

POTENTIAL SCHOOL REOPENING LAWSUIT – WHAT TO DO IF YOU’RE SERVED

Hodgson Russ Education Alert
February 22, 2021

It has been reported that a well-known Buffalo law firm is in the process of considering the filing of a lawsuit to compel school districts in Western New York to fully reopen to all students at all grade levels immediately. While we believe there are a number of meritorious defenses to such a lawsuit, depending on what is alleged and can be proven, it is not our purpose in this alert to discuss those defenses. Rather, our purpose is to briefly let you know what should be done if you are served with such a lawsuit, or with a notice that such a lawsuit will be filed.

There are two basic methods by which legal process may be served on a school district. The first involves the filing of papers with the Secretary of State. This is a relatively new way to serve a school district, and is not yet as widely used as the second method, which generally is termed as "personal service". Since filing with the Secretary of State will normally result in a school district being formally noticed by that office of the commencement of a lawsuit, the remainder of this alert will deal with personal service.

Personal service of a lawsuit or a related notice on a school district involves little more than hand delivery of appropriate papers to someone authorized to receive them on behalf of the district. Among those authorized to receive such papers are any member of the board of education, the superintendent and the district clerk. Upon serving the litigation papers, the individual delivering them, often a professional process server, may ask that the person served sign an acknowledgment or receipt that simply notes who was served and the time and place of that service. After reading the acknowledgment, and finding it to be accurate, there is no real harm in its being signed by the person served. If possible, the person served should obtain a copy of what was signed, but if that is not possible, the person served should separately note the date, time and place they were served. The next step is critically important.

The person served should next deliver those papers, together with whatever they have retained or noted about how they were served, to the district clerk – fast. Speed is important here for a couple of good reasons. First, lawsuits such as the potential one that prompted this alert, often seek some kind of short-term relief, such as a temporary restraining order or a preliminary injunction, and normally allow for only a short period in which to respond. Second, in the event such a lawsuit is seeking to

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hold an individual (as opposed to just the district) personally liable, the individual involved usually has a short period of time to deliver the papers to the district clerk. This is required by statute and necessary to ensure that the district will be able to defend the lawsuit and appropriately indemnify the individual in the event damages are assessed.

Once a school district is officially in receipt of papers concerning the initiation of any lawsuit, two further steps are most advisable. First, the district's insurance carrier should be informed about the matter, and second, the originals of the papers should be sent to the school district's attorneys immediately.

If there are questions about any of this, or if we can be of help in the event your district is sued, please contact [Karl Kristoff](#) (716.848.1410), [Jeffrey Swiatek](#) (716.848.1449), [Andrew Freedman](#) (716.848.1332), or any member of Hodgson Russ's [Education Practice](#).

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