

NOTICE OF SUIT OR THREAT OF SUIT—

In the event that any employee is sued or threatened with suit for actions which the employee has taken while engaged in the performance of the employee's duties, for actions within the scope of the employee's employment, or actions under the color of state authority as an employee of the District, the employee shall notify the

Superintendent of Schools in writing of such suit or threat of suit. The written notice shall provide a short statement of the facts giving rise to the claim, the nature of the claim asserted, and how the actions giving rise to the claim relate to the employee's job duties or come within the scope of employment or occurred under the color of authority. In addition, the notice must request the District to engage counsel to provide a defense to the claim, and the written request must be made:

- a. Within 10 days after service of process upon the employee; or
- b. Within a longer period that would not prejudice the District in maintaining a defense on the employee's behalf; or,
- c. Within a period that would not conflict with notice requirements imposed on the school district in connection with insurance carried by the school district relating to the risk involved.

If the employee fails to make a timely request or cooperate in the defense, including the making of an offer of judgment or settlement, the District need not, in its discretion, defend or continue to defend the employee, or pay any judgment, compromise, or settlement against the employee arising from such claim

REFERRAL TO LEGAL COUNSEL—

The Superintendent may, if the nature of the action so warrants, provide a copy of the request to provide a defense to Risk Management or to the District's legal counsel.

LIMITATION OF OBLIGATION TO PROVIDE DEFENSE—

Nothing in this policy obligates the District to undertake a defense, pay any judgment, or otherwise assume liability of an employee for acts or omissions of an employee that did not occur:

- a. During the performance of the employee's duties; or
- b. Within the scope of employment with the District; or
- c. Under color of authority.

Also, the District shall not be obligated to pay any judgments or indemnify and may decline to provide a defense or discontinue providing a defense for:

- d. Fraudulent acts of an employee; or
- e. Willful misconduct where the employee commits the wrongful act intentionally or fails to act without just cause or excuse while aware that the conduct will probably result in injury;
- f. Or injury or damages committed while the employee was legally intoxicated or under the influence of non-prescribed controlled substances or alcohol to the extent as to be unable to reasonably perform his or her job function or control a vehicle.

Utah Code Ann. § 63-30d-902 (2008)

Within ten days after receiving the request to defend the employee, the District shall inform the employee whether it will provide the defense and if it refuses to provide the defense, the basis for the refusal. If the District refuses to provide the defense for the employee, the employee may recover from the District if the employee can prove that none of the conditions set forth in sub-part four apply. The employee has the burden of proof to establish that none of these conditions apply.

Utah Code Ann. § 63-30d-902(4)(a) (2008)

Utah Code Ann. § 63-30d-903(2)(2008)

The District may conduct the defense under a full reservation of rights under which the District reserves the right to discontinue the defense and/or not pay any judgment if the conditions under Subpart 4(a)-(c) above are not shown or the conditions under Subpart 4(d)-(f) above are shown.