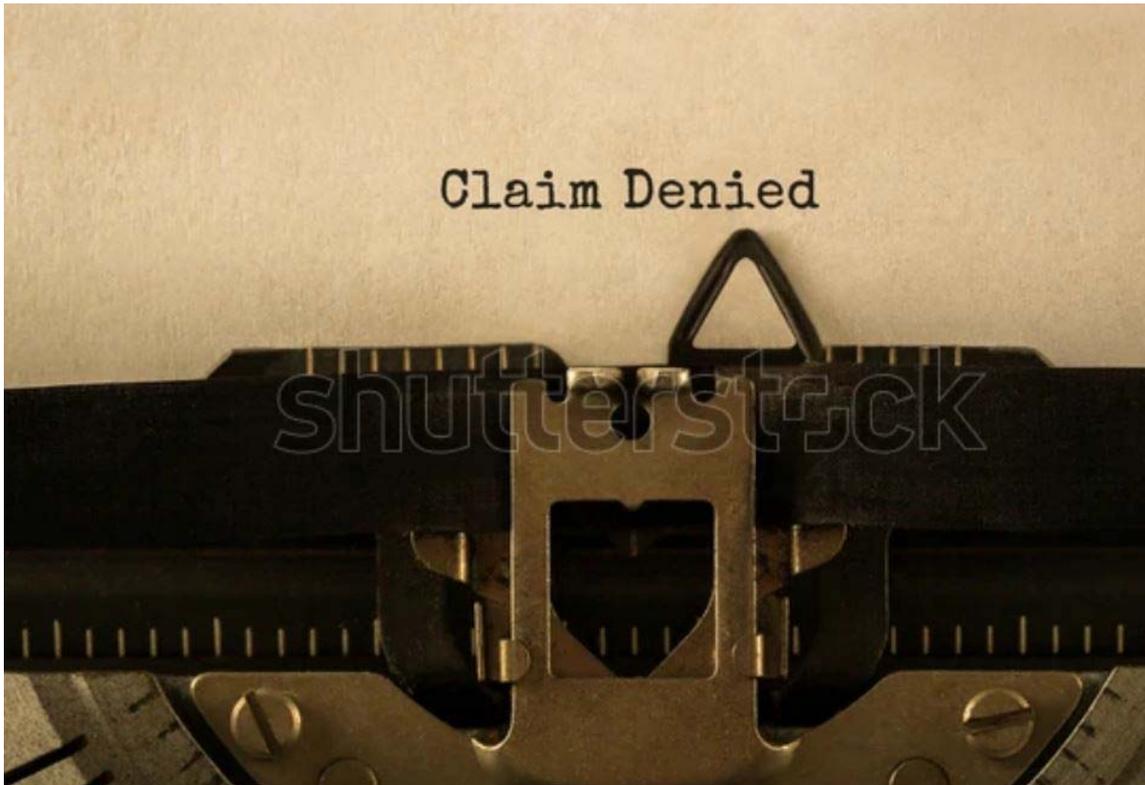


Washington Schools Risk Pool Declines Coverage For South Kitsap School Board Lawsuit



Taxpayers Beware- below is a letter from the State Risk Pool (State Insurance Agency that insures school systems) regarding the lawsuit filed against the School Board. What is important is that the risk pool will not pay the legal costs of the board members. The district has a policy that allows the district to pay them. Thus far, the "investigation" has cost \$10,400 of your money that should be going for student needs. It is time to tell the district that you don't want your tax money spent on lawyers for the board members.



September 8, 2021

Tim Winter
Superintendent
South Kitsap School District
2689 Hoover Ave SE
Port Orchard, WA 98366

Eric L. Gattenby
President
South Kitsap School Board
2689 Hoover Ave SE
Port Orchard, WA 98366

Re: Member District : South Kitsap School District
Claim No. : 21-36799
Claimants : Jeffrey Daily
Date of Loss : July 21, 2021
Coverage Agreement : #COV20-21
Jeffrey Daily v. South Kitsap School Board
Kitsap County Superior Court, Case No. 21-2-01233-18

Dear Mr. Winter and Mr. Gattenby:

Washington Schools Risk Management Pool (“WSRMP”) has reviewed the August 18, 2021 Complaint filed in the above-referenced lawsuit (the “Lawsuit”) against the South Kitsap School Board (the Board”) by Board member, Jeffrey Daily. The Lawsuit alleges that the Board failed to investigate a misconduct complaint against Board members brought by Mr. Daily, while simultaneously investigating frivolous allegations brought against Mr. Daily in a move to censure and ultimately remove him from office.

WSRMP has carefully reviewed Mr. Daily’s allegations and is writing to respectfully decline to defend or indemnify the Board for the Lawsuit. The WSRMP Coverage Agreement covers the District’s liability to pay “damages” because of “wrongful acts.” In this case, however, the Complaint does not seek “damages,” but instead requests non-monetary relief, which is not covered by the Coverage Agreement. Specifically, Mr. Daily requests that the court order the Board to: (1) reverse its decision declining to investigate the misconduct complaint brought by Mr. Daily and (2) amend its rules regarding the handling of such complaints. Because Mr. Daily does not seek damages, WSRMP must respectfully decline to provide coverage for this matter.

Because there is no coverage for the Board under the Coverage Agreement for this Lawsuit, WSRMP urges you to work with trusted counsel to protect the Board’s interests.

After reviewing this letter, please let us know if you have any questions or would like to discuss these issues further.

Mr. Daily’s Allegations

According to the Complaint, Jeffrey Daily was elected as representative member of the Board in 2019. After entering office in 2020, Mr. Daily submitted written allegations regarding the misconduct of certain Board members to the Board President. Mr. Daily alleges that instead of the Board investigating or otherwise taking any action regarding Mr. Daily's allegations, the Board President allegedly found Mr. Daily "out of order" pursuant to a non-statutory procedural rule and "buried" Mr. Daily's complaint.

On July 21, 2021, Mr. Daily made a Motion for the Board to take action regarding his complaints of misconduct. Mr. Daily's Motion proposed: (1) acknowledging the allegations of misconduct; (2) that the Board President advise of the Board's response to the allegations; (3) referring the matter for investigation by a neutral outside investigator if an investigation had not already commenced; and (4) that allegations regarding the Board President's own misconduct be evaluated by an impartial outside investigator. The Board Vice President ruled the Motion "out of order" and the Board rejected it.

Mr. Daily alleges that the Board did not investigate his complaint, but instead investigated allegations against Mr. Daily that he alleges would not violate Board or District policy or the law even if proven true. Mr. Daily contends that the "District's Risk Pool" retained an investigator who produced a 180-page report concerning this investigation.¹ He further alleges that, as one-step towards his removal from office, Board members are planning a move to censure him based on the contents of that report.

Mr. Daily asserts that the Board policies governing misconduct are unclear, vague and incomplete and contain no guidance on how to submit a complaint to the Board and on what grounds a complaint will be investigated. Mr. Daily contends these policies provide a method for collusion, violate RCW 42.52.200, and must be replaced with policies that are consistent with the law on ethics in public service in RCW Ch. 28A.645. Mr. Daily also asks the court for judgment mandating that the Board investigate his misconduct complaint and requests leave to seek a temporary restraining order/preliminary injunction staying the Board's process of censure against him on the grounds that filing his appeal will accelerate the Board's alleged retaliatory censure process, leading to his removal from office.

WSRMP understands that the allegations in the Complaint are allegations only, and that the allegations are unproven and may be untrue, incomplete, or exaggerated. WSRMP has reached no conclusion as to the truthfulness of any of Mr. Daily's allegations and summarizes them here for the purpose of explaining the available coverage.

The Complaint Does Not Trigger Coverage Under WSRMP's Coverage Agreement

WSRMP's Coverage Agreement provides coverage for the District's legal liability for "damages" as a result of "wrongful acts," which are defined to include any actual or alleged error, misstatement, misleading act or statement, or any omission, or a series of related acts. "Damages" means a monetary judgment or settlement, and does not include fines, statutory penalties, or restitution or return of unjust enrichment. "District," as used in the Errors and Omissions Liability Coverage, includes the Member School District and its elected and appointed officials and boards for actions within the course and scope of their official duties.

¹ As you may recall, WSRMP previously extended *discretionary* coverage to the District for this investigation.



In this case, the Complaint does not seek the District's liability for "damages," as that term is defined in the Coverage Agreement, a *requirement* for coverage under WSRMP's Coverage. Instead, it seeks injunctive relief requesting that the court: (1) reverse the Board's decision declining investigation of Mr. Daily's misconduct complaint; (2) strike the Board rules regarding misconduct complaints; (3) require the Board to adopt new rules reviewed by an ethics board, and (4) grant Mr. Daily leave to move for a temporary restraining order/preliminary injunction. Because the Complaint does not seek "damages," the E&O coverage is not available. We also note that the Coverage Agreement contains an exclusion for the costs, fees, or expenses incurred to comply with an order to implement injunctive relief.

Although we understand that Mr. Daily's allegations are disputed, please note that the Coverage Agreement excludes coverage for claims for harm intentionally caused by the District or for the District's willful misconduct. Therefore, if it is established that the Board intentionally failed to address Mr. Daily's misconduct complaint, targeted Mr. Daily for censure, and/or failed to maintain and apply Board rules in conformance with State law, there would be no indemnity coverage for such claims under the Coverage Agreement.

Our position with respect to coverage is based upon the facts as we know them and the Complaint. We regret that WSRMP will be unable to assist the District in this matter. Please notify us if you are aware of any additional facts that you believe are relevant. If Mr. Daily amends his Complaint to assert other claims for relief, please let us know and we would be glad to review the Amended Complaint for coverage.

Please feel free to call if you have any questions about this letter.

Sincerely,

A handwritten signature in black ink, appearing to be 'CH' or similar initials, written in a cursive style.

Cai Hadfield, FCLA

WSRMP Claims Consultant