

LEGAL ASSISTANCE POLICY
of the Nebraska State Education Association for
PRESERVING MEMBER RIGHTS

Amended, Restated and Approved
by the NSEA Board of Directors

March 13, 2004

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THE NEBRASKA STATE EDUCATION ASSOCIATION

Member Rights Legal Assistance Policy

I. Preamble

The Nebraska State Education Association (“NSEA” or “Association”) and the National Education Association (“NEA”), through the provisions of the Unified Legal Services Program (“Program”), are dedicated to the protection of the individual and collective employment rights of all members. When a member or local association believes that a member rights problem exists, the professional staff members of the NSEA should be contacted for advice and assistance. Assistance will be provided by the NSEA professional staff or, where deemed appropriate and authorized in accordance with this Policy, by an attorney retained by the NSEA.

II. General Provisions

A. Nondiscrimination

No member shall be discriminated against on the basis of race, color, creed, national origin, gender, sexual orientation, age, handicap, marital status, or economic status.

B. Administration

Member rights problems should initially be referred to a UniServ representative or the NSEA Program Director of Member Rights. The Program Director of Member Rights, in consultation with NSEA Legal Counsel for Member Rights shall have primary responsibility for the administration of this Member Rights Legal Assistance Policy on a day to day basis.

C. Effective Date

All applications for legal services under this Policy submitted on or after September 1, 2004, shall be subject to and processed in accordance with this Member Rights Legal Assistance Policy, as amended.

D. Assistance Discretionary

All member rights legal assistance provided by the NSEA and all requests therefore shall be subject to this Policy, and shall at all times be subject to the sole and exclusive discretion of the NSEA, and not the result of any right to receive legal assistance.

E. Right to Publicize

The NSEA shall have the right to publicize the results of any case for which legal services were authorized under this Policy.

III. **Eligibility**

All of the following eligibility requirements must be met to be eligible for legal services under the Program unless specifically waived by the NSEA Executive Director in the best interests of the Association.

- A. Unified Active NSEA members are eligible for member rights legal services.
- B. The applicant must be an Active member immediately prior to the time the applicant knew, or should have known of an employment problem or immediately prior to the time an adverse employment action or occurrence takes place, whichever first occurs.
- C. The applicant must have joined the Association as an Active member within 30 days of the beginning of the Association year (September 1) or within 60 days of the date of employment occurring within the school term.
- D. A member must not voluntarily terminate membership in the NSEA or its applicable affiliates while such individual is receiving legal services under the Program. Voluntary termination of membership shall result in the withdrawal of funding and termination of legal services for any matter previously authorized under the Program.

IV. **Applications for Legal Assistance**

A. Submission

Applications for legal assistance must be submitted in writing to the Program Director of Member Rights.

B. Time for Submission

- 1. Requests for litigation in dismissal cases must be received within five calendar days of the decision of the employer to dismiss the member.
- 2. Requests for attorney representation in certification or unemployment matters must be received within five days from the date the member received initial notification of adverse action.

3. Requests for attorney representation in criminal proceedings relating to corporal punishment must be submitted within 48 hours of the member's initial contact by law enforcement authorities.

C. Administration of Applications

The Program Director of Member Rights, with advice from NSEA Legal Counsel for Member Rights and the UniServ representative for the member or local affiliate, will determine if attorney assistance shall be provided. In any case where the Program Director of Member Rights is not authorized to make a determination, the Executive Director or Associate Executive Director may authorize legal services under the criteria of this Policy. The Program Director shall inform the Executive Director of the issues involved, and verify eligibility and Program compliance.

The decision of the Program Director of Member Rights shall be made within five calendar days of receipt of the request and the member or affiliate shall be notified in writing. If the request is denied, the member or affiliate shall be informed of the appeals procedure.

V. **Legal Assistance for Administrative Proceedings**

A. Employment Hearings

1. Permanent Certificated Employees

Unless otherwise provided herein, eligible applicants who are permanent certificated employees shall, where deemed appropriate, be provided representation by NSEA retained legal counsel at due process hearings (i.e. cancellation, termination, and suspension without pay) held for reasons other than reduction in force before employer governing boards, hearing panels, or hearing officers.

2. Probationary Certificated Employees

Unless otherwise provided herein, eligible applicants who are probationary certificated employees shall, where deemed appropriate, be provided representation by NSEA retained legal counsel at due process hearings (i.e., cancellation and suspension without pay) held before employer governing boards, hearing panels, or hearing officers. In the absence of very unusual circumstances, probationary certificated employees noticed for an end-of-year dismissal hearing (i.e. nonrenewal) will not be provided representation by NSEA retained legal counsel but shall be provided representation by NSEA staff.

3. Reductions in Force

In the absence of very unusual circumstances, certificated employees facing a possible reduction in force will not be provided representation by NSEA retained legal counsel but shall be provided representation by NSEA staff.

B. Certification and Licensing Proceedings

Eligible applicants shall, where deemed appropriate, be provided representation by NSEA retained legal counsel in cases where a complaint has been filed against them with the Nebraska Commissioner of Education, Nebraska State Board of Education, Nebraska Department of Health and Human Services, or other applicable agency or authority alleging violation of professional standards and practices.

C. Grievances and Arbitrations

In the absence of very unusual circumstances, legal representation will not be provided to members or local affiliates associated with grievance or arbitration hearings. Grievances and arbitrations will normally be handled by the local association, or when requested, with the assistance of NSEA staff. Requests for such assistance should be made in writing to the Associate Executive Director. The Associate Executive Director, in consultation with the Program Director of Member Rights, shall determine which staff person would be responsible for the arbitration.

Requests for staff assistance in arbitration must be timely submitted and prior to filing for arbitration by the member or affiliate. NSEA shall not be responsible for the costs of arbitration other than provision of NSEA staff services.

D. Workers' Compensation

An eligible applicant may be provided limited attorney assistance for the sole purpose of reviewing the status of a member's workers' compensation claim arising from their educational employment. NSEA retained legal counsel will advise the member whether they should seek private legal counsel at their own expense to assist in resolving any problem with the claim. The NSEA will not provide legal representation to members in workers' compensation disputes.

E. Miscellaneous

An eligible applicant shall, where deemed appropriate, be provided assistance by NSEA retained legal counsel in other employment related disputes including, but not necessarily limited to resignations, leaves of absences, disciplinary action (i.e. letters of reprimand, admonishment, etc.), salary, fringe benefits, personnel file matters, unemployment compensation, retirement and working conditions.

VI. **Legal Assistance for Litigation or Judicial Review**

All requests for legal assistance for litigation or judicial review of administrative action shall be subject to all applicable provisions of this Policy, including the criteria for provision of legal services and reasons for denial or withdrawal of attorney representation. A request for litigation from an eligible applicant to be filed in the federal court system shall be referred by the Program Director of Member Rights to the Executive Director for authorization or denial.

VII. **Allegations of Criminal Conduct**

A. General

Except as otherwise provided herein, the NSEA does not provide attorney representation in situations involving criminal charges or investigations against a member. It is the responsibility of the member to secure the services of a criminal attorney at their own expense.

B. Initial Counseling

In the event an eligible applicant becomes the subject of a criminal investigation or formal criminal charges are filed involving acts or omissions arising out of or in the course of their educational employment, the NSEA shall, upon request of the member, provide initial counseling through NSEA retained legal counsel, subject to the following limitations:

1. Consultation with NSEA retained legal counsel shall be limited to providing information about criminal investigations and prosecutions, responding to law enforcement agencies, and advice about retaining, at the member's own expense, a criminal attorney.
2. Such consultation shall be limited to the first 72 hours following the member's initial contact with the NSEA.
3. Assistance will be provided in filing a claim with NEA and NSEA's Educational Employment Liability Program.

C. Criminal Proceedings Involving Allegations of Corporal Punishment

When an eligible applicant becomes the subject of a criminal proceeding as the result of allegations of use by the member of corporal punishment upon a student which arises out of and in the course of the member's educational employment, such cases shall be referred to NSEA retained legal counsel. The term "corporal punishment" means the infliction by a member of physical pain upon a student as a disciplinary measure for actual or alleged misbehavior.

The term "criminal proceeding" means the prosecution of a member commenced by the filing, with a court in Nebraska, of misdemeanor charges alleging that the member had, during the membership period, committed one or more misdemeanor offenses involving one or more incidents, acts, or events, or an investigation by a law enforcement agency that could give rise to such filing. "Criminal proceeding" shall also include any administrative proceeding relating to the reporting, listing, or expungement of information with the Abused or Neglected Child Registry. "Criminal proceeding" shall not include any proceeding that involves the prosecution of a member for any alleged offense under federal law or an alleged offense considered to be a felony under Nebraska law, whether filed independently or joined with misdemeanor charges.

Any criminal proceeding shall be considered a single criminal proceeding, notwithstanding the fact that the prosecution or investigation may involve multiple incidents, multiple counts or charges, and/or multiple trial and/or appellate proceedings. A subsequent or different prosecution or investigation based on the same incidents, acts, or events that provided the basis for the original prosecution or investigation shall not constitute a separate criminal proceeding.

VIII. **Criteria for Provision of Legal Services**

A. Members

In evaluating a request for legal assistance from an eligible applicant under this Policy, the Association, in the exercise of its sole and exclusive discretion, may authorize legal services where the facts demonstrate that legal assistance or representation is necessary or desirable to protect the contractual or statutory rights of a member or an affiliate, or where the legal rights of a member or an affiliate have been violated and a legal response is necessary to protect those rights or the interests of the Association.

B. Nonmembers

A matter of significance to the teaching profession may be supported by the NSEA, even if it involves nonmembers, if approved by the NSEA Board of Directors or where the criteria of the NSEA Policy for Provision of Legal Services for Nonmembers, as amended, are satisfied.

IX. **Reasons for Denial or Withdrawal of Attorney Representation**

- A. The member is not eligible, or ceases to be eligible, for legal services under this Policy.
- B. The matter for which the member or affiliate seeks representation is beyond the scope of matters for which legal services are available under this Policy, or is determined to not warrant legal representation under Policy criteria.
- C. The member fails or refuses to enter into and sign the Memorandum of Agreement or the Release of Information appendices made a part of this Policy.
- D. The member or affiliate retains an attorney without the consent of the NSEA or does not wish to accept the services of a NSEA retained attorney.
- E. The matter for which the member seeks representation is personal to the member and does not relate to job security, certification, licensing, contract maintenance, or other covered employment matter.
- F. The matter for which legal representation is requested or authorized is determined to be in bad faith, with improper motive, frivolous, or otherwise without merit under the law and facts presented.
- G. The matter for which legal representation is requested or authorized is determined to be contrary to the purposes or interests of the NSEA or NEA, or in the judgment of the NSEA, would compromise the integrity or reputation of the NSEA or NEA.
- H. The member or affiliate unreasonably rejects a settlement proposal recommended by the NSEA retained attorney and the Program Director for Member Rights.
- I. The member fails to cooperate with the NSEA or the NSEA retained attorney assigned to the case. Failure to cooperate can include, but is not necessarily limited to:
 - 1. Failing to provide truthful, accurate, or complete information affecting the case to the NSEA retained attorney;

2. Failing to timely respond to or keep in contact with the NSEA attorney assigned to the case;
3. Failure to attend scheduled conferences with the NSEA retained attorney;
4. Failure to assist in the preparation of a defense as requested by the NSEA retained attorney;
5. Failure to allow the NSEA retained attorney to make legal or professional judgments regarding the manner in which the case is handled;
6. Failure to cooperate in the arrangement of a hearing date as recommended by the NSEA retained attorney; and
7. Failure to abstain from abusive or unduly critical statements or behaviors directed towards or about the NSEA or the NSEA retained attorney.

X. Costs and Attorneys' Fees

Where legal services have been duly authorized under the procedures prescribed in this Policy, available resources will be utilized and all costs and fees associated with NSEA approved legal services will be paid by the NSEA and NEA subject to the limitations set forth in this Policy and the provisions of the Unified Legal Services Program. NSEA shall be paid amounts recovered which have been designated as attorney fees or costs.

Legal expenditures by the NSEA related to criminal proceedings involving allegations of corporal punishment shall be limited to a total amount of \$5,000. Legal fees in excess of \$5,000 incurred by the member for legal representation in a criminal proceeding involving allegations of corporal punishment shall be the sole responsibility of the member receiving such services, and must be subject to separate agreement between the member and NSEA legal counsel. Any proceeds of an insurance policy received by the member for legal expenditures made by the NSEA, on behalf of a member for criminal proceedings involving allegations of corporal punishment, must be assigned to the NSEA.

XI. Legal Services Appeals Procedure

A. Denial or Withdrawal of Legal Services for Administrative Hearings

In the event that the Program Director of Member Rights elects to decline a request for legal services for an administrative hearing, an allegation of criminal conduct, or other miscellaneous matter as defined herein, or withdraws authorization previously provided, a written request for review of that decision may be submitted to the Executive Director, or in his/her

absence, to the Associate Executive Director, within three calendar days of the receipt of the denial.

On review, the Executive Director or Associate Executive Director shall determine if the decision was appropriate under this Policy, and may authorize legal services for those cases determined to have merit. The decision of the Executive Director or Associate Executive Director on review shall be final; provided, however, the member or affiliate may appeal the decision to the NEA to determine if the NSEA appeals process was followed.

B. Denial or Withdrawal of Legal Services for Litigation or Judicial Review

In the event that the Program Director of Member Rights, or where the Program Director of Member Rights is not authorized to make a determination, the Executive Director elects to decline a request for legal services for litigation or judicial review, or withdraws authorization previously provided, a written request for appeal may be submitted to the President of the NSEA within three calendar days of receipt of the denial.

The President shall call a meeting of the Legal Review Committee to make a final determination on appeal. The meeting of the Legal Review Committee on appeal shall be called so as to provide adequate time to file litigation or seek judicial review with the appropriate court within legal time limits.

The Legal Review Committee shall consist of the elected Executive Officers of the Association and three members of the NSEA Board of Directors, who shall be elected by the Board at the first meeting of the Association year to serve a one-year term. The Executive Director shall serve on the Committee without voting privileges.

The standard of review on appeal before the Legal Review Committee shall be based on the criteria for provision of legal services and/or the reasons for denial or withdrawal of attorney representation set forth in this Policy.

The decision of the Legal Review Committee shall be final; provided, however, the member or affiliate may appeal the decision to the NEA to determine if the NSEA appeals process was followed.

C. Procedures Before the Legal Review Committee

Three calendar days before the meeting of the Legal Review Committee, the identity of those who will present information to the Committee in support of the position of the respective parties shall be exchanged in writing.

At the meeting, the appellant shall present information to the Committee in support of the appeal. The Program Director of Member Rights and/or Legal Counsel for the NSEA shall then present information to the Committee for denial or withdrawal of legal services. The Legal Review Committee shall

have the right to ask questions of those presenting information to the Committee at its discretion.

The President, or his/her designee, sitting as Chairperson of the Committee shall conduct the meeting, and shall have authority to impose time limits and make other rulings regarding the conduct of the proceedings.

The Committee may deliberate in executive session, but shall vote on the appeal by roll call in open session.

D. Review by NEA

In the event the NSEA declines or withdraws legal services, the member may appeal within 90 days of a final determination to the NEA if the appeal procedures of the Legal Assistance Policy of the NSEA for Preserving Member Rights have been exhausted. Such an appeal would be for the purpose of determining if the NSEA appeals process has been followed. Such appeal should be made in writing to the National Education Association, Legal Services, 1201 Sixteenth Street, N.W., Washington, DC 20036.

E. Timelines

All timelines associated with review or appeal of legal services decisions may be extended by mutual consent of the parties involved; provided, however, the time periods in which administrative hearings are held or litigation filed cannot be extended by agreement of the parties, and therefore all time extensions for review of decisions under this Policy must be based on this consideration.

The NSEA cannot extend timelines associated with appeals to the NEA to determine if the NSEA appeals process has been followed.

APPENDIX A

MEMORANDUM OF AGREEMENT: NSEA/NEA UNIFIED LEGAL SERVICES

This document represents the agreement between NSEA and the undersigned member to provide professional legal services at NSEA expense for disputes as provided and limited by the Legal Assistance Policy of the NSEA for Preserving Member Rights, as amended, receipt of which is hereby acknowledged.

The undersigned acknowledges that the NSEA reserves the right to discontinue legal assistance or representation when:

- the member ceases to be eligible for legal services under the Policy;
- the member fails or refuses to enter into and sign this Memorandum of Agreement or the Release of Information appendix made a part of the Policy;
- the member or affiliate retains an attorney without the consent of the NSEA or does not wish to accept the services of the NSEA retained attorney;
- the matter for which legal representation has been authorized is determined to be in bad faith, with improper motive, frivolous, or otherwise without merit under the law and facts presented;
- the matter for which legal representation has been authorized is determined to be contrary to the purposes or interests of the NSEA or NEA, or in the judgment of the NSEA, would compromise the integrity or reputation of the NSEA or NEA;
- the member or affiliate unreasonably rejects a settlement proposal recommended by the NSEA retained attorney and the Program Director of Member Rights;
- the member fails to cooperate with the NSEA or the NSEA retained attorney assigned to the case.

NSEA shall receive any amounts recovered which have been designated as attorney's fees or court costs.

NSEA is granted the right to publicize the results of the case.

In the event the NSEA declines or withdraws legal services, the member may appeal within 90 days of a final determination to the NEA if the appeal procedures of the Legal Assistance Policy of the NSEA for Preserving Member Rights have been exhausted. Such an appeal would be for the purpose of determining if the NSEA appeals process has been followed. Such appeal should be made in writing to the National Education Association, Legal Services, 1201 Sixteenth Street, N.W., Washington, DC 20036.

I understand and accept the above terms and those of the Legal Assistance Policy of the NSEA for Preserving Member Rights.

Member

Date

Local Association

Witness

APPENDIX B
RELEASE OF INFORMATION
MEMBER RIGHTS CASES

In order for the Program Director of Member Rights of the Nebraska State Education Association (“NSEA”) to follow the progress of your case and provide technical assistance to NSEA legal counsel, if requested, it is necessary for you to read and sign the following:

I, _____, understand and agree that the legal services to be provided me by McGuire and Norby, as legal counsel for the Nebraska State Education Association, are as provided and limited by the terms of the Legal Assistance Policy of the NSEA for Preserving Member Rights, receipt of which is hereby acknowledged.

As a condition to receiving legal services, I authorize McGuire and Norby to provide information about my case on a periodic basis to the NSEA’s Program Director for Member Rights.

Other than as provided herein and in the Legal Assistance Policy of the NSEA for Preserving Member Rights, information about my case will be kept confidential and will not be released to any other person or organization without my permission.

Signature

Date

Witness