

Talk Isn't Cheap: The High Costs of Legal Counsel

Prominently displayed on the wall behind the desk of a managing partner in a prestigious Boston law firm is a plank of highly polished cedar. Engraved on that plank are the words, “Talk Is Cheap—Unless You’re Talking to Your Lawyer.”

As education professionals, we are expected to dispense advice to all our constituents, including teachers, students, parents, and taxpayers. It would seem strange for us to place a price tag on the quantity or quality of the “talk” that we dispense. It’s part of our job.

In the business of law, however, “talk” is legal advice, a commodity that is provided to clients in exchange for professional fees. Fortunately for us, those legal fees charged to our educational institutions are usually quite reasonable. “Of counsel” advice to superintendents and school

boards and labor and employment law counsel may cost our school districts approximately \$200 an hour. In business and industry, legal fees for most corporate work range from \$400 to \$600 an hour. For proprietary advice, including trademark and patent work, the fees are generally \$1,000 an hour, or more.

Extreme Encounters

Overall, the routine legal bills that our school districts pay are a bargain. Legal services that are *not* routine, however, can become quite expensive. That is often the case when a school district is drawn into a legal matter as a defendant, or for circumstances in which it chooses to become a plaintiff. School districts most typically become defendants in due process hearings, the arbitration process, or civil court,



By Richard H. Weeks

in federal, state, or local jurisdictions. They can also be drawn into criminal court as the result of a school employee's actions.

Fortunately, insurance underwriters generally cover attorney fees and judgment awards, less insurance deductibles, in civil court. That being said, however, you do not want to make cameo appearances in civil court very often. Your annual insurance premiums could increase dramatically or your policies could be canceled altogether. Insurance policies do not generally provide financial relief in criminal court—even if the school district prevails.

School District as Defendant

One common instance of a school district as defendant is the due process hearing involving services to a special-needs student. If the respective state agency's "due process hearing and/or appeals" outcome is unsatisfactory to the parent, the matter could be pursued in civil court.

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In our example, the parent contends that the child's individual education program (IEP) is inadequate, denying the child an opportunity to attend a private day school, which would cost the district \$67,000 in tuition annually. The school district contends that the IEP requirements are being met by the district's special-needs program, thus saving the tuition bill.

Both parties incur considerable legal fees. Attorneys usually charge higher fees whenever they represent clients in court. Because they want to prevail and win cases for their clients, they clock considerable billable hours preparing for court appearances. In this example, it would not be unreasonable for the school district to amass \$165,000 in legal fees and expenses for its own representation, from the case's early stages through a final court settlement. A favorable judgment to the parent could also require the district to pay the plaintiff's legal fees and expenses, and possibly the expensive tuition bill for that special-needs school, which triggered this contentious matter.

School District as Plaintiff

School districts are often plaintiffs in civil court. For example, a school district contends its architects and contractors were negligent in constructing a new school.

Fictitious Liberty Public Schools accepted completion of its newest elementary school only to discover it had many problems. The roof leaked; cracks appeared in the cement walls and floors; the heating, ventilating, and air-conditioning system did not provide adequate ventilation or air-

conditioning; and the local area network failed to integrate into the district's wide area network.

The contractors blamed the architects for faulty drawings. The architects accused the school district's clerk-of-the-works of never reviewing the cement contractor's delivery slips. And a local newspaper revealed that the town's building inspector was unaware of numerous electrical code violations while construction was still under way. Subsequently, the school board decided to file a lawsuit.

Because the terms of the performance bond with the contractors and the professional liability contract with the architects had expired, Liberty Public Schools directed its attorneys to bring them all to court.

During numerous pretrial hearings, Liberty Public Schools became disenchanted with the defendants for what it perceived to be "paltry offers" to fix the school's problems. The contractors refused to give in to the "exorbitant financial requests" by the school district. The case proceeded to trial in state court—two years after the school was built. Both sides retained several expert witnesses; interrogatories and depositions were obtained; and additional legal counsel, an expert in litigation involving construction and the trades, was hired.

At trial, a \$500,000 judgment was made for the school district for repair work, legal representation, and court costs. The case was immediately appealed. The district is now waiting for the possibility of another trial in the state's superior court in approximately two years.

Meanwhile, the cracks in the school's cement foundation have widened, causing flooding and mold problems. The air-conditioning units fail to operate, resulting in some of the school's educational programs being relocated to other overcrowded district schools. There is no Internet connection for the school's 375 computers.

Districtwide programs were eliminated to pay legal fees and expenses, possibly totaling \$675,000 over five years of litigation. The school district's insurance carriers refuse to pay any legal or repair bills. Finally, the local newspaper asked an independent building construction consultant to "cost out" the repairs that would have been required to fix the school's problems at the early stages of this debacle. He reported back that a mere \$175,000 would have been needed.

Cost of Legal Matters

Unfortunately, one of the most important, yet unasked, questions in management of American public education is, "What would legal action cost?" The total cash payout to resolve a legal matter must cross the minds of some school authorities; however, attorneys and the legal system intimidate many school officials. Political motives by municipal officials also frequently blind decision makers to obtaining useful legal cost estimates.

In the IEP example cited earlier, school administrators might have pursued their choice of actions to avoid a "domino effect"

	General Activity/Specific Actions	Est. Hours	Rate	Amount
1	Case assessment, development, and administration. Strategic planning activities	20–30	\$200–250	\$5,000–7,500
2	Pretrial pleadings and motions	150–200	\$200–250	\$40,000–50,000
3	Discovery, including interrogatories and depositions	250–300	\$200–250	\$60,000–75,000
4	Investigations, including technical analysis of documents	100	\$150	\$15,000
5	Appeals			n.a.
6	Trial, settlement or other			n.a.
7	Review draft report from expert witnesses	50	\$225	\$11,250
8	Review and analyze opposing expert witness reports	20	\$225	\$4,500
9	Transcripts			\$5,000
10	Total estimated budget as of 5/14/2006			\$168,250

Figure 1. Case Management Plan Budget through October 1, 2006. Prepared for Liberty Public Schools by Harry Norman, Esq.

with the parents of other special-needs students. “If we send this student to that private school, then we can expect 10 others to want their children placed in the same school. You know how those special-ed political action committees operate.”

If you face the possibility of incurring extreme legal fees and expenses, don't be afraid to ask legal counsel for a case management plan budget.

In the second example, Town of Liberty public officials might have been seeking retaliation against the architects who “wanted to build a Taj Mahal instead of a school” or for seeking a high-cash judgment from the contractors’ insurers for perceived shoddy work.

Instead, the district should have asked its legal counsel to cost out the legal fees and expenses for the early stage of a lawsuit. That would have helped the district determine the worthiness of those expenses, which might be offset by a potential settlement. **Figure 1** illustrates a case management plan budget for Liberty Public Schools.

After reviewing the case management plan and obtaining an independent cost estimate to repair the school, Liberty Public Schools could have asked, “Does it make any sense to spend \$168,250 in legal fees and expenses in a case to obtain \$175,000 to repair the school? What will this case cost us if we win but have to pay for years of appeals? What if we ultimately lose the case on appeal? Why not negotiate with the architects and contractors to make whatever repairs they can, and we will pay for the rest ourselves?”

Speaking Up

In the business world, it is standard procedure for managers to obtain cost estimates for any significant legal matter. Corporations and their subdivisions work within, and are held accountable for, annual operating budgets. CEOs and vice presidents are not afraid to ask their attorneys what potential legal services would cost. School districts should be no different. If you face the possibility of incurring extreme legal fees and expenses, don't be afraid to ask legal counsel for a case management plan budget. ■

Richard H. Weeks is business manager at Saugus Public Schools in Massachusetts and past president of Massachusetts ASBO. He served as director of administration at Boston and Connecticut law firms. In 2001, he was recipient of the Pinnacle of Excellence Award.