



Board Policy

Policy Type: Board
Policy Title: Indemnification
Policy Number: 1.15
Office Responsible: CEO
Related Policies: 1.5; 1.13
Related Procedures: N/A
Related Laws: Governmental Immunity Act
HLC Criterion: 2A

Policy Statement

The College shall pay for, and furnish the services of an attorney to advise, appear for and represent its current and former Trustees, employees and authorized volunteers (collectively "Requesting Individuals") against any Claim or civil action commenced against them arising out of the performance of their duties and within the scope of their authority. The College shall, to the extent permitted by law, indemnify and hold the Requesting Individuals harmless from and against any civil actions, suits, judgements, damages, liabilities, including costs and expenses associated with such Claims as long as eligibility criteria are met and applicable procedures are followed.

The College shall maintain insurance as it deems appropriate to cover this obligation. The College's obligation to indemnify and hold harmless shall not exceed the coverage of the insurance purchased by the College.

The CEO shall develop and implement procedures to effectuate this policy.

Definitions

1. *Authorized volunteer* – individuals with official permission from a College Dean or higher to provide services to the College free of charge.
2. *Claims* - lawsuits, agency actions, and civil allegations of wrongdoing.
3. *Covered Claims* – Civil Claims arising out of the performance of the indemnified individual's duties, within the scope of their authority, that meet the eligibility criteria of this Policy, are not excluded by this Policy, and meet the eligibility criteria for coverage under insurance purchased by the College.
4. *Indemnify and Indemnification* – to hold harmless indemnified individuals from costs, expenses, judgements, settlements, monetary penalties, assessments, or damage awards related to a Claim covered by the College's insurance.
5. *Insurance*- Insurance shall mean commercially available insurance or alternative risk financing permitted under Michigan law, including, but not limited to, a governmental risk pool and similar organizations.

6. *Insured*- Insured shall mean any person or entity provided coverage by an “Insurer”, as defined in the applicable insurance policies or other coverage documents.
7. *Insurer* – Insurer shall mean a commercial insurance company, governmental risk pool, or other risk financing permitted under Michigan law.
8. *Requesting Individuals* – current and former trustees, employees and authorized volunteers.
9. *Reported* – includes verbal and written notification of a Claim.
10. *Request* – includes a request for Indemnification of a Claim.

Conditions of Eligibility

A request for Indemnification shall only be granted if all of the following conditions are met:

1. The Claim must have been brought against a current or former Trustee, employee or authorized volunteer by reason of their being or having been a Trustee, employee, or Authorized Volunteer at the time of the acts or omissions (“conduct”) giving rise to the Claim. In addition, the conduct must have occurred:
 - a. Within the scope of the Trustee’s, employee’s, or Authorized Volunteer’s duties and within their authority; and
 - b. In good faith. “Good faith” means in a manner reasonably believed to be lawful and without gross negligence. “Gross negligence” means willful and wanton misconduct.
2. The College may elect, in its sole discretion, but shall have no obligation, to provide Indemnification under this policy to a Requesting Individual charged with criminal conduct subject to criminal penalties (such as conduct in violation of compliance requirements under health and safety or environmental laws), if the Requesting Individual and their actions are not covered by the Insurance purchased by the College, and all other criteria established by the Insurer are met.
3. The Requesting Individual must, upon receipt of notice of any Claim, provide a written request for Indemnification and a copy of any summons, complaint, notice, demand, letter, or other document or communication containing notice of a threatened or filed civil action to the Risk Manager.
4. The Requesting Individual must cooperate continuously and fully with the College, the Risk Manager, College legal counsel and assigned external legal counsel (if applicable), in the investigation and defense of the Claim. Failure to do so may jeopardize Insurance coverage and the College may in its sole discretion decline to Indemnify the Requesting Individual.
5. The Requesting Individual must accept legal counsel selected by the College’s Insurer or the College.
6. The Requesting Individual is considered an insured under the College’s insurance coverage.

Obligations under this policy arise only upon the filing of an external civil action, or agency complaint subject to the eligibility criteria and restrictions otherwise stated in this policy.

The College shall determine in its sole discretion whether to Indemnify a Requesting Individual for fines and penalties not otherwise covered by the College's Insurance coverage.

Additional Restrictions and Exclusions

The College's obligation to Indemnify and hold harmless under this policy shall not extend to:

1. Claims against a Requesting Individual for acts or omissions occurring in connection with the provision of private consulting services or services offered in conjunction with non-College businesses or endeavors.
2. Claims a Requesting Individual initiates, or proposes, against another party.
3. Any individual or Claim that the College is prohibited by law from covering under this policy or is covered by an alternative provision of the law.
4. Any and all internal College investigations and/or proceedings.
5. Any civil Claim or action that arises out of:
 - a. an act or omission that is outside the scope of employment or authority;
 - b. willful misconduct or gross negligence;
 - c. an act intended to cause harm or fraud;
 - d. any act and/or omission while under the influence of alcohol, illegal drugs or improperly used prescription and over the counter medications, or other legal substances;
 - e. criminal conduct;
 - f. a transaction from which the Requesting Individual derived an improper personal benefit in violation of College policy;
 - g. willful misfeasance, malfeasance, nonfeasance, capricious, and reckless conduct in disregard of duties; or
 - h. demands, Claims, or other petitions for relief made by third parties prior to the filing of an external action. The College may, in its sole discretion, elect to retain outside counsel and/or settle such demands or Claims before they become the subject of a civil action.

Third Party Rights

This policy shall not enlarge the rights or remedies otherwise available to any third party plaintiff or Claimant, nor shall any person or entity be entitled to make claims as a third party beneficiary under this policy.

College Response to Request

The Director of /Risk Manager or their designee shall, after receipt of a written request and the information described in the "conditions of eligibility" section above, submit the Claim to the College's Insurance carrier for a determination regarding Insurance coverage. The Risk Manager shall provide a written response to a request made under this Policy after receipt of the College's Insurer's position regarding Insurance coverage for the Claim.

Appeal of Denial

A Requesting Individual may appeal any total or partial denial of a request for Indemnification by submitting a written appeal to the CEO within five business days of the date of the decision from the Risk Manager. The decision of the CEO will constitute the College's final action on the request. In the event the CEO requests Indemnification and the CEO's request is denied, the CEO may appeal to the Board of Trustees whose decision shall be final.

Legal Counsel and Defense

The College and its Insurance Company shall have the right to assume exclusive control over the defense of Claims covered by the College's Insurance, including but not limited to, selecting legal counsel, the right to investigate, determine defense strategy, compromise, settle, and/or pay a Claim. Requesting Individuals must accept legal counsel selected by the College's Insurer or the College as part of the eligibility criteria for Indemnification and defense under this policy. Defense will be provided in accordance with established procedures as outlined in the coverage documents of the College's Insurance provider.

Although the Requesting Individual must accept legal counsel selected by the College's Insurer or the College to be eligible for coverage under this policy, the Requesting Individual may, at their own cost and expense, employ additional counsel to personally advise them.

Scope of Indemnification

The scope of the Indemnification provided under this policy shall not exceed the coverage of the insurance purchased by the College.

In no case will Indemnification be in an amount which, when combined with the Indemnification from all other sources, exceed the actual amount of expenses, including attorney's fees, judgments, penalties, fines, and amount paid in settlement.

In the event the Insurer determines it will not continue to defend a Claim based on the ability to settle the matter and the Requesting Individual does not desire to settle the matter, the Requesting Individual may continue to defend the matter with their own legal counsel at their own expense and the College's obligation from that point forward to Indemnify and defend the individual shall not exceed the amount the Insurer could settle the matter for under the College's Insurance policy.

Change Log

Date of Change	Description of Change	Responsible Party
7-15-96	Initial approval	
4-17-18	Revised; referenced in former Policy 1.6.8 and Procedure 1.6.8	Board
4-28-2020	Reviewed; no change	Board