

Educator Protection Act of 2015

Program Guidelines

I. Background.

The Educator Protection Act of 2015 (“the Act”) was established in Chapter 493 of the 2015 Public Acts and codified in Tenn. Code Ann. §9-8-501 through §9-8-508. The Act provides excess professional liability coverage for all teachers and student teachers through the Tennessee Educator Liability Fund, which shall be administered by the Tennessee Board of Claims. The Act provides coverage for Claims filed against Covered Educators for acts performed within the scope of their employment and shall be provided at no cost to the Covered Educators. The Act provides professional liability coverage in excess of the coverage or coverages already provided to Covered Educators through a local education agency, private insurance company, public entity pool, public entity trust or professional association or organization. The Fund is the payer of last resort after all primary insurance policies or self-insurance provided by a Governmental Entity, and all other excess coverages, have been exhausted. The Act and Program Guidelines establish the authorization and the process by which a Claim or Claims will be considered by the Board for payment from the Fund but do not guarantee that a Claim will be paid from the Fund. The Board reserves the right to investigate and evaluate Claims to determine approval or denial of coverage.

II. Definitions.

- a. “Act” means the “Educator Protection Act of 2015.
- b. “Assault” means a physical attack on a Covered Educator that is an assault or battery as defined by applicable law. Proof of an assault or battery shall be a report of the same to the appropriate police entity as soon as practicable.
- c. “Board” means the Board of Claims.
- d. “Bodily Injury” means injury to an individual’s body, including death resulting therefrom, provided that such injury constitutes an Occurrence.
- e. “Claim” means a request for reimbursement from the Fund pursuant to the Act submitted by or on behalf of a Covered Educator.

f. “Policy Year” means the fiscal year in which coverage is provided by the Fund, beginning with the fiscal year July 1, 2015 to June 30, 2016 and each fiscal year thereafter, subject to appropriations by the General Assembly.

g. “Covered Educator” means student teachers, teachers, assistant principals, principals and superintendents.

h. “Criminal Proceeding” means the prosecution of any Covered Educator commenced by the filing, with a court, of an information, a complaint, or an indictment, and any amendments thereto, alleging that the Covered Educator had, during the Policy Year, committed one (1) or more crimes involving one (1) or more incidents, acts or events, or an investigation by a law enforcement agency that could give rise to such a filing. “Law enforcement agency” does not include a social welfare, child protection or similar agency. Any criminal proceeding shall be considered a single criminal proceeding, notwithstanding the fact that the prosecution or investigation may involve multiple incidents, multiple counts or charges and/or multiple trial and/or appellate proceedings. A subsequent or different prosecution or investigation based on the same incident, acts or events that provide the basis for the original prosecution or investigation shall not constitute a separate criminal proceeding.

i. “Fund” means the Tennessee Educator Liability Fund established in Chapter 493 of the 2015 Public Acts and codified in Tenn. Code Ann. §9-8-501 through §9-8-508.

j. “Governmental Entity” shall have the same meaning as set forth in Tenn. Code Ann. §29-20-102.

k. “Loss” means the monetary amounts payable by the Covered Educator in settlement of Claims or in satisfaction of awards or judgments, including pre-judgment interest, except that loss shall never include more than five thousand dollars (\$5,000.00) in punitive damages awarded to any party.

l. “Occurrence” means acts, errors or omissions of the Covered Educator or someone for whose acts the Covered Educator is legally liable which result in damages to someone other than the Covered Educator. An occurrence can involve a single sudden act, error or omission or continuous repeated acts, errors or omissions; continuous repeated acts, errors or omissions shall constitute a single occurrence and shall be deemed to have occurred as of the date of the most recent act, error or omission. An Occurrence involves a Covered Educator’s wrongful acts, errors or omissions while performing his or her official duties within the scope of his or her employment which results in Bodily Injury, Property Damage or Personal Injury. The determination of what acts, errors or omissions or series of acts, errors or omissions, including any continuous or repeated exposures to the same or substantially similar condition constitutes a single Occurrence shall be determined by the Board.

m. “Personal Injury” means any injury other than Bodily Injury sustained by an individual, provided that such injury is caused by an Occurrence committed by a Covered Educator performing his or her official duties within the scope of his or her employment.

n. “Property Damage” means any physical damage to or destruction or loss of personal or real property, including the loss of use of such property resulting from such damage, destruction or loss; provided, that such damage, destruction or loss is caused by an Occurrence committed by a Covered Educator performing his or her official duties within the scope of his or her employment. This coverage does not apply to damage or destruction of a Vehicle of any kind, or to damage to or destruction of property leased to, owned or rented by a Governmental Entity.

o. “Student Teacher” means an individual enrolled as a student in an institution of higher education approved by the State Board of Education for teacher training, who is jointly assigned by the institution of higher education and either a local board of education or a charter school to teach under the direction of a licensed teacher employed by the local board of education or the charter school.

p. “Teacher” means any individual employed by a local board of education in a position that requires a license issued by the Department of Education for service in public elementary and secondary schools of this state, supported in whole or in part, by local, state or federal funds, and includes an individual employed at a public charter school in a position that requires a license issued by the Department of Education for service in a public elementary and secondary school of this state.

q. “Vehicle” means any motor vehicle device designed for transport on or off public roads: this includes, but is not limited to, autos, buses, motorcycles, motor bicycles, dune buggies, snowmobiles, and golf carts; any trailer or other device being towed by or carried on a vehicle; and any device which travels on fixed rails or crawler treads. Wheelchairs are not considered vehicles.

III. Liability Limits.

a. Educator Liability

\$1,000,000 (maximum amount) per Occurrence per Covered Educator with a maximum of \$3,000,000 per Occurrence involving more than one (1) Covered Educator, and a maximum of \$9,000,000 aggregate for all Claims filed in each Policy Year. This coverage is inclusive of the legal cost of defending civil proceedings, and not to include any civil rights issues or Claims;

\$300,000 (maximum amount) per Occurrence for civil rights issues or Claims, inclusive of the legal costs of defending a civil rights Claim, and not to include any other Claims.

b. Reimbursement of Attorney Fees for Defense of a Criminal Proceeding

\$35,000 per Criminal Proceeding (maximum amount).

c. Bail Bond

\$1,000 per bond (maximum amount).

d. Assault-Related Personal Property Damage

\$500 per Assault (maximum amount).

IV. Coverage.

The excess coverage provided pursuant to this Act shall be self-insured coverage payable from the Fund. Coverage shall commence on July 1, 2015 for Occurrences happening on or after that date. The liability limits contained within this document shall apply to each Policy Year that coverage is in effect. The Fund shall pay on behalf of a Covered Educator any and all Loss, subject to the following limitations of liability for acts committed by a Covered Educator in the scope of his or her employment:

a. Educator Civil Liability. Civil liability Claims filed against a Covered Educator resulting in alleged Personal Injury, Bodily Injury or Property Damage, except for civil rights Claims, shall be reimbursed from the Fund in the maximum amount of one million dollars (\$1,000,000.00) for each Occurrence involving one (1) Covered Educator, a maximum of three million dollars (\$3,000,000.00) for each Occurrence involving more than one (1) Covered Educator, and a maximum of nine million dollars (\$9,000,000.00) aggregate for all Claims filed against Covered Educators during a Policy Year. This includes legal cost that shall include, but not limited to the Covered Entity's attorney's fees (including fees for the services of paralegals, law clerks, or investigators working under the direction of said attorney), court costs and witness fees, and shall not include loss of income, court sanctions, opposing counsel's attorney fees or restitution "legal costs."

b. Educator Civil Liability (Civil Rights Violations). Civil liability Claims resulting from alleged civil rights violations shall be reimbursed from the Fund in the maximum amount of three hundred thousand dollars (\$300,000) for each Covered Educator, per Occurrence giving rise to a lawsuit alleging, in whole or in part, a civil rights violation. This amount shall include legal costs.

c. Reimbursement of Attorney Fees (Criminal Proceedings). The legal costs incurred in defending criminal charges filed against a Covered Educator shall be reimbursed from the Fund in the maximum amount of thirty-five thousand dollars (\$35,000.00) per Occurrence for each Covered Educator. This limit shall apply only to a Claim filed against a Covered Educator who is charged with violating a criminal statute while performing an act

within the scope of his or her employment and only if the criminal charges are dismissed, withdrawn or the Covered Educator is found not guilty. In the event that more than one (1) Covered Educator is criminally charged with the same Occurrence, then each Covered Educator shall receive coverage up to thirty-five thousand dollars (\$35,000.00) for defending the criminal charges. When the Covered Educator is one (1) of two (2) or more defendants represented by the same attorney or law firm, payments shall be limited to the Covered Educator's proportionate share of the total amount of the reasonable attorney fees and the reasonable and necessary costs paid. If the Criminal Proceeding is the result of the use of corporal punishment, reimbursement will be made regardless of the outcome. The legal costs shall include, but not be limited to the Covered Entity's attorney's fees (including fees for the services of paralegals, law clerks, or investigators working under the direction of said attorney), court costs and witness fees, and shall not include loss of income, court sanctions, opposing counsel's attorney fees or restitution.

d. Bail Bond. A bail bond premium paid by a Covered Educator shall be reimbursed by the Fund in the maximum amount of one thousand dollars (\$1,000.00) for each bond in the event that a Covered Educator posts bond as a result of criminal charges arising out of the Covered Educator's scope of employment, and the Covered Educator has been found not guilty or the charges against the Covered Educator have been dismissed, and the Covered Educator has complied with all court orders and directives. This coverage does not obligate the Fund, the State of Tennessee, the Board, the Department of Treasury or the State Treasurer to apply for or furnish a bond for or on behalf of the Covered Educator. For the purposes of this coverage, a series of continuous actions by the Covered Educator shall constitute a single event.

e. Assault-Related Personal Property Damage. In the event that personal property owned by the Covered Educator or in the care, custody, control or possession of a Covered Educator but owned by another individual is damaged in an Assault upon the Covered Educator in the scope of his or her employment, the Covered Educator shall be reimbursed from the Fund for the value of the personal property in the maximum amount of five hundred dollars (\$500.00). Coverage will be provided only if the Assault occurs on or surrounding school property or while away from school property on an authorized school activity to the extent that such damages exceed the coverage provided by any Homeowners, Personal Property Floaters or other similar valid and collectible insurance. This coverage shall not cover damage or destruction of a Vehicle of any kind, or damage to or destruction of property leased to, owned or rented by a Governmental Entity.

V. Exclusions.

The liability coverage provided to Covered Educators pursuant to the Act shall not include coverage for the following:

- a. Any civil or administrative cases arising out of the Covered Educator's discharge, discipline, certification or any other employment issues or disputes.
- b. The cost of criminal defense if the Covered Educator did not commit the act within the scope of his or her employment or if the Covered Educator's criminal charges resulted in a conviction, a guilty plea or a plea of *nolo contendere*.
- c. Any civil action arising out of a Covered Educator's criminal act, except for a criminal charge resulting from corporal punishment that has resulted in the Covered Educator's conviction or plea of *nolo contendere*.
- d. The payment of fines, fees, levies, garnishments, restitution or any other monies relative to any criminal charges filed against a Covered Educator, other than the payment of attorney fees listed in Section IV. c.
- e. Personal Injury arising from documents, including but not limited to letters, emails, memos, notes, newsletters, advertisements or publications, or an utterance developed, made, communicated, published or disseminated directly or indirectly by a Covered Educator that may constitute libel, slander, defamatory or disparaging material or may violate a person's right of privacy if the publication or utterance is made in a newspaper of general circulation, an electronic communication to which there is public access, or in the course of or related to advertising, broadcasting or telecasting. This exclusion shall not apply to an Occurrence that involves damages sustained by a person or organization which arise out of a publication of advertising in a student newspaper, a yearbook, or any other student publication, including a publication distributed by traditional means or electronically and that is sponsored by a school or school district.
- f. Personal Injury or Bodily Injury arising out of or in the course of a Covered Educator transporting Vehicles, watercraft, or aircraft. There are three (3) exceptions to this exclusion: (1) a driver training instructor while riding as a passenger in the course of educational employment activities; (2) a vocational educational instructor in the course and scope of educational employment activities; and (3) an Educator who supervises students entering and exiting a school bus.
- g. Any obligation for which the Covered Educator may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefit Laws.
- h. Any civil action or criminal charges brought against a Covered Educator by or on behalf of another employee or a former employee of the Governmental Entity.
- i. Personal Injury, Bodily Injury or Property Damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, gases, waste materials or other irritants, contaminants or pollutants into or upon land, the air or

any watercourse or body of water, but this exclusion does not apply if such discharge, release or escape is sudden and accidental.

j. Real property damage to any property owned or occupied by or leased by a Covered Educator, property used by any Covered Educator, or property in the care, custody or control of the Covered Educator, except for personal property damaged in an Assault against a Covered Educator.

k. Any liability expressly assumed by the Covered Educator under any contract or agreement.

l. Any misuse, embezzlement, misappropriation, or breach of a fiduciary duty, in the handling or managing of public and/or private monies, investments, or other funds held in a trust capacity.

m. Any use of firearms or other explosive device.

n. Coverage does not apply to any Covered Educator while acting in the capacity, whether paid or unpaid, of a board member, a trustee, a director, or governor, or in any similar capacity, in the governing body of an educational unit.

o. Coverage does not apply for any damages due to war, whether or not declared, civil war, insurrection, rebellion, revolution, terrorism, or to an act or condition incident to any of the foregoing.

p. Coverage does not apply to hazardous properties, nuclear material, spent fuel, or any type of pollution that causes liability, personal, emotional, or real or personal property damages.

q. Coverage does not apply to an action seeking solely declaratory, injunctive, or similar non-monetary relief.

r. Coverage does not apply to the rendering, teaching, or supervision of the following medical, surgical dental, nursing, or other similar service. There are five (5) exceptions to this exclusion that are as follows:

1. First-aid and regular nursing services rendered by a school nurse employed to render such service, or a certified health aide employed to render such service under the direction of a school nurse;
2. Physical therapy, occupational therapy or psychological therapy or treatment rendered by a practitioner who is employed to render such services, and who meets any licensure or certification requirements for such employment;

3. The administration of oral prescription medicine to a student by the Covered Educator, provided the Covered Educator has received advance written approval for such administration from the parent or guardian of the student;
 4. Emergency first-aid services rendered by the Covered Educator when a school nurse or other medically-trained person is not readily available;
 5. Health care services rendered by the Covered Educator to students who are designated disabled under the Individuals with Disabilities Education Act when the rendering of such services is expressly required by the employer; provided, the Covered Educator has received advance written approval for rendering such services from the parent or guardian of the student.
- s. Coverage does not apply to professional services such as the rendering or supervision of (1) legal services; (2) accounting services; or (3) architectural services.
- t. Coverage does not apply to the sale or the distribution for commercial purposes of any product, including food or drink, made by the Covered Educator or under the Covered Educator's direction, except, coverage would apply: (1) if the student who makes such product uses, sells or distributes it as his or own initiative; (2) to the sale or distribution of food or drink made by the Covered Educator or under the Covered Educator's direction if the Covered Educator is employed as a home economics teacher; or (3) the Covered Educator's performance of an agricultural or other commercial type service; except coverage would apply to the rendering, teaching, or supervision of such service to a student.
- u. Coverage does not apply to Occurrences involving damages that are the intended consequence of action taken by the Covered Educator or at the Covered Educator's direction. There are three (3) exceptions to this exclusion, as follows:
1. This exclusion shall not apply if the action taken involves corporal punishment;
 2. This exclusion shall not apply if the civil proceeding against the Covered Educator is based on an alleged violation of any civil rights guaranteed by the Constitution or civil rights statutes of the United States or of a state, unless it is expressly found by the trier of civil fact that in taking said action the Covered Educator specifically intended to violate the civil rights of the claimant; and
 3. This exclusion shall not apply if the Covered Educator's responses to the allegations made against the Covered Educator in any civil proceeding indicate that the damages involved were not the intended consequence of action taken by the Covered Educator or at the Covered Educator's direction. Except as otherwise specified in exception u.2. of this exclusion, if evidence obtained as a result of investigation, litigation, or otherwise demonstrates that said responses

are not credible, this exclusion shall thereafter apply. The Fund shall be entitled to reimbursement for the attorney's fees, costs and other expenses incurred by the Fund in providing coverage to the Covered Educator.

v. Coverage does not apply for liability arising from the manufacturing, distributing, sale, or use of illicit drugs and/or prescription medication prohibited under any federal, state, or municipal law. This includes any liability arising out of professional services rendered by the Covered Educator whose acts are legally liable or in the scope of their duties while under the influence of intoxicants or drugs.

VI. Claims Administration Process.

a. All Claims filed against a Covered Educator shall first be considered by the Governmental Entity employing the Covered Educator to determine immunity or liability coverage pursuant to the Tennessee Governmental Tort Liability Act contained in Tenn. Code Ann. §29-20-101, et seq.

b. In the event that the Governmental Entity's liability coverage is insufficient in providing coverage for all of the Claims filed against a Covered Educator, the Claims shall be considered by any secondary insurance coverage afforded to a Covered Educator that is provided through a private insurance policy, public entity pool, public entity trust or professional association or organization.

c. In the event that the primary and, in some cases, the secondary liability coverage for the Covered Educator's actions do not provide coverage for all of the Claims filed against the Covered Educator, the Covered Educator and the Governmental Entity may submit the outstanding Claim or Claims to the Board for consideration and possible reimbursement from the Fund. The Governmental Entity and the Covered Educator must submit all of the relevant documentation relative to Claim or Claims to the Board to determine coverage under the Act at the request of the Board of Claims staff.

d. In the event of any payment from the Fund, the State of Tennessee shall be subrogated to all the Covered Educator's rights of recovery against any person or organization, and the Covered Educator shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Covered Educator shall do nothing to prejudice such rights.

VII. Effective Date

This policy is effective July 1, 2015 and shall remain in effect until amended by the Board of Claims or until preempted by state law.