Cohen indicated in the petition, not only are schools impacted by the terms of parenting orders issued by courts, “it is not uncommon for schools to find themselves to be in the middle of parental disputes. . . . The problems are exacerbated when parents believe that the parenting orders are binding on the schools or that the schools must interpret and apply the parenting terms.”

Public comments about the proposal will be considered by the Supreme Court and must be submitted by **Monday, May 1, 2023**. You can find instructions on how to submit comments either electronically or by paper here: <https://www.azcourts.gov/rules/Forum-FAQ>. Click on “How do it file a comment on a Rule 28 petition?” for detailed instructions.

We intend to file comments in support of the School Order on behalf of a group of education law attorneys. We urge you to also file comments in support of the Order. You do not have to file extensive comments. You may consider something like the following: “The proposed School Order would relieve some of the pressure on schools to resolve disputes between parents, and we support its approval.” The Court will want to know if this is a change that will help not only parents and children, but also schools, and you are the ones who can best tell them that!

Rule change petitions are usually considered by the Supreme Court in August, and, if the proposed rule change is adopted, the change will likely go into effect next January 1.

## In Memoriam

I am saddened to report that Roger Hall, an education lawyer who many of you knew, passed away earlier this month. Roger was a passionate supporter of charter schools for almost 25 years, providing terrific legal advice to many schools. But more than that, Roger was a compassionate, funny, smart person. He will be missed.

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