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Policy Name: Reimbursement of Criminal Defense Costs Incurred by College Trustees, Officers, Employees & Volunteers **Policy Number:** B-16

Functional Area(s) Responsible: College President

Owner(s) of Policy: College President

Most Recent BOT Approval Date: September 2011

Most Recent Review Date: Spring 2023

Most Recent Review/Revision Type: none minor/non-substantive substantive/extensive

Policy Statement:

New York State Education Law Section 6309 makes uniform the responsibility of community college sponsors operating under the program of the State University of New York to reimburse college trustees, officers, employees and volunteers for expenses incurred in successfully defending criminal charges which arise from acts within the scope of their official duties.

Reason(s) for Policy:

This policy and the attached procedure describe the circumstances under which Finger Lakes Community College trustees, officers, employees and volunteers may be entitled to reimbursement of expenses incurred in successfully defending criminal charges that arise from acts within the scope of their public employment or duties.

Applicability of Policy:

All trustees, officers, employees and volunteers of the College should be familiar with this policy.

Definitions:

Eligible Person- any person holding a position by appointment or employment in the service of Finger Lakes Community College, whether or not compensated, or a volunteer expressly authorized to participate in a College sponsored volunteer program, but specifically excluding an independent contractor. The term shall include a former Eligible Person, his or her estate, or his or her judicially appointed personal representative.

Related Documents:

- New York State Education Law Section 6309
- FLCC Policy on Defense & Indemnification of College Trustees, Officers, Employees & Volunteers

Procedures:

Defense

Upon compliance by an Eligible Person with the provisions of this policy, the County of Ontario (the "County") will pay (i) reasonable attorneys' fees and litigation expenses incurred by or on behalf of an Eligible Person in his or her defense of a criminal proceeding in a state or federal court arising out of any act which occurred while such Eligible Person was acting within the scope of his or her public employment or duties, upon his or her acquittal or upon the dismissal of the criminal charges against him or her, or (ii) reasonable attorney's fees incurred in connection with an appearance before a grand jury which returns no true bill against the Eligible Person where such appearance was required as a result of any act which occurred while such Eligible Person was acting within the scope of his or her

public employment or duties unless such appearance occurs in the normal course of the public employment or duties of such Eligible Person.

Upon the application for reimbursement of reasonable attorneys' fees and/or litigation expenses made by or on behalf of an Eligible Person as provided in this policy, the County shall determine, based upon its investigation and its review of the facts and circumstances, whether such reimbursement shall be paid. The County shall notify the Eligible Person in writing of such determination. Upon determining that such reimbursement should be provided, the County shall so certify to its chief fiscal officer. Upon such certification, reimbursement shall be made for such fees and/or expenses upon the audit and warrant of the chief fiscal officer. Any dispute with regard to entitlement to reimbursement or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by a court of competent jurisdiction upon appropriate motion or by way of a special proceeding.

Conditions and Exclusions

In addition to the conditions, limitations and exclusions set forth elsewhere in this policy, reimbursement of reasonable attorneys' fees and/or litigation expenses by the County as prescribed by this policy shall be conditioned upon (i) delivery to the County at its main business office by the Eligible Person of a written request for reimbursement of expenses together with, in the case of a criminal proceeding, the original or a copy of an accusatory instrument within ten days after the Eligible Person is arraigned upon such instrument or, in the case of a grand jury appearance, written documentation of evidence of such appearance, and (ii) the full cooperation of the Eligible Person in defense of any action or proceeding against the College or the County based upon the same act, and in the prosecution of any appeal. The benefits of this policy shall inure only to Eligible Persons as defined herein and shall not enlarge or diminish the rights of any other party. This policy shall not in any way affect the obligation of any claimant to (i) give notice to the County under any provision of law or (ii) give notice to the College as required by the College's Policy on Responding To Legal Papers. This policy shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

This policy shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity available to or conferred upon any unit, entity, officer or employee of the County or any other level of government, or any right to defense and/or indemnification provided for any governmental officer or employee by, in accordance with, or by reason of, any other provision of state or federal statutory or common law.

This policy shall in all respects be subject and subordinate to the provisions of Section 6309 of the New York State Education Law. In the event of any conflict between this policy and Section 6309, Section 6309 shall control. If any provision of this policy or the application thereof to any person or circumstance be held unconstitutional or invalid in whole or in part by any court of competent jurisdiction, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this policy or the application of any such provision to any other person or circumstance.

Forms/Online Processes:

None

Appendix:

None