

Small damage claims for injury to person or property arising from negligence on the part of agents or employee of the school system in the performance of their duties may result in disproportionate expense and time in defense of disposition of potential litigation. When the Board of Education has waived its sovereign immunity by the purchase of liability insurance, the Superintendent is authorized, if in his opinion it would serve the best interest of the school system, to satisfy any such damage claim by payment of a sum not to exceed the amount of the deductible portion of the Board's liability insurance policy. Whenever the Superintendent exercises his authority under this policy, he shall have a release executed in favor of the Buncombe County Board of Education.

**A. APPLICABILITY TO CERTAIN CLAIMS**

On occasion, the board of education is presented with claims against the board from students, parents or other citizens for injuries to person or property sustained while on a board property or at a school-sponsored event. The board adopts this policy in order that it may consider and process all such claims in a fair and equitable manner, taking into consideration the economic resources available to the board.

The board will only consider claims under this policy when the applicable insurance agreement and/or coverage agreement, if any, does not provide for the consideration, settlement and/or adjustment of claims prior to legal action being filed by the claimant in a court of competent jurisdiction. Upon the filing of a complaint, the board will immediately refer all claims to the appropriate insurance company or coverage provider for appropriate action.

**B. PROCEDURE FOR FILING CLAIM**

All claims shall be made to the superintendent in writing and shall include a detailed account of how the injury occurred, whether board employees were involved, and the amount of damages suffered by the claimant. The claimant should include all supporting documentation and any other information he or she believes is relevant. The superintendent or designee shall investigate the incident and, if necessary, provide supplemental information to the board.

After receiving the claim, the board, in consultation with its attorney, will determine whether to pay the claim, deny the claim or make an offer to settle the claim.

**C. SETTLEMENT**

In determining whether to settle a claim prior to the filing of a legal action, the board will consider the factors listed below. Before any final decision is reached, the board attorney shall ensure that these factors were considered by the board in arriving at its final decision.

1. Whether there is a reasonable possibility that the potential defense costs to be paid by the board, including an estimate of personnel time and school system resources, will exceed the amount for which the case can be settled.
2. The extent to which an employee's actions or omissions may have caused, or contributed to, an injury.
3. Whether an employee intentionally caused an injury.
4. Whether there are any affirmative defenses available to the board in the event of litigation. However, the board shall not assert or consider the availability of Sovereign/Governmental Immunity for any pre-litigation claim.
5. Whether the demand is within the retention or deductible level for monetary payments pursuant to any applicable insurance or coverage agreement.

Each claim will be evaluated based upon the specific circumstances. All factors need not be given equal weight, and no one factor shall be controlling.

The payment of any claim shall be subject to the claimant's execution of a full release of liability in favor of the board, its employees and its agents. The release shall be on a form approved by the board attorney.

By considering whether to settle a claim, the board does not waive any affirmative defenses available to it or its employees, including but not limited to the defenses of governmental, sovereign, qualified or public official immunity, or contributory negligence. The board may assert these defenses should the claimant choose to file a lawsuit.

Legal References: *Dobrowolska v. City of Greensboro*, 138 N.C. App. 1 (2000)

Cross References:

Adopted: June 6, 2013

(Update includes language from policy 590)

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