

LEGAL ASSISTANCE POLICY
of the KEA BOARD OF DIRECTORS
(Adopted February 17, 2012)

I. INTRODUCTION

The KEA Unified Legal Services Program (ULSP) is established for the purpose of protecting and enforcing the legal employment rights of KEA members. It is the intent of the KEA Board of Directors that the ULSP shall meet the minimum standards of and comply with the requirements of the "National Education Association DuShane Unified Legal Services Program" as set forth in the Legal Services Contract entered into between KEA and NEA. The standards and requirements of that contract shall be recognized as minimum standards and requirements, and KEA may from time to time, by action of the appropriate elected governance body, support legal action outside the scope of that contract or outside the scope of this policy.

KEA shall not discriminate against applicants for legal services on the basis of race, color, national origin, creed, gender, sexual orientation, age, handicap, marital status, economic status, or political affiliation.

II. DEFINITIONS

For the purposes of this Policy the following definitions shall apply:

- A. "Appeal" shall mean a direct appeal, a petition for certiorari, or any other procedure by means of which a higher court is asked to review an action taken by a lower court, an administrative body, or a hearing officer.
- B. "Employment-related matter":
 - 1. Except as otherwise provided in Paragraph 2 of this subsection, "employment-related matter" shall mean any matter involving:
 - (a) a dispute between a school district, college or university system, or other institution involved in the teaching-learning process and (i) one or more of its employees who are Unified Member(s), (ii) one or more of its employees who are not Unified Members if a local affiliate of the state affiliate and the NEA or the state affiliate is obligated to provide legal assistance pursuant to a duty of fair representation, or (iii) one or more local affiliates of the state affiliate and the NEA or the state affiliate;
 - (b) a dispute between an employer and one or more of its employees or an employee organization if the state affiliate

and the NEA agree that the matter is precedential for Unified Members;

- (c) an effort by a local affiliate of the state affiliate and the NEA or the state affiliate to secure or retain recognition as the representative for a group that includes Unified Members;
- (d) a legal proceeding instituted by one or more local affiliates of the state affiliate and the NEA or the state affiliate on behalf of one or more Unified Members relating to events occurring or actions taken in connection with the employment of said member(s);
- (e) the obligation of one or more affiliates of the state affiliate and the NEA or the state affiliate to provide legal assistance pursuant to a duty of fair representation;
- (f) the defense of employment-related criminal charges brought against one or more Unified Members, subject to the limitations of this Policy;
- (g) defense of employment related certification issues if the authorized agency takes action against the member based upon a report by the member's employer;
- (h) defense of employment related allegations of wrongdoing brought by the Cabinet for Families and Children or any other state agency charged with the protection of minors, subject to the limitations of this Policy;
- (i) a dispute between the state and/or an agency of the state and one or more individuals or entities if the state affiliate and the NEA agree that the matter is precedential for Unified Members.

2. "Employment-related matter" shall not mean a matter:

- (a) 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;
- (b) which is covered by workers' compensation;
- (c) which is covered by an NEA insurance program, except matters involving the defense of employment-related criminal

charges brought against one or more Unified Members for which the program provides payment only if the member(s) is exonerated, or;

(d) which is not the direct result of an adverse job action by the employer.

C. “Expenditure”: An “expenditure” shall be deemed to have been made when a legal service is actually rendered or an expense is actually incurred, whichever first occurs.

D. “Legal services” or “legal assistance” shall mean services approved, obtained and paid through the ULSP that are rendered by:

1. an attorney who is licensed to practice law, a paralegal, or a law clerk in preparing for, or in the course of, a grievance, arbitration, an impasse resolutions procedure, or an administrative or court proceeding in connection with an employment-related matter;
2. an attorney who is licensed to practice law in training state or local affiliate staff or Unified Members to provide services in connection with an employment-related matter;
3. an arbitrator, hearing officer, or third-party neutral in a grievance, arbitration, or administrative proceeding in connection with an employment-related matter involving dismissal, suspension, public reprimand, non-renewal or layoff; or
4. a mediator or other third-party neutral when alternative dispute resolution is used in connection with an employment-related matter, or an employment-related dispute between or among Unified Members.

E. “Occurrence” shall mean an act or series of related acts that result in one or more employment-related matters. The “occurrence” is not the actual adverse action taken by the employer/state agency; rather, the “occurrence” is the event or series of events leading to the adverse action.

III. COVERAGE

A. This policy is intended to provide legal assistance to eligible members in good standing to protect employment rights and privileges in instances involving adverse job actions by the employer.

B. Legal assistance may be provided to a group of members or to associations affiliated with KEA. It is recognized that legal action on behalf of a group of

members of an affiliate might also benefit non-members. However, such incidental benefit to non-members shall not, of itself, be a basis for denying assistance.

- C. Assistance to local affiliates may be provided to protect the affiliate's rights and privileges as a negotiating representative or as representative of a group or class of members. This policy may also provide protection in disputes arising out of statewide legislative or executive action that might limit members' benefits or diminish revenues for education.
 - D. Defense of employment related criminal charges against a member is limited to five thousand dollars (\$5000.00), after which the member shall be directly responsible for payment of attorney fees and expenses at the usual market rate. Should the member become eligible for reimbursement of fees and expenses paid directly to his or her criminal attorney under the NEA liability policy, the member agrees that KEA/NEA shall be reimbursed for all fees and expenses paid on the member's behalf from the first \$5000 of available coverage, in an amount not to exceed \$5000.
 - E. Defense of employment related charges involving the Cabinet for Families and Children or its successor agency is limited to eight thousand dollars (\$8,000.00), after which the member shall be directly responsible for payment of attorney fees and expenses at the usual market rate. NEA reimbursement to the KEA ULSP shall be limited to 50% of the first five thousand dollars (\$5000.00) expended.
 - F. KEA may approve legal assistance to its members and affiliates when it is determined that:
 - 1. The member meets the eligibility requirements as set forth in Section V, below, and;
 - 2. The matter for which assistance is sought qualifies as an employment-related matter as set forth in Section II(B), above, and;
 - 3. There is a likelihood that the member or affiliate shall be granted the relief sought, and;
 - 4. The procedures and standards described in this policy have been met.
- IV. EXCLUSIONS:** KEA shall not approve and provide legal assistance or continue to provide legal assistance in a previously approved case when:
- A. The person receiving legal assistance fails to meet or maintain the Eligibility requirements set forth in Section V, below, or;

- B. The issue does not qualify as an “employment-related matter” as set forth in Section II(B)(1), above, or;
- C. The case involves support of a position contrary to the goals or policies of KEA, or;
- D. Financing the case would result in support of both sides of an issue, or;
- E. Financing the case would nullify or weaken a position taken or favorable decision gained in another case or cases approved under the ULSP or approved by action of KEA, or;
- F. Financing the case would nullify an agreement that has been negotiated by a KEA affiliate, or;
- G. The member refuses a reasonable settlement of the case that would make him or her whole, meaning that the member will recover most or all of his or her lost wages and benefits or be restored to an employment status comparable to that which was lost or impaired.
- H. In addition to the above limitations, the following types of cases are specifically excluded from coverage under the Unified Legal Services Program:
 - 1. Workers' Compensation. Workers’ Compensation cases are not reimbursable under the NEA DuShane Legal Services Program and therefore, are not covered under the KEA ULSP. At the request of a KEA member, KEA Legal Services may refer members with Workers’ Compensation issues to participating attorneys, who may elect to accept the case for payment of the statutory fees. No referral of a Workers’ Compensation case will be binding on the attorney to whom it is referred, and the attorney may elect not to take the case.
 - 2. Matters in which the applicant for legal assistance is being challenged by one or more rank and file employees or an affiliate as a result of an action taken by the applicant as a management representative; this provision impacts administrative members because KEA only represents the supervised person in a conflict.
 - 3. Actions where the sole complaint involves criminal prosecution of another person. However, where it appears the interests of a member or affiliate cannot otherwise be protected, KEA may approve legal assistance to seek appointment of a special prosecutor or may assign an attorney to assist the prosecutor.
 - 4. Any grievance, complaint, administrative or other legal action by one employee against another employee where neither of them is in a

supervisory/administrative position and neither of them has acted on behalf of the administration.

5. Legal matters covered by the Educators Employment Liability Insurance Policy that is furnished to all KEA/NEA members.
 6. Actions for defamation, libel or slander, even if same allegedly occurs within the context of or arise out of the member's employment.
 7. Attendant claims for emotional distress or punitive damages when the underlying claims have been resolved.
 8. Matters involving the members' status with any retirement system to which the member belongs which arise after the member actually retires. However, issues that may arise regarding an Active member's initial eligibility for or calculation of retirement benefits may be covered under the ULSP.
- I. Legal assistance may be refused if legal action has been taken on behalf of the member on the same issue or issues by an attorney, another person, an organization, or the member without prior knowledge and approval of KEA. If given, such prior knowledge and approval shall be documented. The member shall advise KEA if legal assistance has been sought or granted by any other person or organization.
 - J. KEA shall not finance legal assistance for persons who are not Active members or who were not Active members on the date of the initial occurrence giving rise to the request for legal assistance, except those who shall be represented by a local affiliate of KEA under a duty of fair representation in the collective bargaining agreement between the local affiliate and the employing board.
 - V. **ELIGIBILITY:** In order to be eligible for legal assistance under the KEA ULSP, applicants must agree to and meet all of the following conditions:
 - A. The applicant for legal assistance must have been an Active member of KEA in good standing prior to the date of the initial occurrence giving rise to the request for legal assistance and prior to the date the member became aware of an impending problem. The initial occurrence date may be prior to the actual date of the adverse action by the employer/state agency. Retired, Associate, Staff, Student, Substitute and Reserve members are not eligible for legal assistance under the ULSP. "Early enrollment" members are not eligible for legal assistance until September 1 following the date of their enrollment.
 - B. The member remain in good standing with the Association and must maintain Active Unified Membership by continuing to pay Active dues to the local association, KEA and NEA during the entire time that legal assistance is provided.

Active members who retire or who voluntarily move to any other membership category during the pendency of a matter for which legal assistance is being provided must continue to pay Active dues until the matter is fully resolved or until the member waives further legal assistance in writing, whichever first occurs.

- C. If Active membership is not properly maintained, the Legal Services Attorney(s) may, at his or her discretion, require immediate payment of dues in full or may allow unpaid dues to be paid from any recovery that may be obtained as a result of legal services provided, if it appears that a monetary recovery is likely, or may terminate payment to the assigned attorney under the ULSP with proper written notice to the affected member and the assigned attorney. Selection of any one of these options with regard to a particular member does not exclude the use of another option, should that become necessary. Failure to pay dues within thirty (30) days of a written request, whether by letter or by invoice, shall be grounds for termination of legal assistance.
- D. Members receiving legal assistance through the ULSP shall provide current contact information to their assigned attorneys and the KEA membership office.
- E. Members applying for legal assistance from KEA shall agree to the following terms:
 - 1. Submission of a completed application for legal assistance does not guarantee that assistance will actually be approved.
 - 2. Submitting a request for legal assistance does not establish an attorney-client relationship with the KEA Legal Staff or with any approved outside counsel.
 - 3. Applicants for legal assistance remain solely responsible to comply with all pending deadlines that may apply in their disciplinary, grievance or other matters until such time as the request may be approved and counsel is assigned.
 - 4. Members receiving legal assistance and attorneys providing legal assistance under this policy shall immediately fully inform KEA Legal Services of the specific terms of any judgment or negotiated settlement of a case, notwithstanding the possible inclusion of any confidentiality clause that may be included in the judgment or settlement. Settlement checks shall be made out to the assigned attorney or firm and to the individual member receiving legal assistance. Settlement proceeds shall not be distributed until the Legal Services Attorney(s) have been informed of the terms of settlement and have determined whether back membership dues are owed or whether other sums are due and owing to the KEA ULSP under the terms of this policy.
 - 5. In the event the member obtains a monetary recovery as a result of legal services provided through the ULSP, whether by award, judgment, settlement,

insurance payment or any other source, the following rules of distribution shall apply: The member shall first be entitled to recoup all of his or her actual, documented out-of-pocket expenses actually incurred through the date of judgment or negotiated settlement, including but not limited to lost wages and benefits, less the amount of any unpaid dues. Future lost wages and benefits shall not be considered “out of pocket” losses for this purpose. In the event the amount of the recovery exceeds the amount of the member’s documented out-of-pocket losses less the amount of unpaid dues, KEA shall next be reimbursed for expenditures incurred or paid on the member’s behalf. Should funds remain after KEA has been fully reimbursed for expenditures incurred or paid on the member’s behalf, the member will be entitled to any excess funds. KEA shall, in any event, be reimbursed for amounts recovered which have been specifically designated as attorneys' fees or court costs. While KEA has occasionally obtained large settlements or awards for members, that is not the purpose of the ULSP.

6. Legal assistance shall only be provided by an attorney or attorneys assigned by KEA. Members approved for assistance under the ULSP shall not retain or consult with outside counsel while the ULSP case is pending. In the event a member elects to consult with or retain outside counsel for any aspect of his or her case after an approved ULSP attorney has been assigned, the member shall be deemed to have waived ULSP assistance for all matters that may be pending at that time or that could arise from the adverse employment action for which the member initially sought assistance.
7. The ULSP shall not pay for any attorney fees or expenses incurred on behalf of the member unless the case is assigned to the attorney by KEA. This prohibition applies even if the attorney retained by the member prior to approval of legal services is on the list of participating attorneys.
8. In the event the member consulted or retained another attorney on the issue in question prior to applying for legal services, the member must obtain a written statement from the attorney stating that he or she does not represent the member on the issue for which legal assistance has been requested and there is no attorney-client relationship as to that issue. The written statement must be provided to the ULSP administrator before an approved attorney will be assigned.
9. The member shall allow the assigned attorney(s) to discuss his/her case with appropriate KEA staff in the development of his/her case. “Appropriate staff” may include, but shall not be limited to, attorneys on staff at KEA and/or the UniServ Director assigned to serve the member.
10. KEA has the sole right to decide whether or not it shall finance an appeal from any adverse decision rendered in any forum by any decisionmaker.

11. The member shall fully cooperate with the assigned attorneys. Cooperation shall include, but is not limited to, attendance at meetings, depositions, hearings, and trials upon reasonable prior notice. The member shall assist the attorneys in identifying and obtaining witnesses, evidence, and verifying facts of the case. The member shall provide all documentation necessary to determine his or her out-of-pocket expenses related to the issue in question, if any.
12. Decisions regarding the appropriate forum for a case will be made by the attorney practicing the case in consultation with the client and one of the Legal Services Attorney(s).
13. The member shall accept a reasonable settlement proposal or other reasonable disposition of the case as advised by the assigned attorney.
14. The member shall submit the request for legal assistance on a form prepared by KEA, which includes written acknowledgement of receipt of a copy of this Policy and agreement to abide by the terms thereof. The completed and signed application form and all necessary supporting documentation shall be presented to the appropriate KEA District UniServ Director who shall immediately forward the documents to the KEA Office of Legal Services at 401 Capitol Avenue, Frankfort, Kentucky 40601. No application for legal assistance shall be reviewed for possible assignment to a ULSP attorney until it is complete. A completed application includes all of the following: a Request for Legal Assistance completed and signed by the member, the accompanying KEA Staff recommendation form completed and signed by the UniServ Director, and all documentation requested by the Legal Services Attorney in support of the application, if any.
15. If the applicant requests a mediator to settle a conflict between or among KEA members, each member involved must agree to enter into the process in an effort to reach a solution. No member participating in mediation between or among members will be represented by an attorney. Participation in the mediation process does not prohibit a member from taking legal action if the mediation is not satisfactory, but KEA will not provide representation to any party in disputes between or among members.
16. The member shall timely inform the assigned attorney and KEA of changes in address or employment status.

VI. APPEAL FROM THE INITIAL DENIAL OF LEGAL ASSISTANCE

This process shall apply only to the initial denial of legal assistance. Decisions regarding whether or not to fund an appeal from a final decision rendered in any forum by any decisionmaker or whether to terminate previously approved

legal services for any reason allowed under this Policy lie solely with KEA and shall not be subject to review.

A. The Legal Services Attorney(s) shall make an initial determination as to an applicant's eligibility for legal services under this Policy. If it is determined that the applicant does not qualify for services, that the matter for which assistance is requested is not covered by the terms of the ULSP, or that the member is not likely to obtain the relief sought, the Legal Services Attorney(s) shall send written notice of the denial of legal assistance and the reasons therefore to the applicant by certified mail within ten (10) business days of the date of receipt of the completed application, weekends and holidays excluded. The notice will include an explanation of the initial steps of the appeal process.

B. Steps in the appeal process:

1. **Step 1, Review by the Executive Legal Assistance Committee:** Appeal from an initial denial of legal services shall be taken to the KEA Executive Legal Assistance Committee, composed of the President, Executive Director, and the Legal Services Attorney(s).

(a) The applicant or member seeking to appeal a denial of services (hereafter "the appellant") shall submit a written notice of appeal, including the specific reasons therefore, to the KEA Executive Legal Assistance Committee. The written notice of appeal shall be sent by certified mail within ten (10) calendar days of the date of receipt of the notice of denial to:

Office of Legal Services
Kentucky Education Association
401 Capital Avenue
Frankfort, Kentucky 40601

(b) The written appeal will be reviewed by the Executive Legal Assistance Committee within five (5) business days of the date of receipt, weekends and holidays excluded. The Executive Legal Assistance Committee may affirm or reverse the denial of services, and shall issue a written decision within five (5) business days of the date it convenes, weekends and holidays excluded. The written decision shall be transmitted to the appellant by certified mail, return receipt requested.

(c) If the decision is to overturn the initial denial, the Executive Committee shall have authority to require the Legal Services Attorney(s) to assign a ULSP attorney to the case. If continued denial is decided, the written decision shall inform the appellant of the automatic review process.

(d) The Executive Legal Assistance Committee shall report all requests denied to the KEA Board of Directors Committee on Legal Assistance.

2. **Step 2, Review by the Board of Directors' Committee on Legal Assistance:** All requests denied by the Executive Legal Assistance Committee shall be forwarded to the KEA Board of Directors' Committee on Legal Assistance for automatic review.

(a) The KEA Board of Directors' Committee on Legal Assistance shall convene not later than the date of the next scheduled KEA Board of Directors business meeting following the date of denial by the Executive Legal Assistance Committee.

(b) The KEA Board of Directors Committee on Legal Assistance shall issue a written decision within five (5) business days of the date it convenes to hear the appeal, weekends and holidays excluded, which shall be transmitted to the appellant by certified mail, return receipt requested.

(c) If the decision is in favor of the appellant, the Committee on Legal Assistance shall require the Legal Services Attorney(s) to assign a ULSP attorney to the case. If the decision is for continued denial of services, the written notice shall inform the appellant of the opportunity to appeal to the full KEA Board of Directors at the next regularly scheduled business meeting.

(d) The KEA Board of Directors' Committee on Legal Assistance shall report to the KEA Board of Directors all requests denied by the Executive Legal Assistance Committee. All cases shall be identified by the nature of the issue and local school district. Names of individuals shall not be included.

3. **Step 3, Appeal to the KEA Board of Directors:** When an appellant appeals an adverse decision to the KEA Board of Directors, the following procedure shall be followed:

(a) The decision to appeal to the KEA Board shall serve as appellant's waiver of confidentiality on issues before the Board as part of the appeal. The appellant may request to be heard in closed session.

(b) The KEA Board of Directors may request the appellant to appear before them at the time the appeal will be considered. Failure to appear without prior notice shall constitute a waiver of the right to appeal and the original decision of the KEA Board of Directors' Committee on Legal Assistance shall be final.

- (c) The chair of the Board's Legal Assistance Committee or his/her designee shall read the statement of denial to the Board enumerating the policy provisions for the denial.
 - (d) The appellant shall be given no more than ten minutes to present reasons s/he believes the denial of legal assistance should be overturned.
 - (e) The Board will have an opportunity to ask questions of the appellant or KEA staff or Legal Services Attorney(s).
 - (f) At the conclusion of the Board's questions, if any, the Board shall go into executive session for any discussion. The Board may call anyone into their executive session whom the Board needs for their deliberations. On return from executive session the Board shall vote to reverse or confirm the denial of legal assistance.
 - (g) The decision of the KEA Board of Directors with regard to the provision or denial of legal services shall be final on the date the vote is taken. Written notice of the decision shall be provided to the appellant within five (5) business days, weekends and holidays excluded, of the date the Board takes action.
4. Appeal to NEA: An appellant whose application for legal assistance is rejected by KEA may appeal to NEA from a final decision of the KEA Board of Directors. The sole basis for appeal to NEA is an allegation that KEA failed to process his/her application in accordance with the provisions of this Legal Services Policy. Appeals to NEA, including the specific statement of grounds upon which the appeal is based, should be forwarded to:

National Education Association, Office of Legal Services Program
1201 Sixteenth Street, NW
Washington, D.C. 20036

An appeal to NEA must be postmarked within ninety (90) days of the date of final action by the KEA Board of Directors.

VII. ADMINISTRATION

- A. The Executive Director shall be responsible for directing the activities of the KEA Staff Attorney(s) in dealing with requests for legal assistance in approved cases.
- B. The Executive Director shall, upon recommendation of the Legal Services Attorney(s), develop a list of attorneys and law firms throughout the state to

represent KEA members in approved cases, and may likewise make changes in the list of approved attorneys from time to time.

- C. Dealings with and assignment of retained attorneys in approved cases shall be the responsibility of the KEA Legal Services Attorney(s).
- D. The day-to-day administration of this program, including all reports and financial records for the NEA DuShane Unified Legal Services Program, shall be the responsibility of the KEA Legal Services Attorney(s).
- E. A report of expenditures for legal assistance/representation of members shall be provided to the KEA Board at least quarterly.
- F. Decisions regarding appeal of an appeal from any adverse decision rendered in any forum by any decisionmaker shall be made by the Legal Services Attorney(s) after consultation with the assigned ULSP attorney, if any.
- G. All requests for legal assistance shall be reviewed and acted upon by the KEA Legal Services Attorney(s) within ten (10) business days from the date the application is complete, weekends and holidays excluded.
- H. Nothing in the ULSP shall be construed to prohibit a member or group of members from coming before the KEA Board of Directors to present or to speak for or against a request for legal assistance.
- I. From time to time, legal issues of special significance to the teaching profession may arise. In such instances, the KEA Board may, if it chooses, decide to take exception to any of the provisions of this program and to finance legal action. However, if such exception is made, the Board shall, by separate vote declare the issue considered to be outside the scope of this program.
- J. Once \$10,000 has been spent on a case outside the scope of this policy as approved by the Board of Directors, a report shall be given to the Executive Legal Assistance Committee which shall present the report to the KEA Board.

Adopted by KEA Board of Directors February 17, 2012