

RUPP, ANDERSON, SQUIRES  
& WALDSPURGER, P.A.



333 South Seventh Street, Suite 2800  
Minneapolis, MN 55402  
Office (612) 436-4300  
Fax (612) 436-4340

[www.raswlaw.com](http://www.raswlaw.com)

**YOU'VE BEEN SUED, NOW WHAT?**  
**Legal and Administrative Claims against School Districts**

**2021 MASA Fall Conference**  
**September 27, 2021**

**By Liz Vieira**  
**[liz.vieira@raswlaw.com](mailto:liz.vieira@raswlaw.com)**

**I. INTRODUCTION**

An experienced attorney will provide an overview of the processes for the various types of contested legal and administrative claims made against school districts and ways to avoid them. Topics will include state and federal court and administrative investigations and hearings involving OCR, EEOC, MDHR, special education, worker's compensation, unemployment, and matters before the Minnesota Office of Administrative Hearings. Attendees will learn best practices for going through some proceedings independently and when outside help is necessary.

**II. LAWSUITS**

**A. Basic Concepts**

- i. Types of Claims.** When school districts are directly involved in litigation, the suits will typically be civil claims in which a party or

---

NOTE: These materials and the corresponding presentation are meant to inform you of interesting and important legal developments. While current as of the date of presentation, the information that is provided may be superseded by court decisions, legislative amendments, rule changes, and opinions issued by bodies interpreting the area of law. We cannot render legal advice without an awareness and analysis of the facts of a particular situation. If you have questions about the application of concepts addressed in this outline or discussed in the presentation, you should consult with your legal counsel.

©2021 Rupp, Anderson, Squires & Waldspurger, P.A.

parties claim that the District did something wrong. That could include a claim that the District was negligent (a “tort” claim), the District breached a contract, the District violated a law or regulation (including laws related to employees, students, or the public), or others.

**ii. Parties.** The person or persons bringing a lawsuit is called the “Plaintiff(s).” The person or persons being sued is called the “Defendant(s).”

**iii. State vs. Federal Courts.**

1. Lawsuits against Minnesota school districts will generally be brought in either State District Court or Federal District Court.

a. State Courts in Minnesota are organized into nine judicial districts, with a courthouse physically located within each county.

b. The District Court for the District of Minnesota (Federal District Court) primarily operates out of courthouses in Minneapolis and St. Paul, but also has courthouses in Duluth and Fergus Falls where some proceedings are held.

2. The nature of the claim determines whether state or federal court is proper.

a. State Courts hear claims arising out of state laws, rules, and the Minnesota Constitution, including civil, criminal, juvenile, family, and probate matters.

b. Federal Courts hear claims arising out of federal laws, regulations, and the U.S. Constitution, and all bankruptcy matters.

c. Cases that involve both state and federal law can generally be heard by either court. The decision of which court to file in is a strategic one made by the plaintiff.

**B. Pre-suit Actions.**

**i. Document Incident.** If an incident occurs that could potentially lead to a claim, it is important for the district to maintain timely, accurate

records of what occurred. For example, the circumstances surrounding a serious classroom or playground injury should be immediately investigated by the District, its insurer, or counsel.

- ii. Notice of Claim.** State-law tort (negligence) claims require a party who intends to sue a school district or school district employee to provide notice of the potential claim within 180 days after the alleged injury. Minn. Stat. § 466.05. For other claims, lawyers will frequently notify the district of a potential claim in an effort to reach a settlement before the suit is filed.
- iii. Notice to Attorney and Insurer.** When a significant event that could give rise to liability occurs, upon receipt of a notice of potential claim, or upon receipt of a request to mediate, districts should notify their insurer so the insurer can make a determination of whether there is coverage for responding to the claim and assign a lawyer to defend the district. If there is any doubt about whether to notify the insurer, a district should contact its legal counsel for advice.

**C. Initiation of a Lawsuit.** A lawsuit is initiated against a school district when a summons and complaint are properly served on the district.

- i. Proper Service.** An important first step in a lawsuit is to determine when, or if, a plaintiff properly served a summons and complaint. Under the rules for Minnesota’s state courts, a plaintiff may serve a school district by delivering a copy of the summons and complaint to any member of the school board. Under the federal rules only, it would also be appropriate to serve a school district superintendent as the district’s “chief executive officer.”

**D. Responding to the Complaint.** When a school district is served with a complaint, it will need to respond in one of two ways. It will either serve a document called an “answer” or it will file a motion to dismiss the lawsuit. In most cases, an answer will be the school district’s first pleading.

- i. Time for Responding.** In Minnesota’s state courts and in federal court, an answer or motion to dismiss must be filed within 21 days of the date a party is served with a summons and complaint.
- ii. Affirmative Defenses.** Certain defenses must be asserted in an answer or they are waived. These defenses include:

1. lack of subject-matter jurisdiction;
2. lack of personal jurisdiction;
3. improper venue;
4. insufficient process;
5. insufficient service of process;
6. failure to state a claim upon which relief can be granted; and
7. failure to join a necessary party.

**E. Discovery.** If a lawsuit is not resolved through a motion to dismiss or early settlement, the parties will begin discovery.

**i. Initial Disclosures.** Each party to a lawsuit must automatically make disclosures of certain information. The deadline for making these disclosures in Minnesota’s state courts is sixty days from the due date of the answer. In federal court, initial disclosures are due fourteen days after the parties’ discovery conference.

**ii. Written Discovery.** A party may serve written discovery requests on the other party to obtain information and materials related to the lawsuit. The party upon whom the discovery requests are served must respond within thirty days. These discovery requests include:

1. **Interrogatories.** Interrogatories are questions posed to the other party to gain information related to the lawsuit. While a party may object to interrogatories, they generally must be answered.
2. **Requests for Production.** These requests are used to obtain copies of documents, electronically stored information, and other tangible things or to inspect property that are in the control or possession of the party upon whom the requests are served.
3. **Admissions.** A part may seek an admission from another party as to “statements, opinions of fact, or the application of law to fact.” Admissions are unique because if a party does not timely respond to these requests, they are automatically deemed admitted.

**iii. Depositions.** A party may seek to depose any person, regardless of whether the person is a party to the lawsuit. During a deposition, that person's sworn testimony is taken and recorded by a court reporter.

**F. Summary Judgment.** It is common for parties to make a motion for summary judgment during discovery or shortly after finishing discovery if they believe that they are entitled to judgment in their favor as a matter of law. This motion must be made in state and federal courts in Minnesota within thirty days of the close of discovery, unless the court sets forth a different deadline in its scheduling order.

**G. Alternative Dispute Resolution.** In both Minnesota's state courts and in federal courts, if parties do not resolve a lawsuit before trial, they will be ordered by the court to participate in some form of alternative dispute resolution. The most common form utilized by parties in Minnesota's state courts is mediation. In federal courts, magistrate judges hold settlement conferences with the parties.

**H. Trial.** If a lawsuit proceeds to trial, the trial could be held before a judge or a jury. While jury trials are common in civil lawsuits, not all causes of action are entitled to a trial by jury. In other circumstances, parties may prefer to have a judge hear the entire lawsuit.

**i. Jury Trials.** A jury is made up of six to twelve jurors. If a lawsuit is heard by a jury, the jury will only make findings of fact. The jury will not decide questions of law, as legal questions are reserved for the court. The jury will issue a verdict with its findings.

**ii. Bench Trials.** If a lawsuit is heard by a judge, the judge will decide both fact issues and legal issues. The judge will issue an order with its findings and conclusions.

**I. Challenging the Judgment.** There are many different avenues that a party may pursue to seek relief from an adverse judgment, including the following:

**i. Motion for New Trial.** A party may make a motion for a new trial based on specific criteria, including for example errors of law that occurred during the trial, among other things. This motion must be made within thirty days.

**ii. Motion for Relief from Judgment or Order.** A party may make a motion to correct a judgment or order due to mistake, newly discovered evidence, fraud, satisfaction, or other reasons. Such a motion must be made within one year of entry of judgment.

**J. Appeal.** Either party may appeal a judgment. The deadline for filing an appeal is sixty days in Minnesota's state courts and thirty days in federal court.

**i. State Court Appeals.**

1. The Minnesota Court of Appeals reviews matters directly from state district courts. The Court must hear every case brought to it. Parties file written arguments, which are followed by a hearing where the judges can ask the attorneys questions. Cases are decided by three-judge panels.
2. If a party disagrees with a Court of Appeals decision, they may petition for the Minnesota Supreme Court to review the decision. The Supreme Court takes only a small percentage of cases, typically those that involve significant or novel legal issues.
3. If the Minnesota Supreme Court agrees to hear a case, the parties again file written arguments. All seven justices hear the oral argument and ask questions before issuing a written decision.
4. The Minnesota Supreme Court is usually the last appeal, but in cases involving interpretation of federal law or the U.S. Constitution, a party may ask the U.S. Supreme Court to review the decision. Such requests are very rarely granted.

**ii. Federal Court Appeals.**

1. Appeals from federal district court are heard by the Eighth Circuit Court of Appeals. The country is geographically divided into 12 regional circuits and Minnesota is in the Eighth Circuit. The Eighth Circuit accepts written arguments and conducts an oral argument in front of a three-judge panel, which then renders a decision.
2. If a party disagrees with an Eighth Circuit decision, they may petition for review by the U.S. Supreme Court. The U.S. Supreme Court accepts only a very small percentage of cases that have significant nationwide impact.
3. If the U.S. Supreme Court accepts a case, the parties file written arguments followed by an oral argument in front of the nine justices. A written decision follows.

### III. ADMINISTRATIVE COMPLAINTS

**A. Administrative Charges and Complaints.** School districts are frequently required to respond to complaints filed with federal and state administrative agencies. In some cases, such as with certain types of discrimination claims, an individual must file an administrative complaint before she may initiate a lawsuit.

**i. Form of Response.** The form of a response to an administrative complaint will depend on the agency that is investigating the complaint. Most administrative agencies will ask a school district (1) to provide a narrative response to the complaint and (2) to respond to specific information or document requests.

**ii. Future Use.** School districts should not take responding to administrative complaints lightly for a variety of reasons. As an initial matter, a sloppy or inadequate response may result in future litigation or enforcement action against the school district. In addition, early leg work will avoid situations where the district or its insurer and legal counsel are continually attempting to gather information as a complaint is processed. Legal advice may be necessary to ensure all defenses are asserted at the earliest possible opportunity.

#### **B. U.S. Equal Employment Opportunity Commission.**

**i. Authority.** The EEOC is responsible for enforcing various federal laws including:

1. Title VII;
2. Pregnancy Discrimination Act;
3. Equal Pay Act
4. Age Discrimination in Employment Act;
5. Title I of the Americans with Disabilities Act;
6. Sections 102 and 103 of the Civil Rights Act;
7. Sections 501 and 505 of the Rehabilitation Act; and
8. Genetic Information Nondiscrimination Act.

- ii. **Charge of Discrimination.** An employee may file a charge of discrimination with the EEOC if the employee believes his or her employer has discriminated against him or her under any of the above laws. To be timely, a complaint must be filed within 300 days of the alleged discrimination. The employee is called a “Charging Party.”
- iii. **Notification from the EEOC.** The EEOC will notify an employer against whom a charge of discrimination is filed within ten days. The employer is called a “Respondent.” When the EEOC notifies the Respondent of the charge, it will offer the Respondent an opportunity to participate in mediation with the Charging Party.
- iv. **Position Statement.** If a Respondent declines to participate in mediation, then the EEOC will proceed with investigating the charge of discrimination. As part of the investigation process, the Respondent must submit a position statement responding to the allegations in the Charge within twenty days. The EEOC will provide the Respondent’s position statement to the Charging Party who will be able to submit a response with twenty days.
- v. **Investigation.** After receiving the Respondent’s position statement, the EEOC may conduct an investigation of the charge of discrimination. As part of its investigation, the investigator may interview witnesses and may request additional records and information. At the conclusion of the investigation, the EEOC will make a reasonable cause determination and issue either a Dismissal and Notice of Rights or a Letter of Determination.
  - 1. **Dismissal and Notice of Rights.** If the EEOC determines that there is not reasonable cause to believe that discrimination has occurred, it will issue a Dismissal and Notice of Right to Sue.
  - 2. **Letter of Determination.** If the EEOC determines there is reasonable cause to believe discrimination occurred, they will issue a Letter of Determination stating the reasons they believe that discrimination occurred and inviting the parties to seek a resolution through an informal conciliation process.
- vi. **Timeline.** The EEOC is supposed to complete its investigation and issue its probable cause determination within 180 days of receiving a charge of discrimination, but it frequently takes much longer.
- vii. **Lawsuit by EEOC.** If conciliation does not succeed in resolving the charge, the EEOC may file a lawsuit in federal court.

- viii. **Lawsuit by Charging Party.** If the EEOC determines that there is no probable cause to believe that discrimination has occurred or if the EEOC decides not to file a lawsuit, it will issue a Notice of Right to Sue to the Charging Party. At that time, the Charging Party may sue their employer. After receiving a Notice of Right to Sue, the Charging Party has 90 days to initiate a civil action.

### C. U.S. Department of Education’s Office for Civil Rights

- i. **Authority.** OCR is responsible for enforcing various federal laws including:

1. Title VI;
2. Title IX;
3. Section 504 of the Rehabilitation Act;
4. Age Discrimination Act;
5. Title II of the Americans with Disabilities Act; and
6. Equal Access Act.

- ii. **Discrimination Complaint.** An individual who believes that a school district has discriminated against them under any of the aforementioned laws may file a discrimination complaint with OCR. A complaint must be filed within 180 days of the alleged discrimination. OCR conducts an initial evaluation of all complaints and may either summarily dismiss the complaint or may open an investigation.

- iii. **Facilitated Resolution Between the Parties.** OCR offers Facilitated Resolution Between the Parties (FRBP) as a way to resolve a complaint early on in the investigation process. FRBP is similar to mediation. It is voluntary so both parties must agree to participate. In addition, OCR must approve the case for FRBP and does not do so for all complaints. If a school district is interested in FRBP, it should reach out to OCR as soon as it can after receiving the complaint or OCR will likely deem the case ineligible for FRBP.

1. Agreements reached during FRBP are unique because they are only between the parties; OCR is not also a party to the agreement. OCR does not monitor these agreements.

- iv. **Narrative Response.** If the parties opt not to participate in FRBP, a school district must respond to a complaint filed within fifteen days. The district must submit a narrative response addressing the allegations in the complaint and often must respond to specific requests for records and/or information submitted by OCR.
- v. **Investigation.** If OCR conducts an investigation of the complaint, it may interview witnesses and request additional records and information from the school district.
- vi. **Timeline.** Like the EEOC, OCR must complete its investigation within 180 days of receiving the complaint. Unlike the EEOC, OCR typically adheres to this timeline.
- vii. **Resolution Agreement.** Prior to the conclusion of its investigation, a school district may voluntarily enter into a resolution agreement with OCR. Similar to FRBP, OCR must determine that a resolution agreement is appropriate based on the circumstances of the particular case. A resolution agreement is between the school district and OCR, and OCR will monitor the district's compliance with the agreement.
- viii. **Letter of Findings.** At the conclusion of its investigation, OCR will issue a Letter of Findings. In its Letter, OCR will notify the school district if there is sufficient evidence to conclude that the school district failed to comply with the law as claimed in the complaint. If OCR determines that there is sufficient evidence to conclude that a school district violated the law and the school district has not entered into a resolution agreement, then OCR may proceed with terminating the district's federal funding or may refer the case to the U.S. Department of Justice.
- ix. **Lawsuit by Complainant.** The complainant may initiate a lawsuit against a school district for the conduct that is the subject of the discrimination complaint, regardless of whether OCR finds sufficient evidence to believe that a violation of the law has occurred.

#### **D. Minnesota Department of Human Rights**

- i. **Authority.** MDHR is responsible for enforcing the Minnesota Human Rights Act which prohibits discrimination in employment and in public education.
- ii. **Charge of Discrimination.** A "Charging Party" may file a charge of discrimination with MDHR if the Charging Party believes that a

school district has engaged in unlawful discrimination. A charge must be filed within one year of alleged discrimination.

- iii. **Mediation.** Once MDHR receives a charge of discrimination, it will notify the school district of the charge. At that time, it will offer to have the district participate in its voluntary mediation program.
- iv. **Response.** If a school district opts not to participate in MDHR's mediation program, it must file a response to the charge of discrimination within twenty days of receiving the charge.
- v. **Investigation.** If MDHR proceeds with an investigation of the charge, it will likely conduct interviews of witnesses and may also request additional records and information.
- vi. **Timeline.** MDHR is supposed to conclude its investigation and issue a probable cause determination within twelve months, but it typically takes much longer to resolve a charge.
- vii. **Probable Cause Determination.**
  - 1. If the MDHR ultimately finds probable cause that discrimination occurred, it may refer this matter to the Minnesota Attorney General's Office for litigation either in Minnesota District Court or before the Minnesota Office of Administrative Hearings.
  - 2. If the MDHR dismisses the charge without a finding of probable cause, the Charging Party has the right to initiate her own lawsuit within forty-five days of the dismissal of the charge. The Charging Party may also internally appeal the decision within thirty days.
- viii. **Conciliation.** MDHR also offers a conciliation program, much like its mediation program, to resolve charges where probable cause for discrimination has been found. The program is voluntary. Through the program, the school district may enter into an agreement with the Charging Party and MDHR.

## **E. Minnesota Department of Education Special Education Complaints**

- i. **Authority.** The MDE is charged with enforcing both federal and state special education laws.

- ii. **Special Education Complaint.** An individual or organization may file a special education complaint with MDE if the individual or organization believes that a school district has violated special education laws. The complaint must be filed within one year of the alleged violation. The Complainant must file the complaint with MDE and send a copy to the school district.
- iii. **Response.** A school district's response is due within ten business days of receiving the complaint, although extensions are regularly granted.
- iv. **Alternative Dispute Resolution.** The parties may utilize MDE's facilitated team meeting process or mediation program to resolve a special education complaint.
- v. **Timeline.** MDE is supposed to complete its investigation of and issue a decision on a special education complaint within sixty days.
- vi. **Decision.** If MDE concludes that no violation of law occurs, it will issue its decision and take no further action on the complaint. If MDE determines that a violation of law has occurred, it may develop an action plan with the school district to correct the violation. In addition, the school district must take corrective action to cure the violation.

#### **F. Unemployment Insurance Appeals.**

- i. **Initial Decision.** An employee may apply for unemployment compensation through the Minnesota Department of Employment and Economic Development. DEED will make an initial eligibility determination. If an employee is deemed eligible, DEED will also make a determination regarding the employee's benefits.
- ii. **Appeal from Initial Decision.** An employee may appeal an eligibility determination within twenty days. Appeals are heard by an Unemployment Compensation Judge assigned through the OAH. Hearings are typically conducted via telephone.
- iii. **Timeline.** The Unemployment Compensation Judge will typically make a decision on an appeal within twenty days.
- iv. **Request for Reconsideration.** A party may file a request for reconsideration with the Unemployment Compensation Judge within twenty days of the Judge's decision.

- v. **Appeal to Minnesota Court of Appeals.** Following a decision on a request for reconsideration, a party may appeal to the Minnesota Court of Appeals by writ of certiorari. An appeal must be taken within thirty days of the Unemployment Compensation Judge’s reconsideration decision.

#### IV. OFFICE OF ADMINISTRATIVE HEARINGS (OAH)

**A. Types of Claims.** Certain claims are brought through OAH rather than the judicial system. The right to a hearing by OAH is established by state law for fair campaign practices disputes, data practices disputes, special education due process hearings, workers compensation, and other matters. OAH employs Administrative Law Judges (ALJs)

**B. Procedures.** Unless there are specific rules relating to the type of proceeding, contested cases at OAH generally follow an abridged version of the process for a civil lawsuit, including a contested “trial” before one or more ALJs to reach a final outcome.

#### C. MDE Special Education Due Process Hearing.

- i. **Authority.** As an alternative to the complaint procedure, the MDE is charged with holding an impartial due process hearing “when a dispute arises over the identification, evaluation, educational placement, manifestation determination, interim alternative educational placement, or the provision of a free appropriate public education to a child with a disability.” Minn. Stat. § 125A.091, subd. 12. Such hearings are held before an Administrative Law Judge at the Minnesota Office of Administrative Hearings.
- ii. Special education complaints are typically coupled with a request for a due process hearing. If this is the case, the investigation of the complaint will be put on hold pending a decision at the due process hearing. A due process complaint covers allegations that are up to two years old.
- iii. **Prehearing Conference.** A prehearing conference will be held with the ALJ within five business days of the filing of the complaint.
- iv. **Response.** Within ten days of the district’s receipt of the complaint requesting a due process hearing, the district is required to submit a written response.
- v. **Resolution Session.** If the complainant has requested a due process hearing, the school district must convene a resolution hearing between

the parties within fifteen days. The resolution period extends for thirty days. If the parties are unable to resolve the dispute during that thirty-day resolution period, then the due process hearing will move forward.

- vi. **Mediation.** The parties may also agree to voluntary mediation with MDE.
- vii. **Timeline.** The ALJ must issue his or her decision within forty-five days of the expiration of the resolution period, unless the time period is extended for “good cause,” which is typical.
- viii. **Appeal.** A party may appeal both the MDE’s decision on the special education complaint or the ALJ’s decision at the due process hearing to the Minnesota Court of Appeals within sixty days of receiving the decision.
- ix. **Exhaustion of Administrative Remedies.** A party must exhaust administrative remedies pursuant to MDE’s complaint process before it may file a lawsuit.

#### **D. Worker’s Compensation Appeals.**

- i. **Initial Decision.** A school district’s worker’s compensation insurer will make an initial determination regarding coverage of an employee’s worker’s compensation claim.
- ii. **Appeal from Initial Decision.** If an insurer denies an employee’s claim, the employee may initiate an appeal with the Office of Administrative Hearings. Appeals are heard by a Compensation Judge assigned through the Minnesota Office of Administrative Hearings.
- iii. **Written Petition.** An appeal is initiated by the filing of a written petition with the Minnesota Department of Labor and Industry. The written petition must be served on the school district.
- iv. **Answer to Petition.** A school district must submit an answer to the petition within twenty days.
- v. **Timeline.** A hearing must be held within twenty-six months of the filing of a petition. After the hearing, the Compensation Judge has sixty days to make a decision.

- vi. **Appeal to Worker’s Compensation Court of Appeals.** A party may appeal the decision of the Compensation Judge within thirty days.
- vii. **Appeal to Minnesota Supreme Court.** A party may appeal the decision of the Worker’s Compensation Court of Appeals by writ of certiorari to the Minnesota Supreme Court. Appeals must be taken within thirty days.

## V. MANAGING LAWSUITS AND ADMINISTRATIVE COMPLAINTS

**A. Notify Legal Counsel and Insurer.** When a school district is served with a lawsuit or notified of an administrative complaint, it should immediately notify legal counsel and its insurer. This is important because lawsuits and administrative complaints have a short time period for responding.

**B. Preservation of Evidence.** In the litigation context, the law requires all parties involved in the dispute to preserve potential evidence. This obligation is triggered when a party becomes aware of a potential lawsuit. In many cases, this occurs before a plaintiff formally initiates a lawsuit. Since there can be harsh consequences and sanctions for a party that does not comply with its obligation to preserve records, it is important to address preservation issues as soon as a school district is aware of potential litigation. The following issues should be considered:

- i. **Cease the Routine Destruction of Applicable Records.** If any school district records are routinely destroyed in accordance with a records retention schedule, a school district must immediately take action to ensure that any records related to a potential claim are preserved and are no longer subject to the routine destruction of records.
- ii. **Electronically Stored Information.** Many records will be maintained in an electronic format. Electronic records also need to be preserved. As with paper records, a school district must immediately take action to ensure that electronic records, such as e-mails, are preserved. If a school district lacks the capability to handle IT issues internally, it will likely have to consult with an outside vendor to ensure that it is able to retrieve and preserve electronically stored information.
- iii. **Printing Electronic Records is Not Enough.** Due to metadata contained in electronic documents, a school district is not in compliance with its records retention obligations if it merely prints

hard copies of e-mails and other electronic documents. Electronically stored information must be preserved in its native format.

- iv. **Scope of Obligation.** The obligation to preserve records should be broadly construed. It is important for school districts to consult with legal counsel to determine what types of information should be preserved.

**C. Initial Fact Gathering.** Once a school district becomes aware of a claim, it will need to work with its insurer and legal counsel to begin gathering information for the purpose of evaluating the claim.

- i. **Data Privacy Issues.** A school district may share information related to a claim, including educational data or personnel data, with its insurer and legal counsel. These types of disclosures do not violate data privacy laws.

- ii. **Scope of Initial Fact Gathering.** The initial fact gathering should be as comprehensive as possible. The discovery phase of litigation will go more smoothly if a school district makes a serious effort at the early stages of a claim to gather relevant information and documentation. In addition, the school district's legal counsel and its insurer will use the information gathered to determine an appropriate strategy, which may include an attempt to reach an early settlement.

**D. Updating the Insurer.** After the school district's insurer is put on notice of a lawsuit or administrative complaint, it is important to keep the insurer updated on new developments. If the insurer has assigned an attorney to represent the school district, the attorney will generally provide updates to the insurer.

**E. Media Strategy.** If the claim is likely to garner media attention, a school district should work with legal counsel to determine an appropriate media strategy. The media strategy should address items such as who will be responsible for fielding questions from the media and the extent to which the school district wishes to comment on the matter. In most cases, one person should handle communications with the media to ensure that the school district's message stays consistent.

**F. Resolving Claims.** Most litigation cases are resolved through some type of settlement. Settlement is also an option for resolving most administrative complaints. These decisions are often difficult because they involve compromise.

- i. Insurance.** It is important to be familiar with your school district’s insurance coverage. Some policies give the insurer authority to settle claims without taking into account whether the school district agrees with the proposed settlement.
- ii. Settlement Agreements.** A settlement should be memorialized in a written document that includes a release of all claims. In addition, there are specific requirements that will apply for certain types of claims. For example, the Minnesota Human Rights Act (“MHRA”) provides for a 15-day rescission period where a claimant may rescind a release of an MHRA claim.
- iii. Cannot Agree to Confidentiality.** School districts cannot agree to language that would require a settlement agreement to remain confidential because such agreements are public data under the Minnesota Government Data Practices Act. However, a school district could agree not to disclose a settlement agreement unless an individual or entity specifically asks for a copy.

## **VI. QUESTIONS?**