

Formal Opinion of Counsel

The State Education Department (SED) supports teacher candidates, the future of the profession. As such, SED is committed to removing barriers that preclude candidates, or student teachers, from obtaining their student teaching, residency, or similar clinical experience. Insurance has proved to be one such barrier.

The law on this issue is clear. Education Law § 3023 requires that all school districts¹ and boards of cooperative educational services² insure and indemnify “all teachers, practice or cadet teachers [and] authorized participants in a school volunteer program,” against acts of negligence committed in the scope of their employment. This “notwithstanding[s] any inconsistent provision of law”—including contrary provisions of a city charter.

This makes practical sense. When placed, student teachers are physically located on school property, and performing teaching and related tasks for the school district under the direct supervision of a teacher at the school who has official responsibility for the class. Should candidates fail to exercise reasonable care in this environment, it is eminently reasonable that the entity that exercises day-to-day supervision of the student teacher should bear the obligation of insurance and indemnification.³ This obligation attaches automatically and applies to all student teachers, whether appointed directly by boards or by contract. It is separate from any partnership agreement that boards may have with an institution of higher education (IHE).

Nevertheless, some school districts have insisted that institutions of higher education (IHE) insure student teachers. This is contrary to the plain language of the statute, which places “the duty ... to save harmless and protect” candidates on school districts alone. School districts have no authority to impose a requirement in excess of statute. And even if they did, an insurance requirement for IHEs is an unnecessary impediment to the prompt placement of student teachers.⁴

The time period during which candidates complete their student teaching, residency, or similar clinical experience is arguably the most important time in their teacher

¹ Except for the New York City Department of Education, which is specifically exempted as a “city school district with a million or more inhabitants.”

² All subsequent references to “school districts” herein include BOCES.

³ Additionally, to obtain coverage, the student teacher must “deliver the original or a copy” of a legal document with which they were served to the board of education, trustee, board of trustees, or BOCES within 10 days.

⁴ While the statute only addresses student teachers, it is SED’s opinion that other candidates in education preparation programs should be treated similarly.

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training; it is when they are given the opportunity to put their classroom studies and training in pedagogy to use in the field. The importance of this requirement cannot be overstated. All of New York's public schools must support the clinical experience process to ensure an adequate teaching force, now and in the future.

Dated July 11, 2022