

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM
Office of Chief Counsel

DATE: April 17, 2009
SUBJECT: Proposed Bylaws Amendment on Indemnification
TO: Bylaws/Policy Committee
FROM: Richard D. Michlovitz
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Article VII of the Statement of Organization, Bylaws and Other Procedures of the Commonwealth of Pennsylvania, Public School Employees' Retirement Board protects members of the Board and their designees, as well as members of the Public School Employees' Retirement System's staff, from certain liabilities that they may face when carrying out their duties. Article VII was adopted in 2003, when the Board decided to self insure rather than to continue paying steeply escalating premiums for the fiduciary liability and directors and officers liability insurance policies that it had been carrying for years. The attached red-lined version of Article VII shows a number of changes to the existing indemnification terms and conditions.

Most of the newly added terms were taken from the Coverage Memorandum, which is a separate document that details the same insurance plan. We originally included the Coverage Memorandum to reinforce the protections under the then newly adopted self insurance plan. At this point, however, nearly six years after the Board became self insured, we are concerned that maintaining two separate formulations of the same plan could produce inconsistent interpretations and results and cause confusion. We are therefore recommending that the Board should discontinue the Coverage Memorandum and adopt the Bylaws article now before you, which, in addition to other refinements, incorporates terms from the Coverage Memorandum that were not found in the existing Bylaws provisions.

Of particular note, the exception for "recklessness" in section 7.1(a)(i) is replaced with "self dealing" to better protect covered parties from innocent mistakes but to hold them responsible for acts that were motivated by personal gain. We also recommend increasing the limit of liability (left blank on the red-lined draft), which has been \$25 million since the inception of the insurance program in the early 1990s, due in part to the increasing cost of commercial insurance coverage. We suggest that increasing the limit to \$40 million at this time would be reasonable,

especially since the Retirement Fund does not bear the expense of insurance premiums.

Attachment