

# TCTA EDUCATORS PROFESSIONAL LIABILITY INSURANCE

## DECLARATIONS

This Insurance is only available to members of Texas Classroom Teachers Association through Texas Classroom Teachers Association Services Corporation (RPG). THESE POLICY PROVISIONS, WITH THE APPLICATION, DECLARATIONS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THIS POLICY.

### SCOTTSDALE INSURANCE COMPANY

Home Office:  
One Nationwide Plaza | Columbus, Ohio 43215  
  
Administrative Office:  
8877 North Gainey Center Drive  
Scottsdale, Arizona 85258  
800-423-7675  
A STOCK COMPANY

### GENERAL AGENT NAME & ADDRESS

Notice of CLAIM shall be given to:  
Myron F. Steves and Company  
PO Box 4479 • Houston, Texas 77210-4479  
Attn: Claim Administrator  
Educators Professional Liability  
Agent No: 42511

#### ITEM 1. POLICYHOLDER & MAILING ADDRESS

Texas Classroom Teachers Association  
Services Corporation  
PO Box 1489  
Austin, Texas 78767-1489

#### ITEM 2. POLICY PERIOD

FROM: 08/01/2018

TO: 08/01/2019

12:01 a.m. Standard Time at the address of the POLICYHOLDER as stated herein.

#### ITEM 3. LIMITS OF LIABILITY

##### COVERAGE A—Educators Liability Insurance

- 1. Per INSURED, per OCCURRENCE (other than CLAIMS based on alleged federal civil rights violations) ..... See Section V. Limits of Liability, A.
- 2. Per INSURED, per OCCURRENCE for CLAIMS based on alleged federal civil rights violations ..... \$2,000,000

Subject to the Coverage A.1. limitation above, there is a \$10,000,000 annual aggregate for Coverage A.1. for the POLICY PERIOD as respects CLAIMS in excess of \$3,000,000.

Coverage A. annual aggregate for the POLICY PERIOD as respects each INSURED ..... \$8,000,000

##### COVERAGE B—Supplemental Coverage

- 1. Per INSURED, per CLAIM (other than CLAIMS based on actual or alleged SEXUAL ACTION OR SEXUAL CONDUCT involving a minor or student) ..... \$15,000
- 2. Per INSURED, per CLAIM, and aggregate per INSURED for CLAIMS based on actual or alleged SEXUAL ACTION OR SEXUAL CONDUCT involving a minor or student ..... \$10,000

COVERAGE C—Bail Bond per bail bond, per INSURED ..... \$5,000

COVERAGE D—IDENTITY THEFT per INSURED ..... \$10,000

COVERAGE E—ASSAULT Related Personal Property Damage per ASSAULT ..... \$5,000

Subject to the Coverages B, C, D, and E above, annual aggregate for the POLICY PERIOD as respects each INSURED ..... \$240,000

#### NOTICE OF SETTLEMENT OF LIABILITY CLAIMS — TEXAS

(This endorsement is attached to the policy and reproduced below).

The Company will notify the POLICYHOLDER in writing of its initial offer to compromise or settle a CLAIM against the INSURED under this policy. The notice will be given on or before the tenth (10th) day after the date on which the offer is made.

The Company will notify the POLICYHOLDER in writing of any settlement of a CLAIM against the INSURED made under this policy. The notice will be given on or before the thirtieth (30th) day after the date of the settlement.

The following endorsements are attached to the policy but are not reproduced here:

NUCLEAR ENERGY LIABILITY EXCLUSION | MOLD EXCLUSION | ASBESTOS EXCLUSION

## Scottsdale Insurance Company

A Stock Insurance Company, herein called the Company

***This policy is not subject to the terms and conditions of any other insurance and contains provisions that may be different from those of any other insurance. The policy should be read carefully by the INSURED.***

### I. INSURING AGREEMENTS

In consideration of the payment of premium and full compliance with the terms and conditions contained in this policy, the Company agrees, subject to all limitations, definitions, conditions, exclusions and terms contained in this policy, to provide the INSURED with the coverages set forth herein under COVERAGE A, COVERAGE B, COVERAGE C, COVERAGE D and COVERAGE E as follows:

#### COVERAGE A — Liability Coverage

To pay on behalf of an INSURED all sums which an INSURED shall become legally obligated to pay as damages by reason of liability imposed on him or her by law for damages resulting from a CLAIM arising solely out of the ACTIVITIES OF AN INSURED IN HIS OR HER PROFESSIONAL CAPACITY and caused by any acts or omissions of the INSURED or any other person for whose acts the INSURED is legally liable, provided such acts or omissions occur during the POLICY PERIOD as stated in Item 2 of the Declarations.

With respect to such CLAIMS under this COVERAGE A and provided the CLAIM is otherwise covered by this policy, the Company shall defend the INSURED against any CLAIM or suit seeking damages which are payable under the terms of this policy, even if such suit is groundless, false or fraudulent; but the Company may make such investigation, negotiation and settlement of any CLAIM or suit as is deemed expedient. The Company shall provide Supplemental Payments in addition to the limits of liability with respect to such insurance as afforded by this policy under COVERAGE A as follows:

1. All expenses incurred by the Company; all costs taxed against the INSURED in any suit defended by the Company and interest only on that part of any judgment therein which occurs after entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability thereon;
2. Premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy, but the Company shall have no obligation to apply or reapply for or furnish any such bonds;
3. Expenses incurred by the INSURED for such immediate medical and surgical relief to others as shall be imperative at the time of the OCCURRENCE, for bodily injury to which this policy applies; and
4. Reasonable expenses incurred by the INSURED at the Company's request in assisting the Company in the investigation or defense of any CLAIM or suit, including polygraph examination fees, if deemed appropriate by counsel, or actual loss of earnings, not to exceed \$50 per day.

#### COVERAGE B — Supplemental Coverage

To reimburse the INSURED for reasonable attorney's fees for

services and costs of court which the INSURED is legally obligated to pay in the defense of any CRIMINAL ACTION OR PROCEEDING or for any other proceeding described in COVERAGE B and not otherwise covered by this policy arising as a result of the ACTIVITIES OF AN INSURED IN HIS OR HER PROFESSIONAL CAPACITY, provided such activities occur during the POLICY PERIOD as stated in Item 2 of the Declarations. The INSURED may select an attorney, subject to the approval of the Company. Reimbursement provided shall be limited to the Limit of Liability described for COVERAGE B in the Declarations and further limited to CLAIMS arising from:

1. Expenses incurred in any CRIMINAL ACTION OR PROCEEDING or civil action not otherwise covered under COVERAGE A against the INSURED arising out of ACTIVITIES OF AN INSURED IN HIS OR HER PROFESSIONAL CAPACITY, except those charges or pleadings arising from actual or alleged SEXUAL ACTION OR SEXUAL CONDUCT involving a minor or student, in which instance coverage shall be the limit shown in Item 3. Coverage B.2. on the Declarations. Expenses for any action or proceeding covered by this paragraph will be paid regardless of final judgment;
2. Expenses incurred in any action, proceeding or notice for dismissal of a non-probationary employee at any time or for the dismissal of a probationary employee during the school year, provided, however, that in such an action final judgment is rendered in his or her favor;
3. Expenses incurred in any action against or brought by the INSURED involving dismissal, career ladder level assignments, salary, leave of absence, assignment, resignation, contract nonrenewal, appraisal, or other professional rights, duties and responsibilities, arising within the scope of employment, provided, however, that final judgment is rendered in his or her favor;
4. Expenses incurred in any action or proceeding against or brought by the INSURED involving the issuance, suspension, cancellation, or revocation of any credential, life diploma, or certification document issued by the State Board for Educator Certification, State Board of Education or other commission, provided, however, that in such an action or proceeding, a final decision or judgment is rendered in his or her favor; or

#### COVERAGE C — Bail Bond

To pay the premium for bail bond required of the INSURED arising solely out of ACTIVITIES OF AN INSURED IN HIS OR HER PROFESSIONAL CAPACITY during the POLICY PERIOD, but without obligation to apply for or furnish such bond. Coverage for bond premiums shall not exceed the limit shown in Item 3. Coverage C.1. on the Declarations.

#### COVERAGE D — Identity Theft

The Company will reimburse the INSURED for reasonable and necessary attorney fees which the INSURED is legally obligated to pay an attorney, but without obligation to furnish such attorney, incurred as a result of being a victim of IDENTITY THEFT. Coverage for IDENTITY THEFT shall not exceed the limit shown in Item 3. Coverage D on the Declarations.

#### COVERAGE E — Assault Related Personal Property Damage

The Company will pay up to the limit of liability shown in Item 3. Coverage E on the Declarations for damage or destruction of

the INSURED'S personal property or other people's personal property when being used by, or in the care, custody or control of an INSURED, provided the damage or destruction is caused by an ASSAULT upon the INSURED on or surrounding school property or while away from school property provided the INSURED is on an authorized school activity. This coverage is excess over any valid and collectible insurance available to the INSURED including Homeowners and Personal Property Floater policies. This coverage does not apply to damage or destruction of a VEHICLE of any kind. This coverage also does not apply to damage or destruction to property leased to, owned by or rented by an EDUCATIONAL UNIT.

## II. COVERAGE LIMITATIONS

Coverage A, B, and C shall apply only for CLAIMS arising out of acts or omissions of the INSURED which occur during the POLICY PERIOD set forth in Item 2. of the Declarations.

Coverage D and E shall apply to ASSAULT or IDENTITY THEFT which is reported to the appropriate civil police entity during the POLICY PERIOD as set forth in Item 2. of the Declarations.

## III. DEFINITIONS

### A. ACTIVITIES OF AN INSURED IN HIS OR HER PROFESSIONAL CAPACITY

means activities of the INSURED in the course of his or her duties as an educator, classroom teacher, teacher's aide, school secretary, substitute or student teacher, coach, member of a teaching staff, school nurse, licensed physical therapist, licensed athletic trainer, counselor, student counselor engaged in practicum, librarian, diagnostician, student diagnostician engaged in practicum, or other professional, nonadministrative employee of a Texas public school district or Texas institution of higher education. The terms of this policy shall specifically include the performance of assigned duties of an eligible INSURED as an appraiser, member of a career ladder selection committee, or a site-based decision- making committee.

### B. ASSAULT

means a physical attack on an INSURED. Proof of an ASSAULT shall be a report of such ASSAULT to the appropriate civil police entity during the POLICY PERIOD.

### C. CLAIM

1. as respects COVERAGE A, means an oral or written notice from any party whose intention is to hold an INSURED responsible for any acts or omissions of the INSURED arising out of an OCCURRENCE in the course of ACTIVITIES OF AN INSURED IN HIS OR HER PROFESSIONAL CAPACITY.
2. as respects COVERAGE B, means an oral or written notice from the INSURED or the INSURED'S attorney requesting reimbursement for attorney fees as a result of an action or proceeding arising from ACTIVITIES OF AN INSURED IN HIS OR HER PROFESSIONAL CAPACITY.

As respects C.1. and 2. above, CLAIMS based on or arising out of the same ACTIVITIES OF AN INSURED IN HIS OR HER PROFESSIONAL CAPACITY or series of related or continuous ACTIVITIES OF AN INSURED IN HIS OR HER PROFESSIONAL CAPACITY of one or more INSUREDS, regardless of the number of claimants who allege damages, will

be considered a single CLAIM.

### D. CRIMINAL ACTION OR PROCEEDING

means the prosecution during the POLICY PERIOD of any INSURED initiated by the filing, with a court, or an investigation by a law enforcement department or the Child Protective Services that could lead to the filing, with a court, of an information, complaint, or indictment, and any amendments thereto, alleging that the INSURED had committed one or more crimes involving one or more incidents, acts or events. Any such prosecution shall be considered a single CRIMINAL ACTION OR PROCEEDING, notwithstanding the fact that the prosecution may involve multiple incidents, multiple complainants, counts, or charges, and/or multiple trial and/or appellate proceedings.

### E. EDUCATIONAL UNIT

means a school district, a college or university, a state department of education, and/or any other institution for which the instruction of students is its primary purpose.

### F. IDENTITY THEFT

means the act of knowingly transferring or using, without lawful authority, a means of identification of an INSURED with the intent to commit, or to aid or abet another to commit, any unlawful activity that constitutes a violation of federal law or a felony under any applicable state or local law. Proof of IDENTITY THEFT shall be a report of such IDENTITY THEFT to the appropriate civil police entity during the POLICY PERIOD.

### G. INSURED

means a member of the Texas Classroom Teachers Association (TCTA) in accordance with the terms of its governance documents, with the following exceptions: A retired member is not an INSURED. A life member is an INSURED only if the member is engaged in a professional capacity as provided in Section III.A. above, in a position for which the member would otherwise be eligible to join TCTA as an active or associate member and has purchased this coverage. A student member is an INSURED only during the member's semester(s) of student teaching for which the policyholder has been notified. If this policy is a renewal, the term INSURED includes any members covered under the expired policy who reapply for coverage within sixty-one (61) days of the inception of this policy and who qualify as INSUREDS under the terms of this policy.

### H. OCCURRENCE

means an event that results in damages to person(s) other than the INSURED. An OCCURRENCE can involve a single, sudden event or the continuous or repeated exposure to the same conditions. If the latter, the exposure shall constitute a single OCCURRENCE and shall be deemed to have occurred as of the most recent exposure to said conditions.

### I. POLICYHOLDER

means the Texas Classroom Teachers Association Services Corporation.

### J. POLICY PERIOD

means the period of time stated in Item 2. of the Declarations.

**K. SEXUAL ACTION OR SEXUAL CONDUCT**

means conduct prohibited by a penal statute involving physical, verbal, and/or nonverbal activity of a sexual nature including, without limitation, rape, indecency with a child, indecent exposure, lewdness, sexual assault, sexual abuse, and other sexual offenses; and any other physical, verbal, and/or nonverbal activity of a sexual nature including sexual harassment with any adult or minor; and any tort or legal or equitable cause of action involving conduct of a sexual nature. The term also means conduct of the INSURED, conduct by a person acting under the direction or supervision of the INSURED, conduct by any person acting in concert with the INSURED, and alleged or actual omissions of the INSURED which may give rise to liability of the INSURED for the SEXUAL ACTION OR SEXUAL CONDUCT of any other person.

**L. VEHICLE Means:**

1. any motor driven device designed for transport on or off public roads. This includes, but is not limited to, autos, buses, motorcycles, motor bicycles, dune buggies, snowmobiles and golf carts;
  2. any trailer or other device being towed by or carried on a VEHICLE; and
  3. any device which travels on fixed rails or crawler treads.
- Wheelchairs are not considered VEHICLES.

**M. DEDUCTIONS**

means the amount the POLICYHOLDER must pay for CLAIMS.

**IV. TERRITORY**

This policy applies only to OCCURRENCES within the United States of America, its territories or possessions, or Canada. The original suit or CLAIM for damages must be brought within the United States of America, its territories or possessions, or Canada.

**V. LIMITS OF LIABILITY**

The limits of liability provided under COVERAGE A, COVERAGE B, COVERAGE C, COVERAGE D and COVERAGE E are separate and distinct from each other.

- A.** The limit of liability applicable to Coverage A.1., per INSURED, per OCCURRENCE is the maximum limit of the Company's liability for any CLAIM(S) not alleging federal civil rights violations:

The first \$3,000,000 of the per INSURED, per OCCURRENCE limit for Item 3. Limits of Liability Coverage A.1. is not subject to an annual maximum limit—all CLAIMS for all INSUREDS; The next \$5,000,000 up to \$8,000,000 per INSURED, per OCCURRENCE limit for Item 3. Limits of Liability Coverage A.1. is subject to an annual maximum limit of \$10,000,000—all CLAIMS for all INSUREDS as stated in Item 3. Coverage A of the Declarations page.

After the annual aggregate is exhausted, the limit of liability stated in Item 3. of the Declarations as applicable to Coverage A.1., per INSURED, per OCCURRENCE is reduced from \$8,000,000 to \$3,000,000. The annual aggregate is part of and not in addition to the applicable limits of liability for Coverage A.1.

- B.** The limit of liability applicable to Coverage A.2., per

INSURED, per OCCURRENCE for any CLAIM(S) alleging federal civil rights violations shall not exceed the limit shown in Item 3. Coverage A.2. on the Declarations and is the maximum limit of the Company's liability for any CLAIM(S) alleging federal civil rights violations.

- C.** The Company's limit of liability for COVERAGE A is further always subject to the annual aggregate for the POLICY PERIOD as set forth in the Declarations as respects each INSURED member.

- D.** With respect to COVERAGE B, the Company's limit of liability is the limit shown in Item 3. Coverage B.1. on the Declarations per INSURED, per CLAIM arising from CRIMINAL ACTION(S) OR PROCEEDING(S) or other proceedings as set forth in I. INSURING AGREEMENTS, COVERAGE B — Supplemental Coverage and is further limited to the limit shown in Item 3. Coverage B.2. on the Declarations, per INSURED and aggregate per INSURED for charges or pleadings of actual or alleged SEXUAL ACTION OR SEXUAL CONDUCT involving a minor or student. The Company's total liability per INSURED and aggregate per INSURED for charges or pleadings of actual or alleged SEXUAL ACTION OR SEXUAL CONDUCT involving a minor or student shall never exceed the limits shown in Item 3. Coverage B.2.

- E.** With respect to COVERAGE C, the Company's limit of liability per bail bond, per INSURED shall not exceed the limit shown in Item 3. Coverage C.1. on the Declarations as respects each INSURED.

- F.** With respect to COVERAGE D, the Company's limit of liability per INSURED shall not exceed the limit shown in Item 3. Coverage D on the Declarations as respects each INSURED.

- G.** With respect to COVERAGE E, the Company's limit of liability per ASSAULT shall not exceed the limit shown in Item 3. Coverage E on the Declarations as respects each ASSAULT.

- H.** The Company's limit of liability for COVERAGE B, C, D and E is further always subject to the annual aggregate for the POLICY PERIOD as set forth in the Declarations as respects each INSURED member.

- I.** Subject to the Limits of Liability, the Company will only be liable to pay CLAIMS in excess of the per CLAIM DEDUCTIBLE shown in ITEM 4. DEDUCTIBLE, 1. Per CLAIM of the Declarations.

The total of the POLICYHOLDER'S responsibility for all DEDUCTIBLE payments will not exceed the Annual Aggregate DEDUCTIBLE amount stated in ITEM 4. DEDUCTIBLE, 2. Annual Aggregate of the Declarations.

In the event that the Company expends funds for CLAIMS on the INSURED'S behalf, the POLICYHOLDER will reimburse the Company for such expenditures up to the amount of the DEDUCTIBLE shown in ITEM 4. DEDUCTIBLE of the Declarations. Reimbursement of the DEDUCTIBLE will be due within sixty (60) days from the date the Company bills the POLICYHOLDER.

**VI. EXCLUSIONS**

This insurance does not apply:

- A.** To any activities of the INSURED not carried on in his or her professional capacity, as defined in III. A. herein;

- B. To any loss sustained as a result of the ownership, maintenance, operation, use, loading, or unloading by any INSURED, by any person under the supervision of an INSURED or by any other person of (a) vehicles of any kind, other than farm tractors not operated on public highways; (b) watercraft; or (c) aircraft; except, however, coverage would apply to: (1) an INSURED who is a driver training instructor while riding as a passenger in the course of his or her duties as an employee of a school system; (2) an INSURED who is an automobile mechanics instructor in the course of his or her regular instruction carried out in a shop provided by the school; and (3) an INSURED while supervising students entering or exiting a school bus;
- However, coverage does not apply to B.(1), B.(2) or B.(3) above when the INSURED has any other insurance of any kind whatsoever which affords coverage for such CLAIM(S). SECTION VII-CONDITIONS, Item F. Other Insurance, does not apply to this exception to Exclusion B.;
- C. To liability assumed by the INSURED under any contract or agreement other than a contract or agreement for performance of services or employment as an instructor, or member of a faculty or teacher staff or a Texas public school or Texas institution of higher education;
- D. To any obligation of the INSURED directly occasioned by, happening through, or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority;
- E. To employers' liability, including employers' liability as respects occupational diseases, and any obligation for which the INSURED or the INSURED'S employer and/or any company as their insurer may be held liable under any workers' compensation, unemployment compensation, or disability benefits or similar law; and any obligation of the INSURED or the INSURED'S employer to indemnify another or contribute to the liability of another arising from a CLAIM by an employee of the INSURED arising out of the course of employment of that employee;
- F. 1. To the rendering of any dental, medical or surgical services or the omission thereof, except by an INSURED who is a registered or licensed vocational nurse, licensed physical therapist, or licensed athletic trainer in the course of his or her duties as an employee of a school system; or who is performing the procedure as a related service for a student with disabilities or pursuant to an individualized education program; or
2. To the administering of medication to students by any INSURED unless the INSURED administers the medication pursuant to an employing district's policy adopted pursuant to Sec. 22.052(a), Texas Education Code or any similar state or local law;
- G. To the sale or furnishing of any food or beverage, whether in a cafeteria or otherwise, except to the reimbursement of attorney's fees as provided under COVERAGE B.2., 3. and 4.;
- H. To criminal acts or for conduct prohibited by a state or federal penal statute, except as provided in COVERAGE B.;
- I. To the defense of any civil suit for alleged or actual criminal acts or for conduct prohibited by a state or federal penal statute other than corporal punishment of any student by or at the direction of the INSURED administered as permitted by the law governing corporal punishment in the jurisdiction where the school is located;
- J. To CLAIMS brought by INSUREDS against the POLICYHOLDER, as defined by the policy, or against the Texas Classroom Teachers Association;
- K. To punitive damages or exemplary damages in excess of \$5,000;
- L. To any damages resulting from intentional acts of, or at the direction of, the INSURED, whether or not such damages are intended or foreseeable, except as provided by the following three exceptions to this exclusion:
1. This exclusion shall not apply to acts involving corporal punishment of any student or pupil administered by or at the direction of the INSURED in the course of ACTIVITIES OF AN INSURED IN HIS OR HER PROFESSIONAL CAPACITY administered as permitted by the law governing corporal punishment in the jurisdiction where the school is located;
  2. This exclusion shall not apply to allegations of libel, slander, or defamation of character arising from an act within the course and scope of employment of an INSURED;
  3. This exclusion shall not apply if the civil proceeding against the INSURED is based on an alleged violation of any civil rights guaranteed by the Constitution or Civil Rights statutes of the United States, except that this insurance shall not apply to any damages resulting from acts or omissions indicating deliberate indifference to a clearly established statutory or constitutional right of another of which a reasonable person would have known;
- M. To any action for equitable relief, injunctive relief, declaratory relief or any other relief or recovery that is not seeking monetary judgment, award or settlement, except as provided in COVERAGE B, unless the relief prayed for also seeks damages which are covered under COVERAGE A.;
- N. To any action for any fees, costs or expenses including, but not limited to claimant/plaintiff attorney fees related to equitable relief, injunctive relief, declaratory relief or any other relief or recovery that is not seeking a monetary judgment, award or settlement, except as provided in COVERAGE B, unless the relief prayed for also seeks damages which are covered under COVERAGE A.;
- O. To activities of any INSURED while acting in his or her capacity as an administrator or a member of any School Board or similarly constituted body, or other capacity for which the individual is ineligible for membership in the Texas Classroom Teachers Association;
- P. To any obligation of the INSURED arising out of Human Immunodeficiency Virus (HIV), Aids Related Complex (ARC), Acquired Immune Deficiency Syndrome (AIDS), or any virus, complex or syndrome related to the preceding including, but not

limited to, any CLAIM, accusations, or charges brought against any INSURED, and to any obligation or duty of the Company to afford defense for such CLAIMS, accusations, or charges that were made because of any damages or injury arising out of HIV, ARC, and/or AIDS, no matter how transmitted;

- Q. To bodily injury or personal injury; or loss of, damage to, or loss of use of property directly or indirectly caused by or arising out of seepage into or onto and/or pollution of and/or contamination of air, land, water and/or any other property, however caused and whenever happening, or to bodily injury or personal injury; or loss of, damage to, or loss of use of property directly or indirectly caused by or arising out of: (a) disposal, dumping, conveyancing, carriage, or transportation of any seeping and/or polluting and/or contaminating substances or materials or waste substance(s) or waste material(s) of whatever nature; (b) waste of disposal sites which were, or currently are, owned, operated, or used by the INSURED or were or currently are utilized by others acting for and/or on behalf of the INSURED; or (c) evaluating and/or monitoring and/or controlling and/or removing and/or nullifying and/or cleaning up seeping and/or polluting and/or contaminating substances and materials.

The words “loss of, damage to, or loss of use of property” as used in this exclusion include, but shall not be limited to: (a) the costs of evaluating and/or monitoring and/or controlling and/or removing and/or nullifying and/or cleaning up seeping and/or polluting and/or contaminating substances; (b) loss of, damage to or loss of use of property directly or indirectly resulting from subsurface operations of the INSURED; and (c) removal of, loss of, or damage to subsurface oil, gas or any other substances;

- R. To any circumstance or CLAIM resulting from the manufacture, distribution or use of asbestos or products or premises containing asbestos fiber including, but not limited to, any circumstance or CLAIM resulting from asbestosis or any related disease and any circumstance or CLAIM resulting from the inhalation of asbestos fiber and including, but not limited to, any circumstance or CLAIM arising out of the abatement or removal of asbestos from buildings;
- S. To CLAIMS for actual or alleged SEXUAL ACTION OR SEXUAL CONDUCT of an INSURED or any other person or to the defense thereof, regardless of whether such action is alleged to be intentional or negligent, including, but not limited to, charges of sexual harassment brought by an employee or by or on behalf of a student of any school district or institution of higher education, except to the reimbursement of attorney’s fees as provided under COVERAGE B; or
- T. To the payment of any fines, monies, levies or other forms of payment required by a judge, court, or administrative agency as restitution or penalty for commission of a crime or for engaging in conduct prohibited by an administrative rule or regulation by an INSURED.

VII. CONDITIONS

- A. In addition to all the above terms, limitations, provisions, conditions and exclusions, this policy is further subject to the following conditions:

1. If a CLAIM is first made or suit is first brought against

an INSURED for an act or omission which occurred during the POLICY PERIOD as stated in Item 2. of the Declarations, the INSURED shall immediately forward in writing to the POLICYHOLDER or the Company every demand, notice of summons or other process received by his or her representatives. If the required documentation is sent to the POLICYHOLDER, the POLICYHOLDER shall then immediately forward to the Company every demand, notice of summons or other process received by his or her representatives.

2. The INSURED shall cooperate with the Company and, upon the Company’s request, shall submit to examination and interrogation by a representative of the Company, under oath if required, and shall attend hearings, depositions and trials and shall assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses in the conduct of suits, as well as in the giving of written statement or statements to the Company’s representatives, and meetings with such representatives for the purpose of investigation or defense and all without charges to the Company.
3. Upon request, the Company shall furnish the INSURED copies of CLAIM or suit pleading, motion papers and depositions. The Company will defend any suit against the INSURED seeking damages to which this insurance applies, even if any of the allegations of the suit are groundless, false or fraudulent, and it is agreed that the Company may make such investigation and settlement of any CLAIM or suit as it deems expedient, but the Company shall not be obligated to pay any CLAIM or judgment or to defend any suit after the applicable limit of the Company’s liability has been exhausted by payment of judgments or settlements.
4. The Company shall have the exclusive right to contest or settle any of the said suits or CLAIMS. The INSURED shall not interfere in any way respecting any negotiations for the settlement of any CLAIM or suit, or in the conduct of any legal proceedings. The INSURED will cooperate with the Company’s authorized representatives and render to them all possible cooperation and assistance.

B. SETTLEMENT

The INSURED shall not, except at his or her own cost, voluntarily make any payment, admit any liability, settle any CLAIM, assume any obligation, or incur any expense without the written consent of the Company.

C. SUBROGATION

In the event of any payment under this policy, the Company shall be subrogated to all the INSURED’S rights of recovery against any person or organization and the INSURED shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The INSURED shall do nothing after loss to prejudice such rights.

D. IMPAIRMENT OF RECOVERY

The Company shall not be bound to any loss of the INSURED if

the INSURED shall have impaired any right of recovery for loss.

**E. ACTION AGAINST COMPANY**

No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy, nor until the amount of the INSURED'S obligation to pay has been finally determined either by judgment against the INSURED after actual trial or by written agreement of the INSURED, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Company as a party to any action against the INSURED to determine the INSURED'S liability, nor shall the Company be impleaded by the INSURED or his or her legal representative. Bankruptcy or insolvency of the INSURED or of the INSURED'S estate shall not relieve the Company of any of its obligations hereunder.

**F. OTHER INSURANCE**

This policy is specifically excess if the INSURED has other insurance of any kind whatsoever, whether primary or excess, or if the INSURED is entitled to defense or indemnification from any other source whatsoever, including by way of example only, such sources as state statutory entitlements or provisions. Other insurance includes, but is not limited to, insurance policies, state pools, and programs of self-insurance, purchased or established by or on behalf of any EDUCATIONAL UNIT, to insure against CLAIMS arising from activities of the EDUCATIONAL UNIT or its employees, regardless of whether or not the policy or program provides primary, excess, umbrella or contingent coverage. In addition, COVERAGE A is specifically excess over coverage provided by any EDUCATIONAL UNIT'S or school board's errors and omissions or general liability policies, purchased by the INSURED'S employer or former employers, or self-insurance program or state pools, whether collectible or not, and it is specifically excess over coverage provided by any policy of insurance which purports to be excess to a policy issued to the INSURED.

In addition, COVERAGE A is specifically excess over coverage provided by the Texas Association of School Boards (TASB).

This condition is not applicable to Section VI-EXCLUSIONS, Exclusion B.

**G. ASSIGNMENT**

Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon. If, however, the INSURED shall die or be adjudged to be incompetent, this policy shall cover the INSURED'S legal representatives as INSURED with respect to liability previously incurred and covered by this policy.

**H. DECLARATIONS**

By acceptance of this policy, the INSUREDS, the POLICYHOLDER, and any successors agree that the statements in the Declarations and in the application forming a part of this policy are issued in reliance upon the truth hereof and that this

policy embodies all agreements existing between such persons and the Company or its agent relating to this insurance.

**I. CHANGES**

Notice to any agency or knowledge possessed by any agent or by any other person shall not effect a waiver or change in any part of this policy or stop the Company from asserting any right under the terms of this policy nor shall the terms of this policy be waived or changed except by endorsement issued to form a part of this policy.

**J. CANCELLATION OR NONRENEWAL**

This policy may be canceled by the POLICYHOLDER by surrendering the policy to the Company or any of its authorized agents, or by mailing to the Company written notice stating when thereafter the cancellation shall be effective.

This policy may be canceled for nonpayment of premium with a written notice to the POLICYHOLDER mailed to the address shown in the Declarations, stating when, not less than sixty (60) days, such cancellation will be effective. In which case, earned premium shall be computed pro rata.

If this policy shall be canceled by the POLICYHOLDER, the Company shall retain the customary short rate proportion of the premium hereon. Payment or tender of any unearned premium by the Company shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable. If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended to be equal to the minimum period or limitation of such law.

In the event of cancellation and with the consent of the Company, not to be unreasonably withheld, the coverage for individuals for whom premium has been paid will continue until the end of the POLICY PERIOD. If the Company elects not to renew this policy at the end of a POLICY PERIOD, a written notice of nonrenewal stating the reason for such nonrenewal will be mailed or delivered to the POLICYHOLDER at least ninety (90) days before the expiration date of the policy. The notice will be mailed to the last known address of the POLICYHOLDER. If notice is mailed, proof of mailing is sufficient proof of notice.

If the policy is written on a reporting basis, the POLICYHOLDER agrees in the event of cancellation to report the units of exposure and to pay premium thereon to the Company as provided herein up to date of cancellation. Premium adjustment may be made either at the time cancellation is effected or as soon as practical after cancellation becomes effective, but payment or tender of unearned premiums is not a condition of cancellation.

**K. SOLE AGENT**

Notice to the POLICYHOLDER shall constitute notice to each INSURED. By acceptance of this policy, the POLICYHOLDER will act on behalf of all INSUREDS with respect to:

1. The giving and receiving of notice of CLAIMS or cancellation;
2. Accepting any endorsement issued to this policy;
3. Paying premium when due; and
4. Receiving return premium.

Each INSURED agrees the POLICYHOLDER will act on the INSURED'S behalf. The POLICYHOLDER is charged with the responsibility of notifying the Company and all INSUREDS of any changes that might affect the insurance provided by this policy.

L. AUDIT

The deposit premium shown in the Declarations is provisional and is based on the number of insured members at inception. The POLICYHOLDER agrees to maintain a record of insured members and the policy will be subject to audit in a manner determined by the General Agent with the agreement of the Company. The premium will be adjusted accordingly based on the outcome of the audit. The final premium is subject to a Minimum Earned Premium.

REIMBURSEMENT OF ATTORNEY FEES — PRIVATE INSTRUCTION (This endorsement is attached to the policy).

1. The following is added to SECTION I — INSURING AGREEMENTS, Coverage B — Reimbursement of Attorney Fees, Subsection A:
  - A. The Company will reimburse the insured for reasonable and necessary attorney fees which the insured is legally obligated

to pay an attorney for the defense of any action brought against such insured arising out of the following activities, but without obligation to furnish such attorney:  
incurred in the defense of an action or proceeding against the insured arising from private instruction activities of such insured.

2. As respects the coverage provided by this endorsement, the following sublimits apply:  
\$10,000 per CLAIM, per insured  
\$10,000 Annual Aggregate, per insured and subject to the Annual Aggregate, all CLAIMS, as shown on the Declarations.  
The sublimits of liability stated in this endorsement shall be part of, and not in addition to, the limits of liability shown on the Declarations.
3. Exclusion B. of SECTION VI — EXCLUSIONS is deleted in its entirety and is replaced by the following:  
The Company shall not be obligated to make any payment or defend any lawsuit in connection with any CLAIM against the insured arising from:
  - B. as respects Coverage A. only, activities of the insured carried on in a private business or private professional endeavor.

## SCOTTSDALE INSURANCE COMPANY

### IMPORTANT NOTICE — TEXAS

To obtain information or make a complaint:  
You may contact your agent or you may call Scottsdale Insurance Company's toll-free number at: 1-800-423-7675.

You may also write to Scottsdale Insurance at:  
Scottsdale Insurance Company  
8877 N. Gainey Center Drive  
PO Box 4110  
Scottsdale, Arizona 85261

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at: 1-800-252-3439.

You may write the Texas Department of Insurance at:  
Texas Department of Insurance  
PO Box 149104  
Austin, Texas 78714-9104  
Fax: 1-512-475-1771  
Web: <http://www.tdi.texas.gov>  
Email: [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov)

### PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim, contact the agent first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

### ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

### LOSS CONTROL AVAILABILITY — TEXAS

Loss Control techniques are a function of safety in any operation. Loss Control is a managed analysis of accidents, equipment, facilities and employees to reduce the possibility that a loss will occur and/or reduce the severity of those that do occur. One or more of the following methods for controlling losses may be implemented:

- On-site physical inspection with recommendations for improvement
- Hand-outs of similar industry claims and loss analysis
- Provision of loss summaries and analysis of your operation
- Recommendations for vehicle maintenance and inspection
- Bulletin board type safety materials for posting in conspicuous locations
- Loss Control Newsletter

Managing losses through Loss Control techniques can reduce both personal and financial injury. Should you desire Loss Control services, call 1-800-423-7675, extension 3184.

*The professional liability insurance is provided by Scottsdale Insurance Company, a wholly owned subsidiary of Nationwide®, one of the largest insurance and financial service providers in the United States with an A.M. Best Rating of A+XV (superior). The coverage is provided through a purchasing group, and the insurer may not be subject to all insurance laws and regulations of the state.*



# RISK MANAGEMENT OVERVIEW

Information provided by the Texas Classroom Teachers Association in cooperation with Scottsdale Insurance Company

## THE SCOPE OF QUALIFIED IMMUNITY IN TEXAS

Fortunately for Texas teachers, the state of Texas has strong laws providing for qualified immunity from liability for professional public school employees. The purpose of this article is to provide an overview of those state statutes and review sources of potential liability in an effort to prevent liability. (NOTE: This article does not address any potential liability under federal law.) The Texas statute that provides for qualified immunity was amended and strengthened by the 78th Texas Legislature during the regular session and reads as follows:

### Sec. 22.051. DEFINITION; OTHER IMMUNITY.

- (a) In this subchapter, “professional employee of a school district” includes:
- (1) a superintendent, principal, teacher, including a substitute teacher, supervisor, social worker, school counselor, nurse, and teacher’s aide employed by a school district;
  - (2) a teacher employed by a company that contracts with a school district to provide the teacher’s services to the district;
  - (3) a student in an education preparation program participating in a field experience or internship;
  - (4) a school bus driver certified in accordance with standards and qualifications adopted by the Department of Public Safety of the State of Texas;
  - (5) a member of the board of trustees of an independent school district; and
  - (6) any other person employed by a school district whose employment requires certification and the exercise of discretion.
- (b) The statutory immunity provided by this subchapter is in addition to and does not preempt the common law doctrine of official and governmental immunity.<sup>1</sup>

### Sec. 22.0511. IMMUNITY FROM LIABILITY.

- (a) A professional employee of a school district is not personally liable for any act that is incident to or within the scope of the duties of the employee’s position of employment and that involves the exercise of judgment or discretion on the part of the employee, except in circumstances in which a professional employee uses excessive force in the discipline of students or negligence resulting in bodily injury to students.
- (b) This section does not apply to the operation, use, or maintenance of any motor vehicle.
- (c) In addition to the immunity provided under this section and under other provisions of state law, an individual is entitled to any immunity and any other protections afforded under the Paul D. Coverdell Teacher Protection Act of 2001 (20 U.S.C. Section 6731 et seq.), as amended. Nothing in this subsection shall be construed to limit or abridge any immunity or protection afforded an individual under state law. For purposes of this subsection, “individual” includes a person who provides services to private schools, to the extent provided by federal law.<sup>2</sup>
- (d) A school district may not by policy, contract, or administrative directive:
- (1) require a district employee to waive immunity from liability for an act for which the employee is immune from liability under this section; or

- (2) require a district employee who acts in good faith to pay for or replace property belonging to a student or other person that is or was in the possession of the employee because of an act that is incident to or within the scope of the duties of the employee’s position of employment.

Generally, the statute provides qualified immunity from liability in the following situation for the persons defined in Section 22.051. A professional school employee is immune from liability under state law if the following conditions are met:

- the act is incident to or within the scope of the duties of the employee’s position of employment;
- the act involves the exercise of judgment or discretion on the part of the employee;
- the employee is not using excess force or negligence in the discipline of a student<sup>3</sup>; and
- the act does not involve the operation, use, or maintenance of any motor vehicle.<sup>4</sup>

Other than the use of motor vehicles, professional school employees have exposure to potential liability in two primary areas: ministerial acts and student discipline. Ministerial acts are actions or omissions that do not involve the exercise of judgment or discretion on the part of the employee. The negligent performance of (or lack of performance of) a ministerial act by a professional school employee resulting in injury could make the teacher liable for the injury. So far, the Texas cases have construed the term “ministerial” fairly narrowly. The Texas Supreme Court defines ministerial acts as those “where the law prescribes and defines the duties to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment.”<sup>5</sup>

Nevertheless, the Texas Supreme Court has declined to overrule a decision of the Fort Worth Court of Appeals holding that the alleged failure of school employees to follow certain mandatory procedures of the school constituted a ministerial act for which the qualified immunity from liability did not apply.<sup>6</sup> In that case, a mentally disabled student was allegedly sexually assaulted by another student in the school elevator. The school administration implemented new procedures that included such measures as never allowing the students to be alone together, only allowing adults to have the keys to the elevator, and executing a mandatory tardy policy for the students. The parents of the student alleged that these procedures were not followed and that the student was assaulted two additional times in the school elevator. The parents filed suit against the school district superintendent, principal, vice principal and special education diagnostician. These professional school employees asserted that they were entitled to the qualified immunity from liability.

The Court of Appeals held that they were not entitled to immunity from liability. According to the court, the procedures that were

implemented to protect the student from additional assaults “defined the duties with such precision as to leave nothing to the exercise of Appellants’ judgment or discretion.”<sup>7</sup> Since those procedures were not followed, the employees could be held liable under Texas tort law.

The other source of potential liability is in the discipline of students. A professional school employee can be liable for using excessive force in the discipline of students or by being negligent in the discipline of students. The most important thing to keep in mind is to be very careful not to use excessive force when disciplining students. You should be very familiar with your district’s policies relating to student discipline, especially if your policies authorize corporal punishment. You should also strictly adhere to any policies relating to physical contact with students. While provisions of the Texas Penal Code and Education Code allow an educator to use reasonable force to maintain discipline, you should only use force on a student if necessary to protect another student or yourself from bodily injury.<sup>8</sup>

Teachers must keep in mind that potential liability for the negligent discipline of a student is not limited to situations involving corporal punishment or use of force against a student. The Dallas Court of Appeals envisioned the following scenario as a basis for potential liability:

In other instances, the punishment involves no force, but rather requires some action on the part of the student as a result of which the student suffers bodily injury. An example of the latter instance would be running laps around an athletic field. It is conceivable that an act or failure to act on the part of the professional employee might be a proximate cause of bodily injury suffered by a student in running the laps.<sup>9</sup>

While the definition of corporal punishment in state law excludes physical pain caused by reasonable physical activity associated with athletic training, competition or physical education, any physical activity should be assigned for the purpose of conditioning or training rather than as punishment.<sup>10</sup>

Professional employees should also note that another statute providing for immunity from liability for employees who dispense medication to students has been amended. This law provides:

- (a) On the adoption of policies concerning the administration of medication to students by school district employees, the school district, its board of trustees, and its employees are immune from civil liability from damages or injuries resulting from the administration of medication to a student if:
  - (1) the school district has received a written request to administer the medication from the parent, legal guardian, or other person having legal control of the student; and
  - (2) when administering prescription medication, the medication is administered either:
    - (A) from a container that appears to be:
      - (i) the original container; and
      - (ii) properly labeled; or
    - (B) from a properly labeled unit dosage container filled by a registered nurse or another qualified district employee, as determined by district policy, from a container described by Paragraph (A).<sup>11</sup>

- (b) The board of trustees may allow a licensed physician or registered nurse who provides volunteer services to the school district and for whom the district provides liability insurance to administer to a student:
  - (1) nonprescription medication; or
  - (2) medication currently prescribed for the student by the student’s personal physician.
- (c) This section may not be construed as granting immunity from civil liability for injuries resulting from gross negligence.

It is unclear whether this law is supplemental to the immunity provided by Section 22.0511, or whether it creates an entirely different standard for immunity when dispensing medication. Although it is possible that Section 22.0511 also applies, school employees should only dispense prescription medication under the circumstances provided under the above statute.

While Texas law provides a strong qualified immunity to its professional school employees, it is clear that there are situations in which there is exposure. For this reason, it is fortunate that the Texas Legislature placed a \$100,000 cap on damages for suits against professional school employees for “actions incident to or within the scope of duties of the employee’s position of employment.”<sup>12</sup> As this is a relatively new statute, it remains to be seen how the Texas courts will implement this cap on damages.

The fact that you may be immune from liability in certain circumstances does not keep someone from filing a lawsuit against you. If this happens, you will need the assistance of qualified counsel to represent you and assert the qualified immunity from liability on your behalf. You should be sure that you renew your membership in TCTA and the professional liability coverage within the grace period provided by the policy to make sure there is no lapse in your coverage.

One of the most important ways to prevent liability is to consult with legal counsel if you have any questions about your potential for liability and how to minimize it. TCTA members are fortunate to have toll-free access to staff attorneys to advise you on these matters. If you ever have any questions about the potential for liability, you should contact the TCTA Legal Department at 888-879-8282.

<sup>1</sup> Section 22.051, Texas Education Code.

<sup>2</sup> Section 22.0511, Texas Education Code.

<sup>3</sup> The Texas Supreme Court has ruled that the use of the term negligence in this wording of the statute applies only in the context of disciplining a student. *Barr v. Bernhard*, 562 S.W.2d 844 (Tex.1978); *Hopkins v. Spring Independent School District*, 736 S.W.2d 617 (Tex. 1987).

<sup>4</sup> It is important to note that the professional liability policy available to TCTA members does not cover the operation, use or maintenance of any motor vehicle except as provided by Exclusion B in Section VI of the policy. Members should make sure they are covered by their own motor vehicle policy or that they are specifically named as an insured under their district’s motor vehicle policy if they transport students, whether in a school district vehicle or a personal vehicle.

<sup>5</sup> *Downing v. Brown*, 935 S.W.2d 112, 114 (Tex.1996).

<sup>6</sup> *Myers v. Doe*, 52 S.W.3d 391, 395-96 (Tex.App.-Fort Worth 2001, pet. denied). *Id.* at 396.

<sup>8</sup> Section 22.0512, Texas Education Code and Section 9.62, Texas Penal Code.

<sup>9</sup> *Diggs v. Bales*, 667 S.W.2d 916, 918 (Tex.App.-Dallas 1984, writ ref’d n.r.e.).

<sup>10</sup> Section 37.0011, Texas Education Code.

<sup>11</sup> Section 22.052, Texas Education Code.

<sup>12</sup> Section 22.0515, Texas Education Code