

The taxability and tax status of all compensation expense reimbursement, and other payments that the district makes to, or on the behalf of the members of the Board of Education is determined by applicable state and federal law Board members must follow the Board's policy or administratively established procedures for claiming and substantiating all amounts for which payment or reimbursement is requested.

Compensation

Board members will serve without compensation for their services unless compensation has been authorized by a written resolution adopted by a majority vote of the Board in a public meeting; except that no Board member may have their compensation increased during the term is office to which they have been elected or appointed.

Any compensation provided to Board members must not exceed \$150 per day for not more than 5 days of service per week excluding federal and state holiday. Board members may only receive compensation for days when official Board duties – meaning Board members and other official activities and duties, including those that are conducted with a majority of the Board present – are performed.

Reimbursement

Upon submitting vouchers and supporting bills for expenses incurred in carrying out specific services previously authorized by the Board, Board members may be reimbursed from district funds in accordance with the Board's policy on expense authorization and reimbursement, and in amounts approved by a majority vote of the Board in a public meeting.

Insurance and liability

The Board will purchase liability insurance and errors-and-omissions insurance to protect its members individually and collectively for claims made against them as a result of their membership on the Board.

The Board will rely on the Colorado Governmental Immunity Act, C.R.S. 24-10-101 *et seq.* (the Act) as the statement of its obligation to defend and indemnify Board members. If the Board elects to provide for the defense of a Board member in a claim which alleges willful and wanton conduct by the Board member, the Board may require the Board member to post a reasonable bond to ensure reimbursement of any amounts advanced, in accordance with the Act.

LEGAL REFS.: 20 U.S.C. 7941 through 7948 (*Coverdell Teacher Protection Act limits the liability of school board members*)
C.R.S. 22-12-101 *et seq.* (*Teacher and School Administrator Protection Act also limits liability of school board members*)
C.R.S. 22-32-104 (5) (*board member compensation*)

C.R.S. 22-32-109.1 (9) (*immunity provisions in safe schools law also apply to school board members*)

C.R.S. 22-32-110 (1)(n), (u) (*power to provide necessary expenses*)

C.R.S. 24-10-101 *et seq.* (*Colorado Governmental Immunity Act*)

C.R.S. 24-18-104 (3)(d), (e) (*reimbursements are not considered gifts*)

CROSS REFS.:

DKC, Expense Authorization/

Reimbursement (Mileage and Travel)

EI, Insurance Program/Risk Management

NOTE: Based on the language in the Colorado Constitution, a complaint against school board members that were dismissed by the state's Independent Ethics Committee (IEC), and legislative discussions and intent behind HB21-1055, CASB does not believe that a board member who elects to receive per diem compensation in accordance with this policy and board resolution is subject to the constitutional gift ban (Colo. Const. Art. XXIX, Sect. 3) or the jurisdiction of the IEC.

The Colorado Constitution defines a "local government" as a "county or municipality," and explicitly states that, for purposes of ..., a "[p]ublic officer does not include ... any local government official, or any member of a board, commission, council or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses." Colo. Const. Art. XXIX, Sect. 2.

Additionally, the IEC dismissed a 2009 ethics complaint lodged against school board members, stating that, "[m]embers of boards who receive no compensation other than a per diem allowance or necessary or reasonable expenses are expressly excluded from the definition of "public officer" set forth in Article XXIX Sec. 2(6). The IEC therefore has no jurisdiction to hear complaints against unpaid school board members," and "[a] school district is not a "county or municipality" and therefore is not a "local government" under Sec. 2(2)." [IEC Complaint 09-03 \(04/06/09\)](#).

Finally, the legislature considered and rejected two amendments to HB21-1055 which would have clarified that provisions of Article XXIX of the state constitution apply to board members. [HB21-1055 L.001](#) and [HB21-1055 L.005](#).

NOTE: According to PERA, school board members who are compensated are considered as employees of a school district in accordance with the Internal Revenue Code requirements and, as such, are required to participate in PERA as there are no membership participation exemptions for school board members. C.R.S. 24-51-301–321. Questions about PERA membership should be directed to the district's PERA representative.

NOTE: School board member compensation may be subject to federal and state tax requirements, and school board members who wish to waive or decline compensation may also be subject to taxation under the doctrine of “constructive receipt,” i.e., where the IRS determines that an individual has income for tax purposes when they are authorized to receive the payment, regardless of whether they choose to accept the payment. 26 CFR 1-451-2. Some state legislatures in other states where board members are compensated have passed statutes explicitly allowing board members to waive compensation, and Wisconsin enacted legislation addressing the “constructive receipt” issue. [Wis. Stat. 120.07](#) and [120.45](#) (allowing a board member to decline their payment before it is “earned”).

Districts will need to consult with their local counsel and payroll administrators regarding the applicability of federal and state taxes on board member compensation, as well as any tax implications associated with declining compensation.

NOTE: After January 1, 2022, any compensation provided to board members may be adjusted by the board in accordance with changes in the U.S. Department of Labor's Bureau of Labor Statistics Consumer Price Index for Denver-Aurora-Lakewood for all items and all urban consumers, or its successor index. C.R.S. 22-32-104(6)(b).

ADOPTED: February 9, 2022