

“WELCOME TO BOOT CAMP”



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North Bay Schools
Insurance Authority



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On My Desk in the Last Year ...

School Board Members threatening to sue or file criminal/regulatory charges against one another, based on alleged “discrimination,” retaliation,” and “conflicts of interest.”

Teachers giving “news reports,” writing social media “posts,” and filing lawsuits containing confidential student information (names, “adverse” events, etc.), leading to terminations and risk avoidance activities.

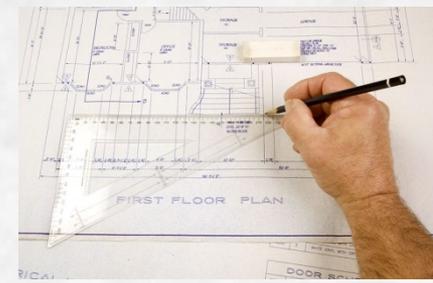
Students calling police due to teacher physical/verbal outbursts.

Parents and nurses disputing roles/responsibilities regarding “medication,” with changed laws creating new tension in this area.

Drunk “off-duty” employees, driving their cars, creating multi-million losses when they kill people, with regulators creating new “off-duty” exposures regarding “distracted” driving related to texting/cell phone use.



Districts reapproving vendors interacting with students who have knowingly violated free education laws and health/safety laws.



Architects seeking to evade all liability for negligent design plans that could leave Districts facing multi-million dollar exposures.

Grand juries issuing critical reports regarding school district operations, creating distractions, liability exposures and costs.



District counsel stating: (1) they have an **“aggressive” style in drafting policies/responding to claims**, (2) their advice was based on **what the District “wanted to hear,”** and (3) **that because they did not like the “outcome”** of provided analysis, they would not recommend a change in policy even through they never provided a responsive/contradictory analysis. **In each case, the District ended up financially paying for this “advice.”**



Self-drafted Board Policies resulted in multi-million dollar judgments when they created unexpected/unrealistic legal standards.

Districts have (improperly) failed to provide the JPAs with full claim information, while also (improperly) disclosing claim information to parents and others, **putting themselves and the JPA at risk.**



Illegal school fee bill called too harsh for struggling districts—Illegal OK to professional educators (April 2012)

“One-fifth of all public school principals surveyed by UCLA last year reported that their schools have begun requiring students and their families to pay for instructional materials,” said Brooks Allen, director of education advocacy for the ACLU of Southern California.

Teacher fired over Facebook photo

A parent of a student complained because one of her photos on her Facebook showed her holding two glasses of alcohol while on vacation.

Let’s make this clear. She was not drinking on the job. She was on vacation. And like the rest of us would, she was sharing her vacation photos with her Facebook friends, including a picture of her with alcohol.



Atherton Student Calls 911 On Teacher, Gets Him Suspended

An allegedly frightened student at Selby Lane School in Atherton called 911 from the girls' bathroom after a teacher freaked out on his students and dropped/threw a desk. The 13-year-old girl, Maria Prado, claims her teacher, John Haynes, got mad and started swearing at students and "throwing furniture around." Police responded to the classroom, and after "investigating" they found that Haynes had only "dropped" a desk from a few inches above the ground, in order to get students' attention (we're picturing them tittering and texting), and the desk fell on its side.

California appeals court rules teacher sexual harassment investigation records are public

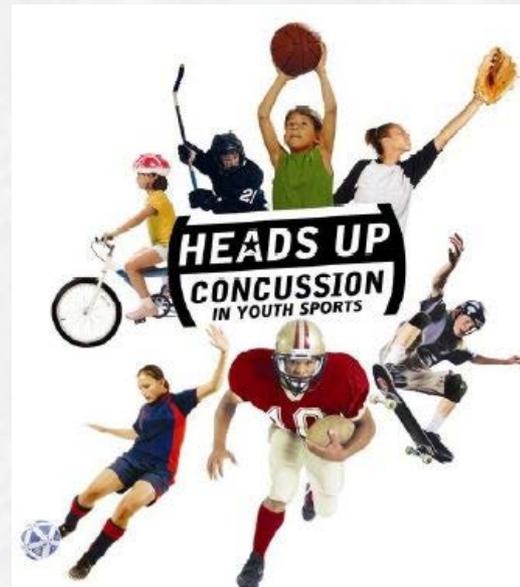
If a school district finds that one of its teachers has sexually harassed a student, a California court says the public has the right to see the records of the investigation.

The ninth-grade teacher, who was reprimanded but not criminally charged in the incident, has substantial privacy rights at stake, said the Second District Court of Appeal in Los Angeles. But the court said parents have an overriding interest in learning about a schoolteacher's conduct and how school officials responded to it.



New California concussion law exposes some dangerous gaps

One issue is that the law applies only to school-sponsored teams. Club teams, for whom thousands of California children compete, are exempt. The bigger issue, experts say, is that with the exception of football, there are not usually any medical personnel present who have experience in diagnosing concussions. That leaves it in the hands of coaches to determine if a player might have a concussion and if that player should be removed from competition.



Luther Burbank School district misses the mark in its response to the Grand Jury

California grand jury report alleged corruption in school district/police department

Grand jury hammers Winters School District on open government and transparency issues

Tulare County School Districts Superintendents' severance policies :

There is a never ending demand on the taxpayer, by the public schools, for additional funds with which to operate. This together with the high severance package payoffs received by many superintendents who are removed by their boards, prompted the grand jury to investigate salaries and severance packages of the district superintendents.

San Diego Grand Jury Report

The Grand Jury investigated complaints concerning the improper administration of the ASB funds. ...This investigation in turn led to discovery of misuse, misappropriation and commingling of District General Funds, over-payments of salary, bonuses and overtime, under-reporting of vacation time, and inaccurate expense and accounts payable treatment.

Contra Costa Grand Jury

Schools Districts analyzed for school board members' stipends, health benefits and other "perks"

Shasta County Grand Jury

Failure to provide training to board members and officers on California's "open meeting" laws and compliance with ethics certifications

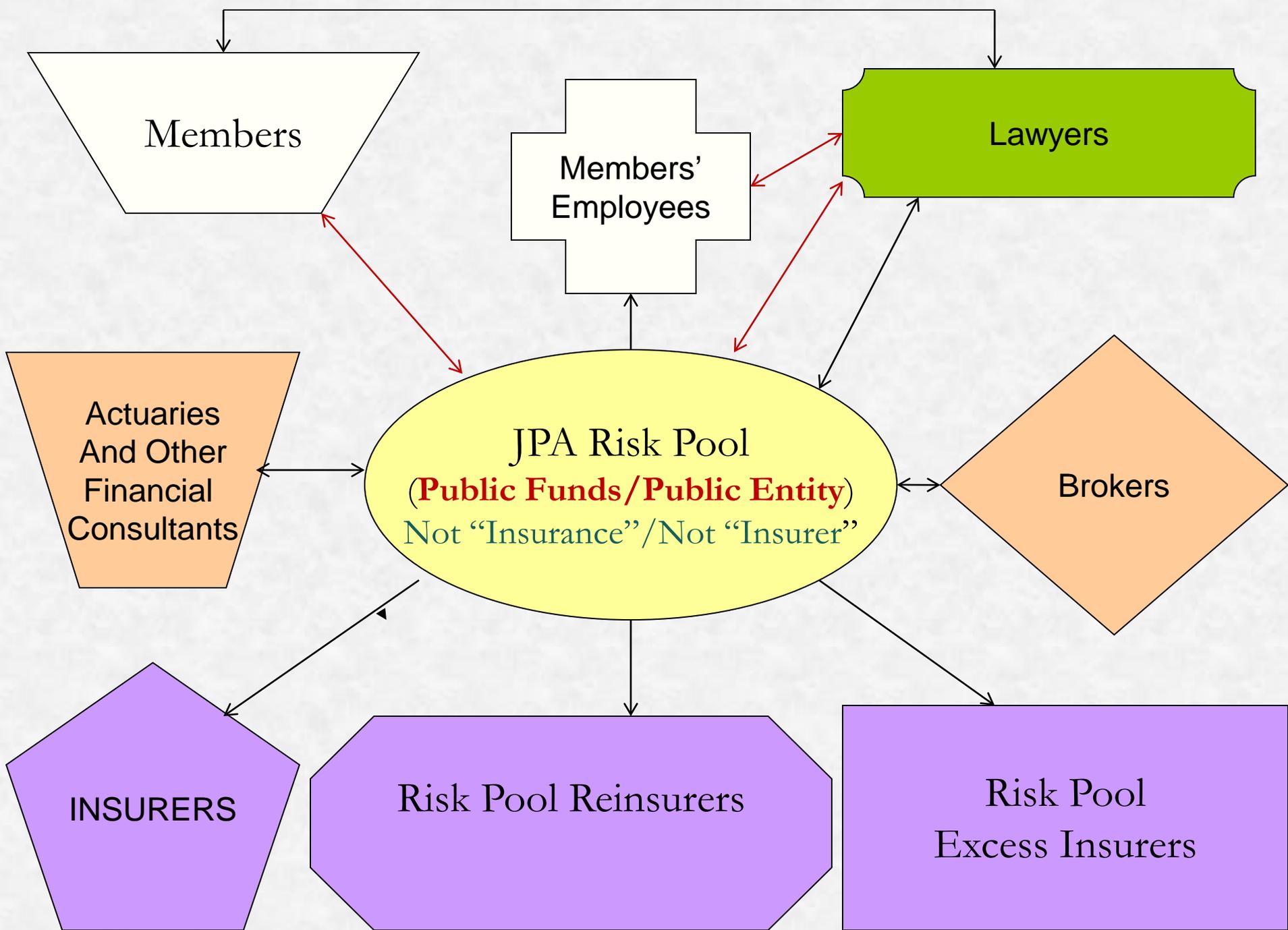
Napa Grand Jury

Addressing "booster clubs" and supervision of "booster club" funds

JPA RISK POOLS – THE BASICS

- ❑ JPAs were formed as “cooperatives” to reduce costs, increase coverage rights, and increase risk management support for “Members.”
- ❑ They are public agencies; they are not “insurers” and should not be called “insurers.” They provide “indemnity” or “pooled coverage,” not “insurance.”
- ❑ Coverage rights are contained in a “Memorandum of Coverage,” with coverage rights/benefits determined by the Members.
- ❑ Under the governing documents, Members must actively engage in “prudent risk management,” with the JPA more involved in risk management/loss prevention than traditional insurers. Thus, Members may need to:
 - **Adopt and Implement new Forms**
 - **Adopt and Implement new Processes**
 - **Adopt and Implement new Board Policies/Admin. Regulations**
 - **Reach out for before making decisions that can lead to adverse claim situations**

Why: (1) to save costs through standardized actions and shared knowledge/effort; (2) To ensure that actions are not “result/preference” driven; and (3) To protect members from litigation and public scrutiny.



New CAJPA Standards for Underwriting

1. The JPA has established a written underwriting policy. This policy should include the following: ...

4. As applicable considers (**required**)

1. Claims

2. Exposures

3. Actuarial results ...

5. Defines relevant period or value of data. (Ex. last five years; or capped at \$150,000) (required)

4. The underwriting policy is formally reviewed periodically or at least once every three years (a fresh look at the formulas). This review should consider:

1. Is the process adequately measuring the risks? (required)

2. Is the process adequately allocating costs? (required)

Members and their Employees

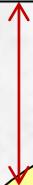
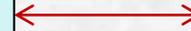
1. Ask Questions/Implement Answers
(Ask for Review/Help in Advance)
2. Adopt/Implement Sound Policies
(Take the Advice/"Keep in the Lane")
3. Provide Timely/Full Claim Information
(It's Confidential/Privileged)

Lawyers

1. Member's Counsel
2. JPA's Legal Counsel
3. Defense Counsel

Risk Mgt./Prevention Serv.

(Contract, Health/Safety,
ADA Compliance, etc.)



JPA Risk Pool

Rights – To Information/Risk Mgt./Cooperation

Duties - Defend/Indemnify/Support

What We Hope to Accomplish Today

□ Clarify Expectations, Relationships, and Responsibilities

□ JPAs and their Members

- Pre-Claim Assistance and Expectations
Risk Management & Prevention Services
- Claim Assistance and Expectations

□ Members and their Counsel/Employees/Agents and ...

- JPA Claims Staff & Legal Counsel
- Defense Counsel

□ Identify Common and/or Current Risk Exposures and Standards/Approaches for Preventing or Responding to these Situations

BOTTOM LINE MESSAGE

**Everyone on the District's "Team" needs to know they should
Collaboratively contact someone on the JPA "Team"
Before Decisions are made for Review / Help / a "Sounding Board"**



Public Records Act

Government Claim Presentation Act



Request is Made

- Made by any person or entity
- In person or via call, letter, e-mail, or fax
- Delivered to anyone in the Agency
- Duty to help clarify and confirm what is being sought

Request for Inspection

- Generally requires immediate response for non-protected records
- Cannot charge for inspections

Request for Copying

- Requires Response within 10-days
- Response must indicate (a) estimated costs, and (b) If records will be withheld and reason
- Copied records timely provided thereafter

Documents of Concern – Consider Independent Review/Counsel Before Holding/Disclosing:

1. Personnel Related Information
2. Claim / Incident Reports / Litigation Documents
3. Information Relating to Students
4. Safety/Security Information/Videos

- **Not everything that “looks/sounds” confidential is free from disclosure obligations.**
- **If you “guess wrong” or don’t respond, they are likely to file suit and will obtain attorneys’ fees.**
- **In an adversarial setting, advise the JPA of the request so it can help frame a response.**

(Public Records Act Training Webinar -- <http://www.youtube.com/watch?v=M4PMgYnwyJs>)

Claims Processes/Procedures

- ❑ Members BPs/ARs should be up to date on claim management issues **(Recommended policies are provided)**; **and** they must regularly/timely file their Roster of Public Agency filings with the Secretary of State **and** County Clerk
- ❑ All Claims for “damages” must be submitted to the District/COE in strict compliance with the GCPA statutory requirements. The District must not -- by statement or conduct -- “mislead” a party into believing they submitted a claim for damages, when they have really filed:
 - Administrative Complaints, which are not “Claims” for damages, or
 - FEHA/EEOC Complaints, may/may not be “Claims.”
- ❑ Members also need to follow Claim Management Guidelines **(Copies Provided)**
 - Prompt Notice – Full Cooperation – Providing of all Documents - Keeping Confidential Information Confidential - No Independent Communications with Claimants on Claim Issues – Compliance with JPA Claim decisions**
- ❑ The JPA will prepare/issue the Claim response, assign counsel, and make claim decisions. Covered Claims do not need to go to the Board for response/action.
- ❑ Noncompliance/Interference with the claims management process can result in a loss of coverage if the JPA’s interests have been materially harmed.

Sample MOU Templates

Contracts



Contracts and Contract Processes

(Contracts Training Webinar - <http://www.youtube.com/watch?v=mwBSbRbaH9w>)

❑ The Writing

All terms must be in the contract ... signed by an authorized party ... **and approved by the Board**. Failure to comply likely makes the contract invalid and the party signing the agreement may have personal financial liability.

❑ The Parties

Don't contract with non-existent parties – either individuals or confirmed entities.

❑ The Contract Period

For a definite period, usually no more than one year, with extensions permissible if in the contract and pre-approved by the Board.

❑ Cancellation/Termination

Best Practice: (1) “out clause” for general reasons; (2) “out clause” for fraud, safety, or health reasons.

❑ **Specifications**

Must clearly set forth expectations

Pricing

Quality

Timeliness

Location/Site

Compensation

Payment Terms

“Acceptance” of product/service

❑ **Fingerprinting and Background Checks**

If they are coming into contact with students, this provision must be included.

❑ **Contract vs. MOU** MOUs are contracts that:

- Are entered into by two or more public agencies (or certain non-profits), who use the agreement to create joint ventures or shared services intended to save public funds or serve the public good;
- Involve duties/issues not primarily focused on monetary payments (i.e., joint services, as opposed to a “paid for” service); and
- Contain all other terms and conditions of a “regular” contract.

❑ **Leases/Licenses** -- **Be careful on Terms (Scope of Duties)**

- **Risk Management**
- **Inclusion in Property Listings**

Indemnity

(See Handout)

Indemnity. Except with respect to claims arising from a Party's **separate negligence or willful acts**, which shall remain that Party's personal obligation, each Party agrees to **defend, indemnify and hold harmless** the other Party and its directors, officers, and employees with respect to a claim arising from the Party's **actual or alleged** act, failure to act, error, or omission in the performance of their obligations **under this Agreement or any governing law or regulation**.

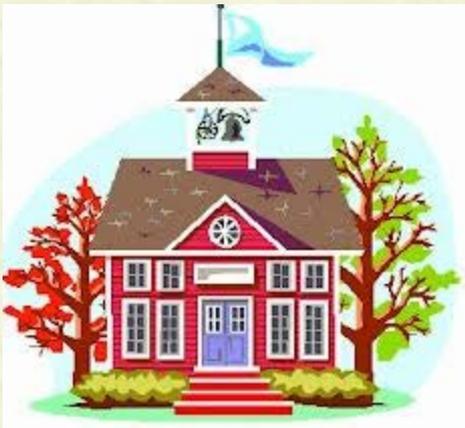
Insurance. Each Party shall purchase and maintain throughout the term of this Agreement **insurance or indemnity protection that is co-equal with its indemnity obligations.** This shall include, but not necessarily be limited to (1) broad form commercial general liability insurance (including, as appropriate, products coverage if goods are being provided, and completed operations coverage, if construction-related services are being provided), (2) personal/commercial automobile liability insurance (including, as appropriate, owned, hired, and borrowed auto coverages), and (3) **professional liability/errors and omissions (if legal, accounting, consulting, day care, IT consulting, or similar professional services are provided).** The limit of liability for such coverage shall be no less than **[\$1 million]** per claim/occurrence, and the other Party and its directors, officers, and employees, to the extent of the owed indemnity obligations, shall be named as “additional insureds” under such policies. Each Party shall also maintain workers’ compensation insurance.

Potential Add-ons:

Property Insurance (leases/rentals) – Fidelity (money/trust) – Builder’s Risk (construction)



Physical Facilities and Program Access



- ❑ Disability Accessibility Standards Apply to:
 - Older buildings undergoing rehabilitation
 - New buildings/sites
 - **Sites where programs/activities are conducted**



- ❑ Architects and General Contractors need to be held accountable for ADA/Building Standards
 - Contracts need to be clearly defined in terms of expectations and indemnity in the case of design and construction errors or deficiencies
 - DSA review and approval is not a defense, nor is it an excuse for noncompliance by architects/engineers/contractors
 - Internal “relationships” can blur lines of communication and negotiation that can result in large financial losses to the District

- ❑ California law requires “safe” schools
 - Maintenance and repair (fences, bushes, sidewalks)
 - Playgrounds (required fill, safe structures)
 - Neighboring properties (parks, “unsafe” properties)

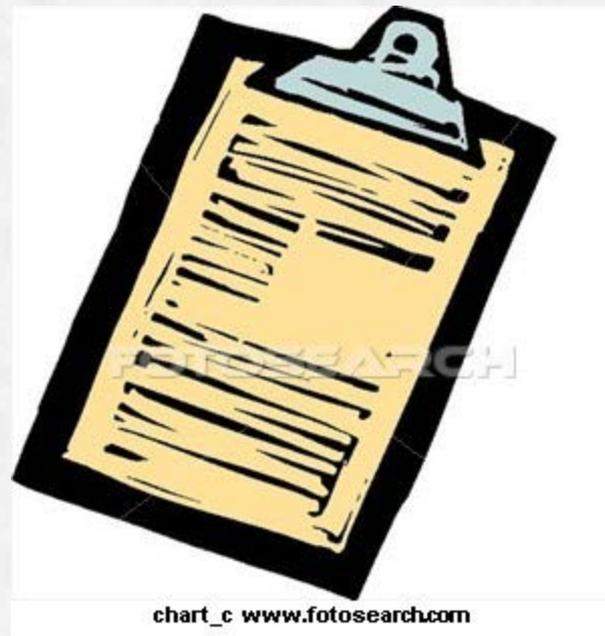
- ❑ Disability Access Applies to **“Programs” and “Activities,”** not just physical structures
 - If you are not ‘legally’ obligated to update a building, but you hold meetings there that are not “accessible,” you have violated the law.
 - If you let others use your site (Civic Center Act/Facilities Use), you may have legal exposure given expected/intended use of the site.

- ❑ Website Compliance
 - Websites must comply with disability access, a key issue with
 - Disabled parents/community members interested in Board events or District functions





FORMS



Field Trip, Special Class, All Purpose Forms



❑ Field Trip

- Applies to all off-campus “field trips” and “excursions”
- Confirms “immunity,” but medical payment obligations exist
- Authorizes emergency medical care (opt-out issues)
- Includes both a lunch/non-lunch option

Field Trip Locations Requiring Waivers/Indemnity

❑ “Special” Classes, Adult Ed., and Workability

- ROP, Industrial, Wood/Autoshop and other elective classes where risks/exposures are materially different from “standard” classes
- Confirms waivers/releases applicable to these enhanced risks



❑ “All Purpose”

- Special Dances; Alumni Events

Sports Forms and Resources



❑ Participation Form

- Must be signed before try-outs/practice/competition
- Includes all athletic events (sports/club sports/middle school sports)
- Waivers/Releases / Emergency Care / Photos-Videos

❑ Physical Exam

- Signed by MD/DO/PA/NP (no chiropractors/sports trainers)
- Covers all currently recommended issues

❑ Concussion/Return Forms

- Complies with new laws on removal from game/return to game



❑ Coaches' Handbook

- Provides “best practice” guidelines for coaching management

Facilities Use -- Three Types

❑ Youth Support/Activity Non-Profit Groups:

Free Use (Direct Cost Recovery if Authorized)

Applies to non-profits that promote youth or school activities, if no other site available. Each party maintains its own insurance/no cross-over.

❑ All Other Private Entities:

Direct Costs and Fair Rental Value if Authorized

Applies to all non-public agency groups who may use the facilities for entertainment or meetings (adult sports leagues, churches, etc.).
Insurance to cover District.

❑ Public Entities:

Full Negotiable

Applies to any public agency and its sponsored activities.
All terms negotiable. Insurance to cover District



Transportation



Employees

- Using their Own Vehicles or District vehicles

Volunteers

- Using their Own Vehicles
- Should not be driving District vehicles

Students

- Using their Own Vehicles
 - Sports/Extra-Curricular Activities
 - ROP/Vocational Classes or Internships
- *** Two Forms – General Approval from District
Special Approval form Supervisor/Coach



Special Education

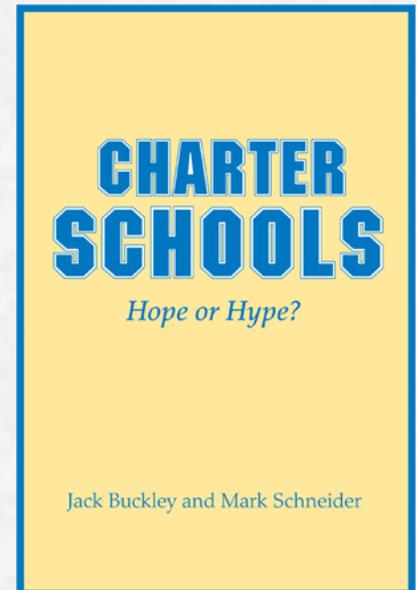


- ❑ SELPA Agreement
 - Increased naming of SELPAs/COEs in special education litigation
 - Identifies responsibilities and coverages

- ❑ Master Agreement for Supplemental Services
 - Identifies basic parameters for all “supplemental” special education services

Charter Schools

- ❑ Charter School Facilities/Operations MOU
- ❑ Charter Petitions (not yet standardized)



Medication Emergency “Opt Out”

☐ Medication Form

- Meets new/updated legal standards
- Ensures compliance with all prerequisites
 - Training
 - Dispensing
 - Management
 - What can be possessed by student

☐ Emergency Opt-Out

- Addresses both “religious” and non-religious reasons
- Is available on request



Other Forms Created

- FMLA/CFRA Leave Forms/Responses
- Hepatitis Vaccination Form for employees
- Disability Accommodation Information Forms and ADA Compliance Pamphlet
- External Agency (Police/Social Service) Student Interview Form
- DFEH Pamphlet



STUDENT ISSUES

Free Education

(Member Alert; Coaches' Handbook)



- ❑ Unless it is statutorily authorized, school districts may not charge any fee for participating in curricular or extra-curricular events.
 - No transportation fees (to/from school OK; otherwise, no fees chargeable)
 - No uniform fees/costs
 - No “sports camp” or “special gym” fees
 - Field trip costs (entry fees to special locations only) may be charged, but no student may be denied participation if they cannot pay
 - Before/After School Programs may charge fees, but no student may be denied the opportunity to participate if they cannot pay
 - Gym clothing can be required, but only if (i) is generally suitable for wear outside of school, and (ii) is not beyond the student’s control to obtain matching gym clothes (inability to pay, etc.).
- ❑ Donations, but no “coerced” donations or “threats” if donations not received
- ❑ General “participation” in fund-raising events, if all required, but no fund raising goals/requirements.
- ❑ A volunteer is the District’s agent – if they violate the law, so do you!

Bullying/Cyberbullying

(Alert and Proposed BPs/ARs)

- ❑ New Laws require additional anti-bullying efforts
- ❑ Anti-Bullying Efforts Must be tied to the District's operations. It cannot overreach, or be involved in off-campus activities, unless there is a direct link to:



- School Attendance
- School Participation

- ❑ Must not punish student bystanders/witnesses; employees and volunteers can be required to proactively seek out and prevent bullying

No District employee need place himself/herself at physical risk
(Member Alert)

- ❑ Because of the risks to students, bullying needs to become a priority for training and updated BPs/ARs.

Special Education

Section 504/Individuals with Disabilities in Education Act (“IDEA”)

“Free and Appropriate Public Education”

Americans with Disabilities Act (“ADA”)

Civil Code Sections 52.1 and 54

Government Code 11135
(Nondiscrimination in Public Programs)

Equitable Relief, plus ...

Education Code 220

No person shall be subjected to discrimination on the basis of disability ... in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance...

Education Code 201

All pupils have the right to participate fully in the educational process free from discrimination and harassment

“Deliberate Indifference” or Knowledge and Inaction

FAPE Myths



- ❑ Special Education Students do not have to:
 - Complete basic requirements for graduation.
 - Pass state-approved assessments that demonstrate State standards.
- ❑ Special Education Students are Entitled to:
 - A specific specialized program/setting chosen by the parent;
 - Greater access to educational materials or better services than non-disabled peers; and/or
 - Preferential treatment or guaranteed placement in extracurricular activities

FAPE Realities

- ❑ Special Education students are entitled to:
 - An equal education, at public expense, under public supervision;
 - Modification, accommodation, and support services allowing them to benefit from instruction so that they can meet standards;
 - An education addressing his/her unique needs as identified by evaluations, observations, and the IEP team in a coordinated manner intended to ensure adequate progress in the educational setting; and/or
 - Access to nonacademic and extracurricular activities equal to those provided to non-disabled peers, including GATE and sports programs (when appropriate)

- ❑ Upon notice (from any source), the school **should affirmatively seek to determine** if a student needs special services.

- ❑ Conduct complete and appropriate testing, while preventing:
 - A “Steering” of parents away from “costly” evaluations
 - Evaluating and Implementing accommodations only to the “lowest” level, triggering disputes and exposures

- ❑ Accommodations – **that do not require an IEP** -- may include:
 - Taking all tests orally -- Receipt of physical tools to help navigate the classroom (at District expense) -- Limiting in-class/homework assignments

- ❑ Even when an IEP is unnecessary/not legally required, you should still:
 - Develop and implement “agreed” measures with the parents
 - Document successes/review needs on a proactive basis



Search and Seizure

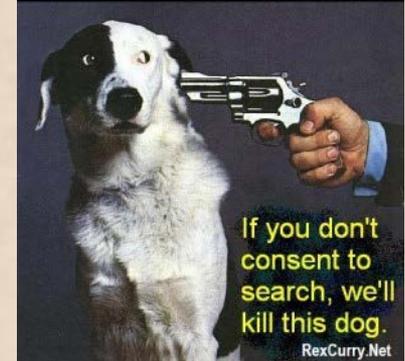
(Member Alert and BPs/ARs)

❑ Actions by District Employees:

- May briefly detain and question a student regarding a specific potential violation of law or school district policy, as long as the interview (detention) is not arbitrary, capricious, or performed in a harassing manner.
- May conduct searches of student property if there is a “reasonable suspicion” that the student currently possesses illegal or prohibited property, evidence of a crime, or breach of school district policy.

❑ Problem (“illegal”) Areas:

- Threatening students, particularly victims or witnesses
- Extended interviews (begins to impede 4th Amendment)
- Fishing Expeditions



❑ Non-District Employees (police/social service), for non-District reasons

- No interviews absent (a) exigent safety circumstances, (b) parental permission, or (c) court order. Form to be filled out.
- Attendance/legal compliance (duty to protect students’ rights from third parties)

ROP/Workability/Vocational Training

- ❑ ROP/Workability/Cooperative Vocational Education are all Different
- ❑ District/Sponsor-Worksite Agreements are incomplete/inadequate, and are often failing to address (or incorrectly address):
 - Risks/obligations/relationships
 - Liability
 - **Workers' compensation exposures**
 - Background check/safety issues
 - Confidentiality
- ❑ Internal Programs face the same problems



Confidentiality/Parental Notifications



- ❑ Student records, anything identifying the student are governed by FERPA and must be protected from disclosure
 - Student “workers”/volunteers in school offices
 - Teachers on social media sites
 - Teachers filing “restraining orders” or complaints
 - Videotapes/Photographs posted without authorization (custody disputes)

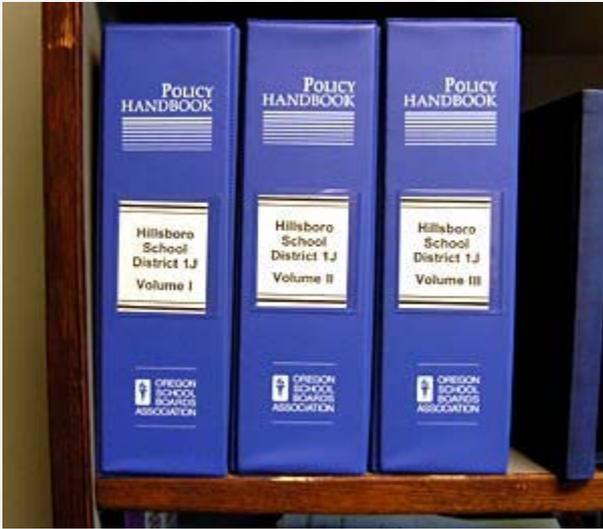
- ❑ Dealing with separated parents
 - Upon “notice,” and a need to know, confirm (i) who has legal custody and (ii) authority to make educational/health care decisions
 - Also confirm time periods for governing orders (preliminary/temporary) and obtain copies of documents (don’t assume a representation is accurate)
 - The Non-custodial parent (if there is one) has no right to notice or to be included in ongoing educational issues absent the consent of the custodial parent



Medication Management (Form and Alerts)

- ❑ While difficult to enforce, all medication must be used by students in accordance with medication management policies.
 - During school hours
 - On Field Trips
 - During special “camps” / off-site activities
- ❑ Medication includes any over-the-counter (including aspirin) and prescription medication.
- ❑ A student may only personally possess, if authorized, an epi-pen or asthma medication. All medication must be stored at the school office/nurse’s office.





YOUR OWN GOVERNANCE DOCUMENTS



BPs/ARs

- ❑ What is the Difference
 - Board Policies are Adopted by the Board and Define Broad General Standards for Governance
 - Administrative Regulations are adopted by the Superintendent in conformity with Board Policies, or to provide routine/day-to-day governance within the Superintendent's managerial discretion

- ❑ Many BPs/ARs are outdated or incomplete.

- ❑ If you are going to draft your own BP/AR, you should ensure that:
 - **You are not dealing with transient/emotional issues**; BPs/ARs should be based on general standards applicable to most/all districts
 - **You are not creating “legal” duties beyond those implied by law**
 - They are narrowly tailored only to the issue being addressed (short, simple and focused on a single and defined issue)
 - Are reviewed by the JPA and/or counsel (with a critical eye) to ensure they do not create unexpected and unintended risks



EMPLOYMENT BOOT CAMP



Hiring/Screening

- ❑ Hiring is the most important risk reduction activity
 - Identify individuals who do not have the skills, temperament, physical skills or other “essential” job skills necessary to be safe and successful
 - Updated Application Forms can help ensure that you obtain proper information and have proper tools to hire/termination if information is incomplete or misleading
 - Hiring/Interview teams must be properly comprised
 - Background/reference/education checks need to be completed
 - Informal investigation (within legal boundaries, such as social media reviews and “Google” searches)
 - Just because there is a “need,” does not mean that you hire the wrong person
- ❑ Credit and background checks are limited, but still critical to conduct for appropriate positions
- ❑ Many questions asked during interviews are illegal – be careful (no questions about children/child care, marital status, age, arrests, origin/place of birth, religion/social views, health issues)

❑ Pre-employment Testing

- Must involve all applicants for identified job classifications
- Is never for the purpose of avoiding workers' compensation claims, but is always intended to ensure the ability to safely perform essential job functions
- The results of the testing must be accepted; if the result is “fail,” then the applicant must be rejected; if the result is “pass,” then the hiring process is complete
- The testing may identify disabilities in need of “accommodation.” Just because an employee “passes,” may not mean there is still a need to evaluate disability right/accommodation obligations

❑ Training/Teaching/Mentoring

- Best time for training (even for experienced employees) is right after they have been hired
- Mentoring is a continuing obligation, best ensuring chances for long-term success and the sharing of institutionalized knowledge



Volunteers and Interns



- ❑ Volunteers – Helping the District **(See Alert)**
 - Statutes require fingerprinting and background checks for uncertificated volunteers who independently supervise students outside the presence of certificated employees
 - Volunteers cannot replace District employees
 - Volunteers are District agents; their errors within the course/scope of their volunteer services are your liability (Driving, Supervising, etc.)

- ❑ Interns
 - FLSA imposes stringent requirements on “unpaid” interns:
 - Must be similar to training given in an educational environment;
 - The internship experience is for the benefit of the intern;
 - The intern does not displace regular employees/works under employee supervision;
 - The employer that provides the training derives no immediate advantage from the activities of the intern

Workplace Management

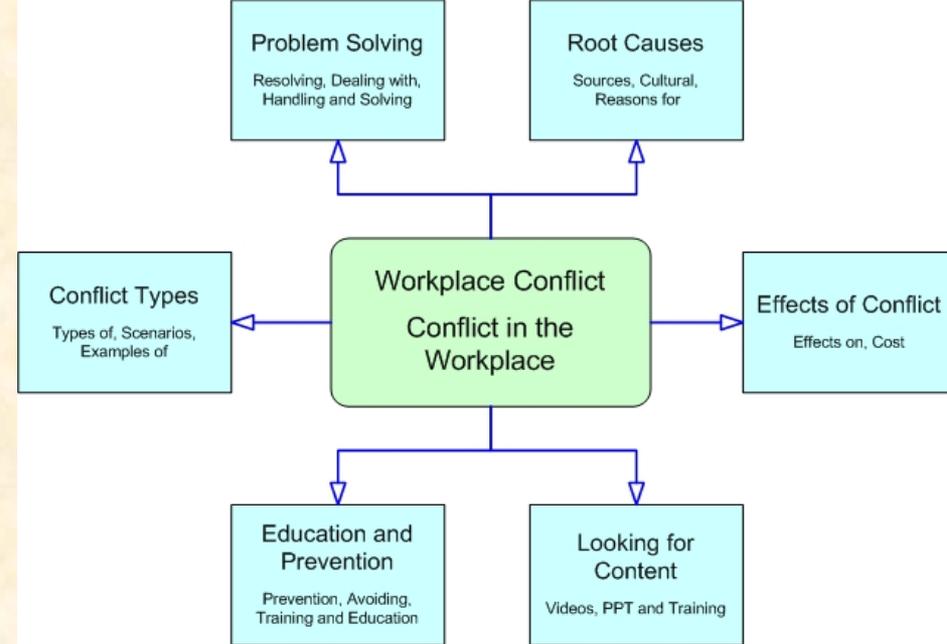
❑ Employee Reviews and Evaluations

▪ Reviews that are

- Too nice
- Incomplete
- Not based on Essential/Expected Functions
- Do not provide required standards of improvement

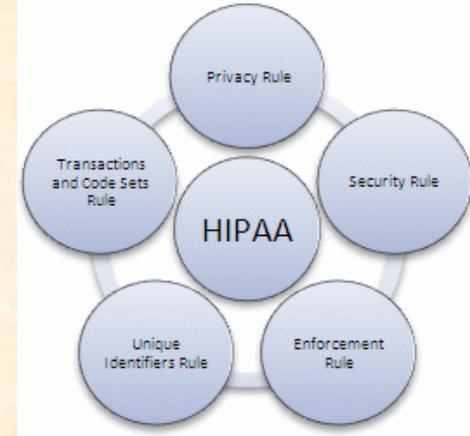
▪ Counseling Sessions that are

- Delayed until it's too late
- Fail to provide post-session check-ins to monitor changes
- Based on “emotions” because the situation has escalated too far
- Are not documented/too little documentation
- **Involve managers (often, principals) not fully trained in H.R. management or proper “boundaries”**



❑ Confidentiality/HIPAA

- Personnel files need to be segregated (no medical in personnel files, which includes insurance applications/claim forms)
- Employee “confidential” information cannot be shared, even for a “benevolent” purpose



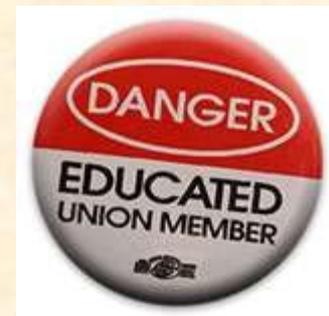
❑ Drugs/Alcohol

- Drug Free Workplaces (including “medical marijuana”)
- Employees and Volunteers
- Testing (Safety sensitive positions vs. non-safety positions)
 - Objective Standards



❑ Current Challenges with Unions

- Making Sure Union Agreements are Negotiated on Risk Management Terms
- Ensuring that all supervisors under the union agreements
- Successfully managing the “what’s in it for me” question.



❑ Employee Terminations

- Incomplete documentation/Incomplete explanations
- Inconsistent Statements (Great one year; horrible the next)
- Decisions based on Statements/Conclusions by Supervisors with a “history” of questionable actions

❑ Keys to Successful Employment Actions

- Ensure all documentation is in order **prior** to significant adverse employment counseling **or** termination
- Ensure that basis for discipline can be objectively supported
- Ensure that all interested parties’ “statements” are documented
- Ensure that you comply with all collective bargaining and/or *Due Process* advance notice and hearing obligations

❑ Key Items not to see:”

- **Speculation/Conjecture**
- **“Emotional” Words**
- **Avoiding Supervisory Responsibility (“not my fault”)**
- * **Unverified “Hearsay”**
- * **Vague/generic comments**

Discrimination, Retaliation, and Consequences of Improper H.R. Management

- ❑ “Retaliation” is now the most common form of civil liability lawsuit
Retaliation involves an actual or threatened material adverse employment action against a party who resists, opposes, or complains about potentially illegal workplace events or practices. Such misconduct may arise from:

- Filing a protected complaint (administrative or civil)
- Reporting of another party’s illegal or improper conduct

Individuals cannot be held liable under this theory



- ❑ “Harassment” – any protected class – but involves pervasive (regular) verbal or physical abuse arising from improper (illegal) motivations



Individuals can be liable under this theory

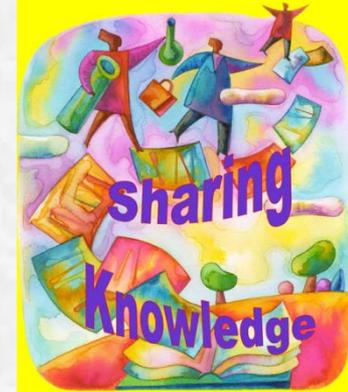
DISABILITY ACCOMMODATION & RETURN TO WORK

Continuing Issues and Challenges

- “Defining” Disabilities
- Not turning “molehills” into “mountains”
- Refusing to consider, let alone implement, “reasonable accommodations”
- Escalating “accommodation” discussions by combining them with threats of termination unrelated to discipline/bad behaviors
- **Principals** and others “hindering” early return to work; concerns about creating workers’ compensation exposures
- Still getting caught up in the details/mechanics, and missing the need to focus on the result



Sharing Knowledge



❑ We are not Sharing our Knowledge

- We need to more proactively address internal “risk management” and “best practice” standards through open discussions
 - Find ways to bring down communication barriers
 - Find ways to change “independent” cultures
 - Develop “inertia” for change before something bad happens

❑ We keep repeating our mistakes

- Changes in Personnel
- Institutional belief that current steps/processes are “proper” (Looking for the most “convenient” action) ... “prove it to me” – but you can never “prove it” to their satisfaction
- “We haven’t been sued yet ... it can’t be that bad”
- We’re Insured ... if there’s a problem, they’ll take care of it



Managing Counsel

(And other Professional Advisors)



❑ RFPs and the Selection of Counsel

- Need to Decide Areas of Services (General Counsel, or Special Counsel)
- Need to Decide Service Expectations
- Needs to Identify Attorney qualifications and standards, as well as Firm qualifications and standards

❑ Contract

- Same as every other vendor – same form/content
- Clear billing standards
- Indemnity (their fault, their problem)
- Insurance (Same standards)

❑ Compensation

- Consider Moving to a “Fixed Fee” for all “Identified Services”
 - Surety for budgetary standards (for both parties)
 - Takes away “billing” incentives for firm (unnecessary actions, inefficient actions, incorrect “staffing”)
- For hourly, (i) insist on “non-block” billing, (ii) by a single attorney skilled in the services provided, (iii) for pre-approved activities taking any significant time.

- ❑ **Roles/Relationships** -- Counsel must understand key relationships/obligations:
 - The Member's Relationship/Obligations to the Risk Pool
 - Differences between the District, the Board, and the Superintendent (Potential Conflicts)
 - Relationships with other Districts/COEs (Not in Isolation; the creation of "best practices," the sharing of common/available knowledge)

- ❑ **Decision-making**
 - Exposure Reduction
 - Saving Funds for Classrooms
 - Legal/Proper – Not "Expedient"
 - Timely Resolution
 - Safe/Sane Policies
 - Long-Term Vision

- ❑ **Problem-Solving/Claim Management**

If Counsel was involved in a decision giving rise to a claim:

 - Counsel's involvement should be documented – what information was given, what was the advice, was it relied on, was the reliance "reasonable"
 - Counsel needs to step out of the Claim management process if there is any reasonable basis to conclude that counsel's advice **may** have been inaccurate **or** they may become material witnesses in the Claim.
 - Counsel cannot protect its interests, while also protecting the District
 - The JPA/District needs to independently decide whether to raise the "advice of counsel" defense and advise the District and JPA of the risk exposures.

Managing Internal Administrative Processes

❑ Universal Complaints

(<http://www.cde.ca.gov/re/cp/uc/documents/UCPBrochure.2009.pdf>)

- A written complaint alleging discrimination, harassment, a violation of a federal/state law, or a violation of adopted BPs/ARs.
- Administrative Relief (Compliance/Changed Policies/Procedures) or Remedial Relief Only – No “damages”
- 60 days to complete an investigation and provide a written decision to the person filing the complaint.

❑ Williams Act/Williams Act Complaints

- Williams Complaint is a type of UCP regarding instructional materials, emergency or urgent facilities ,conditions that pose a threat to the health and safety of pupils, and teacher vacancy or misassignment. It may be filed anonymously.

❑ General Administrative Complaints

- Addressing all other issues

Promptly Acknowledge

Properly Investigate

Timely Respond in a Thoughtful Manner Avoiding Further Dispute

IT ISSUES

(See Webinar and Handout)

- ❑ Outsourcing of Contracts
 - Problems with Confidentiality
 - Lack of Immediate Control over Data
 - Vendors Trying to Disclaim all Liability (including from their loss of data or breach of confidentiality)

- ❑ Compliance with Applicable Federal Standards
 - Filters Content Restrictions First Amendment

- ❑ Need for Current and Complete Acceptable Use Policies
 - Work/School Purposes Only
 - No Expectation of Privacy
 - Teachers/Employees only use District technology (network and e-mail addresses) to conduct District business
 - No “Texts”
 - Social Media – Caution and Care



Special Program Grant and Vendor Issues

- ❑ Given Budgetary Constraints, the Challenge has been to Obtain “Supplemental Funding” through Grants/External Funding Sources
 - Promising More than you can Deliver in Grant Applications/Acceptances
 - Failing to Understand all Obligations of Grant Requirements
 - Failing to Establish Internal Protocols/Standards to Comply

- ❑ Internal Grant Support & Vendor Writing is Often not up to Expected Standards
 - Authors are not Trained in Contracts/Public Contracts – Lack of Clarity
 - Authors are not Trained in District Policies/Laws - Conflicts

- ❑ For Anyone Receiving a Financial Benefit or Special Access to Students:
 - The Agreement must be Board approved,
 - The Agreement should be signed only after a “reasonable” competitive bidding process, and
 - The Vendor/Program Provider must comply with all laws and District Policies

