

Section:	VIII.1.2	
Title:	Settlement of Litigation, Claims and Separation Agreement Policy	
Effective Date:	January 31, 2017	
Approved By:	Board of Trustees	
Responsible Unit:	Office of the General Counsel (609) 771-2734; ogc@tcnj.edu	
Related Documents:	<ul style="list-style-type: none"> • 18A:64-6, 64-7 Board powers and duties – describes general and specified powers and duties of the Board of Trustees. • "New Jersey Contractual Liability Act" (N.J.S. 59:13-1 <i>et seq.</i>) - deals with contract claims and suits against public entities including the College, including the presentation and consideration of claims; and prohibition of recovery against the College for punitive or consequential damages arising out of contract or for claims based upon implied warranties or upon contracts implied in law. • "New Jersey Tort Claims Act" (N.J.S.59:1-1 <i>et seq.</i>) - provides for (i) the State tort claim fund to cover loss or damage from liability for the College's own acts or omissions and for acts or omissions of its officers, employees or servants arising out of and in the course of the performance of their duties; and (ii) representation from the Attorney General of the College and employees on account of an act or omission in the scope of employment. 	
History:	N/A	
<u>Version</u>	<u>Date</u>	<u>Notes</u>
1.1	January 31, 2017	Edited
1.0	December 7, 2010	New policy; Initial release

I. INTRODUCTION

This policy (the "Settlement of Litigation, Claims and Separation Agreement Policy" or "Policy") of The College of New Jersey ("the College") applies to the settlement of litigation and claims and the separation of employees from the College. It establishes the authority of the Board, the President, and the General Counsel and provides reporting requirements with respect to settlements and separation agreements

II. DEFINITIONS

1. Claim

"Claim" shall refer to any demand for payment from an entity or individual, including a College employee, which is disputed in whole or in part and is made other than through litigation. A request or demand to adjust amounts payable under a commercial (non-employment) contract (e.g., change order request) shall not be treated as a "claim."

2. Litigation

"Litigation" shall refer to legal proceedings in the form of a lawsuit, arbitration proceeding, or internal or external administrative proceeding.

3. Separation Agreement

"Separation Agreement" shall refer to an agreement with a College employee by which the employee separates from College employment, but which does not involve a "claim" or "litigation," as defined above.

4. Consideration

"Consideration" shall refer to a monetary commitment on the part of the College, whether in the form of a lump sum cash payment, or compensation for services for a specified term, or individually negotiated benefits or payments for benefits (e.g., tuition remission for dependents), or a non-monetary commitment on the part of the College; it excludes payments for salary and benefits previously earned by the employee (e.g., earned vacation leave) or continued employment on the same terms as existed prior to the agreement. When consideration is received by the College, it can also be monetary or non-monetary.

5. Tort Claim Matter

"Tort Claim Matter" shall refer to a claim or litigation that is covered by The Tort Claims Act and for which the College receives legal representation by the New Jersey Office of the Attorney General.

III. POLICY

1. Settlement Authority of the President

The President shall have authority to settle claims and to enter into separation agreements when the consideration paid or received by the College has a value of \$150,000 or less. In matters for which there is a cognizant vice president (e.g., the Vice President for Human Resources for employment matters or Provost for faculty matters), the President shall consult with and seek the concurrence of that cognizant vice president. Settlement of claims or separation agreements when the consideration paid or received by the College exceeds \$50,000 shall require the concurrence of the General Counsel. The release provisions of all settlements of claims and separation agreements, regardless of the amount of consideration, shall be in a format approved by the General Counsel. Settlement of claims and separation agreements by the President shall be subject to appropriate funding, certified by the Treasurer.

2. Settlement Authority of the General Counsel

The General Counsel shall have authority to settle claims and litigation when the consideration paid or received by the College has a value of \$150,000 or less. In matters for which there is a cognizant vice president (e.g., the Vice President for Facilities Management, Construction and Campus Safety for construction related matters), the General Counsel shall consult with and seek the concurrence of that cognizant vice president. Settlement of claims or litigation when the consideration paid or received by the College exceeds \$25,000 shall require the concurrence of the President. All litigation settlements shall be reviewed and approved by the General Counsel. Settlement of claims or litigation by the General Counsel shall be subject to appropriate funding, certified by the Treasurer.

3. Settlement Actions Reserved to the Board

- a. The following proposals for settlements of claims or litigation or for separation agreements shall be submitted to the authority listed below for prior approval:
 - i. To the Chair of the Board and the Chair of the Business and Infrastructure Committee, when the consideration to be paid or to be received by the College has a value greater than \$150,000 but not exceeding \$500,000.
 - ii. To the Board, when the consideration to be paid or to be received by the College has a value in excess of \$500,000.
 - iii. To the Board, when settlements or separation agreements of any amount involve significant questions of College policy.

- iv. To the Board, when settlements or separation agreements of any amount are with members of the President's Cabinet, Officers of the College or Trustees of the College.
- b. All settlement and separation agreement proposals which require approval by either (i) the Chair of the Board and the Chair of the Business and Infrastructure Committee, or (ii) the full Board, shall be accompanied by the recommendation of the President and General Counsel and a statement of the applicable fund source by the Treasurer.

4. Faculty

With regard to a faculty member with tenure or security of employment, in the event that the faculty member's resignation and severance compensation is deemed by the President to be in the best interests of the College, any resulting separation or settlement agreement shall be subject to this policy.

5. Tort Claim Matters

To the extent that the authority to settle a Tort Claim Matter is subject to the approval of the Office of the Attorney General and/or the New Jersey Department of Treasury, Bureau of Risk Management, the authority to settle provided hereunder is so constrained and may be interpreted as the authority to make a recommendation to settle to or accept a settlement recommendation from the Office of the Attorney General and/or the New Jersey Department of Treasury, Bureau of Risk Management.

6. Reporting of Settlements and Separation Agreements

- a. The General Counsel shall annually report to the Audit, Risk Management and Compliance Committee of the Board all settlements of claims and litigation, and all separation agreements, when the consideration paid or received by the College has a value greater than \$50,000.
- b. At each regular meeting of the Board, the Board shall receive a report from the General Counsel of all settlements of claims and litigation, and all separation agreements, when the consideration paid or received by the College has a value greater than \$50,000 but not exceeding \$150,000.
- c. At each regular meeting of the Board, the Board shall receive a report of all settlements of claims and litigation and all separation agreements approved by the Chair of the Board and the Chair of the Business and Infrastructure Committee pursuant to section 3.a.1 hereof.