



New Jersey Schools Insurance Group
6000 Midlantic Drive, Suite 300 North
Mount Laurel, New Jersey 08054
www.njsig.org

January 12, 2023

VIA USPS

Board of Education Member

Re: Coverage determination
Claim number: 000001GL23
Member: Board of Education
Policy number: P-000-ZA
Petitioner: Concerned Citizen
Respondent: Board of Education Member

Dear Business Administrator:

This office is responsible for administering claims asserted against members of the New Jersey Schools Insurance Group (“NJSIG”), which includes the Board of Education. Please be advised that I am the adjuster assigned to handle this matter. Please direct further correspondence to this office using our claim number. Please accept this letter in response to your request for a coverage determination in the above-referenced matter under NJSIG general liability policy number P-000-ZA.

For the reasons stated below, NJSIG hereby agrees to defend you in the Action pursuant to the Policy’s 18A STATUTORY PAYMENTS extension of coverage, subject to the review of, and consent of the Board of Education, and with the understanding that NJSIG does so in accordance with the terms and conditions of the instant reservation of rights letter and under a reservation of rights of all parties under the Policy.

1. The claim

As you know, a petition was filed with the School Ethics for the State of New Jersey against Board of Education Member (“the Action”). In the petition, Concerned Citizen alleges that Board of Education Member violated the New Jersey School Ethics Act. Specifically, Concern Citizen alleges that Board of Education Member

voted to award of a contract to a vendor because Board of Education Member had a friendship with the vendor. A copy of the complaint is attached as Exhibit A for your reference.

2. General Liability Policy P-000-ZA

NJSIG acknowledges that the Board of Education is a general liability fund member for the 2022/2023 fund year under policy number P-000-ZA (“the Policy”) with a policy term of July 1, 2023 through July 1, 2024. As applicable to the present Action, the 18A STATUTORY PAYMENTS extension of the Policy is limited to a \$100,000 annual aggregate for defense costs. There is a \$5,000 deductible per claim for the “18A STATUTORY PAYMENTS” extension of coverage. A copy of the Policy is attached as Exhibit B for your reference.

With regard to the extension of coverage for 18A STATUTORY PAYMENTS the Policy provides, in pertinent part:

The Group agrees to pay or otherwise indemnify the Named Insured for “18A STATUTORY PAYMENTS”.

The Group shall have the right and duty to defend the Named Insured in any suit seeking “18A STATUTORY PAYMENTS”, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Group shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Group’s liability has been exhausted by payment of judgments, settlements, or defense costs. The Group shall have the right to select defense counsel and the Insured shall not engage counsel without consultation and approval by the Group.

The defense costs provided by this extension are limited to a \$100,000 annual aggregate and are included within the Limits of Liability provided under Article 5. D. 1. NJSIG-G1 (7/21) and subject to a \$5,000 deductible per claim or the General Liability deductible, whichever is greater.

[NJSBAIG-G3 (7/17), Page 1 of 1]

N.J.S.A. 18A:16-6 provides that:

Whenever any civil or administrative action or other legal proceeding has been or shall be brought against any person holding any office, position or employment under the jurisdiction of any board of education, including any student teacher or person assigned to other professional pre-teaching field experience, for any act or omission arising out of and in the course of the performance of the duties of such office, position, employment or student teaching or other assignment to professional field experience, the board shall defray all costs of defending such action, including reasonable counsel fees and expenses, together with costs of appeal, if any, and shall save harmless and protect such person from any financial loss resulting therefrom; provided that

a. no employee shall be entitled to be held harmless or have his defense costs defrayed in a disciplinary proceeding instituted against him by the board or when the employee is appealing an action taken by the board; and

b. indemnification for exemplary or punitive damages shall not be mandated and shall be governed by the standards and procedures set forth in N.J.S. 59:10-4.

Any board of education may arrange for and maintain appropriate insurance to cover all such damages, losses and expenses.

[N.J.S.A. 18A:16-6]

“The only question to be answered when a school board employee seeks civil indemnification under N.J.S.A. 18A-16-6 is whether the employee was acting within the scope of his or her employment duties; a conviction or other unfavorable disposition in a related criminal matter answers that question in the negative.” L.A. v. Bd. of Educ. of City of Trenton, Mercer Cty., 221 N.J. 192, 205-06 (2015).

3. Coverage

With regard to the 18A STATUTORY PAYMENTS extension under the Policy, “the only question to be answered” is whether you were acting within the scope of your employment at the time of the conduct alleged in the first amended complaint. See L.A., 221 N.J. at 205-06. NJSIG will provide coverage as outlined below because, at this time, you have represented to us that you were acting within the scope of your employment as a member of the Board of Education.

Thus, while a factual record is developed upon which a final determination can be made, NJSIG will provide you with coverage for defense costs only under the 18A STATUTORY PAYMENTS extension. Please note that there is no coverage for bodily injury damages under the 18A STATUTORY PAYMENTS extension, and that this extension of the Policy covers only defense costs up to an annual aggregate limit of \$100,000, and is subject to a \$5,000 deductible.

4. Conclusion

For the reasons stated above, NJSIG hereby agrees to defend you in the Action pursuant to the Policy's 18A STATUTORY PAYMENTS extension of coverage, subject to the review of, and consent of the Board of Education, and with the understanding that NJSIG does so in accordance with the terms and conditions of the instant reservation of rights letter and under a reservation of rights of all parties under the Policy. NJSIG expressly reserves the right to seek a declaration from the Commissioner of Education and/or any other appropriate adjudicatory body at an appropriate time once a factual record has been developed to determine the applicability of N.J.S.A. 18A:16-6 in this matter.

Any action that NJSIG may take to investigate and/or defend this matter is not to be construed as a waiver of the policy terms and conditions. NJSIG reserves the right to further disclaim coverage at a later time. Your rights are also fully reserved. You may accept or reject the terms and conditions set forth in the instant reservation of rights letter.

NJSIG has assigned the Offices of Great Law, LLC to represent you in the Action. You may select independent counsel of your own choosing. To the extent that you select independent counsel of your own choosing, NJSIG may review your proposed counsel for approval by NJSIG and shall pay such approved counsel reasonable and customary defense fees, costs and disbursements.

Sincerely,

Claims Examiner

Enclosures

cc: Board of Education
Insurance broker for the Board of Education