

Legal Services Policy

Adopted by
PENNSYLVANIA STATE EDUCATION ASSOCIATION
BOARD OF DIRECTORS
As Amended July 2020

printed August 2020

LEGAL SERVICES

I. Eligibility[1]

Except as otherwise provided herein, in order to be eligible for PSEA legal assistance, an applicant must meet the following eligibility requirements and must maintain appropriate membership in PSEA:

- Appropriate membership in PSEA at the time the Application for Legal Assistance is filed; and
- Appropriate membership in PSEA at the time of the occurrence which precipitated the filing of the Application for Legal Assistance.

"Occurrence" shall mean an action that may reasonably lead to, form the basis of, or result in an employment-related dispute. Continuous or related actions may constitute a single occurrence and may be deemed to have occurred as of the most recent action.

A member with delinquent dues or designated by PSEA as "Not In Good Standing" shall not be eligible for PSEA legal assistance.

PSEA will provide legal services to any member of PSEA-Retired, as long as the issue relates back to the person's employment, the person held appropriate membership in PSEA at the time of the occurrence that precipitated the filing of the Application for Legal Assistance, and membership in PSEA-Retired was continuous with appropriate membership in PSEA.

Persons not eligible for PSEA-Retired membership who separate from employment and anticipate that they may need legal services associated with issues arising from the separation must maintain NEA and PSEA Active or Reserve membership in order to be eligible for legal assistance.

The PSEA general counsel at his or her discretion may waive eligibility requirements for good cause.

II. Coverage

A. Member

PSEA shall provide an eligible member with legal advice and representation through a PSEA staff or PSEA retained attorney for any matter which is "employment-related" as that term is defined by the NEA Unified Legal Services Program, subject to reasonable regulations which PSEA adopts to implement this policy.

The PSEA Legal Services Program shall not discriminate against applicants on the basis of race, color, national origin, creed, gender, sexual orientation, age, handicap, marital status, or economic status.

---

[1] As used in this section, "appropriate membership in PSEA" shall be life membership or that category of membership which allows the greatest participation in Association governance for which the applicant is/was entitled of the following: active; reserve; and, affiliate (HealthCare-PSEA).

B. Association

PSEA shall provide a local association with legal advice and representation through a PSEA staff or PSEA retained attorney for any matter which affects the legal status, rights, or responsibilities of the association, subject to reasonable regulations which PSEA adopts to implement this policy.

III. Procedure

A. Application for Legal Assistance

To obtain legal representation through PSEA, a member of the Association or a local association officer shall submit an application for legal assistance for an employment-related matter. At the time of application, or on an annual basis in the case of local associations, the member or local association shall be provided with a copy of the Legal Services Policy brochure. No application will be considered for funding unless the UniServ representative is aware of the request, with the exception of applications for legal assistance in individual rights matters.

B. Approval or Rejection of Application for Legal Assistance

The PSEA region attorney will forward the application with his/her recommendation for funding to the PSEA general counsel. The PSEA general counsel shall decide whether to approve or reject the application. The criteria used by the PSEA general counsel in deciding whether to fund a case shall be: 1) whether the case has legal merit (i.e., there is a significant probability of success); and 2) whether the representation is consistent with the mission and purpose of PSEA.

Any approval of legal assistance shall be limited to the first stage of the legal proceeding. Such approval does not obligate PSEA to provide representation in any further proceedings or appeals. Unless otherwise provided herein, PSEA will pay all legal fees and expenses incurred in representation at any stage of the proceeding for which legal services are approved.

If the application for an association matter is approved, the general counsel shall inform the region attorney and UniServ representative. If the application for an individual rights matter is approved, the general counsel shall only inform the region attorney. The region attorney should advise the member or local association of the approval and its limitations. The attorney should advise the member or local association of the nature and terms of the relationship and the requirement of consent to share with the general counsel and NEA information related to the matter in order to provide and administer services under this Policy.

After the initial approval, the PSEA general counsel, in consultation with the PSEA region or assigned attorney, will determine whether legal services will be funded at any

later stages of the matter (for example, but not limited to, an appeal, or further related proceedings). After approval of an application, there is no right to appeal a determination that legal services will not be funded for any later stage of that matter.

C. Right to Appeal

If the application for legal assistance is rejected, the general counsel shall inform the member or local association in writing with an explanation to the applicant as to how to appeal the decision to reject the application pursuant to section VI this policy.

D. Termination of Legal Assistance

Once approved, legal representation may be terminated during any stage for the following reasons:

1. A reasonable settlement exists that is rejected by the member or local association;
2. An individual applicant does not maintain membership as required by this policy, except that membership is not required where legal services are provided to a local association for contract enforcement consistent with the duty of fair representation;
3. PSEA becomes aware of additional, relevant facts which it could not have reasonably been expected to know at the time of approval;
4. The member or local association fails to cooperate with, or takes actions which interfere with, the ability of the PSEA assigned attorney to adequately perform his or her duties;
5. The member takes legal action which is adverse to the interests of the local association or PSEA; or,
6. The member or local association revokes consent to share with the general counsel and/or NEA information related to the matter.

After approval of an application, there is no right to appeal a decision to terminate legal assistance terminated during any stage of that matter pursuant to paragraphs 1 through 6 above.

In cases involving the loss of employment, reasonable adjustments may be made to the appeal process in order to expedite the decision of the appeals committee.

IV. Arbitration Cases

A local association retains the ability to determine whether to process a grievance to arbitration. The PSEA region attorney shall provide advice and recommendation to the local association as to the merits of a grievance.

If the PSEA general counsel approves legal services for an arbitration case, PSEA will

pay all legal fees and expenses incurred in representation of the local association except that any fees and costs charged by an independent entity for arbitration administration or selection, and any fees and costs charged by an arbitrator, shall be the responsibility of the local association. Where the arbitration involves loss of employment, PSEA will pay one half of the local association's share of the fees and costs charged by the arbitrator.

If the PSEA general counsel determines, based upon the merit of a grievance, not to fund legal services for an arbitration case, the local association may still proceed to arbitration but will not have the benefit of PSEA legal services. The PSEA region attorney shall ensure that all timelines are preserved prior to terminating representation.

In order to promote arbitration as a final and binding dispute resolution process, PSEA's policy is not to provide legal services for the appeal of any adverse arbitration award, absent exigent reasons (such as a violation of law or improper bias in the arbitration process) at the discretion of the PSEA general counsel. PSEA encourages its local associations to likewise honor the binding nature of arbitration. If a local association determines to appeal an adverse arbitration award, PSEA will ensure that timelines are preserved for the filing of the appeal, but will not provide legal representation absent the approval of the PSEA general counsel for an exigent reason.

V. Conflict of Interest

In the event a conflict of interest develops between a local association and a member, or between or among two or more members, the PSEA general counsel will take the necessary steps to resolve the conflict.

VI. Appeal Procedure

If an application for legal assistance for an employment-related matter is rejected, the PSEA general counsel shall mail a Notice of Intent to Appeal form with the notification that the applicant's application has been rejected.

The applicant shall return such form to the executive director of PSEA within fifteen (15) days of receipt. The form may be accompanied by a written statement in support of an appeal and/or any relevant documentation.

A Governance Appeals Committee consisting of the PSEA president and vice president or their designees, and an officer of PSEA designated by the PSEA president shall set a meeting date to review the appeal, such date to be within thirty (30) days of receipt of the applicant's notice of intent to appeal. Meetings of a Governance Appeals Committee may be conducted through conference call or other electronic means.

The executive director shall notify the general counsel and the applicant of the date of the Governance Appeals Committee meeting. The general counsel, or designee, shall submit the following to the executive director at least five (5) days in advance of such meeting:

1) a copy of the denial of legal services; 2) a written statement of the reasons for denying legal assistance; and 3) any relevant documentation.

The Committee may review all timely submitted statements and documentation, and may consider factors other than legal merit, such as the purpose and mission of the Association and the equities of the case.

The Committee shall issue its decision within five (5) days of the meeting. Such decision shall be final. With respect to applications of local associations, the decision shall be communicated immediately to the applicant and the appropriate UniServ representative in writing. With respect to individual member applications, the decision of the Committee shall be communicated immediately to the applicant and the region attorney.

An applicant whose application is rejected and whose appeal is denied by PSEA may appeal to the NEA, but on the sole ground that PSEA failed to process the application in accordance with the PSEA Legal Services Policy. An appeal to the NEA must be received by the NEA within ninety (90) days of the date of PSEA's final decision.

VII. Coverage Exceptions

A. Civil Litigation in State or Federal Courts

The following procedure shall be followed when a member requests legal representation for civil litigation in state or federal court (including but not limited to defamation, civil rights, or discrimination cases):

1. The assigned region attorney (whether retained or staff) shall forward the application for legal assistance along with his/her recommendation whether PSEA should fund the case, a detailed review of the facts and the applicable law supporting the recommendation, and an assessment regarding the likelihood of success on the merits. The attorney shall indicate whether he/she needs assistance in litigating the case, and specify what participation he/she will actually have in the prosecution of the matter if the case is approved for funding.
2. The PSEA general counsel will review the application for legal assistance and consult as necessary with NEA regarding the suitability and advisability of funding. The PSEA general counsel shall then decide whether to approve or deny the application.
3. If the PSEA general counsel approves the case for funding, the general counsel may make such funding contingent upon the member's execution of a Counsel Fees and Cost Reimbursement Agreement which provides that:
    a. All counsel fees and costs awarded by the court shall be assigned either to the retained attorney (if a retained attorney is in charge of the case) or to the Restricted Litigation Fund established by PSEA (if a staff attorney is in charge of the case);
    b. If the matter is settled or resolved in a manner that provides a recovery to the

member but without an allocation or award of counsel fees and costs, the member shall pay one-third of any such recovery to the retained attorney (if a retained attorney is in charge) or to the Restricted Litigation Fund (if a staff attorney is in charge);

c. If the work is handled by both a retained attorney and staff attorney, counsel fees shall be allocated in accordance with the time billed as ordered by the court, or on a proportionate basis if no such order is made and if attorney fees are due under the Agreement.

4. In the case of a retained attorney, he/she shall advise PSEA whether he/she is willing to accept the case on a contingent fee basis or not. PSEA general counsel may approve, where appropriate, paying an hourly rate to a retained attorney for handling such a case with the understanding that all counsel fees recovered or due under the Agreement will be immediately paid into the Restricted Litigation Fund.
5. All funds paid into the Restricted Litigation Fund shall be used in accordance with PSEA Fiscal Policy establishing the Fund.
6. If PSEA approves the case and the member agrees to the Counsel Fees and Cost Reimbursement Agreement, PSEA/NEA will provide resources in the nature of advances for costs, expert witnesses and other expenses that may be incurred. If the litigation is unsuccessful, PSEA/NEA will bear the loss for all resources and monies advanced or extended.
7. If PSEA does not approve a case or if a member declines to execute a Counsel Fees and Cost Reimbursement Agreement, the member is free to negotiate with an attorney not employed or retained by PSEA for representation at the member's own cost. It is assumed that members will prefer to have PSEA/NEA provide representation because of the additional resources and expertise of the two organizations. However, it should be understood that a member is always free to seek representation outside of the Legal Services Program at his/her own cost.
8. Appeals of unsuccessful litigation shall be within the discretion of the PSEA general counsel who may determine not to approve the litigation at the next level. The member will be so informed and may seek representation outside of the Legal Services Program at his/her own cost.

B. Criminal Matters

PSEA does not provide legal representation by a PSEA attorney in employment-related criminal matters. "Employment-related criminal matters" shall include any investigation of a member or charges filed against a member by law enforcement agency for alleged criminal conduct related to the member's employment. PSEA will provide up to a maximum $2,500 up-front money to assist an eligible member in paying an attorney retainer for defense in an employment-related criminal matter covered by the NEA Unified Legal Services Program, or within the discretion of the general counsel for defense of criminal matters excluded from such coverage, where the member retains an

attorney approved by PSEA. The member must complete, and have his or her criminal attorney complete, all required forms in order to obtain the upfront money. If the NEA Educators Employment Liability Insurance reimburses attorney fees for the defense of the criminal matter, PSEA shall recover its up-front money from the reimbursement.

C. Child Protective Services Matters

As a general rule, PSEA does not provide legal representation by a PSEA attorney in any matter involving an investigation under the Child Protective Services Law concerning any allegations of employment-related child abuse. In many cases, criminal charges are pending at the same time and the member will have the benefit of the $2,500 up-front money referenced in Paragraph B, above. If criminal charges do not accompany the Child Protective Services (CPS) investigation and the allegations are such that the member is nevertheless in need of a criminal defense attorney, PSEA will provide up to a maximum of $2,500 up-front money to assist an eligible member in paying an attorney retainer for representation related to the CPS investigation. The member must retain an attorney approved by PSEA. The member must complete, and have his or her attorney complete, all required forms in order to obtain the up-front money. As an exception to the general rule, in unusual cases where recommended by the PSEA attorney and approved by the general counsel, a PSEA attorney may undertake representation of an eligible member in a CPS investigation.

PSEA does not provide legal representation by a PSEA attorney in any appeal of a founded or indicated report of employment-related child abuse. However, regarding an indicated report of employment-related child abuse, PSEA may, subject to the approval of the general counsel, provide up to a maximum of $2,500 up-front money to assist an eligible member in paying an attorney retainer for representation related to the appeal.

D. Disability Insurance Matters

PSEA does not provide legal representation by a PSEA attorney in any matter involving denial of employment-related disability benefits. However, PSEA will provide up to an aggregate of $1,000 to cover attorneys fees and costs to an eligible member represented by an attorney approved by PSEA in matters involving denial of disability benefits by the Public School Employees' Retirement System, State Employees' Retirement System, or an employer-provided third-party insurance carrier. If the member is awarded fees and/or costs in the matter, the member shall reimburse PSEA for its payment.

E. Management or Supervisory Matters

PSEA does not provide legal representation by a PSEA attorney in any matter involving the defense of a challenge by one or more employees or an employee organization as the result of an action taken by the member as a management representative.

F. Member vs Member Matters

PSEA does not provide legal representation by a PSEA attorney in any matter involving a dispute between the member and one or more members, or the member and NEA or an affiliate of NEA. Where appropriate, PSEA may offer conflict resolution or mediation services to the affected members in which participation is voluntary. Within the discretion of the general counsel, refusal by a member to participate in such services may result in denial of legal services in an otherwise eligible employment-related matter involving the same facts and circumstances.

G. Workers' Compensation Matters

PSEA does not provide legal representation by a PSEA attorney in any matter involving workers' compensation. PSEA will provide up to $1,500 to cover the cost of obtaining necessary medical testimony and/or at the discretion of the general counsel for legal assistance in such matters to an eligible member represented by an attorney approved by PSEA. If the member is awarded costs in the matter, the member shall reimburse PSEA for its payment.

H. Environmental Matters

Consistent with this Policy, PSEA will approve representation for any member who needs employment accommodations related to environmental issues such as indoor air quality, mold or chemical sensitivities. PSEA does not provide funding for indoor air quality testing but, consistent with this Policy will undertake litigation if needed to ensure the employer completes any tests determined to be necessary.

For any local experiencing a "sick building syndrome" or "building related illness" problem, PSEA will assist in finding an expert who can advise the local. PSEA does not cover the costs of such expert assistance. If, in the opinion of the PSEA attorney, an expert is needed to conduct inspections and/or review the results of any indoor air quality reports, and the costs of the review exceed $1,000, PSEA will cover costs over $1,000 to a maximum determined in each case by the general counsel after consultation with the PSEA president and executive director, provided the local is using the expert recommended by PSEA.

If any expert assistance is needed in any litigation undertaken by PSEA to resolve a sick building or building related illness problem, PSEA will cover the expenses of such expert.

Frequently Asked Questions

Am I eligible for legal services from PSEA?

Yes, if you are currently an active, reserve, life, or retired member of PSEA or Health-Care PSEA, and were a member at the time the alleged incident occurred.

What if I am suspended or dismissed?

If you are suspended or dismissed, or resign in lieu of discipline, you must maintain your membership in the appropriate category during the period of suspension, or while you are challenging the dismissal, or after your resignation in order to remain eligible for legal services under this Policy.

What if I am retired?

If you are a member of PSEA-Retired, you are eligible for legal services if the issue relates back to your employment, you were a member of PSEA at that time, and your membership in PSEA-Retired has been continuous with your PSEA membership.

Can I obtain legal advice from this program?

Yes, but there are certain conditions. You must use the attorney PSEA assigns, and your problem must be employment-related.

Do I have to pay for legal advice related to my employment?

No, it is a benefit of your PSEA and NEA membership.

How do I get legal advice related to my employment?

Contact your UniServ Representative, who will communicate your question or issue to a PSEA attorney.

Will an attorney represent me in an employment-related case?

The program entitles you to legal representation in a case related to your employment that is approved by the PSEA General Counsel. You must use the attorney assigned by PSEA. While your relationship with the PSEA-funded attorney is similar to the attorney/client relationship with a private attorney, there are some differences since the attorney must provide case status updates to PSEA, may need to discuss case details with the PSEA General Counsel, and may need to provide limited case management information to NEA on a confidential basis. These and other differences will be further explained to you by your assigned attorney.

Does that mean I can get an attorney to handle any case?

No. Your problem must be related to your employment, and must be approved for funding by the PSEA General Counsel.

Does the policy cover employment-related criminal charges?

No; however, members have insurance coverage under the NEA Educators Employment Liability Insurance for reimbursement of attorney's fees up to the maximum amount in the policy when charged with employment-related crimes and when exonerated. Please refer to the EEL Insurance Policy Brochure for additional information.

PSEA will provide up to $2,500 in "up-front" money in employment-related criminal matters when

Frequently Asked Questions

the member retains a criminal defense attorney approved by PSEA. PSEA will be reimbursed the amount if your attorney fees are reimbursed by the EEL insurance. If fees are not reimbursed by the insurance, you will not be required to reimburse PSEA.

Does the policy cover employment-related child abuse investigations by child protective services agencies?

Yes, in certain circumstances. Depending on the allegations, the member may need a criminal defense attorney, and in that event PSEA will provide up to $2,500 in "up-front" money when the member retains a PSEA-approved criminal defense attorney. In addition, PSEA may approve one of its PSEA region attorneys to represent a member in an employment-related child abuse investigation where, based upon the allegations, the PSEA region attorney and member conclude it is not necessary to have a criminal defense attorney.

Does the Policy cover appeals of "indicated reports" of child abuse issued by child protective service agencies?

PSEA will provide financial assistance for an appeal. PSEA may, subject to approval of the General Counsel, provide up to $2,500 in "up-front" money to assist members in retaining an attorney to appeal an indicated report of child abuse.

Does the policy cover workers' compensation cases?

Workers' compensation cases are an exception to the PSEA Legal Services Policy because of their need for specialized counsel.

If a member retains an attorney approved by PSEA, PSEA will provide up to $1,500 to cover the costs of obtaining necessary medical testimony and/or for legal assistance. If you are successful and attorney fees or costs are reimbursed, PSEA will be reimbursed for its portion of the costs. If you are not successful, you will not be required to reimburse the amount paid by PSEA.

In addition, the PSEA approved attorney will handle your case on a contingent fee basis, with a 30% reduction in the fee.

Does the policy cover disability insurance cases?

Disability insurance cases are an exception to the PSEA Legal Services Policy because of their need for specialized counsel.

However, if you retain an attorney approved by PSEA, PSEA will provide up to $1,000 to cover attorney fees and costs. If you are successful and attorney fees and costs are reimbursed, PSEA will be reimbursed for its portion of the fees and costs. If you are not successful or attorney fees and costs are not reimbursed, you will not be required to reimburse the amount paid by PSEA.

Does the policy cover if I want to sue someone in court?

The PSEA General Counsel can approve civil litigation for certain matters including defamation, civil rights or discrimination. In such circumstances funding may be contingent upon an agreement that PSEA or retained counsel will be reimbursed for counsel fees and costs if awarded by the court.

How do I get a PSEA provided attorney to represent me?

Contact your UniServ Representative, who will provide you with an Application for Legal Assistance.

Frequently Asked Questions

What if the application is rejected?

You have the right to appeal. An appeal form and the procedures will be mailed to you if the Application is rejected.

Do I have to pay for the PSEA provided attorney?

No, it is free as a benefit of your PSEA and NEA membership.

Is there any maximum PSEA funding for my case?

No. Once PSEA agrees to provide legal representation in a case there is no maximum limit. PSEA often has spent thousands of dollars to defend a member.

If my case is approved for funding, am I automatically entitled to representation for every appeal, even to the Pennsylvania or United States Supreme Court?

No. Every case will be reviewed for funding before it proceeds to the next stage.

Do I have to reimburse PSEA for legal services?

You do not have to reimburse PSEA for the cost of legal services where you recover back pay, when, for example, you were improperly demoted, suspended, dismissed or furloughed. However, where you are seeking and are awarded damages beyond compensatory damages, PSEA does reserve the right to seek reimbursement from the award.

Who do I contact if I have other questions?

Contact your UniServ Representative.

Is that it?

PSEA has employed and retained some of the finest attorneys in Pennsylvania to serve its members. If you ever have a problem with the quality of service provided by this program – and we doubt you will – please let us know by contacting the PSEA General Counsel at the PSEA Headquarters in Harrisburg.

NOTES



400 North Third Street, PO Box 2225
Harrisburg, PA 17105-2225

