

# ROOKIE MISTAKES: Common Errors by New Board Members

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# Role of Counsel

- Advice offered today is similar to how we train other boards
- Based on years of watching boards and superintendents do things well and do things poorly
  - Combination of statute, policy, and “best practices”
  - Our job is to warn you of limitations
- Rookie Error:
  - Confusing our role. We are the board’s counsel. We work with the Superintendent but there is an understanding that we are still board counsel
- Rookie Error: Calling counsel without going through board president.

# Does How You Conduct Your Work Matter for Student Achievement?

- From the research, it is clear that school boards in high-achieving districts exhibit habits and characteristics that are markedly different from boards in low-achieving districts.
- In the most dramatic examples from this research, scholars compared districts with similar levels of poverty and disadvantage to determine factors that separate high-performing districts from those with low performance.
- Data driven, common goals, adherence to roles, team concept

# Rookie Error: Personal Conflicts

- Any group of 5 is going to have conflicts.
- Challenge is not to personalize
- Challenge is not to air them in front of the public
  - What are the impacts for the board?
- Avoiding public dysfunction
  - Ideas: meet privately; resolve not to publicly address the other; mediation.

# Rookie Error: Not Knowing Your Authority and Limitations

- ▶ Section 22-5-14 of the New Mexico Statutes: Superintendent Authority
    - ▶ Chief Executive Officer
    - ▶ Administer and supervise the school district
    - ▶ Employ, fix salaries, assign, terminate and discharge
- \*Statute places general administrative and all employment functions in the hands of the administration (HB 212)

# Rookie Error: Not Knowing Your Authority and Limitations

- ▶ Section 22-5-4 of the New Mexico Statutes defines the scope of Board Authority:
  - ▶ Focuses on setting policy direction
  - ▶ Budgets
  - ▶ *Limited* role in employment matters as a reviewing body
  - ▶ Acquire, lease and dispose of property
  - ▶ Except for salaries, contract for expenditure of money
  - ▶ Acquire property by eminent domain

# Rookie Error: Acting Alone

- ▶ Board members only have authority when acting with the board, not as individuals.
- ▶ In giving direction to the administration, the board must act as one body.
  - ▶ Speak to the superintendent with one voice, which is the majority on any one issue.
  - ▶ The superintendent cannot and should not have to pursue five agendas.
- ▶ Do not undermine the board majority decision or the administration's attempts to implement.

# Rookie Error: Trying to Control Personnel

- ▶ Error: Telling the Superintendent to hire/fire or raise/lower salaries.
  - ▶ Board's power with regard to salaries?
    - ▶ Salary schedules that impact this outcome?
  - ▶ What options do you have to alter such a hire/salary?
  - ▶ Where does the Board exercise its greatest influence over such issues?

# Rookie Error: Investigating or Inserting Yourself in Administration Matters

- ▶ Error: Acting as an investigator
- ▶ Board Member's Proper Role:
  - ▶ Help the superintendent anticipate problems
  - ▶ Be the “ears and eyes” of the district, not the legs, hands, and mouth.
  - ▶ Do not directly communicate with employees or community members regarding confidential problems
  - ▶ Remember that the superintendent is your CEO; all information should flow through him/her.

# Rookie Error: Violating the Open Meetings Act

- ▶ Common errors: participating in a rolling quorum, email errors, notice/agenda errors.
- ▶ Basic principle: the Board cannot make any decision or discuss issues relating to public business unless the public has been given proper notice of the Board's possible action and agenda's posted.
  - ▶ Be familiar with executive session exceptions

# Rookie Error: Creating Public Documents “by Accident”

- ▶ Error: Sending correspondence regarding public business without considering the implications
  - ▶ Common Errors: email, notes to the superintendent, administration or other board members.
- ▶ Statute that allows any person to inspect and copy any “public” document.
- ▶ Some protected documents: attorney client privilege, notes for personal use, personnel, identifiable student matters.
- ▶ Rule of Thumb: Do not write anything down regarding school business or on your accounts that you would not want to see in the newspaper

# Rookie Error: Special Access

- ▶ Error: Improper Site Visits
  - ▶ As a board member, do I have any access rights that are different from the community?
  - ▶ Is this disruptive?
  - ▶ How should sight visit requests be handled?
  - ▶ What is the likely impact on staff?
  - ▶ How are board special access issues, in this or other situations, likely to be viewed by the public?

# Rookie Error: Communication Breakdown

- ▶ Error: Speaking publicly about confidential topics or sharing confidential documents
- ▶ Typical Examples:
  - ▶ Employment Discharge Hearings
  - ▶ Review of student appeals may also involve conduct that is high profile.
  - ▶ Leaking Executive Session Discussion
- ▶ Error: Speaking for the Board
  - ▶ A board member has no authority to speak publicly on behalf of the board unless designated to do so.
  - ▶ Complications with the press

# Rookie Error: Not Being Careful in Superintendent Hiring and Evaluation

- ▶ Errors: handing the decision to committees or other interested parties
- ▶ Hiring:
  - ▶ the most important decision of a school board
  - ▶ Educational Leader of the District
  - ▶ Salaries, benefits, term
- ▶ Error: timelines, changing content, failing to evaluate fully
- ▶ Evaluating
  - ▶ Schedule and Agreed-Upon Process
  - ▶ Choosing and collaborating on your forms
  - ▶ Clear guidance, with one voice
  - ▶ Verbal versus written

# Rookie Error: Board Meeting Mistakes

- Meetings Errors:
  - Not preparing
  - Arguing or Commenting During Public Comment
  - Agendas: seeking improper agenda items
  - Asking visitors to executive session
  - Covering non-agenda topics during board discussion
  - Getting angry or personal in comments

# Rookie Error: Improper Communication with Union

- Error: Improper communication regarding employees or CBA negotiation.
- What are your obligations to the District?
- What is the board's role and what are appropriate boundaries?
- Risk of undermining the superintendent or HR?
- Risk of giving the unions the impression that you can control HR matters?

# Rookie Error: Conflicts of Interest

- ▶ Error: Giving in to the temptation to use power improperly
- ▶ Conflicts of Interest
  - ▶ Procurement Code: no participation, publicly declare the conflict, no involvement, confidential bidding; board waives conflict.
  - ▶ Governmental Conduct Act: Any self-dealing or actions taken to further the financial interests of oneself or family can be seen as a conflict. Punishable by up to a 4<sup>th</sup> degree felony.
    - ▶ Contracts and Personnel.

# Rookie Error: Mismanaging Complaints About Other Board Members

- Error: Publicly accusing another board member of ethics or legal violations.
  - Relationships
  - Circus atmosphere
  - Legal implications
- How do we ideally manage the concerns of a board member who believes the board or superintendent is violating law/policy?

# Rookie Error: Social Media

- ▶ Error: Posting attacks or criticisms of staff, superintendent, board members or board actions.
  - ▶ Can turn into a form of improper public comment
- ▶ Again, we start with the core principle that no one board member can represent the view of the board unless authorized to do so. Thus, there is danger that a Facebook post can misrepresent the board's position or cause confusion.

# Rookie Error: Seeking to Volunteer

- ▶ Error: Pushing to volunteer in a regular position
- ▶ Employment Barred: Section 22-5-5
  - ▶ A. The members of a local school board shall serve without compensation.
  - ▶ B. No member of a local school board shall be employed in any capacity by a school district governed by that local school board during the term of office for which the member was elected or appointed.
- ▶ Volunteering: New Rules Distinguish Between “Regular” and “Spontaneous” Volunteers
  - ▶ Regular Volunteers
    - ▶ Regulations require interviews, supervision, evaluation, and training
    - ▶ Enforcement of Code of Ethics and Professional Standards (including dismissal)
  - ▶ Spontaneous Volunteers: The same rules do not apply but such volunteers still are to be “supervised” by school staff.
- ▶ Potential Problems:
  - ▶ Supervisory problems
  - ▶ Improper use of influence
  - ▶ Public Perception of a Board Member using his/her influence
- ▶ Recommendation: No board members as regular volunteers or spontaneous volunteers. However, more flexibility about serving as spontaneous volunteers.

# Rookie Error: Giving Directives to Staff

- ▶ Error: Directing Staff on Projects
  - ▶ Authority?
  - ▶ Chain of command?
  - ▶ Improper pressure on staff?
  - ▶ Relationship with the superintendent?
  - ▶ Smooth operation of the District?

# Rookie Error: Recklessly Seeking the Discharge of the Superintendent

- ▶ Error: Telling the community that you are going to get rid of the superintendent.
  - ▶ Contract length and financial exposure?
  - ▶ History of evaluation, remediation and write ups?
  - ▶ Is there just cause?
  - ▶ Is a negotiated buy out a good use of public funds? Would PED approve it?
  - ▶ If not, what steps need to be taken to improve performance, provide guidance and document issues.

# Rookie Error: Involvement in Student Discipline

- ▶ Error: Trying to Control a Student Matter
  - ▶ Legal authority to be hearing or discussing identifiable student issues?
  - ▶ Involvement at early stage of this complaint?
  - ▶ Board's role in such matters?

# Questions

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