

MEA Legal Representation Policy

*(Amended by MEA Board, August 1987, November 1989, September 1997, April 2002;
Amended by MEA RA, April 2010; Amended by MEA Board, January 2013, March 2013, July 2014)*

I. Individual members

A. Coverage. The MEA (Association) will provide representation to its individual members, fee payers and other bargaining unit members relating to their educational employment rights and privileges in accordance with the terms of this policy. For purposes of this policy:

1. “Member” shall mean an active member in good standing in the Association.
2. “Fee Payer” shall mean an employee in a bargaining unit represented by an MEA affiliate who is not an active member in good standing, but who is required to pay and is paying an agency fee to the Association.
3. “Other Bargaining Unit Member” (OBUM) shall mean a member of a bargaining unit represented by an MEA affiliate who is neither a member nor a fee payer, but for whom the Association has a duty of fair representation.

B. Matters where Representation is Provided.

1. Representation will extend to those cases which arise out of the activities of the member or fee payer in the course of employment as an employee of a school district, college or university, as well as those cases which arise out of activities which impact on such employment. The rights and privileges may arise by virtue of a collective bargaining agreement, state or federal constitution or statute, or by virtue of a judicial or administrative decision. The representation may be provided in the appropriate case by an attorney employed by the Association or by a UniServ director. A fee payer shall not be eligible for representation in unemployment, retirement, certification, licensure or civil rights cases.
2. Representation of an OBUM is limited to grievances pursuant to a collective bargaining agreement at steps or levels where only the Association has the right to pursue the grievance and in accordance with the conditions of representation set forth in paragraph 1-D below. The Association reserves the right to determine in its sole discretion the representative for an OBUM.
3. In providing representation, the Association will not discriminate against members, fee payers or OBUMs on the basis of religion, race, color, national origin, age, sex, sexual orientation, economic status, height, weight, marital status or handicap.

C. Exclusions. The Association will not provide representation to its individual members or fee payers in connection with the following cases or matters:

1. Criminal charges brought against the member or fee payer, except as provided in Article XI of this policy.
2. Workers’ compensation, except when: 1) A member has been unable to obtain private legal counsel; 2) there is a substantial likelihood of the member succeeding in the case; and 3) prosecuting the case would potentially assist other members either due to the potential precedent of the case or by placing the employer on notice that it will not be allowed to reject claims for workers’ compensation only because the amount at issue does not justify the employee proceeding on his or her own through privately retained counsel.

As a condition of representation, the member shall enter into a written agreement providing for reimbursement to MEA of attorney fees and costs at the maximum contingency fee rates set forth in the workers' compensation statute.

3. Claims for personal injury to individual members or fee payers not substantially a part of a case otherwise covered under this policy.
4. Proceedings in which the individual member or fee payer asserts a claim adverse to matters in the interest or position of the Association or its affiliates.
5. Proceedings in which the member or fee payer is provided representation by an insurance company under the terms of an insurance policy provided either by the Association or the member's or fee payer's employer.
6. Exceptions to the foregoing exclusions may be made by the MEA executive director for good cause on a nondiscriminatory basis.

D. Conditions for representation.

Representation under this policy shall be provided upon the conditions set forth below.

1. Representation under this policy will be provided where it is determined by the Association:
 - a) The action complained of resulted or will result in actual prejudice or injury to the member's, fee payer's or OBUM's educational employment rights and privileges; and
 - b) There is a substantial likelihood that the facts, as alleged or established through investigation, will entitle the member, fee payer or OBUM to relief under the current state of the law.
2. The Association may decline to provide representation in cases where the member, fee payer or OBUM does not fully cooperate and freely assist the Association or its representative in the handling of his or her case.
3. The Association may decline to provide further representation if it determines through investigation that the facts, as alleged by the member, fee payer or OBUM and upon which the member, fee payer or OBUM bases his/her claim are not true.
4. The Association may decline to provide further representation in the case where the representative employed by the Association to assist the member, fee payer or OBUM advises a settlement or a particular disposition of a member's, fee payer's or OBUM's case and he or she rejects that settlement proposal or recommended disposition.
5. In order to be eligible for representation as a member or fee payer under this policy, an individual must have been an active member in good standing of the Association or a fee payer at the time of the action complained of and must maintain active membership in good standing in the Association or continue to pay the agency fee for the entire time legal services are provided unless expressly waived by the MEA executive director. The Association may decline to provide representation when it appears that an individual became a member or an active member in good standing for the purpose of receiving representation under this policy.
6. In order to be eligible for representation under this policy, the individual member, fee payer or OBUM must agree to reimburse the Association for attorney's fees, court costs and expenses incurred on the member's, fee payer's or OBUM's behalf in the event a member, fee payer or OBUM prevails on his/her claim and is awarded cash damages or receives a cash settlement.

A member may be obligated to reimburse the Association for attorney's fees, court costs and expenses only to the extent the sum received by the member exceeds his/her backpay loss (e.g., loss of salary and fringe benefits, minus earnings in mitigation), plus other consequential damages and expenses. The Association must, in any event, be reimbursed any portion of a damage award or cash settlement specifically designated as attorney's fees, court costs and expenses.

7. In the event that the Association denies representation based on the criteria contained in section I-D, the member or local affiliate may appeal that determination in accordance with the appeal procedure contained in Article VIII. The question to be determined in such an appeal is whether the criteria in section I-D has been met.
8. A fee payer or OBUM may only challenge a violation of this policy within 10 days of notice that the association will not pursue a matter under this policy by making a written request to the MEA president for a review by the MEA Executive Committee of an alleged violation of this policy. The decision of the Executive Committee shall be final and binding on the Association and fee payer or OBUM.

II. Affiliates

The MEA will provide legal representation to its affiliates to protect their rights and privileges as a collective bargaining representative. These rights and privileges as a collective bargaining representative may arise by virtue of a collective bargaining agreement, state or federal constitution or statute, or by virtue of a judicial or administrative decision. Representation under this policy shall be provided upon the conditions set forth below:

- A. *Conditions for representation.*** Legal representation under this policy will be provided the affiliate when it is determined:
 1. That the action complained of has resulted in actual prejudice or injury to the affiliate's rights and privileges as a collective bargaining representative;
 2. There is a substantial likelihood that, under the current state of the law, an affiliate will be found entitled to relief;
 3. Or in the alternative, that the handling of the case will assist the affiliate in negotiations with the employer and/or in the representation of its membership.
- B.** The Association may decline to continue to provide representation in cases where the affiliate or its representatives do not fully cooperate with and freely assist the Association or the representative provided by the Association in the handling of its case.
- C.** The Association may decline to provide representation if it determines through independent investigation that the facts as alleged by the affiliate and upon which the affiliate bases its claims are not true.
- D.** The Association may decline to provide further representation of any affiliate in a case where the representative employed by the Association to assist the local affiliate advises a settlement or particular disposition of the affiliate's case and the affiliate rejects that proposed settlement or recommended disposition.
- E.** In cases where the affiliate's rights and privileges as a collective bargaining representative are affected or threatened by the action of another affiliate of the Association, the Association may decline to provide representation to one or both of the involved affiliates.

III. Appeals

Appeals of an adverse decision in a member's, fee payer's or affiliate's case to the next level of review shall be taken only if it is determined by the Association:

- A. That the decision, if left unchallenged, will create precedent detrimental to the rights and privileges of a substantial number of other members, fee payer's and/or local affiliates;
- B. In the absence of a detrimental effect on other members, fee payers or affiliates, that there is a substantial likelihood of success on appeal.

In the event that the Association determines that it will not represent an appeal of an adverse decision to the next level of review, based on the criteria contained in III-A and/or III-B above, the member or local affiliate may appeal such determination in accordance with the appeal procedure contained in Article VIII. The question to be determined in such an appeal is whether the criteria in sections III-A and/or III-B have been met.

IV. Designation of representatives

- A. **UniServ directors.** In the implementing of this policy UniServ directors will generally provide representation for members and fee payers:
 - 1. In proceedings before arbitrators under collective bargaining agreements;
 - 2. In hearings of an informal nature conducted before administrative agencies such as the unemployment agency, U.S. Equal Employment Opportunity Commission and Michigan Department of Civil Rights.
- B. **Attorneys.** In addition to proceedings in the courts of this state and in federal courts, attorneys will generally be employed:
 - 1. In proceedings before state and federal administrative agencies where a record is made and/or the proceedings result in a written decision;
 - 2. Attorneys may also be used to handle functions normally handled by UniServ directors when the member faces charges of a criminal nature and a proceeding normally handled by a UniServ director may adversely affect disposition of those criminal charges.

V. Procedures for obtaining assistance/authorizations

- A. Individual members, fee payers and OBUMs wishing representation shall first make application to their UniServ director. Completion of a written application is not required. But individual members, fee payers and OBUMs may be asked to sign a "Representation Agreement" as a condition of acceptance of their case. An application for representation will be reviewed and a decision made in a timely manner.
- B. Routine services under this policy normally provided by UniServ directors will be provided without specific authorization.
- C. Authorization for the use of attorneys, as well as a determination as to which attorneys shall be utilized in a particular case, shall be made by the MEA general counsel or his/her designee.
- D. The determination to appeal an adverse decision in a case shall be made by MEA general counsel or his/her designee after consultation with the zone director. A member or affiliate shall be promptly advised of a determination not to appeal an adverse decision in his/her/its case by the MEA general counsel or his/her designee.

In the event a determination is made not to appeal an adverse decision, the attorney employed by the Association will take reasonable steps necessary to ensure that the rights of the affected member or affiliate are preserved pending a decision by the member or affiliate as to whether the matter will be pursued further. If a member or affiliate determines to pursue their case, further fees and costs shall be the responsibility of the member or affiliate.

VI. Legal projects

- A.** The Board of Directors of the MEA may establish legal projects that have as their purpose the improvement of the current state of the law affecting the rights and privileges of individuals represented by the MEA or the rights and privileges of MEA affiliates.
- B.** In establishing such projects, the Board of Directors shall first designate the improvement sought and specify the amount of money to be spent in achievement of this improvement in the current fiscal year. The executive director shall then prepare and submit to the Board a specific program to effect the changes in the state of the law sought by the Board. The Board of Directors may adopt, modify or reject a proposed program. After adoption of a program, the Board, at the beginning of each fiscal year, shall determine the amount of money to be expended on a project in the upcoming fiscal year.
- C.** Representation of individuals or affiliates may be undertaken pursuant to an approved legal project without consideration of the other provisions of this policy.

VII. Curtailment of legal expenditures

- A.** In the event the Board of Directors determines that the financial condition of the Association requires a reduction in expenditures under this policy, the following steps will be taken, as necessary, in the following order:
 - 1. Approved legal projects shall be suspended. Representation of individuals and local affiliates undertaken pursuant to said projects shall be terminated as soon as possible.
 - 2. Representation of fee payers in pending cases shall be terminated as soon as possible.
 - 3. No representation, except as provided in Paragraph V-A of this policy, shall be provided to a local affiliate in cases which qualify only under Paragraph II-A-3 of this policy.
 - 4. Representation of individual members will be undertaken only if there is a substantial likelihood, under the current state of the law, that the member will be found entitled to relief.
 - 5. Action in current cases will be deferred whenever possible.
 - 6. Appeals of adverse decisions will be undertaken only if an adverse decision will create precedent detrimental to the rights and privileges of a substantial number of other members and/or local affiliates.
 - 7. Representation of affiliates in pending cases may be terminated.
 - 8. Representation of members in pending cases may be terminated.
- B.** In the event it is necessary to curtail representation under this policy, the attorney employed by the Association will take reasonable steps necessary to ensure that the rights of affected members, fee payers and affiliates are preserved pending a decision by the member, fee payer or affiliate as to whether the matter will be pursued further. If a member, fee payer or affiliate determines to pursue his/her/its case, further fees and costs shall be the responsibility of the member, fee payer or affiliate.

VIII. Appeal from decision under this policy

- A.** A member or affiliate aggrieved by a decision of an employee of the Association applying this policy may, within ten (10) days of notice of that decision, appeal to the executive director.
- B.** The executive director shall meet with the member or representative of the affiliate to discuss the decision complained of. The executive director shall advise the member or affiliate of his/her determination.
- C.** Any member or affiliate dissatisfied with the determination of the executive director may appeal to the Executive Committee of the Board of Directors of the Association by giving written notice to the president of the Association within ten (10) days of receiving the executive director's determination. The Executive Committee shall meet with the member or affiliate to discuss the decision complained of. The decision of the Executive Committee may be appealed to the Board of Directors by giving written notice to the president of the Association within ten (10) days of receiving the Executive Committee's decision.
- D.** During the pendency of any appeal under this paragraph, at the request of the member or affiliate, all necessary steps will be taken to preserve the rights of the member or affiliate.
- E.** A member or affiliate whose application for representation is rejected by the MEA may appeal to the National Education Association (NEA) on the sole ground that the Association failed to process his/her application in accordance with the provisions of its representation policy.
- F.** In the event an individual member's or affiliate's appeal under this paragraph is denied by the Association and the NEA or denied and not appealed further by the member or affiliate, the individual member or affiliate shall reimburse the Association for the attorney's fees, court costs and expenses incurred by the Association in order to preserve the rights of the member or affiliate during the pendency of their appeal under this paragraph.
- G.** The appeal rights contained herein may not be waived by a member or an affiliate, except by failure to submit a timely appeal in accordance with the provisions in Paragraphs A-C above.
- H.** In accordance with past practice, this appeal procedure is not applicable to the decision of a bargaining agent as to whether or not to process a grievance to arbitration.
- I.** Failure of a member or affiliate to appear at a scheduled hearing for purposes of an internal appeal shall cause the appeal to be denied at that step. Following notice of such, the member or affiliate shall then have the aforementioned time limit for appeal to the next step. Failure to appear at a scheduled hearing with the Board of Directors shall result in denial of the appeal, with no further appeal or hearing possible. At each step, exceptions may be granted by the person or body conducting the hearing if it is determined that a legitimate reason or good cause existed for the failure of the member or affiliate to appear.

IX. Effective date

This policy shall be effective August 1, 2014 and shall apply to all cases arising after that date. All cases arising prior to the effective date of this policy shall be processed in accordance with previous policies.

X. Traffic offenses/violations

- A.** To the extent not otherwise provided under the terms of an insurance policy, the Association will reimburse a member up to \$2,500 for reasonable and necessary attorney fees incurred in the defense of a traffic offense/violation charge made against the member. Reimbursement will be made only if the following conditions are met:
1. The member is expressly or by implication required by his/her employer to operate a motor vehicle in order to perform his/her job duties and was so operating a motor vehicle when the traffic offense/violation occurred.
 2. The alleged traffic offense/violation occurred during the course of the member's educational employment.
 3. A finding against the member on the traffic offense/violation may have an adverse effect on his/her educational employment rights and privileges.
 4. The member is exonerated of the traffic offense/violation charge by a court or the traffic offense/violation charge is dismissed or withdrawn.
 5. An initial claim form is submitted to the MEA general counsel within 60 days of the issuance of the traffic offense/violation charge.
 6. A request for reimbursement is submitted to the MEA general counsel within 60 days of exoneration by a court or within 60 days of dismissal or withdrawal of the charges. The request for reimbursement includes necessary documentation of the charges and exoneration, dismissal or withdrawal along with an itemized bill from the attorney indicating specific case time and activities.
- B.** The Association shall not assume any liability for a member's defense of a traffic offense/violation charge, other than as specifically provided above.
- C.** The following are specifically excluded from coverage herein:
1. Personal injury suits, property damage suits, and civil actions against a member by an injured party and criminal charges arising out of vehicular use.
 2. A traffic offense/violation received while the member is off-duty, regardless of its impact on the member's employment.
 3. Travel to and from work unless operating an employer-owned vehicle.
 4. Parking violations.

XI. Representation in criminal matters

- A.** Representation in criminal matters shall not be provided under this policy except as expressly provided below.
- B.** Upon satisfaction of the following conditions, the MEA shall pay the cost of reasonable and necessary attorney fees, not to exceed \$1,000, which have accrued when the member or fee payer obtains legal representation due to notification that a police agency is investigating a member for alleged criminal conduct.
1. The allegations being investigated arise out of the member's expressed or implied employment duties at a school district, college, or university.

2. The allegations are of a criminal nature, which if proven, could lead to a criminal fine and/or imprisonment.
 3. The member obtains written legal authorization from his/her UniServ director prior to obtaining an attorney.
 4. MEA will recommend legal counsel to the member and payment will be made for other than recommended counsel only upon advanced written approval.
 5. Should the Educator's Employment Liability Policy or other source provide coverage for such service, MEA will be reimbursed for all costs.
 6. A request for reimbursement along with supporting documentation is submitted to the MEA general counsel by the attorney within 60 days of the end of the investigation. Supporting documentation shall minimally include appropriate documentation from the investigating agency, and an itemized bill from the attorney indicating specific case time and activities.
 7. No attorney fees shall be reimbursed for hours spent beyond an arraignment of the employee. The hourly rate shall be computed at no more than the attorney's normal hourly rate.
- C.** The foregoing conditions and requirements are fundamental to achieving the purpose of this article and shall not be subject to waiver.
- D.** The Association shall not assume any liability for a member's or fee payer's defense in such criminal matters, other than reimbursement of attorney fees as provided above.