

GEORGIA

SPECIAL EDUCATION

UPDATE

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BOARD POLICY SAVES DISTRICT COST OF DEFENSE FOR PRINCIPAL'S MISCONDUCT IN SPECIAL EDUCATION LITIGATION

Underscoring the importance of carefully drafted school board policies, a federal district court recently refused to find any obligation on the part of a school district to contribute to the defense costs of a middle school principal. The underlying lawsuit, *Persadi v. Fulton County School District*, was initiated by a student with severe disabilities who alleged the principal had willfully ignored multiple reports of a special education teacher's abusive and neglectful treatment of special-needs students. The student's complaint named the school district, the former principal, and the former teacher as defendants.

Like many Georgia boards of education, the Fulton County Board of Education had adopted a policy related to the purchase of liability insurance. Consistent with the provisions of state law, the policy provided for the

purchase of liability insurance insuring employees against damages arising out of the performance of their duties and payment of attorneys' fees and expenses incurred by employees in defending such actions. However, given the nature of the allegations against the principal, the Board voted against using school district funds to defend to the principal's alleged misconduct.

The principal challenged the Board's decision by filing a cross-claim, alleging the District and the Board had breached their contractual obligations under the Board policy to indemnify and provide her with a legal defense. In dismissing the cross-claim, the Court noted that the language of the Board policy was clear that the Board had discretion to decide whether to extend a defense to employees. The court also noted that, based on the

language of the Board policy, the Board had the authority to subject the availability of liability insurance on such exclusions and other limitations as it deemed appropriate.

This case illustrates the need for school boards to review their insurance policies (e.g., Policies EG, EGA, EGD) to ensure they afford the Board maximum discretion when handling difficult personnel matters. At a minimum, school boards should avoid enacting policies that unconditionally obligate them to defend or indemnify employees in litigation. Because every personnel matter is unique, board members should protect their ability to make such decisions on a case-by-case basis while also ensuring that similarly-situated employees are treated the same for purposes of extending coverage and defense costs.

HBS EDUCATION PRACTICE GROUP

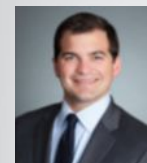
Our attorneys handle claims involving student issues such as discipline, school violence, special education, testing/promotion, and student records. We also handle employment issues involving teacher evaluation, remediation and discipline, teacher dismissals, at-will employees, sexual harassment, and Title VII.

In addition to handling litigation needs, our Education Practice Group focuses on the prevention of legal problems through comprehensive board policy development and review. We also provide staff development on a variety of topics.

In addition to providing legal advice and handling litigation needs, our firm

believes in the need to focus on litigation prevention through regular consultations with decision makers, resulting in early identification of concerns and issues. Our firm provides a wide range of resources in this regard. We emphasize risk management in the prevention of legal disputes through ongoing consultation and training. We provide legal seminars for administrators and staff members in personnel law, student discipline, and other issues affecting schools. Our Education Practice Group also provides legal workshops for school board members, school system officials, and professional educators. In addition, we assist school lawyers in Georgia in representing their respective school clients.

ABOUT THE AUTHOR



JEFFREY DANIEL

Mr. Daniel provides a variety of legal services to educational institutions and school districts. He has significant experience defending them in civil rights lawsuits; whistleblower actions; claims based on special education services; and employment litigation. Drawing on his extensive litigation background, he counsels his educational clients in day-to-day matters, such as: school board governance, policy, and procedure; compliance with new legislation; navigating personnel issues; and evaluating requests for disability-related accommodations and services.