



## **211 CRIMINAL OR CIVIL ACTION AGAINST SCHOOL DISTRICT, SCHOOL BOARD MEMBER, EMPLOYEE, OR STUDENT**

### **I. PURPOSE**

The purpose of this policy is to provide guidance ~~aboutas to~~ the school district's position, rights, and responsibilities when a civil or criminal action is pending against the school district, ~~or a~~ school board member, a school district employee, or a student.

### **II. GENERAL STATEMENT OF POLICY**

- A. The school district recognizes that, when civil or criminal actions are pending against a school board member, a school district employee, or a student, the school district may be requested or required to take action.
- B. In responding to such requests and/or requirements, the school district will take such measures as are appropriate to its primary mission of providing for the education of students in an environment that is safe for staff and students and is conducive to learning.
- C. The school district acknowledges its statutory obligations with respect to providing assistance to school board members and teachers who are sued in connection with performance of school district duties. Collective bargaining agreements and school district policies may also apply.

### **III. CIVIL ACTIONS**

- A. Pursuant to Minnesota Statutes section 466.07, Subd. 1, **subject to the limitations in Minnesota Statutes section 466.04**, the school district shall defend and indemnify any school board member or school district employee for damages in school-related litigation, including punitive damages, claimed or levied against the school board member or employee, provided that ~~the school board member or employee~~ ~~he or she~~ was acting in the performance of the duties of the position and was not guilty of malfeasance, willful neglect of duty, or bad faith.
- B. Pursuant to Minnesota Statutes section 123B.25(b), with respect to teachers employed by the school district, upon written request of the teacher involved, the school district shall provide legal counsel for any school teacher against whom a claim is made or action is brought for recovery of damages in any tort action involving physical injury to any person or property or for wrongful death arising out of or in connection with the employment of the teacher with the school district. The school district will choose legal counsel after

consultation with the teacher.

C. Data Practices

Educational data and personnel data maintained by the school district may be sought as evidence in a civil proceeding. The school district will release the data only pursuant to the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, and to the Family Educational Rights and Privacy Act, 20 United States Code, section 1232g and related regulations. When an employee is subpoenaed and is expected to testify regarding educational data or personnel data, ~~the employee or she is to~~ will inform the building administrator or designated supervisor, who shall immediately inform the superintendent or designee. No school board member or employee may release data without consultation in advance with the school district official who is designated as the authority responsible for the collection, use, and dissemination of data.

D. Service of Subpoenas

The policy of the school district is that its officers and employees will normally not be involved in providing service of process for third parties in the school setting.

E. Leave to Testify

Leave for employees appearing in court, either when sued or under subpoena to testify, will be considered in accordance with school district personnel policies and applicable collective bargaining agreements.

## IV. CRIMINAL CHARGES OR CONDUCT

A. Employees

1. The school district expects that its employees serve as positive role models for students. As role models for students, employees have a duty to conduct themselves in an exemplary manner.
2. ~~If the school district receives information relating to activities of a criminal nature by an employee, the school district will investigate and take appropriate disciplinary action, which may include discharge, subject to school district policies, statutes, and provisions of applicable collective bargaining agreements.~~ If the school district receives information indicating that an employee may have engaged in criminal activity, the school district will comply with all applicable reporting requirements and take appropriate action in accordance with law, school district policies, and collective bargaining agreements. Appropriate action may include referral to law enforcement, an internal investigation, and disciplinary action up to and including discharge.

3. ~~Pursuant to Minnesota Statutes section 123B.02, Subd. 20 (Legal counsel, reimbursement) if reimbursement for a criminal defense is requested by a school district employee, the school board may, after consulting with its legal counsel, reimburse the employee for any costs and reasonable attorney fees incurred by the employee to defend criminal charges brought against the employee arising out of the performance of duties for the school district. The decision as to whether to reimburse shall be made at the discretion of the school board. A school board member who is a witness or an alleged victim in the case may not vote on the reimbursement. If a quorum of the school board is disqualified from voting on the reimbursement, the reimbursement must be approved by a judge of the district court.~~ Pursuant to Minnesota Statutes section 123B.02, subdivision 20, if a school district employee requests reimbursement for costs and reasonable attorney fees incurred in defending against criminal charges arising from the performance of the employee's duties for the school district, the school board may, after consulting with legal counsel, approve such reimbursement at its discretion.

A school board member who is a witness or an alleged victim in the case may not vote on the reimbursement.

If enough board members are disqualified from voting that the board does not have a quorum, the reimbursement must be approved by a district court judge.

#### B. Students

The school district has an interest in maintaining a safe and healthy environment and in preventing disruption of the educational process. In order to further that interest, the school district will take appropriate action regarding students convicted of crimes that relate to the school environment.

#### C. Criminal Investigations

1. The policy of the school district is to cooperate with law enforcement officials. The school district will make all efforts, however, to encourage law enforcement officials to question students and employees outside of school hours and off school premises unless there are extenuating circumstances or the matter being investigated is school-related, or as otherwise provided by law.
2. If ~~such~~ questioning at school is unavoidable, the school district will attempt to maintain confidentiality; to avoid embarrassment to students and employees and to avoid disruption of the educational program. The school district will attempt to notify parents of a student under age ~~eighteen~~ (18) that police will be questioning their child. Normally, the superintendent, principal, or other appropriate school official will be present during the interview, except as otherwise required by law (Minnesota Statutes section 260E.22), or as otherwise determined in consultation with the parent or

guardian.

#### D. Data Practices

The school district will release to juvenile justice and law enforcement authorities educational and personnel data only in accordance with Minnesota Statutes chapter 13 (Minnesota Government Data Practices Act) and 20 United States Code section 1232g (FERPA).

### V. STATEMENTS WHEN LITIGATION IS PENDING

The school district recognizes that when a civil or criminal action is commenced or pending, parties to the lawsuit have particular duties in reference to persons involved or named in the lawsuit, as well as insurance carrier(s). Therefore, school board members or school district employees shall make or release statements in that situation only in consultation with legal counsel.

**Legal References:** *Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)*  
*Minn. Stat. § 121A.40-121A.56 (Pupil Fair Dismissal Act)*  
*Minn. Stat. § 123B.02, Subd. 20 (Legal Counsel, Reimbursement)*  
*Minn. Stat. § 123B.25(b) (Legal Actions Against Districts and Teachers)*  
*Minn. Stat. § 260E.22 (Interviews)*  
*Minn. Stat. § 466.07, Subd. 1 (Indemnification)*  
*20 U.S.C. § 1232g (Family Educational Rights and Privacy Act)*  
*42 U.S.C. § 1983 (Civil Action for Deprivation of Rights)*  
*Minn. Op. Atty. Gen. 169 (Mar. 7, 1963)*  
*Minn. Op. Atty. Gen. 169 (Nov. 3, 1943)*  
*Dypress v. School Committee of Boston, 446 N.E.2d 1099 (Mass. App. Ct. 1983)*  
*Wood v. Strickland, 420 U.S. 308, 95 S.Ct. 992, 43 L.Ed.2d 214 (1975)*

**Cross References:** *ISD 200 Policy 406 (Public and Private Personnel Data)*  
*ISD 200 Policy 408 (Subpoena of a School District Employee)*  
*ISD 200 Policy 414 (Mandated Reporting of Child Neglect or Physical or Sexual Abuse)*  
*ISD 200 Policy 506 (Student Discipline)*  
*ISD 200 Policy 515 (Protection and Privacy of Pupil Records)*  
*ISD 200 Policy 519 (Interviews of Students by Outside Agencies)*

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