

THE CITY UNIVERSITY OF NEW YORK

*Office of the General Counsel and Vice Chancellor for Legal Affairs*

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**Student Advisory**  
**Memorandum No. 11**

November 1, 1991

To: College Presidents

From: Vice Chancellor Robert E. Diaz 

Re: Use of Student Activity Fees for Representation  
in Criminal Matters or for Criminal Defense Costs

On May 24, 1991, I issued Student Advisory Memorandum No. 8, "Use of Student Activity Fees for Legal Services." Since then I have been asked to render an opinion as to whether student activity fees can be used to purchase a legal services plan which provides for representation of students in criminal proceedings or for reimbursement of criminal defense costs; and if so, under what circumstances.

Pursuant to Section 6206 of the State Education Law, the Board of Trustees has two obligations with regard to the expenditure of student activity fees: Subdivision 6 of the above-noted Section requires that all fees collected by the University be administered by the Board for "collegiate or university proposes in connection with the units under its control"; and Subdivision 7 of Section 6206 provides that where the Board imposes and collects mandatory student activity fees, it must receive and expend them as "trustees", which results in a fiduciary obligation on the Board with respect to these fees.

In order to qualify for funding from student activity fees, a student government must meet the requirements of Board Bylaw Section 16.4. This Bylaw defines a student government activity as "any activity operated by and for the students enrolled at any unit of the university." Board Bylaw Section 16.4 also provides that the activity must be for the direct benefit of students enrolled at the college and that participation in the activity and the benefits thereof must be available to all students enrolled in the college.

State statutory and decisional are silent with respect to the specific issue of using student activity fees for the purchase of legal services plans which provide for representation in criminal proceedings or reimbursement of criminal defense costs. State law does, however, address the issue of the state's responsibility with respect to reimbursing the criminal defense costs of state employees.

Section 19 of the New York Public Officers Law provides that the state reimburse the defense costs (attorneys' fees and litigation expenses) incurred by a state employee in a criminal proceeding arising out of an act which occurred while the employee was acting within the scope of his/her employment, under the following limited conditions: 1) if the employee is acquitted; or 2) if the charges against the employee are dismissed; or 3) if the employee appeared before a grand jury and the grand jury failed to return an indictment.

Applying the above-cited State Education Law and CUNY Bylaw and, by analogy, the principles of the Public Officers Law, the use of student activity fees for the purchase of a legal services plan which provides for reimbursement of criminal defense costs would be a permissible activity, subject to the following limitations and conditions: The plan should not provide for representation of students in any criminal proceedings or for any type of legal advice or counseling in connection with such proceedings. The plan may provide for reimbursement of a fixed amount of attorneys' fees and litigation costs only where the student is acquitted or the charges are dismissed or the student appeared before a grand jury and was not indicted. Moreover, the plan must be available to all students. The use of student activity fees to reimburse the criminal defense costs of an individual or a specific group of individuals would contravene Bylaw 16.4 and, thus, not be a permissible activity.

The contract for such a plan must be in writing and must specify the services to be provided, including the maximum total costs which will be reimbursed. To be approved for payment, the contract must have been reviewed by the appropriate bodies and the college presidents. The approval and execution of the contract must occur prior to the issuance of any reimbursements. My office would be happy to review any plans submitted to you for approval.

Legal Affairs Designees  
Chief Administration Officers