

New York University

University Policies

Title: Legal Protection for Faculty Members
Effective Date: December 14, 1981
Supersedes: N/A
Issuing Authority: Office of the General Counsel
Responsible Officer: Senior Vice President, General Counsel and Secretary

Purpose of this Policy:

Certain principles govern the circumstances under which New York University will undertake to defend and indemnify members of the faculty in litigation arising from the performance of their duties. The principles outlined below were approved by the Board of Trustees on December 14, 1981.

Scope of this Policy:

The policy applies to all NYU faculty members.

Procedures for Implementation:

A. The University's Obligation

The University is obligated by the State Board of Regents to provide indemnification under specified conditions to trustees, officers, and employees. Section 12 of the University Charter provides that "Any person made a party to any action, suit or proceeding by reason of the fact that he or she, his or her testator or his or her intestate, is or was an officer or employee of New York University, or an officer or member of the Board of Trustees of said University, or an officer or member of the managing board of any separate administrative unit of said University, or of any corporation which he or she served as such at the request of said University, shall be indemnified by said University against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him or her in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except in relation to matters as to which it shall be adjudged in such action, suit, or proceeding that such person is liable for negligence or misconduct in the performance of his or her duties. Such right of indemnification shall not be deemed exclusive of any other rights to which such person may be entitled apart from the provisions of this paragraph."

B. Additional Activities Deemed To Be Within the Scope of Employment of Faculty Members

In addition to the normal range of intramural activities traditionally considered to fall within the scope of employment of a member of the New York University faculty, it is recognized that members of the faculty, as members of a collegial and learned profession, are called upon from time to time and for nominal or no compensation to evaluate the scholarship or other qualifications of members of faculties of other institutions of higher learning for purposes of promotion or tenure. Where a member of the University faculty undertakes such activity, he or she shall be afforded the same degree of legal protection by the University for that activity as for his or her other faculty duties whenever an equivalent degree of protection is not provided by the other institution.

Similarly, it is recognized that faculty members of other institutions of higher learning often participate in tenure and promotion evaluations of members of the New York University faculty. Where such external persons are not entitled to receive legal protection from their own institutions for such participation in New York University faculty evaluations, the University is prepared to offer them such protection on the same terms and conditions as it is afforded to our own faculty.

C. Litigation over Confidential Evaluations

In order to preserve a meaningful process of peer review for promotion and tenure, it is vital to obtain candid analysis and opinion from qualified scholars. Therefore, it is the general policy of New York University to treat as confidential all evaluations of University faculty, making only such limited exceptions as are necessary to permit informed review of promotion and tenure decisions by the appropriate decision makers and review panels within the University. Where external litigation arises, it is the policy of the University to preserve the confidentiality of evaluations wherever possible. It is recognized, however, that situations may arise in which binding and enforceable court orders will compel the University either to surrender confidential documents or information or to face contempt proceedings. In such cases, the University must make a conscientious judgment as to the appropriate course to follow.

Where a faculty member of the University properly maintains exclusive possession of a confidential document or exclusive knowledge of facts which are the subject of a court disclosure order, he or she may similarly be faced with a choice between compelled disclosure and contempt. It is the policy of the University under such circumstances, to furnish the faculty member with legal assistance should he or she choose to resist such order by asserting in good faith, a conscientious belief that disclosure would significantly infringe on academic freedom. In the event legal services are supplied directly to a faculty member or by outside counsel in connection with any actual or threatened action to hold such faculty member in contempt, this shall not be construed as reflecting any view of the University in support of the position expressed by the faculty member. Should the faculty member eventually be subject to a final order or judgment imposing sanctions or penalties for a refusal to make disclosures, such sanctions or penalties would be borne by the faculty member.

D. Procedures for Furnishing Legal Assistance to Faculty

Where a faculty member wishes to request indemnification under the provisions of Section 18 of the University's charter (and as further defined by this memorandum), he or she must promptly notify the University's Office of General Counsel, in writing, of any actual or threatened action, suit, or proceeding, as to which entitlement to indemnification is claimed.

E. The Office of General Counsel shall have the option to provide legal services directly to an entitled faculty member or to have the matter referred to appropriate outside counsel. Where the Office of General Counsel determines that the matter should or must (because of a conflict of interest between the faculty member and the University) be referred to outside counsel, the final choice of the particular outside counsel shall be made jointly by the Office of General Counsel and the faculty member, and the fee arrangements must be approved by the Office of General Counsel.

F. Questions of Entitlement

Where a question arises as to a faculty member's entitlement to indemnification, the matter shall be referred to the General Counsel of the University for a determination. If a request for indemnification is denied in a case arising from a faculty member's refusal to comply with a court order to disclose confidential information, the faculty member may request a review of the determination by the Faculty Senators Council Grievance Committee. That committee shall make a recommendation to the Chancellor of the University, whose decision shall be final. These provisions, however, shall not preclude any faculty member denied indemnification from thereafter seeking judicial review of such denial.

Policy Definitions: N/A

Related Policies:

Notes

1. Dates of official enactment and amendments:
2. History:
3. Cross References:

