

## **Policy Code: 7700 SETTLEMENT OF CLAIMS**

### **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 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 lawsuit, 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 must be made to the superintendent in writing and must 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 compile any supplemental information pertinent to the claim.

Following investigation of the incident giving rise to the claim, the Board or the superintendent, as appropriate, will determine in consultation with the Board's attorney whether to deny or make an offer to settle the claim.

### **C. Settlement**

The Superintendent is authorized to settle claims for \$10,000.00 or less in accordance with the criteria for settlement set forth below. All other claims shall be referred directly to the Board for decision. Claims within the superintendent's settlement authority may be referred directly to the Board in the superintendent's discretion.

~~In determining whether to settle a claim prior to the filing of a legal action, the Board or the superintendent, as appropriate, shall consider the following factors in consultation with the Board's attorney:~~

The resolution of claims requires the exercise of discretion by the board. Therefore, to treat similarly situated claimants (claimants who are alike in all relevant respects) alike, the board will be consistent in its settlement practices by using the factors listed below to evaluate all claims. The board recognizes, however, that separate claimants often will be dissimilar with respect to one or more of the relevant factors, so the final decision regarding each claim will be based upon the specific circumstances. All factors need not be given equal weight and no one factor will be controlling.

~~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. Whether there was a negligent act or omission by an employee or agent of the board. The extent to which an employee's actions or omissions may have caused, or contributed to, an injury.~~

23. Whether an employee or agent of the board intentionally caused an injury.

3. Whether an employee or agent of the board violated any board policies.
4. ~~Whether there are any affirmative~~ What, if any, defenses are available to the Board in the event of litigation and the viability of those defenses based upon the facts known at the time of settlement consideration. ~~However, the availability of~~ Sovereign/Governmental Immunity shall not be asserted or considered for any pre-litigation claim.
5. The claimant's likelihood of success in litigation.
6. The likely costs of defending the case.
7. The administrative burden and disruption that litigation would likely cause.
- 85- Whether the demand is within the retention or deductible level for monetary payments pursuant to any applicable insurance or liability coverage agreement and whether there is, or is likely to be, coverage under such agreements, if known.
9. Goodwill on behalf of the citizens of the school community.
10. The best use of public funds in an effective manner.

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

The payment of any claim will 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 will be on a form approved by the attorney for the Board.

The consideration of a settlement claim does not constitute a waiver of any affirmative defenses available to the Board or its employees, including but not limited to the defenses of governmental, sovereign, qualified or public official immunity, and contributory negligence. The Board may assert these defenses should the claimant choose to file a lawsuit.

LEGAL REF: *Clayton v Branson*, 170 N.C. App. 438 (2005); *Hallman v. Charlotte-Mecklenburg Board of Education*, 124 N.C. App. 435 (1996); *Dobrowolska v. The City of Greensboro Wall*, 138 N.C. App. 1 (2000)

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**Edenton-Chowan Schools**