

**BYLAWS OF THE AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS, INC.**  
*Amended October 2021, Ratified February 2022*

Preamble

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**PREAMBLE**

The American Association of School Administrators, Inc. believes that access to an education which develops to the maximum the potential of individuals is a fundamental right of citizenship in our nation. It believes that the schools of the nation are now and must continue to be the primary instruments in fulfilling this right. It believes that the quality of administration of the schools has an overriding effect on the ability of the schools to deliver the required programs.

**ARTICLE I** **NAME**

The name of this association shall be the American Association of School Administrators, Inc.

**ARTICLE II** **PURPOSE AND OBJECTIVES**

The objectives of this association shall be exclusively educational and charitable, and in furtherance thereof, to promote and to provide leadership for the improvement and advancement of education and public interest in improved schools; to work particularly for improvement to the process of educational administration; to improve the preparatory and in-service training of educational personnel; to strive continuously to upgrade teaching and learning and to improve the curriculum; to implement the principle of equal rights for all, including the elimination of prejudice, bigotry, and discrimination; to assist in solving problems of organization and planning which arise as the school systems are improved; and generally to do all other things appropriate to achievement of its educational and charitable objectives.

The activities in furtherance of these objectives shall be limited to those consistent with the historic nonprofit character of the Association and with the paramount public benefit essential to the Association's status as a tax-exempt education and charitable organization, including limits as to legislative activities and intervention in political campaigns.

## **ARTICLE III                      MEMBERSHIP**

### **SECTION 1        Voting Members**

#### 1.        Active Member

Active Membership is open to all persons who serve as a school system leader or who are in an administrative position in a:

- (a)        public or private school system, or
  - (b)        regional, state, or national educational agency or association
- and who possess a valid license for the position as may be required by law.

#### 2.        College Professor Member

College Professor Membership is open to all persons employed by or at a college or university who serve in an administrative position or who teach persons preparing for education or educational administration in these institutions and who possess any legally required license for the position.

#### 3.        Institutional Member

Institutional Membership is a school district-owned membership and is open to any school district. The school district has the right to designate one person who meets the qualifications for Active Member status, to receive all member benefits, with the exception of legal support, for a 12-month period.

#### 4.        Life Member

The Executive Committee shall have the right to confer Life Member status on those who are or would be eligible to become an Active Member, a College Professor Member, an Institutional Member or a Small School System Superintendent Member.

#### 5.        Small School System Superintendent Members

Small School System Superintendent membership is open to all superintendents leading school systems with an enrollment of 350 or fewer students.

Active, Life and Small School System Superintendent Members shall be entitled to all rights and privileges of the Association including the right to vote and to participate in the legal support program. College Professor and Institutional Members shall be entitled to all rights and privileges of the Association, including the right to vote, but shall not be eligible for legal support.

Active, Life, College Professor, Institutional and Small School System Superintendent Members are eligible to serve as an officer of the Association or serve as a member of the Executive Committee so long as they are members of both AASA and the chartered affiliate in which they reside in accordance with these bylaws.

### **SECTION 2        Non-Voting Members**

#### 1.        Associate Member

Associate Membership is open to any person who is actively interested in, engaged in, or associated with any phase of educational work and is not a school system leader.

2. Aspiring Superintendent Member

Aspiring Superintendent Membership is open to any teacher, graduate student, counselor, or others pursuing a career as a school system leader and/or those who hold administrative credentials but are employed in non-administrative positions in K-12 schools.

3. Subscription Member

Subscription Membership is open to any governing body of a school district, library, professional organization, governmental agency, or other institution wishing to support the Association.

4. Retired Member

Retired Membership is open to anyone who is or who has been a voting member pursuant to Article III, Section 1 of these By-Laws and who has retired from full-time employment as a school administrator.

5. Emeritus Member

The Emeritus Membership category was eliminated effective July 29, 2010. Members currently designated as emeritus members will continue receiving emeritus member benefits, but no new members may be added to this category.

6. Allied Member

Allied Membership is open to any firm or organization providing products or services to schools or school districts.

7. Honorary Member

The Executive Committee shall have the right to confer Honorary Member status on those who would otherwise be ineligible for voting member status pursuant to these By-Laws.

8. District/Cabinet Members

District/Cabinet membership is open to any person who is employed as a non-superintendent school system leader.

**SECTION 3** The Executive Committee shall have the power to review and determine the eligibility of all applicants for membership except that no individual may be denied membership on the basis of race, national origin, religion, or sex.

**SECTION 4.** The dues of the Association shall be paid for twelve consecutive months of membership. The Executive Committee shall recommend to the Governing Board for its approval the dues for any classification of Membership pursuant to the terms of this Article III of the By-Laws.

## **ARTICLE IV CHARTERING OF UNITS**

**SECTION 1** There shall be in each state, the District of Columbia, Canada, Puerto Rico, and Overseas, one chartered unit.

**SECTION 2** The Executive Committee shall determine the procedure for selecting the affiliate or unit to be chartered.

## **ARTICLE V                      OFFICERS**

**SECTION 1**        The officers of the Association shall be the President, the President-elect, and the Immediate Past President. Each officer holds his or her position for a period of one year. The Executive Director shall serve as the Secretary/Treasurer and shall be an ex-officio, non-voting officer of the association.

**SECTION 2**        The President shall hold office for a period of one year. It shall be the duty of the President to preside or to arrange for the presiding officer at all meetings of the Governing Board and the Executive Committee.

The President shall be the presiding officer and a member of the Executive Committee, and shall call meetings of the Executive Committee whenever the President or a majority of the Executive Committee request such a meeting. The President shall serve as the presiding officer and an ex-officio, non-voting member of the Governing Board, provided the President may vote at a meeting of the Governing Board in the event of a tie vote of the Governing Board.

The Executive Committee shall set an amount of no more than \$50,000 each year for a subsidy to be paid to the President's employer effective in the 2007-08 fiscal year. This payment is to ensure that the school district or institution is compensated for the time the current president of AASA spends performing his or her duties and responsibilities as president of AASA. The intent of this action is that the district or institution does not suffer a financial loss from having the current president of AASA as an employee.

**SECTION 3**        The President-elect shall hold office for a period of one year beginning July 1 following election, and shall become President July 1 of the following year.

**SECTION 4**        The Executive Director shall be the Chief Executive Officer of the Association. The Executive Director shall be selected by the Executive Committee and shall serve as an ex-officio, non-voting officer and as an ex-officio, non-voting member of the Executive Committee and the Governing Board. The Executive Director, or his designee, shall keep a complete and accurate record of the proceedings of all meetings of the Governing Board and of the Executive Committee and shall conduct the business of the Association pursuant to these Bylaws and the policies of the Executive Committee. The Executive Director shall communicate with the President on a regular basis.

The Executive Director shall be responsible for the day to day business activities of the Association. The Executive Director receives all monies due the Association and deposits or invests such monies. The Executive Director shall implement Association policies, make such business arrangements and other transactions as are feasible, practical, and in the best interest of the Association. The Executive Director shall arrange for an audit by a Certified Public Accountant and provide a written report of the audit to the Association.

Consistent with the adopted budget of the Association, the Executive Director shall make such expenditures as are necessary for the conduct of the business of the Association. The Executive Director shall keep a list of members of the Association. The Executive Director shall be Secretary of the Governing Board and of the Executive Committee and custodian of all property of the Association. The Executive Director shall submit an annual report to the Governing Board. Upon leaving office, the Executive Director shall leave to the Association all of its money, books, and property.

## **ARTICLE VI                      ELECTION OF OFFICERS**

**SECTION 1**        The Election Committee and the Executive Director shall be responsible for all AASA election procedures.

**SECTION 2**        Any eligible AASA voting member may serve on the Executive Committee or as

President, President-elect or Immediate Past President. The individual may not be an employee of AASA or an AASA chartered affiliate association; or an employee or representative of a company that sells to schools.

In the case of involuntary suspension of employment, a person may serve the remainder of his or her term as long as she or he is not an employee or representative of a company that sells products or services to schools. A candidate cannot be a retiree; however, he or she may continue to serve, if retirement commenced during his or her term of office as President as long as she or he is not an employee or representative of a company that sells products or services to schools. A person may serve as Immediate Past President regardless of job status so long as she or he is not a representative of a company that sells products or services to schools.

In addition, to be a candidate for President-elect, a member must have been an eligible AASA voting member for at least the three (3) immediately preceding years; a member in good standing of a chartered affiliate for at least the three (3) immediately preceding years and a current member of the Governing Board and/or the Executive Committee, or former member of either body having served at least one of the three (3) immediately preceding years.

Candidates must submit the candidate information packet to stand for election as President-elect with the office of the AASA Executive Director in keeping with a deadline set within the Election Guidelines, and pay a filing fee to AASA of \$500.

The election for President-elect shall be conducted in accordance with guidelines developed by the Election Committee and approved by the Executive Committee. The Governing Board shall be the Nominating Committee. Following a credentialing process, as established by the Election Committee, the Governing Board shall submit a slate of up to three (3) qualified candidates to the eligible AASA voting members.

The names of all qualified candidates shall be placed on the ballot which shall be distributed to the eligible AASA voting members immediately following the annual meeting.

Eligible AASA voting members, may vote for only 1 (one) President-elect candidate. Ballots cast by eligible AASA voting members must be received at AASA headquarters in accordance with a timeline established by the Election Committee. The candidate for President-elect receiving a plurality of votes cast in the balloting shall be declared duly elected. A representative of a Certified Public Accounting firm shall supervise the counting of election ballots.

In the case of a tie vote, the Governing Board shall determine by majority vote, which of the tied President-elect candidates shall be declared elected.

In the event that only one candidate is certified as eligible to be nominated for the position of AASA President-elect, then the AASA Governing Board, following the nomination of that single candidate, shall vote to elect the candidate as the AASA President-Elect and announce the results to the membership.

Terms of office for those elected officers shall begin July 1<sup>st</sup> following the election.

Member complaints and allegations concerning campaigns and elections shall be made in writing and filed with the Election Committee. The Election Committee shall review each such charge and deliver a judgment consistent with the established campaign and election procedures. The Election Committee may recommend for action to the Executive Committee such remedial, disqualifying, or other action as it deems appropriate.

Members may appeal Election Committee decisions to the AASA Appeals Board as established and set forth in the document "AASA Election Guidelines."

**SECTION 3** In case of vacancy in the office of President, the President-elect shall immediately succeed to the office of President, and serve for the remainder of the term and then serve his or her own term as President. The vacated office of President-elect shall be filled by a majority vote of the members of the Executive Committee. Any person serving as President-elect pursuant to the terms of the Section shall serve only until the following June 30, at which time a President-elect shall be elected pursuant to the terms of these By-Laws.

**SECTION 4** In case of vacancy in the office of President-elect after the election but preceding installation, the vacancy shall be filled by the first runner-up of the same election. In the case that the initial winner ran for president-elect unopposed, the Executive Committee shall select an individual to serve the one-year term. The selected individual shall meet all eligibility requirements as established by the AASA by-laws. The individual will be eligible to run for President in the subsequent election, so long as they continue to meet eligibility requirements.

**SECTION 5** In case of vacancy in the office of the President-elect after installation, the Executive Committee shall select an individual to serve the remainder of the one-year term. The selected individual shall meet all eligibility requirements as established by the AASA by-laws. The individual will be eligible to run for President in the subsequent election, so long as they continue to meet eligibility requirements.

**SECTION 6** In case of vacancy in the office of Immediate past-president, the Executive Committee shall ask the previous immediate past-president to return to the role for the duration of the term. If that individual is unable or unwilling to fill the vacancy, the Executive Committee shall select someone to serve the remainder of the term. The selected individual shall meet all eligibility requirements as established by the AASA by-laws.

## **ARTICLE VII ELECTION AND APPOINTMENT OF EXECUTIVE COMMITTEE MEMBERS**

**SECTION 1** Seven regions shall be established for the purpose of electing regional executive committee members. The Executive Committee shall review the composition of regions every 5 (five) years, making recommendations if necessary, for modifications to the Governing Board the following year to ensure that regions continue to have approximately an equal number of AASA members.

The term of office for an Executive Committee member is 3 years. A regionally elected Executive Committee member may serve no more than one (1) full term, but may be elected to complete an unexpired term and then serve one (1) full term from a region.

**SECTION 2** Each region shall have two Executive Committee members serving staggered terms; any chartered affiliate within a region having six (6) or more representatives on the Governing Board shall automatically be entitled to one (1) of the two (2) Executive Committee members from that region. If a region has two (2) or more chartered affiliates with six (6) or more representatives on the Governing Board, that region shall be entitled to one (1) additional member on the Executive Committee representing the chartered affiliates having less than six (6) representatives on the Governing Board.

Regional Executive Committee members shall be elected by the regional representatives serving on the Governing Board from that region. Those chartered affiliates comprising a region shall determine how the regional Executive Committee member is elected; however, a chartered affiliate may be represented on the Executive Committee no more than two (2) successive terms, except in the case of a chartered affiliate with six (6) or more representatives. A chartered affiliate may be represented by not more than one (1) Executive Committee member, except in the case of a presidential officer or an appointed member from an underrepresented segment of the AASA membership.

Only members of the Governing Board from chartered affiliates within the region are eligible to vote for regional Executive Committee members.

**SECTION 3** Any eligible AASA voting member may serve on the Executive Committee as an elected regional Executive Committee member. The individual may not be an employee of AASA or an AASA chartered affiliate association; or an employee or representative of a company that sells products or services to schools. In the case of involuntary suspension of employment, a person may serve the remainder of his or her term as long as she or he is not an employee or representative of a company that sells products or services to schools. A candidate cannot be a retiree; however, he or she could continue to serve, if retirement commenced during his or her term of office as a regional executive committee member, as long as she or he is not an employee or representative of a company that sells products or services to schools.

In addition, to be a candidate for regional Executive Committee member, a member must have been an eligible AASA voting member for at least the three (3) immediately preceding years, a member in good standing of a chartered affiliate for at least three (3) immediately preceding years and be a

current member of the Governing Board, or a former member having served at least one of the three (3) immediately preceding years, from a chartered affiliate within the region.

**SECTION 4** If a regional Executive Committee member moves to a new chartered affiliate within his or her region, he or she may complete his or her current term as an Executive Committee member from that region, notwithstanding other provisions of these bylaws.

If a vacancy occurs in the position of regional Executive Committee member, including a vacancy created by a regional executive committee member moving out of the region (resulting in the automatic resignation of his or her position), the region shall conduct a special election to select a new regional Executive Committee member, as soon as practical, to complete the unexpired term.

If an Executive Committee member misses two meetings without a legitimate excuse, he or she can be removed from their position. Legitimate excuses are illness or emergency situations of either a personal or professional nature. Once someone has missed two meetings without a legitimate excuse, a letter will go out from the President to the Executive Committee member that they will be removed from their position, followed by notification to the Executive Committee, Governing Board members within the region, and the state executives within the region.

**SECTION 5** Prior to assuming the position of President-elect on July 1, the President-elect shall appoint an eligible AASA voting member to serve as an Executive Committee member at-large, from an underrepresented segment of the membership, serving on the Executive Committee for a three-year term, beginning simultaneously with his or her term as President-elect. When making this appointment, the President-elect shall give priority consideration to members from underrepresented groups who are currently serving on the Governing Board, or who have served on the Governing Board within the last three (3) preceding years.

At the completion of his or her term, an Executive Committee member at-large, may seek election as an elected regional Executive Committee member from his or her region, serving for one full term only.

**SECTION 6** The elected regional Executive Committee members and the appointed Executive Committee members at-large shall hold office for three years, commencing July 1 following the date of election or appointment.

## **ARTICLE VIII MEETINGS**

**SECTION 1** NOTICES: Unless otherwise stated, notice for all Executive Committee and Governing Board Meetings and, unless extraordinary circumstances dictate otherwise, for any Special Meeting thereof, stating the time and place of such meetings and the purposes for which the meeting is called, shall be mailed to respective Members of the Executive Committee and Governing Board at least twenty days prior to the meeting date.

**SECTION 2** ACTION WITHOUT MEETING: Any action required or permitted to be taken at a meeting of the Executive Committee or the Governing Board, or any other duly authorized Committee, may be taken without a meeting by filing with its minutes a unanimous consent setting forth the action and signed by each Member of the respective entity.

**SECTION 3** MEETINGS BY CONFERENCE CALL: The Executive Committee or the Governing Board may hold a meeting by conference telephone or similar communications equipment if all persons participating in the meeting can hear each other at the same time. Any action taken by such means by the Executive Committee or the Governing Board shall be of the same force and effect as if a regular meeting authorized by these By-Laws took place.



## **ARTICLE IX EXECUTIVE COMMITTEE**

**SECTION 1** The voting members of the Executive Committee shall be: the President, the President-elect, and the Immediate Past President; the elected regional Executive Committee members; and the appointed Executive Committee members at-large. The Executive Director shall be an ex-officio, non-voting member of the Executive Committee. Additional non-voting liaisons, as determined by the Executive Committee, may be invited to participate in Executive Committee meetings.

**SECTION 2** The Executive Committee derives its power from and shall be responsible to the Governing Board and the membership of the Association.

In addition to such powers as may be extended to it by the Governing Board, the Executive Committee shall:

- a. Articulate the mission of the Association, recommend short term and long range goals to be considered and voted upon by the Governing Board, and establish procedures necessary for effective operation of the association.
- b. Receive from the members, resolutions for consideration by the Governing Board. The Executive Committee shall recommend to the Governing Board those resolutions approved by majority vote of the Executive Committee. The Executive Committee may also initiate resolutions for consideration by the Governing Board.
- c. Develop and submit the Association's legislative agenda to the Governing Board for approval.
- d. Approve initially and submit for ratification to the Governing Board the Association annual budget and programs.
- e. Approve President-elect election guidelines as submitted by the Election Committee.
- f. Monitor the implementation of AASA's programs, budget, consent agenda, resolutions and legislative agenda.
- g. Authorize the appointment of special commissions and committees.
- h. Propose possible amendments to the By-Laws to the Governing Board.
- i. Provide an agenda for each meeting of the Governing Board.
- j. Every five (5) years, review the composition of each region and if determined necessary, make recommendations for modifications to the Governing Board the following year.
- k. Hire and annually evaluate the Executive Director, and determine the term and conditions of employment.
- l. Serve as *ex officio*, nonvoting members of the Governing Board.

The Executive Committee may:

1. Develop and submit to the Governing Board a code of ethical behavior for the profession of school administration.

2. Establish procedures for conducting investigations and applying sanctions where a breach of ethics is proven.

**SECTION 3** A majority of the voting members of the Executive Committee shall constitute a quorum.

## **ARTICLE X ANNUAL MEETING**

The annual meeting of the Association shall be the meeting of the Governing Board held in conjunction with the AASA national conference. This meeting is open to all members of the Association; however, only members of the Governing Board may participate in deliberations and decision-making.

## **ARTICLE XI GOVERNING BOARD**

**SECTION 1** The Governing Board of the Association shall be composed of the duly elected representatives of each chartered affiliate. Each chartered affiliate is entitled to a minimum of two (2) representatives on the Governing Board for up to 100 eligible voting AASA members. The chartered affiliate shall be entitled to an additional representative for every 100 additional eligible AASA voting members from within the chartered affiliate.

The number of representatives allocated to a chartered affiliate shall be based on the number of eligible voting AASA members within the chartered affiliate on September 30 of any given year. Proposals for the timing of adding or removing a Governing Board representative shall be developed by the Election Committee and approved by the Executive Committee.

**SECTION 2** Each chartered affiliate shall develop a plan for electing members to the Governing Board, including procedures for filling vacancies when necessary. Once developed, or revised, the election plan shall be sent to the AASA Executive Director who has the authority to accept or reject the plan. Additionally, the AASA Executive Director has the authority to monitor the implementation of said election plan.

**SECTION 3** Members of the Governing Board shall be eligible AASA voting members for at least three (3) years and members in good standing in the chartered affiliate for at least three (3) years at the time of election. Employees of AASA and/or a chartered affiliate are not eligible to serve as members of the Governing Board.

**SECTION 4** A member may serve on the Governing Board as the representative of a chartered affiliate for no more than two (2) successive, three (3) year terms.

The Governing Board shall have the corporate responsibility for the Association. The Governing Board shall:

- a. Determine the mission of the Association.
- b. Act on resolutions which shall have been submitted to it by the Executive Committee. The Governing Board may consider other resolutions which may be presented during a meeting provided such other resolutions in order to be adopted, must receive a two-thirds (2/3) vote in favor of consideration. Adopted resolutions become the official resolutions of the Association.
- c. Receive, discuss, and act upon recommended policy positions submitted to it by the Executive Committee.
- d. Serve as the liaison between chartered affiliates and AASA.

- e. Determine, on an annual basis, the dues for any classification of Membership pursuant to the terms of Article III of the By-Law.
- f. Recommend, on an annual basis, programs and activities for inclusion in the AASA budget.
- g. Ratify the annual AASA budget and programs.
- h. Affirm AASA's legislative agenda.
- i. By region elect Members to serve as voting members on the Executive Committee.
- j. Approve, by a 2/3 vote, any change in the composition of the regions.
- k. Approve amendments to the By-Laws submitted to the Governing Board from the Executive Committee, provided that any amendment to the By-Laws must be approved by a 2/3 vote of those Governing Board members present and voting.
- l. Receive and act on the annual report of the Executive Director.
- m. Receive and act on the report of the Audit Committee.
- n. Assist in advocacy efforts by letter writing, telephone calls, emails and personal visits to their Congressional representatives.
- o. Perform such other duties as may be requested of it by the Executive Committee.

**ARTICLE XII                      RESOLUTION OF IMPASSE**

**SECTION 1**        It shall be incumbent on the Governing Board to take appropriate action on the resolutions of the Executive Committee provided such resolutions or actions are feasible, legal, and in the interest of the Association.

**SECTION 2**        The Executive Committee shall receive and commence appropriate action on the adopted resolutions of the Governing Board.

**SECTION 3**        If the Executive Committee, by a two-thirds (2/3) vote, determines that a resolution of the Governing Board is incompatible with the Bylaws, not feasible or contrary to the interests of the Association, the Committee shall, within ninety (90) days, communicate its veto and reasons for its actions to the members. Said communication shall be printed in a regular publication of the Association.

**SECTION 4**        If the Executive Committee shall receive a request from 50 percent of the chartered units for a referendum on the issue of the veto, the Committee shall, within ninety (90) days, submit the issue to a vote of the eligible AASA voting members. The results of said referendum, as determined by a majority of the votes received, shall become policy of the Association.

**SECTION 5**        The conduct of a referendum shall be under the supervision of the Election Committee and the Executive Director.

**ARTICLE XIII                      COMMITTEES**

**SECTION 1**        The Executive Committee shall establish and modify the AASA advisory committee structure as deemed necessary. The Governing Board and membership will be informed of any

modifications. The standing committees of the Association shall consist of an Audit Committee of three (3) members and an Election Committee of seven (7) members.

**SECTION 2** The Audit Committee shall review the audit of the Association and annually report its findings and recommendations to the Governing Board.

**SECTION 3** The Election Committee shall develop guidelines for the election of the President-elect. Such guidelines shall be approved by the Executive Committee. The Election Committee will be responsible for conducting, monitoring and enforcing the election proceedings of the Association.

#### **ARTICLE XIV DISSOLUTION OR LIQUIDATION**

No part of any income, revenue, and grant of or to the Association shall inure to the material or pecuniary benefit of a member, officer, or any private individual (except that reasonable compensation may be paid for services rendered in connection with one or more of its purposes), and no member, officer, or any private individual shall be entitled to share in the distribution of any of the assets of the Association on its dissolution or liquidation. In the event of such dissolution or liquidation, the assets of the Association, after payment of debts and obligations, shall be transferred to an organization with federal tax-exemption for charitable and educational uses and purposes similar to those of this Association, which is not a private foundation within the meaning of the federal tax laws. The exempt organization shall be designated by the final Executive Committee of the Association.

#### **ARTICLE XV PARLIAMENTARY AUTHORITY**

The most recently published edition of *Robert's Rules of Order* shall govern in all official meetings of the Association.

#### **ARTICLE XVI AMENDMENT OF THE BYLAWS**

As recognized in Article XI, Section 4.j., the Governing Board may approve any amendment to the By-Laws submitted to it by the Executive Committee by a 2/3 vote of those Governing Board members present and voting.

#### **ARTICLE XVII INDEMNIFICATION**

Any present or former director, officer, or committee member of the Association, or other such person or persons so designated by the discretion of the Executive Committee, the Governing Board, the President and/or the Executive Director, or the legal representative of such person, shall be indemnified by the Association against all reasonable costs, expenses, and counsel fees paid or incurred in connection with any action, suit or proceeding to which any such person or his/her legal representative, may be made a party by reason of being or having been such a director, officer, committee member, or having served the Association, except in matters as to which he or she shall be found to have committed an act constituting gross negligence, gross misconduct or civil rights violations in respect to matters in which indemnity is sought and in relation to matters settled or otherwise terminated without a final determination on the merits where such settlement or termination is predicted on the existence of such gross negligence or gross misconduct.