

## **Litigation, Religion, and Politics<sup>1</sup>**

The Washington School District is a K-12 system with 4,500 students, which was formed as a result of a lengthy desegregation law case. The Commissioner of Education ordered the forced merger of the wealthy and white Washington Township school system with the heavily minority Washington City schools. The case was triggered by the K-8 Washington Township attempt to withdraw its high school age population from Washington High School and build its own high school. The consequence would have been an increase in Washington High School's minority population from 20% to 70%. The Commissioner of Education not only denied Washington Township's withdrawal request but also determined that the best interests of the children would be served by merging both school systems into one desegregated K-12 school system, a decision upheld by the State Supreme Court.

The first reactions from many of the parents and from the Board of Education of Washington Township were anger and threats to boycott the new school system. In fact over 20% of the parents did withdraw their children and enrolled them in private or parochial schools. Because the students in the Washington Township schools were almost all white, a state desegregation plan was implemented that created four elementary school zones, each with four public and four Catholic elementary schools.

### **New Superintendent**

Dr. Lawrence Epstein had just been appointed the superintendent of the merged district following the retirement of the former superintendent, who had been instrumental in the creation of the new district. Although this is Dr. Epstein's first superintendency, he came to Washington with a strong background having served as a teacher, guidance director, principal, and assistant superintendent; in fact, he has both urban and suburban school experience during his 21 years as a public school teacher and administrator.

### **The Board of Education**

Because this is a merged school district, the composition of the board is determined by the percentage of students who attend the district from either Washington Township or Washington City. Superintendent Epstein inherited a board with five members from Washington Township and the other four from the City. The merger is now ten years old and many of the fears that caused parents to pull their children from the then new school district never materialized, and the reputation of the school district has improved significantly. Washington High School is considered one of the best in the state and is proud of its ethnic and racial diversity. The board members are also proud of their schools and pleased with their selection of the new superintendent. Board members no longer vote to represent where they live, but they see their responsibility to the entire district. Although they are a diverse group, they are all college educated, successful in their careers, and have or have had children in the merged school district. They function well together and present a united front to the public and staff.

### **The Problem**

Three months after Dr. Epstein took over the reins as superintendent, he received a telephone call from an irate parochial school parent protesting a notice from the district's transportation coordinator that his children would no longer be entitled to receive "Courtesy Busing." The state's requirement for busing students is primarily based on a minimum distance of two miles from a student's home to the assigned elementary school. Many of the students attending the elementary schools live less than two miles from their schools, but they are transported under the board of education policy called "Courtesy Busing." When a board of education decides to provide transportation for students who live less than two miles from their schools, the district does not receive any financial reimbursement from the state for these students. "Courtesy Busing" is further complicated by a series of decisions by Commissioners of Education in this state that ordered public boards of education to provide transportation to private and parochial students on the same basis as they do to their public school students.

The superintendent listened patiently to the parent's complaint and promised that he would investigate the case and get back to him. Superintendent Epstein called Marilyn Ricco, his transportation coordinator, to his office to provide him with the rationale or policy that supported the decision to remove this parent's children from the eligible list of students provided transportation. Marilyn Ricco explained that Jim Ryan, the parent who was protesting the decision, was no longer eligible for courtesy busing. Mr. Ryan had removed his children from one parochial school and enrolled them in another one because of a dispute with the parochial school principal. The decision by the parent to remove his children from the parochial school in one of the elementary school districts created by the desegregation plan and enroll them in another parochial school resulted in forfeiting his right to "Courtesy Busing." The explanation seemed reasonable to the superintendent, particularly when Ricco indicated that all similar cases were handled the same way, and this was strong past practice in the district.

Armed with this information, Superintendent Epstein called Jim Ryan back to tell him why he was supporting the decision by his transportation coordinator. Ryan exploded and angrily threatened a lawsuit because he claimed that he had evidence that there were a number of parochial school students being transported under similar circumstances. Dr. Epstein tried to calm the situation by suggesting that if names and addresses of these other students were produced, then he would consider reversing his decision. The parent, however, refused to inform on his friends. "Just take my word," he said. The conversation ended congenially with both agreeing to keep an open mind.

Dr. Epstein immediately and discretely launched an investigation into the facts, and what he found, he didn't like. First, it was true that there were many such cases; the parent was correct. Second, the parent was influential in the community and was mobilizing a parental action group. Third, Marilyn Ricco, his transportation coordinator, had not been fair in her administration of the busing policy. When confronted with more than a dozen cases of parochial school students who had been receiving transportation in violation of board policy, she admitted the variance but tried to justify her decision. Finally, this case proved to be only the tip of the iceberg. More than

130 students were subsequently identified who were not eligible for transportation; yet they had been receiving it at a substantial cost to the district.

Faced with this information, the superintendent asked the board president to call a special closed session of the board. The session was closed because of the potential of litigation. The board members expressed their dismay about a practice that has been going on for many years and unanimously agreed that the 100+ parochial students who were not eligible for transportation should be removed from the buses. The board directed the superintendent to do two things: take disciplinary action with Marilyn Ricco and inform the parents of these parochial students that “Courtesy Busing” for their children would stop.

The superintendent sensed a major challenge that, if not handled effectively, would undermine his leadership. He called a meeting of all the parochial school principals to give them advance notice of the board’s intentions and listened carefully to their reactions and suggestions. Although the meeting was cordial, he understood that litigation was inevitable. He alerted both the board attorney and members about the outcome of the meeting. The attorney advised the board that the history of these cases suggested that the board’s position might not be upheld; however, he promised to review the state Supreme Court’s prior decisions in similar cases and report at the next board meeting. Meanwhile the superintendent was directed to notify the parents by letter that in the following school year busing would not be provided.

It took only a week after the letters were sent for the board of education to receive notice that the parents of the affected students had retained an attorney and litigation to reverse the board’s decision was being filed. The reaction came as no surprise, but the report of the board’s attorney was intriguing. He advised the board that his research had convinced him that not only would the board prevail in the impending litigation but that “Courtesy Busing” for any private or parochial student was not a requirement. He indicated that all the transportation being provided for all private and parochial students was not required except for those who attend schools more than two miles from their homes.

His findings were a surprise because the board thought that the issue had been settled in the state by a number of decisions from the Commissioner of Education and State Board of Education. The attorney informed the board that the issue of “Courtesy Busing” for private and parochial students had never been appealed to the state’s supreme court, and he was convinced that the board would be successful if they determined to proceed with the case. Board members were elated because a saving of over \$600,000 a year was a possibility if the attorney was correct in his assessment. Some of the board members were enthused for other reasons beyond the financial reward. They believed that the board would gain widespread support from other boards who would now have the opportunity to save significant money without negatively affecting their programs. The Washington District and its Board of Education would again gain statewide attention as it did when the district was the first and only to be formed to resolve the desegregation dilemma.

Superintendent Epstein pondered the prospect of spending the next year or two preparing for litigation as well as dealing with the daily impact of the negative reactions that were sure to come from the parochial schools and churches as well as parents and teachers in the district. He knew that both he and the board members would be the targets of ugly rhetoric and vicious attacks. The board turned to him for his recommendations as they sought the safety of a superintendent’s advice. Because he and four board members were not Catholic, they would be special targets during the next few months. He also was concerned that the board members who were Catholic would be pressured in church and by many of their friends. Would they buckle under the impending assault? He knew that he and the board had to make a momentous decision and soon. Oh yes, and then there was his transportation coordinator, Marilyn Ricco; he was under pressure to fire her. He needed a plan and a timetable to act. Assume you are the superintendent.

- Is there a way to prevent this issue from polarizing the community?
- Is litigation inevitable? If not, how can it be avoided?
- What kind of external coalition is likely? What are the consequences?
- Is this issue likely to spill into the school and affect students and teachers? How?

- What kind of political games and tactics are likely to get played out?
- What kind of conflict management styles are needed? Why?
- How should you deal with Marilyn Ricco?
- Formulate a thoughtful plan of action. What are your short-term goals? Long-term goals?

1. Written by Dr. Harry Galinsky from Hoy, W, K. & Miskel, C. (2001). *Educational Administration: Theory, Research, and Practice*. New York: McGraw Hill.