

# LEGAL RESPONSIBILITIES *of Board Members*

**A**dventist schools are blessed with a core of dedicated lay people who contribute their time and skills to the task of governing their local school. Those who serve in this capacity need a basic overview of the legal responsibilities of school boards and their individual members. This article will offer a brief overview of some areas that are of particular concern for Adventist school boards.\*

## **Conflict of Interest**

Each year, board members should be required to sign a form stating they have no conflicts of interest with their relationship to the school. Avoiding conflicts of interest means that personal preferences and commitments must not prevent the member from acting in the best interest of the school. In general, this means that members must disclose conflicting interests and refrain from voting on any item in which they have a personal financial interest. They should also refrain from accepting any gratuities from entities that do business with the school. For example, if a board member runs a local office supplies store and sells copier paper to the school, he or she should disclose that fact to other board members and re-

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frain from voting on a motion to establish an account with a mail-order discount office supply company.

Serious and continuing conflicts of interest may make board membership unethical. Employees (except the principal and business manager) generally are not voting members of the school board for this reason. A thorny problem is the choice of board members with relatives employed by the school or already elected to the board. Ideally, no immediate relative of such a person should serve as a board member.

However, in smaller communities, it may be difficult to find enough people willing to serve on the board who do not fall into one of these categories. In that case, at minimum, the fact must be made known to the board, and the member must refrain from voting on any action that directly affects the relative (such as an employment recommendation). The board chair should

take care in making committee assignments to avoid situations where relatives could become "voting blocs."

## **Protection of Students**

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**BY CHARLES L. MCKINSTRY**

disaster plan, and protect students from sexual misconduct.

### *Supervision*

Parents entrust the physical welfare of their children to the school. Board members should ensure that the teachers and principal provide appropriate supervision. Students must be supervised for a reasonable period before and after school. The exact length of time will vary, but a rule of thumb is 30 minutes before and after school. During the school day, students must be supervised continuously. Higher-risk activities, such as science and industrial technology labs, water sports, camping, and snow skiing, will require greater supervision, use of safety equipment, and training. Schools may even have a legal duty to more closely supervise students with known aggressive tendencies. School-sponsored field trips and off-site activities also require supervision by school personnel who are capable of providing for the safety of the students.

Example: The principal has hired a mother to supervise lunch and afternoon recess for grades 1 to 4. The supervisor must have adequate skills and judgment for dealing with children. She must be physically capable of doing the task and have training in emergency procedures. The number of children must be manageable within the physical characteristics of the playground; for example, the supervisor must be able to see all of the children from one position. Also, the type of activities in which the children are engaged will affect the supervision needed.

Board members should pay close attention to the issue of adequate supervision. On occasion, the board may wish to ask the principal to review the daily supervision of the students and present them with a report. The board needs to assist administration in providing adequate human resources to ensure appropriate supervision.

### *Safe Plant*

The safety of the physical plant is a joint responsibility of the board and administration. Larger schools should have a safety committee that meets on a regular basis and keeps minutes of its

meetings. The committee should oversee safety inspections, make decisions about corrective action, and follow up to make sure the work is completed. Board members should make sure that the safety committee is active. In addition, each board member should be personally attentive to unsafe physical conditions, calling such problems to the attention of the appropriate personnel. The board must provide adequate financial resources to create and maintain a safe plant.

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***School-sponsored field trips and off-site activities require supervision by school personnel who are capable of providing for the safety of the students.***

### *Disaster Plan*

Every school must have a current disaster plan. This plan must be more than a paper document. Adequate supplies and training must accompany the plan to make sure it covers all foreseeable events and that personnel are trained in its implementation. Board members should ask to review the school's disaster plan if the principal has not recently done so. The conference office of education will provide plans that can serve as models in devel-

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oping or revising the school's disaster plan.

## *Sexual Assault*

Protecting students from sexual assault is a very important duty of the school. Board members should oversee the school's compliance with mandatory provisions such as child abuse reporting and employee criminal record checks in accordance with local laws. Protection of students begins with the application and reference-checking process for new

employees. The personnel committee should ensure that the administrator doing the reference checks asks specific questions, such as whether the applicant (employee or volunteer) has ever been accused of sexual misconduct with a minor. Thorough reference-checking is part of the process. The administrator should check with each supervisor for the past 10 years. Calling only listed references is inadequate.

Ongoing supervision and keeping student well-being ahead of other competing concerns is crucial to providing an environment where students will be willing to come forward if improper actions occur.

## **Protection of Employees**

School boards can avoid legal liability by protecting employees from unfair treatment, harassment, and discrimination. Board actions affecting employment are serious matters that require dispassionate, careful decision-making. Board members must carefully review the governing provisions of the union education code. These are often specifically made a part of the employment contract. Even if a written contract is not used, board members can expect the courts to require the board actions to comply with the union education code provisions.

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In general, the following basic elements of due process<sup>1</sup> should be followed in any action adversely affecting the employment status of certificated personnel:

- *Notice.* The employee should be told what action is being considered and the basis for the action.

- *Access to Evidence.* Prior to the hearing, the employee should have access to relevant evidence, including items in his or her personnel file.

- *Hearing.* The employee should be invited to attend any hearing by the personnel committee or the school board relating to his or her employment, to hear any evidence presented, to ask questions, and to present his or her side before a decision is made. A representative of the conference office of education should be present to ensure that proper procedures are followed.

- *Appeal.* If the board votes to terminate the employee, an appeal to the conference board of education should be provided.

- *Reprisal.* The employee should be assured that no reprisal will be allowed against him or her for exercising these rights.

A wise board will steer away from rash or emotional actions and base its decisions on solid information. If a termination is being considered, prior written evaluations should normally reflect the problem, as well as efforts aimed at solving it.

In addition to ensuring procedural protections to employees who may be affected by adverse employment decisions, board members should protect school personnel from unlawful discrimination based on protected categories such as age, race, and disability. Employment applications and personnel committee and board discussions should refrain from any reference to even innocent information in these areas. To ensure that they are sensitive to the law and choose appropriate courses of action, the board should seek guidance from someone trained in these areas, perhaps a representative from the conference office of education, the principal, or a lay board member with specific experience and training.

A United States Supreme Court

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holding issued in June 1998 makes a printed policy and employee training important factors in avoiding liability from sexual harassment claims. Each union or conference should have a written policy in this area, and it should be distributed to each employee. Board members should ask the principal for a report on what has been accomplished in this area. If the actions are inadequate, the board should ensure that appropriate remedies are implemented.

### Protection of the School's Finances

Board members act as guardians of the school's funds. As such, the law requires them to act more carefully than they would with their own money. Board members must learn to read the school's financial statement. They should question the principal and/or business manager carefully to understand the statement. (See the article by David Penner on page 33.) Members should be alert to inaccurate or incomplete statements, which may include assets that are not listed on the financial statement such as a reserve fund or money held in scrip.<sup>2</sup> Also, they should watch for any bills that are unpaid but not recorded in accounts payable on the statement. Inadequate collection of accounts receivable (such as tuition) is a frequent problem. The board should adopt a written policy about collection, review accounts receivable regularly, and ensure that the policy is being followed.

Board members should watch for evidence of misappropriation of funds. Signs of this may include cash-flow problems when the operating statement looks strong, evasiveness or reluctance to reveal information by the business manager or principal, and a lifestyle inconsistent with income. Personal financial setbacks are sometimes the catalyst for misappropriation.

### Insurance

The church provides numerous protections to its institutions in the form of property insurance, liability insurance, and errors-and-omissions insurance. Board members need to carefully check the status of such coverage. In most cases, individual board members who

are named in a lawsuit will not be personally liable. The conference and school will indemnify the board member through a specific clause in the school constitution, as well as the union education code.

### Confidentiality and Defamation

School board meetings are generally open to parents and members of the constituency. One exception is when the board holds an employment or discipline hearing. At those times, the board should go into closed session. All non-voting members and employees, except the principal, should be excused. Items discussed in closed session by the board or its personnel committee must not be shared outside the room. Generally, state law provides a privilege to communications in a closed hearing. That protection is not available for parking lot conversations or sharing of private information orally or in writing. Board members have an ethical responsibility to honor the confidentiality of a closed meeting. Violation of this rule can result in personal as well as institutional liability.

### Summary

To obtain more information on any of these areas, contact your conference and union offices of education. However, you may also need to get specific information about local or national laws relating to your school. Serving as

a board member brings legal responsibilities to protect the students, employees, and assets of the school. Following the guidelines contained in this article will help board members meet these important requirements. ✍

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\* The guidelines in this article are based on laws in the United States, though the principles are applicable worldwide. All readers should consult the bylaws relating to education in their division, as well as local and national regulations.

### NOTES

1. Although due process as a constitutional requirement is not applicable to private employers, the courts will generally imply a covenant of good faith and fair dealing in all contracts. The end result looks very similar to constitutional due process. For additional information in this area, consult the board's legal advisor. Definitions of *certificated* and *classified* personnel are found in the box accompanying the Plubell article on page 17.

2. Scrip is a gift certificate sold by the school that provides a percentage of the value as profit to the school. It is a fund-raising device that is growing increasingly popular.

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**Boards should appoint a safety committee to do inspections of the school plant and grounds.**