

Vermont-NEA Legal Assistance Policy

CONTENTS

- I. INTRODUCTION
 - II. STATEMENT OF PURPOSE
 - III. DEFINITIONS
 - IV. ELIGIBILITY FOR LEGAL ASSISTANCE
 - V. PROCEDURES FOR OBTAINING LEGAL ASSISTANCE
 - VI. CONTINUATION AND TERMINATION OF LEGAL ASSISTANCE
 - VII. APPEALS
 - VIII. ATTORNEYS' FEES AND EXPENSES
 - IX. EFFECTIVE DATE AND AMENDMENTS
- Attachments

I. INTRODUCTION

Within Vermont-NEA, it is the regional UniServ Directors who provide advice and support to local Associations in the context of collective bargaining, grievance processing, and certain other matters. In general, it is left to their judgment, in concert with local Association officials, to determine the extent of their direct representation of individuals or local Associations in grievance and other matters. In those instances where a member's employment is in actual jeopardy, the UniServ Director consults with the General and/or Associate Counsel to determine if, and at what procedural step, the member's situation requires legal assistance. Within that context, members and local Associations may be entitled to legal assistance and this policy establishes the procedures through which legal assistance may be obtained and continued.

II. STATEMENT OF PURPOSE

The Vermont-NEA Legal Services Program is a cooperative program between the National Education Association (NEA) and Vermont-NEA. Its purpose is to provide legal assistance to Vermont-NEA members and affiliates in certain employment-related matters and to protect and broaden the rights of educators.

III. DEFINITIONS

For purposes of this policy, the following definitions shall apply:

"Appeal" means an appeal, a petition for certiorari, or any other procedure by means of which a higher decision-making authority is asked to review an action.

"Days" means calendar days.

"Employment-related matter," except as provided in subparagraph d, means any matter involving:

- a. a dispute involving terms and conditions of employment or employee representation between a school district or other institution involved in the teaching-learning process, the State, or an agency of the State, and (i) one or more of its employees who are Vermont-NEA members, (ii) one or more of its employees who are not Vermont-NEA members if Vermont-NEA or a local affiliate of Vermont-NEA is obligated to provide legal assistance pursuant to a duty of fair representation, or (iii) one or more local affiliates of Vermont-NEA.
- b. The defense of employment-related criminal charges brought against a member or members as limited in subparagraph d.3.

- c. A dispute in which the State of Vermont is seeking or considering revocation, suspension or restriction of a member's professional educator's license.
- d. "Employment-related matter" shall not mean a matter
 - 1. in which the applicant for legal assistance is being challenged by one or more rank-and-file employees or an employee organization as a result of an action taken by the applicant as a management representative;
 - 2. covered by worker's compensation; or
 - 3. covered by an NEA insurance program, except matters involving the defense of employment-related criminal charges brought against a member for which the program provides payment only if the member is exonerated.

"Fiscal year" means September 1 through August 31.

"Legal assistance" means the provision of legal representation in an employment-related matter.

"Legal services" means services rendered by an attorney who is licensed to practice law, a paralegal or a law clerk in preparation for or in the course of:

- a. a grievance, administrative, judicial, or other adversarial proceeding involving an employment-related matter; and
- b. with respect to the collective bargaining process, an impasse resolution proceeding.

"Occurrence" means an act or series of related acts that result in one or more employment-related matters.

IV. ELIGIBILITY FOR LEGAL ASSISTANCE

- A. Individuals. Except as provided in ¶C of this section, a member of Vermont-NEA is eligible for legal assistance only if he or she was a member both when the occurrence for which assistance is requested took place and when the application for assistance was filed.
- B. Affiliates. Except as provided in ¶C of this section, a local affiliate of Vermont-NEA is eligible for legal assistance only if it was an affiliate both when the occurrence for which assistance is requested took place and when the application for assistance was filed.
- C. Optional Assistance. At its option, Vermont-NEA may provide legal assistance to an individual who, or an organization which, was not a member when the occurrence took place and/or when the application for assistance was filed, if the occurrence took place:
 - 1. in the case of an individual, during a thirty (30)-day period after the individual initially became eligible for Vermont-NEA membership; or
 - 2. in the case of an organization, when the organization was in the process of becoming an affiliate of Vermont-NEA.
- D. Continued Membership. If the request for legal assistance is granted, the individual or organization, as a condition for continuing assistance, must remain a member or affiliate of Vermont-NEA.
- E. Waiver. An individual who wishes to be exempted from Vermont-NEA membership under this section may submit to Vermont-NEA a request in writing detailing the reasons for the request. The Executive Director or his/her designee shall consider the request and notify the individual of the decision. Vermont-NEA is without authority to exempt membership in the NEA for purposes of receiving legal assistance.
- F. Non-Discrimination. In determining whether or not to provide legal assistance to members and local affiliates of Vermont-NEA, Vermont-NEA shall not discriminate on the basis of race, color, religion, national origin, creed, age, gender, sexual orientation, disability, marital status, or economic status.

V. PROCEDURES FOR OBTAINING LEGAL ASSISTANCE

- A. UniServ consultation. Prior to filing an application for assistance, an individual or local affiliate shall consult with his or her UniServ Representative about the appropriateness of legal assistance regarding the employment-related matter in question.
- B. Application. An individual or local affiliate seeking legal assistance shall file with the Vermont-NEA General Counsel a completed application for assistance and executed memorandum of agreement, attached as Appendices A and B.
- C. Decision. Within forty-five (45) days of receiving an application for assistance, barring circumstances necessitating a longer period, the General Counsel shall determine if the application is or is not granted. In making this determination, the General Counsel shall consider, among other things:
1. The applicant's eligibility for legal assistance;
 2. The legal merit of the applicant's position;
 3. Vermont-NEA policies; and
 4. Whether and to what extent granting the request for legal assistance would advance the goals and objectives of Vermont-NEA.
- D. Denial. If the General Counsel denies the request for legal assistance, in whole or in part, he or she shall notify the applicant in writing, providing a clear statement of the basis for the denial and of the applicant's right to appeal that denial under §VII of this policy.
- E. Attorney-client relationship. When the decision to provide legal assistance is made, an attorney-client relationship between the General, Associate, or other counsel retained for this purpose by Vermont-NEA shall commence.
- F. Other retained counsel. In rare circumstances, Vermont-NEA may retain a private attorney to provide legal assistance under this policy. The following provisions pertain to such an attorney:
1. Any statements made or information given to him or her by an individual or local affiliate during a preliminary investigation are not privileged, and may be shared by the attorney with Vermont-NEA.
 2. Any statements made or information given to him or her by an individual or local affiliate after the attorney is assigned to provide legal assistance are subject to the attorney-client privilege.
- G. Conditions. As a condition of receiving legal assistance, a client expressly authorizes the attorney:
1. to share statements or information with Vermont-NEA staff that may be relevant to the determination by Vermont-NEA to continue or discontinue legal assistance;
 2. to keep Vermont-NEA informed of developments in connection with legal assistance, including any settlement offers made or received by the client; and
 3. to provide Vermont-NEA copies of legal documents prepared in connection with representation of the client, for possible use by Vermont-NEA after redacting from any non-public document any references identifying the client.
- H. Representation in Criminal Matters. A member notified that the Department of Social and Rehabilitation Services or Aging and Disabilities, or a law enforcement agency is investigating him or her for alleged criminal conduct arising out of his or her employment duties may, upon proper application, attached as Appendix C, receive payment by Vermont-NEA for the cost of reasonable and necessary attorney fees, not to exceed \$2500, if:
1. The allegations, if proved, could lead to a criminal fine and/or imprisonment.

2. He or she retains an attorney approved for this purpose by the Vermont-NEA General Counsel.
3. He or she agrees in writing to reimburse Vermont-NEA from any other source of financial coverage for attorney fees, including the Educators' Employment Liability Policy.
4. He or she submits the attorney's bill, with appropriate documentation and detail, to the Vermont-NEA General Counsel within 60 days of the end of the investigation.

VI. CONTINUATION AND TERMINATION OF LEGAL ASSISTANCE

- A. Continuation. Unless otherwise expressly indicated, a determination by Vermont-NEA to provide legal assistance in connection with an employment-related matter means that Vermont-NEA will pay all legal fees and expenses incurred in representing an individual or local affiliate in connection with that matter. Vermont-NEA's determination to provide legal assistance at each stage of the proceedings is an independent determination to be made in accordance with §V.C.
- B. Termination. Vermont-NEA may terminate legal assistance at any stage of the proceedings if:
 1. It becomes aware of relevant facts it did not, and could not reasonably have been expected to, know when it made its initial determination to provide legal assistance;
 2. The client does not remain eligible for legal assistance under the criteria set forth in §IV;
 3. The client fails to comply with the provisions of this policy;
 4. The client fails to cooperate with, or takes actions that interfere with the ability of, the attorney adequately to perform his or her professional duties;
 5. The client rejects a reasonable settlement proposal or other disposition of the case as advised by the General Counsel; or

6. Continued representation would, in the opinion of the General Counsel, not advance the goals and objectives of Vermont-NEA.
- C. Notice. If the General Counsel terminates legal assistance, he or she shall notify the client in writing, providing a clear statement of the basis for the termination and of the client's right to appeal that termination under §VII of this policy.

VII. APPEALS

- A. General. If the General Counsel (1) denies a request for legal assistance, (2) grants a request for legal assistance for a particular stage of a proceeding but denies legal assistance for a subsequent stage, or (3) terminates legal assistance, an individual or local affiliate may appeal the decision to the Vermont-NEA Board of Directors.
- B. Filing. An appeal may be timely filed within twenty (20) days after the client receives written notice of the General Counsel's decision by delivering in hand or by certified mail written notice to the Vermont-NEA Executive Director.
- C. Board of Directors. The Board of Directors may hold a hearing, request written submissions, or take other actions it deems appropriate to rule on the appeal. It shall render its decision as soon as possible, and shall give the appellant and the General Counsel written notice of its decision, which shall be final, except as provided in ¶D of this section.
- D. Appeal to National Education Association (NEA)
 1. An individual or local affiliate dissatisfied with the decision of the Vermont-NEA Board of Directors may appeal to NEA, provided the individual or local affiliate was a member or local affiliate of NEA when the occurrence for which legal assistance is requested took place and when the appeal is filed.
 2. The sole basis for an appeal to NEA is that Vermont-NEA failed to comply with this policy in processing the request for legal assistance.

3. An appeal may be timely filed within ninety (90) days after the client receives written notice of the Appeal Panel's decision by delivering in hand or by certified mail a Notice of Appeal with the NEA-Member Advocacy Services, Legal Services Programs, 1201 16th Street, N.W., Washington, D.C. 20036.
4. NEA shall consult with Vermont-NEA before acting on the appeal. If NEA concludes that Vermont-NEA failed to comply with this policy in processing the request for legal assistance, and that such noncompliance may have affected the decision of the Board of Directors, NEA shall afford Vermont-NEA the opportunity to take appropriate corrective action. If Vermont-NEA fails to take appropriate corrective action, NEA itself may provide legal assistance to a member or local affiliate of Vermont-NEA, and the amount expended by NEA in this regard shall be set off against any future NEA reimbursement to which Vermont-NEA otherwise
5. would have been entitled under its Unified Legal Services Program.

VIII. ATTORNEYS' FEES AND EXPENSES

- A. A client shall pay to Vermont-NEA any amounts recovered by court award, settlement, or otherwise that specifically are designated as attorneys' fees and costs, and if no part of the amount recovered is so designated, the recipient shall pay to Vermont-NEA any amount in excess of the recipient's actual financial loss up to the amount that has been expended by Vermont-NEA and NEA to provide legal assistance.
- B. Vermont-NEA shall forward to NEA its appropriate share, as determined in accordance with the Guidelines of the Legal Services Program, of any amount received from a recipient pursuant to ¶A of this section.

IX. EFFECTIVE DATE AND AMENDMENTS

- A. This policy shall become effective as of January 15, 2000, and shall supersede all previous Vermont-NEA policies dealing with the same subject matter, provided that any request for legal assistance made prior

to that date shall be processed in accordance with the policy in effect at that time.

- B. The Vermont-NEA Board of Directors may amend this policy from time to time, provided that any request for legal assistance that was filed prior to the effective date of such amendment shall be processed in accordance with the policy in effect at that time.

Adopted: January, 2000.

Amended: Spring, 2006, to extend the NEA appeal period to 90 days

Vermont-NEA Legal Assistance Policy
Application for Legal Assistance

Appendix A

The purpose of the Vermont-NEA Legal Services Program is to provide legal assistance to members and local affiliates of Vermont-NEA in certain employment-related matters. The structure and operation of the Program are described in the Vermont-NEA Legal Assistance Policy attached and made part of this Application. By signing the accompanying Memorandum of Agreement, you are affirming that:

1. You have read and understand the Policy's provisions and acknowledge that your rights and obligations under the Program are as set forth there, and that they take precedence over any other statements or commitments, written or oral, that have been or may be made to you with regard to such rights and obligations.
2. You understand that the information provided on the subsequent pages of this Application will be relied upon by Vermont-NEA in acting on your Application. To the best of your knowledge, this information is complete and accurate.
3. You understand that this Application is only a request for legal assistance, and the filing of the Application does not in and of itself entitle you to such assistance. Vermont-NEA will notify you in writing of the action that is taken with regard to your Application.

2. Name of School: _____
School address: _____
School phone #: _____
3. Superintendent: _____
4. School Board Chair: _____
5. Your supervisor: _____
6. Your job title: _____
7. Number years employed there: _____
8. Name of local Association: _____
9. Are you a member of the Association? Yes No
10. Were you a member at the time of the _____
incident that led to the current dispute? Yes No

– more –

You should complete this Application and submit it to your UniServ Representative. If you do not know who that is, contact your local Association Representative or call 1-800-649-6375. Feel free to keep a copy of the Application, along with the Legal Services Program Policy, for your records.

Instructions: Please type or print. Fill in all answers completely. If you need additional space to respond to a question, please attach additional sheets with your name and insert the number of any question(s) next to your response.

Section 1 – General Information (if applicant is an affiliate, please enter name of contact in item 1 and omit items 5 – 7)

1. Name of Applicant: _____
Home address: _____
Home phone #: _____

Vermont-NEA Legal Assistance Policy
Memorandum of Agreement

Appendix B

I hereby declare that the information contained on the attached "Application for Legal Assistance" is accurate to the best of my knowledge and that I have read the attached "Vermont-NEA Legal Assistance Policy" and agree to abide by the conditions set forth therein, including the following:

1. That Vermont-NEA agrees to pay the costs, expenses, and attorneys' fees involved in the resolution of this dispute only when the procedures and standards described in the "Vermont-NEA Legal Assistance Policy" have been met.
2. That Vermont-NEA reserves the right to decline to provide representation or continue assistance when:
 - a. It becomes aware of relevant facts it did not, and could not reasonably have been expected to, know when it made its initial determination to provide legal assistance;
 - b. The client does not remain eligible for legal assistance;
 - c. The client fails to comply with the provisions of this policy;
 - d. The client fails to cooperate with, or takes actions which interfere with the ability of, the attorney adequately to perform his or her professional duties;
 - e. The client rejects a reasonable settlement proposal or other disposition of the case as advised by the General Counsel.;
 - f. Continued representation would, in the opinion of the General Counsel, not advance the goals and objectives of Vermont-NEA; or
 - g. The law controlling the disposition of the case is changed and as a result of the change, there is little or no likelihood of success.

3. If I/we prevail on the claim and receive an award, settlement, or insurance payment in excess of the member/affiliate's actual financial loss, I/we agree to reimburse Vermont-NEA for legal expenses incurred in pursuing the matter in question. Vermont-NEA will, in any event, be reimbursed by the member/affiliate with any amounts recovered which have been specifically designated as attorneys' fees, legal fees, or court costs.
4. I/we hereby grant to Vermont-NEA the right to publicize the matter in question.
5. If Vermont-NEA denies continued legal assistance in the matter in question, the member/affiliate has the right to appeal to the National Education Association at the following address:

National Education Association
Member Advocacy Services
Legal Services Programs
1201 16th Street, N.W.
Washington, D.C. 20036

This appeal may be made on the sole ground that Vermont-NEA failed to process the member/affiliate's application for assistance or handle the matter in question in accordance with the provision of its Legal Assistance Policy.

I/we understand and accept the above terms regarding Vermont-NEA support of the matter for which I/we request assistance.

Date: _____ Applicant: _____

Witness: _____

Please return completed application and agreement to: General Counsel, Vermont-NEA, 10 Wheelock Street, Montpelier, Vermont 05602-3737.

Application for Payment of Certain Attorney Fees in Criminal Matters

I am an applicant for legal assistance under Vermont-NEA's Legal Assistance Policy. I understand I am under investigation for alleged criminal conduct arising out of my employment duties, as described in my application for legal assistance. I am also applying for payment by Vermont-NEA of the cost of reasonable and necessary attorney fees, not to exceed \$2500. I hereby affirm and agree to the following terms and conditions for such payment:

1. I have submitted a complete application for legal assistance, in which I describe the basic facts of the dispute with my employer.
2. I have been informed that the allegations about me, if proved, could lead to a criminal fine and/or imprisonment.
3. I have or will retain an attorney approved for this purpose by the Vermont-NEA General Counsel.
4. I agree to reimburse Vermont-NEA from any other source of financial coverage for attorney fees, including the Educators' Employment Liability Policy.
5. I will advise or have advised my attorney that he or she must submit a bill with appropriate documentation and detail to the Vermont-NEA General Counsel within 60 days of the end of the investigation.

Date: _____

Applicant: _____