

MONTCLAIR STATE UNIVERSITY
Montclair, New Jersey

INDEMNIFICATION POLICY

The Board of Trustees of Montclair State University adopts this policy to govern the provision of defense and indemnification to its officers and employees and trustees against whom any causes of action are asserted and in which the New Jersey Office of the Attorney General determines that those individuals are not subject to the provisions of the New Jersey Tort Claims Act.

The University shall defend and indemnify, to the fullest extent permitted by law, any officer or employee or member of the Board of Trustees of the University from and against any and all expenses, judgments, costs or other liabilities, including attorney's fees and disbursements, for any lawful act or omission arising out of and occurring in the course of the performance and within the scope of the duties of his or her office, position or employment with the University.

The University's obligation to defend and indemnify any officer or employee or trustee of the University shall not extend to any expense and/or liability that is the result of: 1) intentional and malicious tortious conduct, gross negligence, or wanton, willful violation and/or wanton, willful disregard for University policy and/or procedures and/or the law; 2) actions or omissions occurring outside of the scope of employment or appointment; 3) actions or omissions that are otherwise covered or indemnified by a policy of insurance; 4) any internal proceeding initiated by the University against the officer or employee; and 5) any claim or cause of action in which the officer or employee has named the University as an adverse party. If, during the course of the litigation, it becomes apparent that an employee or officer acted beyond the scope of his/her employment, committed a crime, or that his/her actions involved willful misconduct, actual fraud or actual malice, continued representation and/or indemnification by the University will be terminated.

Defense and indemnification provided by the University to any officer and employee and trustee of the University is conditioned upon the officer's and employee's full and unequivocal assistance, disclosure, and cooperation on a continuing basis with the Office of University Counsel, from inception of defense through finality and closure of the matter for which such officer and employee is defended and/or indemnified. The right of a University employee or officer or trustee to indemnification and defense is also specifically conditioned upon satisfaction of the following:

- A copy of the Summons and Complaint or other legal action in which the officer or employee or trustee is named as an adverse party must be delivered to the Office of University Counsel within five (5) working days of receipt of service by the officer or employee or trustee, along with a written request for defense and indemnification.
- The officer or employee or trustee shall provide written consent to give the University the absolute right to take charge of and fully control the proceeding for which defense and/or indemnification is afforded, including the right to appoint counsel and direct and/or settle the proceeding in the discretion of the University as it deems appropriate following

advance notice to the indemnified party. A party may decline settlement in his/her individual capacity in which case the right to a defense and indemnification, including the obligation by the University to pay unpaid accrued and pending costs and liabilities associated therewith, shall cease and shall become the obligation of the party who declined the settlement.

- The employee or officer or trustee seeking defense and indemnification shall execute a representation agreement and additionally any and all release(s) as required by the University to permit joint representation by the same attorney.

University Counsel shall be responsible for the implementation of this policy. In the event the individual seeking indemnification holds a position of Vice President or higher, the Board of Trustees shall be notified within 30 days of such request for indemnification. In all instances, the Board of Trustees retains the right to determine that indemnification shall not be provided.