

PRINCE GEORGE'S COUNTY PUBLIC SCHOOLS
Board of Education
Upper Marlboro, Maryland

9250
Bylaw No.

BYLAWS OF THE BOARD

DUTIES OF OFFICERS, MEMBERS, AND AUXILIARY PERSONNEL

Legal Counsel

I. POLICY STATEMENT

- A. The Board of Education of Prince George's County (Board) may retain legal counsel to represent it in legal matters that affect the Board and contract for the payment of a reasonable fee to the counsel. The funds for these fees shall be included in the annual budget.
- B. The Board shall retain legal counsel to defend a Board member who is involved in litigation because of the member's service on the Board and in the member's official capacity on the Board. If, during litigation, it is determined that the Board member was acting within the scope of the member's authority and without malice and gross negligence, the Board shall pay all counsel fees and reasonable and related expenses.

II. PURPOSE

The purpose of this policy is to provide guidelines for the Board to retain counsel to represent it in legal matters and to defend a Board member who is involved in litigation because of their service on the Board and in the member's official capacity on the Board.

III. DEFINITIONS

- A. *Defend* – An act of protecting one's own interests and in certain situations preventing or limiting liability.
- B. *Gross negligence* – The "lack of slight diligence or care" or "a conscious, voluntary act or omission in reckless disregard of a legal duty and of the consequences to another party." A party acts with *gross negligence* when they intend to cause harm or act with complete indifference to the possibility that the harm might occur.
- C. *Litigation* – A judicial controversy before a court of law, an administrative board or tribunal, commission, administrative law judge, hearing officer, or other body that conducts a civil legal or administrative proceeding.

- D. *Malice* – A party's intention to do injury to another party, which can be either expressed or implied.
- E. *Plaintiff* – A person who initiates litigation and makes a formal legal complaint.

IV. STANDARDS

A. Legal Services for the Board

The process for selecting legal counsel to represent the Board in matters that affect the Board shall be in accordance with Policy 3323 –Purchasing.

B. Legal Services to Defend a Board member

1. A Board member, who is involved in litigation because of the member's service and in the member's official capacity on the Board, shall be defended by an attorney retained by the Board.
2. The Board will issue a Request for Proposals (RFP) with the solicitation stating that the attorney's fees cannot be greater than \$315 per hour. The Board will prequalify at least five (5) law firms or attorneys in accordance with Policy 3323 – Purchasing.
3. The Board will vote to approve the law firms or attorneys who have been prequalified. The Board member who is involved in litigation shall choose one of the prequalified attorneys to defend them.
4. An exception to this process would be a situation in which the Board member does not want one (1) of the five (5) preapproved law firms or attorneys to defend them. For the Board member to use the law firm or attorney of their choosing, a majority of the Board must vote to approve such an exception. The Board member seeking the exception may not participate in the vote.
5. The Board shall pay all of the attorney's fees and reasonable and related expenses related to defending the Board member in litigation if it is determined during the course of the litigation that the Board member was acting:
 - a. Within the scope of the member's authority, and
 - b. Without malice and gross negligence.
6. In addition to the requirement that all fees and reasonable and related expenses be paid for defending a Board member who was acting within the scope of the member's authority and without malice and gross negligence, the fees, reasonable and related expenses will only be paid for an attorney that the Board retained. The Board will not pay the fees or expenses for an attorney that the Board member retained.

7. The Board will not pay the fees or expenses for an attorney for any Board member who is the plaintiff in litigation unless the Board member was first a defendant in the litigation, met the criteria for payment (acting within the scope of the member's authority and without malice and gross negligence) and then in order to defend themselves had to go on the offensive and file a counterclaim.
8. The decisions to retain an attorney and pay the attorney's fees will be subject to the Board's vote.

V. REFERENCES

A. Legal

MD. Ann. Code, Educ. Art. § 4-104
COMAR 28.02.01

VI. HISTORY

Bylaw Adopted
11/26/74

Bylaw Amended
1/26/84

Bylaw Amended
9/28/00

Bylaw Reviewed-No Revisions Required
5/5/03

Bylaw Reviewed – No Revisions Required
11/15/04

Bylaw Reviewed – No Revisions Required
10/26/05

Bylaw Amened
04/25/2024