



SCSBA School Law Conference
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**“LITIGATION 101: WHAT
SCHOOL BOARD MEMBERS
NEED TO KNOW”**

Presented by: Dave Duff & William Freeman

Duff Freeman Lyon, LLC

www.dfl-lawfirm.com

(803) 790-0603

WHO CAN SUE (THE COLLECTIVE) “YOU?”

- Parents/Students
- Teachers
- Other Employees
- Citizens
- The Government
- Your Superintendent
- Board Members
- Your Attorney!! 😊

WHO CAN BE SUED?

- The District
 - Other Administrators/Employees
- The Board
 - Board Members
- The Superintendent

WHERE CAN THE SUIT OCCUR?

- State Court
- Federal Court
- Administrative Tribunals

WHAT CAN “YOU” BE SUED FOR?

(General)

- Breach of Contract
- Tortious Acts (Negligence)
- Civil Rights Violations
- Violation of Law, e.g., FOIA

WHAT CAN THE DISTRICT BE SUED FOR?

(Specific)

- **Contract-Based Claims**
 - Construction contracts
 - Software agreements
 - Employment agreements
- **No liability insurance coverage**

WHAT CAN DISTRICT BE SUED FOR?

(Specific)

- Negligence-Based (Tort Claim Act)
 - Premises liability – e.g., slip and fall
 - Negligent supervision (students)
 - Negligent hiring/retention (staff)
- Only against the District
- Liability insurance coverage

WHAT CAN “YOU” BE SUED FOR?

(Specific)

Student/Employee Federal Civil Rights Violation

- Section 1983 Suits
 - Discrimination/Civil Rights Violations (age, race, sex, disability)
- First Amendment/Free Speech Violation
 - Student Discipline – corporal punishment; suspension/expulsion
- Sexual Harassment/Assault
 - Special Education – failure to provide free public education.

WHAT CAN “YOU” BE SUED FOR?

(Specific)

Various other causes of action

- FOIA Violations
- Cyber Liability/Bullying
- Transgender Related
- Book Ban Related
- Curriculum Related

BOARD MEMBER LIABILITY

- “Official Capacity” vs. “Individual Capacity”
- “Official Capacity” – same as a suit against the District or Board
- “Individual Capacity” – member can be liable if s/he violates clearly established law **AND exhibits callous disregard for the rights of the plaintiff**

ROLE OF INSURANCE

- SCSBIT (or commercial carrier)
- Covers most claims for damages
- Does **not** cover contract claims or claims for declaratory, injunctive or other equitable relief

ROLE OF INSURANCE

- Coverage may not exist for claims alleging:
 - Willful violation of law
 - Intentional disregard or violation of school board policies/regulations
 - Intentional acts or acts of deliberate indifference
 - Punitive damages

ROLE OF INSURANCE

- Appointment of defense counsel
- Indemnification for loss
- Reservation of Rights letter

THE CIVIL SUIT

- "Preservation"-of-documents letter from plaintiff's lawyer (sometimes a FOIA request)
- Summons and Complaint – served on ?
 - Removal to federal court ?
- Motion to Dismiss ?

LITIGATION PROCESS

- Answer and Affirmative Defenses within 30 days in state court (20 days in federal court)
- Discovery
 - Interrogatories
 - Document Production Requests
 - Depositions
- Requests to Admit

LITIGATION PROCESS

- Motion for Summary Judgment ?
- Mediation/Settlement
- Trial ?
- Appeal ?

HELP YOURSELVES, HELP US !

“An ounce of prevention is worth a pound of care”

- Call your attorney early on
- Submit suit for insurance coverage determination and assignment of defense counsel
- Please: Stay off social media !!!

A low-angle photograph of a modern glass skyscraper. The building's facade is composed of large glass panels that reflect the sky and surrounding environment. The image is partially obscured by a large, semi-transparent blue rectangular overlay. In the center of this overlay, the text "? QUESTIONS?" is written in a bold, white, sans-serif font. The background shows a cloudy sky and the top of the building, suggesting a high-altitude or urban setting.

? QUESTIONS?