

## Personnel

### ~~Litigation Involving or Subpoena of a School District Employee~~

#### I. Purpose

This policy ~~sets forth the~~ protects the privacy rights of school district employees and students under both state and federal law when requested to testify or provide educational records for a judicial or administrative proceeding. ~~This policy also provides guidance regarding the district and employees' rights and responsibilities when a civil or criminal action is pending involving the district and/or its employees.~~

#### II. General Statement of Policy

A. This policy provides guidance and direction for a school district employee who is subpoenaed to testify and/or provide educational records for a judicial or administrative proceeding ~~or is sued in his or her capacity as an employee.~~

B. ~~The district recognizes that when civil or criminal actions are pending involving an employee or student, the district may be requested or required to act.~~

C. ~~In responding to legal requests and/or requirements, the 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 employees and students and is conducive to learning.~~

D. ~~The district acknowledges its statutory obligations with respect to assisting teachers who are sued in connection with performance of district duties. Collective bargaining agreements and district policies may also apply.~~

#### III. Data Classification

##### A. Educational Data

##### 1. State Law

The Minnesota Government Data Practices Act (MGDPA) classifies all educational data, except for directory information as designated by the school district, as private data on individuals. The state statute provides that private data on individuals may not be released, except pursuant to a valid court order or informed consent by the subject of the data or a parent/guardian if the subject of the data is a minor.

## 2. Federal Law

The Family Educational Rights and Privacy Act (FERPA) provides that educational data may not be released, except pursuant to informed consent by the individual subject of the data or any lawfully issued subpoena. Regulations promulgated under the federal law require that the district must first make a reasonable effort to notify the parent/guardian of the student, or the student if the student is 18 years of age or older, of the subpoena in advance of releasing the information pursuant to the subpoena.

### B. Personnel Data

The MGDPA also classifies all personnel data, except for certain data specifically classified as public, as private data on individuals. The state statute provides that private data on individuals may not be released, except pursuant to a valid court order or informed consent by the subject of the data.

## IV. Applications and Procedures Received Subpoenas or Court Orders

- A. Any employee who receives a subpoena for any purpose related to employment is to inform the building administrator or immediate supervisor when the employee receives the subpoena ~~or court order ("subpoena")~~. The building administrator or supervisor will inform the superintendent ~~or designee~~ that the employee has received a subpoena. ~~The building administrator or immediate supervisor will guide the employee in this process.~~
- B. No employee may release educational data, personnel data, or any other data of any kind without consultation in advance with the school district official who is designated as the authority responsible for the collection, use, and dissemination of data. ~~In cases where the district or its employees have received a subpoena, no employee may release educational data, personnel data, or any other data of any kind without consultation in advance with the superintendent or designee.~~
- C. Payment for attendance at judicial or administrative proceedings and the retention of witness and mileage fees is to be determined in accordance with the applicable school board policies and collective bargaining agreements.
- D. The administration will not release any information except in strict compliance with state and federal law and this policy. Recognizing that an unauthorized release may expose the district or its employees to civil or criminal penalties or loss of employment, the administration will confer with district legal counsel prior to release of such data.
- ~~D. If the subpoena involves private educational data, the district will make a reasonable effort to notify the parent of the student, or the student if the student is 18 years of age or older, of the subpoena in advance of releasing the information pursuant to the subpoena.~~

#### ~~IV. Service of Subpoenas~~

- ~~—The school district expects that its employees are not involved in providing service of process for third parties on district property or during the course of employment.~~

#### ~~V. Civil Actions against Employees~~

- ~~A. Pursuant to state law, the school district will defend and indemnify an employee for damages in district-related litigation, including punitive damages, claimed or levied against the employee, provided that the employee 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 state law, with respect to teachers employed by the district, upon written request of the teacher involved, the district will provide legal counsel for a school teacher against whom a claim is made or action is brought for recovery of damages in any tort action involving physical injury to a person or property or for wrongful death arising out of or in connection with the employment of the teacher with the district. The district will choose legal counsel after consultation with the teacher.~~

#### ~~VI. Criminal Charges, Conduct, and/or Investigations~~

##### ~~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. The district has an interest in maintaining a safe and healthy environment and in preventing disruption of the educational process. To further that interest, if the district receives information related to an employee's conviction of a crime or an employee being charged with a crime, the district will investigate and take appropriate disciplinary action, which may include discharge, subject to district policies, state and federal laws, and provisions of applicable collective bargaining agreements. The district expects its employees to notify the district of any pending criminal charges against the employee. Disciplinary action is dependent on the extent to which the conviction and/or criminal act relate(s) to the school environment and/or district employment.~~
- ~~3. Pursuant to state law, if reimbursement for a criminal defense is requested by a 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 district. The decision as to whether to reimburse is 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.~~

#### ~~B. Criminal Investigations~~

- ~~1. The district cooperates with law enforcement officials. The district, however, encourages law enforcement officials to question employees outside of work hours and off district property unless extenuating circumstances exist or the matter being investigated is district-related, or as otherwise provided by law.~~
- ~~2. If questioning on district property is unavoidable, the district will attempt to maintain confidentiality, to avoid embarrassment to employees, and to avoid disruption of educational programming.~~

#### ~~VII. 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 policies and applicable collective bargaining agreements.~~

#### ~~VIII. Statements While Litigation is Pending Against the School District~~

~~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, when litigation is pending, individual district employees will not make or release statements regarding the pending litigation.~~

#### Legal References:

20 U.S.C. § 1232g (Family Educational Rights and Privacy Act)  
42 U.S.C. § 1983 (Civil Action for Deprivation of Rights)  
Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)  
Minn. Stat. §§ 121A.40-121A.56 (Pupil Fair Dismissal Act)  
Minn. Stat. § 123B.02, Ssubd. 20 (Legal Counsel, Reimbursement)  
Minn. Stat. § 123B.25(b) (Legal Actions Against Districts and Teachers)  
Minn. Stat. § 466.07, Ssubd. 1 (Indemnification Required)  
Minn. Rules 1205.0100, Ssubp. 5 (Minnesota Rules Regarding Data Practices - Legal Proceedings)

#### Cross References:

Policy 211 (Criminal or Civil Action Involving the School District)  
Policy 403 (Discipline, Suspension and Dismissal of School District Employees)  
Policy 406 (Public and Private Personnel Data)  
Policy 414 (Mandated Reporting of Child Neglect or Physical or Sexual Abuse)  
Policy 506 (Student Conduct and Discipline)  
Policy 515 (Protection and Privacy of Student Records)

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Edina, Minnesota