§ 6205. Liability of board of trustees and liability of city university of New York. 1. The state shall save harmless and indemnify members of the board of trustees and any duly appointed member of the teaching or supervising staff, officer or employee, and a student serving on a university or college body or committee which is composed of a majority of faculty, administration and trustees, of the senior colleges under the jurisdiction of such board pursuant to section seventeen of the public officers law against any claim, demand, suit or judgment arising by reason of any act or omission to act by such person occurring in the discharge of his duties and within the scope of his service on behalf of such university.

2. (a) As used in this subdivision, the term (i) "employee" shall mean any person holding a position by appointment or employment at a community college under the jurisdiction of the board of trustees, whether or not compensated, or a volunteer expressly authorized to participate in a sponsored volunteer program of such community colleges, and a student serving on a community college body or committee composed of a majority of faculty, administration and trustees, but shall not include an independent contractor. The term employee shall include a former employee, his estate or judicially appointed personal representative; (ii) "comptroller" shall mean the comptroller of the city of New York; and (iii) "corporation counsel" shall mean the corporation counsel of the city of New York.

(b) Upon compliance by the employee with the provisions of paragraph (i) of this subdivision, the city of New York shall provide for the defense of the employee in any civil action or proceeding in any state or federal court arising out of any alleged act or omission which occurred or is alleged in the complaint to have occurred while the employee was acting within the scope of his public employment or duties, or which is brought to enforce a provision of section nineteen hundred eighty-one or nineteen hundred eighty-three of title forty-two of the United States code. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or on behalf of the city of New York.

(c) Subject to the conditions set forth in paragraph (b) of this subdivision, the employee shall be entitled to be represented by the

city of New York provided, however, that the employee shall be entitled to representation by private counsel of his choice in any civil judicial proceeding whenever the corporation counsel of the city of New York determines based upon his investigation and review of the facts and circumstances of the case that representation by the corporation counsel would be inappropriate, or whenever a court of competent jurisdiction, upon appropriate motion or by a special proceeding, determines that a conflict of interest exists and that the employee is entitled to be represented by private counsel of his choice. The corporation counsel shall notify the employee in writing of such determination that the employee is entitled to be represented by private counsel. The corporation counsel may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such employees be represented by the same counsel. If the employee or group of employees is entitled to representation by private counsel under the provisions of this subdivision, the corporation counsel shall so certify to the comptroller of the city of New York. Reasonable attorneys' fees and litigation expenses shall be paid by the city of New York to such private counsel from time to time during the pendency of the civil action or proceeding subject to certification that the employee is entitled to representation under the terms and conditions of this subdivision by the board of trustees of the city university and upon the audit and warrant of the comptroller. Any dispute with respect to representation of multiple employees by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon motion or by way of a special proceeding.

(d) Where the employee delivers process and a request for a defense to the corporation counsel as required by paragraph (i) of this subdivision, the corporation counsel shall take the necessary steps including the retention of private counsel under the terms and conditions provided in paragraph (c) of this subdivision, on behalf of the employee to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

(e) The city of New York shall indemnify and save harmless employees of the community colleges of the city university in the amount of any judgment obtained against such employees in any state or federal court, or in the amount of any settlement of a claim, provided that the act or

omission from which such judgment or settlement arose, occurred while the employee was acting within the scope of his public employment or duties; the duty to indemnify and save harmless prescribed by this subdivision shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.

(f) An employee represented by private counsel shall cause to be submitted to the board of trustees any proposed settlement which may be subject to indemnification by the city of New York and if not inconsistent with the provisions of this subdivision the board of trustees shall certify such settlement and submit such settlement and certification to the corporation counsel. The corporation counsel shall review such proposed settlement as to form and amount, and shall give his approval if in his judgment the settlement is in the best interest of the city of New York. Nothing in this subdivision shall be construed to authorize the city of New York to indemnify or save harmless an employee with respect to a settlement not so reviewed and approved by the board of trustees.

(g) Nothing in this subdivision shall authorize the city of New York to indemnify and save harmless an employee with respect to punitive or exemplary damages, fines or penalties, or money recovered from an employee pursuant to article seven-A of the state finance law.

(h) Upon entry of a final judgment against the employee, or upon the settlement of the claim, the employee shall cause to be served a copy of such judgment or settlement, personally or by certified or registered mail within thirty days of the date of entry or settlement, upon the board of trustees; and if not inconsistent with the provisions of this subdivision, such judgment or settlement shall be certified for payment by the board of trustees of the city university. If the corporation counsel concurs in such certification, the judgment or settlement shall be paid upon audit and warrant of the comptroller.

(i) The duty to defend or indemnify and save harmless prescribed by this subdivision shall be conditioned upon (1) delivery to the corporation counsel at his main business office in the city of New York by the employee of the original or a copy of any summons, complaint, process, notice, demand or pleading within five days after he is served with such document, and (2) the full cooperation of the employee in the defense of such action or proceeding and in defense of any action or

proceeding against the city university or city of New York based upon the same act or omission, and in the prosecution of any appeal. Such delivery shall be deemed a request by the employee that the board of trustees provide for his defense pursuant to this subdivision.

(j) The benefits of this subdivision shall inure only to employees as defined herein and shall not enlarge or diminish the rights of any other party nor shall any provision of this subdivision be construed to affect, alter or repeal any provision of the workers' compensation law.

(k) This subdivision shall not in any way affect the obligation of any claimant to serve notice of the claim upon the city of New York pursuant to any other provision of law.

(l) The provisions of this subdivision shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

(m) The provisions of this subdivision shall apply to all actions and proceedings pending upon the effective date thereof or thereafter instituted.

(n) Except as otherwise specifically provided in this subdivision, the provisions of this subdivision shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity available to or conferred upon any unit, entity, officer or employee of the city of New York or any other level of government, or any right to defense or indemnification provided for any governmental officer and/or employee by, in accordance with, or by reason of, any other provision of state or federal statutory or common law.

(o) If any provision of this subdivision or the application thereof to any person or circumstance be held unconstitutional or invalid in whole or in part by any court of competent jurisdiction, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this subdivision or the application of any such provision to any other person or circumstance.