

Legal Responsibilities of School Board Members

Adventism is blessed with a group of dedicated lay people who devote their time and skill to the task of governing church schools. This article will provide an overview of the primary legal responsibilities of a school board and its members. Although these are crucial issues, they must not be allowed to overshadow the mission of the institution. School boards and members should be sure to devote adequate time and attention to the most important issues of all, the spiritual and academic development of the students.

Avoiding conflict of interest means that the board member's personal interest must not prevent him or her from acting in the best interest of the school.

Conflict of Interest

Each year, board members should be required to sign a form disclosing any potential conflicts of interest. Avoiding conflict of interest means that the board member's personal interest must not prevent him or her from acting in the best interest of the school. If the board is considering a business transaction with a member, care should be taken to investigate the details and scope of the transaction as well as the member's involvement. Other alternatives should be explored. The transaction may be legal and ethical if all possible conflicts of interest are explored, and the results are in the best interest of the school.

For example: *A board member runs a local office supply store and sells copier paper to the school. The member should disclose this to the board and refrain from voting on any motion relating to the purchase of paper. Someone else should report on other possible suppliers and a comparison of prices. The board may validly purchase from the board member if the price is competitive, and if the transaction is in the best interest of the school. The board's minutes should reflect the details of this process.*

Serious and continuing conflicts of interest may make board membership unethical or illegal. School employees, except the principal and business manager, generally are not voting members of the school board for this reason. A thorny problem is the issue of board members whose relatives are employed by the school. Ideally, no immediate relative of an employee should serve as a board member. However, in small communities, many people are related, making it difficult to find qualified board members who are not related to a school employee. In that case, at minimum, the relationship must be revealed to the board, and the member must refrain from voting on any action that directly affects his or her relative,

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such as a job recommendation or vote on termination of the relative's employment.

Protection of Students

Board members must take an active role in ensuring the protection of students. This includes adequate supervision, maintaining a safe plant, having a current disaster plan, and protecting students from sexual misconduct.

Supervision

Parents entrust the physical and emotional 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. Even while school is not in session, if children are allowed to be on campus, a jury might hold the administration responsible for providing adequate supervision. During the school day, students must be supervised continuously. Some activities, such as those with known dangers (sports, science laboratories, wood-

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working, or auto repair classes) require more intense supervision. Schools have a legal duty to provide a higher level of supervision for 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.

Providing adequate supervision can be a critical concern in small schools with no office staff. While a school is not automatically liable for every injury that occurs, it may be held responsible if the level of supervision is judged to be negligent. In small schools, teachers may have little if any adult help. In order to keep students safe and avoid liability, the school board should arrange for supervision by a competent adult (1) to allow the teacher a daily break, and (2) to cover emergency situations.

Simply leaving the students unattended is unsafe and legally risky.

Example: The principal hires a mother to supervise lunch and afternoon recess for grades 1-4. The supervisor must have adequate skills and judgment for dealing with children. She must be physically capable of performing the necessary tasks and have had training in emergency procedures. The number of children she is asked to supervise must be reasonable, considering the physical characteristics of the playground. The supervisor must be able to see all of the children from one position. The activities in which the children are engaged affect the level of supervision required.

Board members should pay careful attention to the issue of adequate supervision. On a regular basis, the board should ask the principal to review the daily supervision of the students. The board needs to ensure that funds are designated to pay for adequate supervision.

Safe Plant

Landowners are legally required to inspect their property for dangerous conditions. Each school should

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have a safety committee that meets on a regular basis and keeps minutes of meetings. In small schools, the board may function in this capacity. The committee should oversee safety inspections, make decisions about corrections, and follow up to make sure the recommendations are implemented. The board should receive reports from the safety committee. In addition, board members should be personally attentive to unsafe physical conditions, calling them to the attention of the appropriate personnel. The board must provide adequate financial resources to create and maintain a safe plant.

Common problems in this area include playground safety issues such as protection under climbing devices, the condition of swings, open holes, and uneven surfaces. Sidewalks should be smooth and in good repair. Traffic patterns in driveways and parking lots should not put children at risk. If the school is on a busy street, crossing guards should escort children across nearby intersections.

Disaster Plan

Every school must have a current disaster plan. The plan must be more than a paper document. Adequate supplies and training are necessary to ensure that the plan is implemented effectively. The plan should deal with physical disasters (tornadoes, hurricanes, explosions, fires, chemical spills) as well as criminal acts. The board members should regularly review the school's disaster plan, which should be updated each year.

Sexual Harassment and Assault

Protection of students from sexual assault is a very important duty of the school. Board members should oversee the school's compliance with local and national laws relating to mandatory reporting of child abuse and employee criminal record checks. Protection of students begins with the checking of applications and references for prospective employees. The personnel committee should make

sure that the administrator doing the reference checks asks whether the applicant has ever been accused of sexual misconduct with a minor or has a criminal record of any kind. Simply contacting people whose names are provided as references is inadequate. The administrator should check with each supervisor for the past 10 years.

Ensuring ongoing supervision and putting student well being ahead of competing concerns is critical to creating an environment where students will be willing to come forward if improper actions occur.

Each school should also have a written policy dealing with student-to-student sexual harassment. Emphasis should be given to prevention, including age-appropriate training for students. Penalties for infractions should be voted by the board. School officials should intervene to discipline

the offender and protect the victims of harassment.

Protection of Employees

School boards have a legal and moral responsibility to protect employees from unfair practices, harassment, and discrimination. Board actions affecting employment are serious matters that require dispa-

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sionate, careful decision-making. Board members must review carefully the governing provisions of the union education code. These are often included in the employment contract. Even if a written contract is not used, board members can expect the courts to require board actions to comply with the provisions of the union education code.

The following basic elements of due process should be followed in any action adversely affecting employment status.

- **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.** At the employee's

written request, a hearing should be held to consider the relevant issues relating to the proposed action. The hearing body is the school board or personnel committee. The meeting is closed and is generally chaired by the conference superintendent. The employee should be allowed to be present and to hear the information concerning his or her employment, to ask questions, and to present his or her side *before* a decision is reached. Un-

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istrator). These protections should be provided to persons employed locally as well as those employed by the conference. Hearings are generally not required for part-time employees.

The conference representative will guide the process and ensure that the union code is followed. Generally, the conference superintendent chairs such hearings. The vote of the board constitutes only a *recommendation* to the conference board of education. In many unions, the employee has the right of appeal to the conference board of education. One of the surest ways for a school board to lose such an appeal is failure to follow the union education code.

In addition to providing procedural protections to employees regarding adverse employment decisions, the board should also protect employees from unlawful discrimination based on their membership in protected categories such as age, race, and disability. Employment applications, personnel committee, and board discussions should exclude reference to even innocent information in these areas. The board should be guided by a person or persons trained in these areas. This may be the representative from the office of education, the principal, or a lay board member with legal experience and training.

A recent United States Supreme Court case makes a printed policy and employee training important factors in avoiding liability for sexual harassment claims. Contact your conference office of education for a model policy. The policy should be distributed to each employee. Board members should ask the principal to report on progress in this area. If the actions are inadequate, the board should ensure that this is remedied immediately.

Protecting the School's Finances

Board members have a fiduciary responsibility for the funds of the school. As such, they are required by law to act more carefully than they would with their own funds. Board

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less specific permission is granted, the employee is not allowed to bring an attorney. The employee may present evidence on his or her behalf, including asking a witness to speak who has specific knowledge of the events in question. After the hearing, the employee is dismissed from the room and the board or committee deliberates and decides. After the employee leaves, *no new evidence should be introduced*. Board members must respect the confidential nature of the hearing and not discuss the evidence or deliberations outside of the hearing.

- *Appeal*. If the vote is for termination, the employee should be given an opportunity to appeal to the conference board of education.

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

Board discussions and decisions should be based on solid, factual information, and should avoid innuendo and emotional manipulation. If a termination is being considered, prior written evaluations should normally indicate the problem, as well as any actions taken to correct it.

Personnel decisions should always occur in closed session, with only board members allowed to be present. The hearing, if requested, must be conducted prior to a vote to terminate the employee. It weakens the due process protections for a board to recommend the termination of an employee and later, as an afterthought, to offer the employee a hearing.

The conference representative should be present any time a school board plans a vote that affects the status of an employee (teacher or admin-

members have a responsibility to learn how to read the school's financial statement. They should question the principal and/or business manager carefully in order to ensure that all aspects of the finances are clearly explained. Members should be alert to detect inaccurate financial statements. Problem areas often include assets that are not listed on the financial statement, such as a reserve fund; and unpaid bills that do not appear as an account payable on the statement. Delinquent student accounts are a common and potentially serious problem, since most schools depend heavily on tuition income for their working capital. The board should adopt a written policy about collection, review accounts receivable regularly, and ensure that the policy is followed.

Board members should watch for evidence of misappropriation of funds. Warning signs include cash-flow problems when the operating statement looks strong, over-protectiveness about information by the business manager or principal, and a personal 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, liability, and errors-and-omissions insurance. In most cases, individual board members who are named in a lawsuit will not be held personally liable. The conference and school will indemnify the board member. To make sure that all board members understand what is required of them in this area, information on these topics should be included in the board handbook and discussed at in-service meetings.

It is wise to have a specific clause in the school constitution as well as the union education code specifically providing legal protection to board members. Generally, insurance is obtained for your school through an

agreement between the conference and Adventist Risk Management. If you have questions about your coverage or do not currently have such insurance, talk to your conference insurance department or contact Adventist Risk Management.

Confidentiality and Defamation

School board meetings are generally open to parents of students and members of the constituency. An exception is when the board conducts an employment or discipline hearing. At those times, the board should go

ing open meetings, the board should exercise care to avoid discussing matters that affect the privacy rights of students, parents, and employees.

This protection does not cover parking lot conversations or repeating private information to others. Board members are ethically obliged to honor the confidentiality of the closed board meeting. Violation of this rule can result in personal as well as institutional liability. During open meetings, the board should exercise care to avoid discussing matters that affect the privacy rights of students,

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into closed session. All non-voting members and employees should be excused except the principal. Generally, communications in a closed hearing are considered an exception to the general rules about invasion of privacy or defamation. The information presented and discussed cannot be the basis for a judgment for invasion of privacy or defamation as long as the information shared is not knowingly false or malicious. This protection does not cover board members' disclosure of private information to others. Board members are ethically obliged to honor the confidentiality of the closed board meeting. Violation of this rule can result in personal as well as institutional liability. Dur-

parents, and employees.

Board members should exercise discretion in discussing any matter before the board. Even though a subject is discussed in open meeting, it may be harmful for board members to talk about it with others. The board should also respect the request of the chairperson or principal to defer public discussion of a particular agenda item until adequate research and documentation can be obtained.

Getting Help

Feeling overwhelmed? Help is available. You may have in your community or on your board an attorney experienced in at least some of the issues raised here who can assist with

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decision-making. However, board members need to be knowledgeable about the union education code and local and national laws relating to the operation of the school. The conference or union office of education can help school boards deal with education code problems and provide model school policies. Some unions

ble. Your state department of education likely has a summary of what laws apply to private schools. In countries outside the U.S., consult your regional or national education

discussed also are relevant for college or university boards, not all of the advice is applicable.

Though student supervision issues are less complex in a college setting, they still exist. Since students over 18 are considered adults in some jurisdictions, privacy laws may prevent parents from assuming the active role they take in K-12 student discipline and academic issues.

Due process protections for employees and students should be in place at all levels—kindergarten through university. Tertiary boards should hire legal counsel to provide guidance on a regular basis.

This article has provided an overview of several important areas. Running a school, even a small one, is a complex undertaking. Those who have accepted a position as a board member owe a duty to the school and to the church to act as knowledgeable, committed, impartial decision makers. An intelligent understanding of one's responsibilities as a board member is essential. Legal requirements change, requiring periodic updating of policy and practice.

While this article is written from a legal perspective, the duty to keep students safe and protect students and teachers from unfair actions is more than just a legal requirement. As a church, we have a duty to apply the principles of the kingdom in the way we run our schools. Our motivation should not be technical compliance or self-protection but seeking what is best for each student, teacher, and employee, and for the constituency. We teach our students a lot about our church by how we run our schools. ✍

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distribute a school board member handbook. Very likely the conference education superintendent has dealt with a problem such as yours before. He or she may recommend an attorney knowledgeable in local law and Adventist policies. Adventist Risk Management is another good source for insurance advice and preventative policies.

In the U.S., there are several nationwide organizations and periodicals that specialize in school law, such as the Education Law Association. While these can be helpful, most school law will be specific to your state. Further, not all the provisions in the state education code apply to private schools. In fact, in some places hardly any of them are applica-

official to determine what laws apply to private schools.

Summary

A board member has authority only when the board is in session. Individual board members do not have authority to act on behalf of the board outside of meetings unless the board has provided express authorization for such action. Board members are not authorized to individually evaluate the employees of the school or carry out actions voted by the board. Nor do they speak for the board.

This article is written specifically to guide the boards of Seventh-day Adventist elementary schools and academies. While several of the issues



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