

School board members frequently report the same problem with their school district's legal counsel:

- “I proposed a reform or policy on my school board, and I got shut down by the superintendent, other board members, or our legal counsel, who told me that we can’t because it violates some federal or state law or regulation, and we would lose our federal or state funding, or even get sued.”

When advising school board members in this situation, there are a few key truths to keep in mind and share with them, as relevant:

- School boards do get sued for policies and actions they take. Superintendents, attorneys, and other school board members are right to be cautious.
- The person advising against the proposed reform may be correct.
- There are 13,500 school districts in the country. The experiences in one district, or the beliefs of one of its stakeholders, may not apply to this situation.
- The laws governing what school districts can and can’t do are different in all 50 states.
- State and federal government agencies often send out threatening guidance letters to cow school districts into submission.
- The range of law that an attorney needs to know to advise a school board well is vast. It is more akin to being a general practitioner family doctor than a specialized heart surgeon.
- It is not sustainable for any one organization to provide free legal advice to the number of school board members who need it.
- Much of what each state’s establishment School Board Association does is help school boards think through legal matters. They all have attorneys on staff. These attorneys tend to be very risk averse and often are politically biased.
- School boards have money to spend hiring attorneys. They all have attorneys on retainer except, and larger school districts also have attorneys on staff.
- School districts can retain supplementary counsel that is more friendly to the desired reform goal without replacing the existing counsel.



With these realities well understood by the school board member, here are the steps necessary to identify and retain an attorney that can be an ally, rather than an impediment to reform:

- Develop lists of friendly attorneys in your state.
 - If the school district in question needs supplementary legal counsel on a specific issue, or to replace the existing attorney entirely, SBAE can provide referrals to attorneys whom they can retain. You also can connect with local attorneys by asking for referrals from other school board members in your network, or through the your local [Federalist Society](#) chapter, the [Republican National Lawyers Association](#), or [American Juris Link](#).
 - Get to know the attorney or attorneys you have identified, meeting with them over Zoom, in their offices, or over coffee. Explain your work and see if they are bought in.
- Determine the exact legal needs of the school board member you are advising. Help them think through the situation they face, what area of law it likely applies to, if they need to replace the existing attorney entirely or just retain one as supplemental counsel, and discuss this need with the most suitable attorney on your list.
- Define specific next steps for the school board member to contact the right attorney, make sure they understand how retainers work, and know how to engage with them.
- In the rare cases in which the district faces an issue that might set a national precedent, or applies to a narrow set of specific issues, a pro bono legal aid organization may be able to help at little or no cost. Such organizations include:
 - [Wisconsin Institute for Law & Liberty](#): deeply versed in education issues, parental rights, Title IX
 - [Parents Defending Education](#): free speech, parental rights, political bias
 - [Alliance Defending Freedom](#): religious liberty, parental rights, free speech, gender identity
 - [America First Legal](#): free speech, Title IX, racial discrimination
 - [Liberty Justice Center](#): free speech, school choice
 - [First Liberty](#): religious liberty, free speech, workplace discrimination