

Coverage for Special Education Disputes

IS COVERAGE AVAILABLE FOR SPECIAL EDUCATION DISPUTES?

The short answer is yes, there is now limited defense coverage for special education administrative hearings and civil lawsuits against the district on special education disputes. There can sometimes be disagreements regarding a special education student's Individual Education Plan (IEP). At times, these disagreements must be resolved through an administrative hearing or lawsuit. In the 2008-2009 school year, the Southwest Washington Risk Management Insurance Cooperative (Risk Cooperative) added limited coverage which assists with some of the attorney fees the District may incur associated with defending these administrative hearings or lawsuits.

HOW IS THIS COVERAGE TRIGGERED?

In the event an agreement cannot be reached when assessing the special needs of a specific student, an Administrative Hearing Request may be filed with the Office of the Superintendent of Public Instruction (OSPI). A copy of the request for a hearing will be sent to the District by the requesting party. The Office of Administrative Hearings will then assign a case number, after which the requestor and the District will receive written notice from OSPI. Within five (5) calendar days of receiving the request for a hearing, the District should forward the written notice to the Risk Cooperative.

WHAT COSTS ARE COVERED FOR THE ADMINISTRATIVE HEARING?

As stated in the WSRMP Coverage Agreement #COV 08-09, Article IV (Errors and Omissions Liability Coverage), Section C (Limits of Liability), Paragraph 4 (Administrative Proceedings Under a Student's IEP), the costs associated with defending the District at the administrative hearing will be paid by the Risk Cooperative up to a maximum of \$35,000 per hearing.

WHAT COSTS ARE COVERED IN THE EVENT OF A LAWSUIT?

While many times the dispute will be resolved following the outcome of the administrative hearing, there are times a student and/or his or her representative wishes to appeal the decisions made by the Office of Administrative Hearings. To that end, a lawsuit may be filed in Superior Court and served upon the District. The WSRMP Coverage Agreement #COV 08-09, Article IV, Section C (Limits of Liability), Paragraph 3 (Lawsuits Brought Under a Student's IEP), provides for limited defense costs associated with such lawsuits.

Immediately upon being served with suit papers, the District should forward the notice of suit or Summons & Complaint to the Risk Cooperative. The Risk Cooperative reserves the right to assign defense counsel to defend the District with respect to the student's lawsuit under the IEP.

The Risk Cooperative will provide coverage for defense costs of the civil lawsuit against the district, subject to an aggregate limit of \$200,000 for each Member District. To clarify, the aggregate limit is the total limit the Risk Cooperative will pay during the applicable coverage period in defending the District for all lawsuits brought under any District students' claims stemming from IEP disputes.

WHAT IF THE DISTRICT REQUESTS THE HEARING OR FILES THE LAWSUIT?

The coverage discussed above extends only when the District is named as a defendant in both the administrative hearing and any subsequent civil lawsuit. Should the District choose to initiate the hearing request or the lawsuit, the Risk Cooperative will not pay any of the District's costs associated with such a hearing or suit.

IS THERE COVERAGE FOR PAYMENT OF SETTLEMENTS OR JUDGMENTS?

Per the WSRMP Coverage Agreement #COV 08-09, Article IV, the Risk Cooperative shall not be obligated to make any payment for any claim, settlement or judgment based on the District's action, or failure to act, with respect to the student's claim under the IEP. However, in Article IV, Section C (Limits of Liability), Paragraph 3 (Lawsuits Brought Under a Student's IEP), the Risk Cooperative, will pay up to \$25,000 aggregate for "awarded" plaintiff's attorney fees and costs, following the conclusion of the lawsuit. Should the Office of Administrative Hearings, or the Superior Court, award payment to, or on behalf of, the student, or should the District choose to settle the claim, or suit, the Risk Cooperative will not pay for such settlement or judgment.

WHAT IF I HAVE MORE QUESTIONS?

For your reference, the pertinent part of Article IV has been provided below and can be found in your insurance notebook under Tab 8. Please do not hesitate to contact Derek Bryan or Peggy Sandberg with any questions at (360) 750-7504.

From WSRMP Coverage Agreement #COV 08-09

Article IV. Errors and Omissions Liability Coverage

C. Limits of Liability

"3. Lawsuits Brought Under a Student's IEP

The Pool will provide coverage for defense costs and limited indemnity to the District, with such coverage for defense costs subject to an aggregate limit of \$200,000 and such coverage for indemnity subject to an aggregate limit of \$25,000 for plaintiff's attorney fees and costs; both regardless of the number of wrongful acts for defense of any suit in connection with or relating to a District's acts or failure to act with respect to any District students' claims to or claims under an Individual Education Plan (IEP)

4. Administrative Proceedings Under a

Student's IEP

The Pool will pay up to a maximum of \$35,000 for defense costs in connection with an administrative proceeding based upon the District's alleged action or failure to act with respect to any District student's claim to or claim under an Individual Education Plan (IEP), provided that each of the following conditions are first met:

- a. A Hearing Request has been filed with the Office of the Superintendent of Public Instruction;*
- b. A case number has been assigned by the Office of Administrative Hearings;*
- c. The Pool has received written notice of the Hearing Request not later than 5 calendar days after the district's receipt of the initial Hearing Request from the Office of Administrative Hearings.*

The Pool will not provide coverage and will not indemnify the District for any such administrative proceeding. The Pool reserves the right to assign defense counsel of its choosing in connection with this provision."

D. Exclusions

The Pool shall not be obligated to make any payment or defend any suit in connection with or relating to:

- "7. any claim, settlement or judgment based upon the District's action, or failure to act, with respect to any District student's claim to or claim under an Individual Education Plan (IEP) (except the Pool will pay defense costs applicable to an administrative proceeding pursuant to Article IV, Section C, Subsection 4, and will pay defense costs applicable to a lawsuit pursuant to Article IV, Section C, Subsection 3, regardless of the number of wrongful acts)."*