



# LEGAL SERVICES POLICY

Massachusetts Teachers Association  
20 Ashburton Place  
Boston, MA 02108  
2015





# LEGAL SERVICES POLICY

This document contains the MTA Legal Services Policy as adopted by the Board of Directors on November 21, 1970 and amended on December 6, 1975; June 13, 1981; June 19, 1982; March 19, 1983; October 15, 1983; October 18, 1986; October 17, 1987; August 11, 1991; June 11, 1994; August 14, 1994, August 6, 2000, June 16, 2001, and August 6, 2006.

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Boston, MA 02108

# **MTA LEGAL SERVICES POLICY**

MTA legal support of associations and individuals is based upon the premise that associations and individuals, through their local affiliate, should be assured of legal representation in certain matters relating to their employment. Decisions relative to the granting or denial of the legal services provided in this policy will be made without regard to the race, color, national origin, creed, gender, sexual orientation, age, handicap, marital status, or economic status of the applicant.

## **ARTICLE I**

### **A. AFFILIATE**

The term "affiliate" as used in this policy shall refer to any professional and/or educational association in Massachusetts which has been affiliated with the MTA in accordance with Article III of the MTA Bylaws.

### **B. APPEAL**

The term "appeal" shall mean 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, administrative agency, or arbitrator.

### **C. EMPLOYMENT-RELATED MATTER**

1. Except as otherwise provided in Paragraph 2 of this subsection, "employment-related matter" is a matter arising directly or indirectly out of:
  - (a) the employment relationship between a municipal, or state employer as currently defined by G.L.c. 150E, or

other institution involved in the teaching-learning process and (i) one or more of its employees who are members of the MTA (ii) one or more of its employees who are not members of the MTA, if the local affiliate of the MTA is obligated to provide legal assistance pursuant to a duty of fair representation or (iii) one or more local affiliates of the MTA.

(b) the relationship between an employer, and one or more of its employees or an employee organization not provided for in paragraph (a), if the MTA determines that the matter is precedential for the membership.

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) in which the applicant for legal assistance is challenging an interpretation or application of a collective bargaining agreement being asserted by an employee organization acting as, his, her, or their exclusive bargaining agent or in which the applicant is requesting legal service or representation in any arbitration, administrative, judicial action, or proceeding in which the local, state or national association is an adverse party to requesting member.

(c) in which the applicant for legal assistance is requesting legal service which would otherwise meet the requirements of Paragraph C-1 above and where the applicant is placed in a bargaining unit represented by an employee organization not affiliated with the MTA and the matter involves collective bargaining issues.

- (d) which involves the membership defense of a criminal charge or where the individual wishes to prosecute a criminal complaint against an individual except in the latter where the GENERAL COUNSEL determines the matter involves a physical attack on a teacher by a student, parent, or member of the administration and the prosecution is determined to be necessary to prevent the reoccurrence of such action.
- (e) which is covered by NEA employee liability insurance.
- (f) a civil matter involving libel, slander, or other non-contractual complaints in which civil damages are being sought by the member or association.

#### D. EXECUTIVE COMMITTEE

The term "Executive Committee" as used in this policy shall refer to the MTA Executive Committee as constituted and elected as provided in Article VI of the MTA Bylaws.

#### E. EXECUTIVE DIRECTOR-TREASURER

The term "Executive Director-Treasurer" as used in this policy shall refer to the MTA Executive Director-Treasurer as that position is defined in Article V of the MTA Bylaws.

#### F. EXCLUSIVE BARGAINING AGENT

The term "exclusive bargaining agent" as used in the policy shall mean that of an affiliated organization which is recognized or certified as the collective bargaining representative of employees contained in a defined bargaining unit.

## G. GENERAL COUNSEL

The term "General Counsel" as used in this policy shall refer to MTA's General Counsel.

## H. LEGAL SERVICES

1. "Legal Services" shall refer to legal advice and representation services provided by an attorney who is licensed to practice law in the Commonwealth and who has been employed or retained by the MTA for that purpose or, services provided by an arbitrator who has been employed or retained by the MTA for the purpose. Legal Services shall mean services rendered in connection with:
  - (a) grievance arbitration involving employee discharge, termination, suspension, non-reappointment or involving other issues of law, impasse resolution, and/or any administrative or court proceeding involving an employment-related matter.
  - (b) the business or corporate affairs of affiliates including services rendered relevant to incorporation and c. 150E reporting requirements, and other similar routine business tax or corporate activities that involve issues of law. Such business or corporate legal services shall not include any matter involving or arising out of the relationship between affiliates and their employees or agents.
2. In addition to other exclusions, it is expressly understood that "Legal Services" shall not mean services rendered as a negotiator in the collective bargaining process other than in connection with an impasse resolution proceeding or representation in litigation arising from an affiliate election

dispute where the affiliate has declined to participate in the procedures set forth in the MTA Policy on Local Election Disputes.

I. MTA ATTORNEY(S)

The term "MTA attorney(s)" as used in this policy shall refer to those attorneys employed or retained by the MTA and approved by the GENERAL COUNSEL to provide legal services pursuant to this policy.

J. MEMBER(S)

The term "member(s) as used in this policy shall mean persons defined by Article III, Sections 2 and 3 of the MTA Bylaws as active members, retired members, or life members. In order to be eligible for legal services, life members must be actively employed by a school committee or the governing board of an educational institution."

## **ARTICLE II**

Guidelines on expanded assistance to MTA members accused of employment-related criminal conduct.

1. Employment-related criminal charge means one arising out of the member's educational employment activities. The term "educational employment activities" means the activities of the member performed:
  - a. Pursuant to the express or implied terms of his/her employment by a school committee or an institution of higher education, which employment is the basis for his/her membership in MTA, or

- b. At the express request or with the express approval of his/her supervisor, provided that at the time of such request or approval, the supervisor was performing what would appear to be his/her educational employment activities.

An employment-related criminal charge shall not include an assault in which the alleged victim is also a member of MTA.

- 2. Legal services for school committee and other non-criminal proceedings connected with an employment-related criminal charge will be provided by MTA strictly in accordance with the terms of the MTA Legal Services Policy.
- 3. In order to be eligible for the assistance provided herein, a member must assign to MTA the right to be reimbursed for any fees and costs advanced by MTA under these guidelines which are subject to reimbursement under the Educators Employment Liability Policy.
- 4. The member agrees to accept the attorney assigned by the General Counsel and MTA will not pay legal fees to any other attorney retained by the member without the approval of the General Counsel. The General Counsel is specifically authorized to negotiate, enter into, and execute on behalf of the MTA such retainer or service contracts with such attorneys as are necessary to provide legal services pursuant to this policy.
- 5. Subject to availability of money expressly designated by the MTA Board of Directors for the purpose of funding the services specified below, the following assistance will be provided to members:

#### A. INITIAL CONSULTATION

MTA will provide up to three hours of advice and consultation with an attorney concerning an employment-related criminal charge provided that the member has provided directly to the General Counsel such information regarding the case as the General Counsel deems necessary.

#### B. INVESTIGATION COSTS

The MTA will reimburse up to \$1,000 of investigator's costs incurred by a member subject to the conditions set forth in this policy and further subject to the additional conditions stated below:

1. The General Counsel determines that an investigation will be helpful; and
2. The member and his/her attorney will provide the General Counsel a copy of the investigator's report, along with all other information discovered in preparation of the member's defense.

#### C. ADDITIONAL ATTORNEY FEES

The MTA will fund up to an additional \$5,000 of attorney fees subject to the limitations and conditions stated below:

1. The General Counsel is given a detailed bill of fees;
2. The General Counsel reserves the right to decline to pay any fees he/she determines to be unreasonable; and
3. The General Counsel is given any investigator's report along with other information discovered in preparation of the member's defense, and determines that the merits

of the case, the probability of success, and the nature of the precedents justify the additional reimbursement.

6. The General Counsel may make individual exceptions to this policy based upon the merits of a case and the member's financial inability to pay, as determined by the General Counsel. If an exception is made the General Counsel and the member shall enter into a written agreement setting forth the amount of all reimbursement and the terms of repayment.
7. The decision of the General Counsel regarding provision of services described in these guidelines will be final and not subject to review. Report of the status of the fund will be submitted at each Executive Committee meeting.
8. This policy becomes effective upon approval of the MTA Board and will not be applied to any attorney or investigator's fees incurred prior to the time of approval.

### **ARTICLE III**

1. Notwithstanding any other provisions of this policy no member, group of members, or affiliate shall be entitled to legal services pursuant to this policy in the event:
  - (a) the person(s) or affiliate(s) fails to cooperate with the assigned attorney in the preparation and presentation of the matter for which legal service is being rendered, or consistently fails to follow the legal advice of the assigned attorney.
  - (b) the applicant member(s) has not become a member of, or an agency fee payer to his, her, or their local affiliate, MTA, and NEA prior to January 1 of the membership year in which services are being requested. A person seeking legal

services in their first year as a retired member must have become a retired member of MTA and NEA prior to January 1 of that membership year. A person seeking legal services as a retired member in the second year of retired membership or thereafter, must have renewed MTA and NEA membership prior to January 1 of the membership year in which services are being requested and must have maintained continuous membership since retirement. Where the applicant was a member as required above, and without the specific written approval of the MTA does voluntarily terminate membership while he or she is receiving such assistance, the applicant will not be eligible for any further assistance. Application of this subsection will not prevent the rendering of legal services to non-members because of the affiliate's duty of fair representation.

- (c) the applicant association has not complied with its obligations pursuant to Article III, Section 2 of the MTA Bylaws as most recently amended.
- (d) the appellate actions for which legal services are requested and which are not approved and recommended by the GENERAL COUNSEL.
- (e) the litigation involves individual contracts entered into by the employee where the individual applicant has had collective bargaining employee rights through an MTA affiliated association under the provisions of G.L.c. 150E, and he or she has voluntarily, without a decision of the Labor Relations Commission, relinquished those rights and, subsequently, individually contracted with the employer.
- (f) the request for service has not been processed as provided in Article IV of this policy.

(g) The applicant member is delinquent in the repayment of a loan from the MEA Professional Rights Fund.

2. The MTA will not normally pay as part of MTA legal services:

(a) fact finders, arbitrators, or mediators fees incurred by affiliated associations, nor any administrative fees incurred by the affiliated association in the processing of arbitration or other administrative procedures.

MTA will pay the employee or local association portion of arbitration fees in dismissal cases under the statutory arbitration process set forth in Chapter 71 or dismissal cases involving teachers with professional teacher status under just cause provisions in MTA local collective bargaining agreements, provided that the General Counsel has determined that the case is meritorious and has assigned an attorney to handle the case pursuant to the MTA legal services policy.

(b) fees incurred by affiliate associations for non-MTA staff negotiators, whether lawyers or non-lawyers, are utilized by said association in collective bargaining with the public or private employer and/or their representatives.

(c) filing fees, cost of service of process, printing or transcription.

3. Requests for such assistance may be honored within available budgetary limitations by the GENERAL COUNSEL when such requests involve unusual situations or situations of broad interest to other associations. The decision of the GENERAL COUNSEL shall be reviewable by the EXECUTIVE COMMITTEE whose decision shall be final.

4. In the event an administrative, arbitration or judicial decision is adverse to an individual, group of individuals, or association, the determination as to whether the MTA will support, in any form, an appeal of said decision shall be determined by the GENERAL COUNSEL whose decision shall be final.
5. In the event the MTA has provided legal assistance pursuant to this policy, the recipient member or association, exclusive of any compensatory settlement award or judgment, shall reimburse the MTA for all expenses and legal fees incurred by the MTA in processing the matter from any punitive damages award or from any award or settlement providing counsel fees.

## **ARTICLE IV**

### Procedure for Obtaining Legal Services:

1. Individual requests for legal assistance from the MTA shall be made through the applicant's local affiliate president or designee. The local association shall request legal assistance from the MTA through the local affiliate's president or designee.
2. All applications shall be in writing and shall briefly enumerate the factual basis for the request; the matter for which legal services are requested; provide names, addresses and telephone numbers of all individuals involved in the matter; and any other information requested by the GENERAL COUNSEL including a statement of authorization of representation and submitted through the appropriate Regional Manager. All such requests shall be referred to the office of the GENERAL COUNSEL and processed in accordance with this policy and any statement of administrative procedures promulgated by the GENERAL COUNSEL and approved by the EXECUTIVE DIRECTOR-TREASURER.

3. Upon receipt of the request for legal assistance, the GENERAL COUNSEL will review it, and any report from the appropriate Regional Manager or Division Director, and make a determination as to the disposition of the request within thirty (30) working days of the GENERAL COUNSEL'S receipt of the application.
  
4. Individuals or associations denied legal service pursuant to this policy by determination of the GENERAL COUNSEL may appeal said determination to the MTA EXECUTIVE DIRECTOR-TREASURER. An appeal to the MTA EXECUTIVE DIRECTOR-TREASURER must be received no later than 10 days from receipt of the letter from the GENERAL COUNSEL denying legal services. An appeal to the MTA EXECUTIVE COMMITTEE must be filed no later than 20 calendar days from receipt of the letter from the MTA EXECUTIVE DIRECTOR-TREASURER. For any appeal after June 15, the 20 calendar days shall not begin to run until after September 1. The determination of the MTA EXECUTIVE COMMITTEE shall be final except that it shall be reviewable by the NEA as provided in the then current MTA-NEA Legal Services Agreement and NEA Guidelines.

Appeals to the MTA EXECUTIVE DIRECTOR-TREASURER and MTA EXECUTIVE COMMITTEE should be addressed to the MTA EXECUTIVE DIRECTOR-TREASURER, Massachusetts Teachers Association, 20 Ashburton Place, Boston, MA 02108. More detailed information concerning current procedure for appeal to NEA will be provided upon request to the MTA GENERAL COUNSEL.

If a determination is made by the GENERAL COUNSEL that there is a potential for a conflict of interest and the matter does not involve collective bargaining issues, an applicant may be

required to retain independent counsel of his or her selection and the applicant will be reimbursed for the reasonable cost of such counsel. The applicant will not be eligible for such reimbursement in the event he or she selects any attorney affiliated with an employee organization which is in conflict with the MTA or its affiliates.

The request for legal services, once approved, will be processed and service rendered in the manner determined by the GENERAL COUNSEL with the general approval of the EXECUTIVE DIRECTOR-TREASURER.

A member or association provided legal service by the MTA agrees to accept the attorney assigned by the GENERAL COUNSEL and the MTA will not pay legal fees for any other attorney(s) retained by the member without prior written approval of the GENERAL COUNSEL.

Further, only MTA attorneys will be used to provide legal services pursuant to this policy except where in the opinion of the GENERAL COUNSEL it is in the best interest of the member, local association, and the MTA to assign other attorneys with a particular expertise needed in providing the requested legal service or when the workload prevents the MTA staff attorneys from providing the necessary service to meet the requests.

5. The GENERAL COUNSEL is specifically authorized to negotiate, enter into, and execute in behalf of the MTA such retainer or service contracts with such attorneys as necessary to provide legal services and assistance to the MTA, its affiliates, and members.

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**For MTA Legal Services, contact:**

**MTA Regional Offices**

**Metropolitan Service Center**

100 Grandview Road, Suite 320  
Braintree, MA 02184-2635  
(781) 380-1410 or 1-800-479-1410  
FAX (781) 380-1441

**Northeast Service Center**

50 Salem Street  
Building B, Suite 9  
Lynnfield, MA 01940  
(781) 246-9779 or 1-800-421-3332  
FAX (781) 246-9774

**Southeast Service Center**

756 Orchard Street, 3<sup>rd</sup> Floor  
Raynham, MA 02767  
(508) 822-5371 or 1-800-336-1118  
FAX (508) 880-7575

**Auburn Service Center**

48 Sword Street  
Auburn, MA 01501  
(508) 791-2121/22 or 1-800-542-5504  
FAX (508) 753-4503

**Berkshire Service Center**

188 East Street  
Pittsfield, MA 01201-6124  
(413) 499-0257  
FAX (413) 442-4099

**Western Service Center**

55 Bobala Road, Suite 3  
Holyoke, MA 01040  
(413) 535-2415 or 1-800-432-1117  
FAX (413) 535-0196