



The Role of the School Board in Managing Legal Issues

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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

What to do to be prepared:

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

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** [§ 22-5-4E]
 - ◆ Approve contracts pursuant to the Procurement Code [§ 22-5-4J]

Role of School Board

What to do to be prepared:

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.
- ◆ Obtain Insurance Coverage Report/Update.
- ◆ 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

Role of School Board

What to do to be prepared:

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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- 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.

- 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



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- 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.

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

**VI. DOCUMENT, Document,
Document**



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- 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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