

# Doing What's Right for Kids: Defendable Decision Making

*You can create a district culture that encourages school officials to make defendable decisions based on what's right for kids.*

By Brian N. Moore, RSBS



## First, Apples and Oranges

Have you ever attended a jury trial in a civil court in which a school district—maybe your school district—was the defendant? Did you watch the jury members' reactions as school officials on the stand answered a tedious array of questions based on sections of the school code or applicable federal law? You probably saw some looks of confusion or downright boredom on the jurors' faces.

Did you see their entire demeanor change when the parent took the stand? Did you notice the way the jury members leaned forward when the parent talked about the harm done to his or her child?

Those jurors (who, by the way, were probably parents) could not relate to the administrative regulations or standard practices the district administrator talked about. However, they could relate to the experiences of the parent and of the child, and they based their verdict on whether harm was done to the child.

Too often, jurors are faced with a case of apples and oranges. "Apples" are the plaintiffs' allegations that their child was wronged somehow. "Oranges" are the district's defense grounded in case law and a current interpretation of the administrative code provisions . . . blah, blah, blah. The jurors know they should be paying attention to

**R**emember the last time you and your fellow administrators were called in to review a lawsuit with your district's attorneys? Whether the suit went to trial or was settled out of court, the process was expensive and took time and money away from educating the district's kids.

Isn't there a better way—a way to cut down on the time and resources tied up in legal issues? Yes, there is a way! (I can hear the collected gasp from our beloved readers!)

The answer is to make better decisions.

I know some of you are shaking your heads in disgust. "But, you can't teach people to use common sense," you say. I agree, but you *can* teach them a different method of decision making. You can create a district culture that encourages school officials to make defendable decisions that have a relatively low risk of exposing the district to liability and that simultaneously allow them to do the right thing for kids.

the oranges, but their minds have left the building. They are thinking about the time their own kid was wronged by the school—the time their child got an F in English because the teacher had a no-late-work policy, and their poor child’s assignment was delayed because the family was at an out-of-town funeral.

## Therein lies the key to defensible decisions: make them with the students in mind.

Jurors can relate to the angry parent; few can understand or interpret the code. If those same school officials who answered questions about federal regulations and district policy could take the stand and say that they made their decisions according to what they believed was in the best interest of the student, the jurors would listen. They can understand that reasoning. They can defend it. Therein lies the key to defensible decisions: make them with the students in mind.

### Decision Making on the Front End

Let’s consider a common lawsuit that many of us have experienced—a lawsuit that has to do with a free appropriate public education (FAPE).

A special-needs student assaults a teacher in the classroom. He is suspended pending the outcome of the due process procedure.

As school administrators, what’s on our minds in that situation? We are thinking about due process. We have a ton of paperwork to complete and to submit to the district office as soon as possible, and we must schedule a manifestation determination meeting to review the student’s misconduct and disability. We are focused on meeting all the legal requirements associated with disciplining a special-needs student, right?

While we do the paperwork and schedule the meeting, what is the student doing? He is sitting at home playing video games, being watched over by a parent who must take time off from work. He is upset because he didn’t mean to punch the teacher, but he was really mad about a bad grade, and now he’s going to fail the semester because he is missing so much schoolwork.

The parent speaks to an advocate who asks, “Has the school provided him with a tutor?” Oh no! At the school, we were so focused on the incident and the paperwork that we forgot about the student!

When we make no attempt to meet our almost universal obligation (there are exceptions) to provide a FAPE, we open ourselves up to a lawsuit.

The student may wait more than a month for the superintendent’s or school board’s decision about whether he can return to school or can receive tutoring

at home. When all is said and done, whether or not the case is litigated, we owe the student that time.

Litigating a case for denial of a FAPE and providing educational services to a student—even if we think there might be exceptions—are both costly propositions. But isn’t it better to land on the side of doing the right thing for the student rather than trying to apply an exception and hoping the district doesn’t end up in court?

What could we have done differently? We could have made decisions with the student in mind. Yes, we must start the paperwork and schedule a manifestation meeting, but we should also think about our responsibility to the student and his education. Are teachers available who can make regular home visits to ensure that the student is still learning? Does he have a connection with a particular student adviser or caseworker who can help him keep up with his schoolwork and also help his parent understand the process?

Sure, that case could still end up in court, but your attorney will be better able to defend your actions with apples (i.e., we made sure the student was still receiving instruction while we were meeting the administrative requirements). A jury can sympathize with school leaders who say, “We know the student made a mistake, and we are doing our best to continue to educate him.”

### Defensible Decisions

The best possible type of decision we make in education is one that is “defensible.” In the Red Clay Consolidated School District in Delaware, we coach school-based administrators to make honest and defensible decisions. One way we do so is by teaching them to use different lenses to view a potential decision. For example, I ask them to consider, “What would the media or an attorney or a jury think if they were given the same information I have? What decision would they come up with? What would they think about the decision I am contemplating?”

## We coach school-based administrators to make honest and defensible decisions.

One of the biggest issues in our schools is bullying. Bullying has so many different definitions and interpretations. Our school administrators typically cite the department of education definition when they assert that an action is not considered bullying. The public and the press do not understand the department of education definitions. When the administrators are challenged, what happens? They are left floundering, trying to justify their pronouncement according to regulations and complex definitions.

We coach our administrators to remove the complex lens from the issue and think, “If I were not an educator but were Joe the Plumber down the street, and I read the statements made by the victim in the paper, would I think the behavior constituted bullying?” If the answer is yes, then stop quoting strict definition and say yes! It is a form of common sense, and it helps us make defensible decisions.

## Practical training is always productive training.

Practical training is always productive training. Using examples from our own district (without the names, of course), I present a scenario and ask the administrators to think about the scenario and brainstorm how they should respond. Most break out our code of conduct and say that they would figure out whether anything in the code applies to the situation. Next, I ask them to consider the same scenario from a media perspective, then from an attorney’s perspective, and finally, from a good old-fashioned parent-down-the-street perspective. All perspectives are apt to be different, but each provides a view into what others would think of our response. With those perspectives in mind, administrators are better able to develop and defend their decisions.

## Put It All Together

Take the time to work with your legal team to develop a workshop on defensible decision making. As you delve more into the subject, you will begin to understand that defensible decisions are most likely the right decisions for kids. That is, after all, what we are here to do. Our job is to help a child grow up and learn to be successful. If the basis for our decision is not the codes or standards, is not a single incident or a cost analysis, but is ultimately what is right for kids, we will be far better off in the court of law and in the court of public opinion.

Remember that the real benefit of a workshop on defensible decision making is not our saving money in legal fees or avoiding bad publicity—although those are both good results because they keep money in the classroom. The real upside is that we are teaching our folks to do what is right for the kids.

I know that I sleep better at night knowing that I helped a child. Let’s all help our school administrators make better decisions and get a better night’s sleep as well!

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