



MEMORANDUM

TO: Tonya Williams, Director, DCCECE

FROM: J. Mark White, DHS Chief Attorney

RE: Liability Insurance Requirement and Public School Districts

This purpose of this memorandum is to explain how public school districts are affected by the liability insurance requirement imposed on licensed child care centers by Ark. Code Ann. § 20-78-227(b). The statute reads:

The Division of Child Care and Early Childhood Education of the Department of Human Services is directed, in collaboration with the State Insurance Department, to develop and promulgate rules requiring sufficient and appropriate minimum levels of general liability insurance coverage for licensed child care centers and licensed and registered child care family homes, including coverage for transportation services when applicable.

This requirement does not apply to all public school districts, but only to those districts operating “licensed child care centers.” DHS has licensing and regulatory authority over public school districts only to the extent they provide child care or early childhood programs that are above and beyond the constitutionally-required components of an adequate education. Common examples of when a public school district must seek licensure from DHS include:

- The provision of custodial care for infants or toddlers;
- Before- or after-school custodial care programs for older children that operate for more than twenty hours weekly; and
- Pre-kindergarten programs for students under the age of five.

The requirement for general liability insurance coverage applies to all “licensed child care centers,” and nothing in the Child Care Facility Licensing Act allows DHS to waive this requirement for public school districts operating a licensed child care center.

It is true that public school districts are statutorily immune from tort liability. However, the immunity statute explicitly accounts for the possibility that the General Assembly may require an immune subdivision to nonetheless carry liability insurance:

It is declared to be the public policy of the State of Arkansas that all counties, municipal corporations, school districts, public charter schools, special improvement districts, and all other political subdivisions of the state and any of their boards, commissions, agencies, authorities, or other governing bodies shall be immune from liability and from suit for damages ***except to the extent that they may be covered by liability insurance.***¹

Because the General Assembly has directed DHS to require “sufficient and appropriate minimum levels of general liability insurance coverage for licensed child care centers,” and because existing law does not authorize DHS to exempt public school districts from this requirement, DHS is bound by law to require general liability insurance coverage for any public school district operating a licensed child care center.

¹ Ark. Code Ann. § 21-9-301(a) (emphasis added).