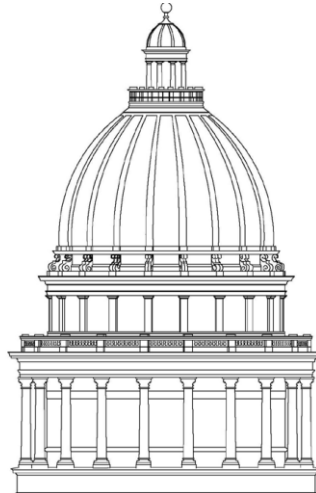


REPORT TO THE
UTAH LEGISLATURE

Report Number ILR 2015-B



**A Review of the
Communication of the State's Liability Protection
For School District Employees**

September 2015

Office of the
LEGISLATIVE AUDITOR GENERAL
State of Utah



STATE OF UTAH

Office of the Legislative Auditor General

315 HOUSE BUILDING • PO BOX 145315 • SALT LAKE CITY, UT 84114-5315
(801) 538-1033 • FAX (801) 538-1063

Audit Subcommittee of the Legislative Management Committee

President Wayne L. Niederhauser, Co-Chair • Speaker Gregory H. Hughes, Co-Chair
Senator Gene Davis • Representative Brian S. King

JOHN M. SCHAFF, CIA
AUDITOR GENERAL

September 8, 2015

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, A Review of the Communication of the State's Liability Protection for School District Employees (Report Number ILR 2015-B). We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

A handwritten signature in black ink that reads "John M. Schaff" with a stylized flourish at the end.

John M. Schaff, CIA
Auditor General

JMS/lm

REPORT TO THE UTAH LEGISLATURE

Report No. ILR 2015-B

A Review of the Communication of the State's Liability Protection For School District Employees

September 2015

Audit Performed By:

Audit Manager Darin Underwood

Audit Supervisor James Behunin

Office of
LEGISLATIVE AUDITOR GENERAL
State of Utah

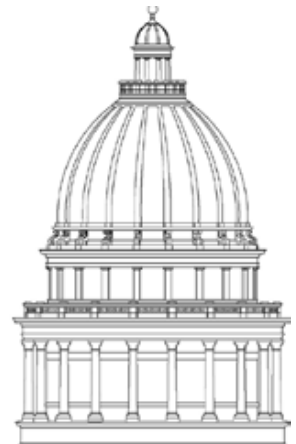
Report Number ILR 2015-B
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A Review of the Communication of the State's Liability Protection for School District Employees

Of the state's 45 school districts and education service centers, 14 did not distribute the state's legal liability information as required by *Utah Code* 63A-4-204. The Division of Risk Management is responsible for drafting and distributing the information to school districts. The division can promote greater compliance with the law by verifying that all districts have forwarded the information to their employees and by sending a follow up notice if the information has not been sent. However, ultimately it is the school districts who are responsible for distributing the information to their employees. The Legislature can also promote greater compliance with the law by allowing school districts to include the legal liability information with district policies they distribute to employees at the beginning of each school year.

State Law Requires Annual Notification Of Legal Liability Protections

As a service to the employees of Utah's public education system, the state provides legal liability coverage for civil claims or lawsuits brought against them for acts occurring during the performance of their duties. Other independent organizations offer employees a limited amount of legal liability coverage as well. To help employees avoid purchasing redundant coverage, state law requires that by March



Each year, the Division of Risk Management drafts a brochure describing the legal liability coverage offered to school district employees.

School districts are responsible for distributing the brochure to their employees.

31 each year, the Division of Risk Management must prepare a brochure describing the types of legal liabilities that are covered by the Risk Management Fund. The brochure must also compare the state's coverage to that offered by other, private organizations. According to our legal counsel within the Office of Legislative Research and General Counsel, the law requires the school districts to provide the information to new employees when they are hired and to all employees no later than April 15 each year.

Division of Risk Management Has Distributed the Required Legal Liability Information

Legislators asked the Office of the Legislative Auditor General to verify that school districts are distributing the state's legal liability information as required by law. We found that, for the year 2015, the division prepared a brochure (see appendix) that includes all the information required in statute. On March 27, 2015, this information was sent via email to all 41 school districts except one. The Jordan School District was mistakenly excluded from the initial set of emails and did not receive the information until May. The division also sent the brochure to each of the four regional education service centers and to about 70 charter schools that receive legal liability coverage through the Risk Management Fund.

The Division of Risk Management asked each institution to forward the email containing its brochure to each of their employees. Because some employees do not have district email accounts, the school districts were also instructed to print out copies of the brochure and provide them to employees who might not otherwise receive them. To verify that the information has been distributed, the division asked each institution to copy them on the email forwarded to district employees. The division reports that only 14 school districts copied them on emails sent to employees. The response by the other 31 entities was not known and, for this reason, they became the focus of our audit.

Employees in Some School Districts and Education Service Centers Did Not Receive the Legal Liability Information

We contacted each school district that did not report already having distributed the division's brochure. Of those, we found that 12 school districts had not distributed the brochure to its employees. Two

The Division of Risk Management emailed its legal liability brochure to each school district with instructions to forward the email to all district employees.

other districts did not distribute the information by the April 15th deadline. See Figure 1.1.

Figure 1.1. Some School Districts and Education Service Centers Are Not Complying with Requirement to Distribute Legal Liability Information. Only 31 of Utah’s 45 school districts and service centers complied with the statutory requirement to distribute the state’s legal liability information.

Distributed Brochure by April 15 and Notified Division	14
Distributed Brochure by April 15 but Did Not Notify Division	17
Entities that Distributed Brochure by April 15	31
Distributed Brochure after April 15	2
Did Not Distribute Brochure	12
Entities that Did Not Distribute Brochure by April 15	14
Total Utah School Districts and Service Centers	45

Two districts missed the April 15th deadline for delivering the legal liability brochure. Twelve districts did not send it at all.

Figure 1.1 shows there were 14 school districts that distributed the division’s brochure to their employees and sent the division a copy of the forwarded email. We found that 17 of the remaining 31 school districts and education service centers had distributed the division’s email as requested before the April 15 deadline, but neglected to send the division a copy of the email it sent to employees. As a result, a total of 31 entities met the deadline and were in compliance with the statute.

Two other districts sent out the information after the April 15 deadline. The remaining 12 school districts (which includes 3 regional service centers) did not distribute the information at all. A few district officials said they did not read the email with sufficient care to realize they were supposed to forward it to their employees. Others told us they knew they were supposed to send the email to their employees but simply forgot to do so. As one superintendent described it, the division’s email was “lost in the shuffle.” We also found three instances in which the district did not receive the email because the division sent the email to the incorrect email address.

Division Can Improve the Process of Distributing Its Brochure

The Division of Risk Management should take steps to ensure that districts receive the annual brochure and forward the brochure to their employees. First, the division must maintain a list of key contacts for each district and their current email addresses. In addition, the division should make a greater effort to verify that districts have distributed the

According to state law, the school districts are ultimately responsible for providing the legal liability brochure to their employees.

brochures to their employees. If a district has not notified the division that they sent out the brochure, the division should send a follow-up email reminding districts to forward the information to their employees, and to send the division a copy of the email.

School Districts Are Responsible for Forwarding Policy Information to Their Employees

School districts and regional service centers need to take responsibility for complying with the requirements of *Utah Code* 63A-4-204. Division of Risk Management is only required to distribute the information to the school districts. The statute says the “A school district that participates in the Risk Management Fund shall provide a copy of the information described in Subsection (4)(c) to each school district employee... .” This means it is the school districts who are ultimately responsible for making sure that the information is passed on to each employee. As the following paragraphs suggest, there are things the Legislature can do to help make it easier for the school districts to comply with the statute.

Legislature Should Change the Division’s Deadline for Delivering Legal Liability Information to School Districts

We recommend that the Legislature authorize changes to the statute that will allow the distribution of legal liability information at the same time districts are communicating other important policy information to their employees. We found that many school districts routinely notify their employees of important policy information before school begins. Each year, just before classes begin, these districts ask their faculty and staff to review a set of employee policies and to certify that they understand and agree to abide by them.

Even though it does not conform to the required April 15 deadline, some districts include the state’s legal liability information with the other policies that employees are asked to review as the school year begins. In our view, these districts appear to be using an effective process for presenting policy information to school district employees. For this reason, we recommend the Legislature amend the statute to allow for a later date for distributing the legal liability information. We also recommend that the Utah Board of Education encourage all school districts to adopt a formal process for communicating policy information to their employees. The following are two examples of districts that have adopted such a process.

The Davis School District Has an Effective Process for Communicating Important Policy Information to Its Employees

Before each new school year begins, the Davis School District requires each employee to review a set of policies that are made available on the district's internal, web-based network. After reviewing the policies, the employee must certify, through an electronic signature, that he or she understands and will abide by those policies. Included among those policies is the legal liability brochure provided by the Division of Risk Management. Other topics include the district's ethics policy, harassment information, computer use agreement, and workers' compensation information. Each employee's supervisor is required to verify that the employee has entered an electronic signature certifying that they will abide by the policies.

Iron School District Requires Staff to Certify They Have Reviewed District Policies

Before each school year begins, the Iron School District invites its employees to review the district's policy handbook. The employees are then required to sign a form indicating they have read and understand the policies. Employees also sign a separate form indicating they understand the district's acceptable use policies for computers. Finally, employees sign a third form indicating they have read and understand the legal liability information.

All School Districts Should Develop a Process for Communicating Policies to Their Employees

In addition to Davis and Iron County school districts, several other school districts have told us they have either developed a formal process for communicating their policies to employees or are developing such a process. Some are also asking employees to sign a statement certifying that they understand and will abide by those policies. We believe that all school districts should adopt similar procedures and that the distribution of the state's legal liability information should be included in that process.

School districts should be allowed to distributed the legal liability brochure with their district policies just before school begins.

The State Board of Education should encourage all school districts to develop a process for communicating district policies to their employees.

In the past, the Legislature has encouraged the State Office of Education to identify and promote on their website, the best practices being used by local school districts. We recommend that the State Board of Education include among its best practices a process for communicating district policies to employees. Specifically, districts should be encouraged to develop a process for identifying the policies that each employee should review before school year begins. Each employee should then be required to sign a written statement that they agree to abide by those policies.

We also recommend that the Legislature amend the statute to enable school districts to distribute the state's legal liability information just before school begins each year. This step would require a change in the deadline by which the Division of Risk Management must distribute the information to the school districts. Instead of requiring the division to deliver the information by March 31, we suggest a July 1 distribution date. Rather than distributing the information by April 15, school districts should be required to distribute the information to each employee before the beginning of each new school year.

Recommendations

1. We recommend the Division of Risk Management (a) maintain a current list of the email addresses for each district superintendent and business manager, (b) send the legal liability information to the appropriate district representative(s), and (c) verify that each school district has forwarded the information to its employees.
2. We recommend each school district and education service center comply with state requirements that each employee be provided with information regarding the state's legal liability coverage.
3. We recommend the Utah State Board of Education promote the broader use of an online review process for personnel policies. Among other things, it should direct the Utah State Office of Education to include that process among the other best practices already described on its website.

4. We recommend the Legislature change the date when the Division of Risk Management must distribute the legal liability information to the school districts from April 15 to July 1 of each year.

5. We recommend the Legislature change the date when school districts must distribute legal liability information to their employees from April 15 to sometime between July 1 and the first day of school each year.

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Appendix

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Comparison to Other Civil Liability Coverages

Limits:

State Risk Fund - Coverage for employees of School Districts under the Governmental Immunity Act is generally consistent with the Utah Governmental Immunity Act damage caps. The Fund may cover School Districts' obligations to their employees up to \$10 million per occurrence. Coverage is primary and pays before other coverages. Punitive damages are not covered.

UEA - Coverage limits are \$1 million per occurrence in damages awarded, \$3 million per occurrence aggregate, except civil rights; \$300,000, per occurrence for civil right claims inclusive of defense costs. Coverage is excess of any statutory protection, such as your Governmental Immunity Act coverage with the Fund.

AFT - Coverage limits are \$1 million per member and \$2 million aggregate, except \$250,000 per member per year for denial of constitutional rights. Coverage is excess of any statutory protection, such as your Governmental Immunity Act coverage with the Fund.

AAE - Coverage limits are \$2 million per occurrence and \$2 million aggregate and all legal fees are covered, except sexual harassment or abuse.

Activities covered by the Governmental Immunity Act/Fund not covered by other commonly available programs:

Liability for district vehicle usage by employees is covered by the fund.

Civil coverage by other commonly available programs not covered by the Governmental Immunity Act/Fund:

UEA - Bail bond premiums, up to \$1,000 per bond covered; Personal property damage caused by assault up to \$500 covered;

AFT - Bond premium available if required for the defense of a suit; Personal property damage caused by assault up to \$250 covered; \$10,000 assault death benefit covered; \$5,000 defense costs in licensure or credential hearing covered.

AAE - Bail bond premiums, up to \$1,000 per bond covered. Legal consultation for workplace employment issues.

Comparison to Other Criminal Defense Coverages

State Risk Fund - No criminal defense coverage.

UEA - \$35,000 per school related criminal proceeding if exonerated from all charges, if charges are withdrawn or dismissed or if case is the result of corporal punishment. Coverage is excess of any statutory protection, such as UCA 52-6.

AFT - \$35,000 per member per year for school related criminal charges if completely exonerated or if case results from corporal punishment. Coverage is excess of any statutory protection, such as UCA 52-6.

AAE - \$10,000 per member per claim in legal coverage for corporal punishment. Coverage is excess of any statutory protection, such as UCA 52-6.



Additional Information

For additional information about your rights please see the following:

The Utah Governmental Immunity Act UCA 63G-7;
Reimbursement of Criminal Defense Costs UCA 52-6;

Your District Risk Manager or Business Official; or
The Utah State Division of Risk Management
5120 State Office Building
Salt Lake City, Utah 84114
(801) 538-9560

The information provided here is a general description and comparison of coverages. For a detailed explanation of coverages you may refer to the statutes cited above and coverage brochures provided by UEA & AFT.

AAE - visit aeteachers.org for information.

AFT - visit ut.aft.org for information

UEA - www.myuea.org for information

Legal Liability Protection for School District Employees



Provided by:

UTAH STATE DIVISION OF
RISK MANAGEMENT
5120 State Office Building
Salt Lake City, Utah 84114
risk.utah.gov
2015

Legal Liability Protection for School District Employees

Civil Liability Protection

Your district and its employees are covered for liability by:

The Utah State Risk Management Fund.
(Hereafter the Fund)

Lawsuits are defended by:

The Litigation Division of the Utah Attorney General's Office.

YOUR UTAH STATE RISK MANAGEMENT FUND COVERAGE RIGHTS

As a School District employee if:

A civil claim or

A civil lawsuit

for damages is brought against you for acts or omissions occurring:

During the performance of your duties;
Within the scope of your employment; or
Under color of authority,

then, under the Governmental Immunity Act of Utah you may have the right:

To have any lawsuit defended by an attorney at no cost to you;

To have any claim settlement paid on your behalf; and

To have any judgment entered against you paid for you.

SECURING COVERAGE

To secure these rights you must:

Immediately notify the district of any claim or lawsuit;

Immediately forward to the district all legal documents served on you;

Make a written request to the district for defense and indemnification within ten days of the service of a lawsuit; and

Cooperate in the subsequent investigation and defense, including making an offer of judgment if requested.

WHAT IS NOT COVERED

Your rights to defense and payment of claims or judgments do not cover acts or omissions involving:

Fraud;

Willful misconduct;

Impairment due to your use of alcohol or drugs; or

False testimony under oath.

Criminal Defense Protection

YOUR UTAH STATE RISK MANAGEMENT FUND COVERAGE RIGHTS

As a School District employee if:

Criminal charges are filed against you for acts or omissions occurring:

*During the performance of your duties;
Within the scope of your employment; or
Under color of authority,*

then under the terms of Utah Code 52-6 you have the right to recover from your employing School District reasonable attorneys fees and court costs, if the indictment or information is quashed, dismissed or results in an acquittal, unless it is quashed or dismissed on motion of the prosecuting attorney.

The Fund does NOT provide an attorney nor pay for attorneys fees incurred in defending a criminal case, nor does it cover or pay for any fines, fees, or any other costs assessed in a criminal case.

Agency Response

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State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of Administrative Services

KIMBERLY K. HOOD
Executive Director

Division of Risk Management

TANI PACK DOWNING
Director

August 20, 2015

John M. Schaff, CIA
Auditor General
Office of the Legislative Auditor General
W315 Utah State Capitol Complex
PO Box 145315
Salt Lake City, UT 84112

RE: Audit Report ILR 2015-B: A Review of the Communication of the State's Liability Protection for School District Employees

Dear Mr. Schaff:

State Risk Management has reviewed the recommendations made by the Office of the Legislative Auditor General's Office as a result of this audit. Below is Risk's response to those recommendations.

Recommendations

1. The Division of Risk Management agrees that it will:
 - a. keep its list of email addresses for each district superintendent and business manager as updated as possible. Risk will cross-check and update its list with the district superintendent's and business manager's email address located in the Utah Educational Directory published at the beginning of each school year by the State Office of Education. Risk will also update these contacts any time during the school year as we are informed by the district of personnel changes;
 - b. send the legal liability information to the business manager and the superintendent of each district; and

- c. request that the district copy Risk on its email forwarding the legal liability pamphlet information out to its employees to verify the district has done so. If Risk has not received a copy of that email by the date it is required to be sent out to district employees, Risk will follow up with an email to the district's superintendent and business manager asking for verification that the legal liability pamphlet information was given to its employees.
2. Risk agrees with this recommendation.
3. Risk agrees with this recommendation.
4. Risk agrees with this recommendation.
5. Risk agrees with this recommendation.

We appreciate the professionalism of your audit staff during this audit.

Sincerely,



Tani Pack Downing
State Risk Manager