

POLICY NO. SIR - 01

SELF-INSURED RETENTION POLICY

Effective January 27, 1992

Revised April 17, 2008

1. DETERMINATION OF ANNUAL CONTRIBUTION

- 1.1 **Gross Rate.** The Board will establish a "Gross Rate" (GR) for each fiscal year. The GR shall be determined and expressed as a "per unit of Average Daily Attendance (ADA)." The GR will include the actual insurance premiums paid or to be paid by OSS for that fiscal year, an amount equal to estimated expenses for that fiscal year, and a "contingency provision" sufficient to cover potential claims which OSS may be responsible for and which may not be paid by reinsurance. In establishing such amount, the Board shall, on an ongoing basis, create sufficient reserves to provide claim coverage which may exceed the annual contingency provision. The foregoing amount will be reduced by the projected income from fund investments.
- 1.2 **District Rate.** The "District Rate" (DR) shall be determined by multiplying the gross rate by an actuarially determined experience factor based on the historical loss experience of each district participant. The DR shall be determined and expressed as a "per unit of Average Daily Attendance (ADA)." For example, if the Gross Rate is \$15.62 per unit of ADA and the experience factor determined by the actuary is 1.2, the DR will be \$18.744 per unit of ADA. The experience factor shall not result in a credit or surcharge in excess of twenty percent (20%). Therefore, the minimum experience factor shall be .80 and the maximum shall be 1.20. The experience factor shall be established by the Board on an annual basis in consultation with the actuary establishing the District Rates.
- 1.3 **Annual Contribution.** Each District's annual contribution to OSS shall be equal to the DR as determined under section 1.2 multiplied by the District's ADA as determined under State of California rules for participation in State funding programs.

2. UTILIZATION OF FUND

- 2.1 **Contingency Fund.** As the District contributions to OSS are received, the percentage of the rate allocation for the same year which is established for the contingency fund shall be applied to all such receipts, and the amount thereof shall be transferred immediately to a reserve account for contingencies.

2.2 **General Fund.** The balance of all receipts shall be placed in the general fund of OSS and on a monthly basis shall be used to pay the operating expenses and transferred to reimburse the trust fund for payment of claims on a monthly basis. Payments made on all reinsurance stop-loss and other insurance policies shall be considered an expense of operations.

2.3 **Coverages Provided.** For purposes of this policy, the term "coverages provided" means only those coverages applicable under the coverage document(s) purchased by OSS for the benefit of its members. The self-insured retention funds of OSS provide only that coverage for Member Districts, their agents, and employees, which is provided to those insureds under the liability insurance policies purchased by OSS which apply as the first layer of coverage over and above the self-insured retention funds. Those coverages would generally include all owned personal property (including owned vehicles), business auto coverage, and such other liability coverage, riders, floaters, etc., as OSS may from time to time purchase, subject to all coverage exclusions, limitations, conditions, and requirements as may be set forth in such coverage document(s). No portion of the Self-Insured Retention Fund shall be used for, nor shall OSS be liable for, any liability of a Member for which no coverage exists under the coverage document(s) purchased by OSS for the benefit of its Members. Therefore, to the extent that there are exclusions and limitations of coverage in the said liability coverage document(s) purchased by OSS for its Member Districts, whether those exclusions and limitations pertain to coverages under California Education Code Section 35208, California Government Code Section 990, or otherwise, all such exclusions and limitations of coverage are also applicable to OSS self-insured retention funds. If a District is included under any Inland Marine Floater in an OSS coverage document, no portion of the Self-Insured Retention Fund would be applied for any property loss of the Member District which relates to a loss covered by such Floater.

The responsibility for determining what constitutes a valid claim under any coverage document of OSS shall be upon the excess insurer issuing the coverage document. If such excess insurer indicates that the claim would be covered under their coverage document, their decision shall be binding on OSS. If such excess insurer indicates that the claim would not be covered under their coverage document, the decision may be appealed by the Member District to the executive committee of OSS for review. The executive committee may override the decision of the excess insurer and agree to cover the claim but only up to an amount not exceeding \$50,000 (the amount of the applicable self-insured retention). If the excess insurer refuses to indicate whether the claim would or would not be covered, then the issue of coverage shall be decided by the executive committee after receipt of a recommendation of the Third Party Administrator of OSS. All decisions of the executive committee provided for herein shall be final, and no further appeal is permitted.

- 2.4 **Application of SIR.** As to those coverages provided under the various coverage documents available through OSS for the benefit of its members, OSS will pay per incident or occurrence the lesser amount of the ultimate net loss or the Self-Insured Retention (SIR) of Fifty Thousand Dollars (\$50,000). If an occurrence involves more than one section of the coverage document (i.e. property and liability), OSS is responsible for only a single SIR. For example; if a member's school bus driven by one of its employees backs into one of its own buildings causing damage to the building and also causes injuries to students and a visiting parent, OSS would be responsible for a maximum of Fifty Thousand Dollars (\$50,000), one SIR for the entire occurrence regardless of the amount of damage to the building and bodily injuries. Damage to the bus would be subject to the collision deductible for motor vehicles which is Five Hundred Dollars (\$500).

When a liability coverage document provides for a self-insured retention but also provides for a sharing of costs of defense, settlement, or judgments in excess of the self-insured retention (i.e., wrongful termination claims), all shared costs in excess of the SIR shall be the sole responsibility of the involved Member District.

- 2.5 **SIR Coverage When More Than One District is Involved.** In the event that two or more Member Districts suffer a property loss and are exposed to third party liability claims as a result of a single incident or occurrence, it is likely that several separate claims, each subject to a \$50,000 self-insured retention, will arise. If the facts of the example in Section 2.4 above were changed to read that the school bus was owned by a second Member District and driven by an employee of the second Member District, there would be a potential for several self-insured retention amounts to be met (e.g., one for the claim for property damage to the real and personal property; one for the claim for damage to the bus; one for any claim by the injured students against a school district for premises liability; and one for any claim by injured students against a school district for automobile liability). Under such circumstances and to minimize the obligation of OSS (i.e., reduce the number of self-insured retentions to be met), it is the policy of OSS to not pay or submit to the third party claims administrator any first party property damage claim by a Member District for which another Member District is legally obligated to pay; rather, the Member District whose property is damaged because of the negligence or other liability of a second Member District shall make a liability claim against the second Member District which was responsible for the loss, and the claim will be paid (and the self-insured retention met) under the liability section of the coverage document applicable to the second Member District which was responsible for the property loss of the first Member District.

- 2.6 **Incident or Occurrence.** For purposes of this policy, "incident or occurrence" shall be defined as an accident or event and all related incidents or occurrences which may occur in conjunction with or as a direct result of the initial accident or event. For example, a transportation accident involving a bus and students shall be treated as one incident (and therefore have an SIR ceiling of \$50,000) no matter how many different individuals may file claims or bring causes of action as long as they occurred in conjunction with or as a direct result of the bus accident.

- 2.7 **Ultimate Net Loss.** For purposes of this policy, ultimate net loss means loss, cost, or damage which arises out of an occurrence for which coverage is provided under the various policies and coverage purchased by OSS for the benefit of its Members, which are actually paid by a Member or which become payable during the period that a school district is a Member of OSS.
- 2.8 **Claims Audits.** The third party claims administrator shall make all records and accounts available for review for claims audits in accordance with the requirements of the Board of OSS and in compliance with CAJPA accreditation requirements.

### 3. **SUBROGATION AND SALVAGE**

- 3.1 **Subrogation.** In the event that OSS makes any payment on behalf of the Member District from its Self-Insured Retention Fund, the Member District shall notify OSS, and OSS shall participate with the Member District and any other insurer in the exercise of the Member District's rights of recovery against any person or organization. The Member agrees to execute and deliver all instruments and documents and do whatever else may be necessary to secure such rights. The Member District shall do nothing to prejudice such rights.
- 3.2 **Salvage.** Subject to any of the provisions of a policy purchased by OSS on behalf of its Members and applicable to the subject incident or occurrence, all salvages and payments recovered or received subject to a loss settlement shall be reported to OSS and shall be applied to reimburse OSS for all amounts paid from its Self-Insured Retention Fund on behalf of the Member District. The reasonable expenses incurred in the exercise of the rights of recovery or in salvage, and any interest included in the amount of any said recovery or salvage, shall be apportioned between OSS and the Member District in the same proportion as the principal sum of the recovery or salvage.

### 4. **TERMINATION OF PARTICIPATION**

- 4.1 **Notification.** Written notification of intent to terminate participation must be made in accordance with Article X of the Bylaws of OSS. All conditions and requirements must be met fully, as contained within the Bylaws.
- 4.2 **Withdrawal Agreement.** Upon acceptance and approval of such written notice, the withdrawing Member District shall execute a Withdrawal Agreement with OSS, conditions and terms to be determined by the Executive Board of OSS. Until such time as a Withdrawal Agreement has been executed, the withdrawing Member District shall continue to pay its premium to OSS.

- 4.3 **Good Faith Obligation.** The withdrawing Member District is expected to act in good faith in regard to any continuing obligations that may remain as a result of their participation with OSS.
- 4.4 **Loss of Coverage.** Failure to exercise such good faith, or failure to comply in full with the termination process as outlined in the Bylaws of OSS, and as determined by the Executive Board of OSS, shall result in a loss of all claim or right to the SIR funds and may also result in legal action being taken by OSS against the Member District.