

If your UniServ representative, local president, or state association EEL coordinator is not available, you may send a copy of all legal documents, as well as a brief description of the occurrence, to:

NEA Collective Bargaining
& Member Advocacy
Legal Services Programs
1201 16th Street, N.W.
Washington, DC 20036
Telephone: (202) 822-7080

Educators Employment Liability (EEL) Coverage for ESPs

The following are some examples of the types of situations covered by the EEL Program. In each case, your NEA EEL insurance would assist in obtaining a lawyer and paying any possible financial damages.

Bus Driver

1. Two teenage students are involved in a fight on the school bus and one is hurt. The students' parents sue the bus driver for negligent supervision on the bus.
2. A child on the school bus suffers a severe asthma attack. The bus driver, who administers emergency first-aid, is later sued for her actions by the child's parents.
3. A school bus driver is supervising a group of children entering the bus. Two of the children run into the street and are struck by a passing car. The children's parents sue the driver for negligent supervision.
4. A school bus driver has a claim made against him by a student alleging sexual harassment on or around the school bus and during a field trip activity.

Teacher Aide/Paraeducator

1. A child falls from the playground swing while an aide is on playground duty. The teacher is not present at the time of the accident. The child suffers head injuries and requires long-term care. The child's parents file a lawsuit claiming the aide improperly carried out her duties.
2. An aide working a physical education class helps "spot" children in gymnastics exercises. Later, parents of two students accuse the aide of improper touching.
3. A paraeducator member is informed that her employer is requiring her to check a student's feeding tube and catheter. The student is designated disabled under the Individuals With Disabilities in Education Act (IDEA). This does not require a licensed individual to perform these checks. The district's nurse provides the paraeducator with instructions on performing the procedures. The school has written approval from parents authorizing the school staff to render such services. A problem arises in performing these procedures, and the paraeducator is sued for negligence.

Secretary/Technology Staff

1. Two students waiting to see the counselor get into a fight. The media specialist uses force to break up the fight and is sued for assault by the students' parents.
2. A school secretary agrees to act as a chaperone for the school dance. The sound equipment falls and injures a student. The secretary is sued for improper supervision.
3. The school secretary is given a verbal directive by the school principal to administer oral prescription medicine to students when the district's traveling nurse is not on campus/school premises. An incorrect dosage of medicine is inadvertently administered to the student by the secretary, and the secretary is sued.

Custodian/Maintenance

1. A maintenance staff person is called to the school lab when it is discovered that there are some bottles of solvents leaking. The staff person is preparing to clean the area. Suddenly, there is an explosion and fire in the lab. Several students are injured, and the maintenance staff person and lab instructor are sued for negligence.
2. A night custodian encounters students walking through school after hours and ushers them off premises. The custodian is subsequently sued for threatening them.
3. A custodian does not report problems with the ladder leading the school building's roof. Students climb the ladder after school and the ladder breaks—serious injuries result. Parents sue the school and the custodian.

Security Guard

1. A security guard wrestles a student to the ground to remove a stun gun (or some other weapon) partially concealed by a student. The student is injured and the security guard is sued.

2. A student begins to choke and have a seizure in the hallway. There is no school nurse or other medically trained personnel available. The security guard administers emergency first-aid, but the student dies. The guard is sued by the student's parents.

Food Service Personnel

1. Students in the cafeteria get into a fight and start throwing glassware. One student is cut. Two of the food service staff are sued for improper supervision.
2. A cafeteria worker uses "old" canned food to prepare a school meal. Several students become ill. The cafeteria worker is sued for negligence.
3. A cafeteria worker is supervising a student helper. The student plugs in damaged equipment and is electrocuted. The lawsuit alleges that the cafeteria worker was aware of the faulty wiring and could have prevented the accident.

EDUCATORS EMPLOYMENT LIABILITY PROGRAM (EEL Program)



Legal Actions Against Education Support Professionals (ESP)—Who Pays?

The National Education Association (NEA) believes it is the responsibility of your employer to provide you with insurance to protect you from personal financial liability stemming from employment-related lawsuits.

NEA supports state “hold harmless” legislation that requires the employer to pay for your defense or related damages in case you are sued. However, since this is not always available—and because the liability potential can be so serious for individuals employed by schools and other educational units—NEA provides all eligible Association members with professional liability insurance through the NEA Educators Employment Liability (EEL) Program.

Eligible Association members include the following membership categories: Active, Life Active, Substitute, Student, and Retired.

What is the Educators Employment Liability (EEL) Program?

The EEL program is a professional liability insurance program that NEA provides as a benefit of membership. The program is totally dues-funded; members pay no separate fee. It is designed to protect Association members—whether classroom teachers or support professionals—from personal financial liability for most incidents arising out of their educational employment activities or duties.

The EEL Program provides insurance coverage for a variety of situations that result in injury to someone other than members. For example:

- student injuries
- charges of educational malpractice
- corporal punishment

The EEL Program is administered through your NEA-affiliate association. Liability and insurance laws vary in each state. If you want more information on the specific provisions of EEL coverage in your state, contact your local UniServ representative or state association.

Additional Advantages of the EEL Program

Your coverage is worldwide, includes coverage on and off school grounds, and is in force 24 hours a day, as long as you are performing your educational employment activities.

“Educational employment activities” are those duties that you perform pursuant to the express or implied terms of your employment by an educational unit. This includes, for example, your regular duties as well as any authorized involvement in school/educational unit-sponsored extracurricular activities.

Also, you should know that NEA’s policy is an “occurrence policy.” This means that your coverage is linked to when the “occurrence” took place. For example, if you are sued for a 1980 incident, coverage would be available to you if you were a member at the time of the “occurrence,” even if such claim or proceeding arises against you in the current year or in the future.

What Benefits Does the EEL Program Provide?

The following benefits are available to all NEA members, including ESPs:

Coverage A. Educators Liability Benefit

- Payment of the legal costs of defending civil proceedings (other than proceedings concerning civil rights) brought against you in the course of performing your educational employment activities.
- Payment of up to \$1,000,000* in damages assessed against you as a result of such civil proceedings.
- Payment of up to \$300,000* worth of defense, settlement or judgments, and other supplementary payments for proceedings concerning civil rights.** (Coverage A is subject to a \$3,000,000 per occurrence limit regardless of the number of members involved in the occurrence.)

Coverage B. Reimbursement of Attorney Fees for the Defense of Criminal Proceedings**

- Reimbursement for attorney fees and other legal costs up to \$35,000 if you are charged with violating a criminal statute in what otherwise would be within the course and scope of your educational employment activities, and you are exonerated of all charges by a court of law or all charges are withdrawn or dismissed. If, however, the proceeding arises out of an incident involving the administration of corporal punishment, the policy will provide reimbursement regardless of the outcome.

Coverage C. Bail Bond

- Reimbursement of up to \$1,000 of bail bond premium, if you must post a bond as the result of an occurrence arising out of your educational employment activities. (The insurance company is not required to furnish the bond.)

Coverage D. Assault-Related Personal Property Benefit

- Payment of up to \$500 for damages to your personal property when caused by an assault upon you in the course of your educational employment. (Vehicle and school property are excluded.)

* May have state variations; check with your state affiliate.

Common Questions About the EEL Program

Q—Does the EEL Program cover administration of medication(s) at the school site?

A—Yes, in limited circumstances. These include:

- Members in every occupation group are covered for administering oral prescription and nonprescription medicine as long as it is at the express request of his or her supervisor or at the written request of a student’s parent or guardian.
- Every member is also covered for giving emergency first-aid—including CPR—when no medically trained person is available.
- Certified health aides are covered when employed by the educational unit to render nursing services and first-aid under the direction of a school nurse. The policy does require that the supervising nurse be an employee of an educational unit, but it does not matter whether this nurse is a Licensed Practical Nurse (LPN) or a Registered Nurse (RN).

Q—Does coverage also depend on training?

A—Absolutely. There are certain activities and procedures, such as physical, occupational, and psychological therapy, that are covered only if performed by a licensed or certified therapist employed to render such services. Teachers and paraprofessionals—people not specifically licensed or certified in health care—are not covered for these procedures under the EEL Program.

Q—Does the EEL Program cover members for the administration of health care services, if this is requested by the employer?

A—Yes, in limited circumstances, such as health care services rendered by the member to students who are designated disabled under the Individuals with Disabilities in Education Act (IDEA), when rendering of such services is expressly required by the employer, provided the member has received advance written approval for rendering such services from the parent or guardian of the student.

** State insurance laws do not permit this coverage in New York.

Q—Is there further advice for NEA members doing health care procedures?

A—Three things. First, make sure your employer is not asking you to do anything that’s illegal in your state for someone in your occupation. Second, make sure your employer provides you with training. Third, make sure your employer either holds you harmless or provides you with primary liability insurance.

Q—Does the EEL Program cover civil lawsuits arising from accidents involving a member’s operation of motor vehicles?

A—No. The EEL Program excludes claims arising out of the operation, ownership, or use of a motor vehicle by a member regardless of occupation (for example: a bus driver, a regular classroom teacher, or a student teacher). One of the three exceptions to the “Motor Vehicle Exclusion” provides coverage to a member who is supervising students entering or exiting a school bus. (See panel on “What Benefits Does the EEL Program Provide?” for other examples of coverage.)

*Q—Does the EEL Program cover the defense of criminal charges arising from a member’s educational employment activities?**

A—Yes. Coverage B of the EEL Program reimburses a member’s attorney fees and costs up to a maximum of \$35,000 incurred in the defense of a criminal proceeding arising out of the member’s educational employment activities.

Reimbursement will be made if the member is exonerated by a court of law from all charges or all charges are subsequently withdrawn or dismissed. If, however, the criminal proceeding is the result of the use of corporal punishment, reimbursement will be made regardless of the outcome.

For example, when a member use corporal punishment to discipline an unruly student and the member is later sued by the child’s parents, reimbursement of attorney fees will be made regardless of the outcome of the criminal proceeding.

Q—What can I do if I’m denied EEL Program coverage?

A—The insurance company provides a written

coverage determination for each claim filed. If the claim is denied, a written explanation is provided and you are given notice of your right to challenge this determination and resolve the disagreement through arbitration.

You can invoke the arbitration process by filing with the insurance company a written demand for arbitration, postmarked no later than 30 days after the date you received the company’s statement of position.

Please refer to your copy of the EEL Certificate of Insurance brochure for additional information (the brochure is available through your local UniServ director or state association EEL program coordinator).

What To Do If An Incident Occurs

Contact your UniServ representative or local president immediately if you:

- are involved in an incident/occurrence during a school/educational unit activity that results in a student injury requiring medical attention;
- receive a letter from an attorney regarding an incident/occurrence or a service of summons for a lawsuit;
- are involved in any situation where you believe you may be sued for something that happened while you were performing your job.

Do **not** contact an attorney to represent you before contacting your local association. Your association will brief you on the procedures to follow under the EEL Program. Your local association will notify the state coordinator to verify your membership at the date of the occurrence and submit the claim to the insurance company. All actual determinations of coverage are made by the insurance company based on the specific facts of the incident/occurrence that gave rise to the claim or proceeding. Like all insurance policies, the EEL policy provides specific definitions and criteria for coverage that must be met.

Write down a description of the incident/occurrence as soon as possible. A brief description of the occurrence will help your attorney and you remember the details that fade over time.