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**Representation of School Boards and
Administrators in Challenging Times***In support of a panel discussion by:***Joy Baskin, TASB****Cory Hartsfield, Cory Hartsfield P.C.****Jarod Russell, Underwood Law Firm, P.C.****Jim Walsh, Walsh Gallegos Treviño Kyle & Robinson P.C.**

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I. Divisions Within School Boards

Whenever a group of people are tasked with making decisions, as school boards are, it is inevitable that disagreements will occur. These disagreements may result in “divided” or “split” boards. Divided school boards are not a new development—splits based on ideological differences, interpersonal strife, and local issues have always been present. However, media headlines indicate there has been an infusion of national partisan political issues into local school boards that is contributing to divisiveness. For example, consider the following headlines:

- “School boards become battlegrounds for nation’s divisions on race, gender and more”¹
- “Tears, politics and money: School boards become battles zones”²
- “Why School Board Seats May Be the Hottest Races on Your Midterm Ballot”³
- “Culture wars over race and sexuality are dominating Texas school board elections”⁴

These sensational headlines are not just isolated or unique incidents. A study conducted by Ballotpedia found that school board elections are drawing increased attention from the media.⁵ From 2021 to early 2023, Ballotpedia identified no less than 2,080 school board elections across the United States in which candidates took a stance on one of the following issues: (1) Race in education/Critical Race Theory, (2) Responses to the coronavirus, and (3) Sex and gender in schools.⁶ Traditionally, school boards have been considered non-partisan in most jurisdictions (including Texas). Nevertheless, the media is reporting an infusion of money into at least some school board races as a result of national partisan politics.⁷

Although a divided school board can operate effectively in accomplishing its purpose, a divided school board may also present legal and ethical issues for school board trustees, district school district administration, and the attorneys who represent school districts. For example, in a

¹ *School boards become battlegrounds for nation’s divisions on race, gender and more*, PBS NEWSHOUR (June 21, 2023), <https://www.pbs.org/newshour/show/school-boards-become-battlegrounds-for-nations-divisions-on-race-gender-and-more>. <https://apnews.com/article/health-education-coronavirus-pandemic-school-boards-e41350b7d9e3662d279c2dad287f7009>

² *Tears, politics and money: school boards become battle zones*, ASSOCIATED PRESS (July 10, 2021), <https://apnews.com/article/health-education-coronavirus-pandemic-school-boards-e41350b7d9e3662d279c2dad287f7009>.

³ Katie Reilly, *Why School Board Seats May Be the Hottest Races on Your Midterm Ballot*, TIME (November 3, 2022), <https://time.com/6228330/school-board-elections-midterms-2022/>.

⁴ Mike Hixenbaugh, *Culture wars over race and sexuality are dominating Texas school board elections*, NBC NEWS (May 3, 2022), <https://www.nbcnews.com/news/us-news/texas-school-board-elections-race-sexuality-rcna26977>.

⁵ BALLOTPEDIA, https://ballotpedia.org/Conflicts_in_school_board_elections,_2021-2023 (last visited September 16, 2023).

⁶ *Id.*

⁷ *Id.*

recent survey, Texas school attorneys identified the following issues in representing a divided school board: maintaining relationships with all trustees, maintaining confidentiality, facing pressure to give a legal opinion desired by a board faction, and addressing complaints by individual trustees against other trustees. Successfully navigating the challenges presented by a divided school board requires an understanding of the roles and responsibilities of the school board, the individual trustee, the superintendent, and the school attorney. For attorneys, knowledge of and adherence to the relevant ethical obligations is critical.

II. The Role of the School Board and the Superintendent

A school district is managed and operated by a variety of entities and individuals, including the school board, superintendent, campus administrators, and the district- and campus-level committees.⁸ These constituents must work together to contribute to the operation of the district in accordance with the Texas Education Code and Board Policy.⁹ Therefore, good working relationships between the district’s school board and superintendent are paramount for the efficient operation of a school district. Trust and mutual respect are crucial aspects of a good working relationship. School board members and superintendents may foster trust and mutual respect by understanding—and respecting—their individual responsibilities.

A school district is managed by a school board, which is tasked with overseeing the management of the district and “ensuring that the superintendent implements and monitors plans, procedures, programs, and systems to achieve appropriate, clearly defined, and desired results in the major areas of district operations.”¹⁰ The school board serves in a fiduciary role for the benefit of the students in the district,¹¹ and an individual trustee’s fiduciary duties include the duty of good faith, duty of prudent investing, and duty of compliance.¹² A school board’s authority includes hiring and evaluating the superintendent.¹³

The school board must organize itself by selecting a board president, board secretary, and any other officers or committees the board deems necessary.¹⁴ The board president has certain unique statutory responsibilities and duties, such as calling the meeting to adopt the budget.¹⁵ Further responsibilities of the board president or other board officers may be defined in board policy or board operating procedures.

⁸ See TEX. EDUC. CODE § 11.011.

⁹ See *Id.*

¹⁰ TEX. EDUC. CODE § 11.051.

¹¹ See *River Rd. Neighborhood Ass’n v. S. Tex. Sports*, 720 S.W.2d 551 (Tex. App.—San Antonio 1986, writ dismissed).

¹² See TEX. PROP. CODE §§ 113.051, 117.004.

¹³ TEX. EDUC. CODE § 11.1513(a)(1).

¹⁴ TEX. EDUC. CODE § 11.061.

¹⁵ See, e.g., TEX. EDUC. CODE § 44.004.

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