

Rules and Regulations
Governing the School Workers Defense Program
August 30, 1999

1.00 Regulatory Authority

- 1.01 These rules and regulations shall be known as Arkansas Department of Education Rules and Regulations Governing the Administration of the School Worker Defense Program.
- 1.02 These regulations are enacted pursuant to the State Board of Education's specific authority under Ark. Code Ann. §6-17-1113 (Supp. 1997), as amended by Act 540 of 1999.

2.00 Purpose

These rules and regulations are enacted to set forth the procedures used by the Department of Education to govern the administration of the School Worker Defense Program. The Department of Education is authorized and directed to establish a School Worker Defense Program for protection against civil liability, attorney's fees, and costs of defense for certain acts or omissions of protected persons while in the performance of his/her duties as a school district employee or volunteer.

3.00 Definitions

- 3.01 "Educational Activity" means - Acts or omissions of those protected employees/volunteers listed in Section 4.00, in connection with his or her authorized duties as a member of the faculty and/or staff of any public school district, educational cooperative, School for the Blind, School for the Deaf, or the School for Mathematics and Sciences.
- 3.02 "Bodily Injury" means - Physical injury to the body, or to sickness or disease contracted by the injured as a result of the injury.
- 3.03 "Property Damage" means - Physical damage to or destruction of property including loss of use.
- 3.04 "Personal Injury" means - False arrest, malicious prosecution, libel, slander, defamation, violation of right of privacy, wrongful entry or eviction, mental injury, mental anguish, shock, humiliation, unlawful detention, or false accusation.

3.05 "Protected Person" means - Any individual, group of individuals or entities identified in Section 4.00 of this document.

3.06 "Official Duties" means - Acts or omissions of any protected person (official school board member) resulting from his or her participation in a meeting or activity directed by the action of the school board and as reflected in the minutes of a legal board meeting. This does not include individual acts or omissions of a school board member outside the scope of their official duties or responsibilities.

3.07 "School Nurse" means - Registered nurse or licensed practical nurse employed by a protected entity.

3.08 "Wrongful Act" means - Any actual or alleged breach of duty, neglect, error, misstatement, misleading statement or omission committed solely in the performance of official duties as a school board member or school employee and occurring during the protection period. Wrongful acts shall not include bodily injury, property damage, or personal injury. Wrongful acts shall also not include failure to desegregate and/or violation of voting rights."

3.09 "Punitive Damages" means - Those damages awarded in a court of law, that are imposed to punish a wrongdoer and to deter others from similar conduct.

4.00 Protected Persons

4.01 The School Worker Defense Program protection's are defined in A.C.A § 6-17-1113(a) (Supp. 1997), as amended by Act 540 of 1999.

Protected entities and persons include the following:

4.01.1 Educational service cooperatives and their board members;

4.01.2 School districts and their board members;

4.01.3 School secretaries;

4.01.4 School treasurers;

4.01.5 School bookkeepers;

4.01.6 School nurses;

4.01.7 Substitute teachers;

- 4.01.8 Authorized volunteers;
- 4.01.9 Volunteers in the registered volunteer program;
- 4.01.10 School custodians;
- 4.01.11 Food service workers employed by public schools;
- 4.01.12 Bus drivers;
- 4.01.13 School mechanics;
- 4.01.14 School maintenance personnel;
- 4.01.15 Each employee of a public school district;
- 4.01.16 Each employee of the Arkansas School for Mathematics and Sciences;
- 4.01.17 Each employee of the Arkansas School for the Deaf and Blind required to hold a certificate issued by the Department of Education;
- 4.01.18 Each teacher's aid and each student teacher in any public school district;
- 4.01.19 Each teacher's aid and each student teacher in the Arkansas School for Mathematics and Sciences;
- 4.01.20 Each teacher's aid and student teacher in the Arkansas School for the Deaf and Blind;
- 4.01.21 Each member of the dormitory staff for the Arkansas School for Mathematics and Sciences;
- 4.01.22 Each member of the dormitory staff for the Arkansas School for the Deaf and Blind.

4.02 Authorized volunteers or registered volunteers to protected entities as defined in A.C.A §§ 6-22-101 et seq. (Supp. 1997).

5.00 Protections and Limits of Protection

5.01 Civil Complaints

Subject to governmental immunity and exclusions outlined in Section 11, the School Worker Defense Program will pay all sums the protected person shall become legally obligated to pay as damages because of bodily injury, property damage, or personal injury arising out of the protected persons educational activity or official duties. The program will also pay the attorneys' fees and costs in defending any protected person in any action in which governmental immunity may be applicable, but only for the purpose of pursuing that defense. The maximum the School Worker Defense Program will pay for claims under this caption is two hundred fifty thousand dollars

(\$250,000) for incidents which occurred prior to July 1, 1999, and one hundred fifty thousand dollars (\$150,000) for each incident which occurred after June 30, 1999 including reasonable defense costs and expenses otherwise stated in this document.

5.02 Wrongful Acts

The School Worker Defense Program shall provide an attorney and pay reasonable attorney fees and reasonable and necessary costs of defense up to fifty thousand dollars (\$50,000) per incident for any suit alleging a wrongful act, as defined in Section 3.08. Protected persons may reject the School Worker Defense Program's defense and defend these charges at their own expense.

5.03 Defense of Criminal Charges Arising From Corporal Punishment

5.03.1 The School Worker Defense Program shall provide an attorney and pay reasonable attorney fees and necessary costs in the defense of all criminal charges arising out of the use of corporal punishment in any one incident administered in accordance with the discipline policies filed by the local school districts' board of education with the Department of Education. The cost for the defense under this section for reasonable attorney's fees and the necessary cost shall not exceed five thousand dollars (\$5,000).

5.03.2 The defense afforded by this Section does not apply to any incident of corporal punishment administered other than in accordance with the school policy on file with the Department of Education.

5.04 Defense of Criminal Charges

5.04.1 The School Worker Defense Program may reimburse the protected person for attorney fees and reasonable and necessary costs in defense of all criminal charges arising out of any one incident and arising out of the educational activities within the scope of his/her employment. The reimbursement of attorney fees and costs are contingent upon the protected person being exonerated by a court of law or all charges are permanently dismissed or withdrawn. The protected person shall provide proof of all attorney's fees, costs or expenses at the request of the School Worker Defense Program before reimbursement is made.

5.04.2 The reimbursement under this Section shall not exceed five thousand dollars (\$5,000). However, the School Worker Defense Program Advisory Board may, at its discretion, authorize reimbursement in excess of five thousand dollars (\$5,000) in matters that the Board finds to require extraordinary attorneys' fees and

costs.

- 5.04.3 In no case shall the School Worker Defense Program be obligated to reimburse any legal fees or expenses which will benefit any insurance company, self-insurance plan or risk sharing pool.

5.05 Automobile Protection

The School Worker Defense Program shall not provide or afford protection or defense in any form for automobile claims.

6.00 Governmental Immunity

The establishment of the School Worker Defense Program, the approval of these rules and regulations, the investigation of any incident, or the defense of any protected person by this Program does not waive or forfeit any immunity.

7.00 Conditions

7.01 Notice of Claim

- 7.01.1 Notice of claim must be given to the School Worker Defense Program within 30 days of a protected person having knowledge or believing that a claim under this program will be made.

- 7.01.2 Once notice has been received by the protected person as to the formal filing of charges or complaints, immediate notice shall be given to the School Worker Defense Program along with copies of any summons and complaints.

7.02 Duty to Cooperate

Any protected person shall cooperate fully in the defense provided by this program. However, a protected person shall not voluntarily make any payment, assume any obligation, incur any expense, or enter into any settlement agreement without prior written approval from the School Worker Defense Program. Violation of this stipulation may void any or all benefits or protection provided by the School Worker Defense Program.

7.03 Other Insurance or Protection

The coverage provided by this Program for civil complaints is primary to any group protection or insurance furnished by any teacher organization. However, this program protection is excess to any protection, insurance or policy purchased by a local school district, association of school districts, or provided by any self-funded risk sharing pool, or insurance cooperative. In any claim, action, complaint, litigation or circumstance in which this Program is excess to any other protection, insurance or policy purchased by a local school district, association of school districts, or provided by any self-funded risk sharing pool, or insurance cooperative, this Program will not apply to, or be responsible for, the payment or reimbursement of any deductible or self-insured retention included in the primary protection, insurance or policy.

8.00 Limits of Liability

The protection afforded by this Program shall not exceed the sum of one hundred fifty thousand dollars (\$150,000) per occurrence after July 1, 1999, regardless of the number of protected persons involved or the number of claims being made.

9.00 Settlement

This Program may settle or defend, as it deems necessary, any suit or claim seeking compensatory damages. However, any portion of any claim or suit not pertaining to compensatory damages, cannot be settled without the permission of the protected person or entity involved.

10.00 School Worker Defense Program Advisory Board

- 10.01 The School Worker Defense Program Advisory Board shall be composed of seven members. The members are as follows:
 - 10.01.1 The Executive Director of the Arkansas Association of Educational Administrators or his designee;
 - 10.01.2 The President of the Arkansas Rural Education Association or his designee;
 - 10.01.3 The Executive Director of the Arkansas School Boards Association or his designee;
 - 10.01.4 The Executive Director of the Arkansas Education Association or his designee;
 - 10.01.5 The designee of the Attorney General;
 - 10.01.6 The Director of the Department of Finance and Administration or his designee; and
 - 10.01.7 The Director of the Department of the Education or his designee.
- 10.02 The Department of Education shall provide support staff for the Advisory Board.
- 10.03 Members of the board shall biannually elect a chairman, a vice-chairman and a secretary from the membership of the Board, whose duties shall be those customarily exercised by those officers or specifically designated by the Board.
- 10.04 The members of the Advisory Board shall meet within the State of Arkansas as often as they deem necessary for the purpose of carrying out their duties. In an emergency situation, the chairman of the Board may approve payment of a claim without the meeting of the Board.
- 10.05 The duties of the School Worker Defense Program Advisory Board are as follows but not limited to:
 - 10.05.1 Authorizing reimbursement in excess of five thousand dollars in cases of the defense of criminal charges that the Board finds requires extraordinary attorney's fees and costs.
 - 10.05.2 Hearing the appeal of a decision made by the Department by a covered person.
 - 10.05.3 Approval of payment in an emergency situation by the Chairman without a meeting of the Board.

11.00 Exclusions: The Program will not apply to/provide protection for the following:

- 11.01 Intentional, dishonest or criminal acts or omissions, other than corporal punishment administered in accordance with school district policies on file with the State Department of Education
- 11.02 Contractual damages, including back wages
- 11.03 Activity outside the official duties of a protected person
- 11.04 Violation of a Court Order issued by a court of competent jurisdiction and addressed to the school district.
- 11.05 Punitive damages
- 11.06 Willful violation of a penal statute or ordinance committed by or with the knowledge or consent of a protected person
- 11.07 Any and all claims for damages which are subject to the affirmative defense of governmental immunity under Arkansas law
- 11.08 Lawsuits involving desegregation related issues filed after September 14, 1993
- 11.09 Lawsuits involving voting rights issues filed after September 14, 1993
- 11.10 Hearings of any type unless a formal civil complaint or lawsuit has been filed
- 11.11 The School Worker Defense Program will not provide or afford any protection or defense in any form for the operation, maintenance, or use of any motor vehicle, or for any automobile claims of any type.
- 11.12 Plaintiff Attorney's fees
- 11.13 The payment or reimbursement of any deductible or self-insured retention included in any protection, insurance or policy purchased by a local school district, association of school districts, or provided by any self-funded risk sharing pool, or insurance cooperative.
- 11.14 Any and all demands, claims, suits, actions, complaints, litigation, or other circumstances brought by or filed by one protected entity against another protected entity. In this regard, protected entities means and includes any public school district, any educational service cooperative, the Arkansas School for Mathematics & Sciences, the Arkansas School for the Deaf, and the Arkansas School for the Blind.