

**ARKANSAS DEPARTMENT OF EDUCATION
DIVISION OF ELEMENTARY AND SECONDARY EDUCATION
RULES GOVERNING THE SCHOOL WORKER DEFENSE PROGRAM AND THE
SCHOOL WORKER DEFENSE PROGRAM ADVISORY BOARD
November 25, 2019**

1.0 PURPOSE

- 1.01 The purpose of these rules is to establish the requirements and procedures concerning the School Worker Defense Program and the School Worker Defense Program Advisory Board.

2.0 REGULATORY AUTHORITY

- 2.01 These rules shall be known as the Arkansas Department of Education Division of Elementary and Secondary Education Rules Governing the School Worker Defense Program and the School Worker Defense Program Advisory Board.
- 2.02 These rules are enacted pursuant to the authority of the State Board of Education under Ark. Code Ann. §§ 6-11-105, 6-17-1113, 6-17-1118, 25-15-201 et seq., Act 1073 of 2013 and Act 557 of 2019.

3.0 DEFINITIONS

- 3.01 “Authorized Volunteers” and “Volunteers in a Registered Volunteers Program” are those who meet the definition of “volunteer” and “registered volunteer” pursuant to Ark. Code Ann. §§ 6-22-101 through 6-22-108.
- 3.02 “Backup Documentation” means documentation included to justify the amount invoiced. Examples may include timesheets, receipts, supplier invoices.
- 3.03 “Costs” are court filing fees, photocopying costs, mailing and postage fees, service of process fees, transcript request fees, expert testimony, and reasonable mileage for court appearances and depositions. Mileage reimbursement is based on the current rate set by the Arkansas Department of Finance and Administration.
- 3.04 “Covered person” or “Covered entity” refers to those individuals and entities listed in Section 5.01 of these rules.
- 3.05 “Official duties” are those duties legitimately related to the carrying out of an individual’s position listed in Section 5.01 of these rules.

4.0 SCHOOL WORKER DEFENSE PROGRAM ADVISORY BOARD

- 4.01 The School Worker Defense Program Advisory Board is composed of the following seven (7) members:
- 4.01.1 The Executive Director of the Arkansas Association of Educational Administrators or his or her designee;
 - 4.01.2 The President of the Arkansas Rural Education Association or his or her designee;
 - 4.01.3 The Executive Director of the Arkansas School Boards Association or his or her designee;
 - 4.01.4 The Executive Director of the Arkansas Education Association or his or her designee;
 - 4.01.5 The designee of the Attorney General;
 - 4.01.6 The Director of the Department of Finance and Administration or his or her designee; and
 - 4.01.7 The Commissioner of Education or his or her designee.
 - 4.01.8 No employee of the Division of Elementary and Secondary Education who is charged with administering the School Worker Defense Program shall be eligible to serve as the designee of the Commissioner.
- 4.02 Members of the advisory board shall biannually elect a chair, a vice chair, and a secretary from the membership of the advisory board, whose duties shall be those customarily exercised by those officers or specifically designated by the advisory board.
- 4.03 The advisory board shall meet within the State of Arkansas and may meet as often as it deems necessary for the purpose of carrying out its duties as listed in Ark. Code Ann. § 6-17-1118 and these rules.
- 4.04 A majority of the members of the advisory board shall constitute a quorum for the purpose of a meeting.
- 4.05 The advisory board shall have final authority to hear and adjudicate any appeal filed by a school worker for protection against liability pursuant to Ark. Code Ann. § 6-17-1113 and these rules.
- 4.06 In an emergency situation, the chair of the advisory board may approve payment of a claim without a meeting of the advisory board.

- 4.07 The Division of Elementary and Secondary Education shall provide support staff for the advisory board.

5.0 SCHOOL WORKER DEFENSE PROGRAM

- 5.01 The School Worker Defense Program is established for the protection of:

- 5.01.1 Education service cooperatives;
- 5.01.2 Education service cooperative board members;
- 5.01.3 Public school districts;
- 5.01.4 Public charter schools;
- 5.01.5 Public school board members;
- 5.01.6 Public school treasurers and bookkeepers;
- 5.01.7 Public school nurses;
- 5.01.8 Public school secretaries;
- 5.01.9 Public school substitute teachers;
- 5.01.10 Authorized volunteers;
- 5.01.11 Volunteers in a registered volunteers program;
- 5.01.12 Public school custodians;
- 5.01.13 Food service workers employed by public schools;
- 5.01.14 Bus drivers and mechanics employed by public schools;
- 5.01.15 Maintenance personnel employed by public schools;
- 5.01.16 Each employee of the following who is required to hold an educator license issued by the Division of Elementary and Secondary Education:
 - 5.01.16.1 A public school district;
 - 5.01.16.2 The Arkansas School for Mathematics, Sciences, and the Arts;

5.01.16.3 The Arkansas School for the Deaf; and

5.01.16.4 The Arkansas School for the Blind;

5.01.17 A public charter school teacher;

5.01.18 Each teacher's aide and each student teacher:

5.01.18.1 In a public school district;

5.01.18.2 In a public charter school;

5.01.18.3 In the Arkansas School for Mathematics, Sciences, and the Arts;

5.01.18.4 In the Arkansas School for the Deaf; and

5.01.18.5 In the Arkansas School for the Blind; and

5.01.19 Each member of the dormitory staff of:

5.01.19.1 The Arkansas School for Mathematics, Sciences, and the Arts;

5.01.19.2 The Arkansas School for the Deaf; and

5.01.19.3 The Arkansas School for the Blind.

5.02 The School Worker Defense Program is authorized, subject to governmental or statutory immunity and any exclusions or rules set forth herein, to protect any of the entities and individuals listed in Section 5.01 of these rules against civil liability, attorney's fees, and costs of defense for acts or omissions of each employee, authorized volunteer or volunteer in a registered volunteers program in the performance of his or her duties as a school volunteer or his or her official duties as a school employee, including civil liability for administering corporal punishment to students, in the amount of:

5.02.1 Two hundred fifty thousand dollars (\$250,000) for incidents which occurred prior to July 1, 1999; and

5.02.2 One hundred fifty thousand dollars (\$150,000) for each incident which occurs after June 30, 1999.

5.02.3 An employee or volunteer who administers corporal punishment to a child who *is intellectually disabled, non-ambulatory, non-verbal, or autistic* is

not subject to the protection against civil liability, attorney's fees, and costs of defense.

- 5.03 The School Worker Defense Program is further authorized to provide limited financial reimbursement not to exceed five thousand dollars (\$5,000) for attorney's fees and costs for the defense of criminal charges if the covered person listed in Section 5.01 of these rules is exonerated by a court of law or if all charges are subsequently withdrawn or dismissed unless:
- 5.03.1 Withdrawal or dismissal of the criminal charges is conditioned upon termination of employment or surrender of a professional license; or
- 5.03.2 The covered person enters a plea of guilty or nolo contendere to the criminal charges.
- 5.04 The School Worker Defense Program Advisory Board may authorize reimbursement under Section 5.03 of these rules in excess of five thousand dollars (\$5,000) in matters that the advisory board finds to require extraordinary attorney's fees and costs. Such authorization may be made at the sole discretion of the School Worker Defense Program Advisory Board if such authorization is sufficiently justified in writing by the covered person or entity as set forth in Section 7.01.2.4 of these rules.
- 5.05 The cost of the School Worker Defense Program shall be paid annually out of funds in the Public School Fund that are designated for that specific purpose.
- 5.06 The School Worker Defense Program shall not pay any costs associated with the administration of the School Worker Defense Program if no funds are designated in the Public School Fund for the purpose of administering the School Worker Defense Program, or if all designated funds have been depleted through the payment of claims through the School Worker Defense Program.
- 5.07 Any school districts previously covered by or moneys expended pursuant to the self-insurance program of the Division of Elementary and Secondary Education or the School Worker Defense Program shall be deemed a proper expenditure of state funds as set forth in Ark. Code Ann. § 6-17-1113(c) as that statutory subsection existed on July 1, 2011.
- 5.08 The establishment of the School Worker Defense Program, the approval of these rules and regulations, the investigation of any incident, the payment of any claim, or the defense of any covered person or entity by the School Worker Defense Program does not waive or forfeit any immunity or authorization to provide for hearing and settling claims extended to educational entities and their personnel by the laws of the State of Arkansas.

6.0 ADMINISTRATION OF THE SCHOOL WORKER DEFENSE PROGRAM

- 6.01 The School Worker Defense Program shall be a part of and administered by the Division of Elementary and Secondary Education.
- 6.02 The Commissioner of Education may appoint a Division of Elementary and Secondary Education Administrator (Program Administrator), who will administer the School Worker Defense Program.
- 6.03 The Program Administrator will receive and review requests for protection and coverage through the School Worker Defense Program.
- 6.04 The Program Administrator will determine whether requests for protection, coverage, reimbursement, or payment meet the requirements of Ark. Code Ann. § 6-17-1113 and these rules.
- 6.05 Any person entitled to protection under the School Worker Defense Program may appeal the decision of the Program Administrator to the School Worker Defense Program Advisory Board.

7.0 PROCEDURES FOR FILING A CLAIM

- 7.01 Any person entitled to protection under Section 5.01 of these rules shall submit a notice of claim to the Program Administrator.
- 7.01.1 The notice of claim shall be sent by certified mail, return receipt requested to:
- School Worker Defense Program
ATTN: Program Administrator
Division of Elementary and Secondary Education
Four Capitol Mall
Little Rock, Arkansas 72201
- 7.01.2 The notice of claim shall include the following information:
- 7.01.2.1 The name, address, telephone number and position of the entity or individual covered under Section 5.01 of these rules;
- 7.01.2.2 If the claim is filed pursuant to Section 5.02 of these rules, a copy of the summons and complaint and an explanation of how the acts and omissions of the employee or volunteer in question were in the performance of his or her official duties;

- 7.01.2.3 If the claim is filed pursuant to Sections 5.03 or 5.04 of these rules, a copy of relevant court documents indicating the withdrawal, dismissal, or acquittal of criminal charges;
 - 7.01.2.4 If the claim is filed pursuant to Section 5.04 of these rules, an explanation of the reasons why extraordinary attorney's fees and costs are appropriate;
 - 7.01.2.5 A description of the nature of each insurance policy that may provide coverage for the claim. This description shall include, but not be limited to, coverage limits under each policy; and
 - 7.01.2.6 The name, address, and telephone number of the attorney who will represent the covered entity or person in the matter, or a request for an attorney to be appointed by the School Worker Defense Program.
- 7.01.3 Notice of any claim must be given to the School Worker Defense Program within thirty (30) days of a covered person or entity having knowledge of a civil or criminal action being filed or having reason to believe that a claim under the School Worker Defense Program will be made, whichever is later.
- 7.01.4 Once notice has been received by the covered person or entity as to the formal filing of charges or complaints, immediate notice shall be given to the School Worker Defense Program along with copies of any summons and complaints.
- 7.02 For requests for payment or reimbursement, the covered individual or entity shall provide an itemized invoice along with back up documentation and any information required by the Division of Elementary and Secondary Education to substantiate the amounts listed in the invoice.
- 7.02.1 Invoices and back up documentation shall be submitted by the covered individual or entity quarterly (every three months). Invoices that are not submitted on a timely basis may not be paid by the School Worker Defense Program.
 - 7.02.2 To be submitted on a timely basis, any request for payment of an expense or reimbursement, other than attorney's fees paid pursuant to Sections 5.03 and 5.04 herein, must be received by the Program Administrator within three (3) months of the date the expense was incurred by or known to the covered entity or person or attorney.

- 7.02.3 For invoices requesting the payment of attorney's fees, the School Worker Defense Program may reimburse the covered individual or entity for attorney's fees up to one hundred dollars (\$100.00) per hour. The payment of fees in excess of one hundred dollars (\$100.00) per hour is the responsibility of the covered individual or entity.
- 7.03 The Program Administrator shall make an initial determination of whether the request for protection, coverage, reimbursement, or payment meet the requirements of Ark. Code Ann. § 6-17-1113 and these rules.
- 7.04 The Program Administrator shall notify the individual or entity making the claim or request for reimbursement and/or payment of the initial determination, in writing, within ten (10) days of receipt of the notice of claim or request for reimbursement and/or payment, subject to the provision of Section 7.05 below. If the Program Administrator denies a claim, the Program Administrator shall provide in writing the reasons for the denial.
- 7.05 The Program Administrator may request additional information before making an initial determination. If additional information is needed for a proper determination, and if the Program Administrator gives timely notice of the request to the individual or entity making the claim, the Program Administrator may approve or disapprove the request for protection, coverage, reimbursement, or payment within ten (10) days of receipt of the additional information.

8.0 PROCEDURES FOR FILING AN APPEAL WITH THE SCHOOL WORKER DEFENSE PROGRAM ADVISORY BOARD

- 8.01 The individual or entity filing the claim may appeal the initial determination of the Program Administrator by filing a written notice of appeal with the School Worker Defense Program Advisory Board within twenty (20) days of receipt of the initial determination.
- 8.02 The written notice of appeal shall be sent certified mail, return receipt requested to:

School Worker Defense Program Advisory Board
 ATTN: Program Administrator (APPEAL)
 Division of Elementary and Secondary Education
 Four Capitol Mall
 Little Rock, Arkansas 72201

- 8.03 The written notice of appeal shall include a detailed explanation of how the request for protection, coverage, reimbursement, or payment meets the requirements of Ark. Code Ann. § 6-17-1113 and these rules, and whether the appealing party wishes to appear in person at the meeting during which the School Worker Defense Program Advisory Board will review the appeal. If the

appealing party does not wish to appear in person at the meeting during which the appeal will be heard, the School Worker Defense Program Advisory Board may determine whether to grant or deny the appeal based upon the written materials provided by the appealing party and the Program Administrator.

- 8.04 The School Worker Defense Program Advisory Board shall schedule a meeting to review the appeal as soon as practicable, but no later than thirty (30) days from the date of receipt of the notice of appeal by the School Worker Defense Program.
- 8.05 The Program Administrator shall notify the appealing party in writing of the date, time, and location of the meeting during which the School Worker Defense Program Advisory Board will review the appeal.
- 8.06 If the appealing party appears at the meeting during which the appeal is heard, the following procedures shall apply:
 - 8.06.1 The Program Administrator shall provide an introduction of the matter and present the reasons supporting the Program Administrator's initial determination. The presentation of the Program Administrator shall be limited to fifteen (15) minutes.
 - 8.06.2 The appealing party or the appealing party's representative may provide a presentation of up to fifteen (15) minutes explaining how the appealing party's request for protection, coverage, reimbursement, or payment meets the requirements of Ark. Code Ann. § 6-17-1113 and these rules.
 - 8.06.3 The chairperson of the School Worker Defense Program Advisory Board may, for good cause, allow the Program Administrator and/or the appealing party additional time to complete their presentations.
 - 8.06.4 Any member of the School Worker Defense Program Advisory Board may, at any time, ask questions of the Program Administrator or appealing party.
- 8.07 A decision to grant or deny the appeal shall be made by a majority of the members of the School Worker Defense Program Advisory Board who are present at the meeting during which the appeal is heard.
- 8.08 The School Worker Defense Program Advisory Board's decision shall be in writing or stated in the record and shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.
- 8.09 The School Worker Defense Program Advisory Board shall notify the appealing party of its decision concerning the appeal within seven (7) days of the meeting

during which the appeal is considered. The notice shall include a copy of the written decision issued by the School Worker Defense Program Advisory Board.

8.10 A decision to grant or deny the appeal shall be final.

9.0 CONDITIONS

9.01 Nothing in these rules should be interpreted to waive any governmental or statutory immunity available under Arkansas law.

9.02 Any covered person or entity shall cooperate fully in the defense provided by the School Worker Defense Program. However, a covered person or entity shall not voluntarily make any payment, assume any obligation, incur any expense, or enter into any settlement agreement without prior written approval from the Program Administrator. A violation of this stipulation may void any or all benefits for protection or coverage under the School Worker Defense Program.

9.03 The protection or coverage provided by the School Worker Defense Program is primary to any group protection or insurance furnished by a teacher organization.

9.04 The protection or coverage provided by the School Worker Defense Program is secondary or excess to any protection, insurance or policy purchased by a school district, association of school districts, or provided by any self-funded risk sharing pool or insurance cooperative.

9.05 The School Worker Defense Program may settle or defend, as necessary, any suit or claim seeking compensatory damages. However, any portion of any claim or suit not pertaining to compensatory damages may not be settled without the permission of the covered person or entity involved.

9.06 The attorney representing the covered individual or entity must file, on a quarterly basis, a short summary concerning the status of the lawsuit with the Program Administrator. Failure to file a timely summary may result in withdrawal of coverage under the School Worker Defense Program.

10.0 EXCLUSIONS

10.01 The protection afforded under the School Worker Defense Program does not apply to any claims for damages which are successfully defended on the affirmative defense of governmental or statutory immunity under Arkansas law. The School Worker Defense Program may pay attorney's fees and costs for the purpose of asserting a successful affirmative defense of governmental or statutory immunity.

10.02 The School Worker Defense Program shall not provide protection, coverage or payment for the following:

- 10.02.1 Intentional torts committed outside the scope of employment; or dishonest or criminal acts or omissions, other than corporal punishment administered in accordance with school district policies on file with the Division of Elementary and Secondary Education. Such disqualifying acts do not include intentional acts that are reasonably committed in self-defense, in defense of another, or to prevent bodily injury to self or another;
- 10.02.2 Contractual damages, including back wages;
- 10.02.3 Acts or omissions falling outside the official duties of a covered person;
- 10.02.4 Violation of a court order issued by a court of competent jurisdiction;
- 10.02.5 Punitive damages;
- 10.02.6 Willful violation of a penal statute or ordinance committed by or with the knowledge or consent of a covered person;
- 10.02.7 Lawsuits involving desegregation related issues filed after September 14, 1993;
- 10.02.8 Lawsuits involving voting rights issues filed after September 14, 1993;
- 10.02.9 Administrative hearings or other hearings of any type unless a formal civil complaint has been filed;
- 10.02.10 Plaintiff attorneys' fees;
- 10.02.11 The payment or reimbursement of any deductible or self-insured retention included in any protection, insurance or policy purchased by a school district, association of school districts, or provided by any self-funded risk sharing pool or insurance cooperative;
- 10.02.12 Any and all demands, claims, suits, actions, complaints, or litigation brought by or filed by a covered entity against another covered entity;
- 10.03 The School Worker Defense Program shall not provide or afford any protection or defense in any form for the operation, maintenance, or use of any motor vehicle, or for any automobile claims of any type.