

The District Is Served With A Complaint – What Now?

By Jonathan P. Riba

For better or for worse, the American legal system is designed in a way that encourages lawsuits. By simply paying a nominal filing fee, an individual can cause a school district and individual employees great anxiety by alleging some perceived wrongdoing. Unfortunately, the fact that a Court or jury subsequently finds in favor of the school district does not entitle the school district to recover the thousands of dollars spent defending the lawsuit. Although a school district cannot go back in time to change the facts that lead to the filing of a Complaint, the school district has complete control over the actions it takes after a Complaint is filed. To that end, if served with a Complaint, a school district should always do the following to fully protect its interests:

I. Immediately Contact Counsel And Your Insurance Broker or Insurance Company

A Complaint is not something that can be “dealt with another day.” School district action must be taken immediately. Specifically, a District must immediately contact their solicitor and inform him/her of the Complaint. Notification of counsel is paramount because the solicitor must respond to the allegations in the Complaint within a specified time period or judgment may be entered against the District by default.

Equally important is prompt notification of the school district’s insurance broker or insurance company. In most cases, if sued, the school district’s insurance policy will cover some or all aspects of the lawsuit, including damages and attorney fees. However, the insurance company will not agree to pay any costs associated with the defense of the action until it receives notification of the lawsuit. The insurance company also may elect to assign the defense of the case to assigned counsel and/or require detailed information about the claim so they can properly evaluate any potential coverage issues.

II. Internally Investigate And Preserve All Records Associated With The Allegations In The Complaint

The easiest claims to defend against are cases in which the incident or allegation is well documented. Accordingly, as soon as a Complaint comes in, an Administrator should make sure to talk to all the relevant people involved and compile all documents that relate to the specific allegations. This would include items such as personnel files, incident reports, memos, emails, letters, videos, telephone slips, etc. It is also recommended that if a specific incident is at issue, if not already done, the individual(s) involved should write out a statement outlining exactly what occurred. At no time should anybody attempt to destroy or remove relevant documents. If such an act was discovered during the course of the litigation, both counsel and the client would be subject to severe sanctions by the Court.

III. Do Not Treat The Claimant Any Differently Because Of The Lawsuit

It is very common for an employee to sue his/her employer while still working for the employer. Likewise, it is not uncommon for a student to remain enrolled pending a lawsuit filed by the student. This is a legally protected right which the employee or student is Constitutionally permitted to do. Although the temptation might be to treat the claimant differently or retaliate against him/her in some way, this should be avoided in all instances as it is strictly prohibited by law. Accordingly, after receiving notice of a lawsuit, a District should be extremely cognizant of its actions toward the claimant as all District actions that are taken subsequent to the service of the Complaint could be used as further evidence supporting the claim or as evidence of a separate retaliation claim.

IV. Be Open Minded Toward The Concept of Settlement At The Outset of Litigation

Most cases settle not because the underlying allegations have merit but because of the economic realities of litigating a case through trial. Only about 5% of all civil cases go to trial. Districts should keep in mind that it costs approximately \$70,000 to defend a typical employment case through trial. Therefore, if the employee is willing to accept \$10,000 to settle all claims at the outset of litigation, the pure dollars and cents of the matter indicates that it makes economic sense to resolve the case prior to trial. However, as the client, the District always has the ultimate say in whether the case settles or not. Furthermore, if a District fervidly believes the employee should not receive a single dollar, by all means, the case should proceed to trial.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111 or 570-654-2210.