

Bylaw No. 2-96

Indemnification - Bylaw

-POLICY-

A Bylaw of the Board of Education of School District No. 58 (Nicola-Similkameen) (herein called the "Board") to adopt an Indemnification Bylaw to provide additional protection for trustees, officers and employees.

Now, therefore, the Board enacts this as Indemnification Bylaw No. 2-96.

1. General

- 1.1 The Board of Education will indemnify a trustee, an officer or an employee of the Board against a claim for damages arising out of the lawful performance of his or her duties or where an inquiry under Part 2 of the Inquiry Act or other proceeding involves the administration and conduct of the business of the school district and may, by an affirmative vote of the majority of its members, pay legal costs incurred in proceedings out of the claim or inquiry or other proceedings, in accordance with the regulations.
- 1.2 The Board of Education may, by an affirmative vote of not less than two-thirds of all its members, pay any sum, including costs necessarily incurred, required to indemnify a trustee, an officer or an employee of the Board where a prosecution arises out of the lawful performance of his or her school board duties, in accordance with the regulations. The Board shall not pay a fine imposed on a trustee, officer or employee as a result of his or her conviction.
- 1.3 The Board of Education shall not seek indemnity against a trustee, an officer or an employee of the Board in respect of any action by the trustee, officer or employee that results in a claim for damages against the Board except where the claim for damages arises out of the gross negligence of the trustee, officer or employee or where the officer or employee acted wilfully contrary to the terms of his or her employment or an order of a superior, in accordance with the regulations.

2. Regulations

2.1 This Bylaw shall apply:

2.1.1 to individuals who are currently trustees, officers or employees of the School District; and

2.1.2 to individuals who were formerly trustees, officers or employees of the School District provided that the occurrence which gives rise to the claim for indemnification occurred while they were a trustee, officer or employee.

2.2 The Board shall indemnify a trustee, officer or employee against a claim for damages against the trustee, officer or employee arising out of the performance of his or her duties and where an inquiry under Part 2 of the Inquiry Act or other proceedings involves the administration and conduct of the School District except as provided for in this Bylaw.

2.3 The Board shall not indemnify a trustee, officer or employee for any matters for which insurance coverage is available to cover the liability of the trustee, officer or employee or against:

2.3.1 liability and legal fees incurred as a result of an action or other proceeding taken by the Board against the trustee, officer or employee or as a result of an action or proceeding taken by the trustee, officer or employee against the Board;

2.3.2 liability to pay a fine, penalty or order imposed as a result of the conviction for an offence;

2.3.3 legal fees incurred as a result of a prosecution where the trustee, officer or employee is convicted of an offence or obtains a conditional or absolute discharge;

2.3.4 liability and legal fees incurred as a result of proceedings under the Teaching Profession Act unless the Board, by an affirmative vote of a majority of its members, so agrees;

2.3.5 legal fees incurred in an appeal of any conviction, sentence, judgment or order unless the Board, by an affirmative vote of a majority of its members, so agrees;

- 2.3.6 liability and legal fees incurred by a trustee where the Court determines that the trustee knowingly contravened Section 78 of the *School Act*;
 - 2.3.7 liability and legal fees incurred by a trustee, officer or employee where the Court determines that the trustee, officer or employee knowingly permitted or authorized an expenditure not authorized by an enactment;
 - 2.3.8 liability incurred by a trustee as a result of any restitution ordered pursuant to section 83(1)(b) of the *School Act*.
 - 2.3.9 those matters for which the Board may seek indemnity from an employee pursuant to its authority under Section 113(3) of the *School Act*.
 - 2.3.10 claim for damage brought by a third party for liability arising out of the operation of a vehicle owned or leased to the school district;
 - 2.3.11 bodily injury caused intentionally by or at the direction of the School District except when solely to protect persons or property;
 - 2.3.12 personal injury arising out of the performance or alleged performance of a criminal or illegal act (shall not apply to any insured not having knowledge of, or being a party to, the performance of any such act).
- 2.4 For those matters covered by Section 2 and not excluded by Section 3, the trustee, officer or employee may:
- 2.4.1 retain such legal counsel as the Board may appoint and such legal counsel shall be paid for and directed by the Board;
 - 2.4.2 retain such legal counsel as the trustee, officer or employee may choose, in which case the Board shall:
 - i. have the right to approve in advance any agreement for legal fees and disbursements;
 - ii. have the right to pay all or part of the legal fees and disbursements and to set a maximum for legal fees and disbursements;
 - iii. have the right to direct the defence and to settle or compromise the claim or action;
 - iv. have the right to tax the account of the legal counsel and the trustee, officer or employee agrees to include such a term in the agreement with his/her counsel; and
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- v. determine whether or not the trustee, officer or employee will be reimbursed by the Board for legal fees or any portion of the legal fees that have been paid by the trustee, officer or employee prior to the approval of the Board.
- 2.5 Any amount that may be payable to the Board shall be reduced by any court costs awarded to the trustee, officer or employee.
- 2.6 The Board shall give consideration to advancing legal costs to the trustee, officer or employee prior to the final resolution of a claim or action in order to prevent undue hardship. When the Board advances such costs to a trustee, officer or employee, the trustee, officer or employee shall provide a written authorization for the Board to deduct any amount equivalent to the costs advanced from future funds payable to the trustee, officer or employee by the Board. The authorization shall be used by the Board if it is determined at a later date that the trustee, officer or employee is not entitled to be indemnified under the terms of this Bylaw.

Read a First Time the 2nd day of December, 1996.

Read a Second Time the 2nd day of December, 1996.

Read a Third Time, Passed and Adopted the 2nd day of December, 1996.

Chairperson of the Board

Secretary Treasurer

I hereby certify this to be a true, original of School District No. 58 (Nicola-Similkameen) Indemnification Bylaw No. 2-96 adopted by the Board on the 2nd day of December, 1996

Secretary Treasurer