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 attor-
ney 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 poli-
dies 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 hear-
ing and/or appeals” outcome is unsatisfactory to the par-
et, the matter could be pursued in civil court.

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In our example, the parent contends that the child’s indi-
vidual 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 usu-
ally 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 ex-
ample, a school district contends its architects and contrac-
tors 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-condi-
tioning 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 build-
ing inspector was unaware of numerous electrical code viola-
tions while construction was still under way. Subsequently,
the school board decided to file a lawsuit.

Because the terms of the performance bond with the con-
tractors 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 per-
ceived to be “paltry offers” to fix the school’s problems.
The contractors refused to give in to the “exorbitant finan-
cial 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 rep-
resentation, 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 connec-
tion 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 intim-
itate many school officials. Political motives by municipal
officials also frequently blind decision makers to obtain-
ing useful legal cost estimates.

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

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.

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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.

<table>
<thead>
<tr>
<th>General Activity/Specific Actions</th>
<th>Est. Hours</th>
<th>Rate</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1 Case assessment, development, and administration. Strategic planning activities</td>
<td>20–30</td>
<td>$200–250</td>
<td>$5,000–7,500</td>
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<tr>
<td>2 Pretrial pleadings and motions</td>
<td>150–200</td>
<td>$200–250</td>
<td>$40,000–50,000</td>
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<tr>
<td>3 Discovery, including interrogatories and depositions</td>
<td>250–300</td>
<td>$200–250</td>
<td>$60,000–75,000</td>
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<td>4 Investigations, including technical analysis of documents</td>
<td>100</td>
<td>$150</td>
<td>$15,000</td>
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<td>5 Appeals</td>
<td>n.a.</td>
<td></td>
<td>n.a.</td>
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<tr>
<td>6 Trial, settlement or other</td>
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<td>n.a.</td>
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<tr>
<td>7 Review draft report from expert witnesses</td>
<td>50</td>
<td>$225</td>
<td>$11,250</td>
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<td>8 Review and analyze opposing expert witness reports</td>
<td>20</td>
<td>$225</td>
<td>$4,500</td>
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<td>9 Transcripts</td>
<td></td>
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<td>$5,000</td>
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<tr>
<td>10 Total estimated budget as of 5/14/2006</td>
<td></td>
<td></td>
<td>$168,250</td>
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**Figure 1.** Case Management Plan Budget through October 1, 2006. Prepared for Liberty Public Schools by Harry Norman, Esq.