

ETHICAL SITUATIONS SCENARIOS

2018 COSA – San Antonio

The Oklahoma State School Boards Association's Legal Staff

SETTING THE STAGE

Three scenarios will be presented. The panel of attorneys will address ethical rules and issues associated with each of the scenarios. The scenarios will include the perspective of all types of attorneys that work with school districts:

Retained Legal Counsel

In-House Legal Counsel

State Association Counsel

Insurance Defense Counsel

SCENARIO #1

1. Sample document from Association Counsel.
2. Modified by Retained Counsel.
3. Superintendent/Board Drama Ensues.
4. Superintendent's Wife Files Unemployment Claim – Supt does not want to protest.
5. Superintendent Files Unemployment Claim – Prior to being let go.
6. Superintendent Let Go.
7. Lawsuit Filed by Superintendent.

CONTRACT SAMPLE

Association counsel create sample employment contracts which are available for free and are online for easy retrieval. A school board and incoming superintendent utilize this contract as a starting point for negotiation. The attorneys for the school board and for the superintendent revise the terms until an agreement is made.

OSSBA Sample Superintendent Contract

This Contract is made and entered into this ____ day of _____, 20____, by and between _____ Schools, Independent School District No. _____, County, Oklahoma, ("District"), and ("Superintendent").

Whereas, District hereby agrees to hire Superintendent to be employed as superintendent of _____ and Superintendent hereby agrees to accept this offer of employment.

Therefore, the parties hereby enter into this contract, subject to the following terms and conditions:

Term. In consideration of the premises contained herein, District hereby employs, and Superintendent hereby agrees to accept employment as superintendent of _____ Public Schools for a term commencing _____ and ending on _____, 20____, subject to such conditions and limitations as may be prescribed by _____.

Certification. Superintendent acknowledges that Superintendent has a valid certificate to serve as a superintendent in the State of Oklahoma and agrees to keep such certificate on file in District's administrative office and to maintain such certificate in good standing during the term of this contract.

Duties. Superintendent agrees to perform in good faith the duties required of District's superintendent of schools as shall be prescribed by federal and state law, Oklahoma State Department of Education, policies established by the District Board of Education, the job description of Superintendent, and other documents concerning Superintendent. Superintendent also has the responsibility to obtain all training pertaining to the performance of Superintendent's duties.

Superintendent shall be required to qualify for a surety bond in the amount of \$100,000 as per 70 O.S. § 5-1-1.

LEGAL INFORMATION VS. LEGAL ADVICE

Some time in, problems arise. The Superintendent calls the association for legal guidance, but he asks questions in general terms – can the board terminate a superintendent mid-year? What can the board do as far as amending contract terms? His questions become more specific, and he finally questions whether he can be dismissed and how does his contract protect him and his pay. It becomes very clear the superintendent is talking about his own employment contract. On the same day, the Board President also contacts association counsel asking similar questions.

Ethical issues?

ROLE OF RETAINED COUNSEL

The Board President is also a Director on the Association Board. He contacts the Association Executive Director asking if the association legal team can review what their retained legal attorney has advised, because he thinks and hopes that it's incorrect. He says he'll send over the opinion letter and other emails and contract review notes from the attorney. The board does not want to pay this Superintendent for the rest of his contract. The Association Executive Director brings the matter up in a legal team meeting and asks the attorneys to review the retained legal counsel's work.

Ethical issue?

UNEMPLOYMENT CLAIM FILED BY SPOUSE OF SUPERINTENDENT

Meanwhile, the Superintendent's wife (a teacher at the school) files for unemployment. These claims are handled by an in-house unemployment representation program (essentially a mini law firm within the association). Typically in claims against this school, the Superintendent is the direct contact for protest information. Yet, truly, the attorneys have attorney-client relationship with the board. They represent the school. In response to the claim, the Superintendent directs the attorneys not to protest his wife's unemployment claim. This feels like a major conflict of interest. Do the attorneys contact the board?

UNEMPLOYMENT CLAIM BY SUPERINTENDENT

UNEMPLOYMENT CLAIM FORM

Personal Information

Name (Last)	First	Middle Initial	Last	State	Home Telephone
Address (Mailing Address)	City				

Soon, the Superintendent stops coming to work yet is still the legal Superintendent for all purposes as he hasn't been terminated. He files a claim for unemployment claiming he has been discharged. The same concerns arise as he says not to protest the claim!

LAWSUIT FILED

The Superintendent then files a lawsuit against the school board for wrongful termination and claims he wants his job back. Later, he amends his pleadings and asks for damages of lost pay. The school's insurance carrier hires an attorney in defense of the claim.



ATTORNEY-CLIENT PRIVILEGE

Now, association counsel, retained legal counsel, insurance-hired legal counsel are all working on separate claims/lawsuits following this disagreement between the Superintendent and the School Board. Who represents whom? When does attorney-client relationship begin and/or end? What conflicts of interest exist? What can be shared and what is confidential between the parties and between the attorneys? Can and if so, how, can the attorneys work together on these defenses?

SCENARIO #2

Multiple calls to State Association from different parties in the same district. Each call includes “new” information which slightly alters the presented fact pattern.



ASSOCIATION COUNSEL

The Superintendent calls the association attorney for assistance on a student discipline issue. There was a fight between two students. Association counsel suggests suspension according to school policy not to exceed limitations in school law and also mentions contacting law enforcement.



MULTIPLE CALLERS...

A little while later, a school board member calls the association and reaches the same attorney. More information is provided by the school board member. He says his child was jumped by the superintendent's son. The Superintendent has called the board member to let him know his kid is suspended for 5 school days. When the school board member asked about the discipline for the other student, the superintendent said he can't talk about it. But rumor has it that only the board member's son is being punished. The school board member says he might call retained legal counsel about initiating termination of the superintendent. He asks what he should do.

PRINCIPAL

The school board member calls the principal and asks him to handle it. The principal calls the association and asks for guidance.



SCENARIO #3 MULTIPLE ATTORNEY INVOLVEMENT

- A Superintendent calls the association asking about suspension of a special education student who has attacked a teacher. Based on the information given, the association counsel provides the applicable statute by email and suggests it could be up to 10 days. However, the Superintendent later forwards an email from in-house counsel disagreeing with the applicable statute and timeframe of possible suspension. He believes suspension can be up to a semester. The Superintendent then suspends the student for a full semester.

MULTIPLE LAWSUITS

The parents of the special needs student file a lawsuit against the board of education in their official capacity, then file another suit against the superintendent and every teacher who ever saw the student, including one who just before the incident drug the student down a hallway.



MULTIPLE ATTORNEYS WORKING ON CLAIM

The retained legal counsel has been working with in-house counsel on the initial lawsuit, but then once damages are requested, the insurance carrier hires another defense attorney. The insurance company directs that only its hired counsel will defend the school and dictated exactly how many depositions can be taken to save costs.



QUESTION TO STATE ASSOCIATION COUNSEL

The school board calls association counsel for guidance and asks who can decide which attorney(s) will defend the school and who decides what legal actions to take in defense.



CONCLUSION

Key to assisting school board members and administrators with legal information and services is to remember that all of the attorneys working with a school district maintain professional respectful relationships and understand that they are all working in the best interest of the client.



School board members and employees

THANK YOU FOR YOUR ATTENTION!

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