

# DO I NEED A LAWYER FOR THAT?

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## I. A FEW GENERAL OBSERVATIONS ABOUT THE IMPACT OF LAWYERS:

### Negative Influences

A lawyer's involvement can:

- 1) create distance between the parties to a dispute
- 2) make small problems bigger & delay resolution
- 3) create misperceptions
- 4) add expense
- 5) create an adversarial relationship

### Positive Influences

A lawyer's involvement can:

- 1) bring an objective point of view to a dispute
- 2) distinguish between a shakedown and real liability
- 3) enable you to avoid mistakes through preventive advice
- 4) create distance between the parties to a dispute

Whether the involvement of a lawyer will be helpful in resolving an issue or dispute is very much determined by the nature of the dispute, the relationship of the parties and the environment in which the dispute or issue arises. You need to look at the big picture.

**Nature of the dispute:** is it a question of legal rights and obligations or simply discretion?; what is at stake? is this part of a larger dispute?

**Relationship of parties:** have you gotten along in the past? is the other party litigious, combative, or unreasonable? what are the motives involved? has an outside force become involved?

**Environment:** what is the impact of the dispute upon the learning environment at the school? are the students affected? is the district in a posture of: avoiding high-profile conflicts? zero tolerance? or "take no prisoners?"

## II. YOU SHOULD HAVE A LAWYER (AT LEAST TO SOME EXTENT)

- A. You have been sued or a demand letter has been delivered threatening suit.
- B. Criminal charges have been filed against you
- C. Your campus is targeted for an OCR or other government agency investigation
- D. Your employment contract has been proposed for nonrenewal or termination
- E. Your certificate is threatened at SBEC
- F. A serious incident has occurred on your campus (e.g. sexual assault).
- G. Your employment contract rights have been violated
- H. You are unclear or unfamiliar with the law in a particular area in which you must act
- I. An attorney for the student is attending an ARD Committee meeting on your campus
- J. A parent has filed a due process hearing request under IDEA

## III. YOU MIGHT WANT A LAWYER (AT LEAST TO SOME EXTENT)

- A. Employee/parent brings an attorney to school for grievance/complaint
- B. A parent threatens to file for a hearing/bring an attorney to an ARD
- C. You receive an Open Records request
- D. You receive an unfair evaluation/assignment/reassignment/reprimand/directive
- E. You are revising the student handbook

- F. “Winds of Discontent” are howling (PTA, Board, Central office, faculty)
- G. A parent, faculty member, or community member accuses you of violating the law
- H. Your campus needs an inservice on a legal issue

### III. SHOULD I USE THE SCHOOL DISTRICT’S LAWYER?

**As a general rule, YES.** School districts employ attorneys to assist them in dealing with suits and also to provide answers to day-to-day legal questions. As a principal, you may or may not have access to your school district attorney. Find out if you have access. If not, find out who you need to talk to get access, or what procedures to follow to get legal questions answered. Remember that as an employee, your response/action (or lack of same) affects the district. **When you have a legal question about how to carry out your job functions as an employee of the district, the school attorney is the resource to tap.**

**If legal action is brought or taken by the district against you,** however, calling the school attorney will not help. The school attorney will be the person pursuing the action against you. When this happens, it’s time to look for help elsewhere, like TEPSA.

**Note: the attorney’s help need not be obvious to the other party.** Involvement does not necessarily mean “visibly present.” Some times, the most effective use of an attorney is to provide advice behind the scenes so as not to escalate the situation or send the wrong messages.

### IV. CAN I AVOID GETTING SUED OR ENDING UP IN LEGAL TROUBLE? PROBABLY NOT.

Unfortunately, absent a career change, there is nothing you can do to entirely prevent the risk of being called “defendant” at some point in your career. There will always be a small percentage of folks that you cannot satisfy regardless of your best efforts. With regard to the rest of the population, you can reduce the risk by complying with the law (especially by treading carefully when dealing with the following: corporal punishment; TAAS; use of funds/accountability; FERPA; teacher supervision, appraisal, discipline and employment; special education; sexual assaults and harassment). Finally, having complied with the law, implement the lesson of the doctors.

### V. THE LESSON OF THE DOCTORS: IT PAYS TO BE NICE

In February of 1997, a study on medical malpractice appeared in the JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION. The study attempted to determine what factors play into a patient’s decision to sue a doctor. The study was conducted by tape recording office visits between doctors and patients in 120 physicians offices, and analyzing the communications skills utilized by doctors who had two or more malpractice claims filed against them during their lifetimes, versus those with less than two complaints. The study confirmed that certain communication skills will reduce a doctor’s malpractice exposure. The findings are somewhat startling: the quality of care received was not the determining factor in whether a patient sued his doctor. Whether the doctor did a bad job as a doctor was not the big issue. Instead, “patients and families are more likely to sue if they feel the physician was not caring and compassionate.” American Medical Association New Update, *Correlation Seen Between Communication Skills and Malpractice Risk*, February 19, 1997.

The physicians with less than two lifetime malpractice claims:

- Used more statements of orientation
- Laughed and used humor more
- Used more facilitative comments
- The most startling finding was that the doctors sued less spent more time with their patients—on average three and half minutes more per visit. The length of visit, by itself, had an independent positive effect on a patient’s likelihood of suing the doctor. *The Relationship With Malpractice Claims Among Primary Care Physicians and Surgeons*, 277 JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 553-559, February 19, 1997.