

# Board Liability – Risk Management and Coverage

April 13, 2018

Presented by:

Deborah Callahan, Executive Director

# Topics of Discussion

## *Risk Management:*

- There is RISK in Everything!
- Defining Risk Management
- Avoid, Prevent, Reduce or Transfer
- Board and Superintendent roles
- The “Target” on Your Back!
- Why Did My Spouse Get Sued?



# Topics of Discussion

## *Claims and Coverage:*

- Claims: When Prevention Doesn't Work
- Types of Claims Brought Against Board/Supt
- Communication with Pool
- Typical Policy Coverages
- Who/What is generally Covered
- Who/What is generally NOT Covered

# Topics of Discussion

## *Additional Information:*

- Case Examples
- Recommendations



# There is Risk in Everything!

- Fires, vandalism, air quality, bio-chemical hazards
- Earthquake, floods, windstorm, snow and ice
- Bus accidents, bus camera recordings
- Playgrounds, classrooms, science labs, shops
- Athletics, locker rooms, after school clubs
- Strip searches, drug testing, guns and SRO's
- Shootings, Rape, Sexual Molestation
- Time out rooms and de-escalation techniques
- Open Public Meetings Act, board meetings
- Public Records Requests, Media interviews

# Defining Risk Management

- The process of planning, organizing, leading and controlling the activities of an organization in order to minimize the adverse effects of accidental losses on that organization at a reasonable cost.\*
- You and your board are at the top of the decision-making chart for all district-wide programs.
- Each child deserves an opportunity for a bright future. Your decisions can make that happen.

\* *Essentials of Risk Management Process, ARM 54 Text, Insurance Institute of America*

# Avoid, Prevent, Reduce or Transfer

## *Avoid the Exposure:*

- You choose NOT to authorize a field trip to No. Korea

## *Prevent the Exposure:*

- You hire an attorney to assist you in handling a sensitive Public Records Request

## *Reduce the Exposure:*

- Parent signed consent forms, adequate supervision, proper training, maintained equipment

## *Transfer the Exposure*

- Purchase property and liability insurance, contractual transfers of risk

# Board and Superintendent Roles

From a risk management standpoint

## *Superintendent:*

- Superintendent should address all employee, student and operational issues as a rule.
- Superintendent brings issues to the Board for consideration and action.
- Superintendent sets the culture of the district.

## *Board*

- The Board has 1 employee: the Superintendent.
- The Board operates as a group within its board charge.
- All Board actions must be reflected in the minutes.



# The “Target” on Your Back

- Targeted solely because of your positions
- Institutional reputational risk
- Personal reputational risk
- Public perceptions and expectations
- Often named in lawsuits against district
- Generally sued for errors or omissions in areas within your oversight
- Sometimes sued even though you have had no involvement or knowledge with an issue

# Why Did My Spouse Get Sued?

- Sometimes your spouses are named as defendants in lawsuits against the district.
- Washington is a community property state.
- By naming your spouse, a plaintiff attorney protects his right to seek recovery directly from the personal assets of the Superintendent or Board Member.
- Board members get very upset when this happens.
- Ask the Pool to address the board's concerns in executive session
- Almost always removed by motion in court.

# Claims: When Prevention Doesn't Work

- *Complaints*: generally low level and handled internally; usually do not need counsel
- *Grievances*: if formal, can require use of counsel; can set a record for a lawsuit
- *Claims (formal and informal)*: tort claims, letters from attorneys, requests for \$; notify pool for investigation
- *Lawsuits*: notify pool within 20 days; request assignment of counsel

# Types of Claims Brought Against Board/Supt

- Discrimination – race, gender, disability, age, religion, transgender, etc.
- Sexual Harassment/Sexual Molestation claims
- Claims against the Superintendent
- Wrongful Termination
- Violation of Civil or Constitutional rights
- Benefits and Salary errors

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# Types of Claims Brought Against Board/Supt (cont.)

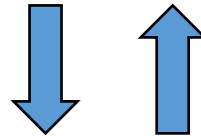
- Catastrophic injury or death claims (active shooter, athletics, drownings, suicides, abductions, etc.)
- Defamation, libel and slander
- Copyright Infringement
- Abuse of process claims
- Open Meetings Act violations
- Public Disclosure Act violations

# Communication by Superintendent to Pool

- Depending upon the size of the school district, the Superintendent, or designee, notifies a pool or carrier of a matter.
- Reporting of an issue or loss should be done at the earliest possible opportunity.
- Reporting should be done in writing, not by phone, unless extreme sensitivity is required.

# Communication by the Board Chair to Pool

**Board Chair**



**Pool/Carrier**

Regarding issues involving the Superintendent or in the Superintendent's absence.



# Other Communication

- When a serious lawsuit ensues, the pool will ask for time at executive session of a board meeting to discuss the case strategy and coverage.
- You should be told about any coverage concerns early in the litigation.
- During defense, confidentiality by the district is of the utmost importance.
- You should be kept informed of litigation status and have input as to settling or proceeding to trial.
- Sometimes your attendance may be needed at mediations or trial.

# Typical Policy Coverages

- Property Coverage
- Equipment Breakdown
- Crime Coverage
- Liability Coverage
- Errors and Omissions Coverage  
Employment Practices Liability Coverage

## *Risk Pools generally add:*

- Pre-Loss Legal Advice
- Investigation Coverage
- Special Education Hearing Coverage

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# Who is generally Covered?

- School District
- Superintendent
- Individual Board Members in the course and scope of their Board charge
- Marital-Community named spouses
- Board designated committees
- Employees in course and scope of their duties
- Volunteers under direction of district staff

# What is generally Covered?

- District buildings, contents, vehicles, etc.
- Money and securities
- Bodily Injury to third parties
- Property Damage to third parties
- Personal Injury to third parties
- Errors and Omissions
- Employment Liability

# Who is generally NOT Covered?

- Students
- Parents
- They are considered members of the public
- Providing free insurance to members of the public is considered a gift of public funds
- They can, however, benefit from certain No Fault coverage like Medical Payments and Premises Liability coverage that can provide relief with medical bills.

# What is generally NOT Covered?

## *Examples:*

- Board members who step outside the Board charge
- Employees who step outside of their duties
- Intentional acts – acts of malice
- Retaliation
- Punitive damages, fines or penalties
- Criminal activities
- Non-economic or Injunctive relief – apology, reinstatement, cleansing of documents from employment record, etc.

# Washington Case Examples

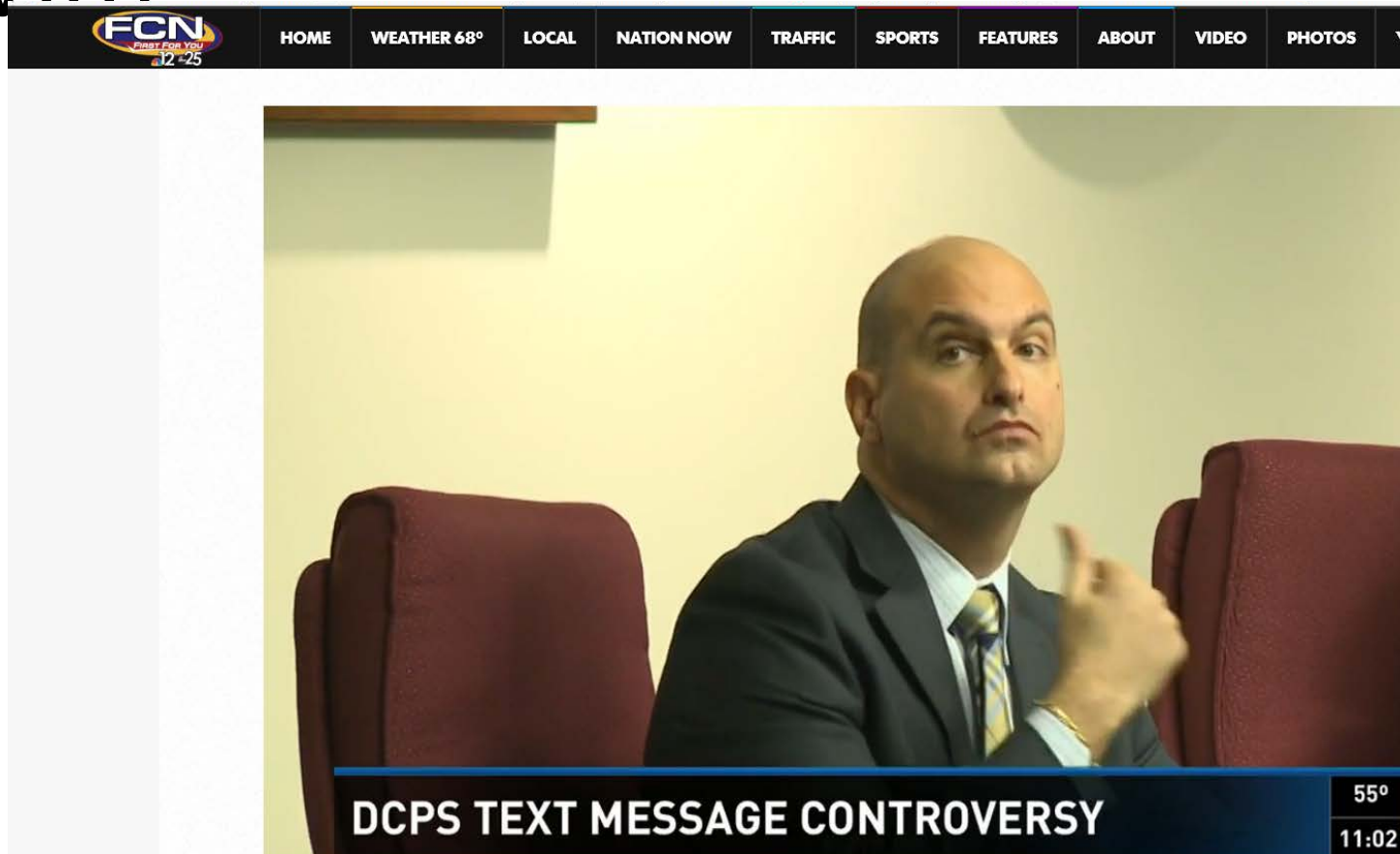
- School Board member drew defaming cartoon of sheriff and submitted to newspaper; sued for defamation.
- School Board member involved in internal investigation of a sexually-charged employment matter.
- School Board disregards legal advice and terminates a mentally disabled employee.
- School board member videotapes board executive session; police summoned over “tussle.”



# National Case Examples

- Wichita school board president says “this board meeting is held in public, but it is not for the public, or of the public.”
- New Hampshire school board sued for disallowing “negative” public comments.
- Georgia school board member accused of speaking in official capacity when publicly criticizing school board.
- North Bergen, New Jersey - Clerk of the Board indicted for taking confidential board documents from the district.

# Text messages show rift between school board, Superintendent Vitti



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Dr. Vitti was hired in 2012 to bring about change. But the superintendent said the changes he's making have been met with resistance -- despite the fact that the board voted unanimously to extend his contract last March.

"There's been a bit of a hostile work environment that has been present since the day I became superintendent," Vitti told First Coast News.

Text messages between a board member and the school board's internal auditor show displeasure with Vitti. On Sept. 25, the board member texted, "I vote, fire him now!!!!!!!!!!!!!!!" In a separate text the same day, the board member ridicules the superintendent, calling him "...Special Ed in action".

# Recommendations to Superintendents

- Instruct Board members to operate as a team and to stay inside their Board charge.
- Consult district counsel regularly and often.
- Follow legal advice as a rule, not exception.
- Refrain from making statements or promises you can't back up.
- Always refer issues to the Board to consider as a group.
- Identify a single spokesperson to interact with the media so as to present consistent messaging.

# Recommendations to Superintendents (cont.)

- Address all employee, student and operational issues as a rule, until brought to Board for action.
- Operate transparently.
- Have regular Board training in:
  - Open Public Meetings Act
  - Use of Executive Session
  - Public Records Act
  - Media Relations
  - Importance of Board Minutes
- Report your losses immediately.

# Thank You!

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