



Attolles Law, s.c.

Embracing Challenge. Delivering Opportunity

“I’m Calling Your Bonds, and You’re Going to Lose Your Federal Funding!”

School districts across the nation, and some even right here in Wisconsin, have received threats from community members and special interest groups threatening to “call the bonds” of school board members and administrators if the district refuses to accede to certain demands. To go along with the threat to “call bonds,” these groups are threatening to file lawsuits and even suggesting that school districts will lose their federal funding unless the district capitulates to the demands, which have typically taken the form of dropping a mask mandate. The threats may be standalone, but are more typically accompanied by a lengthy public records request wherein the requestor seeks bonds, policies relative to the bonding of school officials, and copies of insurance policies.

As difficult and frustrating as the “demands” may seem, it is important for school districts to recognize that there may be elements to even the most ill-conceived threat that could lead to legal consequences. For example, there is no statutory requirement for school districts or district officials to obtain bonds. Specifically, Wis. Stat. § 120.13(23) allows for a school board to require bonding, but does not mandate the practice (see below for further analysis). Thus, there is no legal basis for a person or group to “call the bonds” of school district personnel or officials. At the same time, a “demand” accompanied by a request for records nonetheless constitutes a public records request under Wis. Stat. § 19.35, the Public Records Law. As a result, even if there is no legal foundation for a group to demand compliance with a demand under threat of “calling a bond,” there are significant legal consequences for failing to respond to a request for access to public records.

So, what is a school district to do when it receives the threat and demand?

1. Bring your leadership team together and advise the entire team of the situation. And the message delivered to the entire team is “don’t panic!” As a team, we will remain calm and rely on our policies and good sense to respond.
2. Reassure Board members and staff that, as indicated above, school board members and employees are not required to be bonded. Only where bonding is required by local Board policy or if there is an “acting” clerk or treasurer under Wis. Stat. § 120.05(3) who has filed a bond to cover Board vacancies, will a district maintain a bond for an official. In other words, a bond is generally not required for board members or school administrators and the vast majority of Wisconsin boards **do not** require the posting of a bond.
3. Immediately notify your liability carrier of a threat or claim to determine what coverage your district carries, including directors and officers (D&O), errors and omissions (E&O), general liability, etc.

4. Keep in mind the purpose of a fidelity bond—to protect against employee malfeasance (*i.e.*, theft, dishonesty, misrepresentation, destruction of property, etc.).
5. Remember that federal funding is authorized and governed by the United States Department of Education—no single individual or group can “call a bond” and instantaneously cause a district to lose federal (or state) funding!
6. If the demand and threat is accompanied by a public records request, follow your district’s process for response, and ensure you timely produce records and/or timely provide a written response, which will include the legal basis for any exception from disclosure you may claim. If you are unsure of your district’s process for handling Public Records Law requests, be sure to register for the WASBO Accounting Conference and check out the session on Thursday, March 17 at 9:40 a.m.—“I’m Not the Records Custodian, So What Do I Need to Know about Public Records?”
7. Above all else, stay the course and be confident in the decisions your district is making regarding instructional content and delivery, student safety, and the overall education of your district’s students.
8. If there are any specific questions, reach out to legal counsel for assistance.

We know the last two (2) years have been tiring. A threat to block federal funding is just about the last thing you need to hear at this point. But so long as you methodically review the communication, being careful to separate a valid records request from an invalid threat to “call the bonds,” you will be well on your way to fulfilling your legal obligations and putting this latest challenge in the rearview mirror.

If you have any questions surrounding communications you may have received on this topic (or others), please contact your legal counsel. Likewise, if you have any questions on this guidance, please do not hesitate to let us know by emailing Chrissy Hamiel at chamiel@attolles.com, Andy Phillips at aphillips@attolles.com, or Kylie Owens at kowens@attolles.com. As always, we appreciate the opportunity to work with WASBO on these issues and look forward to seeing many of you again as the Spring conference season approaches!