

# NEA-NM LEGAL SERVICES

## Protection On the Job Provided with Your Membership

If you have legal difficulties on the job, don't assume the school district will protect you. An employee can run into legal difficulties in at least three ways:

- 1) Your job can be threatened through disciplinary action, or by the school district violating the employment rights provided through school district policy or the collective bargaining agreement (CBA).
- 2) You can be sued for damages by parents or a student.
- 3) You can be charged with an employment related crime, such as child abuse.

## Your Membership Can Help When Your Job is in Jeopardy

Local NEA-NM member leaders are your first line of defense. They are trained as first contacts for advice and representation in meetings with your supervisor or other school district representatives. They will take notes, review the appropriate school district policy or contract language and then advocate for you with the school district. Most grievances are resolved at this level. If you need assistance beyond this point, a NEA-NM UniServ Director will advise your local leaders regarding a course of action. In the event of a threat to your job such as termination, NEA-NM will provide staff to represent you in formal hearings with the school district. In the unlikely event your dispute with the school district requires a legal challenge in state or federal court, NEA-NM may provide legal counsel in accordance with NEA-NM Board Policy.

**NEA-New Mexico members have additional protection when threatened with criminal or civil legal action from the Educators Employment Liability (EEL) Insurance Program provided at no premium cost to you with your NEA membership.**

**REMEMBER: At the first hint of action toward you and your job (verbal or written), contact your local Association president.**

## Real or Potential Criminal Charges

If you are under investigation for an alleged crime or are threatened with criminal charges, you should contact your local president who will contact the local NEA-NM UniServ Director. If appropriate, arrangements will be made for you to fill out paperwork prior to a legal consultation. **Do not discuss the specific allegations or investigation with anyone except the UniServ Director and your attorney.** To confirm you have the needed coverage when investigations are imminent or underway but no charges have been filed, NEA-NM will provide you with appropriate criminal defense representation services up to the maximum of \$5,000 from the United Legal Services Program funded jointly by NEA and NEA-NM. These services are provided to protect your rights and to prevent charges from being filed against you, if possible. These services are available to you regardless of the outcome of the investigation or the criminal charges that may be filed.

Should criminal charges be filed, your benefits and protection come under the NEA-NM EEL Program. Under this program, you are entitled up to \$35,000 in reimbursement from the EEL Program insurance carrier for defending criminal charges if and when you are exonerated of all charges.

**NEA also provides defense and counsel for members facing employment-related legal action for lawful actions taken in response to an immigration enforcement action on school property, higher education campuses, and official school bus stops.**

## Civil Actions

The National Education Association (NEA) and NEA-New Mexico (NEA-NM) believe it is the responsibility of your employer to provide you with insurance to protect you from personal financial liability stemming from employment-related lawsuits. In New Mexico, this is the coverage required by the Tort Claims Act. We have lobbied to keep this coverage available and strong over the years.

EEL is secondary coverage to that required by the New Mexico Tort Claims Act. However the New

Mexico Act limits claims in a way that could leave you to face serious personal financial liability.

EEL has a three million dollar (\$3,000,000) limit per single occurrence, so it greatly extends the protection under the Tort Claims Act. So the state act could leave employees on the hook for up to \$2,600,000 for a serious medical claim that the EEL would cover.

EEL covers employees for activities that the school district would not be required to cover, for instance an insubordinate act that creates a civil claim, but is not a crime. The district must only cover “any tort that was committed by the public employee while acting within the scope of his duty.” EEL covers any act, even insubordinate or negligent ones. Finally “A governmental entity shall have the right to recover from a public employee the amount expended by the public entity to provide a defense and pay a settlement agreed to by the public employee or to pay a final judgment if it is shown that, while acting within the scope of his/her duty, the public employee acted fraudulently or with actual intentional malice causing the bodily injury, wrongful death or property damage resulting in the settlement or final judgment.” EEL covers these defense costs even if the employee acted fraudulently or with intentional malice, as long as not charged with a crime.

**The Tort Claims Act will not provide coverage if you are charged with a crime, even if exonerated. EEL will!**

### **Keep This in Mind**

School districts may try to limit their liability if an employee is sued. NEA-NM will do everything possible to make those districts live up to their fiscal responsibilities.

In the event of a civil suit, which often includes as many parties as possible, the district’s lawyers may attempt to have the district dismissed from the case; that is what district lawyers are paid to do. This could leave the employee without protection, unless he/she is a member of NEA-NM.

### **On-the-Job Protection**

School employees need NEA and NEA-NM. Leaving yourself unprotected is unwise. We believe it is better to let you, the school employee, have all the facts for a reasoned decision.

### **Are some activities excluded from coverage?**

Yes. Certain activities, which NEA members perform, are excluded, the following are some examples of those major activities.

- **Operating vehicles.** (Driver training instructors are covered while riding as passengers, and vocational education instructors are covered for their activities during school shop classes. In addition, coverage is provided for the loading and unloading of school buses.)
- **Selling or distributing products, including food and beverages.** (Home economics teachers are covered for their classroom and laboratory teaching activities and for the sale of products prepared in the classroom. Cafeteria workers are covered for their food preparation and distribution activities.)
- **Law enforcement activities,** except for those of a security guard.
- **Using or supervising the use of firearms,** except where this activity involves the use of physical restraint in defending yourself or school property.

### **What is the NEA Attorney Referral Program?**

This unique program is designed to make sure that every NEA member in participating states has access to affordable legal advice. NEA’s Attorney Referral Program is open to any active, life, support, or retired member, and the member’s spouse and dependent children.

During any membership year (from September 1 to August 31), eligible members are entitled to two free 30-minute consultation sessions with any of these Association-approved attorneys. During the two free sessions, you may discuss any legal matter except income tax preparation.

**Contact your NEA-NM local president for information about how to join.**

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