



**Responsible Office:** Office of the General Counsel

## **BOARD POLICY 9165**

### **LEGAL COUNSEL**

#### **PURPOSE**

The Board of Trustees (Board) recognizes that the complex legal environment in which the Washoe County School District (District) operates requires reliable and dependable legal advice. The use of legal counsel is necessary to ensure compliance with state and federal laws and Board Policies, and to improve the operations of the District. This policy establishes the guidelines under which the District shall employ and utilize "in-house" legal counsel to represent the District, when the District may employ outside private legal counsel, and when the Board may employ independent "Board Counsel."

#### **POLICY**

1. Office of the General Counsel
  - a. The Office of the General Counsel is the legal representative for the District.
  - b. The Office of the General Counsel. The duties and responsibilities of the Office of the General Counsel include, but are not limited to:
    - i. Under the supervisory authority of the Superintendent for day-to-day operations, the Office of the General Counsel shall provide legal assistance and advice to the Board of Trustees, Superintendent, administration, faculty and employees regarding legal matters and issues involving or affecting the District.
    - ii. Issuing written legal opinions on matters involving or affecting the District, including:
      - 1) Opinions requested by the Superintendent or Leadership employees, which shall be considered and researched, with a written opinion or other response rendered and provided as soon as is practical; and
      - 2) Opinions requested by the officers or individual members of the Board of Trustees as may be requested which shall be

considered and researched, with a written opinion or other response provided to the full Board of Trustees as soon as practical.

- iii. Preparation, review, and revision of contracts, leases, and other legal documents.
  - iv. Handling litigation matters that may be filed by or against the District in any and all courts through direct representation as counsel of record, or in coordination with retained outside private legal counsel.
  - v. Responding to complaints filed with the various administrative agencies of the state and federal government including, but not limited to, the Nevada Department of Education, the Nevada Equal Rights Commission (NERC), the U.S. Equal Employment Opportunity Commission (EEOC), and the U.S. Department of Education Office for Civil Rights (OCR).
  - vi. Provide legal guidance and opinion related to the review, revision, and maintenance of Board policies and the associated governing documents, including administrative regulations, procedures, handbooks, manuals, and forms.
  - vii. Working collaboratively with independent Board Counsel, whenever retained by the Board of Trustees, in regard to all duties and services to be rendered by independent Board Counsel contained in a written contract approved by the Board of Trustees at an open, public meeting.
  - viii. Conducting legal and professional development training for District employees on substantive or procedural legal topics.
  - ix. The Office of the General Counsel shall not provide legal services to individual employees regarding personal matters.
- c. Appeals
- i. Appeals of Litigation
    - 1) The Board of Trustees shall be informed by the Office of the General Counsel, or any attorney representing the District, of any potential appeal of litigation prior to the filing of such

an appeal. This includes appeals to the Nevada Supreme Court, United States Court of Appeals, and/or United States Supreme Court.

- 2) The Board shall receive such notice by way of a legal meeting, a "non-meeting" which is exempt from Nevada's Open Meeting Law.
- 3) The Office of the General Counsel has authority to file a notice of appeal, which then must be ratified by the Board at the next regularly scheduled meeting of the Board of Trustees.

ii. Appeals of Non-Litigation

- 1) The Board delegates to the Superintendent the decision-making authority to direct the Office of the General Counsel, or any attorney representing the District, to file a notice of appeal in any non-litigation proceeding, to include matters of arbitration, administrative process, or similar quasi-judicial proceedings. As appropriate, the Office of the General Counsel shall work collaboratively with the Leadership Team member from whose office/department the appeal arises.
- 2) The Superintendent:
  - a. shall inform the Board in writing when such delegation of decision-making authority occurs;
  - b. may revoke such delegation at any time; and
  - c. may not delegate the decision-making authority to file a notice of appeal to the Office of General Counsel.

d. Outside Legal Counsel

- i. The Office of the General Counsel may retain outside legal counsel, up to a maximum cost of \$50,000 to be paid from District funds, when it is determined such employment is necessary and appropriate under the specific circumstances. If the Chief General Counsel determines at any time that a specific legal matter referred to such outside private legal counsel will likely exceed \$50,000 in

fees and costs, the Chief General Counsel shall so advise the Board of Trustees in writing.

- ii. The Superintendent may retain outside legal counsel, up to a maximum of \$50,000 to be paid from District funds, when it is determined such employment is necessary and appropriate under the specific circumstances. If the Superintendent determines at any time that a specific legal matter referred to such outside legal counsel will likely exceed \$50,000 in fees and costs, the Superintendent shall so advise the Board of Trustees in writing.

e. Independent Board Counsel.

- i. The Board of Trustees, by a vote of the majority, may hire or place on retainer independent board counsel as the Board deems appropriate or necessary. Independent board counsel represents the Board and shall not provide legal services to Trustees on private matters.
- ii. Only the officers of the Board of Trustees may seek advice from or consult with the independent board counsel. If the officers refuse to seek the advice from or consult with the independent board counsel, two or more Trustees may ask for an agenda item to seek advice from or consult with the independent board counsel. The President of the Board must put the item on the next possible agenda. If the majority of the Board votes to seek advice from or consult with the independent board counsel, then the President or his/her designee shall seek the advice from or consult with the independent board counsel.
- iii. The Board of Trustees may use the independent board counsel to represent it at meetings of the Board of Trustees, its committees, and sub-committees, and to advise the Board of Trustees and its individual members upon specific terms and conditions as may be provided by written contract approved by the Board at an open, public meeting.

## **LEGAL REQUIREMENTS AND ASSOCIATED DOCUMENTS**

1. This Board Policy reflects the goals of the District's Strategic Plan and aligns/complies with the governing documents of the District.

2. This Board Policy complies with Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC), to include:
  - a. Chapter 41, Actions and Proceedings in Particular Cases Concerning Persons, and specifically:
    - i. NRS 41.0305 – 41.039, Liability of and Actions Against This State, Its Agencies and Political Subdivisions;
  - b. Chapter 241, Meetings of State and Local Agencies;
  - c. Chapter 386, Local Administrative Organization, and specifically:
    - i. NRS 386.410, Employment of private legal counsel;
  - d. Chapter 391, Personnel, and specifically:
    - i. NRS 391.100, Employment of personnel by trustees; and
    - ii. NRS 391.271, School district to provide for legal defense of employee charged with certain crimes committed within scope of employment; exceptions.
3. This Board Policy complies with the Opinion of the Nevada Attorney General, AGO 12-28-1911, Trustees may employ attorney.
4. Nevada Rules of Professional Conduct.

## REVISION HISTORY

Date	Revision	Modification
4/8/2008	1.0	Adopted
11/10/2015	2.0	Revised: to clarify the role and supervision of the Office of the General Counsel, outside private legal counsel and independent Board counsel
10/25/2016	3.0	Revised: to align with Balanced Governance principles; number changed from 9012
9/12/2017	4.0	Revised: to include language related to appeals of litigation

1/12/2021	5.0	Revised for consistency to Board Policy 9070 and to make changes for clarity
-----------	-----	--