

Davis School District Policy and Procedures

Subject: 3RM-100 Legal Defense of District Employees

Index: Risk Management and Workplace Safety

Revised: October 5, 2021

1. PURPOSE AND PHILOSOPHY

The Board of Education of Davis School District (Board), having a responsibility to defend and indemnify claims against an employee arising out of their employment as provided by the Utah Governmental Immunity Act, establishes this policy to notify employees of their rights and responsibilities relating to potential lawsuits.

2. NOTICE OF SUIT OR THREAT OF SUIT

- 2.1. In the event that any Davis School District (District) employee is sued or threatened with suit in connection with or arising out of any act or omission occurring during the performance of the employee's duties; within the scope of the employee's employment; or under color of authority as an employee of the District, the employee shall notify the superintendent in writing of such suit or threat of suit. The written notice shall include:
 - 2.1.1. a short statement of the facts giving rise to the claim;
 - 2.1.2. the nature of the claim asserted;
 - 2.1.3. how the actions giving rise to the claim relate to the employee's job duties or come within the scope of employment, or occurred under the color of authority;
 - 2.1.4. a request that the District engage counsel to provide a defense to the claim; and
 - 2.1.5. a copy of the official legal paperwork.
- 2.2. The written request must be made within:
 - 2.2.1. ten (10) days after service of process upon the employee; or
 - 2.2.2. a longer period that would not prejudice the District in maintaining a defense on the employee's behalf; or
 - 2.2.3. a period that would not conflict with notice requirements imposed on the District in connection with insurance carried by the District relating to the risk involved.
- 2.3. If the employee fails to make a timely request or cooperate in the defense, including the making of an offer of judgment, the District need not, in its discretion, defend or continue to defend the employee, or pay any judgment, compromise, or settlement against the employee arising from such claim.

3. REFERRAL TO COUNSEL

The superintendent or his/her designee may, if the nature of the action so warrants, provide a copy of the request to provide a defense to Risk Management or to the District's legal counsel.

4. LIMITATION OF OBLIGATION TO PROVIDE DEFENSE

- 4.1. Nothing in this policy obligates the District to undertake a defense, pay any judgment or otherwise assume liability of an employee for acts or omissions of an employee that **did not** occur during the performance of the employee's duties; within the scope of the employee's employment; or under color of authority as an employee of the District.
- 4.2. The District shall not be obligated to pay any judgments or indemnify and may decline to provide a defense or discontinue providing a defense for:
 - 4.2.1. fraudulent acts of an employee; or

- 4.2.2. willful misconduct where the employee commits the wrongful act intentionally or fails to act without just cause or excuse while aware that the conduct will probably result in injury; or
- 4.2.3. injury or damages resulted from the employee driving a vehicle, or being in actual physical control of a vehicle:
 - [a] with a blood alcohol content equal to or greater by weight than the established legal limit;
 - [b] while under the influence of alcohol or any drug to a degree that rendered the person incapable of safety driving the vehicle; or
 - [c] while under the combined influence of alcohol and any drug to a degree that rendered the person incapable of safely driving the vehicle.
- 4.2.4. injury or damage resulted from the employee being physically or mentally impaired so as to be unable to reasonably perform his or her job function because of:
 - [a] the use of alcohol;
 - [b] the nonprescribed use of a controlled substance as defined in Utah Code Ann. [§58-37-4](#); or
 - [c] the combined influence of alcohol and nonprescribed controlled substance as defined by Utah Code Ann. [§58-37-4](#).

5. NOTICE OF INTENT

- 5.1. Within ten (10) days after receiving the request to defend the employee, the District shall inform the employee whether it will provide the defense and if it refuses to provide the defense, the basis for the refusal. If the District refuses to provide the defense for the employee, the employee may recover from the District if the employee can prove that none of the conditions set forth in Section 4 of this policy apply. The employee has the burden of proof to establish that none of these conditions apply.
- 5.2. The District may conduct the defense under a full reservation of rights under which the District reserves the right to discontinue the defense and/or not pay any judgment if the conditions under Section 2 of this policy are not shown or the conditions under Section 4.2 of this policy are shown.

DEFINITIONS

“**Burden of proof**” means, the duty of establishing the truth of a matter.

“**Color of authority**” generally refers to actions taken by a representative of government which are beyond the authority granted by the law to his position of office, but which appear to be legal because of his official status.

“**Cooperation in the defense,**” includes but is not limited to, appearing for interviews, answering interrogatories, providing documents and being available to assist the defense attorney.

“**Employee**” means, a governmental entity’s officers, employees, servants, trustees, or commissioners’ members of a governing body; members of a government entity board; members of a government entity commission; members of an advisory body, officers; student teachers holding a letter of authorization in accordance with UCA §53E-6-201; educational aides; volunteers as defined by UCA §67-20-2(3); and tutors; whether or not the individual holding that position receives compensation. Employees does not mean an independent contractor.

“**Fraudulent act**” means, that which is done with intent to deceive or mislead.

“**Judgment**” means, a final determination by a court of the rights of the parties, based upon the evidence.

“**In connection with or arising out of**” when used to describe the relationship between conduct or a condition and an injury, means that: (a) there is some causal relationship between the conduct or condition and the injury; (b) the causal relationship is more than any causal connection but less than proximate cause; and (c) the causal relationship is sufficient to conclude that the injury originates with, flows from, or is incident to the conduct or condition.

“**Indemnify**” means, a contract to compensate another in money or property for a loss she might suffer as the result of conduct which might occur.

“**Omission**” means, a failure to act.

“**Prejudice**” means, to injure; to bias; to impair.

“**Willful misconduct**” means, the intentional doing of a wrongful act, or the wrongful failure to act, without just cause or excuse, where the actor is aware that his conduct will probably result in injury.

“**Within the scope of employment**” is generally constructed to mean, within the period of employment and while the employee is engaged in the performance of her duties and furthering her employer’s business.

REFERENCES

[Utah Code Ann. Title 52, Chapter 6](#) – Reimbursement of Legal Fees and Costs to Officers and Employees Act
[Utah Code Ann. Title 63G, Chapter 7](#) – Governmental Immunity Act of Utah

DOCUMENT HISTORY:

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Revised: September 22, 2010 (by consent) – As part of a five-year review, including a reorganization of the Table of Contents (added Risk Management section), renumbered from 2HR-118 to 3RM-100. No substantive changes required.

Revised: August 16, 2016 – Five-year review. No changes.

March 8, 2018 - Education code references updated in accordance with 2018 recodification.

Revised: October 5, 2021 - Five-year review. Nonsubstantive revisions.