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TO: Whom It May Concern

FROM:

RE: Sovereign Immunity for Clayton County Public Schools

Sovereign Immunity is available to all School Districts in Georgia, which includes the Clayton County Public Schools.

Please consider this synopsis of the State of Georgia Sovereign Immunity law to specifically address the issue of the Clayton County School System not having General Liability coverage for tort claims or for not being able to provide financial remuneration for damage or injury to person or property.

Any program that is a legitimate function of the education process is covered in the Sovereign Immunity provisions of state law.

> Article. 1, Section 2, Paragraph 9 of the Georgia Constitution provides:
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> Except as specifically provided in this Paragraph, sovereign immunity extends to the state and all of its departments and agencies. The sovereign immunity of the state and its departments and agencies can only be waived by an Act of the General Assembly which specifically provides that sovereign immunity is thereby waived and the extent of such waiver.

Under this constitutional provision, state law tort claims against the School System are barred. ***Davis v. DeKalb County School District,*** 996 F. Supp. 1478 (N.D. Ga. 1998), *aff'd*, 233 F.3d 1367 (11th Cir. 2000), *cert. denied*, 532 U.S. 106 (2001). This bar also covers claims against school officials sued in their official capacities. ***Hennessy v. Webb,*** 245 Ga. 329, 330 (1980).

The Supreme Court of Georgia has ruled that a governmental entity which has immunity cannot waive that immunity. CSX Transportation, Inc. v. City of Garden City, 277 Ga. 248 (2003). This ruling prohibits the School System from entering into contracts which provide that the School System agrees to indemnify or hold harmless the other party.

In addition to the complete tort immunity afforded the school district, school district officials sued in their capacity as individuals are entitled to "official immunity," which protects them from claims made against them for negligent performance of their duties when they are performing discretionary, as opposed to merely ministerial acts. "A discretionary act requires personal deliberation and judgment, which entails examining the facts, reaching reasoned conclusions, and acting on them in a way not specifically directed. We have previously found that supervising and disciplining school children constitute discretionary acts." ***Gamble v. Ware County Bd. of Ed.,*** 253 Ga. App. 819, 824 (2002). By contrast, a "ministerial act is commonly one that is simple, absolute, and definite, arising under conditions admitted or proved to exist, and requiring merely the execution of a specific duty." ***Aliffi v. Liberty County School District,*** 259 Ga. App. 713, 715 (2003) quoting ***Kelly v. Lewis,*** 221 Ga. App. 506, 508-09 (1996). In other words, to the extent that the governmental actor has the ability to make any independent judgment, the act is discretionary and immunity attaches, unless the act was done with actual malice or with actual intent to cause injury.

Further, the use of tax payer funds for education must be used for educational purposes. The Constitution still adheres to the strict requirement that all school funds be devoted to educational purposes as defined in the statutes and Constitution of this State. This constitutional proscription includes the defendant board. ***Commissioners of Chatham County v. Savannah Electric & Power Co.,*** 215 Ga. 636 (112 SE2d 655); ***State Board of Education v. Board of Public Education for the City of Savannah and County of Chatham,*** 190 Ga. 588 (10 SE2d 369).

This means that the defendant board can not lawfully or constitutionally pay the plaintiff's claim, even should a judgment be obtained on it in this suit against the board. Neither the payment nor settlement of the claim is within the ambit of "educational purpose" for which alone the board may spend its funds. ***Wright v. Absalom,*** 224 Ga. 6, supra; ***Board of Education of Waycross v. Bates,*** 114 Ga. App. 343, supra.

A payment of plaintiff's claim, with or without a judgment against the defendant board, in settlement of a supposed tort liability of the board would be a gratuity which is forbidden. Constitution, Article VII, Section I, Paragraph I (Code Ann.§ 2-5401).