



**Gwinnett County  
Board of Education**

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437 Old Peachtree Road, NW  
Suwanee, GA 30024-2978  
678-301-6000  
[www.gcpsk12.org](http://www.gcpsk12.org)

It is the policy of Gwinnett County Public Schools not to discriminate on the basis of race, sex, religion, national origin, age, or disability in any employment practice, educational program, or any other program, activity, or service.

**The Mission of  
Gwinnett County  
Public Schools**

is to pursue excellence in academic knowledge, skills, and behavior for each student, resulting in measured improvement against local, national, and world-class standards.

July 1, 2024

To Whom It May Concern,

The Gwinnett County School District is a political subdivision of the State of Georgia and is sovereignly immune from suit except where its sovereign immunity is expressly waived by the General Assembly. As a result, the school district does not purchase standard General Liability insurance. Claims that arise are, if applicable, handled pursuant to the terms of our internal Defense and Indemnification policy, approved by the Board of Education, that authorizes reimbursements under some circumstances for claims that arise from an employee's performance of duties.

If you have any questions, please give me a call at 770-513-6631 or you can email at [dawn.jones@gcpsk12.org](mailto:dawn.jones@gcpsk12.org).

Sincerely,

Dawn Jones  
Assistant Director,  
Risk Management





**GWINNETT  
COUNTY  
PUBLIC  
SCHOOLS**

**Gwinnett County Board of Education**

Level: Policy E-Business Management	Accompanying Procedure:	Descriptor Code: <b>EGF</b>	Rescinds September 13, 2018
Descriptor Term: <b>Defense and Indemnification for General Liability Incidents</b>		Effective Date: <b>September 21, 2023</b>	Last Reviewed Date: <b>September 21, 2023</b>

GWINNETT COUNTY PUBLIC SCHOOLS  
DEFENSE AND INDEMNIFICATION PLAN FOR GENERAL LIABILITY INCIDENTS

I. Statement of Purpose

Pursuant to its constitutionally vested authority to manage and control Gwinnett County Public Schools; and in accordance with O.C.G.A. 20-2-990, 20-2-992, 20-2-993 and 45-9-22; and as a part of the compensation and terms of employment of Board employees, and for the purpose of providing for the effective use of its assets and revenues in order to effectuate sound public policy, thereby benefiting its citizens by the conservation of all resources dedicated to educational purposes, the Gwinnett County Board of Education hereby establishes by its official Act this Defense and Indemnification Plan in order to provide as additional compensation to Board Employees for the defense and indemnification of any Board Employee with respect to claims arising out of those professional activities associated with his or her job with the Board and not otherwise covered by any professional liability insurance policy purchased by the Board. This Plan is adopted by the Board according to the following terms:

II. Definitions

When used in this Plan, the following definitions apply to each of the terms listed below:

- A. "Accident": Accident means an unforeseen or unexpected act which was involuntarily or unintentionally done.
- B. "Board": Board means the Gwinnett County Board of Education and includes all persons who now are or who shall later be elected or appointed members of the Board and all of its officers, agents, and employees.
- C. "Board Attorney": Board Attorney means any attorney employed by the Board and designated to act on behalf of the Board pursuant to this Plan.
- D. "Board Employee": Board Employee means all persons who now are or shall be employed by the Board to work within Gwinnett County Public Schools.
- E. "Bodily Injury": Bodily injury means physical injury sustained by a Claimant which occurs during the policy period, including death resulting therefrom. Bodily injury does not include pain and suffering or any other such non-physical, emotional, or mental harm.
- F. "Claimant": Claimant includes any school child enrolled in Gwinnett County Public Schools and his/her parent(s) or guardian(s) as well as any member of the

general public asserting a claim against Gwinnett County Public Schools, the Board, the School District, or any employee or member of the Board or School District as the result of an occurrence, as defined herein.

- G. "Occurrence": Occurrence means an accident which results in bodily injury to a Claimant.
- H. "Plan": Plan means Gwinnett County Public Schools' Defense and indemnification Plan for General Liability Incidents adopted by the Gwinnett County Board of Education.
- I. "Professional Activities": Professional activities means all activities of a Board Employee that are carried out in the course of and within the scope of said individual's official duties as an employee of the Board.
- J. "Risk Management Department": Risk Management Department means the department within Gwinnett County Public Schools responsible for developing and instituting policies and procedures to prevent injuries and damages involving the School System. This department also handles any claims associated with injuries and damages. Claimants may contact this department at 770-513-6666.
- K. "School District": School District means Gwinnett County Public Schools and all of its trustees, members, school directors, officers, agents, and employees.

### III. Plan Period

This Plan shall become effective at 12:01 a.m., July 10, 1998; therefore, said Plan applies only to those occurrences that take place after 12:01 a.m., July 10, 1998.

### IV. Defense and Indemnification of Board Employees

#### GENERAL LIABILITY

Whenever any civil claim or civil cause of action is instituted, threatened, or maintained in any court of the State of Georgia against any Board Employee, in his or her individual capacity or as an employee of the Board, asserting liability for damages resulting from a bodily injury arising out of an occurrence related to a Board Employee's performance of any professional activities, the Board shall have the right and duty to defend all such actions, and the Board shall pay on behalf of the Board Employee all sums which said employee shall become legally obligated to pay as damages as a result of such bodily injury within the terms and limitations set forth herein; however, this Plan does not provide indemnification for pain and suffering damages or any other claims for non-physical, emotional, or mental harm.

This Plan only applies to those Board Employees that comply with each of the following requirements:

- A. In the event of an occurrence likely to invoke the defense and/or indemnification provisions of this Plan, written notification containing a detailed outline of all of the facts associated with said occurrence including, but not limited to, the time, place and circumstances thereof along with the names of all injured persons and of all witnesses shall be provided to the Risk Management Department by the Board Employee as soon as practicable following said occurrence.
- B. Execution of a written contract for legal representation by the Board Attorney(s);
- C. Execution of a written waiver of any and all actual or potential conflicts of interest with the Board, the School District, and any other Board Employee;
- D. Full cooperation with the Board Attorney and, upon request, assistance in making settlements, in the conduct of any litigation, and in the enforcement of any right of contribution or indemnity against any person or organization who may be liable to the Board or School District;
- E. Attendance at and participation in any hearings and/or trials; assistance in securing and providing evidence, and assistance in the attendance of witnesses

- at such hearings and/or trials;
- F. Refusal to provide any oral or written statement or enter into any stipulation or agreement concerning claim or lawsuit, except upon the advice of the Board Attorney; and
- G. Refusal to make any payment, assume any obligation, or incur any expenses with respect to a claim or lawsuit without first obtaining the authorization of the Board Attorney.

V. Indemnification Limits

- A. The Board will indemnify any Board employee covered under this plan for any and all civil claims or civil actions initiated or maintained against said employee as the result of an occurrence arising out of his/her professional activities, if such occurrence causes a bodily injury to a Claimant. The Board's duty and authority to indemnify a Board Employee to whom this Plan applies is subject to the following monetary limitations:

Bodily Injury ---	\$100,000 each Claimant
	\$500,000 each occurrence

- B. The Board shall not be obligated to pay any claim or judgment or to defend any cause of action on behalf of a Board Employee after the indemnification limits, as set out above, have been exhausted.
- C. The indemnification limit indicated for "each Claimant" for bodily injury is the maximum amount of money for which the Board will indemnify a Board Employee for damages sustained by any Claimant as a result of a bodily injury arising out of the professional activities of a Board Employee and caused by an occurrence, as defined herein. The limit of liability for "each occurrence" for bodily injury is the maximum amount of indemnification that the Board will provide for ALL claims or actions asserted as the result of any one occurrence involving a Board Employee.
- D. The Board's duty and authority to indemnify a Board Employee to whom this Plan applies ceases when the applicable limits referenced in Part A above have been exhausted.
- E. The Board will not provide indemnification for pain and suffering damages or any other claims for non-physical, emotional, or mental harm.

VI. Exclusions, Limitations, and Grounds for Refusal of Defense and Indemnification and for Termination of Coverage

- A. The Board may refuse to provide for the defense of a claim or action brought against any Board Employee and may also refuse to indemnify said employee pursuant to the terms of this Plan IF the Board or Board Attorney determines that:
  1. the occurrence upon which the claim or action is based did not arise out of and in the course of the professional activities of the Board Employee;
  2. the occurrence upon which the claim or action is based arose out of conduct of the Board Employee that exceeded the scope of the Board Employee's authority;
  3. the Board Employee fails to report the occurrence in a timely manner and/or fails to comply with the requirements set out in Section IV, subparts A through G;
  4. the occurrence upon which the claim is based arises out of the Board Employee's violation of any written policy of the Board and/or the oral or written directive(s) of the Board Employee's immediate supervisor;
  5. the Board Employee acted or failed to act because of actual or intentional misconduct, malice, fraud, or bad faith;

6. the Board employee acted or failed to act as a result of impaired judgment caused by voluntary consumption of alcohol or by the voluntary illegal use of any controlled substance, as defined by the laws of the State of Georgia;
  7. the occurrence upon which the claim is based arises out of the Board Employee's intentional or knowing violation of a penal statute or ordinance;
  8. the occurrence upon which the claim is based is otherwise covered by a policy or contract of insurance purchased by the Board;
  9. the Board, any of its individual members, and/or the School District are the plaintiffs in the claim or action brought against the Board Employee;
  10. the Board Employee knowingly conceals or misrepresents any facts or circumstances concerning the occurrence upon which the claim or cause of action is based;
  11. the Board Employee fails or refuses to follow the advice of the Board Attorney in any matter related to the claim made or action brought against said Employee;
  12. the Board's defense of any claim or action brought against the Board employee may create a conflict of interest between the Board/School district and the Board Employee;
  13. the defense of or indemnification for any claim or action brought against the Board employee would not be in the best interest of the Board or the School District; and
  14. the claim brought against the Board Employee is a subrogation claim.
- B. Once the Board has assumed the defense of a claim or action pursuant to its authority under this Plan, it may terminate such defense at any time prior to trial or settlement, IF the Board Attorney discovers or determines that any of the exclusions, limitations, or grounds for refusal to defend or indemnify, as listed in Part A above, are applicable to the claim or action.
  - C. This Plan specifically excludes any and all coverage for pain and suffering or other such non-physical, emotional, or mental harm.
  - D. Coverage under this Plan may not be combined with any other coverage or insurance provided by the Board or with other Board Defense and Indemnification Plans.

VII. Conflicts of Interest.

- A. Nothing contained within this provision shall be construed to prohibit the Board Attorney from undertaking to defend any claim or action on behalf of any Board Employee even where a potential conflict of interest exists with regard to another Board Employee.
- B. If a conflict of interest arises at the initiation of or during the course of any litigation, the Board shall pay the reasonable fee of another attorney mutually agreeable to the Board and the Board employee in order to provide legal representation for such employee pursuant to this Plan.

VIII. Payments to Resolve Threatened or Pending Litigation and to Satisfy Judgments.

- A. Where this Plan authorizes the defense of any civil claim or civil action brought against a Board Employee, the Board shall pay any final judgment awarded against said Employee by a court of competent jurisdiction, subject to the defense and indemnification limits expressly set out in Section V of this Plan. In addition, the Board and the Board Attorney shall have the joint authority to settle or compromise any civil claim, suit, action, or other form of liability asserted against a Board Employee, the Board, and/or the School District in connection with an occurrence, as defined herein, if such settlement or compromise can be effectuated by paying an amount within the indemnification limits expressly set forth in this Plan.

- B. Any and all payments made by the Board pursuant to this provision of the Plan are subject to the following limitations and exclusions:
1. No sum shall be paid where the Board has terminated the Board Employee's entitlement to a defense or to indemnification under this Plan prior to trial or settlement, as provided in Section VI above;
  2. No sum shall be paid where the Board Employee has been represented by counsel other than the Board Attorney unless said Employee obtained prior approval of such counsel as set forth in subsection B of Section VII above; and
  3. No sum shall be paid unless all Claimants unconditionally and forever discharge the Board and the School District from any and all liability, suits, claims, actions, demands, damages, costs, expenses, and compensation which result from or are in any way connected with or related to any such single or continuing occurrence to which this Plan applies.

IX. Preservation of Immunities and Defenses

Nothing contained herein shall be construed to constitute a waiver by the Board, its employees, or the School District of any governmental, official, legislative, qualified or sovereign immunity or any other immunity or defense afforded the Board, its members, its employees, and/or the School District under the federal or state constitutions or laws. The Board and the School District specifically reserve all such immunities and defenses afforded under the Constitution of the State of Georgia and the Constitution and laws of the United States.

X. Subrogation Rights

- A. In the event any payment is provided under the terms of this Plan, the Board shall be subrogated to the Board Employee's right(s) of recovery against any third person, organization, or entity, but the Board's right of subrogation exists only to the extent of those payments made by the Board on behalf of the Board Employee and pursuant to the terms of this Plan;
- B. Each Board Employee to whom this Plan applies shall be required to reimburse the Board for those payments made by the Board pursuant to this Plan. Such reimbursement shall be provided out of any monies received by said Employee from a third person, his/her insurer, or any other such entity as a result of a judgment, settlement, or other such disposition;
- C. Each Board Employee to whom this Plan applies shall be required to furnish the Board with the information and assistance necessary to enforce its right(s) of subrogation; and
- D. The purpose of this provision is to assist the Board in administering this Plan in an economically efficient manner. In accordance with this purpose, the Subrogation Rights provision of this Plan does not purport to transfer a Board Employee's right of action to the Board, but instead it is intended to secure the Board's right to be reimbursed for those payments that it makes pursuant to this Plan on behalf of a Board Employee, to the extent said Employee receives compensation from a third person, his/her insurer, or any other such entity.

XI. Insurance

This Plan is only intended to provide for the defense and indemnification of Board Employees in excess of any coverage provided by a valid and collectible contract or policy of insurance available to the Board Employee from any source whatsoever.

XII. No Creation of Cause of Action.

Nothing contained in this Plan shall be construed as creating a right or cause of action against a person or entity covered hereunder nor as giving a right to a third party to institute or maintain a suit which would not otherwise exist as a legal claim against the person or entity covered under this plan.

XIII. Medical Examinations and Reports.

All Claimants may be required to undergo medical examinations by physicians selected by the Board, as often as the Board reasonably requires. Any such examinations will be paid for by the Board. All Claimants must provide and/or authorize the Board to obtain all medical reports and other such documentation generated as a result of the bodily injury allegedly sustained by any Claimant.

XIV. This Plan is Non-Severable.

The provisions of this Plan shall not be severable. If any provision contained herein is held invalid or declared unconstitutional by the appellate courts of this State, then all of the remaining provisions of this Plan shall be null, void, and unenforceable.

LIABILITY INSURANCE, DEFENSE COSTS, AND DEDUCTIBLES

The Board may purchase liability insurance, in an amount determined by the Board and subject to such exclusions and other limitations as the Board deems appropriate, insuring Board members and employees against claims arising out of the performance of their duties as Board members or employees of the Board.

The Gwinnett County Board of Education, under the authority of Georgia law including O.C.G.A. §§ 20-2-990, 20-2-291, 20-2-293, and 20-2-994, and as part of the terms of employment of Board members, superintendents, principals, teachers, and other administrators and employees may undertake to defend all civil, criminal, or quasi-criminal actions brought or maintained against members of the Board, the superintendents, principals, teachers, other administrators and employees, where the Board determines that such actions have arisen out of the lawful performance of duties or in any way connected therewith for the Gwinnett County Board of Education, whether such actions are based upon negligence, violation of contract rights, or violation of civil, constitutional, common law or other statutory rights, whether state or federal, to the extent they are not covered by insurance up to \$100,000 per person per occurrence. The Superintendent is authorized to expend federal, state, and local funds budgeted for such purposes, including but not limited to attorney's fees, court costs, deposition costs, judgments, witness fees and compensation, and all other like costs, expenses and fees. This includes the amount of any deductible specified in a liability insurance policy. Such payments shall not be made to or on behalf of any Board member or employee who has interests in the litigation that are adverse to those of the Board; or who has intentionally or with wanton disregard acted in violation of Board policy or procedure; or whose acts or omissions giving rise to such liability involve the misappropriation of Board funds or other property of the Board or the commission of any other civil or criminal offense against the Board, its members, employees or students. Nor shall any such payments be used to satisfy an award of punitive or exemplary damages awarded against any member of the Board or any of the Board's employees.

Nothing herein shall be construed as waiving immunity or privilege now or hereafter enjoyed by any Board member, any superintendent, principal, teacher, administrator or other employee, nor any public body, board, agency, or political subdivision.