



State University of New York

Memorandum to Presidents

Date: February 10, 1988

From: Office of the University Counsel and
Vice Chancellor for Legal Affairs

Subject: Reimbursement of Criminal Defense Expenses
for Officers and Employees of Community
Colleges

To: Presidents, Community Colleges

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ACADEMIC PROGRAMS
POLICY & PLANNING

At the request of the State University Trustees, legislation was enacted in 1987 to authorize reimbursement to community college trustees, officers, and employees for expenses incurred in successfully defending criminal charges which arise from acts within the scope of public employment or duties (new Education Law, §6309, L.1987, ch. 358, copy attached).

Subject to statutory requirements, reimbursement is now available for reasonable attorneys' fees and related litigation expenses incurred in a criminal proceeding in State or Federal court as well as appearances before a grand jury. Please note, however, that this reimbursement process is distinct from the existing defense and indemnification protection already provided for community colleges in civil litigation under section 6308 of the Education Law (Memorandum to Presidents, Vol. 80, No. 10, August 15, 1980).

In accordance with the new legislation the reimbursement process for criminal defense expenses is effective:

- for trustees, officers, and employees of community colleges with public employee unions but who occupy positions outside of collective negotiation units, on and after July 23, 1987; and
- for employees of community colleges serving in positions in collective negotiating units represented by a public employee union, upon agreement between the sponsor and the union to provide such coverage;
- for community colleges which have no employees represented by public employee unions, upon approval of the local sponsor.

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These requirements follow the model established for officers and employees of the State, including the State-operated campuses of the State University (Public Officers Law, §19; Memorandum to Presidents, Vol. 85, No. 14, October 1, 1985).

Where the coverage is available, actual reimbursement is provided only after the trustee, officer, or employee is acquitted or the criminal charges are dismissed. The local sponsor is empowered to determine, after investigation and review of the facts and circumstances of the criminal proceeding, whether an application for reimbursement should be granted. In the event the entitlement to reimbursement or the amount of reimbursement is disputed, a court will resolve the issue.

In order to obtain this protection in criminal cases where it is available, a trustee, officer, or employee must deliver a written request to the local sponsor at its main business office, together with an original or a copy of any accusatory instrument (such as an indictment, criminal information or misdemeanor complaint), within ten days after the individual is arraigned (enters a plea) upon such an instrument. A copy of the request for reimbursement and accusatory instrument should also be sent to the office of the community college president. The person requesting reimbursement is also required to provide his or her full cooperation to the local sponsor in the prosecution of any criminal appeal or in the defense of any civil lawsuit arising out of the same act or occurrence.

We suggest that copies of this memorandum be shared with representatives of your local sponsor.


Sanford H. Levine

Attachment

cc: Chairs, Boards of Trustees of Community Colleges

This Memorandum addressed to:
Presidents, Community Colleges

Copies for information only sent to:
Presidents, State-operated Campuses
Deans, Statutory Colleges
President Coll
Vice President Nesheim

COMMUNITY COLLEGES—REIMBURSEMENT OF LITIGATION DEFENSE COSTS TO TRUSTEES, OFFICERS AND EMPLOYEES

CHAPTER 358

Approved July 23, 1987, effective as provided in section 2

AN ACT to amend the education law, in relation to the indemnification of officers and employees of community colleges

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. The education law is amended by adding a new section sixty-three hundred nine to read as follows:

§ 6309. Reimbursement of defense costs incurred by or on behalf of community college trustees, officers and employees

1. As used in this section, unless the context otherwise requires, the term "employee" shall mean any person holding a position by appointment or employment in the service of a community college, whether or not compensated, or a volunteer expressly authorized to participate in a community college sponsored volunteer program, but shall not include an independent contractor. The term employee shall include a former employee, his or her estate, or judicially appointed personal representative.

2. (a) Upon compliance by the employee with the provisions of subdivision three of this section, and subject to the conditions set forth in paragraph (b) of this subdivision, it shall be the duty of the local sponsor of a community college to pay reasonable attorneys' fees and litigation expenses incurred by or on behalf of an employee in his or her defense of a criminal proceeding in a state or federal court arising out of any act which occurred while such employee was acting within the scope of his or her public employment or duties, upon his or her acquittal, or upon the dismissal of the criminal charges against him or her, or reasonable attorney's fees incurred in connection with an appearance before a grand jury which returns no true bill against the employee where such appearance was required as a result of any act which occurred while such employee was acting within the scope of his or her public employment or duties unless such appearance occurs in the normal course of the public employment or duties of such employee.

(b) Upon the application for reimbursement of reasonable attorneys' fees or litigation expenses, or both, made by or on behalf of an employee as provided in subdivision three of this section, the local sponsor shall determine, based upon its investigation and its review of the facts and circumstances, whether such reimbursement shall be paid. The local sponsor shall notify the employee in writing of such determination. Upon determining that such reimbursement should be provided, the local sponsor shall so certify to its chief fiscal officer. Upon such certification, reimbursement shall be made for such fees or expenses, or both, upon the audit and warrant of the chief fiscal officer. Any dispute with regard to entitlement to reimbursement or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by a court of competent jurisdiction upon appropriate motion or by way of a special proceeding.

3. Reimbursement of reasonable attorneys' fees or litigation expenses, or both, by the local sponsor as prescribed by this section shall be conditioned upon (a) delivery to the local sponsor at its main business office by the employee of a written request for reimbursement of expenses together with, in the case of a criminal proceeding, the original or a copy of an accusatory instrument within ten days after the employee is arraigned upon such instrument or, in the case of a grand jury appearance, written documentation of evidence of such appearance and (b) the full cooperation of the employee in defense of any action or proceeding against the community college or local sponsor based upon the same act, and in the prosecution of any appeal.

Additions in text are indicated by underline; deletions by ~~strikeouts~~

4. Except as otherwise specifically provided in this section, the provisions of this section shall not be construed in any way to impair, alter, limit, modify, abrogate, or restrict any immunity available to or conferred upon any unit, entity, officer, or employee of the sponsor or any other level of government, or any right to defense and/or indemnification provided for any governmental officer or employee by, in accordance with, or by reason of, any other provisions of state or federal statutory or common law.

5. If any provision of this section or the application thereof to any person or circumstance by held unconstitutional or invalid in whole or in part by any court of competent jurisdiction, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this section or the application of any such provision to any other person or circumstances.

§ 2. This act shall take effect immediately, provided, however, that section one of this act shall not take effect for community college employees in positions in collective negotiating units represented by an employee organization certified or recognized pursuant to article fourteen of the civil service law¹ unless and until there is an agreement between the sponsor of the community college and such employee organization which provides for the coverage contained in such section. In the case of employees of community colleges without such employee organizations, section one of this act shall be effective only upon approval of the local sponsor of such community colleges.

¹ Civil Service Law § 200 et seq.