The Role of the School Board in Managing Legal Issues

NMSBA 2019 Board Institute
Santa Fe, NM
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Role of School Board

ASSUMPTIONS:

With each passing day

- Your decisions will be scrutinized more closely. Your actions and decisions will be challenged.

- Attorneys will become involved at earlier stages of most disputes.
Role of School Board

What to do to be prepared:

I. DEVELOP Positive and Constructive Board Relationships.

- Within the Board
- With the Administration
- In the Community
Role of School Board

What to do to be prepared:

I. DEVELOP Positive and Constructive Board Relationships.

- Adopt a Policy or Protocol on Board and Administration Roles and Abide by It.
Role of School Board

What to do to be prepared:

I. DEVELOP Positive and Constructive Board Relationships.

II. KNOW the law or policy which applies to a disputed issue.
Role of School Board

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A. Powers & Duties of Local Board

- NMSA 1978 Section 22-5-4:
  - As governing body of the School District, the School Board must:
    - Develop policies and administrative rules for carrying out its powers and duties [§ 22-5-4A, K]
    - Hire the Superintendent [§ 22-5-4B]
    - Approve the budget [§ 22-5-4C]
    - Acquire and dispose of property [§ 22-5-4D]
    - Have **capacity to sue and be sued** [§ 22-56-4E]
    - Approve contracts pursuant to the Procurement Code [§ 22-5-4J]
II. KNOW the law or policy which applies to a disputed issue.

B. Establish the School Board’s relationship with School Attorney:

- As the institutional governing body, the School Board is the client.
- The Attorney represents the Board as a whole, not its individual members, but the Board can direct the attorney by majority action.
- In event of a conflict between Board and Superintendent, the attorney represents the Board.
Role of School Board

What to do to be prepared:

II. **KNOW** the law or policy which applies to a disputed issue.

C. Retaining School Board Counsel:
   - Procurement Code, Section 13-1-76 defines “professional services” to include services of attorneys.
   - Section 13-1-150B permits multi-year contracts for professional services, up to four years.
   - Legal services contracts are usually procured through an RFP process.
   - Note: The attorney or firm may not assist in drafting the RFP. Doing so disqualifies the attorney or firm from selection as counsel. § 10-16-15.
Role of School Board

What to do to be prepared:

II. **KNOW** the law or policy which applies to a disputed issue.

D. Adopt a Policy on Contact with School Board Counsel:
   - Superintendent and Board President are usual contacts.
   - Does the Board authorize other Board members to contact the attorney
     - With prior notice to the Board President?
     - Only if 2 other members make the request?
     - Avoid perception that attorney is “in the pocket” of the
       Superintendent/Board President/Board majority (this creates divisiveness.)
   - Does the Board share legal advice received with all members?
     - Should advice given to individual Board members be confirmed in writing and distributed?
   - Confidentiality/Attorney-Client Privilege Issues
Role of School Board

What to do to be prepared:

II. KNOW the law or policy which applies to a disputed issue.

E. Establish Sound Policies and Procedures:
   ☐ Update your policy manual.
   ☐ Arrange a facilities safety audit.
   ☐ Assure personnel policies are implemented, especially reference and background checks.
Role of School Board

What to do to be prepared:

II. KNOW the law or policy which applies to a disputed issue

F. Determine what legal standards or requirements apply
   - Federal law
   - State law
   - Regulations
     - Federal
     - State
     - School policy

Example: Employee contracts may create property rights which may not be taken away without due process
   - Suspension without pay
   - Termination
   - Discharge
II. KNOW the law or policy which applies to a disputed issue

G. Review Procedures which apply to the legal standard or requirement
   - Federal law
   - State law
   - Regulations
     - Federal
     - State
     - School policy

Example: Long term suspension/expulsion of student may require evidentiary hearing under school policy
- hearing before hearing authority/disciplinarian
- appeal to school board
Role of School Board

What to do to be prepared:

II. KNOW the law or policy which applies to a disputed issue

Bottom Line:

Look before you act!
Role of School Board

What to do to be prepared:

I. **DEVELOP** Positive and Constructive Board Relationships.
II. **KNOW** the law or policy which applies to the issue.

III. **ACT** in Accordance with the Law and Procedure
Role of School Board

What to do to be prepared:

III. ACT in Accordance with the Law and Procedure

• Follow established procedures
  • Don’t rely on the way it’s always been done, if current law, policy or agreements differ.
  • Failure to follow your own policy, procedure or written agreement makes you an easy target for an attorney representing employees, students or others in:
    •Suspension/expulsion hearings
    •Termination/discharge hearings
    •EEOC/HRD complaints
    •Procurement disputes
    •Employee grievances over discipline or evaluation
    •Collective bargaining disputes
Role of School Board

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IV. **TRAIN** Your Administrators
Role of School Board

What to do to be prepared:

IV. TRAIN Your Administrators

- Depending on their duties, Administrators must know how to:
  - Conduct an investigation of employee or student misconduct
  - Write up a reprimand or student discipline report
  - Properly suspend an employee or student
  - Respond to confrontations with parents, students or attorneys threatening to sue
  - Respond to public or student records requests/service of a subpoena
  - React to a crisis or emergency situation
Role of School Board

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II. **KNOW** the law or policy which applies to the issue.
III. **ACT** in Accordance with the Law and Procedure.
IV. **TRAIN** Your Administrators.

V. **INFORM** Staff and Students of your Rules and Expectations
Role of School Board

What to do to be prepared:

V. **INFORM** Staff and Students of your Rules and Expectations

A. Conduct in-service training for staff on
   - Job descriptions, duties and responsibilities and the evaluation process
   - Staff conduct codes
   - Other policies affecting their employment or benefits

B. Advise students about the student handbook and conduct rules, especially any new rules adopted by the board
   - Students will say they didn’t know the rule if it’s in board policy, but not in the student handbook

C. Get signed receipts for policies or conduct codes provided to staff, students and parents.
Role of School Board

What to do to be prepared:

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II. KNOW the law or policy which applies to the issue.
III. ACT in Accordance with the Law and Procedure.
IV. TRAIN Your Administrators.
V. INFORM Staff and Students of your rules and expectations.

VI. DOCUMENT, Document, Document
Role of School Board

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II. KNOW the law or policy which applies to the issue.

III. ACT in Accordance with the Law and Procedure.

IV. TRAIN Your Administrators.

V. INFORM Staff and Students of your rules and expectations.

VI. DOCUMENT, Document, Document.
Role of School Board

What to do to be prepared:

The Goal:

STAY
OUT
OF
COURT!!!
Thank you!

QUESTIONS?
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