

# POLICY

2015

6540

Personnel

**SUBJECT:** Defense and Indemnification of Board Members, Employees and Authorized Volunteers

## **Liability Protection Pursuant to Education Law**

The Board of Education (the “Board”) recognizes its statutory obligations to indemnify and/or defend School District employees, Board members and, in certain circumstances, authorized volunteers pursuant to the provisions of Education Law Sections 3023, 3028 and 3811. For the purpose of this policy and as appropriate to the context of this policy, the term “employee” shall include District employees, Board members, authorized volunteers, the Superintendent, District officers or any other person holding a position by election, appointment or employment in the service of the District, whether or not compensated. The term “employee” shall also include a former employee, his/her estate or judicially appointed representative.

The Board shall provide employees with a legal defense and/or indemnification for all damages, costs and reasonable expense necessarily incurred in the defense of an action or proceeding provided that the alleged action or omission is covered by the appropriate statutes(s). Furthermore, the Board will not be required to provide indemnification protection and/or legal defense unless the employee was, at the time of the alleged incident, acting in the discharge of his/her duties within the scope of his/her employment or authorized volunteer duties and/or under the direction of the Board.

The District shall not be subject to the duty to defend or indemnify unless the employee delivers appropriate notice of the claim to the Board within the time prescribed by statute.

- a) For purposes of Education Law Section 3811, the employee must give written notice to the Board within five (5) days after service of process upon him/her. Although the statute mandates only written notice of the claim to the Board, submission of relevant legal documents by the employee to the Board is also encouraged.
- b) For purposes of Education Law Sections 3023 and 3028, the employee must deliver the original, or a copy of the original relevant legal documents to the Board within ten (10) days after service of process upon him/her.

## **Liability Protection Pursuant to Public Officers Law Section 18**

The Board of Education also confers the benefits of Section 18 of the New York Public Officers Law upon the “employees” of the District, as defined in Section 18 of the Public Officers Law. The District assumes liability for the costs incurred in accordance with the provisions of Section 18. The benefits accorded to District employees under Section 18 of the Public Officers Law shall supplement and be available in addition to defense or indemnification protection conferred by other provisions of law.

Pursuant to the provisions of Section 18 of the Public Officers Law, and upon compliance by the employee with the requirements of this statute, the Board shall provide for the defense of the employee in any civil action or proceeding, state or federal, arising out of any alleged act or omission which occurred or allegedly occurred while the employee was acting within the scope of his/her public

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employment or duties. Furthermore, the Board shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in a state or federal court, or in the amount of any settlement of claim, provided that the act or omission from which such judgment or claim arose occurred while the employee was acting within the scope of his/her public employment or duties. However, in the case of the settlement of a claim, the duty to indemnify and save harmless shall be conditioned upon Board approval of the terms and conditions and amount of the settlement prior to actual settlement.

The duty to defend and/or indemnify and save harmless in accordance with Section 18 of the Public Officers Law shall be conditioned upon the delivery by the employee to the School District attorney or to the Superintendent a written request to provide for his/her defense, together with the original or a copy of any summons, complaint, process, notice, demand or pleading within ten (10) days after her/she is served with such document. Pursuant to Section 18, the full cooperation of the employee in the defense of such action or proceeding against the District based upon the same act or omission, and in the prosecution of any appeal, shall also be required as a condition for the Board's duty to defend and/or indemnify.

**Exceptions to Liability Coverage**

Indemnification coverage and/or the provision of legal defense by the Board will not apply unless the action claim is of the type covered by the statute(s) and/or is not otherwise exempt from coverage pursuant to law. Additionally, indemnification coverage and/or the duty to provide a defense shall not arise where such action or proceeding is brought by or on behalf of the District.

Paul D. Coverell Teacher Protection Act of 2001, as authorized by the No Child Left Behind Act of 2001  
20 United States Code (USC) Section 6731 et seq.  
Public Officers Law Section 18  
Education Law Sections 1709(26) and 34-b), 2560, 3023, 3028 and 3811  
General Municipal Law Sections 6-n and 52

Adopted: 08/07/95  
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