

LIMITED CLAIM SETTLEMENT

A. APPLICABILITY TO CERTAIN CLAIMS

On occasion, the Avery County Board of Education is presented with claims against the board from students, parents, or other citizens for injuries to person or property sustained while on a board property or at a school sponsored event. The Board adopts this policy so it can consider and process all such claims in a fair and equitable manner taking into consideration the economic resources available to the Board of Education.

The board will only consider claims under this policy when the applicable insurance agreement and/or coverage agreement, if any, does not provide for the consideration, settlement and/or adjustment of claims prior to legal action being filed by the claimant in a court of competent jurisdiction. Upon the filing of a complaint, the Board will immediately refer all claims to the appropriate insurance company or coverage provider for appropriate action.

B. PROCEDURE FOR FILING CLAIM

All claims shall be made to the superintendent in writing and shall include a detailed account of how the injury occurred, whether board employees were involved, and the amount of damages suffered by the claimant. The claimant should include all supporting documentation and any other information they believe is relevant. The Superintendent, or his/her designee, will investigate the incident and, if necessary, provide supplemental information to the board.

After receiving the claim, the Board, in consultation with its attorney, shall determine whether to pay the claim, deny the claim, or make an offer to settle the claim.

C. SETTLEMENT

The resolution of claims requires the exercise of discretion by the board. Therefore, to treat similarly situated claimants (claimants who are alike in all relevant respects) alike, the board will be consistent in its settlement practices by using two factors listed below to evaluate all claims. The board recognizes, however, that separate claimants often will be dissimilar with respect to one or more of the relevant factors, so the final decision regarding each claim will be based upon specific circumstances. All factors need not to be given equal weight and no one factor will be controlling.

1. Whether there was negligent act or omission by an employee or agent of the board.
2. Whether an employee or agent of the board intentionally caused an injury.

3. Whether an employee or agent of the board violated any board policies.
4. What, if any, defenses are available to the board in the event of litigation and the viability of those defenses based upon the facts known at the time of settlement consideration.
5. The claimant's likelihood of success in litigation.
6. The likely costs of defending the case.
7. The administrative burden and disruption that litigation would likely cause.
8. Whether the demand is within the retention or deductible level for monetary payments pursuant to any applicable insurance or liability coverage agreement and whether there is, or is likely to be, coverage under such agreements, if known.
9. Goodwill on behalf of the citizens of the school community.
10. The best use of public funds in an effective manner.

The payment of any claim shall be subject to the claimant(s) executing a full release of liability in favor of the Board of Education, its employees, and agents. The release shall be on a form approved by the Board of Education attorney.

By considering whether to settle a claim, the Board does not waive any affirmative defenses available to it or its employees, including but not limited to the defenses of governmental, sovereign, qualified, or public official immunity, or contributory negligence. These defenses may be asserted by the Board of Education should the claimant(s) choose to file a lawsuit.

Legal References: *Clayton v. Branson*, 170 N.C. App. 438 (2005); *Dobrowolska v. Wall*, 138 N.C. App. 1 (2000)

Cross References:

Adopted: 11/03/08, 11/09/21