ROOKIE MISTAKES: Common Errors by New Board Members

Tony F. Ortiz, Esq.

ORTIZ & ZAMORA
Attorneys at Law, LLC
Role of Counsel

- Advice offered today is similar to how we train other boards
- Based on years of watching boards and superintendents do things well and do things poorly
  - Combination of statute, policy, and “best practices”
  - Our job is to warn you of limitations
- Rookie Error:
  - Confusing our role. We are the board’s counsel. We work with the Superintendent but there is an understanding that we are still board counsel
- Rookie Error: Calling counsel without going through board president.
Measures of Effectiveness

Effectiveness of the Board is Rooted in:

- **Efficiencies**
  - How the board operates and how “functional” it is
  - Whether the board follows process

- **Communication**
  - How the board communicates about its aims with one another and the public
  - How the board handles sensitive communications

- **Validation**
  - Whether others follow the board’s lead.

- **Results**
  - Is the board actually accomplishing the small and big goals?
Does How You Conduct Your Work Matter for Student Achievement?

- From the research, it is clear that school boards in high-achieving districts exhibit habits and characteristics that are markedly different from boards in low-achieving districts.
- In the most dramatic examples from this research, scholars compared districts with similar levels of poverty and disadvantage to determine factors that separate high-performing districts from those with low performance.
- Data driven, common goals, adherence to roles, team concept
Rookie Error: Personal Conflicts

- Any group of 5 is going to have conflicts.
- Challenge is not to personalize.
- Challenge is not to air them in front of the public.
  - What are the impacts for the board?
- Avoiding public dysfunction.
  - Ideas: meet privately; resolve not to publicly address the other; mediation.
Rookie Error: Not Knowing Your Authority and Limitations

- Section 22-5-14 of the New Mexico Statutes: Superintendent Authority
  - Chief Executive Officer
  - Administer and supervise the school district
  - Employ, fix salaries, assign, terminate and discharge

*Statute places general administrative and all employment functions in the hands of the administration (HB 212)*
Rookie Error: Not Knowing Your Authority and Limitations

- Section 22-5-4 of the New Mexico Statutes defines the scope of Board Authority:
  - Focuses on setting policy direction
  - Budgets
  - *Limited* role in employment matters as a reviewing body
  - Acquire, lease and dispose of property
  - Except for salaries, contract for expenditure of money
  - Acquire property by eminent domain
Rookie Error: Acting Alone

- Error: Pursuing your own agenda
- Board members only have authority when acting with the board, not as individuals.
- In giving direction to the administration, the board must act as one body.
  - Speak to the superintendent with one voice, which is the majority on any one issue.
  - The superintendent cannot and should not have to pursue five agendas.
- Do not undermine the board majority decision or the administration’s attempts to implement.
Rookie Error: Investigating or Inserting Yourself in Administration Matters

- **Error: Acting as an investigator**
- **Board Member’s Proper Role:**
  - Help the superintendent anticipate problems
  - Be the “ears and eyes” of the district, not the legs, hands, and mouth.
  - Do not directly communicate with employees or community members regarding confidential problems
  - Remember that the superintendent is your CEO; all information should flow through him/her.
Rookie Error: Violating the Open Meetings Act

- Common errors: participating in a rolling quorum, email errors, notice/agenda errors.

- Basic principle: the Board cannot make any decision or discuss issues relating to public business unless the public has been given proper notice of the Board’s possible action and agenda’s posted.

  - Be familiar with executive session exceptions
Rookie Error: Creating Public Documents “by Accident”

- Error: Sending correspondence regarding public business without considering the implications
  - Common Errors: email, notes to the superintendent, administration or other board members.
- Statute that allows any person to inspect and copy any “public” document.
- Some protected documents: attorney client privilege, notes for personal use, personnel, identifiable student matters.
- Rule of Thumb: Do not write anything down regarding school business or on your accounts that you would not want to see in the newspaper.
Rookie Error: Violating Confidentiality

- **Error:** Speaking publicly about confidential topics or sharing confidential documents
- **Typical Examples:**
  - Employment Discharge Hearings
  - Review of student appeals may also involve conduct that is high profile.
  - Leaking Executive Session Discussion
- **Possible Negative Consequences of Confidentiality Violations:**
  - Civil Rights Claims
  - Undermining the Board/Superintendent/Programs
  - Causing Recusal from Your Participation in Issues/Hearings
  - Harming the District’s legal or financial interests
  - Public Embarrassment for you and the Board
  - Unauthorized Statements and Personal Liability
Rookie Error: Violating Confidentiality (cont.)

- **Error: Speaking for the Board**
  - A board member has no authority to speak publicly on behalf of the board unless designated to do so.
  - Complications with the press

- **Error: Commenting on executive session**
  - Just because a public decision is made does not mean that you are now free to discuss executive session.
  - The written decision of the Board is the final word on hearing matters. Comments about why a decision was made or what other board members thought may create problems if there is an appeal. Even seemingly harmless comments may damage the District’s interests.

- **Best practice: Let your superintendent or other designee answer inquiries.**
Rookie Error: Not Being Careful in Superintendent Hiring and Evaluation

- Errors: handing the decision to committees or other interested parties
- Hiring:
  - the most important decision of a school board
  - Educational Leader of the District
  - Salaries, benefits, term
- Error: timelines, changing content, failing to evaluate fully
- Evaluating
  - Schedule and Agreed-Upon Process
  - Choosing and collaborating on your forms
  - Clear guidance, with one voice
  - Verbal versus written
Rookie Error: Board Meeting Mistakes

- Meetings Errors:
  - Not preparing
  - Arguing or Commenting During Public Comment
  - Agendas: seeking improper agenda items
  - Asking visitors to executive session
  - Covering non-agenda topics during board discussion
  - Getting angry or personal in comments
Rookie Error: Improper Communication with Union

- Error: Improper communication regarding employees or CBA negotiation.
- What are your obligations to the District?
- What is the board’s role and what are appropriate boundaries?
  - It is not best practices for a board member to be on the negotiating team. It can impair the negotiation and also it runs counter to the principle that all board members constitute the client.
- Risk of undermining the superintendent or HR?
- Risk of giving the unions the impression that you can control HR matters?
Rookie Error: Improper Role in Contracting

- Typical Errors:
  - Communications with Contractors
  - Attempts to oversee work
  - Influencing who gets District work

- Board has authority to contract
- However, most boards, delegate contracting authority to the superintendent (with approval)

- So how do you handle a situation where you have concerns?
  - Pull off consent
  - Make sure contracts say “subject to board approval”
  - Board prep sessions
Rookie Error: Conflicts of Interest

- Error: Giving in to the temptation to use power improperly

Conflicts of Interest

- Procurement Code: no participation, publicly declare the conflict, no involvement, confidential bidding; board waives conflict.

- Governmental Conduct Act: Any self-dealing or actions taken to further the financial interests of oneself or family can be seen as a conflict. Punishable by up to a 4th degree felony.

  - Contracts and Personnel.

  - However, if board member bids, he/she must scrupulously avoid attempts to intervene, or if the contract is granted, to influence the procurement/construction project.

- Family?
Rookie Error: Mismanaging Complaints About Other Board Members

- Error: Publicly accusing another board member of ethics or legal violations.
  - Relationships
  - Circus atmosphere
  - Legal implications

- How do we ideally manage the concerns of a board member who believes the board or superintendent is violating law/policy?
Rookie Error: Social Media

- Error: Posting attacks or criticisms of staff, superintendent, board members or board actions.
  - Can turn into a form of improper public comment
- Again, we start with the core principle that no one board member can represent the view of the board unless authorized to do so. Thus, there is danger that a Facebook post can misrepresent the board’s position or cause confusion.
Rookie Error: Seeking to Volunteer

- **Error:** Pushing to volunteer in a regular position
- **Employment Barred:** Section 22-5-5
  - A. The members of a local school board shall serve without compensation.
  - B. No member of a local school board shall be employed in any capacity by a school district governed by that local school board during the term of office for which the member was elected or appointed.
- **Volunteering:** New Rules Distinguish Between “Regular” and “Spontaneous” Volunteers
  - Regular Volunteers
    - Regulations require interviews, supervision, evaluation, and training
    - Enforcement of Code of Ethics and Professional Standards (including dismissal)
  - Spontaneous Volunteers: The same rules do not apply but such volunteers still are to be “supervised” by school staff.
- **Potential Problems:**
  - Supervisory problems
  - Improper use of influence
  - Public Perception of a Board Member using his/her influence
- **Recommendation:** No board members as regular volunteers or spontaneous volunteers. However, more flexibility about serving as spontaneous volunteers.
Rookie Error: Giving Directives to Staff

- Error: Directing Staff on Projects
  - Authority?
  - Chain of command?
  - Improper pressure on staff?
  - Relationship with the superintendent?
  - Smooth operation of the District?
Rookie Error: Trying to Control Personnel

Error: Telling the Superintendent to hire/fire or raise/lower salaries.

- Board’s power with regard to salaries?
  - Salary schedules that impact this outcome?
- What options do you have to alter such a hire/salary?
- Where does the Board exercise its greatest influence over such issues?
Rookie Error: Recklessly Seeking the Discharge of the Superintendent

- Error: Telling the community that you are going to get rid of the superintendent.
  - Contract length and financial exposure?
  - History of evaluation, remediation and write ups?
  - Is there just cause?
  - Is a negotiated buy out a good use of public funds? Would PED approve it?
  - If not, what steps need to be taken to improve performance, provide guidance and document issues.
Rookie Error: Involvement in Student Discipline

- Error: Trying to Control a Student Matter
  - Legal authority to be hearing or discussing identifiable student issues?
  - Involvement at early stage of this complaint?
  - Board’s role in such matters?
Rookie Error: Special Access

- Error: Improper Site Visits
  - As a board member, do I have any access rights that are different from the community?
  - Is this disruptive?
  - How should sight visit requests be handled?
  - What is the likely impact on staff?
  - How are board special access issues, in this or other situations, likely to be viewed by the public?
Board Liability

- Your actions, taken in the context of your duties as a board member, are insured.
- If you are not “in the course and scope,” then you risk giving up that coverage.
- However, you should feel confident that you can carry out your duties without worrying about losing your financial security.
Questions

Tony F. Ortiz, tony@ortiz-zamora.com
Geno Zamora, geno@ortiz-Zamora.com
(505) 986-2900