Top 10 Reasons School Boards Get into Legal Trouble

Lessons from Education Attorney James Stoll

10. Acting Like an Individual Administrator

Board members overstep their authority by personally directing district/charter employees, investigating complaints, or interfering with the superintendent/charter administrator's administrative responsibilities. A board member's authority is generally exercised collectively through the board, not individually.

- **Why it creates legal risk:** It can undermine administrative authority, compromise impartiality, and create disputes over employee treatment and decision-making.
- **How to avoid it:** Focus on policy, oversight, and superintendent/charter administrator evaluation. Route complaints through the appropriate channels rather than conducting independent investigations.

9. Deciding Before the Public Meeting

Board members discuss district/charter business privately, build consensus, or reach tentative decisions before bringing the matter to a properly noticed public meeting.

- **Why it creates legal risk:** Private deliberations can violate open meeting requirements, undermine public trust, and result in costly litigation.
- **How to avoid it:** Conduct board deliberations through properly noticed meetings. Avoid using private conversations, emails, or group texts to build consensus or predetermine decisions.

8. Forgetting That Messages Can Become Public Records

Board members assume their emails, text messages, and other communications are private, particularly when using personal phones or accounts.

- **Why it creates legal risk:** Communications about district/charter business may be subject to public records disclosure. Written exchanges can also become evidence in litigation.
- **How to avoid it:** Communicate professionally, assume district/charter-related messages may eventually become public, and follow applicable records retention and disclosure requirements.

7. Relying on Outdated Legal Assumptions

Boards continue following policies or practices based on outdated interpretations of the law.

- **Why it creates legal risk:** A policy that was once appropriate may no longer comply with current state or federal law, exposing the district/charter to legal challenges.
- **How to avoid it:** Review policies annually and update them when legislation, regulations, or court decisions change. Work with district/charter administrators, legal counsel, and the Idaho School Boards Association to identify necessary revisions.

6. Misusing Executive Session

Board members use private conversations or executive sessions to discuss matters outside the legally permitted scope, develop consensus improperly, or make decisions that should occur in public.

- **Why it creates legal risk:** Improper deliberations can violate open meeting requirements and lead to litigation. The fact that a topic is sensitive does not automatically make it appropriate for executive session.
- **How to avoid it:** Confirm that the subject qualifies for executive session under applicable law, provide the required notice, limit discussion to authorized topics, and make final decisions in open session when required.

5. Failing to Recognize and Address Conflicts of Interest

Board members participate in decisions involving their personal financial interests, employment, family relationships, or business dealings with the district/charter without adequately addressing potential conflicts.

- **Why it creates legal risk:** Conflicts can undermine public confidence and may violate laws restricting the use of public office for personal benefit. Simply abstaining from a vote may not resolve every conflict.
- **How to avoid it:** Disclose potential conflicts promptly, seek legal guidance about recusal or other required actions, and avoid using a board position for personal advantage.

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4. Prejudging an Employee Hearing

Board members form conclusions about an employee disciplinary matter before reviewing the evidence or providing the process required by law.

- **Why it creates legal risk:** Premature judgments can compromise the board's impartiality and create due process concerns, particularly when an employee has protected employment rights.
- **How to avoid it:** Route complaints through established administrative procedures. Avoid promising a particular disciplinary outcome, investigating allegations independently, or making public statements suggesting the decision has already been made.

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3. Skipping Student Due Process

Boards impose student suspensions or other disciplinary consequences without following required procedures or giving students the opportunity to respond.

- **Why it creates legal risk:** Students have due process protections in disciplinary situations. Failure to follow applicable procedures can expose the district to legal challenges.
- **How to avoid it:** Follow the required disciplinary process, provide students with appropriate notice and an opportunity to respond, and assess each student's individual conduct rather than assuming everyone involved in an incident shares equal responsibility.

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2. Making Promises the Board Cannot Legally Keep

Individual board members promise specific employment outcomes, student placements, disciplinary decisions, contracts, or expenditures without proper authority or approval.

- **Why it creates legal risk:** An individual board member generally cannot bind the district/charter or guarantee an outcome outside established procedures. Such promises can create unrealistic expectations, disputes, and allegations of unequal treatment.
- **How to avoid it:** Refer requests to the appropriate administrator, follow established procedures, and ensure commitments receive the necessary authorization. Never promise an outcome the board has not lawfully approved.

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1. Treating the School Attorney as the Policymaker

Boards expect their attorney to decide what the district/charter should do rather than provide legal advice about the available options and associated risks.

- **Why it creates legal risk:** Legal counsel advises the board on legal requirements, restrictions, and risks, but the elected board remains responsible for policy decisions. Mischaracterizing the attorney's role may also create disputes about attorney-client privilege and whether communications remain protected.
- **How to avoid it:** Ask the attorney what the law requires, prohibits, and permits. Then exercise independent judgment to select the policy option that best serves students and the district. Seek legal advice before voting, not after a lawsuit is filed.