

DEPARTMENT OF EDUCATION

SUBJECT: School Worker Defense Program and the School Worker Defense Program Advisory Board

DESCRIPTION: The purpose of the Arkansas Department of Education Rules Governing the Arkansas School Worker Defense Program and the School Worker Defense Program Advisory Board is to establish the requirements and procedures for the School Worker Defense Program which provides employees of education service cooperatives and public schools with funds for protection against civil liability, attorney's fees, and costs of defense for acts or omissions in the performance of an employee's duties as a school worker.

The rules accomplish this by defining key terms and setting forth composition of the School Worker Defense Program Advisory Board. The rules also set forth the parties eligible to receive funds under the program and the financial limits of the program. The rules describe how the program is to be administered, including the procedures for filing a claim, filing an appeal with the advisory board, the conditions for participation in the program and circumstances that are excluded from the program.

The existing rule, last updated in 1999, must undergo substantial revisions. Consequently, the text of the current rule should be repealed and replaced with new text. The revisions follow:

3.0 Definitions: The definitions were significantly revised to simplify the rule.

4.0 School Worker Defense Program Advisory Board: This section was added and taken verbatim from Ark. Code Ann. § 6-17-1113.

6.0 Administration of the School Worker Defense Program: This section was added to the rule to provide a general overview of how a claim may progress through the School Worker Defense Program process.

7.0 Procedures for Filing a Claim: This section was added to provide a clear, step-by-step approach to the processing of claims under the School Worker Defense Program. The section allows for an initial review of claims to be conducted by the Arkansas Department of Education Program Administrator.

8.0 Procedures for Filing an Appeal with the School Worker Defense Program Advisory Board: This section was added to the rule to provide a clear, step-by-step approach to processing the appeals of claims denied by the ADE Program Administrator.

9.0 Conditions: This proposed section includes portions of the current rule and sets forth the conditions for reimbursement by the School Worker Defense Program.

10.0 Exclusions: This proposed section includes portions of the current rule and sets forth those claims that will not be accepted for payment by the School Worker Defense Program.

PUBLIC COMMENT: A public hearing was held on October 18, 2011. The public comment period ended on October 21, 2011. The following comments were submitted to the Department:

Tripp Walter, Arkansas Public School Resource Center

Comment: Section 5.03: Where is the authority for adding the language “or surrender of a professional license?”

Response: Comment considered. This provision was added in order to prevent the structuring of plea agreements to allow for reimbursement under the program at the same time that the effect of such plea would result in an individual being ineligible for reimbursement (i.e. the termination of employment or loss of a license).

Comment: “Ethical standards” means the requirements set forth in Ark. Code Ann. § 6-24-101 et seq. and these rules.”

Response: Comment considered. The phrase “ethical standards” is not used in the rule and does not need to be defined.

Comment: Section 7.05: Amend last line to read: “Provide in writing the reasons for the denial, and the process for filing an appeal pursuant to Section 8.0 of these rules.”

Response: Comment considered. The comment appears to apply to Section 7.04 instead of 7.05. The process for filing an appeal under the program is clearly set forth under Section 8.0 of the rules. The approved rules will be publicly available on the ADE website. Nothing in the rule prohibits the Program Administrator from including a reference to the rules in the initial determination, or from including a copy of the rules with the initial determination. However, there is no need to mandate this practice.

The proposed effective date is tentatively set for December 2011.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: Arkansas Code Annotated §6-13-629 (c)(2) gives the Department specific authority to promulgate rules and regulations regarding the training and instruction of school board members. Specifically, Ark. Code Ann. §6-17-1113 (e)(2) states the Department shall adopt appropriate rules and regulations necessary carry out the School Worker Defense Program; further, A.C.A. §6-17-1118 (e)(1) states the Department “may promulgate rules and regulations as necessary for the proper administration of this section to establish an advisory board.”

**ARKANSAS DEPARTMENT OF EDUCATION
RULES GOVERNING THE SCHOOL WORKER DEFENSE PROGRAM AND THE
SCHOOL WORKER DEFENSE PROGRAM ADVISORY BOARD**

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1.0 PURPOSE

1.01 The purpose of these rules is to establish the requirements and procedures concerning the School Worker Defense Program and the School Worker Defense Program Advisory Board.

2.0 REGULATORY AUTHORITY

2.01 These rules shall be known as the Arkansas Department of Education Rules Governing the School Worker Defense Program and the School Worker Defense Program Advisory Board.

2.02 These rules are enacted pursuant to the authority of the State Board of Education under Ark. Code Ann. §§ 6-11-105, 6-17-1113, 6-17-1118, 25-15-201 et seq. and Act 993 of 2011.

3.0 DEFINITIONS

3.01 "Authorized Volunteers" and "Volunteers in a Registered Volunteers Program" are those who meet the definition of "volunteer" and "registered volunteer" pursuant to Ark. Code Ann. §§ 6-22-101 through 6-22-108.

3.02 "Covered person" or "Covered entity" refers to those individuals and entities listed in Section 5.01 of these rules.

3.03 "Official duties" are those duties legitimately related to the carrying out of an individual's position listed in Section 5.01 of these rules.

4.0 SCHOOL WORKER DEFENSE PROGRAM ADVISORY BOARD

4.01 The School Worker Defense Program Advisory Board is composed of the following seven (7) members:

4.01.1 The Executive Director of the Arkansas Association of Educational Administrators or his or her designee;

4.01.2 The President of the Arkansas Rural Education Association or his or her designee;

4.01.3 The Executive Director of the Arkansas School Boards Association or his or her designee;

4.01.4 The Executive Director of the Arkansas Education Association or his or her designee;

4.01.5 The designee of the Attorney General;

4.01.6 The Director of the Department of Finance and Administration or his or her designee; and

4.01.7 The Commissioner of Education or his or her designee.

4.01.8 No employee of the Department of Education who is charged with administering the School Worker Defense Program shall be eligible to serve as the designee of the Commissioner.

4.02 Members of the advisory board shall biannually elect a chair, a vice chair, and a secretary from the membership of the advisory board, whose duties shall be those customarily exercised by those officers or specifically designated by the advisory board.

4.03 The advisory board shall meet within the State of Arkansas and may meet as often as it deems necessary for the purpose of carrying out its duties as listed in Ark. Code Ann. § 6-17-1118 and these rules.

4.04 A majority of the members of the advisory board shall constitute a quorum for the purpose of a meeting.

4.05 The advisory board shall have final authority to hear and adjudicate any appeal filed by a school worker for protection against liability pursuant to Ark. Code Ann. § 6-17-1113 and these rules.

4.06 In an emergency situation, the chair of the advisory board may approve payment of a claim without a meeting of the advisory board.

4.07 The Arkansas Department of Education shall provide support staff for the advisory board.

5.0 SCHOOL WORKER DEFENSE PROGRAM

5.01 The School Worker Defense Program is established for the protection of:

5.01.1 Education service cooperatives;

5.01.2 Education service cooperative board members;

5.01.3 Public school districts;

5.01.4 Public charter schools;

5.01.5 Public school board members;

5.01.6 Public school treasurers and bookkeepers;

5.01.7 Public school nurses;

5.01.8 Public school secretaries;

5.01.9 Public school substitute teachers;

5.01.10 Authorized volunteers;

5.01.11 Volunteers in a registered volunteers program;

5.01.12 Public school custodians;

5.01.13 Food service workers employed by public schools;

5.01.14 Bus drivers and mechanics employed by public schools;

5.01.15 Maintenance personnel employed by public schools;

5.01.16 Each employee of the following who is required to hold a teaching certificate issued by the Department of Education:

5.01.16.1 A public school district;

5.01.16.2 The Arkansas School for Mathematics, Sciences, and the Arts;

5.01.16.3 The Arkansas School for the Deaf; and

5.01.16.4 The Arkansas School for the Blind;

5.01.17 A public charter school teacher;

5.01.18 Each teacher's aide and each student teacher:

5.01.18.1 In a public school district;

5.01.18.2 In a public charter school;

5.01.18.3 In the Arkansas School for Mathematics, Sciences, and the Arts;

5.01.18.4 In the Arkansas School for the Deaf; and

5.01.18.5 In the Arkansas School for the Blind; and

5.01.19 Each member of the dormitory staff of:

5.01.19.1 The Arkansas School for Mathematics, Sciences, and the Arts;

5.01.19.2 The Arkansas School for the Deaf; and

5.01.19.3 The Arkansas School for the Blind.

5.02 The School Worker Defense Program is authorized, subject to governmental or statutory immunity and any exclusions or rules set forth herein, to protect any of the entities and individuals listed in Section 5.01 of these rules against civil liability, attorney's fees, and costs of defense for acts or omissions of each employee, authorized volunteer or volunteer in a registered volunteers program in the performance of his or her duties as a school volunteer or his or her official duties as a school employee, including civil liability for administering corporal punishment to students, in the amount of:

5.02.1 Two hundred fifty thousand dollars (\$250,000) for incidents which occurred prior to July 1, 1999; and

5.02.2 One hundred fifty thousand dollars (\$150,000) for each incident which occurs after June 30, 1999.

5.03 The School Worker Defense Program is further authorized to provide limited financial reimbursement not to exceed five thousand dollars (\$5,000) for attorney's fees and costs for the defense of criminal charges if the covered person listed in Section 5.01 of these rules is exonerated by a court of law or if all charges are subsequently withdrawn or dismissed unless such withdrawal or dismissal is conditioned upon termination of employment or surrender of a professional license.

5.04 The School Worker Defense Program Advisory Board may authorize reimbursement under Section 5.03 of these rules in excess of five thousand dollars (\$5,000) in matters that the advisory board finds to require extraordinary attorney's fees and costs. Such authorization may be made at the sole discretion of the School Worker Defense Program Advisory Board if such authorization is sufficiently justified in writing by the covered person or entity as set forth in Section 7.01.2.4 of these rules.

- 5.05 The cost of the School Worker Defense Program shall be paid annually out of funds in the Public School Fund that are designated for that specific purpose.
- 5.06 The School Worker Defense Program shall not pay any costs associated with the administration of the School Worker Defense Program if no funds are designated in the Public School Fund for the purpose of administering the School Worker Defense Program, or if all designated funds have been depleted through the payment of claims through the School Worker Defense Program.
- 5.07 Any school districts previously covered by or moneys expended pursuant to the self-insurance program of the Arkansas Department of Education or the School Worker Defense Program shall be deemed a proper expenditure of state funds as set forth in Ark. Code Ann. § 6-17-1113(c) as that statutory subsection existed on July 1, 2011.
- 5.08 The establishment of the School Worker Defense Program, the approval of these rules and regulations, the investigation of any incident, the payment of any claim, or the defense of any covered person or entity by the School Worker Defense Program does not waive or forfeit any immunity or authorization to provide for hearing and settling claims extended to educational entities and their personnel by the laws of the State of Arkansas.

6.0 ADMINISTRATION OF THE SCHOOL WORKER DEFENSE PROGRAM

- 6.01 The School Worker Defense Program shall be a part of and administered by the Arkansas Department of Education.
- 6.02 The Commissioner of Education may appoint an Arkansas Department of Education Administrator (Program Administrator), who will administer the School Worker Defense Program.
- 6.03 The Program Administrator will receive and review requests for protection and coverage through the School Worker Defense Program.
- 6.04 The Program Administrator will determine whether requests for protection, coverage, reimbursement, or payment meet the requirements of Ark. Code Ann. § 6-17-1113 and these rules.
- 6.05 Any person entitled to protection under the School Worker Defense Program may appeal the decision of the Program Administrator to the School Worker Defense Program Advisory Board.

7.0 PROCEDURES FOR FILING A CLAIM

7.01 Any person entitled to protection under Section 5.01 of these rules shall submit a notice of claim to the Program Administrator.

7.01.1 The notice of claim shall be sent by certified mail, return receipt requested to:

School Worker Defense Program
ATTN: Program Administrator
Arkansas Department of Education
Four Capitol Mall
Little Rock, Arkansas 72201

7.01.2 The notice of claim shall include the following information:

7.01.2.1 The name, address, telephone number and position of the entity or individual covered under Section 5.01 of these rules;

7.01.2.2 If the claim is filed pursuant to Section 5.02 of these rules, a copy of the summons and complaint and an explanation of how the acts and omissions of the employee or volunteer in question were in the performance of his or her official duties;

7.01.2.3 If the claim is filed pursuant to Sections 5.03 or 5.04 of these rules, a copy of relevant court documents indicating the withdrawal, dismissal, or acquittal of criminal charges;

7.01.2.4 If the claim is filed pursuant to Section 5.04 of these rules, an explanation of the reasons why extraordinary attorney's fees and costs are appropriate;

7.01.2.5 A description of the nature of each insurance policy that may provide coverage for the claim. This description shall include, but not be limited to, coverage limits under each policy; and

7.01.2.6 The name, address, and telephone number of the attorney who will represent the covered entity or person in the matter, or a request for an attorney to be appointed by the School Worker Defense Program.

7.01.3 Notice of any claim must be given to the School Worker Defense Program within thirty (30) days of a covered person or entity

having knowledge of a civil or criminal action being filed or having reason to believe that a claim under the School Worker Defense Program will be made, whichever is later.

7.01.4 Once notice has been received by the covered person or entity 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 For requests for payment or reimbursement, the covered individual or entity shall provide an itemized invoice along with any information required by the Department of Education to substantiate the amounts listed in the invoice.

7.02.1 Invoices shall be submitted by the covered individual or entity quarterly (every three months). Invoices that are not submitted on a timely basis may not be paid by the School Worker Defense Program.

7.02.2 To be submitted on a timely basis, any request for payment of an expense or reimbursement, other than attorney's fees paid pursuant to Sections 5.03 and 5.04 herein, must be received by the Program Administrator within three (3) months of the date the expense was incurred by or known to the covered entity or person or attorney.

7.02.3 For invoices requesting the payment of attorney's fees, the School Worker Defense Program may reimburse the covered individual or entity for attorney's fees up to one hundred dollars (\$100.00) per hour. The payment of fees in excess of one hundred dollars (\$100.00) per hour is the responsibility of the covered individual or entity.

7.03 The Program Administrator shall make an initial determination of whether the request for protection, coverage, reimbursement, or payment meet the requirements of Ark. Code Ann. § 6-17-1113 and these rules.

7.04 The Program Administrator shall notify the individual or entity making the claim or request for reimbursement and/or payment of the initial determination, in writing, within ten (10) days of receipt of the notice of claim or request for reimbursement and/or payment, subject to the provision of Section 7.05 below. If the Program Administrator denies a claim, the Program Administrator shall provide in writing the reasons for the denial.

7.05 The Program Administrator may request additional information before making an initial determination. If additional information is needed for a proper determination, and if the Program Administrator gives timely notice of the request to the individual or entity making the claim, the Program Administrator may approve or disapprove the request for protection, coverage, reimbursement, or payment within ten (10) days of receipt of the additional information.

8.0 PROCEDURES FOR FILING AN APPEAL WITH THE SCHOOL WORKER DEFENSE PROGRAM ADVISORY BOARD

8.01 The individual or entity filing the claim may appeal the initial determination of the Program Administrator by filing a written notice of appeal with the School Worker Defense Program Advisory Board within twenty (20) days of receipt of the initial determination.

8.02 The written notice of appeal shall be sent certified mail, return receipt requested to:

School Worker Defense Program Advisory Board
ATTN: Program Administrator (APPEAL)
Arkansas Department of Education
Four Capitol Mall
Little Rock, Arkansas 72201

8.03 The written notice of appeal shall include a detailed explanation of how the request for protection, coverage, reimbursement, or payment meets the requirements of Ark. Code Ann. § 6-17-1113 and these rules, and whether the appealing party wishes to appear in person at the meeting during which the School Worker Defense Program Advisory Board will review the appeal. If the appealing party does not wish to appear in person at the meeting during which the appeal will be heard, the School Worker Defense Program Advisory Board may determine whether to grant or deny the appeal based upon the written materials provided by the appealing party and the Program Administrator.

8.04 The School Worker Defense Program Advisory Board shall schedule a meeting to review the appeal as soon as practicable, but no later than thirty (30) days from the date of receipt of the notice of appeal by the School Worker Defense Program.

8.05 The Program Administrator shall notify the appealing party in writing of the date, time, and location of the meeting during which the School Worker Defense Program Advisory Board will review the appeal.

8.06 If the appealing party appears at the meeting during which the appeal is heard, the following procedures shall apply:

8.06.1 The Program Administrator shall provide an introduction of the matter and present the reasons supporting the Program Administrator's initial determination. The presentation of the Program Administrator shall be limited to fifteen (15) minutes.

8.06.2 The appealing party or the appealing party's representative may provide a presentation of up to fifteen (15) minutes explaining how the appealing

party's request for protection, coverage, reimbursement, or payment meets the requirements of Ark. Code Ann. § 6-17-1113 and these rules.

8.06.3 The chairperson of the School Worker Defense Program Advisory Board may, for good cause, allow the Program Administrator and/or the appealing party additional time to complete their presentations.

8.06.4 Any member of the School Worker Defense Program Advisory Board may, at any time, ask questions of the Program Administrator or appealing party.

8.07 A decision to grant or deny the appeal shall be made by a majority of the members of the School Worker Defense Program Advisory Board who are present at the meeting during which the appeal is heard.

8.08 The School Worker Defense Program Advisory Board's decision shall be in writing or stated in the record and shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

8.09 The School Worker Defense Program Advisory Board shall notify the appealing party of its decision concerning the appeal within seven (7) days of the meeting during which the appeal is considered. The notice shall include a copy of the written decision issued by the School Worker Defense Program Advisory Board.

8.10 A decision to grant or deny the appeal shall be final.

9.0 CONDITIONS

9.01 Nothing in these rules should be interpreted to waive any governmental or statutory immunity available under Arkansas law.

9.02 Any covered person or entity shall cooperate fully in the defense provided by the School Worker Defense Program. However, a covered person or entity shall not voluntarily make any payment, assume any obligation, incur any expense, or enter into any settlement agreement without prior written approval from the Program Administrator. A violation of this stipulation may void any or all benefits for protection or coverage under the School Worker Defense Program.

9.03 The protection or coverage provided by the School Worker Defense Program is primary to any group protection or insurance furnished by a teacher organization.

9.04 The protection or coverage provided by the School Worker Defense Program is secondary or excess to any protection, insurance or policy purchased by a school

district, association of school districts, or provided by any self-funded risk sharing pool or insurance cooperative.

9.05 The School Worker Defense Program may settle or defend, as necessary, any suit or claim seeking compensatory damages. However, any portion of any claim or suit not pertaining to compensatory damages may not be settled without the permission of the covered person or entity involved.

9.06 The attorney representing the covered individual or entity must file, on a quarterly basis, a short summary concerning the status of the lawsuit with the Program Administrator. Failure to file a timely summary may result in withdrawal of coverage under the School Worker Defense Program.

10.0 EXCLUSIONS

10.01 The protection afforded under the School Worker Defense Program does not apply to any claims for damages which are successfully defended on the affirmative defense of governmental or statutory immunity under Arkansas law. The School Worker Defense Program may pay attorney's fees and costs for the purpose of asserting a successful affirmative defense of governmental or statutory immunity.

10.02 The School Worker Defense Program shall not provide protection, coverage or payment for the following:

10.02.1 Intentional torts committed outside the scope of employment; or dishonest or criminal acts or omissions, other than corporal punishment administered in accordance with school district policies on file with the Arkansas Department of Education. Such disqualifying acts do not include intentional acts that are reasonably committed in self-defense, in defense of another, or to prevent bodily injury to self or another;

10.02.2 Contractual damages, including back wages;

10.02.3 Acts or omissions falling outside the official duties of a covered person;

10.02.4 Violation of a court order issued by a court of competent jurisdiction;

10.02.5 Punitive damages;

10.02.6 Willful violation of a penal statute or ordinance committed by or with the knowledge or consent of a covered person;

- 10.02.7 Lawsuits involving desegregation related issues filed after September 14, 1993;
- 10.02.8 Lawsuits involving voting rights issues filed after September 14, 1993;
- 10.02.9 Administrative hearings or other hearings of any type unless a formal civil complaint has been filed;
- 10.02.10 Plaintiff attorneys' fees;
- 10.02.11 The payment or reimbursement of any deductible or self-insured retention included in any protection, insurance or policy purchased by a school district, association of school districts, or provided by any self-funded risk sharing pool or insurance cooperative;
- 10.02.12 Any and all demands, claims, suits, actions, complaints, or litigation brought by or filed by a covered entity against another covered entity;
- 10.03 The School Worker Defense Program shall 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.

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.~~

2.0 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. § 6-17-4113(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.~~

~~41.00 Exclusions: The Program will not apply to/provide protection for the following:~~

- ~~41.01 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.~~
- ~~41.02 Contractual damages, including back wages~~
- ~~41.03 Activity outside the official duties of a protected person.~~
- ~~41.04 Violation of a Court Order issued by a court of competent jurisdiction and addressed to the school district.~~
- ~~41.05 Punitive damages.~~
- ~~41.06 Willful violation of a penal statute or ordinance committed by or with the knowledge or consent of a protected person.~~
- ~~41.07 Any and all claims for damages which are subject to the affirmative defense of governmental immunity under Arkansas law.~~
- ~~41.08 Lawsuits involving desegregation related issues filed after September 14, 1993.~~
- ~~41.09 Lawsuits involving voting rights issues filed after September 14, 1993.~~
- ~~41.10 Hearings of any type unless a formal civil complaint or lawsuit has been filed.~~
- ~~41.11 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.~~
- ~~41.12 Plaintiff Attorney's fees.~~
- ~~41.13 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.~~
- ~~41.14 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.~~