

Million Dollar Liability Insurance

Each member receives as part of his or her dues payment a \$1,000,000 liability insurance policy. Some of the important provisions of this coverage are listed here. Copies of the complete policy are available from MSEA on request. Members are encouraged to read the policy and should contact the Center for Legal Affairs at MSEA headquarters for additional information regarding the specific coverage provided.

MSEA/NEA Benefits Package

1. Liability Pays all damages which the insured shall become legally obligated to pay as a result of any claim arising out of an occurrence or event in the course of the insured's educational employment activities (subject to the limitations contained in the policy) and caused by any acts or omissions of the insured or any other person for whose acts the insured is legally liable, not to exceed \$1,000,000 (other than civil rights issues).

2. Defense of Criminal Charges Pays reasonable and necessary costs and attorney's fees up to \$35,000 in defending against criminal charges arising out of a member's educational employment activities provided that the member is exonerated or the charges are dismissed or withdrawn. In addition to the insurance policy, pays up to \$15,000 for reasonable attorney fees for cases when the member uses the attorney provided through MSEA Chief Counsel.

An exception to the general rule stated above is criminal charges arising out of the use of corporal punishment. In such cases all reasonable attorney fees (again up to \$35,000) are paid regardless of the outcome of the case and regardless of whether the member uses an MSEA or private attorney.

3. Defense of Civil Rights Issues Pays up to \$300,000 per occurrence for legal fees and damages which the insured shall become legally obligated to pay as a result of a claim based upon an alleged violation of protected civil rights.

4. Bail Bond Pays up to \$1,000 per bond required of the insured arising out of the insured's educational employment activities.

5. Personal Property Benefits for Assault Pays up to \$500 for damages to or destruction of the insured's personal property, other than a vehicle, caused by an assault upon the insured on or surrounding school property, or while away from school property on an authorized school activity, to the extent that such damages exceed the coverage provided by any homeowner or similar insurance.

6. Defense of Charges Resulting from Participation in a Peer Review System Defends any claim made or criminal proceeding brought against an insured by another employee or former employee of an educational unit if the claim or criminal

proceeding arises out of an occurrence in the course of the insured's educational employment activities as a participant in a peer review system of an educational unit.

Why Education Employees Need Liability Insurance

The topic of education employees' liability is important because the crime and accident rate in the schools appears to be increasing every year. Along with this growth, there has been an even more dramatic increase in the number of legal suits brought against members for injuries to students allegedly caused by the employee's negligence, assault, and/or abuse of a student.

In the past, parents generally did not bring suit against school employees unless an injury was severe, but this is no longer the case. Parents and students are being made aware of the possibility of litigation and they are increasingly turning to this remedy. A few of the reasons behind this sudden influx of cases stem from a changing attitude toward the education employee's role by many parents, from a knowledge that employees are being paid more and have insurance coverage available, and from a financial need created by the increasing costs of medical treatment.

MSEA Insurance

Membership in MSEA provides automatic coverage of a \$1,000,000 Employment Liability Insurance Policy, which pays legal fees and damages to the limit of the policy for defense of members in certain job-related cases. The policy is described at the beginning of this section.

Individual liability insurance is also generally available, although the cost of purchasing it alone (as opposed to through a group) is often prohibitive. Maryland law now requires that local school boards carry comprehensive liability insurance of at least \$100,000 to protect the board, its agents, and employees. This law purports to waive the board's right to raise the defense of sovereign immunity in any suit in which the damages are not in excess of the limit of its liability policy, thus allowing parents and others to sue the board itself as well as the individual educator.

Although the board's policy must cover its agents and employees, there is often qualifying language limiting the coverage of the employees to specific conditions, and the problem arises as to whether the employee was within those specific conditions when the alleged offense occurred. Of course, the board's policy does not provide any coverage for the employee when the action is one by the board against the educator.

Concept of Negligence

In past years, the majority of cases brought by parents alleged negligence on the part of the employee with resulting injuries to the student. Negligence is a concept connoting legal fault when one party becomes liable to an injured second party for an injury attributable to the unintentional conduct of the first party. Negligence can result from commission or omission of an act. For example, if a teacher performed a faulty experiment in a chemistry laboratory which injured a pupil, this would probably be a negligent act of commission. If, on the other hand, a chemistry teacher failed to explain safety rules (or allowed a child to be present at an experiment without his protective eyeglasses) and a pupil injury resulted, this would undoubtedly be considered as an act of omission. In negligence suits, the standard of conduct to which the defendant is held is that of a reasonably prudent person under the circumstances involved.

A 1985 law limits school board employee liability to “gross negligence,” but the full impact of this change has not yet been judicially determined.

A key test to determine negligent conduct is foreseeability. In circumstances where a prudent person could have foreseen that this conduct would lead to injury of another, a person who disregards the foreseeable consequences is liable for negligent conduct resulting in damage.

In a suit for injury where negligence is charged, no liability exists if the mishap was a pure accident. This means that the injury did not result from the wrongdoing of another person and that the circumstances which caused the accident could not have been foreseen by a person exercising reasonable judgment.

Contributory Negligence

One defense in a liability case is contributory negligence. This may be argued when the injured person was also negligent, and, therefore, contributed to the cause of his or her injury. If such a contention can be proved, it is usually a sufficient cause for dismissal of a case. However, as mentioned above, minors are not held to the same degree of care for their own safety as are adults, so contributory negligence on the part of pupils is often difficult to sustain.

There are certain obvious danger spots in our schools, e.g., shops, laboratories, playgrounds, cafeterias, stairways, etc., and the more dangerous the situation, the more careful the supervision must be to avoid liability. However, teachers not situated in such danger areas should not grow too complacent, because accidents do happen in elementary classrooms, English classes, and in other apparently safe locations.

Special care should be exercised while taking students on field trips. While it is good administrative practice to secure notes of permission from parents, this does not give a teacher in charge of a trip immunity from suit. Court cases have held that the owners of industrial plants which are visited by pupils are not necessarily liable for injuries to the visitors. Again, the burden of exercising proper precaution falls on the teacher.

An Important Case

One important decision of the Maryland Court of Special Appeals in this area affirmed the dismissal of a negligence suit against a Prince George’s County physical education teacher. The suit had been filed on behalf of a student severely injured while performing on a trampoline. The opinion of the Court, by the late judge Thomas Hunter Lowe, noted that the injury was caused by the failure of the student to follow the teacher’s instructions. Judge Lowe stated that the very “nature of physical education activities comprehends physical hazards,” and, while a teacher must avoid as many of those hazards as he is able, “the system cannot be made child proof.” The Court concluded:

“In making sensitive ‘judgment calls’ a teacher must not be made aware of the precariousness of his position, as was Damocles, beneath some economic falchion suspended by the hair of hindsight. The courts are just as much a shield to a teacher who has acted prudently as they are a weapon against him if he has neglected his duty...”

Walter S. Levin, former MSEA Chief Counsel, observed that “this case is a further step along the road of *Segerman v. Jones*, protecting MSEA members from ‘second guessing’ by juries as to an appropriate standard of care after an injury has occurred.”

Assault

In recent years, criminal and civil suits brought against employees alleging assault of a student have risen sharply. An assault is an intentional unlawful attempt to do bodily harm to another. In Maryland, education employees may not corporally punish disruptive students, but they do still have a certain amount of privilege to touch students when required. Thus, if students are fighting, a teacher has a duty to stop the fight and may use such force as is reasonably necessary to do so. A teacher also has the right to guide a disruptive student from the classroom and to prevent a child from acting in a manner which might be harmful to himself, other students, and/or the employee. The trouble comes when an employee abuses the privilege, usually by using excessive force. Although a teacher has the right to maintain order in class, he or she can only use such force as is reasonably necessary. Thus, if a child uses profanity in the classroom, the teacher cannot strike the child. The teacher must be careful to control

his or her temper and not let personal frustration result in an aggressive action against the student.

Any pupil injury should be reported by a teacher through the proper administrative channels in the school system. If there is any possibility that the teacher involved has been negligent and/or has committed an assault, the incident should be reported to MSEA's Center for Legal Affairs immediately, rather than after a suit has been filed, so that the names and addresses of witnesses can be obtained and the teacher can be given proper legal advice.

In no case should a teacher voluntarily pay medical or property damage bills without reporting the incident, as this act might later be offered as an admission of guilt in a suit for damages which might result. It is equally unwise for a teacher to relate the incident to any person representing the student or the student's parents without first seeking the advice of counsel through MSEA.

Legal Assistance: Professional Problems

Procedure for Getting Help

For many years, the Maryland State Education Association has provided assistance to school employees faced with difficulties in their professional lives. Countless numbers of Maryland school employees receive assistance with their individual problems each year from the combined resources of the local, MSEA, and NEA. However, with the dramatic increase in the number of cases which ultimately require legal services, it has become necessary to standardize somewhat the procedures for handling such cases in order to provide efficient service to members. Generally, the procedure is as follows:

1. Any member having a problem in connection with his or her employment should contact the UniServ director assigned to that particular area. UniServ directors shall act as the initial contact for those school employees needing legal help.
2. If the problem is one where a violation of the collective bargaining agreement is alleged, it will be handled by the UniServ director in cooperation with the local association, which has been designated under the law as the exclusive representative.
3. If the problem involves a claim covered under the Educators Employment Liability Policy, the UniServ director will forward the appropriate papers to the MSEA Counsel in accordance with MSEA office procedures.
4. All other requests for legal assistance should be initiated with the UniServ director who will forward same to the MSEA Counsel.
5. MSEA's Center for Legal Affairs is authorized to provide legal assistance to members in all cases except the following:
 - a. any case where an individual school employee is requesting legal assistance to appeal a decision of the State Board of Education or a decision of a Maryland Circuit Court
 - b. any case where an individual is requesting legal assistance for an action at any level in the federal court system
 - c. any case involving legal services to a non-member or to a member where the event giving rise to the

request occurred before the individual joined. This provision does not apply to cases which fall within the local association's obligation under the collective bargaining law. Similarly, this provision does not apply to cases approved by staff and counsel where a non-member plaintiff who is not eligible to join is being utilized by a local association which lacks standing to sue in its own behalf.

6. In any case where the Chief Counsel is not authorized to act or in any case where a school employee or affiliate is seeking assistance and the decision of the Chief Counsel is against MSEA participation, the Legal Review Panel, upon appropriate request, will consider the request and make a decision as to MSEA assistance.

It is important to note that MSEA members expecting either financial or legal assistance must seek help from MSEA before initiating any legal action. Normally, legal assistance will be provided only through MSEA legal counsel. Finally, it is important that members contact the UniServ staff member as soon as the problem arises. An early response by staff and/or counsel may result in resolution of the difficulty and avoid a protracted controversy.

More information on the MSEA legal services program operational guidelines is available upon request, or by visiting www.marylandeducators.org.

Attorney Referral: Personal Problems

MSEA membership provides members with job-related legal services free of charge. For non-job-related personal problems, the MSEA/NEA Attorney Referral Program provides members consultations, at no cost, and discounts on attorney fees.

Who Is Eligible?

All active, life, or retired MSEA/NEA members and, at the request of the member, his or her spouse and dependent children.

What Services Are Covered and What Do They Cost?

Each eligible member is entitled to one free consultation session of up to 30 minutes twice each year on any topic not arising out of the employment relationship between a member and a school district (except income tax preparation).^{*} If a consultation leads to follow-up legal services of at least one billable hour, or equivalent services at a flat fee, it will not be counted as one of the consultations to which the member is entitled that year. If the member decides to use the services of a participating attorney, the attorney's regular fees will be discounted 30 percent if the problem falls into one of the following five "core areas" covered by the program. These areas, and some examples of covered matters, are:

Real Estate Purchase or sale of property for residential purposes, disputes with landlords, property line disputes, problems with zoning laws or land use regulations

Wills and Estates Preparation of wills, assistance with estate planning, representation of a member who is named executor or administrator of an estate, guardianship proceedings

Domestic Relations Representation in proceedings for annulment, divorce, separation, alimony, custody, child support, guardianship, adoption, paternity, name change

Consumer Protection Disputes with creditors or finance agencies, proceedings for garnishments and attachments, disputes with retailers concerning defective merchandise

Traffic Violations Defense of charges of operating under the influence, reckless driving, or other offenses involving potential loss of license, financial liability in excess of \$50, or jail sentence

While fees may vary from attorney to attorney, a particular attorney's fees will be 30 percent less than his or her regular rate for services in the five core areas, whether billing is on an

hourly or a flat-fee basis. (The discount does not apply to incidental fees such as court imposed filing fees and attorney's out-of-pocket expenses.)

**Free consultation sessions are limited to a teacher explaining his or her problems and being given advice as to what, if any, legal remedies are available. If the session continues beyond this basic consultation, the attorney is entitled to be paid for legal advice and/or services rendered, even if such advice or services fall within the half-hour session.*

Are There Any Legal Problems That Are Not Covered?

Almost any problem can be discussed with an attorney during the free advice and consultation sessions. Certain matters, however, are excluded from the 30 percent discount, including assistance with bankruptcies, preparation of federal income tax returns, and defense of criminal violations (other than traffic). Any matter in which the attorney was retained prior to participating in the program or involving a member's business dealings is also excluded. The fee in the excluded matters would be determined by you and the attorney and may be higher than the program rates.

Participating attorneys cannot represent you or any other NEA member under any arrangement if the adverse party is the NEA, an NEA affiliate or another NEA member. The one exception is that an attorney may represent you in a separation or divorce proceeding if your spouse is also an NEA member.

How Do I Contact An Attorney?

Contact information for law firms participating in the program can be obtained from the MSEA Center for Legal Affairs, Marilyn Kurtz, 800/448-6782 x3668, mkurtz@mseanea.org, and can also be found at www.marylandeducators.org, Member Center, Legal Assistance. A member may use any firm listed.

Attorney Referral Program

Members may contact any of the following attorneys to receive free consultations and to investigate the need for additional services. Participating attorneys have requested that members mention the MSEA Attorney Referral Program when setting up an appointment—some firms are instituting special office procedures to expedite the handling of inquiries. MSEA members should expect to receive a 30 percent discount for matters in the five core areas of real estate, wills and estates, domestic relations, consumer protection, and traffic violations.

Teachers should inquire about specific fees before engaging the services of an attorney.

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