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206 PUBLIC PARTICIPATION IN SCHOOL BOARD MEETINGS/COMPLAINTS ABOUT PERSONS AT SCHOOL BOARD MEETINGS AND DATA PRIVACY CONSIDERATIONS

I. PURPOSE

A. The school board recognizes the value of participation by the public in deliberations and decisions on school district matters. At the same time, the school board recognizes the importance of conducting orderly and efficient proceedings, with opportunity for expression of all participants' respective views.

B. The purpose of this policy is to provide procedures to assure open and orderly public discussion as well as to protect the due process and privacy rights of individuals under the law.

II. GENERAL STATEMENT OF POLICY

A. The policy of the school board is to encourage discussion by persons of subjects related to the management of the school district at school board meetings. The school board may adopt reasonable time, place, and manner restrictions on public expression in order to facilitate free discussion by all interested parties.

B. The school board shall, as a matter of policy, protect the legal rights to privacy and due process of employees and students.

III. DEFINITIONS

A. "Personnel data" means government data on individuals maintained because the individual is or was an employee or applicant for employment. For purposes of this policy, "employee" includes a volunteer or an independent contractor.

B. Personnel data on current and former employees that is "public" includes:

Name; employee identification number, which must not be the employee's social security number; actual gross salary; salary range; terms and conditions of employment relationship; contract fees; actual gross pension; the value and nature of employer paid fringe benefits; the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary; bargaining unit; job title; job description; education and training background; previous work experience; date of first and last employment; the existence and status of any complaints or charges against the employee, regardless of whether the complaint or charge resulted in a disciplinary action; the final disposition of any disciplinary action as defined in Minnesota Statutes, section 13.43, subdivision 2(b), together with the specific reasons for the action and data documenting the basis of the action, excluding data that would identify confidential sources who are employees of the public body; the complete terms of any agreement settling any dispute arising out of the employment relationship, including a buyout agreement as defined in Minnesota Statutes, section 123B.143, subdivision 2, except that the agreement must include specific reasons for the agreement if it involves the payment of more than $10,000 of public money; work location; work telephone number; badge number; work-related continuing education; honors and awards received; and

payroll time sheets or other comparable data that are only used to account for employee's work time for payroll purposes, except to the extent that release of time sheet data would reveal the employee's reasons for the use of sick or other medical leave or other not public data.

C. Personnel data on current and former applicants for employment that is "public" includes:

Veteran status; relevant test scores; rank on eligible list; job history; education and training; and work availability. Names of applicants shall be private data except when certified as eligible for appointment to a vacancy or when applicants are considered by the appointing authority to be finalists for a position in public employment. For purposes of this subdivision, "finalist" means an individual who is selected to be interviewed by the appointing authority prior to selection.

D. "Educational data" means data maintained by the school district which relates to a student.

E. "Student" means an individual currently or formerly enrolled or registered in the school district, or applicants for enrollment, or individuals who receive shared time services.

F. Data about applicants for appointments to a public body, including a school board, collected by the school district as a result of the applicant's application for appointment to the public body are private data on individuals, except that the following are public: name; city of residence, except where the appointment has a residency requirement that requires the entire address to be public; education and training; employment history; volunteer work; awards and honors; prior government service; any data required to be provided or that is voluntarily provided in an application to a multimember agency pursuant to Minnesota Statutes, section 15.0597; and veteran status. Once an individual has been appointed to a public body, the following additional items of data are public: residential address; either a telephone number or electronic mail address where the appointee can be reached, or both at the request of the appointee; the first and last dates of service on the public body; the existence and status of any complaints or charges against an appointee; and, upon completion of an investigation of a complaint or charge against an appointee, the final investigative report unless access to the data would jeopardize an active investigation. Any electronic mail address or telephone number provided by a public body for use by an appointee shall be public. An appointee may use an electronic mail address or telephone number provided by the public body as the designated electronic mail address or telephone number at which the appointee can be reached.

IV. RIGHTS TO PRIVACY

A. School district employees have a legal right to privacy related to matters which may come before the school board, including, but not limited to, the following:

1. right to a private hearing for teachers, pursuant to Minnesota Statutes, section 122A.40, subdivision 14 (Teachers Discharge Hearing);

2. right to privacy of personnel data as provided by Minnesota Statutes, section 13.43 (Personnel Data);

3. right to consideration by the school board of certain data treated as not public as provided in Minnesota Statutes, section 13D.05 (Not Public Data);

4. right to a private hearing for licensed or nonlicensed head varsity coaches to discuss reasons for nonrenewal of a coaching contract pursuant to Minnesota Statutes, section 122A.33, subdivision 3.

B. School district students have a legal right to privacy related to matters which may come before the school board, including, but not limited to, the following:

1. right to a private hearing, Minnesota Statutes, section 121A.47, subdivision 5 (Student Dismissal Hearing);

2. right to privacy of educational data, Minnesota Statutes, section 13.32 (Educational Data); 20 United States Code, section 1232g (FERPA);

3. right to privacy of complaints as provided by child abuse reporting and discrimination laws, Minnesota Statutes, chapter 260E (Reporting of Maltreatment of Minors) and Minnesota Statutes, chapter 363A (Minnesota Human Rights Act).

V. THE PUBLIC'S OPPORTUNITY TO BE HEARD

The school board will strive to give all persons an opportunity to be heard and to have complaints considered and evaluated, within the limits of the law and this policy and subject to reasonable time, place, and manner restrictions. Among the rights available to the public is the right to access public data as provided by Minnesota Statutes, section 13.43, subdivision 2 (Public Data).

VI. PROCEDURES

A. Agenda Items

1. Persons who wish to have a subject discussed at a public school board meeting are encouraged to notify the superintendent's office in advance of the school board meeting. The person should provide his or her name, the name of group represented (if any), and the subject to be covered or the issue to be addressed.

2. Persons who wish to address the school board on a particular subject should identify the subject and identify agenda item(s) to which their comments pertain.

3. The school board chair will recognize one speaker at a time and will rule out of order other speakers who are not recognized. Only those speakers recognized by the chair will be allowed to speak. Comments by others are out of order. Individuals who interfere with or interrupt speakers, the school board, or the proceedings may be directed to leave.

4. The school board retains the discretion to limit discussion of any agenda item to a reasonable period of time as determined by the school board. If a group or organization wishes to address the school board on a topic, the school board reserves the right to require designation of one or more representatives or spokespersons to speak on behalf of the group or organization.

5. Matters proposed for placement on the agenda which may involve data privacy concerns, which may involve preliminary allegations, or which may be potentially libelous or slanderous in nature shall not be considered in public, but shall be processed as determined by the school board in accordance with governing law.

6. The school board chair shall promptly rule out of order any discussion by any person, including school board members, that would violate the provisions of state or federal law, this policy or the statutory rights of privacy of an individual.

7. Personal attacks by anyone addressing the school board are unacceptable. Persistence in such remarks by an individual shall terminate that person's privilege to address the school board.

8. Depending upon the number of persons in attendance seeking to be heard, the school board reserves the right to impose such other limitations and restrictions as necessary in order to provide an orderly, efficient, and fair opportunity for those present to be heard.

B. Complaints

1. Routine complaints about a teacher or other employee should first be directed to that teacher or employee or to the employee's immediate supervisor.

2. If the complaint is against an employee relating to child abuse, discrimination, racial, religious, or sexual harassment, or other activities involving an intimidating atmosphere, the complaint should be directed to the employee's supervisor or other official as designated in the school district policy governing that kind of complaint. In the absence of a designated person, the matter should be referred to the superintendent.

3. Unresolved complaints from Paragraph 1. of this section or problems concerning the school district should be directed to the superintendent's office.

4. Complaints which are unresolved at the superintendent's level may be brought before the school board by notifying the school board in writing.

C. Open Forum

The school board shall normally provide a specified period of time when persons may address the school board on any topic, subject to the limitations of this policy. The school board reserves the right to allocate a specific period of time for this purpose and limit time for speakers accordingly.

The school board may decide to hold certain types of public meetings where the public will not be invited to address the school board. Possible examples are work sessions and board retreats. The public will still be entitled to notice of these meetings and will be allowed to attend these meetings, but the public will not be allotted time during the meeting to address the board.

D. No Board Action at Same Meeting

Except as determined by the school board to be necessary or in an emergency, the school board will not take action at the same meeting on an item raised for the first time by the public.

VII. PENALTIES FOR VIOLATION OF DATA PRIVACY

A. The school district is liable for damages, costs and attorneys' fees, and, in the event of a willful violation, punitive damages for violation of state data privacy laws. (Minnesota

Statutes, section 13.08, subdivision 1)

B. A person who willfully violates data privacy or whose conduct constitutes the knowing unauthorized acquisition of not public data is guilty of a misdemeanor. (Minnesota Statutes, section 13.09)

C. In the case of an employee, willful violation of the Minnesota data practices law (Minnesota Statutes, chapter 13), and any rules adopted thereunder, including any action subject to a criminal penalty, constitutes just cause for suspension without pay or dismissal. (Minnesota Statutes, section 13.09)

Legal References:
Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)
Minn. Stat. § 13.43 (Personnel Data)
Minn. Stat. § 13.601, Subd. 3 (Applicants for Appointment)
Minn. Stat. § 13D.05 (Meetings Having Data Classified as Public)
Minn. Stat. § 121A.47, Subd. 5 (Exclusion and Expulsion Procedures; Closed or Open Meeting)
Minn. Stat. § 122A.33, Subd. 3 (License and Degree Exemption for Head Coach; Notice of Nonrenewal; Opportunity to Respond)
Minn. Stat. § 122A.40, Subd. 14 (Employment; Contracts; Termination; Hearing Procedures
Minn. Stat. § 122A.44 (Contracting with Teachers; Substitute Teachers)
Minn. Stat. § 123B.02, Subd. 14 (General Powers of Independent School Districts; Employees; Contracts for Services)
Minn. Stat. § 123B.143, Subd. 2 (Superintendents; Disclose Past Buyouts or Contract is Void)
Minn. Stat. Ch. 363A (Minnesota Human Rights Act)
Minn. Stat. Ch. 260E (Reporting of Maltreatment of Minors)
20 U.S.C. § 1232g (Family Educational Rights and Privacy Act)
Minn. Op. Atty. Gen. 852 (July 14, 2006)

Cross References:
MSBA/MASA Model Policy 205 (Open Meetings and Closed Meetings)
MSBA/MASA Model Policy 207 (Public Hearings)
MSBA/MASA Model Policy 406 (Public and Private Personnel Data)
MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)
MSBA School Law Bulletin "C" (Minnesota's Open Meeting Law)
MSBA School Law Bulletin "I" (School Records – Privacy – Access to Data)