

It is generally the board's policy to provide for the defense of any civil or criminal action or proceeding brought against an employee in his or her official or individual capacity, or both, on account of an act done or an omission so long as all of the following conditions are met.

1. The act or omission occurred in the scope and course of employment.
2. Defense of the action would not create a conflict of interest between the board and the employee.
3. The employee did not act or fail to act because of fraud, corruption, or malice on his or her part.
4. All potential liability insurance carriers and/or liability coverage providers have provided written notification to the employee that the carrier(s) and/or liability coverage provider(s) will not provide a defense for the employee.

In order for the board to provide for the defense pursuant to this policy, the employee must provide a written request to the superintendent as soon as possible upon learning of the claim or action and receiving written notice from all potential insurers and/or liability coverage providers pursuant to item 4 above.

The superintendent, with advice from the board attorney, shall make a recommendation to the board as to whether the board will provide legal representation for the employee. Board approval of an employee's request to provide legal representation will only relate to the initial trial or proceeding. The employee must make an additional request in writing to the board for legal representation at each subsequent stage of the appeal of the action or proceeding.

If an employee's request for legal representation in any civil or criminal action or proceeding is denied and subsequently the employee is found not to be liable or guilty, the board may reimburse the employee a reasonable attorney's fee upon written request of the employee.

To protect its own financial resources, the board will provide for sufficient liability coverage for personnel, workers' compensation coverage, and unemployment compensation insurance.

By enacting this policy, the board does not intend to create any contractual rights between the board and any employee and this policy should not be construed to create any contract term or substantive right whatsoever. Further, this policy should not be construed to waive any claim of immunity that the board might otherwise be entitled to make.

Legal References: G.S. 115C-43; *Wray v. City of Greensboro*, 370 N.C. 41 (2017)

Cross References:

Adopted: November 7, 2016

Revised: September 3, 2019