

EFFECTIVE 7/1/2013

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STATE OF ALABAMA  
DEPARTMENT OF FINANCE  
DIVISION OF RISK MANAGEMENT

**EDUCATORS LIABILITY TRUST FUND**

**PROGRAM GUIDELINES**

Pursuant to Act 2013-215 of the Alabama Legislature  
Effective July 1, 2013

APPROVED



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Bill Newton  
Acting Director of Finance

**STATE OF ALABAMA**

**DEPARTMENT OF FINANCE  
DIVISION OF RISK MANAGEMENT**

**EDUCATORS LIABILITY PROGRAM GUIDELINES**

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## **A. PROGRAM GUIDELINES – GENERAL CONDITIONS**

### **SECTION 1. SCOPE AND APPLICATION OF PROGRAM GUIDELINES**

The Educators Liability Trust Fund (“the Fund”) is established pursuant to Act 2013-215 of the Alabama Legislature to protect specified education employees (“Covered Employee”) against damages for claims arising out of the performance of their duties. These Program Guidelines shall not constitute a policy of insurance, and shall not constitute a binding contract between the State of Alabama and any Covered Employee or the Department of Education or any Local Education Unit. Neither the promulgation of these Program Guidelines nor the provision of this program for indemnification shall be a waiver of the sovereign immunity granted to the State of Alabama pursuant to Article I, Section 14 of the Constitution of Alabama 1901, or the defense of immunity available to any Covered Employee, or any other factual or legal defense which a Covered Employee may have, nor shall it be construed to pledge the credit of the State of Alabama. These Program Guidelines shall take precedence over any conflicting terms or conditions of any private insurance plan.

### **SECTION 2. COVERAGE PERIOD**

Coverage shall be continuous from 7/1/2013, 12:01 A.M., Standard Time, Montgomery, Alabama until notice of cancellation is given to the Participating Department by the Fund, until amended with the approval of the Director of Finance, or until terminated or amended by legislative act. Charges for participation in the Fund are subject to adjustments, with any adjustment notice directed to the Participating Department when the need arises, as determined by the Fund exercising its sole discretion. Participation charges are assessed in advance on an annual basis, effective October 1.

### **SECTION 3. TERRITORY**

These Program Guidelines cover Occurrences and Accidents anywhere in the world.

### **SECTION 4. DEFINITIONS**

The following definitions shall apply to words used in these guidelines.

1. **ACCIDENT** means an event that is unintentional and fortuitous.

2. **AGGREGATE LIMIT OF LIABILITY** is the maximum amount the Fund will pay for indemnification of liability, including the costs of defense, in the event that what has been determined by the Risk Manager to be a single Occurrence, according to the definition of Occurrence set forth herein, is judicially determined to constitute multiple Occurrences.
3. **AUTOMOBILE** means land motor vehicle, trailer, or semi-trailer designed for travel on public roads, to include any machinery or apparatus attached thereto, but does not include Mobile Equipment.
4. **BODILY INJURY** means injury to the body sustained by a Person, including death at any time resulting there from, provided such injury is caused by an Occurrence or Accident during the coverage period.
5. **COVERED EMPLOYEE** means active teachers, principals, and other education employees who are employed by a Local Education Unit and required to hold a certificate issued by the State Superintendent of Education and Student Teachers, as further defined herein, and support personnel such as maids, custodians, adult bus drivers, lunchroom or cafeteria workers, secretaries, clerks, clerical assistants, maintenance workers and other non-certificated personnel.
6. **EDUCATIONAL ACTIVITIES** means activities of a Covered Employee in the course of his/her duties of employment with a Local Education Unit which are performed:
  - (a) in accordance with the express or implied terms of his/her employment by the Local Education Unit;
  - (b) at the express request or approval of his/her supervisor so long as the supervisor was performing an Educational Activity at the time the request or approval was made;
  - (c) while a member of a state board or commission which sets and applies standards for licensing and certification of educators;
  - (d) while in the course of his/her duties as a Student Teacher.

For the purpose of this coverage field trips will be covered provided that they are related to an Educational Activity and are in accordance with the rules of, and approved by, the Local Education Unit. Non Educational field trips, including but not limited to cruises, theme or water parks, lake outings and other trips devoted primarily to recreational activities are not considered Educational activities.

7. **LOCAL EDUCATION UNIT** means a city or county board of education located in the State of Alabama, the Board of Trustees of the Alabama Institute for the Deaf and Blind, the Alabama Youth Services Board in its capacity as the Board of Education for the Youth Services School District, the Board of Directors of the Alabama School of Fine Arts, and the Board of Directors of the Alabama School of Mathematics and Science.
8. **FUND** means the program established to protect specified education employees (“Covered Employee”) against damages for claims arising out of the performance of their duties and designated as the Educators Liability Trust Fund of the State of Alabama established pursuant to Act 2013-215 of the Alabama Legislature.
9. **LIMIT OF LIABILITY** as found in Part B, Section 1 is the maximum amount that the Fund will pay for indemnification for liability, including the costs of defense, for any one Occurrence.
10. **MOBILE EQUIPMENT** means a land vehicle, to include any machinery or apparatus attached thereto, whether or not self-propelled, which is (1) not subject to motor vehicle registration or (2) maintained for use exclusively on premises owned by or rented to the State of Alabama or any of its Departments, including the right-of-way immediately adjoining such premises or (3) designated and maintained for the sole purpose of affording mobility to equipment of the following types and forming an integral part of or permanently attached to such vehicles: power cranes, shovels, loaders, diggers, cement mixers (other than mixed-in-transit types), graders, scrapers, rollers and other road construction or repair equipment, air compressors, pumps and generators, including spraying, welding, and building cleaning equipment and geophysical exploration and well servicing equipment.
11. **OCCURRENCE** means every incident, transaction, act, omission or series of acts or omissions, including any continuous or repeated exposure to the same or substantially same conditions, regardless of whether or not there is an overlapping of one or more coverage periods, caused by or resulting from negligent or wrongful acts or omissions of a Covered Employee while in the performance of their official duties in the line and scope of their employment which results in Bodily Injury, Property Damage or Personal Injury

neither expected nor intended from the standpoint of the Covered Employee. Determination of what incident, transaction, act, omission or series of acts or omissions, including any continuous or repeated exposure to the same or substantially same conditions constitutes a single Occurrence shall be made by the Risk Manager in the exercise of that Manager's sole and absolute discretion and shall be final and binding as to the Covered Employees and the Fund.

12. **PARTICIPATING DEPARTMENT** means a Department for which a program under these Program Guidelines has been activated by such Department providing exposure information and agreeing to pay participating charges. The Department of Education for the State of Alabama is designated as the Participating Department for this Fund.

13. **PERSON** means an individual, firm, corporation, or other entity sustaining Personal Injury, Bodily Injury, and Property Damage as the result of an Occurrence.

14. **PERSONAL INJURY** means any injury other than Bodily Injury sustained by any Person, provided such injury is caused by an Occurrence during the coverage period.

15. **PROPERTY DAMAGE** means:

(a) Any physical injury to or destruction or loss of tangible property, including the loss of use of such property resulting from such injury, destruction or loss, provided such injury, destruction or loss is caused by an Occurrence or Accident during the coverage period: Or

(b) Loss of use of tangible property which has not been physically injured or destroyed provided such loss is caused by an Occurrence or Accident during the policy period.

16. **STUDENT TEACHER** means a college or university student in an education degree program who, as part of the degree program, is assigned to teach in a local public school classroom, is providing instructions to students, and is being mentored by a teacher.

## **SECTION 5. NOTICE OF OCCURRENCE OR ACCIDENT**

In the event of an Occurrence or Accident believed to be covered by the Fund, every Covered Employee shall be responsible for providing written notice, using a form approved by the Division of Risk Management, as soon as

practicable, but not later than 30 days after an accident or occurrence, to the Superintendent of the Local Education Unit that employs the Covered Employee and to the Division of Risk Management, P.O. Box 303250, Montgomery, Alabama 36130-3250. This notice includes, but is not limited to, particulars sufficient to identify the Covered Employee and other information with respect to the time, place and circumstances of the Occurrence or Accident, the names and addresses of the Persons alleged to be injured or property damaged, all available witnesses and any reports of internal investigations of the Occurrence or Accident.

## **SECTION 6. SUITS OR DEMANDS**

If a claim is made or suit is filed against any Covered Employee, the Covered Employee shall, upon being served, immediately forward the original suit papers and other appropriate documents to the Division of Risk Management, P.O. Box 303250, Montgomery, AL 36103-3250. Copies of the suit and other documents must be sent to the Superintendent of the Local Education Unit that employs the Covered Employee.

## **SECTION 7. CONDITIONS**

The program for indemnification for liability described herein is subject to the following conditions:

1. The Covered Employee shall cooperate with the Fund as well as any representative thereof, and upon request of the Fund, shall attend hearings and trials and shall assist in effecting settlement and obtaining the attendance of witnesses. The Covered Employee shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such emergency medical attention to others as may be imperative at the time of the Occurrence or Accident. The failure of the Covered Employee to cooperate with the Fund shall terminate the Fund's coverage under this program.
2. The Fund shall not be subject to being impleaded into any action by any Covered Employee or the representatives of any Covered Employee, and no third party shall have a right to join the Fund as a party to an action to establish the liability of any Covered Employee.
3. In the event of any payment under this program, the Fund shall be subrogated to all of the Covered Employee's rights of recovery therefore against any person or organization and the Covered Employee shall execute and deliver all instruments and papers and any other documents deemed necessary by the

Fund to secure such rights. The Covered Employee shall do nothing after the loss to prejudice such rights.

4. Notice to, or knowledge possessed by, any representative of the Fund or by any other person shall not effect a waiver or a change in any part of this program or stop the Fund from asserting any right under the terms of these Program Guidelines; nor shall the terms of these Program Guidelines be waived or changed, except by amendments issued to form a part of these Program Guidelines.
5. There shall be no assignment of rights under these Program Guidelines.
6. Any question of law arising out of or in connection to these Program Guidelines shall be governed by and construed under and in accordance with the laws of the State of Alabama.
7. These Program Guidelines apply singly to each Occurrence or Accident so that only one program shall apply to each Occurrence or Accident. If a determination is made that a program applies to an Occurrence or Accident, no coverage shall exist under any other program.

## **B. PROGRAM GUIDELINES – EDUCATORS LIABILITY**

### **SECTION 1. DECLARATION OF LIMIT OF LIABILITY**

**LIMIT OF LIABILITY – EACH OCCURRENCE - \$1,000,000.00**

**AGGREGATE LIMIT OF LIABILITY - \$1,200,000.00**

### **SECTION 2. COVERAGE**

The program for indemnification for damages due to liability described in these Guidelines applies only to Occurrences on or after 12:01 A.M. on the first day of the coverage period stated herein. This program covers the following: Personal Injury, Bodily Injury, and Property Damage caused by an Occurrence and arising out of negligent or wrongful acts or omissions committed by the Covered Employee while in the performance of that employee's official duties within the line and scope of employment with a covered Local Education Unit as defined herein. Subject to all of the limitations and exclusions as set forth in these Program Guidelines or any amendment hereto, the Fund hereby agrees that it will indemnify any Covered Employee all sums which the Covered Employee shall become legally obligated to pay, including court costs, attorney fees, investigative expenses, mediation and/or damages because of Personal Injury, Bodily Injury, or Property Damage suffered by

a third person or entity, arising out of negligent or wrongful acts or omissions of a Covered Employee while in the performance of official duties in the line and scope of employment. The limitations on the Fund's liability under this section shall be stated in these Program Guidelines, or by amendments made a part of these Program Guidelines. However, where damages arising from an Occurrence are incurred as a combination of Bodily Injury, Property Damage and/or Personal Injury, all such damages, plus other costs incurred by the Fund on behalf of the Covered Employee, shall be combined in calculating the total liability of the Fund, but in no event shall the total liability of the Fund exceed the Aggregate Limit of Liability as set forth in these Program Guidelines, or by amendments hereto.

### **SECTION 3. LIMIT OF LIABILITY**

The limit of liability stated herein is the limit on the expenditure of funds from the special trust account established in the State Treasury in furtherance of the purposes of Act 2013-213 of the Alabama Legislature, said special trust account having been designated as the Educators Liability Trust Account (Trust Account). This limit applies regardless of the size of a claim or the amount of money in the Trust Account. In addition, notwithstanding this stated limit of liability, the undertaking herein by the State and/or the Fund is limited only to the expenditure of funds from the Trust Account, and is not an undertaking to pay any sum from any other source. The limit of liability of the Fund under this program for indemnification of Covered Employees, including costs of defense, shall be a maximum of \$1,000,000.00 per Occurrence for all Persons, for all Personal Injury, Bodily Injury, and Property Damage, regardless of the number of Covered Employees involved in an Occurrence or the number of Persons making claims or bringing suits on account of an Occurrence covered by this program, and regardless of any overlapping of one or more coverage periods. Once this \$1,000,000.00 per Occurrence limit is exhausted, the Fund shall have no further obligation for indemnification as to that Occurrence and the payment of defense costs shall terminate.

An Aggregate Limit of Liability shall apply in the event that a judicial determination is made that an act, omission, or a series of acts or omissions, including continuous or repeated exposure to the same or substantially the same conditions, constitutes more than one Occurrence, the same having been initially determined by the Risk Manager to constitute a single Occurrence. In this event, the Aggregate Limit of Liability of the Fund for all such judicially determined Occurrences, regardless of the number, including costs of defense, shall be a maximum of \$1,200,000. Once this Aggregate Limit of Liability is exhausted, the Fund

shall have no further obligation for indemnification as to those Occurrences, and payment of any further costs shall terminate.

#### **SECTION 4. EXCLUSIONS**

This program for indemnification for liability does not apply to any claim arising out of the following:

1. To activities of a Covered Employee that are not Educational Activities of a Covered Employee in his/her professional capacity, as defined above.
2. Any acts or omissions of any Covered Employee not arising out of the Educational Activities of a Covered Employee performing his/her official duties in the line and scope of employment by a Local Education Unit;
3. Any liability to any government, or any department, agency, instrumentality or political subdivision thereof;
4. Personal Injury or Bodily Injury to any employee of the State of Alabama or any of its Departments for which the State of Alabama or any of its Departments may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or any similar law;
5. Personal Injury, Bodily Injury, or Property Damage arising out of or in the course of the transportation of Mobile Equipment, which transportation is being done by a land motor vehicle licensed for public road use;
6. The ownership, maintenance, operation, use, loading, unloading, travel in or upon of (a) vehicles of any kind, other than equipment being used for Educational Activities or for maintenance of the school facilities belonging to a Local Education Unit, while being operated by a Covered Employee and not operated on public highways, (b) watercraft, (c) aircraft, except, however, coverage would apply to: (1) A driver training instructor while riding as a passenger in the course of duties as an employee of a Local Education Unit and (2) a Covered Employee while supervising students entering or exiting a school bus. The coverage afforded herein does not apply when the Covered Employee has any other Insurance of any kind, whatsoever which affords coverage as to such liability.
7. Personal Injury, Bodily Injury, or Property Damage arising out of the discharge, dispersal, release, or escape, of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of

water, provided this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental from the standpoint of the Covered Employee;

8. Personal Injury, Bodily Injury, or Property Damage due to war, whether or not declared, civil war, insurrection or revolution or to any act or condition incidental to any of the foregoing;
9. Property Damage to any property owned or occupied by or rented to any Covered Employee, or property used by any Covered Employee, or property in the care, custody or control of any Covered Employee, or as to which any Covered Employee is for any purpose exercising physical control, except as to property held in any fiduciary capacity;
10. Personal Injury, Bodily Injury, or Property Damage arising out of a willful violation of a penal statute or penal ordinance committed by or with the consent of a Covered Employee;
11. Personal Injury, Bodily Injury, or Property Damage resulting from any dishonest, fraudulent or criminal act or omission of a Covered Employee for which a judgment of conviction has been entered in a criminal prosecution of such Covered Employee;
12. Personal Injury, Bodily Injury, or Property Damage arising out of any publication or utterance of any libel or slander if the first injurious publication or utterance of the same or similar materials, by or on behalf of any Covered Employee was made prior to the effective date of the coverage provided herein;
13. Personal Injury, Bodily Injury, or Property Damage expected or intended from the standpoint of the Covered Employee. This exclusion does not apply to Bodily Injury arising from the use of reasonable force to protect persons or property;
14. Personal Injury or Property Damage arising out of oral or written publication of material, if done by or at the direction of a Covered Employee with knowledge of its falsity;
15. Any claim based upon any actual or alleged error or omission or breach of duty, committed or alleged to have been committed in the discharge of fiduciary duties, obligations or responsibilities imposed by the Federal Employee Retirement Income Security Act of 1974 or amendments thereto;
16. Personal Injury, Bodily Injury, or Property Damage arising out of any act or omission of any Covered Employee for which the Covered Employee has been removed from elective office;
17. Personal Injury or Property Damage arising out of publications or utterances by a Covered Employee in the course of or related to advertising activities conducted by or on behalf of any Covered Employee or Department;

18. Personal Injury or Bodily Injury for or arising out of sexual misconduct or sexual harassment, licentious, immoral, or sexual behavior intended to lead to or culminating in any sexual activity on the part of the Covered Employee; and
19. Personal Injury or Bodily Injury arising out of physical abuse of any Person by a Covered Employee.

## **SECTION 5. ADDITIONAL CONDITIONS**

1. Legal representation for all Covered Employees as defined herein shall be undertaken by legal counsel selected by the Fund to defend any litigation to which the coverage under these Guidelines applies even if such litigation is false, groundless or fraudulent, and to pay for the cost of defending the litigation subject to the Limits of Liability. As a condition precedent to coverage under these Guidelines, the Covered Employee shall cooperate with the Fund and its representatives in the investigation, defense, or settlement of any claim. No Covered Person shall admit any liability, settle any claim, incur any cost or retain any attorney without the express written permission of the Fund. The Fund's obligation to pay any claim or defend any litigation ends after the applicable limit of liability has been expended by the payment of damages or the cost of defending litigation to which these Guidelines apply.
2. The settlement of any claim or civil action on behalf of a Covered Employee shall be solely at the discretion and upon the authorization of the Director of Finance.
3. The Participating Department, in furtherance of its statutory duty as administrator of the ELTF program for the school systems, shall establish administrative rules or regulations governing the obligations and duties of the Local Education Units and Covered Employees and shall inform those individuals and entities of those rules and regulations and the ELTF Guidelines and thereafter keep those individuals and entities informed of any changes to these Guidelines or other policies and procedures that may be adopted for the operation of the program.
4. These Program Guidelines shall not constitute a policy of insurance. The program for indemnification of liability provided herein shall be excess over any valid insurance available to any Covered Employee, subject to the following: If other insurance is available to the Covered Employee covering a loss also covered by this these Guidelines, then the Fund's coverage shall apply only in excess of, and shall not contribute with, such other insurance. This is applicable regardless of whether or not the other coverage applies as primary, excess, umbrella or contingent.

Other Insurance includes but is not limited to:

- a) Insurance, coverage or benefits provided by school boards, school districts or any similar entity;
- b) Insurance, coverage or benefits provided by the National Education Association, Alabama Education Association, the American Federation of Teachers, or any other similar organization;
- c) Insurance, coverage or benefits provided by self-insurance, trusts, pools, risk retention groups, captive insurance companies, or any other insurance plan or agreement of risk assumption.

The Fund's coverage is specifically excess over any School Leaders Errors and Omissions Policy purchased by the Covered Employee's employer or former employer and it is specifically excess over any coverage provided by school district or school board errors and omissions or general liability policies purchased by the Covered Employee's employer or former employer and it is specifically excess over any policy of insurance which claims or recites that it is excess to coverage for a Covered Employee provided by the State of Alabama and/or by this Fund.

If it is determined that the Fund must contribute to a covered Loss with any valid and collectible excess insurance as described above, the Fund's contributing limit shall be determined and paid as follows:

- a) computed on a pro rata basis if the Fund's limit of liability is less than any other valid and collectible excess insurance limit of liability, with the Fund's limit of liability computed by dividing the Fund's limit of liability by the sum of the Fund's limit of liability plus any other insurer's limit of liability, then multiplying the result by the amount that the Covered Employee would have been entitled to receive under the Fund's coverage if there were no other valid and collectible insurance; and/or
- b) computed on a limit of liability basis if the Fund's limit of liability is greater than any other valid and collectible excess insurance limit of liability, with the Fund's limit of liability computed by dividing the Fund's amount of liability as if there were no other valid and collectible insurance, divided by the sum of the Fund's limit of liability as if there were no other valid and collectible insurance plus all other valid and collectible insurance.