

## **POLICY NO. V-01**

### **USE OF VEHICLES BY THIRD PARTIES**

**Effective October 21, 1991**

**Revised July 1, 2012**

The following guideline of Risk Management Practices has been developed and adopted by the Board of Directors of the Organization of Self-Insured Schools ("OSS") and is effective as of the date indicated above pursuant to Article VIII of the Bylaws of OSS. Each Member District has agreed to the implementation of all guidelines of Risk Management Practices developed by the Board of Directors. The following policy shall be referred to for all purposes as Policy No. V-01.

#### **1. AGREEMENT REQUIREMENTS**

In order to contain and limit liability exposure to the SIR pool of OSS, all Members in OSS shall be required to obtain an executed agreement in the form from time to time designated by the Executive Committee or Board of OSS and hereinafter designated as Form No. V-100A, V-100B, or V-100C as appropriate, from any organization seeking to borrow or use any Member District passenger vehicle. Form V-100A shall be used in the event the Member provides workers compensation coverage to subject employees. Form V-100B shall be used where the "Qualified Entity" as described therein provides such workers compensation insurance coverage. Form V-100C shall be used where the Qualified Entity is a non-member of OSS, and is an eligible organization described at Section 2.1 below.

#### **2. OTHER REQUIREMENTS FOR USE**

The use of a Member passenger vehicle by, or for the benefit of any third party shall be subject to the following requirements:

- 2.1 Vehicles may be used only by other public entities or duly qualified IRC §501c non-profit organizations, constituting a Qualified Entity defined in Section 6.2 hereunder.
- 2.2 Any passenger vehicle borrowed or used by a third party must be driven by a certified driver regularly employed by a Member of OSS, or other organization defined in Section 2.1 above. In the event of the use of a passenger vehicle pursuant to a mutual assistance agreement or in the case of a passenger vehicle loaned to a third party under emergency circumstances, the vehicle may be driven by a certified driver who is not regularly employed by a Member.
- 2.3 Any driver operating a Member vehicle for the benefit of any third party must have signed a "Driver Release" in either **Form No. V-100A** or **Form No. V-100B** (for use with Member drivers); or **Form No. V-100C** (use with vehicles to transport eligible third parties as described in 2.1 above), or any similar form approved by the Executive Committee for use with respect to this policy.

- 2.4 Members shall be responsible for the service and maintenance of such Member owned vehicles.

### 3. **DISTRICT LIABILITY**

The OSS Board recognizes that the liability exposure for those Members who allow their vehicles to be loaned and used by third parties tends to be greater than the risk and exposure for those Members who do not loan their vehicles for use by third parties and, in addition, that the liability exposure is considerably greater if a non-certified driver operates a passenger vehicle. When such vehicles are used by third parties, the following provisions shall apply:

- 3.1 In the event a Member allows the use of a vehicle for other than a permissible organization as described in 2.1 above, then such Member shall be responsible for the full amounts of the SIR (\$50,000).
- 3.2 In the event a Member allows the use of its vehicles by a third party and complies with all of the foregoing provisions relating to execution of an agreement with such third party and a release signed by a certified driver (where a certified driver is required hereunder or by law), and the vehicle (when required hereunder) is in fact driven by a certified driver (where a certified driver is required hereunder or by law), then the loaning Member shall be responsible for and shall pay the first Five Thousand Dollars (\$5,000) resulting from any Member's liability relating to such use before such Member shall be able to require any SIR pool funds be applied, and the total liability of the SIR pool funds in such event shall be limited to Forty Five Thousand Dollars (\$45,000).
- 3.3 In the event that the Member fails to have all of the required documents executed but the vehicle (when required hereunder) is in fact driven by a certified driver (where a certified driver is required hereunder or by law), then the loaning Member shall be responsible for and shall pay the first Twenty Five Thousand Dollars (\$25,000) resulting from any Member liability relating to such use before such Member shall be able to require any SIR pool funds be applied, and the total liability of the SIR pool funds in such event shall be limited to Twenty Five Thousand Dollars (\$25,000).
- 3.4 Regardless of whether or not the loaning Member has the required documents executed, if such district permits the vehicle to be operated by a non-certified driver (where a certified driver is required hereunder or by law), the Member shall be responsible for the first Fifty Thousand Dollars (\$50,000) of Member liability resulting from or relating to such use, and such Member shall have no claim against the SIR pool for any amount.
- 3.5 The provisions relating to requiring a certified driver operate a passenger vehicle shall only require that the Member loaning the vehicle request and receive normal

evidence of certification and does not require that the district run an independent check with the California Department of Motor Vehicles.

3.6 The foregoing provisions for payment of specified portions of the liability by the loaning Member shall apply to all monetary liability incurred with respect to any claim arising out of the use of any borrowed vehicle, including, specifically, any costs of defense relating to such claim. OSS may advance the portion of the liability shifted to the Member under Sections 3.1, 3.2, and 3.3 above and in such event shall be entitled to reimbursement by the loaning Member for all amounts advanced by OSS which are the responsibility of such district.

3.7 In the event that the Qualified Entity borrowing the vehicle(s) is also a Member of OSS, the agreement for such use shall include a provision which makes the borrowing district solely responsible for the use of the vehicle and requires that the loaning district is named as an additional insured. The purpose of the foregoing provision is to avoid creating two separate liabilities for the SIR pool established by OSS.

#### 4. **COPIES OF AGREEMENTS AND RELEASES**

A copy of all such agreements and driver releases shall be forwarded to OSS prior to the time of such use. In the event that such documents are not forwarded to OSS prior to the date and time of usage, it shall be conclusively presumed that for all purposes hereunder no such documents were executed; provided, however, that when vehicles are borrowed by third parties on an emergency basis or without prior notice under a mutual assistance arrangement, the agreement must be sent to OSS within forty-eight (48) hours after the vehicle is borrowed. When practical, all such agreements shall be sent to OSS by either U.S. Mail, fax, or email.

#### 5. **NON-PASSENGER VEHICLES**

A certified driver is not required for a non-passenger vehicle. In the event that the use by any third party of a vehicle results in any liability for which the pool is responsible in connection with the use of such vehicle by a third party, the provisions of only Sections 3.1 and 3.2 shall apply, and the provisions therein relating to a certified driver shall be deemed eliminated.

#### 6. **DEFINITIONS**

FOR PURPOSES OF THE POLICY:

6.1 A "Member certified driver" must be a regular employee of a Member whose principal activity is driving vehicles owned by the district and who has been certified by the State Department of Education as having passed the course provided for the training of school bus drivers pursuant to Education Code §40081 and certified pursuant to Vehicle Code §12517, §12517.2, §12517.3, and §12517.4.

- 6.2 A "third party" means any person or entity described in Section 2.1, other than the Member loaning a vehicle. The term "Qualified Entity" includes any youth activity, sport league, or team, even though the activity is financially supported, directly or indirectly, by a Member or "sponsored" by a Member, unless it is part of the regular K-12 school curriculum.
- 6.3 "Regular K-12 school curriculum" for the purposes of this policy includes only those courses of study, courses, subjects, classes, and organized group activities which are provided by the Member and are mandatory to the student (as opposed to "elective") and fall under the guidelines of "common state curriculum" as defined in Education Code §51012. It excludes any course of study, course, subject, class, or organized group activity which requires in part or in whole financial support of the parent/guardian of the student, or the student himself, in the manner of, but not limited to, fees, uniforms, dues, provision of own equipment or instruments; or any course of study, course, subject, class, or organized group activity whose instructional time or practice time is not solely limited to normal class periods within the normal operation of school hours for the core curriculum as defined by the Member.
- 6.4 A "Member" means any school district or agency which has become a member of OSS pursuant to the provisions of the OSS agreement and bylaws.
- 6.5 A "loaning Member" is a Member which allows a third party to use with or without charge one or more of its vehicles.
- 6.6 A "passenger vehicle" is a motor or electric vehicle which is regularly used to transport one or more persons from place to place when being used as a "passenger vehicle." The term "passenger vehicle" shall include school buses and automobiles (including automobiles designated for driver education purposes or vans) but excluding any and all maintenance vehicles and "passenger vehicles" out of service of maintenance.