

Portland Public School District 1st Reading

DATE OF FIRST READING: October 12, 2021

PUBLIC COMMENT FOR **Policy 5.50.020-P:** **Liability of Employees of the District Policy**

The Portland Public School District is providing Notice of Proposed Revised Policy and Public Comment to offer interested parties reasonable opportunity to submit data or comments on the proposed policies noted below.

Public comment may be submitted in writing directly to the district or through the district website noted below. Written comments must be submitted by 5:00pm on the Last Date for Comment listed below.

Last Date for Comment: November 02, 2021

Summary: **Liability of Employees of the District Policy 5.5.020-P**

1st Reading by: **Julia Brim-Edwards**
Portland Public School Board

Recommended for a 1st Reading by:
Portland Public Schools Board of Education
Policy Committee

Draft Policy Web Site: <https://www.pps.net/Page/11911>

Contact: **Rosanne Powell**, Senior Board Manager
Address: P.O. Box 3107, Portland, OR 97208-3107
Telephone: 503-916-3741
E-mail: schoolboard@pps.net

Included in Packet	Page
Redlined Policy with Proposed Changes	03
Original Policy	06
Staff Memo	07



Liability of Employees of the District

DRAFT DATED 9/24/2021

- (1) Defense in Civil Actions. Because the nature of the services required of employees of the dDistrict may expose them to claims ~~based upon negligence or carelessness arising from in~~ the performance of their duties, the Ddistrict ~~shall~~ may provide liability insurance in amounts as may be determined from time to time for actions brought against its employees and/or the dDistrict, as described below.
- (2) ~~Conditions and Extent of Defense~~ Notice of Claims. Any current or former employee seeking assistance under this policy shall promptly notify the Office of the Superintendent and the General Counsel that a civil or regulatory action may be or has been brought against ~~him/her~~ them in ~~his/her~~ their official or individual capacity related to their work or any injury on or damage to District property.
 - ~~(a) Any claims related to action taken, work done, or omission in his/her~~ their official capacity, or in the course of his/her their employment; or
 - ~~(b) Any claims related to injuries to persons or property resulting from an occurrence involving any dDistrict property.~~
- (3) The dDistrict shall provide ~~the~~ employees with the defense authorized by the Oregon Tort Claims Act.
- (4) This assistance in ~~legal~~ litigation shall apply in litigation arising out of performance of the employee's professional duties whether or not the employee has left the employment of the dDistrict at the time the action is brought.
- (5) Expenses Incurred by a District in-house attorney when Claim is by a Governmental Entity or Professional Licensing Authority.
 - (a) Expenses incurred by a District in-house attorney who is an employee of the District ("in-house attorney") in the defense of a Claim brought by a governmental entity or a professional licensing authority may be advanced or reimbursed by the dDistrict if the dDistrict, in its sole discretion, determines that the Claim arose out of the in-house attorney's



Liability of Employees of the District

performance of official duties. Any expenses advanced or reimbursed in excess of \$25,000 per ~~C~~claim must be approved by the Board of Education. Such advancement or reimbursement constitutes part of the in-house attorney's official compensation package for purposes of ORS Chapter 244. The ~~d~~District may decline to ~~pay~~reimburse an in-house attorney for any expenses incurred prior to the ~~d~~District's written commitment to provide such payment. The in-house attorney must promptly notify the Office of the Superintendent and the General Counsel that any such claims have been brought against them.~~give notice of any such claims against them~~

- (b) Expenses shall be paid by the ~~d~~District in advance of the final disposition of a Claim at the written request of the in-house attorney if:
 - (1) The ~~d~~District determines, in its sole discretion, that the conduct of such in-house attorney was in good faith and that the in-house attorney reasonably believed that such conduct was in the best interests of the District; and
 - (2) The in-house attorney enters into a written agreement ~~furnishes the with the ~~d~~District a written undertaking~~ to repay such advance to the extent it is ultimately determined by the ~~d~~District, in its sole -discretion, that such in-house attorney is not entitled to be indemnified by the ~~d~~District under this section or under any other indemnification rights granted by the ~~d~~District to such in-house attorney.

~~Such advances shall be made without regard to the in-house attorney's ability to repay such advances.~~

- (c) If the District pays expenses in defense of a claim, the General Counsel shall have the exclusive authority to select counsel and to defend against any Claim. The General Counsel will consult with the in-house attorney regarding any term of a settlement agreement that affects the legal rights or licensing status of the in-house attorney. Authority to settle claims against General Counsel ~~shall be is~~ delegated to the Superintendent or ~~his~~ the Superintendent's designee.
- (d) The ~~d~~District shall not pay for expenses under this section in the case of malfeasance in office or willful or misconduct or wanton gross negligence neglect of duty or any act or omission that may constitute criminal conduct, as determined by the District in its sole discretion.



Liability of Employees of the District

- (e) The ~~d~~District may choose to advance or reimburse expenses to an in-house attorney under a reservation of rights. An in-house attorney shall cooperate fully with the District. If the District determines, in its sole discretion, that the in-house attorney has not so cooperated or has otherwise acted to prejudice the defense of the Claim, the ~~d~~District may at any time terminate its obligation to advance or reimburse expenses or proceed under a reservation of rights.
- (f) The term "Claim" means any threatened, pending, or completed investigation, action, suit, or proceeding except one brought, made, or initiated by the ~~d~~District.
- (+)(g) This section shall not be deemed exclusive of any other rights to which an in-house attorney may be entitled under any statute, agreement, insurance policy, general or specific action of the ~~d~~District, or otherwise. Any repeal of this section shall be prospective only, and no repeal or modification shall adversely affect the rights under this section in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any Claim.

Legal Reference: ORS 30.260 - 30.300 History: Adpt 6/71; Amd. 6/14/84; Amd.

5.50.020-P Liability Of Employees of the District

- (1) **Defense in Civil Actions**. Because the nature of the services required of employees of the district may expose them to claims based upon negligence or carelessness in the performance of their duties, the district shall provide liability insurance in amounts as may be determined from time to time for actions brought against its employees and/or the district, as described below.
- (2) **Conditions and Extent of Defense**. An employee shall promptly notify the Office of the Superintendent that a civil action may be or has been brought against him/her in his/her official or individual capacity.
 - (a) Any action taken, work done, or omission in his/her official capacity, or in the course of his/her employment; or
 - (b) Any injuries to persons or property resulting from an occurrence involving any district property.
- (3) **The district shall provide the employee with the defense authorized by the Oregon Tort Claims Act.**
- (4) This assistance in legal litigation shall apply in litigation arising out of performance of the employee's professional duties whether or not the employee has left the employment of the district at the time the action is brought.

Legal Reference: ORS 30.260 - 30.300

History: Adpt 6/71; Amd. 6/14/84



PORTLAND PUBLIC SCHOOLS
OFFICE OF GENERAL COUNSEL

501 North Dixon Street / Portland, OR 97227
Telephone: (503) 916-3181

Date: September 24, 2021
To: Policy Committee
From: Liz Large, Contracted General Counsel
Subject: Proposed amendments to the Liability of Employees of the District Policy, 5.50.020-P

The proposed amendments to the Liability of Employees of the District Policy, 5.50.020-P, are in two general areas:

1. Nonsubstantive updates and clarifying language.
2. Adding a narrow additional District-provided representation for in-house attorneys (employees) who are facing regulatory proceedings (e.g., from the Oregon State Bar) if the in-house attorney was acting in the course of their role as an in-house attorney and did not engage in misconduct. There is an unfortunate record of filings with the Oregon State Bar or other regulatory complaints against PPS in-house attorneys for reasons perhaps related to the District's position on an issue and unrelated to actual misconduct. Those complaints are almost uniformly dismissed at the first stage, but the defense of that proceeding can cost up to \$10,000. These types of claims are not covered by the Oregon Tort Claims Act, so indemnification of employee attorneys under these circumstances is not authorized by the existing policy.

This draft policy amendment provides criteria and guardrails for the representation and it is not automatic coverage. The district has full discretion. If an in-house attorney were found to have engaged in misconduct, then PPS would not be required to pay the representation costs.