

ROOKIE MISTAKES: Common Errors by New Board Members

Tony F. Ortiz, Esq.

ORTIZ & ZAMORA
Attorneys at Law, LLC

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 an 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 4th 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

Tony F. Ortiz, tony@ortiz-zamora.com

(505) 986-2900

ORTIZ & ZAMORA
Attorneys at Law, LLC