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!

Deborah Callahan
Executive Director
206-394-9727
dcallahan@wsrmp.com