

DEFENSE AND INDEMNIFICATION OF BOARD MEMBERS AND EMPLOYEES

Liability Protection Pursuant to Education Law

The Board recognizes its statutory obligation to indemnify BOCES employees (and in certain circumstances, Board members and volunteers) pursuant to the provisions of Sections 3023, 3028 and 3811 of the Education Law. For the purposes of this policy, the term “employee” shall be as defined in the applicable statute(s).

BOCES shall not be subject to the duty to defend unless the employee, within the time prescribed by statute, delivers appropriate notice of the claim to the Board.

- a) For purposes of Education Law Section 3811, the employee must give written notice within five (5) days after service of process upon him/her. The statute mandates only written notice of the claim to the Board; however, submission of relevant legal documents by the employee to the Board is also encouraged.
- b) For purposes of Education Law Sections 3023 and 3028, the employee must deliver the original or a copy of the relevant legal documents to the Board within ten (10) days after service of process upon him/her.

BOCES will provide legal defense and/or indemnification for all damages, costs, and reasonable expenses incurred in the defense of an action or proceeding if authorized pursuant to statute and provided that the alleged action or omission which occurred or allegedly occurred is covered by the appropriate statute(s). Furthermore, BOCES will not be required to provide indemnification protection and/or legal defense unless the employee was, at the time of the alleged incident, acting in the discharge of his/her duties within the scope of his/her employment or authorized volunteer duties and/or under the direction of the Board.

Public Officers Law Section 18

The Board hereby also confers the benefits of Section 18 of the New York State Public Officers Law upon the “employees” of BOCES, as defined in Section 18 of the Public Officers Law; and BOCES assumes the liability for the costs incurred in accordance with the provisions of Section 18. The benefits accorded to BOCES employees under Section 18 of the Public Officers Law shall supplement and be available in addition to defense or indemnification protection conferred by other enactments or provisions of law.

The term “employees” shall include members of the Board; the District Superintendent; BOCES officers; BOCES employees; volunteers expressly authorized to participate in a BOCES sponsored volunteer program; or any other person holding a position by election, appointment or employment in the service of BOCES, whether or not compensated. The

term “employee” shall also include a former employee, his/her estate or judicially appointed representative.

Pursuant to the provisions of Section 18 of the Public Officers Law, and upon compliance by the employee with the requirements of this statute, BOCES shall provide for the defense of the employee in any civil action or proceeding, state or federal, arising out of any alleged act or omission which occurred or allegedly occurred while the employee was acting within the scope of his/her public employment or duties. Such duties shall include, but not be limited to, all acts or omissions related to the performance of duties pursuant to the employees respective job description; acts or omissions occurring at the direction of a BOCES supervisor, director, or the District Superintendent; acts or omissions occurring as a result of the employees participation with any compensated or uncompensated extra-curricular duty, including but not limited to participation in the Clinton-Essex-Warren-Washington Health Insurance Consortium and/or the Clinton-Essex-Warren-Washington Workers Compensation Consortium. Furthermore, BOCES shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in a state or federal court, or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or claim arose occurred while the employee was acting within the scope of his/her public employment or duties. However, in the case of a settlement, the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of the settlement by the Board.

The duty to defend and/or indemnify and save harmless, in accordance with Section 18 of the Public Officers Law, shall be conditioned upon the delivery by the employee to the BOCES attorney or to the District Superintendent a written request to provide for his/her defense, together with the original or a copy of any summons, complaint, process, notice, demand or pleading within ten (10) days after he/she is served with such document. Pursuant to Section 18, the full cooperation of the employee in the defense of such action or proceeding and in the defense of any action or proceeding against BOCES based upon the same act or omission, and in the prosecution of any appeal, shall also be required as a condition for BOCES’ duty to defend and/or indemnify and save harmless to exist.

Exceptions to Liability Coverage

Indemnification coverage and/or provision of legal defense by BOCES will not apply unless the actionable claim is of the type covered by the statute(s) and/or is not otherwise exempt from coverage pursuant to law. Additionally, indemnification coverage and/or the duty to provide a defense shall not arise where such action or proceeding is brought by or on behalf of BOCES.

Public Officers Law Section 18
Education Law Sections 1709(26) and (34-b), 2560, 3023, 3028, and 3811
General Municipal Law Sections 6-n and 52

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