

MAINE COMMUNITY COLLEGE SYSTEM

GENERAL ADMINISTRATION

Section 208

SUBJECT: INDEMNIFICATION, LEGAL REPRESENTATION AND LIABILITY INSURANCE

PURPOSE: To provide legal protections to trustees, officers and employees conducting the business of the Maine Community College System

A. Introduction

Officers and employees of the Maine Community College System are protected from legal liability for actions taken in good faith within the course and scope of their duties. This policy describes three forms of such protection: legal indemnification, the provision of legal counsel, and insurance protection through the purchase of certain liability insurance.

B. System Legal Representation: General Principles

The president of the System is designated by the Board of Trustees as its representative in all legal matters involving the System, its Board of Trustees, officers, agents, employees and constituent colleges and units. The System's general counsel, acting on behalf of the president, shall manage and coordinate all of the System's legal activities.

College presidents shall forward all requests for legal counsel to the general counsel who, in consultation with the MCCS president, shall review these requests and provide and/or designate counsel as deemed appropriate.

C. Indemnification against Legal Liability; Provision of Legal Counsel

1. Subject to the provisions of law and the limitations and conditions set forth in this policy, each trustee, officer and employee of the System, whether or not in office, and the heirs, executors, administrators and assigns thereof (collectively "covered persons") shall be indemnified by the System against all costs and expenses reasonably incurred by or imposed upon such covered person in connection with or resulting from any action at law, suit, proceeding, claim or investigation, civil or criminal, to which he or she shall or may be made a party, or with which he or she shall or may be threatened, by reason, directly or indirectly, of the good-faith performance of duties on behalf or at the direction of the System, so long as those duties are within the scope of such covered person's responsibilities as a System trustee, officer or employee.
2. Subject to the provisions of law and the limitations and conditions set forth in this policy, the System shall provide legal representation for a covered person, or indemnify a covered person for the cost of legal representation, when the covered

person has been made a party to, or is threatened to be made a party to, a civil, criminal or administrative suit, proceeding, action or investigation by reason, directly or indirectly, of the good-faith performance of duties on behalf or at the direction of the System, so long as (a) those duties are within the scope of such covered person's responsibilities as a System trustee, officer or employee, or (b) he or she reasonably believed such duties to be within the scope of his or her responsibilities as a System trustee, officer or employee.

3. For representation and indemnification to be provided, the covered person must have acted in good faith and in a manner that he or she reasonably believed to be in the best interests of the System, and, with respect to a criminal action or proceeding, the covered person must have had no reasonable cause to believe that his or her conduct was unlawful. No covered person shall be indemnified against or be reimbursed for any cost or expense arising out of a breach of duty of loyalty to the System, an act or omission not in good faith or that involves willful misconduct or a knowing violation of the law, or a transaction from which the covered person derived an improper personal benefit. "Willful misconduct" as the term is used herein includes, but is not limited to, the intentional violation of a law or regulation having the force of law or of the directive of a superior System authority. A covered person shall not be deemed to have been guilty of willful misconduct in the performance of duty as a trustee, officer or employee as to any matter wherein such person relied upon the opinion or advice of legal counsel employed or retained by or for the Board of Trustees, or relied upon erroneous information or advice furnished by an officer or employee of the System and accepted in good faith from such persons.
4. As a precondition for receiving and remaining eligible for representation and indemnification, a covered person shall promptly give notice to the general counsel of the suit, proceeding, action or investigation, or threat of same, by providing within 10 calendar days of receipt a copy of any legal process and all other relevant documentation served upon or received by such covered person. The covered person shall request, in writing, to be represented and indemnified by the System and include in that request the reasons why he or she believes that he or she is eligible for such representation and indemnification under this policy. Decisions on the extent of eligibility for representation and indemnification, and the selection of counsel, are made on a case-by-case basis by the general counsel after an investigation into the facts. The decisions of the general counsel, which will be communicated in writing, are subject to the approval of the System president but are otherwise final and not subject to System appeal or grievance.
5. As a precondition for receiving and remaining eligible for representation and indemnification, a covered person shall agree to legal representation by counsel approved by the general counsel to act on the matter, or in the event of conflict of interest on the part of the general counsel by individual counsel acceptable to the Board of Trustees, which acceptance shall not be reasonably withheld. A covered person shall have a duty to cooperate fully with the counsel approved by or appointed by the System in the defense of any action or proceeding brought

against him or her, as well as any related or ancillary action or proceeding brought against the System based upon the same act or omission. If the covered person fails to cooperate with the counsel, legal representation may be withdrawn, and the System shall have no obligation to provide indemnification for the cost of legal representation.

6. The costs and expenses against which any covered person shall be indemnified shall be those actually paid or for which liability is actually incurred, including sums paid in settlement of any such action, suit, proceedings or claim on advice of competent counsel and with the concurrence of the Board of Trustees, and irrespective of whether such costs or expenses are taxable costs as defined or allowed by statute or rule of court. The right of indemnification under this policy shall be supplementary to any other rights with respect to any such costs and expenses to which a covered person may otherwise be entitled.
7. The System will not defend or indemnify an individual in any action or proceeding brought against such individual by the System itself, and in any action or proceeding brought the System by the individual.

D. Liability Insurance

It is the policy of the Board of Trustees that the System will obtain liability insurance (directors and officers, educators' legal liability, or the equivalent) to provide appropriate protection for the System against legal liabilities assumed by virtue of the indemnification guaranties provided under this policy. The general counsel and MCCS chief financial officer shall periodically review coverage limits, premium costs, claims histories and other information to determine whether existing insurance provides adequate protection at affordable cost. The Board of Trustees will be regularly updated on liability insurance coverage and claims history.

REFERENCES: 20-A M.R.S.A. §12706(10), §12709(2); 14 M.R.S.A. §8010, et seq.

DATE ADOPTED: June 24, 2009

DATE(S) AMENDED: