

## **POLICY 28: INSURANCE AND INDEMNITY**

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### **INSURANCE**

#### **1. Purpose**

The Board of Trustees recognizes the importance of attracting skilled and qualified Board members and trustees ("**Trustees**") to assist the Board in achieving its mission and vision. In light of the inherent risks associated with any individual's consent to sit on the Board of Trustees, in relation to the potential for litigation or other claims against the Board which often involve the individual trustees in some personal capacity, the Board has determined that it is appropriate to obtain trustees' liability insurance, with the premium cost being borne by the Board.

Accordingly, the Board directs as follows:

1. The Board Chair shall ensure that the Board and Trustees are protected through comprehensive risk management and appropriate insurance coverage by obtaining a Directors and Officers Insurance ("**Policy**") at all times in the name of the Board and behalf of its Trustees.
2. The Board Chair may delegate responsibility for consideration and placement of the Policy on behalf of the Board and Trustees as required.
3. The Board shall pay the annual premium for the Policy.
4. The Policy coverage limit shall be at all times a minimum of \$2,000,000.
5. All Trustees shall be provided an insurance update, confirming coverage and the change in premiums and deductibles, annually after insurance is bound. .
6. It is the responsibility of each Trustee to comply with the Policy.
7. Prior to expiry of the Policy coverage period, and in accordance with the particular terms and requirements of the Policy, the Board Chair or his/her designate shall arrange for renewal of the Policy.
8. Prior to renewal of the Policy in any given coverage year, the Board Chair or his/her delegate, shall be responsible for canvassing all of the Trustees of the Board to confirm that there are no claims or potential claims of which and of the Trustees are aware, prior to the Board Chair's execution of the appropriate declarations in the Policy.
9. Should any claims or potential claims be brought to the Board Chair's attention, the Board Chair and the Vice Chair shall each personally be responsible for alerting the coverage provider in accordance and compliance with the terms of the Policy.

10. All Trustees are obliged to alert the Board Chair and Vice Chair immediately in the event that a claim or potential claim comes to their attention, regardless of whether any such request has been made by the Board Chair.

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## **INDEMNIFICATION**

In the event the Policy does not respond to an incident, action, claim or complaint against an individual Trustee, the Board wishes to outline the terms and conditions upon which it will indemnify the Trustee.

### **1. Application**

This policy applies to all Trustees serving on the Board from the effective date of this policy going forward, until such time as this policy is revised or repealed by the Board or any applicable legislation.

### **2. Context**

Trustees may be subject to legal claims/actions/complaints despite the fact that they are acting in good faith, within the scope of their duties as a Trustee. In the event a claim arises and the Policy does not respond, it is necessary that Trustees receive appropriate legal representation and be protected from personal liability provided they are acting in accordance with the terms of this policy.

### **3. Objective**

The objectives of this policy are to:

- protect Trustees from personal financial losses or expenses incurred while they were acting within the scope of their duties, in good faith, and were not acting against the interests of the Board;
- protect the Board's interests and its potential or actual liability arising from the acts or omissions of the Trustees' and
- ensure continued and effective service to the Division.

### **4. Indemnification**

Subject to the provisions of this policy, the Board covenants and agrees to indemnify and save harmless the Trustee from and against all costs, charges and expenses, including any amount paid to settle an action or satisfy a judgment, reasonably incurred by the Trustee in respect of any civil, criminal, or administrative action, proceeding, or complaint to which the Trustee is made a party by reason of being or having been a Trustee of the Board, at any time, if:

- a. the Trustee acted honestly and in good faith with a view to the best interests of the Board for which he or she was appointed as a trustee;
- b. exercised the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
- c. the Trustee acted in accordance with the provisions of the *Education Act*, SA 2012, c E-0.3; and
- d. in the case of a criminal or administrative action, proceeding or complaint that is enforced by a monetary penalty, the Trustee had reasonable grounds for believing that the Trustee's conduct was lawful.

If the Trustee has not complied with 4(a) through (d), then the Board shall have no obligation to provide indemnification to the Trustee under this policy.

## **5. Limitation of Indemnification**

The Board's obligation to indemnify a Trustee under this policy shall only be triggered in the event the Policy obtained on behalf of the Trustees does not respond and provide indemnification, and the Crown chooses not to provide indemnification pursuant to the provisions of the *Financial Administration Act*, RSA 2000, c F-12 and The Indemnity Authorization Regulation, Alta Ref 22/1997, as amended from time to time.

For absolute clarity, this indemnification policy shall be the last resort of indemnification for a Trustee.

## **6. Expenses**

Any right to indemnification conferred by this policy will include the right to be paid by the Board the expenses incurred in defending any such proceeding in advance of its final disposition.

Any and all expenses deemed by the Board Chair to be reasonably necessary in investigating, defending or appealing any indemnified claim under this policy, may be paid by the Board in advance to enable the Trustee to properly investigate, defend or appeal such claim.

In the event it is ultimately determined that the Trustee was or is not entitled to be indemnified, or was not entitled to be fully indemnified under the terms of this policy, the Trustee shall pay and reimburse the Board for such expense amount or the appropriate portion thereof, as was paid in advance by the Board.

## **7. Amplification of Rights**

The provisions of this policy are in amplification of or in addition to, and not by way of limitation of or substitution for, any rights, immunities or protections conferred on any Trustee by the

*Education Act*, SA 2012, c E-0.3 and any regulations thereto, as amended from time to time, or any other applicable law or statute, and the Board Policies.

## **8. The Education Act**

Notwithstanding any other provision set forth in this policy, the Board and Trustee acknowledge that the indemnities granted pursuant to this policy shall at all times be subject to the provisions, restrictions and limitations of the *Education Act*, SA 2012, c E-0.3 and any regulations thereto, as amended from time to time.

## **9. Notice of Claim**

The Trustee shall give notice to the Board within 7 days of receiving or being served with any claim, threatened claim, statement of claim, writ, notice of motion, application, indictment or other document commencing or continuing or threatening any claim against the Trustee in his or her capacity as a Trustee of the Board.

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## **10. Co-Operation of the Board and Trustee**

The Board and Trustee shall cooperate with and provide the other with such information as may be reasonably required from time to time in respect of any claim relating to the Trustee having acted as a Trustee of the Board.

## **11. Heirs and Successors**

The indemnification provided by this policy shall take effect from the first day that the Trustee was or is appointed a Trustee of the Board and will continue even if the Trustee ceases to be a Trustee of the Board and will enure to the benefit of the heirs, executors and administrators of the Trustee, provided always that the indemnification provided by this policy is in all instances personal to the Trustee and his heirs, executors and administrators.

## **12. Resignation Will Not be Prevented**

Nothing contained in this policy shall prevent the Trustee from resigning at any time as a Trustee of the Board.

## **13. Agreement**

In the event a Trustee requires indemnification under this policy, the Trustee and Board shall enter into a separate Indemnification Agreement confirming the terms outlined in this policy which Indemnification Agreement shall be signed by both the Trustee and the Board Chair or his/her designate.