

**SCHOOLS EXCESS LIABILITY FUND
BYLAWS**

P R E A M B L E

Schools Excess Liability Fund, hereinafter referred to as SELF, is established for the purpose of providing the services and other items necessary and appropriate for the establishment, operation, and maintenance of excess liability, workers' compensation and other risk pooling and insured plans for the **Public Educational Agencies** who are parties thereof, and to provide a forum for discussions, study, development and implementation of recommendations of mutual interest regarding risk pooling and insured **programs**.

The principal office and any additional offices may be located in such places as may be determined by the **Board** of Directors.

Throughout these **Bylaws**, words and phrases that appear in bold type have special meanings. They are defined in the **Bylaws** Article I, DEFINITIONS, or in the **Agreement**, Section I, DEFINITIONS.

ARTICLE I. DEFINITIONS

The terms in these **Bylaws** shall be as defined in the **Agreement** or in the appropriate **Memorandum of Coverage**, and as additionally specified below:

- A. **Agreement** shall mean the Joint Powers **Agreement** executed by **parties** to SELF.
- B. **Contingency Fund** shall mean a portion of each **party's** annual **contribution** set aside to fund losses which exceed actuarially determined funding levels for a given year. The capital target for this fund will be discussed in each year's actuarial report.
- C. **Contribution** shall mean money, including, but not limited to, special assessments, paid by a **party** to SELF in return for the services and coverage outlined in the appropriate **Memorandum of Coverage**.
- D. **Custodian** means the county treasurer, certified public accountant, or financial institution designated by SELF pursuant to applicable law to be the depository and **custodian** of all the money of SELF.
- E. **Excess coverage** means the amount of coverage provided by SELF in excess of the **retained limit** as specified in the appropriate **program Memorandum of Coverage**.
- F. **Retained limit** means the amount of paid **claim** liability for which each **party** to the **Agreement** is responsible on a per occurrence basis.
- G. **SELF Area** is defined as described in Exhibit 1.

ARTICLE II. FUNCTIONS OF THE AUTHORITY

- A. To provide risk-pooling (group self-insured) and insured plans for **parties** of SELF and as such, to perform, or contract for the performance of, the financial and claims administration, risk and loss control, legal and other services as necessary for the payment and handling of all **claims** against **parties** as deemed appropriate by the **Authority's Board** of Directors.
- B. To pursue any **party's** rights of subrogation against a third party when in the discretion of the **Board** the same is appropriate.
- C. To obtain insurance and reinsurance coverage in amounts to be determined by the **Board**, as appropriate.
- D. To acquire, hold, and dispose of property, real and personal, employ personnel and operate and maintain a system to manage risk-pooling (group self-insured) and insured **programs**, all for the purpose of providing the **parties** with the necessary education, study, development, and implementation of such **programs**.
- E. To incur debts, liabilities and obligations necessary to accomplish the purposes of the **Agreement** and these **Bylaws**.
- F. To receive gifts, donations of property, monies, services or other forms of assistance from persons, firms, corporations, associations, and any governmental entity.
- G. To provide a forum for discussion, study, development and implementation of recommendations of mutual interest.
- H. To sue and be sued in the name of SELF.
- I. To maintain accurate case records for all covered risks and accurate records of all **claims**.
- J. To perform these and such other functions as may be necessary or appropriate to carry out the **Agreement**, so long as such functions so performed are not prohibited by any provision of law and not otherwise inconsistent with the **Agreement** or these **Bylaws**.

ARTICLE III. ADMINISTRATION

- A. Administrator: The administrator of the SELF **Agreement** and these **Bylaws** shall be the **Board**. The composition and the powers of the **Board** are fully set forth in the **Agreement**, to which reference is hereby made for further particulars.

ARTICLE IV. MEMBERSHIP

- A. **All public educational agencies** as defined in the SELF **Agreement** located within the State of California with statutory authority to self-fund or insure against **claims** may apply for membership in SELF. Membership is contingent upon being a **party** to the **Agreement** and paying the required **contribution(s)** for the **program(s)** in which the **party** is to participate, as well as the **Board's** determination as to the effect upon SELF of the applicant's proposed membership in SELF, as determined by information provided by the application form and such other information as the **Board** may reasonably request.
- B. SELF shall provide application forms and establish procedures for their completion and submission. The application form shall include, but not be limited to, a request for the following information:
1. Underwriting data for the current year;
 2. Incurred losses for the lesser of: the **public educational agency's** entire prior loss history, or the prior ten (10) years' loss history; and
 3. If available, a copy of the most recent **claims** audit and actuarial reports.
- C. Upon the approval of the **Board** of SELF, any **public educational agency**, as defined in the **Agreement**, that is not a **party** thereto but that desires to join SELF, may become a **party** thereto by executing a copy of the **Agreement** whereby said **public educational agency** agrees to comply with the terms of the **Agreement** and these **Bylaws** as from time to time amended and in effect.

ARTICLE V. ELECTION OF THE BOARD OF DIRECTORS

This Article does not apply to appointed positions or to *ex-officio* **member** positions.

- A. SELF shall notify all **parties** of scheduled elections in October of the year preceding each election. In response to the notice, each **party** will supply SELF with the name, and office of the person designated by the **party** to receive nomination forms, ballots, candidate statements, and return the ballots for the election. The **Board** will provide nominating forms to **parties**. The nomination process will be determined by the **Board**.
- B. Nominations for the **Board** and Candidate Statements of Qualifications must be received by SELF no later than the third Monday of March of each election year. SELF shall mail the ballot of those individuals nominated to be primary **members** to the **parties** no later than the second Monday in April of each election year. Ballots being returned by **parties** shall be postmarked no later than the last Monday in April. Ballots not received in accordance with these procedures shall not be counted. The ballots shall be counted and an Election Committee established by the **Board** to administer elections shall have the right and authority to determine whether any ballots are defective and therefore void. The **Board** shall certify the elections at a regularly scheduled meeting no later than the last day in June. Those nominees within each **SELF Area** receiving the greatest number of votes shall be

declared winners and shall serve as primary **Board members**. In the event of tie votes among nominees for the **Board**, winners shall be determined by lot for those so tied. Notification of election results shall be sent to all **parties**. Alternate **Board members** shall be selected and certified by the **Board**. Vacancies of alternate **Board members** occurring in any **SELF Area** shall be filled by a majority vote of the **Board**. In the event an alternate moves onto the **Board of Directors** to fill a vacancy, the **Board** shall select a new alternate. Any alternate from within a **SELF Area** may be asked to serve at any meeting of the **Board** in the absence of a primary **Board member** from that **SELF Area**.

- C. If no more than one candidate is nominated for each available seat on the **Board** within any given **SELF Area**, no further election proceedings shall take place with respect to that **SELF Area**. Such unopposed candidate or candidates shall be declared the winner(s) and shall be seated as a primary **Board member** or primary **Board members** when the new **Board** takes office.
- D. In an election year the **Board** will hold one of its required regular meetings at a date selected by the **Board**, no earlier than the second Monday in May and no later than the last day in June, at which the agenda shall contain the certification of elections.

ARTICLE VI. OFFICERS

- A. The officers shall be elected by and from the **Board**. The principal officers shall be the Chairperson, Vice Chairperson, Secretary, and Comptroller. Each shall serve a two-year term of office. Any primary **member** elected or appointed as an officer may be removed at any time for cause. Vacancies may be filled at any time by the affirmative vote of a majority of the **Board** in attendance at a meeting of the **Board**, provided a quorum is present.
- B. The officers shall be custodians of the property of SELF. SELF shall furnish a Blanket Faithful Performance Bond or self-fund such risk, covering all officers and employees. The liability limits shall be determined by the **Board** and the premiums for bonding shall be considered an administrative expense.
- C. The Chairperson shall have general supervision and direction of the business of SELF, shall see that all orders and resolutions of the **Board** are carried into effect, and shall have an *ex-officio* position on all committees. The Chairperson shall have such other powers and perform such other duties as may be prescribed from time to time by the **Board**.
- D. The Vice-Chairperson shall have such powers and perform such duties as may be prescribed from time to time by the **Board** or the Chairperson. In the absence or disability of the Chairperson, the Vice-Chairperson shall be vested with all the powers and authorized to perform all the duties of the Chairperson.
- E. The Secretary shall attend all meetings of the **Board** and insure the recording of all votes and minutes of all proceedings; shall give, or cause to be given, notice of all meetings of the **Board** when notice is required by these **Bylaws**; and shall have such other powers and

perform such other duties as may be prescribed from time to time by the **Board** or the Chairperson.

- F. Subject to the provisions of California Government Code Section 6505.5, the Comptroller of SELF is the officer designated to establish procedures, subject to approval by the **Board**, for SELF to issue checks, make wire transfers, and make other disbursements to pay demands against SELF. The Comptroller of SELF is also responsible for establishing, subject to **Board** approval, appropriate banking and custodial arrangements for the safe-keeping of SELF funds and investments. The Comptroller shall have such other powers and perform such other duties as may be prescribed from time to time by the **Board** or Chairperson.

ARTICLE VII. EXECUTIVE COMMITTEE

An Executive Committee is established consisting of the Officers of the **Board** and the immediate past Chairperson. If no immediate past Chairperson is serving on the **Board**, any primary **member** of the **Board** may be appointed by the **Board** to serve on the Executive Committee. Chairs of the Finance, Liability Claims & Coverage, Workers' Compensation Claims & Coverage, and Member Services & Communications committees shall also serve as members of the Executive Committee. If a Committee Chair has been elected as an Officer, then the Board will appoint a Member-at-Large to serve as a member on the Executive Committee to fill the nine member Executive Committee. A quorum shall consist of five (5) persons, one of whom shall be the Chairperson, the Vice Chairperson, or the Secretary of the **Board**. The **Board** may delegate such authority to the Executive Committee as is not inconsistent with the **Agreement**, these **Bylaws**, and the laws of the State of California.

ARTICLE VIII. CHIEF EXECUTIVE OFFICER

The Chief Executive Officer of SELF shall be charged with the responsibility for the day-to-day business operation of SELF. The Chief Executive Officer shall have such authority as is contained in the Position Description and that which may be delegated by the **Board** or Executive Committee, provided that such delegation is not inconsistent with the **Agreement** or these **Bylaws**.

ARTICLE IX. COMMITTEES

- A. As needed, the Chairperson will establish committees that will serve under the direction of the **Board**. Such committees may include, but are not limited to, the following:
1. A Finance Committee
 2. A Liability Claims and Coverage Committee
 3. A Member Services and Communications Committee.
 4. A Workers' Compensation Claims and Coverage Committee
- 5

5. Such other Committees as deemed appropriate by the Chairperson.
- B. All primary **Board members** shall serve on at least one committee, and all alternate **Board members** shall serve as alternate members of at least one committee. Committees shall be chaired by other than members of the Executive Committee.
- C. A quorum shall consist of a majority of the number of primary **Board members** currently serving on the committee. Alternate **Board members** who have been appointed by the Chairperson as alternate members of the committee, and primary or alternate **Board members** who are not members of the committee, may count towards the establishment of a quorum at committee meetings.
- D. Alternate **Board members** who have been appointed as alternate members of a committee may vote at meetings of that committee.

ARTICLE X. FINANCE AND INVESTMENTS

- A. SELF shall operate on a **fiscal year** from July 1, to June 30.
- B. Each **party** to the **Agreement** shall pay to SELF each **fiscal year**, **contributions** calculated pursuant to the **Agreement** and these **Bylaws**, as the established yearly **contributions** for each **program** in which a **party participates**. **Contributions** shall be determined using appropriate actuarial principles.
1. **Contributions** shall be made in advance based on the established yearly amount calculated by the **Board**. These amounts represent each **party's** share of each risk pool or insured **program**. These **contributions** shall be due within thirty (30) days of receipt of the due bill from the **Board**, and coverage shall be contingent upon payment. The **Board** may assess penalties for noncompliance.
 2. Additional **Contributions**: Should **claims** against or by the **parties** to any risk-pooling portion of a **program** exceed the amount available for the payment of such pooled **claims**, then each **party** to such risk-pooling **program** shall be required by the **Board** to contribute additional pro-rated amounts sufficient to meet the pooled **claims** liability.
- C. Losses will be paid pursuant to the appropriate **program Memorandum of Coverage** on behalf of the affected **parties** when the actual judgment, compromise and release, award, **claim** or settlement exceeds the **retained limit**.
- D. All expenditures and disbursements of monies shall be authorized in accordance with rules and procedures established by the **Board**.
- E. The **Board**, at its discretion, may declare equity distributions or rate credits using surplus reserves and assess **parties** for any risk-pooling **program** year deficits which may occur, on a *pro rata* basis. *Pro rata*, for the purposes of calculating a **party's** equity or deficit, shall mean to determine separately for each risk-pooling **program** year, a **party's** share of

the equity or deficit by multiplying the total equity or deficit by a fraction, the numerator of which is the total **contribution** and assessment paid to such risk-pooling **program** by the **party** during such year, and the denominator of which is the total **contributions** and assessments paid to such risk-pooling **program** by all **parties** during such year. Equities and deficits do not accrue to the **parties** unless or until they have been declared by the **Board**.

- F. The **Board** shall have the authority to invest or cause to be invested in compliance with Section 6509.5 of the California Government Code, such surplus monies as are not necessary for the immediate operations of SELF in such securities as allowed by Article I of Chapter 4 of Part 1 of Division 2 of the Government Code, commencing with Section 53600. The level of cash to be retained for the actual operation of SELF shall be determined by the **Comptroller**.
- G. No **claim** or obligation shall be paid from one **program** to meet the obligation of another **program**, with the following exceptions:
1. If an immediate need arises to pay an obligation from a **program** with insufficient **funds** to meet such obligation, the **Board** may authorize the loan of a portion of the **funds** available for long term investment from other **programs** to meet such obligation.
 2. The **Board** shall, at the time the loan is made, establish the rate of interest to be charged to the **program** receiving the loan proceeds. The **Board** shall consider the prevailing prime rate as well as yield on other investments in determining such interest rate. The interest shall accrue to the benefit of the **program** making the loan.
 3. **Parties** of the **program** to which the loan is made shall be assessed for the amount of the principal and interest of such loan pursuant to Paragraph B of this Article.
- H. In addition to funding **claims** and other liabilities, the **Board** shall establish a **contingency fund** for losses which exceed actuarially determined funding levels for any given year. The amount of such **contingency fund** shall be determined annually.

ARTICLE XI. BUDGETS

The budgets for each **program** shall separately contain the following:

- A. A General and Administrative Section;
- B. An Interest Income Section; and
- C. Sections for:
 1. Where appropriate, the actuarially estimated **claims** and **claims** adjustment costs;

2. An equitable allocation of the General and Administrative costs; and,
3. Where appropriate, an equitable allocation of the Interest Income.

ARTICLE XII. REPORTING OF CLAIMS

As respects all claims that meet the reporting criteria set forth in the applicable **program** Memorandum of Coverage, all **parties** shall provide **claims** information to SELF, as follows:

- A. SELF shall be given complete access to the covered **party's** claim file, the defense attorney's complete file, and all investigation material and reports, including all evaluations and information on negotiations.
- B. Unless otherwise agreed to by SELF, the covered **party** shall report the progress of the litigation and any significant developments in it, at least quarterly to SELF.
- C. The covered **party** shall provide SELF with copies of all correspondence provided to the covered **party** by its defense counsel and/or its agents, as soon as such correspondence is received by the covered **party**.
- D. The covered **party's** defense counsel must provide SELF with an objective, written analysis of liability and exposure in any reported claim no later than ninety (90) days after assignment of the case to defense counsel. Said initial report shall, at a minimum, provide a brief synopsis of the facts giving rise to the lawsuit; the status of the pleadings, including a discussion of any demurrers or motions to dismiss, or cross-complaints; a summary and analysis of plaintiff's injuries, damages, and exposures in the case; an initial impression of liability; any requests for additional investigation; a brief outline of the discovery planned; and an itemized budget that sets forth what services defense counsel expects the litigation will require, and the total anticipated cost of those services through trial.
- E. The covered **party's** defense counsel must report to SELF, in writing, the setting of any trial date, any settlement conference date, and any hearing date on motion for summary judgment or similar dispositive motion in any litigated case, within one (1) week after the date on which a court establishes such date.
- F. The covered **party's** defense counsel must report to SELF, in writing, on the substance of all depositions taken in the case, including a concise report of major events occurring at the deposition, and an evaluation of the effect of the deposition testimony on the case.
- G. No later than sixty (60) days before the date set for trial in any case, the covered **party's** defense counsel must report to SELF, in writing, the following matters: (1) an assessment of liability in the case; (2) the adverse potential exposure if liability is found; (3) a concise summary of injuries sustained and/or claims; (4) an assessment of any other factors (such as local jury tendencies, appearance of important witnesses, etc.) that may affect the liability analysis or exposure assessment; (5) an opinion on the settlement value of the case;

and (6) an itemized budget that sets forth what defense counsel expects it will cost to take the case forward from that point through trial.

A covered **party's** failure to comply with these provisions of the SELF Bylaws will be grounds for SELF to deny all coverage for any claim with respect to which these provisions have not been followed.

ARTICLE XIII. SETTLEMENT OF CLAIMS

The **Board** shall establish **claims** settlement procedures. All covered **parties** shall, upon request, provide **claims** information on a timely basis.

ARTICLE XIV. ACCOUNTS AND RECORDS

- A. SELF is strictly accountable for all monies it receives and disburses and, to that end, SELF shall establish and maintain such **funds** and accounts as may be required by good accounting practice or by any applicable provision of law.
- B. The **Board** shall provide for an annual audit by an independent Certified Public Accountant of each of the **program funds** and provide for periodic **claims** audits. An audit summary shall be distributed to all **parties**. Any costs of the audits, including contracts with, or employment of, Certified Public Accountants in making the audits provided for herein, shall be borne by SELF and shall be a charge against any unencumbered funds of SELF available for that purpose.
- C. SELF shall keep at its principal office, correct and complete books and records of account, written minutes of the proceedings of its meetings, the original or a copy of the **Agreement**, all **Memoranda of Coverage**, and **Bylaws** as amended to date, and a record giving the names and addresses of all **members**.

ARTICLE XV. WITHDRAWAL FROM OR TERMINATION FROM SELF PROGRAM PARTICIPATION

A **party** to SELF may cease to be a **party** thereto or may discontinue participation in any **program**, and may withdraw from SELF or be terminated from membership in SELF as provided in the **Agreement**, to which reference is hereby made for further particulars. Upon the withdrawal or termination of any **party** from SELF, or from any **program** in which the **party** participates, the withdrawing **party's** equity or deficit position while a participant in each such **program** will continue to be reflected in the records and reports required under Article XIV of these **Bylaws**.

ARTICLE XVI. NOTICE OF CHANGE IN RETAINED LIMIT OR IN TOTAL LIMITS OF EXCESS COVERAGE

The Board shall establish the minimum limits of **excess coverage** that each **party** shall be required to buy for each **program** year, and shall also establish the amount(s) of **retained limit(s)** that a **party** may retain for each **program** year. A member that desires to change either its **retained limit** level or its total limits of **excess coverage** from the previous year's level may do so only if it gives SELF adequate notice of its intention to change such level of **retained limits** or total limits of **excess coverage** for the coming **fiscal year**. For purposes of this Article XVI of these Bylaws, notice shall be deemed adequate if the member notifies **SELF** no later than March 1, of the member's intention to change its **retained limit** level or its total limits of **excess coverage** effective the following July 1. In order to be valid, such notice must be in writing, must be dated and signed by the **SELF** member giving notice of intention to change its retention level, and must be received in the **SELF** office no later than the close of business on March 1.

ARTICLE XVII. DISTRIBUTION OF PROPERTY AND MONIES UPON TERMINATION OF SELF

- A. Distribution of assets upon termination of SELF shall be as provided in the **Agreement**.
- B. The current fair value of SELF properties shall be determined by the **Board**. If a **party** disagrees with the current fair value of SELF properties as determined by the **Board**, the current fair value of said properties shall be determined by an independent appraiser selected by the **Board** and paid for by such **party**.

ARTICLE XVIII. LIABILITIES

Liabilities of **parties** for **claims**, debts and obligations shall be as provided in the **Agreement**, these **Bylaws** and the appropriate **Memorandum of Coverage**.

ARTICLE XIX. AMENDMENTS TO THE BYLAWS

- A. These **Bylaws** may be amended, supplemented, altered, or repealed in whole or in part, by the **Board** at a meeting wherein a quorum is present and at least two-thirds (2/3) of the **members** present at the meeting vote for the resolution; providing that the proposed **Bylaw** change has been presented at a previous regular **Board** meeting.
- B. Unless otherwise stated in the amendment, the effective date of any amendment shall be on July 1 following its adoption.

ARTICLE XX. NOTICE AND SERVICE THEREOF

Any notice given pursuant to the **Agreement** or appropriate **Memorandum of Coverage** shall be in writing and shall be dated and signed by the party giving, and duly authorized to give, such notice. If notice is given to SELF, it shall be delivered to the SELF office, which is currently located at 1531 "I" Street, Third Floor, Sacramento, California 95814.

ARTICLE XXI. SEVERABILITY

Should any portion, term, condition, or provision of these **Bylaws** be determined by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the remaining portion, terms, conditions, and provisions shall not be affected thereby.

ARTICLE XXII. MISCELLANEOUS

- A. The Article and other headings herein are for convenience only and are not to be construed as modifying or governing the language in the provision referred to.
- B. Whenever in these **Bylaws** any consent or approval is required, the same shall not be unreasonably withheld.
- C. Should there be a conflict with the **Agreement** in any portion, term, condition or provision of these **Bylaws**, provisions of the **Agreement** shall take precedence.

ARTICLE XXIII. INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHER SELF AGENTS

SELF may, to the extent allowed by applicable state and federal laws, indemnify and hold harmless its officers, **Board members**, agents and employees from and against any and all **claims**, actions, or proceedings, whether threatened, pending or completed, brought by reason of their respective position with or relationships to SELF, including, without limitation, all reasonable attorneys' fees, costs and other expenses incurred in establishing a right to indemnification under this Article.

ARTICLE XXIV. EFFECTIVE DATE

These **Bylaws** shall become effective on July 1 following their adoption.