

THE COUNCIL'S Legal Services

Direct Legal Representation Service

Level 2




**THE
COUNCIL**^{of}
SCHOOL SUPERINTENDENTS
LEADERS • EDUCATORS • ADVOCATES



Level 2: Direct Legal Representation Service

2010/11

The New York State Council of School Superintendents is a professional and advocacy organization with over a century of service to school superintendents in New York State. The Council provides its more than 750 members with numerous professional development opportunities, publications and personal services, while advocating for public education and the superintendency.

WHY A NEW SERVICE? As the role of the school superintendent continues to evolve, it is important that THE COUNCIL's legal services evolve to meet the needs of our members by providing access to a more comprehensive legal service beyond contract negotiations.

Several previously administered membership surveys indicate that THE COUNCIL should expand its legal services to include the representation of our members in protracted conciliation efforts for superintendents with contract and other employment related issues, including in-person representation of the superintendent in a due process proceeding. We are aware of only one other state in the country (New Jersey) that offers such a comprehensive range of legal services to its members.

We are seeing more challenges to superintendents and the superintendency that require the involvement of our legal counsel. We believe that THE COUNCIL, because of its mission, is in the best position to respond to some of these challenges, both for our individual members and to protect the integrity of the superintendency.

Finally, legal representation can be very costly for our members. These new services are a less costly alternative so members have access to legal representation at a fixed yearly cost.

With **Level 2** services, superintendents are eligible for in-person representation by a Council attorney, or outside counsel, if necessary to represent the superintendent in any protracted conciliatory efforts beyond the core legal services in Level 1 Legal Services. Superintendents may choose to hire their own representation at their own expense. However, THE COUNCIL's legal service can spare superintendents that expense and make available the most experienced superintendent contract service in New York.

DEFINITIONS

- **Direct Legal Representation**

The services of an attorney selected at the sole discretion of THE COUNCIL, for formal or informal intervention on behalf of members to resolve problems between the member and his/her employer, subsequent to a formal request therefore by the member. Direct legal representation includes personal appearances, pre-hearing conferences, and protracted conciliatory efforts, as defined herein.

- **Due Process of Law**

Procedural steps designed to ensure that local board of education action is taken in accordance with Constitutional, statutory, and regulatory guarantees, including, but not limited to, the right to a hearing.

- **Legal Remedies**

Direct legal representation before the Commissioner of Education, and the New York Supreme Court.

- **Personal Appearances**

Representation of a member before local boards of education or legal forums set forth herein.

- **Pre-Hearing Conference**

Conferences between opposing attorneys and the judge designed to frame factual issue prior to hearing, set hearing dates, settle the matter, and the like.

- **Protracted Conciliation Efforts**

Direct legal representation designed to informally resolve member/board disputes.



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DIRECT LEGAL REPRESENTATION

In most instances, a dispute between a member and his/her employer can be resolved through informal remedies. However, if legal remedies, personal appearances, or protracted conciliation efforts are necessary, the member shall make a request to the Executive Director, either in writing or orally, for direct legal representation and, if granted s/he shall execute a formal representation agreement with THE COUNCIL prior to the commencement of direct legal representation.

Direct legal representation will be provided to members whose request for legal representation has been granted, for the following employment related problems:

1. Breach of Contract
2. Employment Status, position or duties
3. Suspension
4. Compensation

This new Direct Legal Representation Service includes in-person representation of a superintendent during mediation, arbitration and due process proceedings, including one appeal either to the Commissioner of Education, or at the state court level. In most instances, a dispute between a member and his/her employer can be resolved through informal remedies. However, if legal remedies, personal appearances, or protracted conciliation efforts are necessary, this second level of services allows a member to take advantage of an attorney with the knowledge and experience to represent a member to resolve issues in labor and education law.

NEW SERVICE
Level 2 Legal Services
are provided at an
additional fee of \$200.

LIMITATIONS TO OUR SERVICE

THE COUNCIL cannot:

1. Provide legal advice concerning district matters.
2. Provide collective bargaining representation.
3. Defend criminal actions. However, after acquittal we may seek to ensure enforcement of the superintendent's preexisting contract.
4. Defend the management decisions of the superintendent. These are already indemnified by the district as a matter of state law.
5. Defend the superintendent against actions of the community or district staff.

Legal services provided through THE COUNCIL are limited to representation of members in state forums, including administrative agencies and state courts. THE COUNCIL does not provide the member with representation in areas of law not directly related to the member's compensation, employment status, position, or duties.

OTHER LEGAL COVERAGE

THE COUNCIL cannot provide legal services to any member who has already retained the services of his/her own private counsel, at his/her own expense. Moreover, THE COUNCIL will not pay the costs of private, legal counsel, retained by the member.

ELIGIBILITY AND COSTS FOR DIRECT LEGAL REPRESENTATION

To participate in direct legal representation, the member must have been eligible for superintendent level membership and be a fully paid regular member of THE COUNCIL in good standing, and be a fully paid member of THE COUNCIL's Level 2 Legal Services, for at least a year prior to the time his/her problem arose.



To be a fully paid member of THE COUNCIL'S Level Two Legal Services, the member must have paid the additional dues, in the amount of \$200 per year, for the inaugural year.

The individual member is responsible for this payment, and cannot seek reimbursement from a school district for this fee. Payment is due from the member, when membership is renewed.

There is a \$1000 deductible that is the member's responsibility if these services are initiated for the first \$1,000 of the legal fees and costs associated with Direct Legal Representation. The deductible expense is paid directly to THE COUNCIL before direct legal representation will begin. The Executive Director of THE COUNCIL reserves the right to waive the deductible.

After the service has been initiated, the person receiving legal services must continue to be a member of THE COUNCIL to continue to receive legal services from THE COUNCIL. THE COUNCIL'S member must also authorize THE COUNCIL to make payments for legal services on the member's behalf consistent with these policies.

MEMBER USE OF LEGAL SERVICES

THE COUNCIL provides legal services as a benefit to participating regular members, subject to the policies set forth herein. However, nothing shall require any member to use the legal services provided through THE COUNCIL. Any member may, at his/her option, elect to obtain his/her own personal attorney, at his/her own expense at any time.

Should the member desire, after the commencement of direct legal representation through THE COUNCIL, to obtain his/her own personal counsel, then the attorney provided through THE COUNCIL shall immediately withdraw from the matter and provide a copy of the file to the member of his/her attorney.

Once a member obtains his/her own attorney, or asks the attorney provided through THE COUNCIL to withdraw from the matter, then THE COUNCIL will not provide any direct legal representation or any additional legal services to the member related to that matter.

ATTORNEY DISCRETION

The attorneys providing legal services through THE COUNCIL shall have complete discretion as to the legal advice and services rendered to the members, subject to all laws and regulations, and the Code of Professional Responsibility. Nothing herein shall permit the Executive Director, and/or the Executive Committee to circumscribe, dictate, or regulate the attorney's professional conduct with respect to the legal advice and services provided to the members. THE COUNCIL attorneys shall be expected and empowered at all times to act in a manner consistent with the Code of Professional Responsibility and all other New York laws, court rules, statutes and regulations.



For more information regarding Level 2 Legal Services please contact Michele V. Handzel, Esq., General Counsel, michele@nyscoss.org or 518.449.1063.

