

BPAA LEGAL DEFENSE COMMITTEE GUIDELINES

The following guidelines were adopted by the Broward Principals' and Assistants' Association Board of Directors on April 25, 1994..

These are intended only as guidelines. The BPAA Board of Directors may deviate from these guidelines upon a vote of two-thirds (2/3) of the members present at any regular meeting of the Board of Directors and an affirmative majority vote of the BPAA Legal Defense Committee.

1. Composition of the Legal Defense BPAA Board Committee.

The composition of the BPAA Legal/Defense Committee shall be in accordance with the BPAA Constitution as amended from time to time and the membership shall be appointed by the BPAA President and sitting chairs.

2. Purpose

The BPAA Legal Defense Committee is established by BPAA to enter into litigation and **administer** legal services to the members of BPAA, whose careers and/or job security as defined herein, are threatened, and to administer, in accordance with these guidelines the Legal Defense Fund. The Legal Defense Committee shall carry out other such duties and responsibilities as may be delegated to it by the President or Board of Directors of BPAA.

3. Funding

The Legal Defense Fund shall be financed through the dues structure of the Association. These funds shall be collected through dues, payroll deduction, or as a part of the annual cash dues collection. **The fund may finance actions brought by the Association or by an Association member, with the consent of the Board of Directors, for the purpose of protecting the Association's interests and/or those of its members, as well as the integrity and standards of our profession.** Each month a prorated amount shall be deposited into the legal defense fund account, which shall be established as a separate account, for the use of the Legal Defense Fund to meet its' obligations. All fund surpluses shall be retained and all interest earned shall be accrued.

4. Eligibility For Benefits

A current member, in order to be considered eligible to receive Legal Defense Fund Benefits, shall have had continuous, uninterrupted dues payments for a period of at least 9 MONTHS prior to the incident or circumstances surrounding the request for benefits. This 9 MONTH requirement may be waived for newly appointed administrators or for extenuating circumstances in the discretion of Legal Defense Committee. In no instance shall Legal Defense Funds be dispersed on behalf of a member who pursued a matter through formal or informal channels outside of the Legal Defense Fund approval process. A member shall not be considered eligible for access to the fund to cover any legal costs incurred to resolve a matter that has been pursued through outside legal counsel. Eligibility for access to the fund shall be withdrawn from a member for failure to follow the requirements of the Legal Defense Committee and BPAA Executive Board of

Directors. No BPAA Member shall receive legal defense fund benefits of any kind for representation relating to any matter for which they admit to any wrong doing or violation of any law, or policy or condition of employment to the Broward County School District, nor shall any benefits or services be provided for any allegation of any criminal matter or civil matter unrelated to their employment whether they admit to the violation or not. The BPAA Board of Directors may review matters where a member admits to wrong doing and shall have exclusive discretion to provide representation to a member who has admitted to wrong doing only to ensure that the BPAA Member's due process rights are protected during the investigative process by the local School District. The Board may not provide any benefits what so ever for any criminal matters.

5. Covered Benefits

The plan will provide legal representation for all matters of alleged misconduct which jeopardize or threaten any member's employment with the Broward County School Board as it relates to the member's professional responsibilities. **COVERAGE SHALL NOT INCLUDE INCIDENTS WHERE A MEMBERS HAS COMMITTED A CRIMINAL OFFENSE OR IN CASES WHICH ARE SUBJECTIVE AS THEY RELATE TO JOB PERFORMANCE WHERE THERE HAVE BEEN NO VIOLATIONS OF THE INDIVIDUALS DUE PROCESS RIGHTS.** Coverage shall include representation at hearings to review disciplinary action such as suspension, demotion or dismissal and representation in investigating interviews which may lead to disciplinary action. The Broward County School District provides errors and omissions insurance coverage for administrators while on duty and Legal Defense Funds shall not be used to provide duplicative coverage. However, should a matter arise that is not covered by said policy provided by the Broward County School District relating to errors and omissions, the BPAA Legal Defense Committee and Board of Directors may consider providing such coverage.

6. Attorneys

The BPAA Board of Directors will contract with attorneys selected by the Association to provide the services under this plan. The attorney's fees will be billed to and paid by the Fund up to the maximum benefit allowed. Prior to engaging the services of any attorney for purposes of representing a member in any matter, the BPAA Board of Directors will request that attorney to submit to the BPAA Board of Directors **for approval** the following information:

- a. A description of the parties to the litigation and the court or administrative agency which will decide the case.
- b. A complete description of all facts known which are relevant to the litigation which is the subject of the request for funds.

- c. A complete listing of the legal issues sought to be determined in the litigation which is the subject of the request for funds.
- d. A complete description of whether or not the issues to be decided are of significance to the membership at large.
- e. An opinion letter from the attorney which shows that he/she is familiar with the facts surrounding the litigation; that he/she has made a preliminary investigation which confirms the facts as specified in the above mentioned documentation; and that he/she believes the litigation to be well-founded on the issues specified in said documentation. The opinion from the attorney should, to the extent possible, indicate that attorney's opinion as to the probability of success on each issue specified in the documentation provided.
- f. A good faith estimate of the costs of the litigation through the trial or administrative level and on each level of direct appeal. The costs shall include an estimate of the attorney's fees, filing fees, discovery costs, expert witness fees, and any and all other fees or costs anticipated to be incurred in the course of the litigation.
- g. The amount of funds available for the litigation from any other source, including state and national organizations of which the litigant is a member and from which may be entitled to other sources of legal defense funds.

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Any and all other relevant facts and circumstances which will assist the BPAA Legal Defense Committee and Board of Directors in applying the criteria specified in these guidelines will be considered.

7. Attorney - Client Relationship

The Association, on behalf of the member, shall be regarded as the attorney's client under this plan. However, information confided to the attorney by the member shall be considered confidential and privileged and shall only be communicated to the B.P.A.A. Board of Directors and Legal Defense Committee with the member's prior consent. The Legal Defense Committee and Board of Directors shall take necessary measures to protect such communicated information.

8. Criteria for Evaluating Requests

The Legal Defense Committee will evaluate requests for funds and make recommendations to the BPAA Board of Directors.

9. Timetable for Submitting Requests for Funds

A member must make requests for Fund benefits prior to the member initiating litigation. However, nothing herein shall be construed to prohibit the BPAA Legal Defense Committee and Board of Directors from participating in a case on the appellate level or to file on behalf of the Association an "Amicus" memorandum or brief.

10. Benefit Amount

The maximum benefit payable in legal fees per alleged incident will be based on the following described rates of coverage. Benefits range from a two hour consultation fee of \$170 to a maximum of \$32,170. **Attachment "A"** outlines the benefits payable directly to the attorney based on agreed charges.

- **Level One** - (\$170) - Consultation of up to two hours as authorized by the Executive Director.
- **Level Two** - (First \$5,000) - Paid by **BPAA** for qualified cases. Notification must be sent to FASA, NAESP, and NASSP at this time to secure Level Three and Level Four funding.
- **Level Three** - (Next \$6,000) - Paid by **FASA** (for **FASA** members) for cases which are certified by **FASA**. In the event **FASA** does not certify the case, **BPAA** will pay this benefit for FASA member. No benefit is available to non FASA members at this level.
- **Level Four** - (Next \$6,000) - Paid by **NAESP/NASSP** (for **NAESP/NASSP** members) for cases which are certified by **NAESP/NASSP**. In the event **NAESP/NASSP** does not certify the case, **BPAA** will pay this benefit for **NAESP/NASSP** member. No benefit is available to non **NAESP/NASSP** members at this level.
- **Level Five** - (Next \$5,000) - Paid by **BPAA**
- **Level Six** - (Next \$10,000) - Special funding which can be authorized by **BPAA** Executive Board for exemplary cases.

In the event the member's benefits are exhausted before the case is resolved, the member can pay all amounts in excess of the maximum available benefit directly to the attorney at the rates previously agreed to by the attorney and the Association, or a LOWER rate agreed to by the attorney and the member. (3)

11. Procedure

A member faced with a matter covered by this plan will contact the **BPAA** Executive Director. The Executive Director will first review the matter and develop a course of action. The Executive Director will attempt to resolve the problem at the lowest possible level.

If not resolved, the Executive Director shall bring the matter before the **BPAA** Board of Directors, who shall then refer the matter to the Legal Defense Committee for action and recommendations.

In no event shall the **BPAA** be required to bring an action on behalf of any member if the **BPAA** Board of Directors determines that bringing such action is not in the best interest of the **BPAA**.

12. Periodic Reports

The attorney shall report to the BPAA Board of Directors and Legal Defense Committee at least every month. The reports should be submitted no later than one week prior to the regular monthly BPAA Board of Directors meeting. In addition, reports should be submitted at any time a significant event occurs in the litigation, such as the scheduling of a trial, the conclusion of a trial, and/or the rendering of a decision by any court, administrative agency, or hearing officer deciding the litigation. Such reports shall also include financial information relating to all billable costs. The report shall include a complete accounting of all fees and costs including but not limited to filing fees, copies, court costs, etc. The report shall also include the amount approved for each pending case and the amount expended to date for each pending case.

13. Termination of Litigation

Any litigation funded in part or in whole by the Legal Defense Fund shall not be terminated or settled without prior consent of the BPAA Board of Directors. Should time constraints make it impossible to get the approval of a majority of Board Members during a regular Board meeting, approval to terminate or settle litigation may be made by obtaining the approval of at least a majority of the Board Members to terminate or settle litigation and such actions shall be binding on the BPAA.

14. Recovery of Attorney's Fees and Costs

In any action funded in part or in whole by the Legal Defense Fund, the member shall make a claim for the recovery of costs and, when appropriate, make a claim for the recovery of attorney's fees. In the event attorney's fees or costs are recovered, such fees shall be reimbursed to and deposited into the Legal Defense Fund account. Recovered fees in excess of BPAA Legal Defense Fund expenditures shall be returned to any state and/or national organization which provided benefits on a pro rata share.

15. Amendments to the Guidelines

These guidelines may be proposed for amendment by the Legal Defense Committee subject to the approval of the BPAA Board of Directors or by a majority vote of the BPAA Board of Directors present at any regular meeting of the Board. The date of Board approval is the effective date of any amendment.