

LOUISIANA SCHOOL EMPLOYEES HAVE A RIGHT TO “DEFENSE” AND “INDEMNITY”

In most suits brought against a school system or school board, the plaintiff will also name a teacher, principal, other administrator, and/or the superintendent as defendants to the claim. Most employees in that position worry about what a personal judgment would do to them and how will they afford a legal defense to the allegations made against them.

A review of LSA-R.S. 17:416.4 provides an answer and a degree of comfort for those so named employees of Louisiana public schools. The statute states that *“should any public school employee be sued for damages by any student or any person qualified to bring suit on behalf of any student based on any action or statement or the omission of any action or statement by such employee when in the proper course and scope of his duties as defined by the school board employing such employee, then it shall be the obligation of said school board to provide such defendant with a legal defense to such suit including reasonable attorney fees, investigatory costs, and other related expenses.”* This portion of the statute requires that the board, so long as the employee was acting within the course and scope of their duties as a school board employee, to provide a legal defense to the claims made against him/her.

The right to a legal defense is only a portion of the rights extended by the statute. Should the employee be cast in judgment for his/her actions and/or inactions while acting in their capacity as a school board employee, the school board employee will have a right to indemnity. The right to indemnity provides the employee with a right to protection against liability and/or damages incurred as a result of his/her action or inaction. The statute states, in pertinent part, that *“[s]hould any such employee be cast in judgment for damages in such suit, it shall be the obligation of the school board employing such defendant to indemnify him fully against such judgment including all principal, interest, and costs...”* The net effect is that the board is obligated to protect the employee from the judgment casts against him/her.

As with most statutes of this nature, there are some exceptions. Most notably, the school board will not be bound by the requirements of this statute for the intentional and malicious acts of its employees. The statute does not *“require a school board to indemnify an employee against a judgment wherein there is a specific decree in the judgment that the action of the employee was maliciously, willfully, and deliberately intended to cause bodily harm or to harass or intimidate the student or where there is a specific decree in the judgment that the employee purposefully or with gross disregard of the facts ignored the complaints of the student, or the student's parent or guardian, that the student was being bullied and the bullying led to the physical harm or death of the student.”* This paragraph will serve to impose true personal liability on the employee that acts in a manner described above.

As with most issues in a school system, the employee can avoid most, if not all, negative consequences by simply following the policies and procedures put in place by the school board.