

02-03. Formal Legal Proceedings

Internal Policies and Procedures of the Utah State Board of Education
Policy # 02-03
Subject: Formal Legal Proceedings
Effective Date: 04/01/2011 Revision Dates: 08/01/2014, 9/25/2017
Purpose: Because a USBE employee (including officers, board members, and other individuals) may be named as a defendant in a lawsuit, the Board has a need to safeguard its members, the Board office, and its employees by following uniform procedures.
Policy: <ul style="list-style-type: none">• The Office of the Attorney General (AG) has the responsibility to represent the State of Utah in all legal suits.• For the protection of USBE and its employees, an individual USBE employee named in a lawsuit against the State shall follow the procedures outlined in this policy.• An individual employee personally named in a work-related lawsuit (within scope of duties) is not required to hire private counsel, providing that the action brought against the employee arises from acts or omissions occurring during the performance of the employee's duties, within the scope of the employee's employment, or under color of authority.• The AG notifies a USBE employee in expedited manner whether or not the employee will be represented by the AG.
References: Utah Code Title 63G, Chapter 7, Governmental Immunity Act of Utah

Procedures:

- If an employee receives a legal document entitled, "Notice of Claim," "Summons," "Temporary Restraining Order," or a similar document, the employee shall take immediate action (no later than the end of the next business day after receipt of such document), the employee shall contact the employee's section director and also the AG.
- A USBE employee shall formally transmit all original documents, including any receipts, accompanying materials, and the envelopes they were mailed or delivered in, to the Executive Secretary to the Superintendent.
 - Officers, Board members, and other individuals who do not report to a Section director shall transmit all documents directly to the Superintendent.
- If more than one employee is named in a lawsuit, each employee shall individually comply with this policy.
- The Superintendency and the Offices of the Attorney General shall formally request representation and indemnification services from Risk Management.

- If a USBE employee fails to promptly make a written request or fails to reasonably cooperate in the defense, the State may not be able to defend the employee or pay any judgments, compromises, or settlements against the employee.
- The State may decline to defend or decline to continue to defend an employee, or pay any judgment, compromise, or settlement if:
 - The alleged acts or omissions did not occur during the performance of the employee's duties, within the scope of the employee's employment, or under color of authority;
 - The injury or damage resulted from the fraud or malice of the employee;
 - The injury or damage resulted from the employee being in physical control of a vehicle while under the influence of alcohol and/or any drug;
 - The injury or damage resulted from being physically or mentally impaired because of the use of alcohol and/or a nonprescribed controlled substance; or
 - The employee gave false testimony in a judicial or administrative proceeding.
- A USBE employee should not discuss pending litigation without the involvement of the USBE Office and the Attorney General's Office.
- Once a lawsuit has been initiated, there should be no discussion of the case with the person who is suing the USBE, their attorney, or any other person, without the involvement of the Attorney General's defense of the case.
 - Any attempts to contact the employee, by the person who is suing the USBE, their attorney, or any other person should be reported to the Office of the Attorney General.