

## **Section V-III**

### **Policy on Indemnification of Employees<sup>1</sup>**

#### **Introduction**

In the event a legal proceeding is commenced against a current or former employee of the College, the Vice President for Administration and Finance, with assistance from the College's General Counsel and from the Director of Budgets and Risk Management, will evaluate the relevant facts associated with the legal proceeding in consultation with the Board of Trustees' Counsel. The Board of Trustees, in accordance with the Bylaws of the College, will make the determination as to whether the College will offer a legal defense and/or indemnification.

Indemnification generally includes payment by the College of any fines, penalties, settlements, and any other expenses actually and reasonably incurred in connection with an actual civil, criminal, administrative, or investigative action, claim, or proceeding. The College will select the legal counsel except when it is determined that the employee's legal interests have substantially diverged from those of the College.

#### **Conditions**

The College will defend the employee for actions arising out of the employment relationship if:

- The employee's alleged actions or omissions were within the scope of his or her College duties.
- The employee's alleged actions and omissions were done in good faith, without criminal or other willful misconduct (for example, conduct demonstrating a substantial disregard and/or intentional neglect of duties and obligations).
- The employee reasonably believed that the alleged actions and omissions were lawful and in the best interests of the College.
- The employee gave the College's Vice President for Administration and Finance prompt written notice of such claim or action.
  - The original copy of any summons, complaint, notice, demand, letter, or any other document or pleading must be given to the Vice President for Administration and Finance as promptly as is reasonably possible.
  - Likewise, employees must give timely notice to the Vice President for Administration and Finance of legal issues as promptly as is reasonably possible before such issues give rise to a lawsuit or other legal proceeding or claim.

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<sup>1</sup> Indemnification of Trustees, and indemnification of employees serving as members of the Board of Trustees or as Administrative Officers, is to be handled in accordance with the College's By-Laws.

- A delay in giving notice to the Vice President for Administration and Finance as set forth in this paragraph can disqualify an employee from indemnification or other coverage under this Policy and potentially subject the employee to personal liability.
- The employee cooperates continuously and fully with the College in defense of the action.
- Any settlement or compromise of the claim or action has prior written approval of the College.

### **Exclusions**

This Policy shall not extend to:

- Conduct giving rise to the claim or action occurring when the employee was providing services for which he or she was being compensated in whole or in part by someone other than the College unless the program under which the services in question were being provided had been approved in writing by the College.
- An employee who brings a legal action against the College or its interests.
- Any action to the extent that it may be indemnifiable under any College insurance policies in place that covers the employee whereupon the terms and conditions of that insurance policy shall govern. The College shall, upon receipt of the claim or notice of legal action from the employee, as required above, submit the same to the College's insurance company.
- Any and all internal College proceedings.
- Any indemnification prohibited by law.

### **Further Limitations**

To the extent that the interests of an employee who is being defended by the College diverge from the College's interests, the College will pay the costs of a separate legal defense for that employee to the extent required by New York State law.

This policy is intended to serve only as a guide to the College's indemnification practices regarding the College's employees. Notwithstanding this Policy or any provision herein to the contrary. The College reserves the right to make determinations regarding indemnification of employees that it believes are in the best interests of the College regardless of this Policy.<sup>2</sup> The

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<sup>2</sup> The factors applied by the College to make the determination that the employee acted in the best interest of the College include, but are not limited to: (i) the employee appeared to have followed, in good faith, College policies; (ii) in matters of questionable propriety or uncertainty, the employee consulted with College officials and appeared to have followed the recommendations; (iii) the employee appeared to have acted to minimize the damage to the College's reputation by limiting the dissemination of information that has consequences for compliance with law and college policies to those who reasonably had a need to know that information.

College's interpretation of this Policy and its determination as to indemnification in specific situations shall be final.

*October 6, 2015*

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The factors applied by the College to make the determination that an employee did not act in the best interest of the College include, but are not limited to: (i) the College advised the employee to discontinue the conduct giving rise to the claim but the employee did not discontinue the conduct; (ii) the employee appeared to have violated College policy; (iii) the employee is accused of violating a law and there appears to be some credence to the allegations; and (iv) the employee's actions appeared to have placed a member(s) of the College community at unreasonable risk of injury.