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**CONFIDENTIAL-ATTORNEY/CLIENT PRIVILEGE
VIA EMAIL**

Amber Garriott, MBA, ARM-P/E, CPSI
Director of Risk Management
Washington Schools Risk Management Pool
P.O. Box 88700
Tukwila, WA 98138

Re: *WSRMP – White Paper on School Board Responsibilities & Liability*

Dear Ms. Garriott,

This White Paper is provided as an overview for WSRMP school board members. The paper's focus is two-fold as it discusses the responsibilities of board members and particular conduct that could result in liability or implications for a school district. While this document does not encompass all aspects of school boards and their members, it provides guidance for board members to review, so they are aware of the dos and don'ts of performing their duties within a school district.¹

I. Roles & Responsibilities

A school board is composed of board members, who are elected by the residents of a school district. The board is the governing body for a school district and created by the legislature with certain enumerated powers including (1) the discretionary power to determine and adopt written policies not in conflict with other law that provide for the development and implementation of programs, activities, services, or practices; (2) such powers as are expressly authorized by law; and (3) such powers as are necessarily or fairly implied in the powers expressly authorized by law.²

¹ See Appendix A for complete language of statutes discussed in this paper.

² See RCW 28A.320.015.

As the governing body, school boards carry out many responsibilities for the success of its school district, and while the legislature lists the above powers of a school board, it does not draw clear lines explaining board members' roles and responsibilities in detail. Generally, the school board, as a whole, is responsible for (1) setting the district's vision and mission; (2) hiring, supervising, and evaluating the superintendent; (3) governing the district through review, revision, and adoption of policies and procedures³; (4) serving as community representatives; (5) monitoring the district's progress towards goals; and (6) fiscal management of the district.⁴

A. Washington School Board Standards

As school boards are uniquely positioned to create a community-wide vision and set goals for improving student achievement, it is essential that each board member understand their overall role. To help board members, the Washington State School Directors' Association adopted five standards in 2009, which guide members in recognizing their crucial responsibilities as part of their school district's governance.⁵ The standards are described in detail below.

Please note that each school board must review this information in light of what is best for their students, staff, and schools. While these standards do contain some legal requirements, they were only created to provide guidance to boards and their members.

1) Provide Responsible School District Governance

The first standard addresses the roles and responsibilities of the school board as it conducts business, adopts policies, holds meetings, and governs the district. A board should conduct all business in a fair, respectful, and responsible manner. Each individual member should set aside their personal opinions and think about what is best for students and staff when governing the district.

With regard to internal business, a school board is responsible for establishing procedures for the operation of the district; electing officers; periodically reviewing their own performance; and working effectively and efficiently with each other, the superintendent, outside agencies, and members of the community. In addition, it is the responsibility of the board to retain an attorney for the district.

As school policies govern all aspects of school operations, when choosing to adopt policies, it is imperative that a board consider whether the proposed policy aligns with the current laws and the district's vision for helping its students succeed. Although many districts already have policies

³ See RCW 28A.150.230 for specific policies that must be adopted by the school board.

⁴ Washington School Board Standards (August 2018) [WashingtonSchoolBoardStandards.pdf \(wssda.org\)](https://www.wssda.org/WashingtonSchoolBoardStandards.pdf).

⁵ *Id.*

and procedures in place, it is critical that school boards routinely review and update/amend their policies and procedures as appropriate.

All board meetings should be conducted in a professional manner and comply with standards of the Open Public Meetings Act.⁶ It is crucial that the board ensure that the public receives notice of the time and place each meeting occurs. Further, the board and its members should encourage the public, its staff, and students to attend board meetings and provide input on the topics discussed in order to understand all perspectives. Generally, this is done by setting aside a time for public comment. Best practice is to limit the time each person can speak. Do not allow personal attacks. Although many citizens will want to engage with the board, we recommend that board members do not respond to public comment, simply listen. If necessary, members of the public can be reminded that open meeting laws give them the right to observe the process of government, not to become part of the governing body. By seeking support from their community, it shows the board is attempting to promote healthy relationships and that the board respects the opinions of others as it makes vital decisions for the District.

2) Communication of and Commitment to High Expectations for Student Learning

Standard two addresses the board's role for improving student achievement. It is the job of the school board to collaborate with the community and staff to determine the best way to increase student learning. It is through this collaboration that the school board determines the vision, beliefs, and goals for the district.

3) Creating Conditions District-Wide for Student and Staff Success

Standard three focuses on creating conditions for student and staff success. This success stems from policies and procedures adopted by the board and followed within its schools. The board should work to ensure the district has appropriate resources to (1) help train staff, (2) create a quality learning environment for its students, (3) provide safety and security, (4) provide an appropriate curriculum, and (5) obtain technology that supports the district's priorities.

The board is responsible for recruiting, hiring, and evaluating the superintendent. Often, it is said that the superintendent is the sole employee of the board. This task cannot be delegated to any other employee. In addition, while in most districts the board does not directly deal with staff members, it is still the board's responsibility to establish policies that govern salaries, salary schedules, and terms and conditions of employment. These responsibilities are usually encompassed in the school board's negotiations with unions for collective bargaining agreements. However, it is the superintendent's job to recruit, recommend for hire, evaluate, promote, and discipline staff in accordance with the policies and procedures put in place by the school board.

⁶ RCW 42.30, *et. seq.*

Standard three also encompasses the board's duty to approve and adopt an annual budget that aligns with the needs of the district. The school board is also responsible for other financial needs of the district including the adoption of policies for purchase, distribution, and disposal of supplies, property, and equipment. The school board further authorizes levy amounts and makes other financial decisions on behalf of the district, including decisions that relate to providing, updating, and renovating school facilities. All of this helps ensure an effective and efficient learning environment.

Lastly, although the school board does not directly work with students to solve problems, it sets policies which govern the actions of administrators and staff regarding student services and discipline.

4) Holding the District Accountable for Student Learning

All school board members should be committed to the continuous improvement of student achievement at each school within the district. Standard four focuses on monitoring school district progress through student assessments and other means. The data received from these assessments provides important data for school boards and personnel to review to ensure that all public-school students receive a quality education. While certain assessments are required in the state of Washington, boards may approve the use of other measures to obtain data of student performance. Many districts implement systems such as the Measures of Academic Progress and the Dynamic Indicators of Basic Early Literacy Skills to assist in monitoring district performance. It is important that board members understand how to evaluate data received through student assessments so that they can evaluate yearly progress and determine where improvement is needed. Along with testing, school boards ought to work with district leaders, staff, parents, and others to identify gaps in student performance. All of this data can be used to examine and revise plans to enhance student learning.

Further, evaluating the superintendent through clear and focused expectations can also assist in keeping the district accountable for student learning. If the board has a set process and evaluation for the superintendent, its members can objectively evaluate the superintendent's achievement and performance as it relates to his/her work toward student success.

5) Engagement of the Community in Education

School boards and their members should collaborate and engage with students, families, and community members to ensure district transparency and to obtain diverse perspectives. Standard five is focused on the board's responsibilities while engaging with the community and establishing partnerships.

A board should maintain a continuous two-way dialogue with staff, parents, students, legislators, and members of the community, which helps all parties gain understanding, receive

guidance, and stay actively involved in the education of the students within the district. This dialogue will ultimately help strengthen the district, as it will provide the board a means to determine needs, concerns, and expectations from the community.

As mentioned in standard one, board meetings are crucial to the above communication. It is important that the board follow all applicable laws when conducting board meetings. A board should let people know when and where the board holds meetings, provide agendas for each meeting, outline public comment procedures, and provide the purpose for any executive session so the public can understand what will be discussed behind closed doors.

II. Liability

A relevant portion of the statutory language regarding school boards indicates that “[i]t is the intent and purpose of this section to guarantee that each common school district board of directors, whether or not acting through its respective administrative staff, be held accountable for the proper operations of their district to the local community and its electorate.”⁷ In other words, it is ultimately the board that is held accountable. Thus, it is important to understand situations that may create liability for a school board and its members.

A. Potential Liability Issues

Below is a list of common situations which might result in legal implications for a school board or its members. While the list is not all-encompassing, it is comprised of common instances that could possibly lead to liability exposure. It is important that board members ultimately consult with district legal counsel when circumstances which may lead to legal concerns arise.

1) Conflicts of Interest in Contracts

Perhaps one of the biggest “don’ts” of being a school board member is engaging in business activity that is considered a conflict of interest. The law provides:

No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein.⁸

⁷ RCW 28A.150.230(1).

⁸ RCW 42.23.030.

In other words, a board member cannot personally benefit (directly or indirectly) from board decisions. Although this should be a general guideline for board members to follow, there are exceptions that may arise in a school setting.⁹ These exceptions include:

- (a) Selecting a bank or other public depository despite a connection to a school board member;
- (b) Publishing the district's legal notices in a newspaper in which a board member has a financial interest, as long as the newspaper is chosen by public bid or charges the district at rates not higher than prescribed by law for members of the general public;
- (c) Designating a board member as clerk or as both clerk and purchasing agent for the district;
- (d) Allowing second-class school districts to hire board members for unskilled day labor at wages not to exceed \$1,000 per calendar month;
- (e) Contracting for goods or services with board members if the value of the contract does not exceed \$1,500 in a calendar month. If the contract is for more than \$1,500 a month, the contract is still allowed as long as the conflicted member's interests do not exceed the \$1,500 limit. However, this exception is not applicable to a sale or lease if the district is the one selling or leasing to the officer. For example, a school district cannot sell leftover supplies to a board member even if the sale is less than \$1,500. All contracts awarded to a school board member under this business exception should be made available for public inspection and copying;
- (f) Allowing board members and their spouses in second class school districts to work as school bus drivers if they are paid no more than other school bus drivers;
- (g) The letting of any employment contract to the spouse of a board member, when such contract is solely for employment as a substitute teacher and for no more compensation than those in similar positions. The school district must also have a policy indicating that there is a shortage of substitute teachers in the school district;
- (h) Allowing an employee of a school district to continue working as a certified or classified employee if their spouse is a board member, as long as the employee was under contract before the date in which the board member assumed office and gets paid the same amount as prescribed in the pay plan or collective bargaining agreement;

⁹ RCW 42.23.030(2)-(12).

- (i) Hiring the spouse of a board member as a certified or classified employee as long as the district has fewer than 200 students, and the spouse is paid no more than other employees in similar positions, and
- (j) Allowing a board member of a second-class school district that has 300 or fewer students to work as a substitute teacher or substitute educational aide.

If a board member has an interest in a contract under one of the exceptions, that member must disclose their interest and cannot vote on the authorization, approval, or ratification of the contract.¹⁰ Failure to adhere to the provisions regarding conflicts of interest can result in a \$500 fine, other civil or criminal penalties, and potential forfeiture of office.¹¹ One big issue seen by districts includes voting on collective bargaining agreements when a board member has a spouse in the union. This would normally give rise to a violation.

If the board member has only a remote interest in a contract, it is not considered a conflict of interest.¹² However, these interests must be disclosed, recorded in the minutes, and the board member may not vote on that particular item.¹³ Attempting to influence individuals in voting for an item where a member has a remote interest may result in penalties. Remote interests that board members may have include: (1) working as a non-salaried officer for a nonprofit corporation with a business relationship to the district; (2) working as an employee or agent of a company doing business with the district if the board member's wages are entirely based on salary or fixed; (3) being the landlord or tenant of a contracting party, and (4) holding less than one percent of the shares of a corporation doing business with the district.¹⁴

2) Not Conducting Board Meetings Properly

It is important to ensure that all board policies and procedures regarding public meetings are aligned with constitutional protections for free speech and all applicable laws. The Open Public Meetings Act, which is encompassed in Chapter 42.30 RCW, lays out the requirements and procedures that a school board must abide by when engaging in public meetings with the community. For example, boards must record minutes for all regular and special meetings and allow public inspection of such minutes.¹⁵ In addition, the board should have a procedure in place in case interruptions occur that makes it unfeasible to continue a meeting. Various options for how

¹⁰ RCW 42.23.030.

¹¹ RCW 42.23.050.

¹² RCW 42.23.040.

¹³ *Id.*

¹⁴ RCW 42.23.040(1)-(4).

¹⁵ RCW 42.30.035.

to proceed if such a situation arises can be found in RCW 42.30.050. Further, a board shall not adopt any resolution, policy, or procedure in a private or secret setting.¹⁶

Under the OPMA, any gathering of a quorum of the board is considered a meeting and public business cannot be discussed. Sometimes, boards try to circumvent this by holding serial meetings or communications of less than a quorum, and in this way try to get consensus. You should avoid this practice. Even if a quorum is present, a full board may assemble for such things as training, as this is not conducting public business.

It is crucial that a school board timely post the time and location of each meeting. The board should allow the public to provide input and ensure the public receives the procedures on how public commentary will proceed at board meetings. The school board should also ensure that they explain in detail the reasoning for going into executive session if one is to occur at a meeting. Boards often find themselves facing implications for failing to allow individuals to speak at meetings and/or improperly using executive sessions. In addition, personal liability may result if individual board members knowingly take action in violation of the Open Public Meetings Act.¹⁷

If you are a new board member, you will receive training on the Open Public Meetings Act. This training should include further detail on the requirements for engaging in public meetings.

3) No Individual Authority

Try to remember that a school board's governing powers are vested in the board, not with individual board members. A board member does not have the authority to tell the school district what to do, speak for the board without discussion, or contract for the entirety of the school board unless it is through one unified voice. Individual member or committees may be formed for various purposes. Make sure that these responsibilities are delegated by the full Board, on the public record.

4) Personal Identifiable Information

The Family Educational Rights and Privacy Act prohibits the disclosure of personally identifiable information about a student without prior consent from the student's parent or the student (if 18 or older). 20 U.S.C. § 1232. By disclosing this information, a board member can create implications for the board and school district.

5) School Board Policies and Procedures

¹⁶ RCW 42.30.60.

¹⁷ RCW 42.30.120.

School boards and/or their members may become liable by not complying with policies and procedures, many of which contain federal and state requirements. Make sure to read and understand all board policies and procedures to ensure compliance. Failure to implement, amend, or follow policies and procedures can lead to implications for school boards.

6) Interactions with the Public & Interactions on Social Media

When interacting with the public, it is important to avoid talking negatively about an individual or mentioning personal opinions that do not align with the voice of the board as whole. Disparaging comments can lead to allegations that a board member defamed or showed an individual in a negative light. In addition, be aware of the information that is provided to the public. Remember, a board member will encounter a lot of confidential information. Providing this information to the public can create legal liability and/or lead to distrust in the community.

Always proceed cautiously when using social media. Board members and/or the board may be subject to personal attacks. In addition, individuals may spread misinformation about the district or the board. Although, a board member may want to speak out about those topics, it is important to avoid responding to those situations, as it can often make the situation worse and open the board to potential liability for various reasons. Social media is most often properly used by Boards to share fact-based information about the district and its schools.

Individual members may speak out as private citizens. If you do this, be careful to say clearly you are speaking as an individual and not a Board member.

7) Other Prohibited Acts¹⁸

No school board member can: (1) use their office to secure special privileges for themselves or others; (2) directly or indirectly, give or receive any compensation, gift, reward, or gratuity except through the school district; (3) engage in business or activities that might lead to the disclosure of confidential information acquired through their position with the district; (4) disclose confidential information gained as a board member, or (5) use confidential information obtained for their personal benefit.

Similar to conflicts of interests, a board member who engages in any of the above prohibited acts may receive a \$500 fine, in addition to any other civil or criminal liability or penalty.¹⁹ This conduct may also be grounds for forfeiture of the board member's office.²⁰

Conclusion

¹⁸ RCW 42.23.070.

¹⁹ RCW 42.23.050.

²⁰ *Id.*

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We hope this paper provides school board members with the most relevant information necessary to understand the responsibilities that come with being a board member and potential implications that may arise based on particular actions.

Sincerely,

A handwritten signature in black ink that reads "Duncan K. Fobes". The signature is written in a cursive style with a large, stylized 'D' and 'F'.

Duncan K. Fobes

DKF/CAL/jdl