

## **1160 LEGAL COUNSEL**

### **I. PHILOSOPHY AND PURPOSE**

Public education is governed by an ever growing body of state and federal laws, rules, and regulations. The complexity of legal requirements imposed on the District requires legal advice and attorney work product. To accomplish these ends, Weber School District Board authorizes the District to employ one or more attorneys as in-house legal counsel. The Board may designate one of those attorneys as General Counsel for the district. This policy sets forth the duties, authority, and employment status of the District's legal counsel.

### **II. POLICY**

#### **A. Officer of the Court**

1. Licensed attorneys are officers of the legal system and are required to take an oath in which they swear to "support, obey, and defend the Constitution of the United States and the Constitution of Utah," and to "discharge the duties of attorney and counselor at law as an officer of the courts with honesty, fidelity, professionalism, and civility." Preamble, Rules of Professional Conduct.
2. Attorneys are members of the Utah State Bar, subject to the Rules of Professional Conduct. Within the Utah State Bar is the Office of Professional Conduct, which is authorized to investigate allegations against attorneys, prosecute those allegations, and provide informal guidance to members of the Bar concerning professional conduct.
3. Attorneys are subject to the Ethics and Discipline Committee, which is appointed by the Utah Supreme Court. Discipline may be imposed on attorneys by the Ethics and Discipline Committee and by Utah courts.
4. As an attorney, Legal Counsel is granted certain authority within the court system not granted to other District employees or members of the community. Legal Counsel may represent the District in court and in administrative agency proceedings. Legal Counsel may issue subpoenas consistent with law. Legal Counsel may accept service of subpoenas and summonses on behalf of the District.
5. Legal Counsel is also subject to certain restrictions on conduct imposed by the Bar, by court rules, or by other directives from the Utah Supreme Court, not imposed on other employees. Violation of these restrictions brings consequences to which other employees are not subject. Therefore, Legal Counsel shall not be required by the Board, the District, any duly authorized constituents, or any District employee, to engage in conduct that is illegal or that would violate any of the restrictions imposed on attorneys by the Bar, the courts, or other applicable law. Legal Counsel may not be subject to disciplinary action for failure to act against the legal, professional, or ethical duties imposed on attorneys.

#### **C. Employment**

1. Legal Counsel is an employee of the District and is entitled to salary and benefits consistent with those offered to Administrators.

2. Legal Counsel is granted career status according to the same terms set forth for other District employees.
3. District Legal Counsel reports directly to the Superintendent. Associate Legal Counsel reports directly to District Legal Counsel.

D. Client

1. Weber School District, the organization, is Legal Counsel's client. Under Rule 1.13 of the Utah Rules of Professional Conduct, "a lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents." The District's authorized constituents are the WSD Board of Education, the Superintendent, the Business Administrator, and other designated employees.
2. Legal Counsel's client is not the Superintendent, Business Administrator, individual Board members, or any other individual employee of the District, except as those individuals act in their official capacity as duly authorized constituents of the District. In the event of conflicting actions or directions between constituents, or a legal dispute between an individual and the District, Legal Counsel shall, consistent with Rule 1.13, "proceed as is reasonably necessary in the best interest" of the District.
3. Notwithstanding paragraph Subsection (II)(C)(2), Legal Counsel may advise and represent an individual employee as a constituent of the District under the following circumstances:
  - i. On legal requirements necessary to the fulfillment of the employee's job responsibilities;
  - ii. If the employee receives a subpoena or other court or administrative order arising out of the fulfillment of the employee's job responsibilities; or
  - iii. If the employee is named in a lawsuit for conduct engaged in by the employee while acting in the scope of employment, as determined and approved by District Legal Counsel and the Superintendent.
4. On rare occasions, the Board may wish to seek legal advice separate from or in addition to that provided by Legal Counsel. Such occasions may arise out of disagreement or a desire for a second opinion on a legal matter, to avoid a potential conflict of interest for Legal Counsel, to seek advice or representation on a specialized legal question, or for other reasons. If the Board retains an outside attorney, Legal Counsel will continue to represent the District by determining the duly authorized constituents and, consistent with Rule 1.13, "proceed[ing] as is reasonably necessary in the best interest" of the District.
5. During grievances, appeals of administrative decisions, hearings, and other quasi-judicial proceedings governed by District policy, Legal Counsel represents and advises the decision maker at each level. According to rules prohibiting conflicts of interest, Legal Counsel may not simultaneously advise the decision maker and either of the parties to the dispute, including District administration, in a grievance, appeal, or hearing.

#### E. Outside Counsel

1. In accordance with Utah law, the District is insured by the Utah State Risk Management Fund. The Risk Management Fund provides legal representation through the Attorney General's Office for certain matters such as litigation. In cases in which the District is represented by the Attorney General's Office, Legal Counsel will work as co-counsel or the point of contact for the Attorney General's Office.
2. In certain circumstances, the Superintendent may, in consultation with Legal Counsel, decide to hire outside counsel to conduct or assist with legal representation. Legal Counsel will work as co-counsel or the point of contact for outside counsel.

#### F. Authority

1. Legal Counsel may make administrative decisions within the scope of counsel's employment. Legal counsel also provides legal advice to the District via the Board, Superintendent, Business Administrator, or other duly authorized constituent regarding legal requirements, permissions, prohibitions, risks, and consequences.
2. Legal Counsel is authorized to access all District records, documents, and electronic information, including student and employee records, necessary to ensure compliance with court orders, subpoenas, public records requests, audits, investigations, administrative proceedings, and other legal requirements. If such records or information is not electronically accessible to Legal Counsel, they shall coordinate retrieval with the custodian of records as designated by District policy.
3. Legal Counsel is authorized to communicate with current and former students and employees as necessary to comply with subpoenas, court orders, records requests, investigations, administrative proceedings, or other legal requirements.