



Legal Defense of Employees
Policy Series: 5000 Personnel

Policy No. 5410

Purpose

The purpose of this policy is to establish the circumstances under which the district will provide legal representation and defense to employees for acts or omissions occurring within the course and scope of their employment, in accordance with Utah law. The board of education is committed to protecting employees who perform their duties in good faith while ensuring the appropriate use of public resources and compliance with applicable legal requirements.

Notice of Suit or Threat of Suit

In the event that an employee is sued or threatened with suit for actions taken while engaged in the performance of the employee's duties, within the scope of employment, or under color of state authority as an employee of the district, the employee shall notify the superintendent in writing of the suit or threat of suit.

The written notice shall include:

1. A short statement of the facts giving rise to the claim;
2. The nature of the claim asserted; and
3. An explanation of how the actions giving rise to the claim relate to the employee's job duties, occurred within the scope of employment, or occurred under color of authority.

The employee shall also request in writing that the district provide a defense to the claim. The request shall be made:

1. Within ten (10) days after service of process upon the employee;
2. Within a longer period that would not prejudice the district in maintaining a defense on the employee's behalf; or
3. Within a period that would not conflict with notice requirements imposed on the district in connection with insurance coverage relating to the risk involved.

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42 If the employee fails to make a timely request or fails to cooperate in the defense, including the
43 making of an offer of judgment or settlement, the district may decline to defend or continue
44 defending the employee and may decline to pay any judgment, compromise, or settlement
45 arising from the claim.
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47 48 **Referral to Legal Counsel**

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50 The superintendent may, if the nature of the action warrants, provide a copy of the request for
51 defense to State Risk Management or to the district's legal counsel.
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53 54 **Limitation of Obligation to Provide Defense**

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56 Nothing in this policy obligates the district to provide a defense, pay a judgment, or otherwise
57 assume liability for acts or omissions that did not occur:
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- 59 1. During the performance of the employee's duties;
- 60 2. Within the scope of employment with the district; or
- 61 3. Under color of authority.
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63 The district may decline to provide a defense, discontinue providing a defense, or decline to
64 indemnify an employee for:
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- 66 1. Fraudulent acts;
- 67 2. Willful misconduct where the employee intentionally commits a wrongful act or
68 intentionally fails to act while aware that the conduct will probably result in injury; or
- 69 3. Injury or damages caused while the employee was legally intoxicated or under the
70 influence of non-prescribed controlled substances or alcohol to the extent that the
71 employee could not reasonably perform job functions or safely operate a vehicle.
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73 74 **District Response to Request for Defense**

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76 Within ten (10) days after receiving a request for defense, the district shall inform the employee
77 whether it will provide a defense and, if it refuses to provide a defense, the basis for the refusal.
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79 If the district refuses to provide a defense, the employee may recover from the district if the
80 employee proves that none of the conditions permitting refusal apply. The employee bears the
81 burden of proof.
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The district may conduct a defense under a full reservation of rights, reserving the right to discontinue the defense or decline payment of a judgment if facts are established showing that the employee is not entitled to coverage or indemnification under applicable law.

Legal References:

[Utah Code § 63G-7-902](#)

Board Approved:

DRAFT