

Notice of Protections Under the Kansas Tort Claims Act

As a teacher employed by Unified School District No. 409, Atchison, Kansas, you are entitled to protections under the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.*

1. What is the Kansas Tort Claims Act?

It is the state statutory scheme which allows governmental entities, including public school districts, in the state to be sued for damages caused by the negligent or wrongful acts or omissions of employees, officers, or board members. In cases arising under the Kansas Tort Claims Act, liability is limited to \$500,000 for any number of claims arising out of a single occurrence or accident or to the extent of the district's insurance, whichever is greater. U.S.D. 409's insurance with regard to tort claims provides liability coverage for such claims up to \$1,000,000. (See K.S.A. 75-6101 *et seq.*)

2. Are there any situations in which a school district may be exempt from liability for negligent acts?

Yes, the law contains several exemptions. A school district and its employees are not liable, under the Tort Claims Act, for damages resulting from:

- Legislative functions, such as adopting or failing to adopt a policy;
- Judicial functions, such as a student or teacher due process hearing;
- Enforcement or failure to enforce a statute, regulation, or board resolution;
- Adoption or failure to adopt written personnel policies which protect persons' health or safety;
- Any claim based on the performance of or failure to perform a discretionary function or duty, regardless of whether discretion is abused;
- The assessment or collection of taxes;
- Any claim by an employee which is covered by workers compensation;
- Snow or ice or other temporary or natural conditions on school property;
- The plan or design for the construction or improvement to public property;
- Any claim for injuries resulting from the use of any public property intended or permitted to be used as a park, playground, or open area for recreational purposes, except in cases of gross or wanton negligence; or
- The natural condition of any unimproved public school property.

3. Is the school district liable for all negligent acts of its employees?

No. The district is only liable for acts or omissions of employees which occur in the scope of the employee's employment and which are not done with actual fraud or actual malice. In other words, the district will not be liable for acts or omissions of employees either occurring outside the scope of employment or which are done with actual fraud or actual malice.

4. Will the district provide me a legal defense for claims under this act?

Generally yes. Upon request of an employee, the district shall:

- Provide for the defense of any civil action or proceeding against you, in your official or individual capacity or both, on account of an act or omission in the scope of your employment with the district; and

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- Provide legal counsel to you when you are summoned to appear before any grand jury or inquisition on account of an act or omission in the scope of your employment with the district.
- The district has no right to recover expenses from you for this defense or representation, except as provided in K.S.A. 75-6109, and amendments thereto.

5. Can the district refuse to provide me a defense under the act?

Yes, the district may refuse to provide for the defense of an action against you or to provide you with representation if the district determines:

- The act or omission was not within the scope of your employment;
- You acted or failed to act because of actual fraud or actual malice;
- The defense of the action or proceeding would create a conflict of interest between you and the district; or
- The request was not made in accordance with law.

6. How do I request the district to come to my defense or to provide me with representation?

You must make a request for such in writing within 15 days of receiving service of process or a subpoena of the action. This request is to be filed with the board of education.

The district may reimburse you such reasonable attorney fees, costs and expenses as are necessarily incurred in defending a claim against you for punitive or exemplary damages if:

- (1) The action or proceeding arose out of an act or omission in the scope of your employment; and (2) you reasonably cooperated in good faith in the defense of the claim.