

MSEA LEGAL SERVICES PROGRAM
OPERATIONAL GUIDELINES

Policy Code: 114, 115
Procedures: 114P, 115P

Purpose: The purpose of the MSEA Legal Services Program is to provide quality legal assistance to MSEA members in certain job-related disputes and to MSEA affiliates under conditions expressed herein. The program is established jointly with the National Education Association as to cases qualifying under the Unified Legal Services Plan.

Administration: The General Counsel shall be designated as the Coordinator of Legal Services and shall have primary responsibility for administration of the program on a day-to-day basis.

Eligibility¹: Except as otherwise provided herein, an applicant for legal assistance must meet the following eligibility requirements:

- A. Appropriate membership in MSEA at the time of the occurrence which precipitated the need for legal assistance;
- B. Appropriate membership in MSEA at the time the Application for Legal Services is filed; and
- C. Maintenance of appropriate membership in his/her local association, MSEA and NEA while Association-supported legal action is pending.

MSEA will provide legal services to any member of MSEA-Retired as long as the issue relates back to the person's employment, the person held appropriate membership in MSEA at the time of the event that precipitated the filing of the Application for Legal Services, and membership in MSEA-Retired was continuous with appropriate membership in MSEA.

No applicant for legal assistance will be discriminated against on the basis of race, color, creed, national origin, gender, sexual orientation, age, handicap, marital status, or economic status.

The MSEA General Counsel at his/her discretion may waive eligibility requirements for good cause.

Coverage:

- A. Member's Employment Disputes: Individual cases which arise out of the member's employment as an employee of a school system, college or university, or other educational institution are eligible for legal assistance

¹ As used in this section, "appropriate membership in MSEA" shall be that category of membership (active or sustaining) which allows the greatest participation in Association governance for which the applicant is entitled.

under the program. "Employment related" is defined by the NEA Unified Legal Services Program, and is subject to MSEA's policy implementing said Program outlined herein.

B. Assistance to Affiliates: Assistance to protect an affiliate's rights and privileges as a collective bargaining representative, as well as other reasonable corporate services, are eligible under the program with the following exclusions:

1. direct participation in the collective bargaining process between local affiliates and local staff;
2. real estate transactions other than those involving the purchase or lease of Association offices and related facilities;
3. any dispute involving a local affiliate where MSEA or another local affiliate is an adverse party;
4. any legal proceeding initiated by a local affiliate involving commercial transactions.

C. MSEA will provide legal assistance to its members and affiliates when it is determined that:

1. the action at issue resulted or will result in actual prejudice or injury to the member's employment rights and privileges, or to the affiliate's rights as set forth above; and
2. there is a reasonable possibility that the member/affiliate will be granted relief under current policies, regulations and/or laws; and
3. where the procedures and standards described in these guidelines have been followed and met.

Such legal assistance shall be limited to the first stage of the legal proceeding. Pursuit of any further appeal or further related legal proceeding requires approval as outlined in herein.

D. Criminal Charges: MSEA will provide legal defense in criminal cases in accordance with and limited by the terms of the NEA Educators Employment Liability Insurance Policy; provided, however, if the defense of a policy-covered criminal case is handled by counsel provided by the Office of the MSEA General Counsel, MSEA will be responsible for reasonable legal fees and costs through the trial court level up to a cap of fifteen thousand (\$15,000) dollars beyond the employment liability insurance policy criminal coverage.

F. Arbitration Cases: A local association retains the ability to determine whether to process a grievance to arbitration. The MSEA region attorney shall provide

advice and recommendations to the local association as to the merits of a grievance.

In arbitration cases, MSEA will provide all legal services in representing the local association, except that any fees and costs charged by an independent entity for arbitration administration or selection, and any fees and costs charged by an arbitrator, shall be the responsibility of the local association.

G. Disability Retirement Appeals: To obtain legal representation through MSEA, an eligible member of the Association shall submit an application for legal services in connection with a denial by the Maryland State Retirement System for disability benefits. If the MSEA Coordinator for Legal Services deems an appeal for disability benefits to be meritorious based upon existing medical records, then MSEA may provide legal representation in said appeal. If MSEA elects to provide representation, then MSEA will also provide up to \$1,800 for costs associated with an appeal for disability benefits, i.e. costs associated with procuring a doctor's testimony.

H. Notwithstanding any of the provisions cited above, MSEA reserves the right to provide legal assistance in any case deemed by it to be significant to the education profession.

Procedures:

A. Any member having a legal problem in connection with his/her employment should contact the UniServ representative assigned to that particular area. UniServ representatives shall act as the initial contact for those members needing legal help.

B. If the problem is one where a violation of the collective bargaining agreement is alleged, it will be handled initially by the UniServ representative in cooperation with the local association, which has been designated under the law as the exclusive representative.

C. If the problem involves a claim covered under the Educators Employment Liability Policy, the UniServ representative will forward the appropriate papers to the MSEA Center for Legal Issues.

D. All other requests for legal assistance should be initiated with the UniServ representative who will forward same to the MSEA Coordinator of Legal Services.

E. The Coordinator of Legal Services is authorized to review and provide legal assistance at the initial stage of the legal proceedings so long as the case or controversy meets the definition and criteria outlined hereinabove. The

Coordinator of Legal Services is not authorized to provide legal services in any of the following:

1. any case where an individual member is requesting legal assistance to appeal a decision of the State Board of Education or a decision of a Maryland Circuit Court;
2. any case where an individual is requesting legal assistance for an action at any level in the Federal court system;
3. 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 obligations 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.

F. MSEA may decline to provide representation or continued assistance when:

1. the case involves support of a position contrary to the policies of MSEA or NEA;
2. the member/affiliate does not fully cooperate with MSEA;
3. MSEA determines that the facts of the case as alleged by the member/affiliate are not true;
4. the member/affiliate rejects a settlement proposal or other disposition of the case as recommended by MSEA;
5. the member/affiliate retains an attorney without the knowledge and consent of MSEA;
6. budgetary constraints or other bona fide reasons render such action appropriate.
7. the member does not maintain membership as required by this policy, except that membership is not required where legal services are provided to a local association for contract enforcement consistent with the duty of fair representation.

If legal services are terminated pursuant to 1-7 above, there is no right to appeal the decision.

Appeals:

A. In any case where the Coordinator is not authorized to act or in any case where a member or affiliate is seeking assistance and the decision of the Coordinator is against MSEA participation, the Legal Review Panel, upon appropriate request, will consider the case and advise the Board of Directors of its action.

1. Composition: The Legal Review Panel shall consist of the President, the Vice President, and at least three members of the Board appointed by the President, provided, however, that the three members so appointed shall be members of different local affiliates. The Executive Director and General Counsel shall attend all meetings of the Panel in an advisory capacity.

2. Procedures: Requests for assistance by members shall be handled by the following procedures:

a. Following a request for assistance, counsel and staff will make a recommendation to the Executive Director.

b. The Executive Director will consider the matter and notify the President as to his/her recommendation.

c. The President will schedule a meeting of the Panel and notify the member of such meeting. A copy of all relevant documents will be forwarded to the Panel in advance whenever possible.

d. Meetings of the Panel shall be scheduled on Board meeting days when possible and if time allows.

e. At the meeting of the Panel, the member will be afforded the opportunity to discuss his/her case and to offer his/her reasons supportive of the request for assistance.

f. The decision of the Panel shall be communicated to the Board of Directors.

g. When the Panel decision is negative, the member/affiliate shall have the right to appeal in writing to the Board of Directors. The member/affiliate may request an oral hearing before the Board which, if granted, shall be limited to no more than one-half hour in length.

h. The decision of the Panel and/or Board will be communicated in writing to the member/affiliate.

i. Where a member has been represented by MSEA counsel and is seeking additional assistance pursuant to this policy, counsel will take appropriate steps to protect the member's right of appeal pending a decision by the Board of Directors, provided that the member notifies the MSEA President of his/her request for further assistance within ten (10) days after receipt of the relevant decision.

B. In any case covered under the provisions of the Unified Legal Services Program, an applicant whose application for legal assistance is rejected or whose legal services have been terminated by MSEA may appeal to the NEA within 90 days of the denial on the sole ground that MSEA failed to process his/her application in accordance with the provisions of its legal services program.

Selection of Counsel: Legal services will be provided only through the Office of MSEA General Counsel, except with specific prior authorization of the Board.

Repayment: In the event that the member/affiliate prevails on the claim and receives an award, settlement or insurance payment in excess of the member/affiliate's actual financial loss, the member/affiliate shall agree to reimburse MSEA for legal expenses incurred in pursuing the matter in question. MSEA will, in any event, be reimbursed by the member/affiliate with any amounts recovered which have been specifically designated as attorney's fees, legal fees or court costs.

Publicity: MSEA reserves the right to publicize cases for which support is received under this plan.

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