

Indemnification and Defense of Trustees and Employees

The District shall defend and indemnify each of its current and former Trustees and employees whenever such Trustees or employees are civilly sued for their actions taken within the course and scope of their service to or employment by the Board, as a result of an alleged violation of Article VII, Section 17, of the Montana Constitution, except as otherwise provided herein.

In any noncriminal action brought against any current and former Trustee or employee of the District for a negligent act, error or omission, or other actionable conduct of the Trustee or employee committed while acting within the course and scope of the Trustee's office or employee's employment, resulting in an increase in taxes in violation of Article VII, Section 17, of the Montana Constitution, the District shall, except as otherwise provided herein, defend the action on behalf of the Trustee or employee and indemnify the Trustee or employee.

Indemnification shall be provided for any money judgments or legal expenses, including attorney fees either incurred by the Trustee or employee or awarded to the claimant, or both, to which the Trustee may be subject as a result of a suit covered under this policy.

Upon receiving service of a summons and complaint in a noncriminal action against him or her alleging a violation of Article VII, Section 17, of the Montana Constitution, the Trustee or employee shall give written notice to the District, requesting that a defense to the action be provided by the District. Except as otherwise provided herein, the District shall offer a defense to the action on behalf of the Trustee or employee. The defense may consist of a defense provided directly by the District. The District shall notify the Trustee or employee, within 15 days after receipt of notice, whether a direct defense will be provided.

In a noncriminal action in which a Trustee or employee is a party defendant, the Trustee or employee shall not be defended or indemnified by the District for any money judgments or legal expenses, including attorney fees, to which the Trustee or employee may be subject as a result of the suit, if it is determined that:

- The conduct on which the claim is based constitutes oppression, fraud, or malice or for any other reason does not arise out of the course and scope of the Trustee's office or the employee's employment;
- The conduct of the Trustee or employee constitutes a criminal offense as defined in Title 45, chapters 4 through 7;
- The Trustee or employee compromised or settled the claim without the consent of the District;  
or
- The employee failed or refused to cooperate reasonably in the defense of the case.

## **Poplar School District**

### **THE BOARD OF TRUSTEES**

**1535**

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If no judicial determination has been made applying the exclusions provide herein, the District may independently determine whether those exclusions apply. However, if there is a dispute as to whether the exclusions herein apply and the District concludes it should clarify its obligation to the Trustee or employee arising under this section by commencing a declaratory judgment action or other legal action, the District shall provide a defense or assume the cost of the defense of the Trustee or employee until judgment is rendered in such action holding that the District had no obligation to defend the Trustee or employee.

The District has no obligation to provide a defense to the Trustee or employee in a declaratory judgment action or other legal action brought against the Trustee or employee by the District under this policy.

Legal References:

§ 2-9-305, MCA

Immunization, Defense and  
Indemnification of Employees

#### Policy History:

Adopted on:

Revised on: 11 July 2016