

Section 8: Advocating for Members and Protecting Their Rights

- Represent the association in meetings with district administrators and maintain open lines of communication between members and the administration.
- Foster relationships with the Board of Education by attending or delegating other members to attend Board meetings and sharing relevant information with the membership.
- Act as an advocate (or appoint a designee) for bargaining unit members who need support.
- Link members with appropriate supports provided by NEA, OEA, or the OEA district as needed.
- Coordinate with the OEA Labor Relations Consultant on member representation needs.
- Familiarize yourself with OEA's Legal Services Program in order to provide needed protection and advocacy for members, and work with your Labor Relations Consultant to access legal support when needed.
- Connect interested members with OEA's Attorney Referral Program for personal legal services.

Duty of Fair Representation

What is Duty of Fair Representation?

Duty of fair representation is the legal duty of a union to equally, and in good faith, represent every employee in a bargaining unit, regardless of whether the employee is a union member or not. This legal duty arises out of the exclusive representative status unions hold under the National Labor Relations Act. A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith.

The duty of fair representation requires that a union represent all workers equally and without prejudice. A union cannot refuse to represent or improperly represent a worker due to the worker's age, race, creed, nationality, sex, religion, political beliefs, union status or personality. If a union fails to represent a worker due to prejudice or hostility the union can be held liable. Its purpose is to ensure that the course of action in any grievance case will be determined by the merits of the grievance, and not by the merits of the grievant. The union may refuse to file or process a grievance for any number of reasons so long as they are valid, however it may not arbitrarily refuse to process a meritorious grievance or decline to proceed to arbitration because of hostility to the grievant or irrelevant and ill-motivated reasons.

There are differences in what benefits members have as opposed to non-members.

Weingarten Rights

The Legal Right to Union Representation during an Investigatory Interview

Where the Right Comes From

The National Labor Relations Act (Section 7) says that employees have the right to engage in “concerted activities for the purpose of collective bargaining or other mutual aid or protections.” Included within this is the right to have union representation at an investigatory interview.

What the Right is in General

If an employee is called in for an interview or discussion or conversation with management and the employee holds a reasonable belief that answering questions at the interview may result in them being disciplined, then the employee has the right to demand union representation at the interview.

The “Weingarten” Case

This right was formally recognized by the U.S. Supreme Court in 1975 in a case called **NLRB vs. Weingarten**. In this case, the Court determined that workers have this right. The Court established the following general rules;

1. An employee’s right to representation in an interview applies to situations where the employee reasonably believes the investigation at the interview will result in discipline;
2. In this kind of situation, the employee is entitled to union representation;
3. The employee **MUST CLEARLY REQUEST** representation in order to claim this right. (There is no right to representation unless an employee requests it and the employer has no duty to inform the worker of this right unless the contract specifically requires that an offer be made.);
4. An employer does not have to grant a “Weingarten” request; once an employee makes a request for union representation, an employer has three options:
 - a. The employer may grant the request;
 - b. The employer may deny the request and stop the investigatory interview immediately;
 - c. The employer may give the employee the option of continuing the interview without a representative or discontinuing the interview.
5. The employer has no duty to bargain with the union representative who attends the interview.
 - a. The primary function of the representative is to be a witness to the proceeding.
 - b. Representative should take notes
 - c. During questioning, the representative may be limited to tacit participation. Some employers might allow questions and comments from representative.

Investigatory Interviews vs. Disciplinary Meetings

There are limits on Weingarten rights, the most important being that these rights only apply to “investigatory interviews.” If an employer has already made a decision to discipline and the interview is only for the purpose of informing the employee of that decision, then the meeting is a disciplinary meeting” and not an “investigatory interview” and there is no legal right to union representation at the time discipline is imposed, many local unions have negotiated this right in their contracts.

Questions and Answers on Weingarten Rights

1. Since an employee only has the right to a union representative when he/she “reasonably” believes discipline may result from the interview, what is a “reasonable” belief?

The reasonableness of a worker’s fear is determined by objective factors. These factors include: the employer’s prior discipline record; the events leading to the interview; the location of the interview; the company representative present at the interview; and the company’s opening words at the interview. These factors must be analyzed on a case-by-case basis.

2. Is a conversation at your work station concerning productivity a Weingarten Interview?

It depends. The law draws a line between “run of the mill” conversations about productivity and conversations where the employee reasonably expects discipline will result. Where the worker has no reasonable fear of discipline in a discussion concerning production, the employee is not entitled to representation. Where the worker has this reasonable fear, they are entitled to representation.

3. May an employer discipline a worker for refusing to go along with the employer’s demand that a Weingarten Interview be conducted without a union representative?

No. An employer may not discipline an employee for insisting on his/her Weingarten rights to union representation. If an employee asks for union representation and the employer refuses to allow it, the worker does not have to continue the interview; the worker may refuse to answer more questions. The employer may not discipline the employee for refusing to discuss the matter in this situation

However, there is no clear answer on whether a worker whose proper request for union representation has been denied can refuse to participate at all in the interview (by refusing to report for the interview or by leaving when his/her request for a union representative is denied).

4. What if the employee requests a union representative and there are none on the premises?

There is no simple answer to this. The employer may have to postpone the interview or it may be able to go ahead without a union representative. However, a worker should still insist upon the presence of a union representative.

The employee’s right is to the presence of a union representative, not to a specific person. So, if the representative the employee wants is not available and another one is, the employee is entitled to the presence of the union person who is available.

5. What is the role of the union representative in the Weingarten Interview?

The employee is entitled to the assistance of the representative, not just their presence. The union representative has the right to speak at the interview; they should be able to take an active role in helping the employee to present the facts.

6. Is the employee entitled to meet privately with the union representative before the interview?

Yes. An employee is entitled to meet with the union representative before the interview. A general idea of the reason for the interview must be given to the employee beforehand so that the representative has some information. However, the employer does not have to give specific information about the case.

7. What legal action can an employee and their union take if the employee is disciplined or discharged after an employer unlawfully denies the employee’s Weingarten Rights?

If the employer is a private employer, then an Unfair Labor Practice complaint can be filed with the National Labor Relations Board (NLRB). If the employer is a public employer, then the complaint must be filed with the Employment Relations Commission. The Board and the Commission have the power to order reinstatement and back pay if: (a) the employer unlawfully denied an employee’s request for representation in violation of Weingarten; and (b) the employer’s decision to discipline was based on information obtained at the unlawful interview.

Weingarten Rights: Frequently Asked Questions

- Q. If my representative sees me being questioned by an administrator, can they ask to be admitted?
- A. *Yes. Your representative has a right to insist on admission to a meeting that appears to be a Weingarten interview. If the interview is investigatory, you must be allowed to indicate whether you desire the representative's presence.*
- Q. A bargaining unit employee, summoned to a meeting with the principal, asked for a representative. The principal said, "You can request your representative, but if you go, I will have to bring in the superintendent. If we can keep it at this level, things will be better for you." Is this a Weingarten violation?
- A. *Yes. The principal is raising the specter of increased discipline to coerce an employee into abandoning their Weingarten rights.*
- Q. A principal told an employee to report to the office for a "talk" about an issue. The employee asked to see a representative but the principal said no. Can the employee refuse to go to the office without seeing a representative first?
- A. *No. Weingarten rights do not arise until an investigatory interview actually begins. An employee can only refuse to go to a meeting if the administrator makes clear in advance the issue to be discussed and the employee believes the meeting could lead to discipline. At that point the employee should request representation. If representation is denied, the employee may refuse to attend the meeting.*
- Q. Can an employee insist on a private attorney before answering questions at an investigatory interview?
- A. *No. Weingarten only guarantees the presence of an Association Representative.*
- Q. If an employee asks to be represented by a particular representative, must the administrator comply?
- A. *Usually, yes. If two representatives are equally available or if the arrival of the requested representative will not cause an unreasonable delay, the request for a particular representative must be honored.*
- Q. If an employee is summoned to a meeting and asked about the role of other employees in illegal or inappropriate activities, can they insist on assistance from an Association Representative?
- A. *Yes. Although the employee may not be involved in wrongdoing, he risks discipline if he refuses to inform on others or admits that he was aware of the violations. Because what is said at the meeting could get the employee into trouble, the employee is entitled to representation.*
- Q. What if I am told to be in the administrator's office but do not know the nature of the meeting?
- A. *You have the right to know beforehand what the subject of the discussion will be. ASK! If there is a possibility of disciplinary action, request your Association Representative.*
- Q. Is the administrator obligated to remind me of my Weingarten rights prior to an investigatory meeting?
- A. *No. You must request an Association Representative.*
- Q. What if an administrator denies my request for a representative?
- A. *If you are denied a representative's presence and are still asked questions, the Administrator commits an Unfair Labor Practice and the employee has the right to refuse to answer. The administrator cannot discipline the employee for such a refusal.*

- Q. What if an administrator directs me to not talk about the meeting or the issues discussed in the meeting?
- A. *The administrator cannot direct you to not talk to your representative about the meeting or the issues discussed. If anything said in the meeting leads you to believe you may be disciplined or may be disciplined if you discuss the meeting or the issues, the administrator has committed an Unfair Labor Practice and you should immediately inform your representative of the directive.*
- Q. Over the weekend or in the evening, the administrator calls an employee at home to ask questions related to an issue at school. Does the employee have to answer the questions?
- A. *No. Weingarten rights apply to telephone interviews and an employee can refuse to answer questions until he or she has a chance to consult a representative.*
- Q. If an employee is called to the office to sign a notice of disciplinary action or to be informed of a forthcoming disciplinary action, are they entitled to a representative?
- A. *No, since the administrator is not questioning the employee but simply announcing discipline. However, if the administrator starts asking questions or “fishing” for information, the employee can insist on the presence of a representative before answering.*
- Q. What do I say to my administrator if I am called to a meeting and have reason to believe that disciplinary action may result?
- A. *“If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I respectfully request that my association representative be present at this meeting. Without representation, I choose not to answer any questions.”*

Overview of OEA Member Legal Services Programs

Updated June 2022. For Ohio Education Association Staff and Member Use.

The OEA provides its members with one of the most comprehensive legal umbrellas of any employee organization. The OEA administers four separately funded legal programs. A person must be an active member at the time of application and at the time of the occurrence or the time they would reasonably have become aware of the occurrence giving rise to the need for Legal Services. An individual who signs up for OEA membership in anticipation of filing a request for Legal Services will be denied. A member must also maintain membership throughout the life of his or her case. If membership is not maintained, OEA will discontinue funding of the case. Legal Services staff constantly checks to ensure that individuals maintain their membership, and if membership lapses, members typically receive 2–4 weeks to reinstate before funding is discontinued. Legal Services are also available to local associations in matters that affect multiple bargaining unit members.

The liaison between the member/local association member and the OEA Legal Department is the Labor Relations Consultant (LRC). Always contact your LRC with any questions or concerns regarding legal matters.

Program Areas:

1. OEA/NEA Legal Services Program
2. Educators Employment Liability Insurance (EEL)
3. Association Liability Insurance
4. Attorney Referral Program

1. The OEA/NEA Legal Services Program (LSP)

While the Legal Services Program is comprehensive, it does not cover everything. Fundamentally, for individual members, there must be an actual dispute on matters relating to the terms and conditions of employment. OEA receives a 50% legal bill reimbursement from NEA on qualifying disputes.

The following is a list of active, threatened employment disputes that will normally be approved for members under the Legal Services Program:

- Termination/Non-Renewal – For terminations proceeding under O.R.C. § 3319.16, an attorney will be assigned at the time of the threatened termination, through the termination hearing. For non-renewals, attorneys are assigned at the conclusion of the board hearing as providing for in O.R.C. § 3319.11. The LRC is required to present evidence at the non-renewal hearing before the school board, and the LRC is entitled to a two-hour consultation with a plan attorney to prepare for that hearing.
- Demotion – Lowering of position or rank.
- Promotion – Failure to increase position or rank.
- Reprimand – Verbal or written.
- Suspensions – With or without pay.
- Performance Evaluations – Content of evaluations or challenges to the evaluation process.
- Transfers – Voluntary or involuntary.
- Assignment of Duties – Assignment to job duties or extracurricular activities.
- Certification – Disputes with the Ohio Department of Education and Workforce or the employer regarding the issue, revocation, suspension, or denial of teaching certificates or licenses. To open a Certification case, typically Legal Services needs to know that the member has received an official letter from ODE stating that they are beginning an investigation. Legal Services are not provided at the time the school board refers a matter to ODE.
- Continuing Contract Status – Denial of tenure.
- Salary – All disputes regarding salary placement, payment, overpayment and compensation for duty or supplemental pay.

- Fringe Benefits – Disputes with the employer regarding insurance and fringe benefits. The dispute must be with the employer. Legal Services are not provided if a member is having difficulty obtaining coverage or benefits under the provisions of a health benefit plan with an insurer.
- Leave – Leave from employment duties, including vacation, sick, military, FMLA, personal, professional development, or association related business.
- Personnel File – Access to contents of a personnel file, release of contents, or disputes over items contained in personnel files.
- Retirement (including disability) – Disputes over eligibility, compensation, contribution, or service credit. The dispute can be with the employer or a state retirement system.
- Unemployment Insurance – Provided only when a claim is denied and there is a hearing before the referee. Legal Services will not aid members in completing initial unemployment claims forms.
- Reduction in Force/Layoff – Rights of employees who are affected by a RIF.
- Working Conditions – Conditions of employment, including health and safety concerns and aiding members in formulating reasonable job accommodations for disabilities.
- Childrens Services Investigations – All investigations, Legal Services are only provided for the Childrens Services component of the investigation. (See Criminal below).
- Criminal (matters relating to employment only) – The only time an attorney is provided through a LSP is when the member is charged because of actions directly relating to their employment. For example, corporal punishment, misuse of funds, and inappropriate materials viewed on school computers are common situations wherein a case number is assigned for a criminal matter.

Exclusions and Limitations to LSPs

- Discrimination charges – (race, sex, religion, ancestry, national origin, age, disability, military status, and any other protected classes under federal, state or local law) With certain exception related to disability (discussed below), a person who believes they have been discriminated against on this basis must first file an administrative charge of discrimination with the Ohio Civil Rights Commission (OCRC) or the Equal Employment Opportunity Commission (EEOC) before any Legal Services will be provided. If Legal Services receives an application regarding a discrimination charge, the application will be placed on hold until the member exhausts the filing of a charge with the OCRC/EEOC. When the OCRC/EEOC has issued a right-to-sue letter, the individual must contact the LRC. At that time, Legal Services will review the matter and determine whether it is necessary to assign an attorney in accordance with the guidelines relative to appeals (discussed below).

Exception: When a member is attempting to devise a reasonable job accommodation because they are disabled, Legal Services will assign an attorney if the LRC is unable to work out the accommodation. The attorney's representation is limited to attempting to develop a reasonable job accommodation. If the accommodation is not achieved, the individual must then file a charge of discrimination with the OCRC/EEOC and the attorney will no longer be authorized to represent the member until the administrative process is exhausted, as described above.

- Grievable Matters – Attorneys will not be assigned to matters that are grievable under the applicable collective bargaining agreement. Such matters must be processed by the LRC. At the completion of the grievance procedure, an attorney may be assigned to review any arbitration award and determine whether enforcement or appeal is appropriate. If the collective bargaining agreement does not contain an arbitration step, the grievance procedure must still be exhausted and Legal Services will determine if the matter is one that should be appealed to a court.
- Defamation (Libel and Slander) – A person wishing to bring a defamation action against a parent, administrator, colleague, etc., will not be assigned an attorney. Defamation actions are specifically excluded from the OEA/NEA Legal Services Program because they are fee-generating actions, and private counsel may be obtained on a contingency fee basis.
- Personal Injury – Please see the reasons for exclusions in Defamation.
- Workers' Compensation – Please see the reasons for exclusions in Defamation.
- Member versus member or local association.
- Support for Bargaining Negotiations Prior to Impasse/Imposition.

- General Advice and Counsel – Legal Services does not provide attorneys for general advice and counsel to members, absent an adverse employment action threatened that is otherwise covered by the Program. For example, applications from teachers seeking counsel regarding liability while preparing IEPs are not approved absent a pending or anticipated job action. Also, Legal Services are not provided to help prepare individuals for providing testimony in court or in an employer investigation wherein no discipline against the requestor is anticipated.

Appeals to LSP Denials

If an application for Legal Services is denied for any reason, the denied member/fee payer has the right to appeal the decision. The appeal consists of two levels. The first level is a committee comprised of the OEA Executive Director, President, and Vice President. If that group affirms the denial, the member may appeal to the OEA Board of Directors.

2. Educators Employment Liability Insurance (EEL)

Through the EEL program, **members** are indemnified for civil actions arising out of their education employment. The cap on this insurance is \$1M per member (other than civil rights issues), \$3M per occurrence (aggregate for all claims), and \$250,000 per occurrence in civil rights issues.

In criminal actions, coverage is provided in two ways. First, if the criminal charge arises out of a matter related to student discipline, the member is covered regardless of the member's guilt or innocence of the charge. Members can choose their own criminal attorney and that attorney will be reimbursed for costs and fees up to \$35,000. Members can also choose to be represented by an OEA plan attorney.

Second, if the criminal charge does not arise out of a matter related to student discipline, the member is only covered if he or she is found not guilty of the charge or the charge is dismissed. In such cases, the member must obtain his or her own attorney and the attorney's costs and fees will be reimbursed up to \$35,000.

The EEL program also provides \$1,000 in bail bond reimbursement and \$500 for assaults related to personal property damage for incidents arising out of the member's educational employment.

3. Association Liability Insurance (APL)

Through the APL program, local, district, and state officers, as well as OEA staff, are insured for civil actions arising out of their actions taken on behalf of the local, district, or state association in the performance of approved association activities. In cases under this program, the OEA provides the defense attorneys, which are usually the same attorneys performing work under the Legal Services Program.

4. Attorney Referral Program (ARP)

Through this program, members are directed to attorneys near their home for personal legal problems unrelated to their employment. The legal services provided are not funded by OEA. Rather, the OEA uses its membership clout to guarantee reduced fees for its members for typical legal services such as wills and estates, domestic relations, real estate, consumer protections, bankruptcy, and traffic violations.

Under the ARP, local attorneys agree to reductions in their standard fees in exchange for referrals from OEA. Additionally, members are entitled to two, one-half hour consultations per year with a referral attorney on matters covered by the ARP. If the attorney or firm is then willing to enter into a contract for reduced rates for OEA members, the firm is accepted into the program. ARP attorneys are published annually in the August/September issue of *Ohio Schools* magazine and on the OEA website under Legal Services.

5. Forms

LSP-1 – Application for Legal Services: Initial Level Assistance. One form is used for member and association issues. All forms must have the original signature of the member, or for an association matter, the original signature of the local President. Without a signed LSP-1 form, OEA will lose the ability to seek the 50% reimbursement from NEA on legal bills in a case. LSP-1's are also used for the APL program.

LSP-2 – Application for Legal Services: Appeal of Adverse Decision. This application is used when a case is lost and further appeal is desired. The fact that a case was initially approved is no guarantee that the application for appeal will be approved. Such determinations involve an evaluation of the lower tribunal's decision, the strengths and weaknesses of the merits of the case, and the potential aspect of the higher tribunal's possible decision on the statewide membership. This is the same standard used to determine whether OEA will approve a LSP for a discrimination charge following exhaustion of the OCRC/EEOC phase.

If the employer appeals an OEA sponsored case, it is unnecessary to submit a LSP-2. Legal Services will continue to be provided through the initial application.

Liability Insurance Claim Form – used when a civil or criminal suit has been filed due to actions of the member which arise out of their employment-related activities. Often, a member will be involved in a matter which may create employment problems needing legal assistance and personal liability. In this case, the member should be directed to complete both the LSP-1 and the liability claim form.

No forms are necessary for the ARP program.

For More Information Contact: OEA Legal Department, legalservices@ohea.org, or 614-362-0646.

EMERGENCY APPROVALS ONLY:

TO BE COMPLETED BY FIELD STAFF
WHEN EMERGENCY APPROVAL HAS
BEEN GRANTED AND PRIOR TO MAILING
APPLICATION TO LEGAL SERVICES DEPT.

DATE OF APPROVAL: _____
ATTORNEY ASSIGNED: _____
CASE # ASSIGNED: _____

LEGAL DEPARTMENT USE ONLY:

DATE RECEIVED: _____
CASE NUMBER: _____
ACTION TAKEN: _____
ASSIGNED TO: _____
DISPUTE CODE: _____
MEMBERSHIP VERIFICATION: _____

OEA/NEA LEGAL SERVICES PROGRAM

LSP # 1

INITIAL LEVEL ASSISTANCE

INSTRUCTIONS: This application is to be used by individual members and affiliate officers to apply for assistance under the OEA/NEA Legal Services Program for employment-related problems. It is important that all questions on the application be responded to fully. In parts where you are asked to supply information in your own words, use extra paper if necessary to complete your answer. Incomplete applications will delay the processing of this application and, consequently, delay the provision of the legal services that may be needed.

A. Applicant Information:

1. This application is being made by, or on behalf of:

_____ an individual member

_____ an officer or employee of an affiliate
requesting legal assistance for the affiliate

_____ an individual fair share fee payer

2. Please provide the following information:

Applicant's Social Security # (last 4 digits): _____

Applicant's Name or Name of Affiliate: _____

Address: _____
(number and street)

_____ (city) (state) (zip code) (county)

Home Phone: _____ Work Phone: _____

Local Association: _____

Local Association President: _____

UniServ District: _____

Labor Relations Consultant: _____

Employer: _____

Employer's Address: _____

Applicant's Position of Employment _____
(teacher, bus driver, cafeteria worker, custodian, secretary, aide, etc.)

Years in Position _____ Years of Employment _____

B. Case Information:

1. Please check the appropriate statement(s) below which you believe best identifies the issue causing you to apply for legal assistance.

<input type="checkbox"/> Agency Fee Shop	<input type="checkbox"/> Refusal to Bargain
<input type="checkbox"/> Arbitration Appeal/Enforcement	<input type="checkbox"/> Reprimand
<input type="checkbox"/> Assignment of Duties	<input type="checkbox"/> Retaliation or Union Activities
<input type="checkbox"/> Bargaining Unit Composition	<input type="checkbox"/> Retirement
<input type="checkbox"/> Certification	<input type="checkbox"/> RIF/Layoff
<input type="checkbox"/> Criminal/Children's Services Investigation	<input type="checkbox"/> Salary
<input type="checkbox"/> Demotion/Promotion	<input type="checkbox"/> Sexual Harassment
<input type="checkbox"/> Discrimination	<input type="checkbox"/> Strike-Related
<input type="checkbox"/> Dismiss, Term, Non-renewal	<input type="checkbox"/> Suspension
<input type="checkbox"/> DFR (Local Associations Only)	<input type="checkbox"/> Tenure/Continuing Contract
<input type="checkbox"/> Fringe Benefits	<input type="checkbox"/> Transfer
<input type="checkbox"/> Leave	<input type="checkbox"/> Unemployment Insurance
<input type="checkbox"/> Negotiation Impasse	<input type="checkbox"/> Working Conditions
<input type="checkbox"/> Performance Evaluation/Personnel File	

Other _____

2. Please describe the facts of the matter giving rise to your need for legal services. Identify all important dates, people, and places. Use and attach additional paper, if necessary.

3. Please identify the date or dates on which the matter giving rise to your need for legal services occurred.

4. Were you an OEA/NEA member/fee payer at the time of the events described above? _____

5. Is the matter described above grievable under your collective bargaining agreement? _____
If so, does the grievance procedure end in binding arbitration? _____

6. Please attach copies of any documents (letters, charges, complaints, court decisions, etc.) which relate to the facts described above.

C. Agreement and Certification: **Please take the time to read and understand, then sign at the bottom.**

I hereby certify, on my own behalf or on behalf of an OEA/NEA affiliate, whichever is applicable, that the facts set forth herein are true to the best of my knowledge and belief, certify that this matter does not involve support of a position contrary to the policies of the OEA, NEA, or my local association and certify that any potentially adverse party is not one or more of the following: an OEA/NEA affiliated district; an OEA/NEA affiliated local association, employees, officers, agents, or members of an OEA/NEA affiliated local or district association, the OEA and/or its officers, employees or agents, the NEA and/or its officers, employees or agents. I understand and agree that any false statements on my part shall be grounds for denial of assistance from the OEA/NEA Legal Services Program.

I understand and agree that:

1. I will remain a member of the United Education Profession, OEA/NEA/District and Local (where applicable), in the event continuing legal representation is undertaken in connection with this matter, and that this is a condition for continuing to receive legal assistance under the OEA/NEA Legal Services Program.
2. Compliance with all applicable provisions of the OEA/NEA Legal Services Program, and its rules and procedures, is a condition to receiving assistance from the OEA/NEA Legal Services Program.
3. I will pay to the OEA any costs or attorney's fees awarded by a court or jury or recovered by settlement, insurance payment or otherwise as reimbursement to the OEA for court costs and attorneys' fees paid by the OEA under the provisions of the OEA/NEA Legal Services Program.

I hereby assign to the OEA any payments received or which may be received by me from an insurance company for costs and attorneys' fees paid by the OEA under the provisions of the OEA/NEA Legal Services Program.

I hereby direct my attorney to furnish the OEA/NEA Director of Legal Services with copies of all pleadings, notices, documents, decisions, and other records pertaining to this matter, to consult and confer with the OEA/NEA Director of Legal Services and/or other OEA or NEA staff attorneys, and upon agreement with the OEA/NEA Director of Legal Services, to enter such counsel, or other counsel, as co-counsel of record when such participation appears desirable for any purpose. I hereby authorize the OEA/NEA Director of Legal Services and/or other OEA or NEA staff attorneys to aid and assist my attorney and to act in such a capacity on my behalf, subject, however, to the express understanding that my attorney shall retain full and final control over all phases of the case.

I understand and agree that approval of this application is for initial consultation with an assigned attorney only. Continued legal assistance is contingent upon agreement by the assigned attorney and the OEA/NEA Director of Legal Services that legal assistance is warranted based on the facts and the current status of the law. In the event legal action is taken, and an administrative agency or court renders an unfavorable decision, I understand and agree that I must submit a new application for legal services to obtain legal assistance to appeal that decision.

Signature of Applicant

Date

Attorney Referral Program 2023-2024

During any calendar year (from January 1 to December 31), eligible members, spouses, domestic partners and dependent children are entitled to two, free 30-minute consultation sessions with any of the Association-approved attorneys under the Attorney Referral Program. During the two free sessions, you may discuss any legal matter except income tax preparation. The free consultation allows you to discuss your problems with an attorney to determine whether you need additional legal services. The attorney is not expected to draft or review documents during a consultation. If you ask the attorney to provide additional services, you will be billed at a discounted Program rate. In addition to free consultations, members may have specific legal work performed in five “core” areas at a 30-percent reduction of participating attorneys’ normal fees. The five core areas include real estate, wills and estates, domestic relations, consumer protection (including bankruptcy) and traffic violations. A few legal services, such as help with business dealings or tax matters, do not qualify for the discounted rate. The discounted rate also does not apply to the defense of criminal violations, other than the traffic violations covered by the Program. For your convenience, participating attorneys are located throughout the state; however, you are not limited to those closest to you.

ADAMS COUNTY

Young & Caldwell
225 N Cross Street
West Union, OH 45693
937-544-2152
(Real Estate, Wills, Domestic,
Consumer, Traffic, Other)

Law Office of Barbara A. Moore
106 S Cross St
West Union, OH 45693
937-544-2500
(Real Estate, Wills, Domestic)

ASHTABULA COUNTY

William P. Bobulsky Co., LPA
1612 E Prospect Rd
Ashtabula, OH 44004
440-998-4214
(Domestic Traffic)

ATHENS COUNTY

Susan Gwinn, Attorney at Law
86 Columbus Circle, Suite 101
Athens, OH 45701
740-594-8686
(Real Estate, Wills, Domestic, Traffic)

CUYAHOGA COUNTY

Goulder & Goulder
15887 Snow Rd, Suite 301
Brook Park, OH 44142-2854
216-676-6800
(Real Estate, Wills, Domestic, Other)

Nabors & Nabors, Ltd

11221 Pearl Rd
Strongsville, OH 44136
440-846-0000
(Real Estate, Wills)

The Gertsburg Law Firm

100 N Main St, Suite 300
Chagrin Falls, OH 44022
440-571-7777
(Real Estate, Wills, Consumer, Other)

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(Real Estate)
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13111 Shaker Square, 304
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ERIE COUNTY

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165 E Water St
Sandusky, OH 44870
419-625-0515
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What Ifs

1. What if a member is assaulted or is the victim of theft in the classroom?

- Report the incident immediately to the school administration.
- Have the bargaining unit member document exactly what took place:
 - a. Names of those involved
 - b. Witnesses
 - c. Time
 - d. Location
 - e. What happened (detailed)
 - f. What injuries were sustained (if applicable)
- Advise the member to follow any procedures and guidelines as established within the Collective Bargaining Agreement and/or Board Policy.
- Encourage the bargaining unit member to seek medical attention if needed and to get a medical statement from the doctor.
- Encourage the bargaining unit member to file a police report.
- Remind the bargaining unit member that the OEA/NEA Liability Program pays up to \$250 for damages to personal property in cases of classroom assault.
- Contact your OEA Labor Relations Consultant who can provide additional advice to the bargaining unit member.

2. What if a member thinks they have a problem and may need the OEA/NEA Legal Services Program?

- Have an in person (if possible) one-to-one conversation with the member to discuss the problem.
- Remind the bargaining unit member that you do not have attorney-client privilege so they should not share potentially incriminating information with anyone except the OEA/NEA Legal Services Attorney.
- Is the issue a contract violation, grievance, personality clash, misunderstanding that can be resolved, etc....?
- Discuss the problem with your Labor Relations Consultant.
- Exhaust all viable remedies before activating the Legal Services Program.
- Move promptly in cases of suits filed against bargaining unit members because of legal time limits.
- Advise the bargaining unit member that the OEA/NEA Legal Services Attorney must be initiated from within the “system” and not contacted directly by an individual bargaining unit member.
- Keep a copy of all correspondence.
- Be a good listener.

3. What if a member is not receiving OEA and/or NEA publications?

- Collect the following information from the member:
 - a. Name and address
 - b. Have they changed their name within the past year?
 - c. Have they moved within the past year?
 - d. When did they stop receiving the publications?
- Report the collected information to your local OEA office via email or phone call. Or call OEA Membership Department at 844-632-4636.
- Communicate back to the bargaining unit member that you have informed OEA of the problem and relay any pertinent information you learned.

4. What if a member dies?

- Initial contact should be an expression of condolences on behalf of the member’s professional colleagues and Association.
- Contact OEA’s Membership Department at membership@ohea.org to cancel the membership and dues collection.

- At an appropriate time, contact the family to ensure they are aware of the member's job-related financial benefits:
 - a. Earned but unpaid salary
 - b. Severance pay
 - c. STRS/SERS/PERS survivor benefits
 - d. STRS/SERS/PERS death benefit
 - e. School district group term life insurance
- Have the family contact NEA Member Benefits at 1-800-637-4636 to inquire about their complimentary life insurance policy.
- Inform the family that they may take advantage of the OEA/NEA Attorney Referral Program to hire an attorney to settle the member's estate.

5. What if a member is called into a meeting?

Prior to the meeting:

- Review the member's rights
 - The member can have any Association Representative- they may be embarrassed to have the Building Representative.
- Have a discussion with the member to review all the known facts. Take detailed notes regarding the situation/issue. Do not judge.
- Let the Administrator know you will be representing the member at the meeting and ask about the nature of the meeting. What is the purpose?
- Review the contract for any/all relevant articles.
- Urge the member to remain calm and act professional during the meeting.
- **If the situation is regarding the Family Educational Rights and Privacy Act (FERPA) or has been reported to Children's Services or the police, IMMEDIATELY contact your LRC.**

During the meeting:

- Take your contract.
- Take detailed notes during the meeting.
- Ask clarifying questions.
- You should always ask to adjourn any meeting where anyone is not using professional, respectful language.
- Ask for copies of all documents.
- Reread notes and add any comments. Start a file for the member. Contact your LRC to review the situation.
- If the meeting reveals serious charges immediately stop the meeting and contact your LRC.

After the meeting:

- Review what happened in the meeting.
- Review with the member "next steps".
- Discuss rebuttal and grievance options.

Note-taking Tips

- **Include the date and time, meeting location, participants and purpose of the meeting as a header to your notes.**
 - **Notes should include a disclaimer that they are your personal property.**
 - **Transcribe as verbatim as possible but designate direct quotes on statements that stand out during a meeting.**
 - **Include initials to designate speakers within the text of your notes.**
 - **If the meeting ends in a resolution, clearly specify the outcomes.**
 - **Reread your notes after the meeting and add any additional comments or clarifiers.**
-

Social Media Guidelines for Educators

Do's and Don'ts for Educators

Whether you're just considering becoming involved with social media or you've already established an identity on one or multiple sites, you need to use these channels wisely. OEA has developed the following guidelines on using social media to help protect yourself both personally and professionally.

- 1. DO: Know the privacy settings of every channel you use** and keep abreast of any changes to them. You have to decide for yourself what level of privacy is right for you, however OEA recommends sharing only with people you know personally. For instance, on Twitter we recommend blocking your tweets so only individuals you approve can see them. Taking just a few minutes to establish strict online settings will go a long way toward keeping what you post restricted. Additionally, try to be “anonymous” whenever possible. Don't include information that could put your identity at risk.
- 2. DO: Understand that there's no such thing as a truly “private” post.** Once you publish something through social media, you lose a degree of control over your message. Even if you set your privacy settings appropriately, to be shared only with people you know, your posts can still be captured via screen shot, printed, or copied and pasted into an email and shared beyond your intended audience.
- 3. DO: Understand the limits of your First Amendment rights.** Free speech rights are fairly limited for educators: their speech is protected only if they speak out as citizens on “matters of public concern” and their speech doesn't disrupt the school. So, matters of personal concern, e.g., social activities, partying, personal gripes, etc., are not protected. Tenured teachers have far greater job security than probationary teachers — they can't be fired except for “just cause” — but it's not the First Amendment that protects them.
- 4. DO: Learn: The Licensure Code of Professional Conduct for Ohio Educators** In 2019, the Licensure Code of Professional Conduct for Ohio Educators added Principle 9, which speaks solely to technology, electronic communication and social media. See Appendix.
- 5. DO: Find out if your school or district has an Acceptable Use Policy and/or additional Board Policies for the Internet and/or social media.**
- 6. DO: Keep work and play separate.** Regardless of your school or district's policy, never use school property for personal communications. Do not log onto your email on the school's computer. Do not bring your laptop to school and access the school's network. Never access your personal email or send texts on your mobile device using the school's Wi-Fi. Also keep a clear distinction between your personal and professional identities online. Don't friend students, parents, and people you only know professionally, or otherwise connect with them through your personal account. If you want to use social media professionally, create a separate account for this and maintain appropriate boundaries and language at all times. Alternatively, you could use a social network specifically designed for connecting professionally.
- 7. DO: Monitor your own internet presence, so you're aware of content posted by others about you or content posted by an imposter posing as you.** Create a Google alert to notify you when anything about you has been posted. Monitor comments that are posted to your page and your friends' photographs. Delete inappropriate language or content. If someone “tags” you in an inappropriate photograph, remove the tag and ask the friend to take the photo down.
- 8. DO: Contact OEA if you have any questions.** If you're about to publish something that makes you even the slightest bit uncomfortable, feel free to discuss it with your Labor Relations Consultant.
- 9. DON'T post profanity, obscenity or anything that depicts you in an unfavorable light,** including,

but certainly not limited to, any images with you drinking, using drugs, in questionable settings, with disreputable companions, in inappropriate attire, or engaging in illegal activities.

- 10. DON'T vent online.** Under no circumstances should you ever tell stories about work that include personally identifiable details, such as full names, job titles, addresses, phone numbers, pay, or other information protected by state and federal privacy laws. Even eliminating any specific information about your situation and/or presenting it as a hypothetical puts you at risk.
- 11. DON'T post anything related to a student, no matter how harmless you think it is.** Never counsel a student online.
- 12. DON'T accept an online relationship with anyone who you do not know offline.** This is true for everyone, not just educators. Don't assume Facebook friends of your friends are safe.
- 13. DON'T join groups that may be considered unprofessional or inappropriate** and leave any such group of which you are already a member.

Employee Use of the Internet

In the past several years, OEA has had a rash of contractual and legal issues regarding alleged misuse of the Internet – school and personal. Therefore, we wanted to remind you of the following common-sense applications of Internet usage.

1. If you have Internet access at your school, you probably have signed a copy of the District's "Acceptable Use Policy." **PLEASE READ IT!**
2. Do **NOT** visit Internet sites from your school computer that would be objectionable if a student saw the information posted there.
3. Be **VERY CAREFUL** in your email correspondence to students. Do not send even marginally questionable jokes, notes, etc. to students **EITHER** from your school computer or from your home computer. Your email correspondence to students should **ONLY** be classroom related. In fact, it would be better to email to the **PARENT**, rather than the student.
4. Do your best to monitor what students are viewing over the Internet sites in your workplace. Be sure that you have a classroom policy on use of the computers and Internet sites.
5. Always remember that **SOMEONE** can read any email you send or receive from the school's computer.
6. Illegal use of the Internet and email **ARE** grounds for termination.
7. When in doubt, **DON'T!** YOUR career is at stake!