

# BECKER PUBLIC SCHOOLS

## School Board Meeting Agenda

Monday, October 4, 2021 at 6:30 PM

Regular Meeting

Teaching & Learning Center, Becker High School

12000 Hancock Street

Becker, MN 55308

---

1. PROCEDURAL ITEMS	
A. Call to Order	
B. Pledge of Allegiance	
C. Agenda	
D. Recognition of Visitors and Public Forum	
2. REPORTS	
A. Student Report	
B. Superintendent's Report	
C. Committee Reports	
D. Board & Administrator	
3. CONSENT AGENDA	
A. Minutes	3
B. Financial Report	9
C. Disbursements	
D. Personnel	10
E. Resolution: Election Judges	11
F. Memorandum of Understanding with Local 284	13
G. Agreements Between Becker Public Schools and Architect, Construction Manager	14
4. PUBLIC HEARING: DISCUSS COMMISSIONER'S REVIEW AND COMMENT	60
5. GIFTS	64
6. FIRST READING	65
7. SECOND READINGS	69

MSBA typically recommends policies from the latest legislative changes. The following policies are updated by MSBA and recommended revisions to align with new laws passed by state and federal government. We have not made changes to the following policies for some time and MSBA has updated them multiple times since our last updates.

Policy 102, Equal Educational Opportunity adds contact information as directed by MDE;

Policy 406, Public and Private Personnel Data updates definitions, clarifies information about applicants, and re-aligns some provisions;

Policy 413, Harassment and Violence, updates language and aligns with Minnesota Statutory Law;

Policy 501, School Weapons Policy, adds language to definition of 'weapon' to align with MN statute, adds referral to law enforcement, clarifies provisions on p. 3, and revises citations;

Policy 524, Internet Acceptable Use and Safety Policy, revises policy to reflect recent U.S. Supreme Court opinion in Mahoney, and updates citations.

8. ADJOURN

Chair Jurek called the regular meeting of the School Board of District #726 to order on the 13th day of September, 2021 at 6:30 p.m. in the Teaching & Learning Center.

**Roll Call.**

**Members present:** Cindy Graham, Aaron Jurek, Ryan Obermoller, Connie Robinson, Sarah Schafer, Mark Swanson

**Members absent:** None

**Others present:** Jeremy Schmidt, Superintendent  
Kevin Januszewski, Director of Business Services

**Citizen Comments:** Betsy Armstrong  
Northwest Talent Academy, Gifted & Talented  
Dylan's Hope

**Reports,** provided by Superintendent Schmidt, Special Education Co-op, Curriculum, Certified Negotiations and Finance Committees

Motion by Ryan Obermoller, seconded by Connie Robinson, to **Approve the Consent Agenda, as amended:**

- Remove 3F, Fundraisers to Regular Agenda for Discussion

Upon roll call vote, motion carried unanimously.

**CONSENT AGENDA**

**MINUTES:** July 26, 2021 Special School Board Meeting  
July 29, 2021 Special School Board Meeting  
August 2, 2021 Regular School Board Meeting  
August 18, 2021 Special School Board Meeting (1)  
August 18, 2021 Special School Board Meeting (2)

**FINANCIAL REPORT**

**EXPENDITURES**

<b>Fund</b>	<b>2021-22 Budget</b>	<b>August 2021</b>	<b>2021-22 Year-to-Date</b>	<b>Remaining Budget</b>	<b>% Spent</b>
General	35,337,094	915,441	1,893,188	33,443,906	5.36%
Food Service	1,732,509	45,093	56,372	1,676,137	3.25%
Community Service	1,543,562	126,346	166,052	1,377,510	10.76%
Debt Service	3,426,201	-	414,308	3,011,893	12.09%
	<b>\$ 42,039,366</b>	<b>\$ 1,086,880</b>	<b>\$ 2,529,920</b>	<b>\$ 39,509,446</b>	<b>6.02%</b>

**DISBURSEMENTS** – in the amount of \$2,630,399.95

**PERSONNEL**

Name	Status	Job Title	Location	Hrs Per Day/FTE	Group	Replacing	Effective	Wage
Babler, Jill	Resignation	Transportation Paraprofessional	Bus Garage	2 Hours Per Day	NonUnion	n/a	9/1/21	n/a
Beck, Susan	New	Camp Opportunity Lead Staff	PS/IS	4.5 Hours Per Day	Camp Opportunity	n/a	9/9/2021	\$15.72 Per Hour
Bishir, Heidi	New	Food Service Worker	MS	2 Hours, 20 Min Per Day	NonUnion	B. Larson	09/07/21	\$14.25 Per Hour
Doucette, Kirsten	Resignation	Paraprofessional	IS	6.5 Hours Per Day	MultiUnit	n/a	9/3/21	n/a
Doucette, Kirsten	New Assignment	Administrative Asst./Student Systems	IS	8 Hours Per day	MultiUnit	n/a	9/7/21	\$16.41 Per Hour
Fitzgerald, Millicent	New	Art Specialist	PS	.25 FTE	BEA	M. Bondhus	8/30/21	BA Lane / Step 1 @ .25: \$10,470
Geiger, Sara	Resignation	Paraprofessional	IS	6.5 Hours Per Day	MultiUnit	n/a	8/30/21	n/a
Graske, Meghan	New	6th Grade English Teacher	MS	1 FTE	BEA	n/a	08/30/21	BA30 Lane / Step 1: \$42,974
Grimley, Shelbi	New	3rd Grade Long-Term Substitute	IS	53 Days	BEA	S. Froehling	09/13/21	BA Lane / Step 1 @ 55 Days: \$12,656.60
Gunderson, Brittany	New Assignment	Administrative Assistant to the Principal	HS	8 Hours Per Day	MultiUnit	L. Henry	9/2/2021	\$16.41 Per Hour
Hartkopf, Alysha	New	SR Teacher	EC	3.75 Hours Per Day x 2X Per Week	BEA	C. Louden	8/30/21	\$26.50 Per Hour
Hendricks, Jerad	New	7th Grade Football Coach	MS	Seasonal	BEA - Schedule C	M. Golley	8/30/2021	\$2,240 Per Season
Henry, Lynnea	New Assignment	Administrative Asst./ Attendance Secretary	IS	3.25 Hours Per Day	MultiUnit	K. Handeland	9/7/2021	Use Current Wage
Hook, Lori	New Assignment	Special Education Paraprofessional	IS	4 3 Hours Per Day	MultiUnit	K. Handeland	9/9/2021	Use Current Wage

Hook, Lori	Resignation	Lunchroom Supervisor	IS	2.5 Hours Per Day	MultiUnit	n/a	9/9/2021	n/a
Hoppe, Megan	New (Rehire)	9th Grade Volleyball Coach	HS	Seasonal	BEA - Schedule C	n/a	8/24/2021	\$2,971 Per Season
Johnson, Kari	Resignation	Food Service Cashier	HS	2 Hours Per Day	NonUnion	n/a	08/24/21	n/a
Kolbinger, Mark	Resignation	Asst. Robotics Coach	HS	Seasonal	BEA - Schedule C	n/a	08/02/21	n/a
Kuklok, Lynnae	New	8th Grade Volleyball Coach	MS	Seasonal	BEA - Schedule C	J. O'Neill	8/30/21	\$2,240 Per Season
Larson, Cayla	New	Kindergarten Teacher	PS	1 FTE	BEA	n/a	08/30/21	BA Lane / Step 1: \$41,881
Lovold, Hannah	New	1st Grade Teacher	PS	1 FTE	BEA	N. Klassen	08/30/21	BA Lane / Step 1: \$41,881
Lynch, Greg	New	9th Grade Volleyball Coach	HS	Seasonal	BEA - Schedule C	K. Johnson	8/17/2021	\$3,274 Per Season
Madsen, Faith	New	JV2 Girls Soccer Coach	HS	Seasonal	BEA - Schedule C	A. Rothstein	08/30/21	\$1,485 Per Season (Share w/ C. Rothstein)
McCormick, Diana	New	Food Service Worker	IS	2.5 Hours Per Day	NonUnion	E. St. Pierre	9/9/2021	\$14.25 Per Hour
Messick, Maisie	New	B-Squad Volleyball Coach	HS	Seasonal	BEA - Schedule C	L. Kuklok	8/16/2021	\$3,363 Per Season
Mills, Stephanie	New	Special Education Paraprofessional	IS	6.5 Hours Per Day	MultiUnit	S. Geiger	9/13/21	\$16.41 Per Hour
Nelson-Sivertson, Alexis	Resignation	K-12 Teacher, EL	District-Wide	1 FTE	BEA	n/a	8/30/21	n/a
Neuman, Madison	New	Camp Opportunity Asst.	PS/IS	Varies according to Summer and School Year Schedule	Camp Opportunity	n/a	08/06/21	\$14.13 Per Hour
Nicolas, Terry	New	9th Grade Football Coach	HS	5 Seasonal	BEA - Schedule C	T. Miller	8/17/2021	\$2,971 Per Season

Offerdahl, Denise	Additional Assignment	AM/PM Bus Supervisor	IS	1 Hour Per Day	MultiUnit	n/a	09/09/21	Use Current Wage
Olson, Dan	Resignation	Head Golf Coach	HS	Seasonal	BEA - Schedule C	n/a	06/30/21	n/a
Peterson, Rosemary	Resignation	Paraprofessional	MS/Copy Center	8 Hours Per Day	MultiUnit	n/a	07/30/21	n/a
Rothstein, Chloe	New	JV2 Girls Soccer Coach	HS	Seasonal	BEA - Schedule C	A. Rothstein	8/30/2021	\$1,485 Per Season (Share w/ F. Madsen)
Schwarzkopf, Joseph	New	7th Grade Football Coach	MS	Seasonal	BEA - Schedule C	R. Burau	08/30/21	\$2,240 Per Season
Shierts, Lynn	Resignation	Paraprofessional	PS	6.75 Hours Per Day	MultiUnit	n/a	08/31/21	n/a
Skelton, Carrie	Resignation	Transportation Paraprofessional	Bus Garage	1 Hour, 15 Min Per Day Per Day	Union	n/a	09/01/21	n/a
Skelton, Carrie	New Assignment	Reading Interventionist Paraprofessional	PS	6.5 Hours Per Day	MultiUnit	K. Kickhafer	9/7/2021	Use Current Wage
Soupir, Anna	Resignation	Camp Opportunity Asst.	PS/IS	Varies	Camp Opportunity	n/a	8/24/2021	n/a
St. Pierre, Erika	Resignation	Food Service Worker	IS	2.5 Hours Per Day	NonUnion	n/a	08/18/21	n/a
Stenberg, Nichole	New	ECSE Teacher	PS	1 FTE	BEA	L. Kasper	9/9/2021	BA Lane / Step 1 @ 176 days = \$40,501.12
Stroman, Brittany	New	Special Education Paraprofessional	HS	6.5 Hours Per Day	MultiUnit	S. Moudry	9/7/2021	\$17.89 Per Hour
Thompson, Christine	Additional Assignment	Breakfast Server	IS	1 Hour Per Day	MultiUnit	n/a	9/7/2021	\$14.62 Per Hour
Vatland, Mark	Resignation	Van Driver	Bus Garage	4 Hours Per Day	Transportation	n/a	08/10/21	n/a
Wiemi, Jennifer	New	Freeplay Supervisor	IS	2 Hours, 25 Minutes Per Day	NonUnion	n/a	9/15/21	\$14.25 Per Hour

**TRANSPORTATION CONTRACT (21-22, 22-23, 23-24)**, as presented

**HEALTH & SAFETY RESOLUTION**, as presented

**TRUTH IN TAXATION HEARING**: December 6, 2021

Motion by Ryan Obermoller, seconded by Mark Swanson, to **Approve 2021-2022 Fundraisers**, as presented. Motion carried unanimously.

Motion by Connie Robinson, seconded by Sarah Schafer, to **Accept the Following Gifts**:

Donor Name	Description of Gift	Purpose of Gift
Becker Lions	\$1,000.00	Leadership Retreat
Becker Lions	\$500.00	Basketball Uniforms/Equipment
Becker Lions	\$3,000.00	Assist Families in Paying Off Negative Lunch Balance Debts
Becker Spine	\$100.00	Gymnastics Cost for New Leotards
BYSA Gymnastics	\$3,263.70	Gymnastics Cost for New Leotards
Genco Builders	\$500.00	Gymnastics Cost for New Leotards
Norzanz, Inc. - Culvers of Albertville	\$250.00	Gymnastics Cost for New Leotards

Motion carried unanimously.

Motion by Mark Swanson, seconded by Ryan Obermoller, to **Approve the Health Insurance Increase and Rates**, as proposed. Motion carried unanimously.

Motion by Connie Robinson, seconded by Sarah Schafer, to **Approve the Request to Transfer \$75,000 to School Readiness, \$6,000 to Early Childhood Screening, and \$30,000 to Community Education from the General Fund**. Motion carried unanimously.

A first reading was held on the following policies. A second reading will be held at the October school board meeting.

- 102** Revised **Equal Educational Opportunity**
- 406** Revised **Public and Private Personnel Data**
- 413** Revised **Harassment and Violence**
- 501** Revised **School Weapons**
- 524** Revised **Internet Acceptable Use and Safety**

Motion by Mark Swanson, seconded by Sarah Schafer, to **Move the November School Board Meeting to the 8<sup>th</sup>**. Motion carried unanimously.

Motion by Mark Swanson, seconded by Cindy Graham, to **Approve the Maximum Preliminary Levy 2021 Payable 2022**, as presented. Motion carried unanimously.

Motion by Mark Swanson, seconded by Ryan Obermoller, to **Approve the MSBA Delegate Assembly Resolutions**, as presented. Motion carried unanimously.

The board entered into a **Closed Session to Discuss Negotiations**.

The meeting was adjourned at 9:40 p.m.

---

Aaron Jurek, Chair

---

Ryan Obermoller, Clerk

Recorder: Angela Oswald

**BECKER PUBLIC SCHOOLS  
MONTHLY FINANCIAL REPORT  
September 2021**

**EXPENDITURES**

<b>Fund</b>	<b>2021-22 Budget</b>	<b>September 2021</b>	<b>2021-22 Year-to-Date</b>	<b>Remaining Budget</b>	<b>% Spent</b>
General	35,337,094	2,921,378	4,814,566	30,522,528	13.62%
Food Service	1,732,509	80,906	137,278	1,595,231	7.92%
Community Service	1,543,562	126,172	292,224	1,251,338	18.93%
Debt Service	3,426,201	-	414,308	3,011,893	12.09%
	<b>\$ 42,039,366</b>	<b>\$ 3,128,456</b>	<b>\$ 5,658,376</b>	<b>\$ 36,380,990</b>	<b>13.46%</b>

Name	Status	Job Title	Location	Hrs Per Day/FTE	Group	Replacing	Effective	Wage
Aaseby, Sarah	Change in Hours	Administrative Assistant	HS	3 Hours Per Day (was 3.5)	Multi	n/a	10/1/21	Use Current
Aaseby, Sarah	Change in Hours	Special Education Paraprofessional	HS	3.5 Hours Per Day (was 3)	Multi	n/a	10/1/2021	Use Current
Agnew, Cindy	Resignation	Volleyball Coach	MS	Seasonal	BEA - Schedule C	n/a	09/10/21	n/a
Barthel, Kali	Resignation	Transportation Paraprofessional	Bus Garage	1.5 Hours Per Day	NonUnion	n/a	9/14/2021	n/a
Bauer, Chery	New	Food Service Worker	HS	2 Hours, 25 Minutes Per Day	NonUnion	K. Steffens	10/04/21	\$14.25 Per Hour
Beck, Sam	Increase in Hours	Special Education Paraprofessional	MS	30 Minutes Per Day	Multi	n/a	10/01/21	Use Current
Beck, Susan	Resignation	Camp Opportunity Lead	IS/PS	4.5 Hours Per Day	Camp Opporutnity	n/a	9/17/2021	n/a
Crowley, Nick	New	Special Education Paraprofessional	HS	6.5 Hours Per Day	Multi	B. Gunderson	9/20/2021	\$16.41 Per Hour (Step 1)
Fluck, Katie	Increase in Hours	Special Education Paraprofessional	MS	30 Minutes Per Day	Multi	n/a	10/01/21	Use Current
Goenner, Marlene	Resignation	Special Education Paraprofessional	PS	4 Hours, 45 Minutes Per Day x 4 Days Per Week	Multi	n/a	11/30/21	n/a
Gunderson, Brittany	Resignation	Special Education Paraprofessional	HS	6.5 Hours Per Day	Multi	n/a	09/01/21	n/a
Hodges, Stacy	New	Special Education Paraprofessional	IS	6.5 Hours Per Day	Multi	R. Elvester	9/9/2021	\$18.42 Per Hour (Step 5)
Jorgenson, Madison	New	Camp Opportunity Lead	PS/IS	5.5 Hours Per Day	Camp Opporutnity	n/a	10/7/2021	\$15.72 Per Hour
Lemire, Jeanne	Increase in Hours	Special Education Paraprofessional	PS	15 Minutes Per Day	Multi	n/a	10/01/21	Use Current
Marx, Kyanna	New	8th Grade Volleyball Coach	MS	Seasonal	BEA - Schedule C	J. Vesledahl	9/20/2021	\$2,240 Per Season
Miller, Ashley	Increase in Hours	Special Education Paraprofessional	PS	15 Minutes Per Day	Multi	n/a	10/1/21	Use Current
Niedfeldt, Tyler	Resignation	7th Grade Boys Basketball Caoch	MS	Seasonal	BEA - Schedule C	n/a	09/20/21	n/a
Olson, JeNee	Correction to Lane Placement	Behavior Interventionist	IS	1 FTE	BEA	n/a	Beginning of 21- 22 School Year	MA15 Lane
Opsted, Breann	New	Special Education Paraprofessional	MS	6.5 Hours Per Day	Multi	n/a	9/22/21	\$17.89 Per Hour (Step 4)
Pritzl, Dawn	New	Special Education Paraprofessional	HS	7 Hours Per Day	Multi	n/a	9/15/2021	\$18.77 Per Hour (Step 6)
Puckett, Lorie	Increase in Hours	Special Education Paraprofessional	PS	15 Minutes Per Day	Multi	n/a	10/1/21	Use Current
Revier, Allison	Increase in Hours	Special Education Paraprofessional	MS	30 Minutes Per Day	Multi	n/a	10/1/21	Use Current
Rosenow, Jessica	New	Ala Carte Cashier	HS	2 Hours, 15 Minutes Per Day	NonUnion	K. Johnson	9/21/2021	\$14.25 Per Hour
Sakry, Sheileen	Increase in Hours	Special Education Paraprofessional	PS	15 Minutes Per Day	Multi	n/a	10/1/21	Use Current
Skelton, Carrie	Increase in Hours	Special Education Paraprofessional	PS	15 Minutes Per Day	Multi	n/a	10/1/21	Use Current
Spanier, Julie	Increase in Hours	Special Education Paraprofessional	PS	15 Minutes Per Day	Multi	n/a	10/01/21	Use Current
Spoden, Kim	Change in Assignment	Transportation Dispatcher (was Bus Driver)	Bus Garage	8 Hours Per Day	Transportation	n/a	9/27/2021	\$27.44 Per Hour
Spoden, Kim	Resignation	Bus Driver	Bus Garage	2 Routes Per Day	Transportation	n/a	9/24/2021	n/a
Stroman, Brittany	Increase in Hours	Special Education Paraprofessional	HS	15 Minutes Per Day	Multi	n/a	10/01/21	Use Current
Thorpe, Mary	Additional Assignment	EL Teacher	District-Wide	.5 FTE	BEA	A. Nelson-Sivertson	9/15/21	Use Current
Tierney, Tonya	End of Assignment	Camp Opportunity Lead	IS/PS	40 Hours Per Week	Camp Opporutnity	n/a	9/16/21	n/a
Vesledahl, Judee	Resignation	Volleyball Coach	MS	10 Seasonal	BEA - Schedule C	n/a	09/10/21	n/a

EXTRACT OF MINUTES OF A MEETING  
OF THE SCHOOL BOARD  
OF INDEPENDENT SCHOOL DISTRICT NO. 726  
(BECKER PUBLIC SCHOOLS)  
STATE OF MINNESOTA

Pursuant to due call and notice thereof, a regular meeting of the School Board of Independent School District No. 726 (Becker Public Schools), State of Minnesota, was duly held in said school district on October 4, 2021, at 6:30 o'clock p.m., for the purpose, in part, of adopting a resolution appointing election judges.

Member \_\_\_\_\_ moved the adoption of the following Resolution:

**RESOLUTION APPOINTING ELECTION JUDGES  
FOR THE NOVEMBER 2, 2021  
SCHOOL DISTRICT SPECIAL ELECTION**

BE IT RESOLVED by the School Board of Independent School District No. 726, State of Minnesota, as follows:

1. The individuals specified on EXHIBIT A attached hereto, each of whom is qualified to serve as an election judge, are hereby appointed as judges of election for the school district's special election on November 2, 2021 to act as such at the combined polling place listed on said exhibit.
2. The election judges shall act as clerks of election, count the ballots cast, and submit the results to the school board for canvass in the manner provided for other school district elections.

The motion for the adoption of the foregoing resolution was duly seconded by \_\_\_\_\_ . On a roll call vote, the following voted in favor: Cindy Graham, Aaron Jurek, Ryan Obermoller, Connie Robinson, Sarah Schafer, Mark Swanson

and the following voted against: None

whereupon said resolution was declared duly passed and adopted.

## EXHIBIT A

### COMBINED POLLING PLACE

Becker City Hall  
Becker, Minnesota

### ELECTION JUDGES

Jill Babler  
Julie Blesi (Head)  
Janet Boettcher  
Mary Jo Cobb  
Marily Danielson (Head)  
Janelle Fast  
Mary Gillham  
Wanda Herkenhoff  
Corina Landwehr  
Jean Lumley  
Brad Novak  
Angela Oswald (Head)  
Lonny Seeley  
Sharon Woolhouse

### *Alternate Election Judges*

Jill Cox  
Sheila Ely-Kotaska  
Susan Nache  
Tony Nahrgang  
Christine Olin  
Jeremy Schmidt  
Angela Spinler

BECKER PUBLIC SCHOOLS  
Superintendent  
12000 Hancock Street  
Becker, MN 55308-9585



Jeremy Schmidt,

Phone: 763-261-4502  
jschmidt@isd726.org

MEMORANDUM OF UNDERSTANDING  
Between Local 284 Transportation, SEIU and ISD #726  
Regarding Addition of Dispatcher Position to Agreement

It is hereby agreed that a position of dispatcher will be added as an MOU to the 284, SEIU Transportation Contract. The pay schedule for this position will align with the current Lead Mechanic per hour pay until a successor agreement is agreed to and approved.

Carol Hanson 9/24/21  
Local 284, SEIU Date

\_\_\_\_\_  
ISD 726 Date

 **AIA**® Document C132™ – 2009

**Standard Form of Agreement Between Owner and Construction Manager as Adviser**

**AGREEMENT** made as of the Fourteenth day of September in the year Two Thousand Twenty-One  
*(In words, indicate day, month and year.)*

**BETWEEN** ICS's client identified as the Owner:  
*(Name, legal status, address and other information)*

Becker Public Schools (the "District")  
Independent School District #726  
12000 Hancock Street  
Becker, MN 55308

and ICS (ICS):  
*(Name, legal status, address and other information)*

ICS (ICS)  
1331 Tyler Street N.E., Suite 101  
Minneapolis, MN 55413

for the following Project:  
*(Name, location and detailed description)*

District-wide additions, remodeling and deferred maintenance improvements. Also, a new transportation facility.

The Construction Manager:  
*(Name, legal status, address and other information)*

ICS (ICS)  
1331 Tyler Street N.E., Suite 101  
Minneapolis, MN 55413

The Owner and ICS agree as follows.

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A132™–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition. ^AIA Document A232™–2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

**AIA Document C132™ – 2009 (formerly B801™ CMA – 1992).** Copyright © 1973, 1980, 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 10:25:44 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail [copyright@aia.org](mailto:copyright@aia.org).  
**User Notes:**

**TABLE OF ARTICLES**

1 INITIAL INFORMATION  
2 ICS'S RESPONSIBILITIES  
3 SCOPE OF ICS'S BASIC SERVICES  
4 ADDITIONAL SERVICES  
5 OWNER'S RESPONSIBILITIES  
6 COST OF THE WORK  
7 COPYRIGHTS AND LICENSES  
8 CLAIMS AND DISPUTES  
9 TERMINATION OR SUSPENSION  
10 MISCELLANEOUS PROVISIONS  
11 COMPENSATION  
12 SPECIAL TERMS AND CONDITIONS  
13 SCOPE OF THE AGREEMENT

**ARTICLE 1 INITIAL INFORMATION**

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.  
*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")*

§ 1.1.1 The Owner's program for the Project:  
*(Identify documentation or state the manner in which the program will be developed.)*

MDE Positive Review & Comment dated August 3, 2021.

§ 1.1.2 The Project's physical characteristics:  
*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)*

The proposed facilities improvements will allow Becker Public Schools to address current physical and programmatic space needs at the Primary, Intermediate, Middle and High School facilities.

Major components of the proposed improvements include: District-wide deferred maintenance improvements, address specific space and program needs within the district facilities, add space to the existing Middle School to address district-wide capacity needs and construction of a new transportation facility.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:  
*(Provide total and, if known, a line item breakdown.)*

Total Project Budget = **Ballot Question #1:** \$37,500,000.00 **Ballot Question #2:** \$6,800,000.00

§ 1.1.4 The Owner's anticipated design and construction schedule:  
*(Paragraph deleted)*

.1 Bond Referendum: November 2, 2021

init.

*(Paragraph deleted)*

.2 Design Phase: November 2021 – July 2022

*(Paragraph deleted)*

.3 Bidding: Summer of 2022

.4 Construction Phase: Fall 2022 – Summer 2024

.5 Occupancy: Fall 2024

§ 1.1.5 The Owner intends the following procurement method for the Project:  
*(Identify method such as competitive bid, negotiated Contract or multiple Prime Contracts.)*

Multiple Prime Contractors

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:  
*(List number and type of bid/procurement packages.)*

N/A

§ 1.1.7 Other Project information:  
*(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)*

N/A

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.5:  
*(List name, address and other information.)*

Mr. Kevin Januszewski, Director of Business Services  
Becker Public Schools the "District"  
Independent School District #726  
12000 Hancock Street  
Becker, MN 55308

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:  
*(List name, address and other information.)*

N/A

§ 1.1.10 Unless provided by the Construction Manager, the Owner will retain the following consultants and contractors:  
*(List name, legal status, address and other information.)*

.1 Land Surveyor:

TBD

.2 Geotechnical Engineer:

TBD

Init.

AIA Document C132™ – 2009 (formerly B801™ CMA – 1992). Copyright © 1973, 1980, 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 10:25:44 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.

User Notes:

.3 Civil Engineer:

TBD

.4 Other:

*(List any other consultants retained by the Owner, such as a Project or Program Manager, or construction contractor.)*

Program Manager: ICS (ICS)

§ 1.1.11 The Construction Manager identifies the following representative in accordance with Section 2.4:  
*(List name, address and other information.)*

Mr. Pat Overom, ICS Partner  
ICS  
1331 Tyler Street N.E., Suite 101  
Minneapolis, MN 55413

§ 1.1.12 The Construction Manager’s staffing plan as required under Section 3.3.2 shall include:  
*(List any specific requirements and personnel to be included in the staffing plan, if known.)*

TBD

§ 1.1.13 The Construction Manager’s consultants retained under Basic Services, if any:

.1 Cost Estimator:

*(List name, legal status, address and other information.)*

N/A

.2 Other consultants:

TBD

§ 1.1.14 The Construction Manager’s consultants retained under Additional Services:

TBD

§ 1.1.15 Other Initial Information on which the Agreement is based:

N/A

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the schedules, the Construction Manager’s services and the Construction Manager’s compensation.

**ARTICLE 2 CONSTRUCTION MANAGER’S RESPONSIBILITIES**

§ 2.1 The Construction Manager shall provide the services as set forth in this Agreement.

Init.

§ 2.2 The Construction Manager shall perform its services consistent with the skill and care ordinarily provided by skilled and experienced construction managers practicing in the same or similar locality under the same or similar circumstances. The Construction Manager shall perform its services as expeditiously as is consistent with such skill and care, and the orderly progress of the Project. The Construction Manager shall put forth reasonable efforts to complete its duties in a timely manner. The Construction Manager shall not be responsible for delays caused by factors beyond its control or that could not be reasonably foreseen at the time of execution of this Contract.

§ 2.3 The Construction Manager shall provide its services in conjunction with the services of an Architect as described in AIA Document B132™-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition as modified. ICS as Construction Manager shall not be responsible for actions taken by the Architect.

§ 2.4 The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.5 Except with the Owner's knowledge and consent, the Construction Manager shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Construction Manager's judgment with respect to this Project.

§ 2.6 The Construction Manager shall maintain the following insurance, including the minimum coverages and limits of liability specified below, or as specified in the applicable insurance certificate(s), or as required by law, whichever is greater, for the relevant claims period for this Project at the Construction Manager's expense. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

COVERAGES	LIMITS OF LIABILITY
Workers' Compensation, including Employer's Liability Insurance	Statutory
Comprehensive General Bodily Injury Liability Insurance, including Contractual	\$1,000,000
Comprehensive General Property Damage Liability Insurance, including Contractual	\$1,000,000 Per Claim \$2,000,000 Aggregate
Comprehensive Automobile Injury Liability Insurance	\$500,000 Per Claim \$500,000 Aggregate
Comprehensive Automobile Property Damage Liability Insurance	\$500,000
Professional Liability Insurance	\$5,000,000 Per Claim \$5,000,000 Aggregate

*(Paragraphs deleted)*

§ 2.6.6 The Construction Manager shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will name the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies. Such proof of insurance shall confirm that the insurer has agreed that it will not cancel the insurance without giving the Owner thirty (30) days advance written notice of its intent to cancel. The Construction Manager shall likewise demand from its consultants' proof of insurance meeting the foregoing requirements as a conditions precedent to their engagement to perform services on the Project. The Construction Manager shall not commence work under this Contract until the Construction Manager has obtained all insurance required herein and such insurance has been approved by the Owner, nor shall the Construction Manager allow any subcontractor to commence work on a subcontract until such subcontractor has obtained like insurance. All this insurance coverage shall be maintained as set forth throughout the relevant claim period.

### ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

#### § 3.1 Definition

The Construction Manager's Basic Services consist of those described in Sections 3.2 and 3.3 and include usual and customary construction coordination and scheduling, constructability review, cost estimating, and allocation of construction activities among the Multiple Prime Contractors.

Init.

**§ 3.2 Preconstruction Phase**

**§ 3.2.1** The Construction Manager shall review the program furnished by the Owner and any evaluation of the Owner's program provided by the Architect, to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner and Architect.

**§ 3.2.2** The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

**§ 3.2.3** The Construction Manager shall prepare the following: (1) preliminary evaluations required in Section 3.2.2, (2) a Project schedule, (3) cost estimates, (4) recommendations for Project delivery method, and (5) Contractors' scopes of Work, if multiple Contractors or fast-track construction will be used. The Construction Manager shall periodically update the information over the course of the Project.

**§ 3.2.4** Based on preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems and may also provide its own suggestions.

**§ 3.2.5** The Construction Manager shall expeditiously review design documents during their development and advise the Owner and Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect on constructability, availability of materials and labor, sequencing for phased construction, time requirements for procurement, installation and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

**§ 3.2.6** The Construction Manager shall prepare and periodically update the Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and highlight items that could affect the Project's timely completion.

**§ 3.2.7** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement. The Construction Manager shall include appropriate contingencies in the estimates of the Cost of the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall advise the Owner and Architect if it appears that the Cost of the Work may exceed the Owner's budget and make recommendations for corrective action.

**§ 3.2.8** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations whenever the Construction Manager determines that design details adversely affect constructability, cost or schedules.

**§ 3.2.9** The Construction Manager shall provide recommendations and information to the Owner and Architect regarding the assignment of responsibilities for temporary Project facilities and equipment, materials and services for common use of the Contractors. The Construction Manager shall verify that such requirements and assignment of responsibilities are included in the proposed Contract Documents.

**§ 3.2.10** The Construction Manager shall provide recommendations and information to the Owner regarding the allocation of responsibilities for safety programs among the Contractors.

**§ 3.2.11** The Construction Manager shall coordinate with the Architect on the division of the Project into individual Contracts for the construction of various categories of Work. Because multiple Contracts are to be awarded where possible, the Construction Manager shall review the Drawings and Specifications and prepare scopes of Work with the Architects to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project are

init.

assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes is minimized, and (4) proper coordination is provided for phased construction. Construction Manager shall keep the Owner apprised of Construction Manager-proposed Work Scopes prior to finalizing the divisions of Work with the Prime Contractors.

§ 3.2.12 The Construction Manager shall update the Project schedule to include the components of the Work, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products, including those that must be ordered well in advance of construction, and the occupancy requirements of the Owner.

§ 3.2.13 The Construction Manager shall coordinate the ordering and delivery of materials, including those that must be ordered in advance of construction.

§ 3.2.14 The Construction Manager shall assist the Owner in selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required for the Project.

§ 3.2.15 The Construction Manager shall determine the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The Construction Manager shall make recommendations for actions designed to assist in impacting the adverse effects of labor shortages.

§ 3.2.16 The Construction Manager shall assist the Owner in obtaining information regarding applicable requirements for equal employment opportunity programs, and other programs as may be required by governmental and for quasi governmental authorities for inclusion in the Contract Documents.

§ 3.2.17 Following the Owner's approval of the Drawings and Specifications, the Construction Manager shall update and submit the latest estimate of the Cost of the Work and the Project schedule for the Architect's review and the Owner's approval.

§ 3.2.18 The Construction Manager shall submit the list of prospective bidders for the Architect's review and the Owner's approval.

§ 3.2.19 The Construction Manager shall develop bidders' interest in the Project and establish bidding schedules "in accordance with Minnesota Statutes, Sections 123B.52 and 471.345, Municipal Public Bidding Acts ("Public Bidding").". The Construction Manager, with the assistance of the Architect, shall issue bidding documents to bidders and conduct pre-bid conferences with prospective bidders. The Construction Manager shall issue the current Project schedule with each set of bidding documents. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda.

§ 3.2.20 The Construction Manager shall receive bids, prepare bid analyses and make recommendations to the Owner for the Owner's award of Contracts or rejection of bids.

§ 3.2.21 The Construction Manager shall assist the Owner in preparing Construction Contracts and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Multiple Prime Contractors.

§ 3.2.22 The Construction Manager shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the various Multiple Prime Contractors. The Construction Manager shall verify that the Owner has paid applicable fees and assessments. The Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

### § 3.3 Construction Phase Administration of the Construction Contract

§ 3.3.1 Subject to Section 4.3, the Construction Manager's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.3.2 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed.

Init.

§ 3.3.3 The Construction Manager shall provide on-site administration of the Contracts for Construction in cooperation with the Architect as set forth below and in AIA Document A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified. If the Owner and Contractor modify AIA Document A232–2009, those modifications shall not affect the Construction Manager’s services under this Agreement unless the Owner and the Construction Manager amend this Agreement.

§ 3.3.4 The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Multiple Prime Contractors with each other and with those of the Construction Manager, the Owner and the Architect. The Construction Manager shall coordinate the activities of the Multiple Prime Contractors in accordance with the latest approved Project schedule and the Contract Documents.

§ 3.3.5 Utilizing the construction schedules provided by the Multiple Prime Contractors, the Construction Manager shall update the Project schedule, incorporating the activities of the Owner, Architect, and Multiple Prime Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery and procurement of products, including those that must be ordered well in advance of construction. The Project schedule shall include the Owner’s occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project schedule as required to show current conditions. If an update indicates that the previously approved Project schedule may not be met, the Construction Manager shall recommend corrective action, if any, to the Owner and Architect.

§ 3.3.6 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Architect and Multiple Prime Contractors.

§ 3.3.7 Utilizing information from the Multiple Prime Contractors, the Construction Manager shall schedule and coordinate the sequence of construction and assignment of space in areas where the Multiple Prime Contractors are performing Work, in accordance with the Contract Documents and the latest approved Project schedule.

§ 3.3.8 The Construction Manager shall assist the Owner in scheduling all tests and inspections required by the Contract Documents or governmental authorities, and arrange for the delivery of test and inspection reports to the Owner and Architect.

§ 3.3.9 The Construction Manager shall diligently endeavor to obtain satisfactory performance from each of the Multiple Prime Contractors. The Construction Manager shall recommend courses of action to the Owner when requirements of a Contract are not being fulfilled.

§ 3.3.10 The Construction Manager shall monitor and evaluate actual costs for activities in progress and estimates for uncompleted tasks and advise the Owner and Architect as to variances between actual and budgeted or estimated costs. If the Contractor is required to submit a Control Estimate, the Construction Manager shall meet with the Owner and Contractor to review the Control Estimate. The Construction Manager shall promptly notify the Contractor if there are any inconsistencies or inaccuracies in the information presented. The Construction Manager shall also report the Contractor’s cost control information to the Owner.

§ 3.3.11 The Construction Manager shall develop cash flow reports and forecasts for the Project.

§ 3.3.12 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.

§ 3.3.12.1 The Construction Manager shall develop and implement procedures for the review and processing of Applications for Payment by Multiple Prime Contractors for progress and final payments.

§ 3.3.12.2 Not more frequently than monthly, the Construction Manager shall review and certify the amounts due the respective Contractors as follows:

- .1 Where there is only one Contractor responsible for performing the Work, the Construction Manager shall, within seven days after the Construction Manager receives the Contractor’s Application for

- Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect.
2. Where there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall, within seven days after the Construction Manager receives each Contractor's Application for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each Contractor, (2) prepare a Summary of Contractors' Applications for Payment by summarizing information from each Contractor's Application for Payment, (3) prepare a Project Application and Certificate for Payment, (4) certify the total amount the Construction Manager determines is due all Multiple Prime Contractors collectively, and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 3.3.12.3 The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's evaluations of the Work and on the data comprising the Contractors' Applications for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Construction Manager. The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 3.3.12.4 The certification of an Application for Payment or a Project Application for Payment by the Construction Manager shall not be a representation that the Construction Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences for the Contractor's own Work, or procedures; (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. The certification of an application for payment shall constitute the Construction Manager's representation to the Owner that the Construction Manager has reported to the Owner and the Architect all defects in the Work or deviations from the Contract Documents that have been observed by or reported to the Construction Manager.

§ 3.3.13 The Construction Manager shall review the safety programs developed by each of the Multiple Prime Contractors solely and exclusively for purposes of coordinating the safety programs with those of the other Contractors and for making recommendations to the Owner for any safety programs not included in the Work of the Multiple Prime Contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractor, Multiple Prime Contractors, Subcontractors, agents or employees of the Contractors or Multiple Prime Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 3.3.14 The Construction Manager shall determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. The Construction Manager shall have the authority to reject Work that does not conform to the Contract Documents and shall notify the Architect about the rejection. The failure of the Construction Manager to reject Work shall not constitute the acceptance of the Work. The Construction Manager shall record any rejection of Work in its daily log and include information regarding the rejected Work in its progress reports to the Architect and Owner pursuant to Section 3.3.20.1. Upon written authorization from the Owner, the Construction Manager may require and make arrangements for additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed, and the Construction Manager shall give timely notice to the Architect of when and where the tests and inspections are to be made so that the Architect may be present for such procedures.

§ 3.3.15 The Construction Manager shall advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Construction Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and

Init.

AIA Document C132™ – 2009 (formerly B801™ CMA – 1992). Copyright © 1973, 1980, 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 10:25:44 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.

User Notes:

programs in connection with the Work of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Construction Manager shall not be responsible for a Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall be responsible for the Construction Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or Multiple Prime Contractors, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. Nothing in this section is intended to limit the Construction Manager's duty to report to the Owner and the Architects all defects in the Work or deviations from the Contract Documents that have been observed by or reported to the Construction Manager. Nothing in this section is intended, or shall be construed to, negate or limit the Construction Manager's duties to the Owner in Section 2.2.

§ 3.3.16 The Construction Manager shall transmit to the Architect requests for interpretations and requests for information of the meaning and intent of the Drawings and Specifications with its written recommendation, and assist in the resolution of questions that may arise.

§ 3.3.17 The Construction Manager shall review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Architect and Owner, and, if they are accepted, prepare Change Orders and Construction Change Directives that incorporate the Architect's modifications to the Contract Documents.

§ 3.3.18 The Construction Manager shall assist the Initial Decision Maker in the review, evaluation and documentation of Claims, subject to Section 4.3.1.7.

§ 3.3.19 Utilizing the submittal schedules provided by each Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from the Owner, Owner's consultants, Owner's separate contractors and vendors, governmental agencies, and all other participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval. The Construction Manager shall promptly review all Shop Drawings, Product Data, Samples and other submittals from the Multiple Prime Contractors for compliance with the submittal requirements of the Contract, coordinate submittals with information contained in related documents, and transmit to the Architect those that the Construction Manager recommends for approval. The Construction Manager's actions shall be taken in accordance with the Project submittal schedule approved by the Architect, or in the absence of an approved Project submittal schedule, with such reasonable promptness as to cause no delay in the Work or in the activities of the Contractor, other Multiple Prime Contractors, the Owner, or the Architect.

§ 3.3.20 The Construction Manager shall keep a log containing a record of weather, each Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require.

§ 3.3.20.1 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall update the Owner and Architect, showing percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of remaining and outstanding submittals;
- .4 Request for information, Change Order, and Construction Change Directive status reports;
- .5 Tests and inspection reports;
- .6 Status report of nonconforming and rejected Work;
- .7 Daily logs;
- .8 Summary of all Multiple Prime Contractors' Applications for Payment;
- .9 Cumulative total of the Cost of the Work to date including the Construction Manager's compensation and reimbursable expenses at the job site, if any;
- .10 Cash-flow and forecast reports; and
- .11 Any other items the Owner may require:

Init.

§ 3.3.20.2 In addition, for Projects constructed on the basis of the Cost of the Work, the Construction Manager shall include the following additional information in its updates:

- .1 Contractor's work force report;
- .2 Equipment utilization report;
- .3 Cost summary, comparing actual costs to updated cost estimates; and
- .4 Any other items as the Owner may require:

§ 3.3.21 Utilizing the documents provided by the Contractor, the Construction Manager shall maintain at the site one copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record all changes and selections made during construction, and in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. The Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. The Construction Manager shall make all such records available to the Architect and the Contractor, and upon completion of the Project, shall deliver them to the Owner.

§ 3.3.22 The Construction Manager shall arrange for the delivery, storage, protection and security of Owner-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Work.

§ 3.3.23 With the Architect and the Owner's maintenance personnel, the Construction Manager shall observe the Contractor's or Multiple Prime Contractors' final testing and start-up of utilities, operational systems and equipment and observe any commissioning as the Contract Documents may require.

§ 3.3.24 When the Construction Manager considers each Contractor's Work or a designated portion thereof is substantially complete, the Construction Manager shall, jointly with the Contractor, prepare for the Architect a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager shall assist the Architect in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.

§ 3.3.25 When the Work or designated portion thereof is substantially complete, the Construction Manager shall prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion. The Construction Manager shall submit the executed Certificate to the Owner and Contractor. The Construction Manager shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Contractor or Multiple Prime Contractors and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections.

§ 3.3.26 The Construction Manager shall forward to the Owner, with a copy to the Architect, the following information received from the Contractor or Multiple Prime Contractors: (1) certificates of insurance received from the Contractor or Multiple Prime Contractors; (2) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (3) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (4) any other documentation required of the Contractor under the Contract Documents, including warranties and similar submittals.

§ 3.3.27 The Construction Manager shall deliver all keys, manuals, record drawings and maintenance stocks to the Owner. The Construction Manager shall forward to the Architect a final Project Application for Payment and Project Certificate for Payment or final Application for Payment and final Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

§ 3.3.28 Duties, responsibilities and limitations of authority of the Construction Manager as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Construction Manager, Architect, Contractor and Multiple Prime Contractors. Consent shall not be unreasonably withheld.

Init.

AIA Document C132™ – 2009 (formerly B801™ CMA – 1992). Copyright © 1973, 1980, 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 10:25:44 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.

User Notes:

§ 3.3.29 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Construction Manager shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

§ 3.3.30 To the extent not addressed in the foregoing, the following shall be included as Basic Services by the Construction Manager. To the extent these address the same item described in the foregoing provisions, the duties will be read in combination. If they cannot be read consistently, the more specific provision will prevail. If an ambiguity or inconsistency remains, the following provisions shall prevail. Construction Manager shall:

1. Interact with the Owner and Architect during the course of the design process to provide advice regarding constructability, value engineering, and evaluation of design options.
2. Provide periodic updates of detailed construction estimate as design progresses to the Owner and Architect.
3. Develop construction phasing schedule and detailed construction schedule.
4. Determine the bid package organization for the Project.
5. Prepare a detailed scope of Work document to clarify the Work required for each individual bid package.
6. Perform final review of and assemble all the necessary bid package documents. Make bid packages available for bidders.
7. Handle pre-bid conferences, questions, site visits, etc. during the bid process.
8. Assist Owner in bid opening process and bid evaluation. Construction Manager shall review bids and make recommendations to the Owner. The Owner, in its discretion, may accept or reject any or all bids.
9. Manage, coordinate and oversee all construction activity and construction scheduling.
10. Administrate the Project Contracts, including the review and certification of all Applications for Payment.
11. Have a qualified Project Superintendent present on job site during all construction activity.
12. Collect and compile maintenance and operation manuals and information sheets for all as-installed equipment and fixtures.
13. Provide written status reports to Owner and Architect on a mutually agreed schedule.
14. Interact and meet frequently with Owner and Architect representatives during both pre-construction and construction phases.
15. Attend meetings to assist Owner, if requested by Owner.
16. Manage, coordinate, apply for, and arrange for Owner to purchase all applicable construction permitting except any permits which the contractors are required to obtain directly.

**ARTICLE 4 ADDITIONAL SERVICES**

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Construction Manager shall provide the listed Additional Services only if specifically designated in the table below as the Construction Manager’s responsibility, and the Owner shall compensate the Construction Manager as provided in Section 11.2.

*(Designate the Additional Services the Construction Manager shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

Services	Responsibility <i>(Construction Manager, Owner or Not Provided)</i>	Location of Service Description <i>(Section 4.2 below or in an exhibit attached to this document and identified below)</i>
§ 4.1.1 Measured drawings	ICS	District-Wide
§ 4.1.2 Architectural interior design	ICS	District-Wide
§ 4.1.3 Tenant-related services	Not Provided	
§ 4.1.4 Commissioning	ICS	District-Wide
§ 4.1.5 LEED® certification (B214™-2012)	Not Provided	
§ 4.1.6 Furniture, furnishings, and equipment design	ICS	District-Wide

§ 4.2 Insert a description of each Additional Service designated in Section 4.1, if not further described in an exhibit attached to this document.

Init.

AIA Document C132™ – 2009 (formerly B801™ CMA – 1992). Copyright © 1973, 1980, 1992 and 2009 by The American Institute of Architects. All rights reserved. The “American Institute of Architects,” “AIA,” the AIA Logo, and “AIA Contract Documents” are registered trademarks and may not be used without permission. This document was produced by AIA software at 10:25:44 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.  
 User Notes:

N/A

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating this Agreement. Except for services required due to the fault of the Construction Manager, any Additional Services provided in accordance with this Section 4.3 shall entitle the Construction Manager to compensation pursuant to Section 11.3.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Construction Manager shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Construction Manager shall not proceed to provide the following services until the Construction Manager receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;
- .2 Services necessitated by the enactment or revision of codes, laws or regulations or official interpretations after the date of this Agreement;
- .3 Preparation of documentation for alternate bid or proposal requests proposed by the Owner;
- .4 Preparation for, and attendance at public presentations, meetings or hearings;
- .5 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Construction Manager is party thereto;
- .6 Providing consultation concerning replacement of Work resulting from fire or other cause during construction and furnishing services required in connection with the replacement of such Work;
- .7 Assistance to the Initial Decision Maker, if other than the Architect; or
- .8 Service as the Initial Decision Maker.

§ 4.3.2 To avoid delay in the Construction Phase, the Construction Manager shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Construction Manager, and the Owner shall have no further obligation to compensate the Construction Manager for those services:

- .1 Services in evaluating an extensive number of Claims submitted by a Contractor or others in connection with the Work when the Architect is serving as the Initial Decision Maker.
- .2 To the extent the Construction Manager's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier.
- .3 Services required in an emergency to coordinate the activities of a Contractor or Multiple Prime Contractors in the event of risk of personal injury or serious property damage, consistent with Section 3.3.13.

§ 4.3.3 If the services covered by this Agreement have not been completed within by September 2024, through no fault of the Construction Manager, extension of the Construction Manager's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including the Owner's program, other objectives, schedule, constraints and criteria, special equipment, systems, and site requirements.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

Init.

AIA Document C132™ – 2009 (formerly B801™ CMa – 1992). Copyright © 1973, 1980, 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 10:25:44 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.

User Notes:

§ 5.3 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it the risk of additional costs. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B132–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and Architect, and any further modifications to the agreement.

§ 5.5 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. In no event shall the Owner's representative have authority to agree to any adjustments in the Contract Sum or Contract Time. All adjustments to the Contract Sum or Contract Time require approval by the Owner's Board unless the Board expressly delegates in writing to the representative, defined authority to approve specified sums or times. The Owner shall render decisions pertaining to documents the Construction Manager submits in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services.

§ 5.6 Unless provided by the Construction Manager, the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.7 Unless provided by the Construction Manager, the Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Construction Manager. Upon the Construction Manager's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Construction Manager to furnish them as an Additional Service, when the Construction Manager requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Construction Manager and Architect if the Owner becomes aware of any fault or defect in Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service or any fault or defect in the Construction Manager's services.

§ 5.12 The Owner reserves the right to perform construction and operations related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are not part of the Construction Manager's responsibilities under this Agreement. The Construction Manager shall notify the Owner if any such independent action will interfere with the Construction Manager's ability to perform the Construction Manager's responsibilities under this Agreement. When performing construction or operations related to the Project, the Owner agrees to be subject to the same obligations and to have the same rights as the Contractors.

§ 5.13 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Construction Manager's

Init.

AIA Document C132™ – 2009 (formerly B801™ CMA – 1992). Copyright © 1973, 1980, 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 10:25:44 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail [copyright@aia.org](mailto:copyright@aia.org).  
User Notes:

(892491130)

14

consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Construction Manager of any direct communications that may affect the Construction Manager's services.

§ 5.14 Before executing the Contract for Construction, the Owner shall coordinate the Construction Manager's duties and responsibilities set forth in the Contract for Construction with the Construction Manager's services set forth in this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreements between the Owner and Contractors, including the General Conditions of the Contracts for Construction.

§ 5.15 The Owner shall provide the Construction Manager access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Construction Manager access to the Work wherever it is in preparation or progress.

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the contractors' general conditions costs, overhead and profit. The Cost of the Work includes the compensation of the Construction Manager and Construction Manager's Consultants during the Construction Phase only, including compensation for reimbursable expenses at the job site, if any. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2 and 6.4. Evaluations of the Owner's budget, preliminary estimates for the Cost of the Work and detailed estimates of the Cost of the Work prepared by the Construction Manager represent the Construction Manager's judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the budget proposed, established or approved by the Owner, or from any cost estimate or evaluation prepared by the Construction Manager.

§ 6.3 If the Architect is providing detailed cost estimating services as an Additional Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work cooperatively to conform the cost estimates to one another.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Construction Manager, in consultation with the Architect, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Construction Manager and Architect in making such adjustments.

§ 6.5 If the estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 in consultation with the Construction Manager and Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .3 implement any other mutually acceptable alternative.

## ARTICLE 7 COPYRIGHTS AND LICENSES

The Owner and Construction Manager agree that the work product the Construction Manager creates during its performance of the Contract is proprietary information and may be copyrighted by the Construction Manager. The Owner shall not sell, share, or distribute the Construction Manager's work product to any party, individual or entity. The Owner has no right or title to the work product and shall not use the work product for any purpose other than those purposes directly benefitting the project described in the Contract. Construction Manager has the right to use, reproduce, and to make derivative works from documents and other data generated or collected during the performance of its services. If the Construction Manager seeks to use information collected during its performance of this Contract that is specific to the Owner and that is classified as public, or private, or confidential information under

AIA Document C132™ – 2009 (formerly B801™ CMA – 1992). Copyright © 1973, 1980, 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 10:25:44 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.

User Notes:

the Minnesota Government Data Practices Act (MGDPA), the consent of the Owner and, as to private or confidential data, the consent of the subject of the data shall be required to use such information, and the Owner or the subject of the data may elect not to provide consent to the Construction Manager. Notwithstanding anything in the Contract to the contrary, the Construction Manager shall comply with all requirements of the MGDPA, and the Construction Manager understands and agrees that data created, collected, received, stored, used, maintained, or disseminated by it in performing its services are subject to the requirements of the MGDPA. The Owner is entitled to keep electronic and hard copies of the Construction Manager's work product, including plans, specifications, and construction documents, created pursuant to the Contract. The Owner may, after receiving the Construction Manager's written approval, provide such documents to other professional service providers the District may retain after the Construction Manager's services under the Contract are completed to assist with the construction, repair, maintenance, and preservation of its properties. Nothing in this Contract shall be construed to limit the Owner's ability to fully comply with its obligations under the MGDPA, including its obligations to respond to requests for data.

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 General**

**§ 8.1.1** The Owner and Construction Manager shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law.

**§ 8.1.2** To the extent damages are covered by property insurance, the Owner and Construction Manager waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232-2009, General Conditions of the Contract for Construction. The Owner or the Construction Manager, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

**§ 8.1.3** The Construction Manager shall indemnify, defend and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent, intentional or otherwise wrongful acts or omissions of the Construction Manager, its employees and its consultants in the performance of professional services under this Agreement. All indemnification obligations shall survive termination, expiration or cancellation of this Contract. The Construction Manager agrees, that in order to protect itself and the Owner under the indemnity provisions set forth above, it will at all times during the term of this contract keep in force policies of insurances required in the Paragraph entitled, "Insurance." Nothing in this Contract shall be construed to waive any immunities or limitations to which Owner is entitled under Minnesota Statute, Chapter 466 or otherwise.

**§ 8.1.4** To the extent permitted by law, the Owner shall indemnify, defend and hold the Construction Manager and the Construction Manager's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent, intentional or otherwise wrongful acts or omissions of the Owner and its employees in the performance of the Owner's obligations under this Agreement. All indemnification obligations shall survive termination, expiration or cancellation of this Contract. The Owner agrees, that in order to protect itself and the Construction Manager under the indemnity provisions set forth above, it will at all times during the term of this Contract keep in force policies of insurance required in the Paragraph entitled, "Insurance." Nothing in this Contract shall be construed to waive any immunities or limitations to which Owner is entitled under Minnesota Statute, Chapter 466 or otherwise.

### **§ 8.2 Mediation**

**§ 8.2.1** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation. Mediation is not a condition precedent to commencing litigation. If litigation is commenced, the parties agree to mediate within six (6) months after notice of the claim, dispute or other matter in question is provided to the other party, or thirty (30) days before the hearing date for any dispositive motion, whichever is earlier.

*(Paragraph deleted)*

Init.

AIA Document C132™ – 2009 (formerly B801™ CMA – 1992). Copyright © 1973, 1980, 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 10:25:44 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail [copyright@aia.org](mailto:copyright@aia.org).  
User Notes:

(892491130)

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: *(Specify)*

*(Paragraphs deleted)*

#### **ARTICLE 9 TERMINATION OR SUSPENSION**

§ 9.1 Termination or suspension is pursuant to Article 9 in AIA Document B132™-2009 dated September 14, 2021.

*(Paragraphs deleted)*

#### **ARTICLE 10 MISCELLANEOUS PROVISIONS**

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2009, General Conditions of the Contract for Construction, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Construction Manager.

§ 10.3 The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Construction Manager to execute certificates, the proposed language of such certificates shall be submitted to the Construction Manager for review at least 14 days prior to the requested dates of execution. If the Owner requests the Construction Manager to execute consents reasonably required to facilitate assignment to a lender, the Construction Manager shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Construction Manager for review at least 14 days prior to execution. The Construction Manager shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Construction Manager.

§ 10.6 Unless otherwise required in this Agreement, the Construction Manager shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 Upon Owner's consent, the Construction Manager shall have the right to include photographic or artistic representations of the design of the Project among the Construction Manager's promotional and professional materials. The Construction Manager shall be given reasonable access to the completed Project to make such representations. However, the Construction Manager's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Construction Manager in writing of the specific

**AIA Document C132™ – 2009 (formerly B801™ CMA – 1992).** Copyright © 1973, 1980, 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 10:25:44 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail [copyright@aia.org](mailto:copyright@aia.org).

**User Notes:**

information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Construction Manager in the Owner's promotional materials for the Project.

**§ 10.8** Subject to any applicable requirements of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, if Owner or the Construction Manager receive information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

**§ 10.9 Modifications/Amendment.** The Contract can only be amended or modified by a writing signed by authorized representatives of the Owner and the Construction Manager.

**§ 10.10 Audit Clause Pursuant to Minnesota Statutes, Section 16C.05, subd. 5,**

The books, records, documents, and accounting procedures and practices of the Construction Manager that are relevant to the Contract are subject to examination by the Owner and either the legislative auditor or the state auditor, as appropriate, for a minimum of six years. If the Owner requests that the state auditor examine the books, records, documents, and accounting procedures and practices of the Construction Manager, the Owner shall be liable for the cost of the examination.

**§ 10.11 Compliance with Laws.** The Construction Manager shall abide by all applicable Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Contract.

**§ 10.12 Notice Pursuant to Minnesota Statutes, Section 181.59.**

The Owner and Construction Manager agree that the contractual agreement(s) between the Owner and any Contractor performing work on a Project pursuant to this Contract shall contain provisions by which the Contractor agrees:

- (1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;
- (2) That no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;
- (3) That a violation of this section is a misdemeanor; and
- (4) That this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

**§ 10.13 Governmental Notice Pursuant to Minnesota Statute 13.05, subd. 11:**

- (a) If a government entity enters into a contract with a private person to perform any of its functions, all of the data created, collected, received, stored, used, maintained, or disseminated by the private person in performing those functions is subject to the requirements of this chapter and the private person must comply with those requirements as if it were a government entity. All contracts entered into by a government entity must include a notice that the requirements of this subdivision apply to the contract. Failure to include the notice in the contract does not invalidate the application of this subdivision. The remedies in section 13.08 apply to the private person under this subdivision.

Init.

(b) This subdivision does not create a duty on the part of the private access to public data to the public if the public data are available from the government entity, except as required by the terms of the contract.

**§ 10.14 No Waiver.** Unless otherwise specified in the Contract, any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Contract or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this Contract. Any express waiver of a term of this Contract shall not be binding and effective unless made in writing and properly executed by the waiving Party.

**ARTICLE 11 COMPENSATION**

**§ 11.1** For the Construction Manager's Basic Services described under Article 3, the Owner shall compensate the Construction Manager as follows:

See Article 11 in AIA Document B132™-2009 dated September 14, 2021.

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

**ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Agreement are as follows:

N/A

**ARTICLE 13 SCOPE OF THE AGREEMENT**

**§ 13.1** This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

**§ 13.2** This Agreement is comprised of the following documents listed below:

.1 AIA Document C132™-2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser – as modified.

.2 AIA Document

*(Paragraphs deleted)*

B132™-2009, Standard Form of Agreement Between Owner and ICS, Construction Manager as Adviser Edition

This Agreement is entered into as of the day and year first written above.

\_\_\_\_\_  
**OWNER** *(Signature)*

Mr. Kevin Januszewski, Director of Business Services  
*(Printed name and title)*

\_\_\_\_\_  
**ICS** *(Signature)*

Mr. Dave Bergeron, ICS Partner  
*(Printed name and title)*

Init.



# AIA® Document B132™ – 2009

## **Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition**

**AGREEMENT** made as of the Fourteenth day of September in the year Two Thousand Twenty-One  
*(In words, indicate day, month and year.)*

**BETWEEN** ICS's client identified as the Owner:  
*(Name, legal status, address and other information)*

Becker Public Schools (the "District")  
Independent School District #726  
12000 Hancock Street  
Becker, MN 55308

and ICS (ICS):  
*(Name, legal status, address and other information)*

ICS (ICS)  
1331 Tyler Street N.E., Suite 101  
Minneapolis, MN 55413

for the following Project:  
*(Name, location and detailed description)*

District-wide additions, remodeling and deferred maintenance improvements. Also, a new transportation facility.

The Construction Manager:  
*(Name, legal status, address and other information)*

ICS (ICS)  
1331 Tyler Street N.E., Suite 101  
Minneapolis, MN 55413

The Owner and ICS agree as follows.

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A132™–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and C132™–2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232™–2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

AIA Document B132™ – 2009. Copyright 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 09:53:58 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail [copyright@aia.org](mailto:copyright@aia.org).

User Notes:

(3B9ADA6C)

**TABLE OF ARTICLES**

- 1 INITIAL INFORMATION**
- 2 ICS'S RESPONSIBILITIES**
- 3 SCOPE OF ICS'S BASIC SERVICES**
- 4 ADDITIONAL SERVICES**
- 5 OWNER'S RESPONSIBILITIES**
- 6 COST OF THE WORK**
- 7 COPYRIGHTS AND LICENSES**
- 8 CLAIMS AND DISPUTES**
- 9 TERMINATION OR SUSPENSION**
- 10 MISCELLANEOUS PROVISIONS**
- 11 COMPENSATION**
- 12 SPECIAL TERMS AND CONDITIONS**
- 13 SCOPE OF THE AGREEMENT**

**ARTICLE 1 INITIAL INFORMATION**

**§ 1.1** This Agreement is entered into between Owner and ICS, a professional Construction Management firm, and is based on the Initial Information set forth in this Section 1.1, entitled, *Initial Information, and Exhibit A to this Agreement, entitled AIA Document C132™ - 2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser. Exhibit A is expressly incorporated into this Agreement as if fully set forth herein.*

**§ 1.1.1** The Owner's program for the Project:  
*(Identify documentation or state the manner in which the program will be developed.)*

MDE Positive Review & Comment dated August 3, 2021.

**§ 1.1.2** The Project's physical characteristics:  
*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)*

The proposed facilities improvements will allow Becker Public Schools to address current physical and programmatic space needs at the Primary, Intermediate, Middle and High School facilities. Major components of the proposed improvements include: District-wide deferred maintenance improvements, address specific space and program needs within the district facilities, add space to the existing Middle School to address district-wide capacity needs and construction of a new transportation facility.

**§ 1.1.3** The Owner's budget for the Cost of the Work, as defined in Section 6.1:  
*(Provide total and, if known, a line item breakdown.)*

Init.

Total Project Budget = **Ballot Question #1:** \$37,500,000.00 **Ballot Question #2:** \$6,800,000.00

**§ 1.1.4** The Owner's anticipated design and construction schedule:

- .1 Bond Referendum:  
November 2, 2021
- .2 Design Phase:  
November 2021 - July 2022
- .3 Bidding:  
Summer of 2022
- .4 Construction Phase:  
Fall 2022 – Summer 2024
- .5 Occupancy:  
Fall 2024

**§ 1.1.5** The Owner intends to retain a Construction Manager adviser and:

*(Note that, if Multiple Prime Contractors are used, the term "Contractor" as referred to throughout this Agreement will be as if plural in number.)*

- One Contractor
- Multiple Prime Contractors
- Unknown at time of execution

**§ 1.1.6** The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:

*(List number and type of bid/procurement packages.)*

N/A

**§ 1.1.7** Other Project information:

*(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)*

N/A

**§ 1.1.8** The Owner identifies the following representative in accordance with Section 5.3:

*(List name, address and other information.)*

Mr. Kevin Januszewski, Director of Business Services  
Becker Public Schools (the "District")  
Independent School District #726  
12000 Hancock Street  
Becker, MN 55308

**§ 1.1.9** The persons or entities, in addition to the Owner's representative, who are required to review ICS's submittals to the Owner are as follows:

*(List name, address and other information.)*

N/A

Init.

**AIA Document B132™ – 2009.** Copyright 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 09:53:58 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail [copyright@aia.org](mailto:copyright@aia.org).  
**User Notes:**

(3B9ADA6C)

§ 1.1.10 The Owner will retain the following consultants:  
(List name, legal status, address and other information.)

- .1 Construction Manager: The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention:

ICS

- .2 Cost Consultant (if in addition to the Construction Manager):  
(If a Cost Consultant is retained, appropriate references to the Cost Consultant should be inserted in Sections 3.2.6, 3.2.7, 3.3.2, 3.3.3, 3.4.5, 3.4.6, 5.4, 6.3, 6.3.1, 6.4 and 11.6.)

ICS

- .3 Land Surveyor:

TBD

- .4 Geotechnical Engineer:

TBD

- .5 Civil Engineer:

TBD

- .6 Other consultants:  
(List any other consultants retained by the Owner, such as a Project or Program Manager, or scheduling consultant.)

TBD

§ 1.1.11 ICS identifies the following representative in accordance with Section 2.4:  
(List name, address and other information.)

Pat Overom, ICS Partner  
ICS  
1331 Tyler Street N.E., Suite 101  
Minneapolis, MN 55413

§ 1.1.12 ICS will retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:  
(List name, legal status, address and other information.)

§ 1.1.12.1 Consultants retained under Basic Services:

- .1 Structural Engineer:

TBD

Init.

AIA Document B132™ – 2009. Copyright 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 09:53:58 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail [copyright@aia.org](mailto:copyright@aia.org).  
User Notes: (3B9ADA6C)

4

.2 Mechanical Engineer:

Obernel Engineering  
1331 Tyler Street N.E., Suite 201  
Minneapolis, MN 55413

.3 Electrical Engineer:

Obernel Engineering  
1331 Tyler Street N.E., Suite 201  
Minneapolis, MN 55413

.4 Program Management and Construction Management Services:

ICS  
1331 Tyler Street N.E., Suite 101  
Minneapolis, MN 55413

.5 Architect:

MLA Architects  
12 Long Lake Road, Suite 17  
St. Paul, MN 55115

.6 Civil Engineer:

TBD

§ 1.1.12.2 Consultants retained under Additional Services:

TBD

§ 1.1.13 Other Initial Information on which the Agreement is based:

TBD

§ 1.2 The Owner and ICS may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change, and, in that event, the Owner and ICS shall appropriately adjust ICS's services, schedule for ICS's services, and ICS's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.2.1 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, any third party against either the Owner or ICS.

Init.

**AIA Document B132™ – 2009.** Copyright 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 09:53:58 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail [copyright@aia.org](mailto:copyright@aia.org).  
**User Notes:**

(3B9ADA6C)

§ 1.2.2 ICS and Owner understand and agree that AIA documents shall be used for Owner's contracts with its contractors. ICS shall prepare the construction agreement forms for all appropriate contractors, and the Owner shall execute and procure construction agreements with all appropriate contractors.

§ 1.2.3 The parties understand and agree that ICS does not represent or warrant the quality or acceptability of any previous work performed at the Project site and that ICS shall be entitled to additional compensation arising from unforeseen and/or concealed conditions arising from the previous work.

**ARTICLE 2 ICS'S RESPONSIBILITIES**

§ 2.1 ICS shall provide professional services as set forth in this Agreement and in Exhibit A. The parties understand and agree that ICS and its sub consultants will provide design, engineering and construction management services for the Project.

§ 2.2 The parties understand and agree that the architect and engineers of record for the Project are sub consultants to ICS and that ICS shall not perform architectural or engineering services for which it is not appropriately licensed.

§ 2.3 ICS and its subconsultants (unless otherwise referenced "ICS" shall mean ICS and all of its subconsultants) shall perform its services consistent with the professional skill and care ordinarily provided by reputable, experienced licensed professionals practicing in the same or similar locality under the same or similar circumstances. ICS shall perform services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

ICS shall put forth reasonable efforts to complete its duties in a timely manner. ICS shall not be responsible for delays caused by factors beyond its control or that could not be reasonably foreseen at the time of execution of this Contract. ICS shall be responsible for costs, delays or damages arising from unreasonable delays in the performance of its duties.

§ 2.4 ICS shall identify a representative authorized to act on behalf of ICS with respect to the Project.

§ 2.5 Owner acknowledges that ICS will act as both Construction Manager and lead of the Project design team. ICS agrees to avoid conflicts of interest and to disclose to Owner when ICS identifies conflicts of interest in advising Owner with the candor necessary for each of the dual roles it undertakes for this Project.

§ 2.6 ICS shall maintain the following insurance, including the minimum coverages and limits of liability specified below, or as specified in the applicable insurance certificate(s), or as required by law, whichever is greater, for the relevant claims period for this Project ICS, individually, shall verify that its design professional subconsultants maintain these insurance coverage amounts. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost.

*(Paragraphs Deleted)*

<b>COVERAGES</b>	<b>LIMITS OF LIABILITY</b>
Workers' Compensation, including Employer's Liability Insurance	Statutory
Comprehensive General Bodily Injury Liability Insurance, including Contractual	\$1,000,000
Comprehensive General Property Damage Liability Insurance, including Contractual	\$1,000,000 Per Claim \$2,000,000 Aggregate
Comprehensive Automobile Injury Liability Insurance	\$500,000 Per Claim \$500,000 Aggregate
Comprehensive Automobile Property Damage Liability Insurance	\$500,000
Professional Liability Insurance	\$5,000,000 Per Claim \$5,000,000 Aggregate

*(Paragraphs Deleted)*

Init.

AIA Document B132™ – 2009. Copyright 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 09:53:58 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org. (3B9ADA6C)

§ 2.6.6 ICS shall provide to the Owner certificates of insurance evidencing compliance with the requirements in Section 2.6. The certificates will name the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies. Such proof of insurance shall confirm that the insurer has agreed that it will not cancel the insurance without giving the Owner thirty (30) days advance written notice of its intent to cancel. ICS shall likewise demand from its consultants' proof of insurance meeting the foregoing requirements as a condition precedent to their engagement to perform services on the Project. ICS shall not commence work under this Contract until ICS has obtained all insurance required herein and such insurance has been approved by the Owner, nor shall ICS allow any subconsultant to commence work on a subcontract until such subconsultant has obtained like insurance. All this insurance coverage shall be maintained throughout the life of this Contract.

§ 2.6.7 ICS's policies shall be primary insurance to any other valid and collectible insurance available to the Owner with respect to any claim arising out of ICS's performance under this Contract. ICS is responsible for payment of Contract related insurance premiums and deductibles. ICS's policies shall include legal defense fees in addition to its liability policy limits, with the exception of the professional liability insurance. All policies listed above, except professional liability, shall be written on an "occurrence" form ("claims made" and "modified occurrence" forms are not acceptable) and shall apply on a "per project" basis. ICS Shall obtain insurance policies from insurance companies having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota.

### ARTICLE 3 SCOPE OF ICS'S BASIC SERVICES

§ 3.1 ICS shall provide design services through licensed sub consultants, including customary architectural, structural, mechanical, civil and electrical engineering services, and any other services necessary to produce a complete set of Construction Documents. The parties agree and understand that all other architectural services shall be provided by the architect or engineer of record as a consultant to ICS. It is understood by the Owner and ICS that contracts for such professional services are not subject to competitive bidding requirements. All professionals providing such services whether directly by ICS or under a sub consultant contract with ICS shall be qualified, and where required, properly licensed and/or certified to perform these services. Upon the Owner's request, ICS shall furnish copies of the scope of sub consulting services in the contract between ICS and ICS's sub consultants. Owner may object to any subconsultant provision that has the effect of diminishing or conflicting with the Owner's best interests on the Project.

§ 3.1.1 ICS shall manage ICS's professional services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 ICS shall coordinate its services with those services provided by the Owner and the Owner's consultants. ICS shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's other consultants provided, however, that ICS must verify the accuracy of information obtained regarding public utility facility location. Owner makes no warranty as to their accuracy. ICS shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, ICS shall submit for the Owner's approval a schedule for the performance of ICS's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project.  
*(Paragraph Deleted)*

Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by ICS or Owner. With the Owner's approval, ICS shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 ICS shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without ICS's written approval.

§

Init.

AIA Document B132™ – 2009. Copyright 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 09:53:58 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail [copyright@aia.org](mailto:copyright@aia.org).  
User Notes:

(3B9ADA6C)

3.1.5 ICS shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### **§ 3.2 Schematic Design Phase Services**

§ 3.2.1 ICS shall review the program and other information furnished by the Owner and Construction Manager, and shall follow laws, codes, and regulations applicable to ICS's services.

§ 3.2.2 ICS shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. ICS shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

### **§ 3.2.3**

Based on the Project requirements, ICS through its sub consultants shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.4 Based on the Owner's approval of the preliminary design, ICS through its sub consultants shall prepare Schematic Design Documents for the Owner's approval consisting of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

*(Paragraphs Deleted)*

### **§ 3.3 Design Development Phase Services**

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, ICS shall prepare Design Development Documents for the Owner's approval illustrating and describing the development of the approved Schematic Design Documents and consisting of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 ICS shall update the estimate of the Cost of the Work and advise the Owner of any adjustments to the estimate of the Cost of the Work.

### **§ 3.4 Construction Documents Phase Services**

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, ICS shall prepare Construction Documents for the Owner's approval. The Construction Documents shall set forth in detail the materials, systems and other requirements for the construction of the Work. The Owner and ICS acknowledge that, in order to properly construct the Work the contractors performing the Work shall provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals pursuant to their AIA construction agreements with the Owner.

§ 3.4.2 ICS shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, ICS and the architect or engineer of record shall, after consultation with the Owner, be primarily responsible for the development and preparation of (1) bidding and procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (4) the scopes of Work for each bid package to ensure completeness of Work and avoiding of overlap.

Init.

§ 3.4.4 ICS shall update the estimate for the Cost of the Work and advise the Owner of any adjustments to the estimate for the Cost of the Work.

§ 3.4.5 ICS shall submit the Construction Documents to the Owner for the Owner's approval.

### § 3.5 Procurement Phase Services

#### § 3.5.1 General

ICS, after consultation with the Owner, shall develop bidders' interest and assist the Owner in establishing a list of prospective bidders or contractors in addition to performing the services provided under this Agreement, all in accordance with Minnesota public bidding law. Following the Owner's approval of the Construction Documents, ICS shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

#### § 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 ICS shall, if requested by the Owner, assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

##### § 3.5.2.2.1

- .1 preparing and facilitating the distribution of Bidding Documents to prospective bidders.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

#### § 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents as allowed under Minnesota public bidding law.

§ 3.5.3.2 ICS shall, if requested by the Owner, assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, ICS shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

### § 3.6 Construction Phase Services

#### § 3.6.1 General

§ 3.6.1.1 ICS shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A232™-2009, General Conditions of the Contract for Construction, as amended for the Project. ICS shall revise and issue the General Conditions of the Contract for Construction (AIA Document A232™-2009) for the Project in accordance with this Agreement and consistent with ICS's duties as set forth in this Agreement and in the AIA Document A232™-2009 as amended for the Project.

Init.

AIA Document B132™ – 2009. Copyright 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 09:53:58 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.

User Notes:

**§ 3.6.1.2** ICS shall advise and consult with the Owner during the Construction Phase Services. ICS shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. ICS shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall ICS be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. ICS shall be responsible for ICS's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work. "Nothing in this section is intended, or shall be construed, to negate the Architect's duties to the Owner under **§2.3 or §3.6.2.1.**"

**§ 3.6.1.3** Subject to Section 4.2 and except as provided in Section 3.6.6.5, ICS's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date ICS issues the final Certificate for Payment.

**§ 3.6.2 Observations of the Work**

**§ 3.6.2.1** ICS or its sub consultants shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in this Agreement, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, ICS shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, ICS shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

**§ 3.6.2.2** ICS has the authority to reject Work that does not conform to the Contract Documents. Whenever ICS considers it necessary or advisable, ICS shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of ICS nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of ICS to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 3.6.2.3** ICS shall interpret and decide matters concerning performance of the Contractor under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. ICS's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

**§ 3.6.2.4** Interpretations and decisions of ICS shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, ICS shall endeavor to secure faithful performance by both Owner and Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

**§ 3.6.2.5** Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A232™-2009, the Architect shall render initial decisions on Claims by the Contractor as provided in the Contract Documents.

**§ 3.6.3 Certificates for Payment to Contractor**

**§ 3.6.3.1** The Architect of record, as

a  
sub consultant to ICS, shall review and certify the amounts due the Contractor and shall issue certificates in such amounts.

Certifications for payment shall constitute a representation to the Owner, based on observation of the Work as provided in this Agreement and on the data comprising the Contractor's Application for Payment, that, to the best of the architect of record's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an observation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3)

**Init.** AIA Document B132™ – 2009. Copyright 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 09:53:58 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail [copyright@aia.org](mailto:copyright@aia.org).  
User Notes: (3B9ADA6C)

correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the architect of record.

**§ 3.6.3.2** The issuance of a Certificate for Payment shall not be a representation that the architect of record has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 3.6.3.3** ICS shall maintain a record of the Applications and Certificates for Payment.

**§ 3.6.4 Submittals**

**§ 3.6.4.1** ICS shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. ICS's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in ICS's professional judgment, to permit adequate review.

**§ 3.6.4.2** ICS shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. ICS's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. ICS's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

*(Paragraph Deleted)*

**§ 3.6.4.4** Subject to Section 4.2, ICS shall review and respond to requests for information about the Contract Documents and shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. ICS's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, ICS shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

**§ 3.6.4.5** ICS shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

**§ 3.6.5 Changes in the Work**

**§ 3.6.5.1** ICS may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. ICS shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents and shall maintain records relative to changes in the Work.

**§ 3.6.5.2** If requested by the Owner as an Additional Service, ICS shall review properly prepared, timely requests by the Owner or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit ICS to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If ICS determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, ICS may issue an order for a minor change in the Work or recommend to the Owner that the change be denied.

**§ 3.6.5.3** If ICS determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, ICS shall make a recommendation to the Owner, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, ICS shall estimate the additional cost and time that might result

Init.

**AIA Document B132™ – 2009.** Copyright 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 09:53:58 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail [copyright@aia.org](mailto:copyright@aia.org).  
**User Notes:**

11

(3B9ADA6C)

from such change, including any additional costs attributable to a Change in Services of ICS. With the Owner's approval, ICS shall incorporate those estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Contractor.

### **§ 3.6.6 Project Completion**

**§ 3.6.6.1** The architect of record, as a sub consultant to ICS shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of ICS's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

**§ 3.6.6.2** The architect of record's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

**§ 3.6.6.3** When Substantial Completion has been achieved, ICS shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

**§ 3.6.6.4** ICS shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

**§ 3.6.6.5** Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, ICS shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

**§ 3.6.6.6** To the extent not addressed in the foregoing, the following shall be included as Basic Services by ICS. To the extent these address the same item described in the foregoing provisions, the duties will be read in combination. If they cannot be read consistently, the more specific provision will prevail. If an ambiguity or inconsistency remains, the following provisions shall prevail.

1. Develop and finalize design of the concept depicted in the referenced studies and prepare construction drawings and specifications.
2. Sub-contract as necessary with and coordinate other applicable professional services providers to provide comprehensive design and construction documents for all necessary disciplines.
3. Prepare and periodically update a milestone schedule for the design and construction documents work – for all disciplines.
4. Assemble bid packages.
5. Provide necessary documents to Owner for public meetings to illustrate the building site plans and other aspects of the Project.
6. Provide necessary documents in the quantities required (both electronic and paper format) for design reviews, Construction Manager reviews, bid packages, permitting, construction, and final record set.
7. Review applicable shop drawings and submittals during the construction phase.
8. Visit job site during construction phase for inspections.
9. Provide written status reports to Owner's Representative.

## **ARTICLE 4 ADDITIONAL SERVICES**

### **§ 4.1 Additional Services**

**§ 4.1** The Additional Services listed below are included in ICS's Basic Services if identified as ICS's responsibility. Other additional services may be required for the Project that are not being provided as part of ICS's Basic Services. ICS shall provide the other listed Additional Services (list as Not Provided) in the table below as ICS's responsibility, if mutually agreed upon in writing, and the Owner shall compensate ICS for such Additional Services as provided in

**AIA Document B132™ – 2009.** Copyright 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 09:53:58 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail [copyright@aia.org](mailto:copyright@aia.org).  
**User Notes:** (3B9ADA6C)

*this Agreement. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor ICS is designated, the parties agree that the listed Additional Service is not being provided for the Project.*

<b>Additional Services</b>	<b>Responsibility (ICS, Owner, or not provided)</b>
§ 4.1.1.1 Programming	ICS
§ 4.1.1.2 Multiple preliminary designs	ICS
§ 4.1.1.3 Measured drawings	ICS
§ 4.1.1.4 Existing facilities surveys	Owner
§ 4.1.1.5 Site evaluation and planning	ICS
§ 4.1.1.6 Building Information Model management responsibilities	Not Provided
§ 4.1.1.7 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.8 Civil engineering	ICS
§ 4.1.1.9 Landscape design	ICS
§ 4.1.1.10 Interior design	ICS
§ 4.1.1.11 Value analysis	ICS
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Not Provided
§ 4.1.1.13 On-site project representation	ICS
§ 4.1.1.14 Conformed documents for construction	Not Provided
§ 4.1.1.15 As-designed record drawings	ICS
§ 4.1.1.16 As-constructed record drawings	Contractor
§ 4.1.1.17 Post-occupancy evaluation	Not Provided
§ 4.1.1.18 Facility support services	Not Provided
§ 4.1.1.19 Tenant-related services	Not Provided
§ 4.1.1.20 Architect's coordination of the Owner's consultants	ICS
§ 4.1.1.21 Telecommunications/data design	ICS
§ 4.1.1.22 Security evaluation and planning	Not Provided
§ 4.1.1.23 Commissioning	ICS
§ 4.1.1.24 Sustainable Project Services pursuant to Section	Not Provided
§ 4.1.1.25 Fast-track design services	Not Provided
§ 4.1.1.26 Multiple bid packages	ICS
§ 4.1.1.27 Historic preservation	Not Provided
§ 4.1.1.28 Furniture, furnishings, and equipment design	ICS
§ 4.1.1.29 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.30 Other Supplemental Services	Not Provided

*(Table Deleted)*

**§ 4.2**

Additional Services may be provided after execution of this Agreement, if mutually agreed upon in writing, without invalidating the Agreement. ICS shall notify the Owner in writing of the need for the Additional Services prior to providing such services. If the Owner deems that all or a part of such Additional Services are not required, the Owner shall give prompt written notice to ICS, and ICS shall have no obligation to provide those services. Except

Init.

**AIA Document B132™ – 2009.** Copyright 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 09:53:58 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.

User Notes:

(3B9ADA6C)

for services required due to the sole fault of ICS, any Additional Services provided in accordance with this Section 4.2 shall entitle ICS to compensation pursuant to this Agreement.

**§ 4.2.1** Upon recognizing the need to perform the following Additional Services, ICS shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. ICS shall not proceed to provide the following Additional Services until ICS receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where ICS is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction;  
or,
- .11 Assistance to the Initial Decision Maker, if other than ICS.

**§ 4.2.2** To avoid delay in the Construction Phase, ICS shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of ICS's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to ICS of the Owner's determination. The Owner shall compensate ICS for the services provided prior to ICS's receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by ICS;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

*(Paragraph Deleted)*

**§ 4.2.3** ICS shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, ICS shall notify the Owner:

- .1 Thirty (30) visits to the site by the design team over the duration of the Project during construction
- .2 Reasonable observations for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .3 Reasonable observations for any portion of the Work to determine final completion.

Init.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent ICS incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed by September 2024, through no fault of ICS, extension of ICS's services beyond that time shall be compensated as Additional Services.

#### ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

#### § 5.2

*(Paragraph Deleted)*

The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify ICS. The Owner and ICS shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner identifies the following representative authorized to act on the Owner's behalf with respect to the Project:

Mr. Kevin Januszewski, Director of Business Services  
Becker Public Schools (the "District")  
Independent School District #726  
12000 Hancock Street  
Becker, MN 55308

In no event shall the Owner's representative have authority to agree to any adjustments in the Contract Sum or Contract Time. All adjustments to the Contract Sum or Contract Time require approval by the Owner's Board unless the Board expressly delegates in writing to the representative, defined authority to approve specified sums or times.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by ICS. Upon ICS's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of ICS in this Agreement, or authorize ICS to furnish them as an Additional Service, when ICS requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner

Init.

AIA Document B132™ – 2009. Copyright 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 09:53:58 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail [copyright@aia.org](mailto:copyright@aia.org).  
User Notes:

15

(3B9ADA6C)

shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

**§ 5.7** The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

**§ 5.8** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

**§ 5.9** The Owner shall provide prompt written notice to ICS if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in ICS's Instruments of Service or any information provided by the Owner.

**§ 5.10** The Owner shall include ICS in all communications with the Contractor that relate to or affect ICS's services or professional responsibilities. The Owner shall promptly notify ICS of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with ICS's sub consultants shall be through ICS.

**§ 5.11** Before executing the Contract for Construction, the Owner shall coordinate ICS's duties and responsibilities set forth in the Contract for Construction with ICS's services set forth in this Agreement. The Owner shall provide ICS a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction and all supplementary general conditions and amendments applicable to the Project.

**§ 5.12** The Owner shall provide ICS with right-of-access to the Project site prior to commencement of the Work and accurate information necessary to perform its services under this Agreement, and shall obligate the Contractor to provide ICS access to the Work wherever it is in preparation or progress.

## **ARTICLE 6 COST OF THE WORK**

**§ 6.1** For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by ICS and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of ICS; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

**§ 6.2** The Owner's budget for the Cost of the Work is provided in Initial Information and shall be adjusted throughout the Project as required by this Agreement. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by ICS, represent ICS's judgment as a professional engineer. It is recognized, however, that neither ICS nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, ICS cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by ICS.

**§ 6.3** In preparing estimates of the Cost of Work, ICS shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. ICS's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, ICS shall provide and be compensated for such an estimate as an Additional Service under this Agreement.

**§ 6.4** If, through no fault of ICS, the Procurement Phase has not commenced within 90 days after ICS submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

Init.

AIA Document B132™ – 2009. Copyright 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 09:53:58 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail [copyright@aia.org](mailto:copyright@aia.org).  
User Notes: (3B9ADA6C)

16

§ 6.5 If at any time ICS's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, ICS shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with ICS in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding of the Project within a reasonable time;
- .3 terminate in accordance with this Agreement;
- .4 in consultation with ICS, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

*(Paragraph Deleted)*

§ 6.7 After incorporation of modifications under Section 6.6, ICS shall, as part of the ICS fee, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Owner in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

#### ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 ICS warrants that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 ICS and ICS's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of ICS and ICS's consultants.

§ 7.3 Upon execution of this Agreement, ICS grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. ICS shall obtain similar nonexclusive licenses from ICS's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Construction Manager, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. The Owner's non-exclusive license to use the Instruments of Service shall be governed by Section 9.7.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases ICS and ICS's sub consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless ICS and its sub consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1.

§ 7.4 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

#### ARTICLE 8 CLAIMS AND DISPUTES

##### § 8.1 General

§ 8.1.1 The Owner and ICS shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law.

Init.

AIA Document B132™ – 2009. Copyright 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 09:53:58 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail [copyright@aia.org](mailto:copyright@aia.org).

User Notes:

(3B9ADA6C)

**§ 8.1.2** To the extent damages are covered by property insurance, the Owner and ICS waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232™-2009, General Conditions of the Contract for Construction as amended for the Project. The Owner or ICS, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

**§ 8.1.3** To the extent permitted by law, the Architect shall indemnify, defend and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgements arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent, intentional or otherwise wrongful acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. All indemnification obligations shall survive termination, expiration or cancellation of this Contract. The Architect agrees, that in order to protect itself and the Owner under the indemnity provisions set forth above, it will at all times during the term of this contract keep in force policies of insurances required in the Paragraph entitled, "Insurance." Nothing in this Contract shall be construed to waive any immunities or limitations to which Owner is entitled under Minnesota Statutes Chapter 466 or otherwise.

To the extent permitted by law, the Owner shall indemnify, defend and hold the Architect and the Architect's officers and employees harmless from and against damages, losses and judgements arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent, intentional or otherwise wrongful acts or omissions of the Owner, its employees and its consultants in the performance of professional services under this Agreement. All indemnification obligations shall survive termination, expiration or cancellation of this Contract. The Owner agrees, that in order to protect itself and the Architect under the indemnity provisions set forth above, it will at all times during the term of this contract keep in force policies of insurances required in the Paragraph entitled, "Insurance." Nothing in this Contract shall be construed to waive any immunities or limitations to which Owner is entitled under Minnesota Statutes Chapter 466 or otherwise.

## **§ 8.2 Mediation**

**§ 8.2.1** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation. Mediation is not a condition precedent to commencing litigation, but if litigation is commenced, the parties agree to mediate within six (6) months after notice of the claim, dispute or other matter in question is provided to the other party, or thirty (30) days before the hearing date for any dispositive motion.

**§ 8.2.2** The Owner and ICS shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise in writing, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

**§ 8.2.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**§ 8.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

*(Paragraphs Deleted)*

Litigation in a court of competent jurisdiction

*(Paragraphs Deleted)*

in the state of Minnesota.

Init.

## ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 Except for amounts that are the subject of a good faith dispute  
(Paragraphs Deleted)

under the  
Prompt Payment Act, Minn. Stat.  
§ 471.425 ("Act"), if the  
(Paragraphs Deleted)

Owner fails to make payments to ICS in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination after seven (7) days written notice by ICS or, at ICS's option, cause for suspension of performance of services under this Agreement. If ICS elects to suspend services, ICS shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, ICS shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architects shall be paid all sums which are not the subject of a good faith dispute under the Act prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. ICS's fees for the remaining services and the time schedules shall be equitable adjusted.

§ 9.2 If the Owner suspends the Project, ICS shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, ICS shall be compensated for expenses incurred in the interruption and resumption of ICS's services. ICS's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the sole fault of ICS, ICS may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to ICS for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or terminates this Agreement through no fault of ICS, or if ICS terminates this Agreement pursuant to Section 9.1, 9.3 or 9.4, the Owner shall compensate ICS for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to ICS's termination of consultant agreements, provided, however, that Owner is not responsible for any consultant agreement costs that include overhead and profit for services that will not be performed due to termination for convenience.

§ 9.7 In the event of Termination, and upon payment to ICS of all sums that are not the subject of a good faith dispute applicable under the Prompt Pay Act, the Owner and its designated agents and consultants, shall have a non-exclusive license to use the Architect's, and its consultant's, Instruments of Service, documents, data, and records relating to the Project, in the conditions they were in on the date of Termination, for the limited purpose of completing, maintaining and operating the Project. ICS's contracts with its consultants shall incorporate provisions whereby its consultants agree to be bound by the terms of this section. Upon request, the Architect and its consultants shall promptly furnish the Owner with legible copies of their Instruments of Service, documents, data and records relating to the Project, and the Owner shall reimburse the Architect and its consultants for their reasonable copying and clerical expenses therefor including any fees associated with termination.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the laws of the state of Minnesota.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232™-2009, General Conditions of the Contract for Construction as amended for the Project.

init.

AIA Document B132™ – 2009. Copyright 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 09:53:58 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.  
User Notes:

19

(3B9ADA6C)

§ 10.3 The Owner and ICS, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor ICS shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to ICS by the Owner prior to the assignment.

§ 10.4 If the Owner requests ICS to execute certificates, the proposed language of such certificates shall be submitted to ICS for review at least 14 days prior to the requested dates of execution. If the Owner requests ICS to execute consents reasonably required to facilitate assignment to a lender, ICS shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to ICS for review at least 14 days prior to execution. ICS shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or ICS.

§ 10.6 Unless otherwise required in this Agreement, ICS shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 ICS shall have the right to include photographic or artistic representations of the design of the Project among ICS's promotional and professional materials. ICS shall be given reasonable access to the completed Project to make such representations. However, ICS's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised ICS in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for ICS in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 Subject to any applicable requirements of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, if ICS or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 10.10 ICS and the Owner each acknowledge that they have reviewed and familiarized themselves with this Agreement, including Exhibit A and all attachments, and agree to be bound by the terms and conditions contained therein.

§ 10.11 ICS and the Owner specifically understand and agree that at all times pertinent to this Agreement ICS and ICS's sub consultants shall be independent professionals and shall not be considered employees of the Owner.

§10.12 **Modifications/Amendment.** Any alterations, variations, modifications, amendments or waivers of the provisions of this Contract shall only be valid when they have been reduced to writing and signed by authorized representative of the Owner and ICS.

§10.13 **No Waiver.** Any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Contract or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this Contract.

**Init.** AIA Document B132™ – 2009. Copyright 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 09:53:58 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail [copyright@aia.org](mailto:copyright@aia.org).  
User Notes: (3B9ADA6C)

Any express waiver of a term of this Contract shall not be binding and effective unless made in writing and properly executed by the waiving Party.

**§10.14 Audit Clause Pursuant to Minnesota Statutes, Section 16C.05, subd. 5,**

The books, records, documents, and accounting procedures and practices of ICS that are relevant to the Contract are subject to examination by the Owner and either the legislative auditor or the state auditor, as appropriate, for a minimum of six years. If the Owner requests that the state auditor examine the books, records, documents, and accounting procedures and practices of the Construction Manager, the Owner shall be liable for the cost of the examination.

**§10.15 Notice Pursuant to Minnesota Statutes, Section 181.59.**

The Owner and ICS agree that the contractual agreement(s) between the Owner and any Contractor performing work on a Project pursuant to this Contract shall contain provisions by which the Contractor agrees:

1. That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;
1. That no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;
1. That a violation of this section is a misdemeanor; and
1. That this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

**§10.16 Governmental Notice Pursuant to Minnesota Statute 13.05, subd. 11:**

1. If a government entity enters into a contract with a private person to perform any of its functions, all of the data created, collected, received, stored, used, maintained, or disseminated by the private person in performing those functions is subject to the requirements of this chapter and the private person must comply with those requirements as if it were a government entity. All contracts entered into by a government entity must include a notice that the requirements of this subdivision apply to the contract. Failure to include the notice in the contract does not invalidate the application of this subdivision. The remedies in section 13.08 apply to the private person under this subdivision.
1. This subdivision does not create a duty on the part of the private access to public data to the public if the public data are available from the government entity, except as required by the terms of the contract.

**§10.17 Compliance with Laws.** ICS shall abide by all applicable federal, state and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Contract.

**ARTICLE 11 COMPENSATION**

**§ 11.1** The Owner shall compensate ICS on a lump-sum basis for pre-referendum and referendum services already provided and services described in Article 3 and Attachment A, AIA Document C132™-2009 as follows:

*(Paragraph Deleted)*

Pre-referendum and referendum services already provided:

*\*As a member of the Resource Training and Solutions Cooperative, the District qualifies for a 10% discount on this*

Init.

**AIA Document B132™ – 2009.** Copyright 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 09:53:58 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail [copyright@aia.org](mailto:copyright@aia.org).

User Notes:

21

(3B9ADA6C)

portion of our compensation. \$20,000.00 - 10% = \$18,000.00  
 Eighteen Thousand Dollars and Zero Cents (\$18,000.00)

Architecture, mechanical engineering, electrical engineering, civil engineering, structural engineering, landscape design, kitchen, construction management and program management services and comprehensive commissioning for the lump sum fee of:  
 Total Fees TBD by Referendum + \$18,000.00 - \$0.00 (previous payments) = TBD by Referendum

- IPD Coordination and Representation: 1.5%
- Construction Management: 3.1%
- Project Design Services (A/E): 8%
- Project Commissioning: 1.2%

Compensation referenced above is included in the Total Project Budget.

§ 11.2 Reimbursable Expenses are in addition to the compensation for ICS professional services under Article 3 and include expenses incurred by ICS and ICS's sub consultants directly related to the Project, as follows:

- .1 Fees paid for securing approval of authorities having jurisdiction over the Project;
  - .2 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
  - .3 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
  - .4 ICS Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by ICS consultants;
  - .5 All taxes levied on professional services and on reimbursable expenses;
  - .6 Professional services of consultants other than architecture, mechanical/electrical/civil and structural.
  - .7 All site related services including site superintendent, site project engineer, general/site superintendent, trailer, office supplies and equipment, etc.
  - .8 Transportation and authorized out-of-town travel and subsistence;
  - .9 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
  - .10 Printing, reproductions, plots, standard form documents;
  - .11 Postage, handling and delivery;

§ 11.2.1 For Reimbursable Expenses, the compensation shall be the out of pocket expenses incurred by ICS and ICS's consultants plus an administrative fee of Zero percent (0%) of the expenses incurred.

§ 11.3 General Conditions are in addition to the compensation for ICS professional services under Article 3 and include expenses incurred by ICS and ICS's sub consultants directly related to the Project, as follows:

(Paragraph Deleted)

- .1 All site related contracted services including temporary sanitation, temporary utilities, construction cleaning/waste management, testing, winter conditions, etc.

§ 11.3.1 For General Conditions, the compensation shall be out of pocket expenses incurred by ICS and ICS's consultants plus an administrative fee of five percent (5%) of the expenses incurred.

§ 11.4 Compensation for Additional Services of ICS's sub consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to ICS.

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Contract Executed	Ten	percent (	10	%)
Schematic Design Phase	Ten	percent (	10	%)
Design Development Phase	Ten	percent (	10	%)

Init.

AIA Document B132™ – 2009. Copyright 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 09:53:58 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.  
 User Notes: (3B9ADA6C)

Construction Documents Phase	Forty	percent (	40	%)
Bidding/Procurement Phase	Five	percent (	5	%)
Construction Phase	Twenty-Five	percent (	25	%)
<b>Total Basic Compensation</b>	<b>One Hundred</b>	<b>percent (</b>	<b>100</b>	<b>%)</b>

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. ICS shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly fixed billing rates for services of ICS and ICS's consultants are set forth below. The rates shall be adjusted in accordance with ICS and ICS's consultants' normal review practices.

*(Paragraph Deleted)*

<b>Personnel Description</b>	<b>Rate/Hour</b>
Construction Executive	\$260.00
Project Director	\$180.00
Safety Director	\$130.00
Project Manager (PM1,2,3 – Blended Rate)	\$150.00
General Superintendent	\$150.00
Site Superintendent	\$130.00
Project Engineer	\$90.00
Clerical/Accounting	\$85.00
Design Team – Architects, engineers, consultants	Based on firm's current rate structure

<b>Flat Rates for Reimbursable Items</b>	<b>Rate/Monthly or Weekly</b>
Site Trailer	\$600.00 per month
Office Supplies & Equipment	\$300.00 per month
Phones/Internet/Technology	\$550.00 per month
Superintendent Truck	\$500.00 per week
Superintendent Lodging/Meals	Expenses actually incurred in an amount not to exceed \$1000.00 per week

*(Table Deleted)*

Init.

**AIA Document B132™ – 2009.** Copyright 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 09:53:58 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail [copyright@aia.org](mailto:copyright@aia.org).

User Notes:

(Paragraphs Deleted)

**§ 11.9**

**ICS's Insurance.**

If the types and limits of coverage required in Section 2.5 are in addition to the types and limits ICS normally maintains, the Owner shall pay ICS for the additional costs incurred by ICS for the additional coverages as set forth below:

*(Insert the additional coverages ICS is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse ICS.)*

N/A

**§ 11.10 Payments to ICS**

**§ 11.10.1 Initial Payments**

**§ 11.10.1.1** An initial payment of ten percent (10%) shall be made upon a successful referendum and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

**§ 11.10.2 Progress Payments**

**§ 11.10.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of ICS's invoice in accordance with Prompt Payment Act, Minn. Stat. § 471.425 ("Act"). Amounts unpaid 30 (thirty) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of ICS.

*(Insert rate of monthly or annual interest agreed upon.)*

Five Percent5%

**§ 11.10.2.2** The Owner shall not withhold amounts from ICS's compensation to impose a penalty or liquidated damages on ICS. The Owner's right, if any, to offset sums due shall be governed by applicable law.

**§ 11.10.2.3** Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

*(Paragraph Deleted)*

ICS shall keep and maintain accurate documentation of all claimed reimbursable expenses in such a form that they may be independently audited.

**ARTICLE 13 SCOPE OF THE AGREEMENT**

**§ 13.1** This Agreement represents the entire and integrated agreement between the Owner and ICS and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and ICS.

**§ 13.2** This Agreement is comprised of the following documents identified below:

- .1 AIA Document B132™-2009, Standard Form Agreement Between Owner and ICS including Exhibit A, AIA Document C132™-2009, Standard Form of Agreement Between Owner and ICS where ICS Provides Construction Manager Services as an Adviser to the Owner.

*(Paragraphs Deleted)*

This Agreement is entered into as of the day and year first written above.

Init.

---

**AIA Document B132™ – 2009.** Copyright 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 09:53:58 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail [copyright@aia.org](mailto:copyright@aia.org).  
**User Notes:** (3B9ADA6C)

\_\_\_\_\_  
**OWNER** *(Signature)*

Mr. Kevin Januszewski, Director of Business  
Services

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**ICS** *(Signature)*

Mr. Dave Bergeron, ICS Partner

\_\_\_\_\_  
*(Printed name and title)*

Init.

\_\_\_\_\_  
AIA Document B132™ – 2009. Copyright 1992 and 2009 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 09:53:58 ET on 08/26/2021 under Order No.9610899884 which expires on 01/29/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail [copyright@aia.org](mailto:copyright@aia.org).  
User Notes:

25





September 29, 2021

Jeremy Schmidt, Superintendent  
Becker Public School District, ISD #0726-01  
12000 Hancock Street  
Becker, MN 55308-9585

Dear Superintendent Schmidt:

Minnesota Statutes, section 123B.71, requires a review and comment statement on the educational and economic advisability of your proposed school construction project. Information supplied by your school district and from Minnesota Department of Education sources is the basis of this review and comment. With this positive review and comment, voter and board approval is required for Becker Public School District, ISD #0726-01, to proceed with the proposed projects.

***The district shall publish a summary of the review and comment statement (the final two pages) in the legal newspaper of the district at least 20 days, but not more than 60 days, prior to holding a referendum for bonds or soliciting any bids for the construction, expansion, or remodeling of an educational facility.*** The department may request a statement certifying the publication, and require the submission, review, and approval of preliminary and final construction plans.

Minnesota Statutes, section 123B.71, requires the commissioner to include comments from residents of the school district in the review and comment. As of the date of this letter, no public comments have been received. In addition, Minnesota Statutes, section 123B.71, ***requires the school board hold a public meeting to discuss the review and comment prior to the date of the bond referendum election.***

Minnesota Statutes, section 123B.71, ***requires that a school district, prior to occupying a new or renovated facility after July 1, 2002, must submit a certification prepared by a system inspector to the commissioner and the building code official that will provide an occupancy permit.*** The certification must verify that the facility's installed or modified heating, ventilation, and air conditioning system operates according to design specifications and code, a system for monitoring outdoor airflow and total airflow of ventilation systems has been installed, and any installed or modified heating, ventilation, or air conditioning system provides an indoor air quality filtration system that meets ASHRAE (American Society of Heating, Refrigerating and Air-Conditioning Engineers) Standard 52.1.

If you have any questions, please contact Chris Kubesh, Education Finance specialist, at 651-582-8319 or [chris.kubesh@state.mn.us](mailto:chris.kubesh@state.mn.us). Thank you for working with us to improve school facilities for Minnesota students.

Sincerely,

A handwritten signature in black ink that reads 'Heather Mueller, Ed.D.'.

Heather Mueller, Ed.D.  
Commissioner

cc: Mark Swanson, School Board Chair

Enclosure

**The Commissioner of the Department of Education  
Review and Comment on the School Construction  
Proposal of Becker Public School District, ISD #0726-01**

A review and comment must be provided on a school district construction project proposal before the district conducts a referendum, solicits bids, or issues bonds for the project. A project proposal has been submitted for review and comment according to requirements set forth in Minnesota Statutes, section 123B.71, subdivisions 9 and 10, and Minnesota Statutes, section 123B.72. The district provides the following information:

1. The geographic area and population to be served:
  - a. preschool through grade 12 student enrollment for the past five years, and
  - b. student enrollment projections for the next five years.
2. A list of existing school facilities:
  - a. by year constructed,
  - b. their uses, and
  - c. an assessment of the extent to which alternate facilities are available within school district boundaries and in adjacent school districts.
3. A list of specific deficiencies of the facility:
  - a. demonstrating the need for a new or renovated facility to be provided,
  - b. the process used to determine the deficiencies,
  - c. a list of those deficiencies that will and will not be addressed by the proposed projects,
  - d. a list of specific benefits that the new or renovated facility will provide to students, teachers, and community users served by the facility.
4. A description of the project, including:
  - a. specifications of site and outdoor space acreage,
  - b. square footage allocations for classrooms, laboratories and support spaces,
  - c. estimated expenditures for major portions of the project,
  - d. estimated changes in facility operating costs, and
  - e. dates the project will begin and be completed.
5. A specification of the source of project financing, including:
  - a. applicable statutory citations,
  - b. the scheduled date for a bond issue or school board action,
  - c. a schedule of payments, including debt service equalization aid, and
  - d. the effect of a bond issue on local property taxes by property class and valuation.
6. Documentation obligating the school district and contractors to comply with the following items:
  - a. Minnesota Statutes, section 471.345 governing municipal contracts,
  - b. sustainable design,
  - c. school facility commissioning under Minnesota Statutes, section 123B.72, certifying the plans and designs for heating, ventilating, air conditioning and air filtration for an extensively renovated or new facility meet or exceed current code standards, including ASHRAE air filtration Standard 52.1,
  - d. American National Standards Institute (ANSI) acoustical performance criteria, design requirements and guidelines for schools on maximum background noise levels and reverberation times,
  - e. state fire code,
  - f. chapter 326B governing building codes, and
  - g. consultation with affected government units about the impact of the project on utilities, roads, sewers, sidewalks, retention ponds, school bus and automobile traffic, access to mass transit and safe access for pedestrians and cyclists.

## Description of Proposed School Construction Project

Becker Public School District, ISD #0726-01, is proposing a two-question bond referendum on November 2, 2021. The first ballot question would authorize \$37.5 million in bonding authority to finance: districtwide facility additions, renovations, deferred maintenance, secure entrances/administrative addition improvements and a new transportation building. The second ballot question would authorize \$6.8 million in bonding authority to finance: artificial turf and lighting upgrades to existing athletic facilities and additional renovations for the (Early Childhood Family Education) ECFE space proposed in the first ballot question.

Proposed projects would be scheduled for completion in calendar years 2022-2024. Cost estimates by ballot question/project component are as follows:

<b>Ballot Question #1</b>			
<b>Primary School</b>		<b>Middle School</b>	
Secure Entrance / Admin Office Addition	\$451,080	Secure Entrance / Admin Office Addition	\$564,750
ECFE Addition	\$2,660,000	Renovations	\$752,000
Roof Line Modifications	\$56,000	Cafeteria Expansion	\$518,400
Drop-off Area Modifications	\$250,000	Kitchen Upgrades	\$100,000
	<b>\$3,417,080</b>	Classroom Additions	\$2,500,000
<b>Intermediate School</b>			<b>\$4,435,150</b>
Secure Entrance / Admin Office Addition	\$614,950	<b>High School</b>	
Media Center Renovations	\$320,000	Secure Entrance	\$30,000
Kitchen / Cafeteria Addition	\$350,000	CTE Renovations	\$2,341,075
Other Renovations	\$569,480	FACS Renovations	\$396,000
	<b>\$1,854,430</b>	Other Renovations	\$1,000,000
<b>Existing Transportation Building</b>			<b>\$3,767,075</b>
ECFE Renovations	\$2,012,400	<b>Districtwide Deferred Maintenance</b>	
		HVAC Upgrades	\$5,470,000
<b>New Transportation Building</b>		Roof Replacement	\$2,812,500
New Construction	\$4,000,000	Building Envelope	\$312,500
		Interior Upgrades	\$547,500
<b>Districtwide</b>			<b>\$9,142,500</b>
FF&E / Technology	\$780,000		
Fees, Permits & Testing	\$5,734,684	<b>TOTAL Project Costs - Ballot Question #1</b>	<b>\$37,500,000</b>
Contingency	\$1,766,681		
Bond Issuance	\$590,000		
	<b>\$8,871,365</b>		
<b>Ballot Question #2</b>			
<b>Stadium / Athletic Fields</b>		<b>Primary School</b>	
Artificial Turf	\$1,090,000	Additional ECFE Renovations	\$1,741,500
Field Lighting	\$600,000	Playground Area	\$140,000
	<b>\$1,690,000</b>		<b>\$1,881,500</b>
<b>Districtwide</b>		<b>Existing Transportation Building</b>	
FF&E / Technology	\$500,000	ECFE Gym Space Renovations	\$1,048,000
Fees, Permits & Testing	\$1,056,803	Maintenance Space	\$300,000
Contingency	\$321,031		<b>\$1,348,000</b>
Bond Issuance	\$100,900		
	<b>\$1,978,734</b>	<b>TOTAL Project Costs - Ballot Question #2</b>	<b>\$6,898,234</b>

Student enrollment exceeds the capacity of the existing facilities and additional enrollment growth is anticipated in the next few years. To accommodate existing and projected space needs, a six classroom addition is proposed at the middle school to accommodate additional classroom space needs. The additional ECFE space proposed will also help with congestion at the existing primary school.

The district would structure the repayment of the bond issuance so that small principal and interest payments would be made in FY 2023 and FY 2024 to minimize the initial tax impact on the Payable 2022 and 2023 levies. The amount of future bond payments would increase as other bonded debt is retired.

The district has supplied cost estimates to operate and staff the additional building space. It appears that existing revenues, along with additional revenues resulting from enrollment growth, will be sufficient to fund the operational cost increase associated with the proposed projects. The proposed projects appear to be in the long-term interest of the school district.

If the bond referendum is successful and bonds are sold, the debt service on the bonds will be eligible for debt service equalization under Minnesota Statutes, section 123B.53, subdivision 3, if the bond schedule is approved. The amount of debt service equalization aid, if any, the district receives is determined annually and is dependent upon property wealth, student population, and other statutory requirements.

#### **Review and Comment Statement**

Based on the department's analysis of the school district's required documentation and other pertinent information from sources of the Minnesota Department of Education, the Commissioner of Education provides a positive review and comment.

#### **Additional Information is Available**

Persons desiring additional information regarding this proposal should contact the school district superintendent's office.

*Heather Mueller, Ed.D.*

Heather Mueller, Ed.D.  
Commissioner

September 29, 2021

Donor Name	Description of Gift	Purpose of Gift
Becker Lions	\$2,000.00	Heart Rate Monitors for PE Dept.
Becker PTSA	\$300.00	Dance Team Expenses
Clear Lake Lions	\$2,000.00	Dance Team Uniforms
Clear Lake Lions	\$1,000.00	Heart Rate Monitors for PE Dept.
Dylan's Hope Foundation	\$15,000.00	Mental Health Program
Santiago Lions	\$1,000.00	Heart Rate Monitors for PE Dept.

*Adopted: June 3, 2013*

*Revised:*

## **470 POLITICAL CAMPAIGNS AND ACTIVITIES**

### **I. PURPOSES**

The purpose of this policy is to recognize the participation of students and employees in political issues. Further, the purpose of this policy is to define limitations on procedures and guidelines for the participation of students and employees in political campaigns, partisan or non-partisan election activities, and the distribution of political or partisan materials.

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

A. The school district will maintain neutrality as to all political campaigns and issues. The school district will not expend public funds or resources to advocate for particular candidates or for only one side of a controversial question. However, the school district may expend reasonable amounts to apprise voters in the school district of facts pertinent to school election, bond issue or referendum.

B. The school district recognizes the rights of students and employees to participate in political campaigns and political issues, elections and public service and the right of students to pursue an education conducted in a suitable academic environment free from disruption.

C. To protect First Amendment rights, while at the same time preserving the integrity of the education objectives and responsibilities of the school district, the school board adopts the following regulations and procedures.

### **III. DEFINITIONS**

A. "Distribution" means circulation or dissemination of material by means of handing out free copies, selling or offering copies for sale, accepting donations for copies, or posting or displaying material. This includes, but not limited to, posting on a wall, bulletin board or other building surface, or anywhere on school district property; leaving items for pick up by interested persons; directly giving items to persons; or placing items in rooms in a school district building.

B. "Nonschool-sponsored material" or "unofficial material" includes all materials or objects intended for distribution, except school newspapers, employee newsletters, literary magazines, yearbooks and other publications funded and/or sponsored or authorized by the school. Examples of nonschool-sponsored material include, but are not limited to, leaflets, brochures, buttons, badges, fliers, petitions, posters, and underground newspapers, whether written by students or employees.

C. “Nonschool person” means any person who is not currently enrolled as a student in or employed by the school district.

D. “Political materials” include, but are not limited to, any paper, handbill, poster, booklet, brochure, advertisement, sample ballot, display, or audio or video presentation, that pertains to a political candidate or political issue.

E. “Political issue” is an issue that is the subject of a public referendum which is being debated by political candidates or organizations.

F. “Political candidate” is a person who seeks nomination or election to partisan or nonpartisan public or party office or who has filed as candidate for election.

G. A “political activity” is an act that is of a nature, done with intent, or done in a way to influence or tend to influence, directly or indirectly, voting at a primary or if it is done because a person is about to vote, has voted, or has refrained from voting at a primary or an election.

H. “School activities” means any activity sponsored by the school including, but not limited to, classroom work, library activities, physical education classes, official assemblies and other similar gatherings, school athletic contests, band concerts, school plays, and in-school lunch periods.

I. “Work hours” for school district employees refer to the period between the time an employee is scheduled to begin work and the end of the employee’s assigned work day (excluding the employee’s lunch and break periods), and any paid overtime hours or extra-duty hours for which the employee has volunteered or been assigned.

#### **IV. PROCEDURES**

##### **A. Political Activities Of Employees In General**

1. Employees of the school district, while acting in the capacity of a school district employee, shall not engage in any political activity during the school day, during work hours or at school activities.

2. School district employees shall be free to engage in political activities outside of the school day, work hours or school activities and to campaign and run for political office. Employees shall not allow such political activities to interfere with the proper performance of their school duties and shall not use school time, supplies, or equipment in these activities.

3. A school district employee or official shall not use his or her official authority or influence to compel a person to take part in a political activity, to pay or promise to pay a political contribution, or apply for membership in or become a

member political organization.

4. Teachers or other school district employees may not use or recruit pupils during the school day, during work hours or at school activities for either distribution of political materials or other political activities.

5. School district employees, while acting in the capacity of a school district employee, shall refrain from any conduct that is intended to be or that reasonably could be perceived as endorsing or opposing specific political issues or political candidates.

6. The implementation of and compliance with this Policy shall be coordinated by the Superintendent. All inquires regarding school district elections referendum candidates and campaigns shall be referred to the Superintendent.

B. Distribution of Political Materials

1. The distribution of political materials on school district property by nonschool persons is governed by Policy 904, Distribution of Materials on School District Property by Nonschool Persons.

2. The distribution of political materials on school district property by students and employees is governed by Policy 505, Distribution of Nonschool-sponsored Materials on School Premises by Students and Employees.

C. School District Property, Facilities and Activities

1. Non-public forums. All school district property and facilities are nonpublic forums that are designated as reserved for their intended purpose of education and education-related activities. Political activities will not be allowed in such non-public forums unless it is part of approved curriculum. Further, reasonable time, place and manner restrictions may be imposed in such a nonpublic forum.

2. Public forums by designation. The building principal, with approval of the superintendent, may designate specific property for facilities of the school district as limited public forums open for certain expressive activity such as political speech. The open character of such property or facilities will not be retained indefinitely. Further, reasonable time, place and manner restrictions may be imposed. The building principal and the superintendent are responsible for establishing the time, place and manner restrictions and for ensuring equality of treatment toward all candidates and issues when such a designated public forum is created.

## V. VIOLATION OF POLICY

A. Violation of this policy by a student will be halted and appropriate disciplinary action will be taken in accordance with the school district's student discipline policy and/or any governing statute.

B. Violation of this policy by an employee will be halted and appropriate disciplinary action will be taken, in accordance with any individual contract, collective bargaining agreement, school district policies and procedures, and/or governing state.

C. Any other party violating this policy will be requested to leave the school property immediately and, if necessary, law enforcement will be called. In addition, other action may be taken, if appropriate.

## VI. IMPLEMENTATION/NOTICE OF POLICY

A. A copy of this policy will be posted on the district website.

B. The school district administration may develop any additional guidelines and procedures necessary to implement his policy.

**Legal References:** Minn. Stat. § 10A.01, Subd. 5  
Minn. Stat. § 43A.32  
Minn. Stat. § 211A.02, Subd.8  
Minn. Stat. § 211B.09 (Prohibited public employee activities)  
Op. Minn. Atty. Gen. 159a-3 (May 24, 1966) (concluding that a school district could not make expenditure of public funds for printing and mailing of literature urging passage of a bond issue)

~~Adopted:~~ \_\_\_\_\_

MSBA/MASA Model Policy 102

Orig. 1995

Revised: \_\_\_\_\_

Rev. ~~2017~~2021

## 102 EQUAL EDUCATIONAL OPPORTUNITY

*[Note: School districts are required by statute to have a policy addressing these issues.]*

### I. PURPOSE

The purpose of this policy is to ensure that equal educational opportunity is provided for all students of the school district.

### II. GENERAL STATEMENT OF POLICY

A. The policy of the school district is to provide equal educational opportunity for all students. The school district does not unlawfully discriminate on the basis of race, color, creed, religion, national origin, sex, marital status, parental status, status with regard to public assistance, disability, sexual orientation, including gender identity and expression, or age. The school district also makes reasonable accommodations for ~~disabled~~ students with disabilities.

~~*[Note: Part of the definition of “sexual orientation” within the Minnesota Human Rights Act (MHRA) is “having or being perceived as having a self-image or identity not traditionally associated with one’s biological maleness or femaleness,” which is how gender identity and expression gain protection under the MHRA. Minn. Stat. § 363A.03, Subd. 44.]*~~

B. The school district prohibits ~~the~~ harassment and discrimination of any individual ~~for any of the categories based on any of the protected classifications~~ listed above. For information about the types of conduct that constitute violation of the school district’s policy on harassment and violence and the school district’s procedures for addressing such complaints, refer to the school district’s policy on harassment and violence (Policy 413).

C. The school district prohibits discrimination of students with a disability, within the intent of Section 504 of the Rehabilitation Act of 1973 (“Section 504”), who need services, accommodations, or programs in order to receive a free appropriate public education. For information as to protections that may apply pursuant to Section 504 and the school district’s corresponding procedures for addressing disability discrimination complaints, refer to the school district’s policy on student disability nondiscrimination (Policy 521).

D. The school district prohibits sexual harassment discrimination of any individual on the basis of sex in its education programs or activities. For information as to the protections that apply pursuant to Title IX and school district’s corresponding procedures and processes for addressing sexual harassment and discrimination,

refer to the school district's policy on Title IX sex nondiscrimination (Policy 522).

- CE. This policy applies to all areas of education including academics, coursework, co-curricular and extracurricular activities, or other rights or privileges of enrollment.
- DE. Every school district employee shall be responsible for complying\_ with this policy ~~conscientiously~~.
- EG. Any student, parent, or guardian having a question regarding this policy should discuss it with the appropriate school district official as provided by policy. In the absence of a specific designee, an inquiry or a complaint should be referred to the superintendent.

**Legal References:** Minn. Stat. § 121A.03, Subd. 2 (Sexual, Religious, and Racial Harassment and Violence Policy)  
Minn. Stat. Ch. 363A (Minnesota Human Rights Act)  
20 U.S.C. § 1681 *et seq.* (Title IX of the Education Amendments of 1972)  
42 U.S.C. § 2000d *et seq.* (Title VI of the Civil Rights Act of 1964)  
42 U.S.C. § 12101 *et seq.* (Americans with Disabilities Act)

**Cross References:** ~~MSBA/MASA Model Policy 402 (Disability Nondiscrimination)~~  
MSBA/MASA Model Policy 413 (Harassment and Violence)  
MSBA/MASA Model Policy 521 (Student Disability Nondiscrimination)  
MSBA/MASA Model Policy 522 (~~Student Sex Nondiscrimination~~Title IX Sex Nondiscrimination Policy, Grievance Procedure and Process)

Adopted: \_\_\_\_\_

MSBA/MASA Model Policy 406

Orig. 1995

Revised: \_\_\_\_\_

Rev. ~~2014~~2021

## 406 PUBLIC AND PRIVATE PERSONNEL DATA

*[Note: The provisions of this policy accurately reflect the Minnesota Government Data Practices Act and are not discretionary in nature.]*

### I. PURPOSE

The purpose of this policy is to provide guidance to school district employees as to the data the school district collects and maintains regarding its ~~personnel~~employees, volunteers, independent contractors, and applicants (“personnel”).

### II. GENERAL STATEMENT OF POLICY

- A. All data on individuals collected, created, received, maintained, or disseminated by the school district, which is classified by statute or federal law as public, shall be accessible to the public pursuant to the procedures established by the school district.
- B. All other data on individuals is private or confidential.

### III. DEFINITIONS

- A. “Public” means that the data is available to anyone who requests it.
- B. “Private” means the data is not public and is available-accessible only to the following: the subject of the data, as limited by any applicable state or federal law; individuals within the school district whose work assignments reasonably require access; entities and agencies as determined by the responsible authority who are authorized by law to gain access to that specific data; and entities or individuals given access by the express written direction of the data subject.
- C. “Confidential” means the data isare not public and isare not ~~available-accessible~~ to the subject.
- D. “Parking space leasing data” means the following government data on an applicant~~-tion~~ for, or lessee~~ase~~ of, a parking space: residence address, home telephone number, beginning and ending work hours, place of employment, location of parking space, and work telephone number.
- E. “Personnel data” means government data on individuals maintained because they are or were employees~~-of the school district~~, applicants for employment,~~-or~~ volunteers or independent contractors for the school district,~~-or members of or applicants for an advisory board or commission.~~ Personnel data include data

submitted by an employee to the school district ~~by an employee~~ as part of an organized self-evaluation effort by the school district to request suggestions from all employees on ways to cut costs, make the school district more efficient, or to improve school district operations. ~~An employee who is identified in a suggestion shall have access to all data in the suggestion except the identity of the employee making the suggestion.~~

- F. “Finalist” means an individual who is selected to be interviewed by the school board for a position.
- G. “Protected health information” means individually identifiable health information as defined in 45 C.F.R. § 160.103, that is transmitted in electronic form by a school district acting as a by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium by a health care provider, in connection with a transaction covered by 45 C.F.R. Parts 160, 162 and 164. “Protected health information” excludes individually identifiable health information in education records covered by the ~~federal~~ Family Educational Rights and Privacy Act, ~~and~~ employment records held by a school district in its role as employer; and records regarding a person who has been deceased for more than fifty (50) years.
- H. “Public officials” means business managers; human resource directors; athletic directors whose duties include at least fifty (50) percent of their time spent in administration, personnel, supervision, and evaluation; chief financial officers; directors; and individuals defined as superintendents and principals and in a charter school, individuals employed in comparable positions.

#### IV. PUBLIC PERSONNEL DATA

- A. The following information on current and former employees, ~~including~~ volunteers and independent contractors of the school district, is public:
  - 1. name;
  - 2. employee identification number, which may not be the employee’s ~~s~~ Social Security number;
  - 3. actual gross salary;
  - 4. salary range;
  - 5. terms and conditions of employment relationship;
  - 6. contract fees;
  - 7. actual gross pension;
  - 8. the value and nature of employer-paid fringe benefits;

9. the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary;
10. job title;
11. bargaining unit;
12. job description;
13. education and training background;
14. previous work experience;
15. date of first and last employment;
16. the existence and status of any complaints or charges against the employee, regardless of whether the complaint or charge resulted in a disciplinary action;
17. the final disposition of any disciplinary action, as defined in Minnesota Statutes, section-§ 13.43, sSubdivision. 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 school district;
18. the complete terms of any agreement settling any dispute arising out of the employment relationship, including superintendent buyout agreements, except that the agreement must include specific reasons for the agreement if it involves the payment of more than \$10,000 of public money, and such agreement may not have the purpose or effect of limiting access to or disclosure of personnel data or limiting the discussion of information or opinions related to personnel data;
19. work location;
20. work telephone number;
21. badge number;
22. work-related continuing education;
23. honors and awards received; and
24. payroll time sheets or other comparable data that are used only 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.

- B. The following information on current and former applicants for employment by the school district is public:
1. veteran status;
  2. relevant test scores;
  3. rank on eligible list;
  4. job history;
  5. education and training; and
  6. work availability.
- C. Names of applicants are private data except when certified as eligible for appointment to a vacancy or when they applicants are considered by the school board to be become finalists for an public employment position.
- D. Applicants for appointment to a public body.
1. Data about applicants for appointment to a public body collected by the school district as a result of the applicant's application for employment are private data on individuals except that the following are public:
    - a. name;
    - b. city of residence, except when the appointment has a residency requirement that requires the entire address to be public;
    - c. education and training;
    - d. employment history;
    - e. volunteer work;
    - f. awards and honors;
    - g. prior government service;
    - h. any data required to be provided or that are voluntarily provided in an application for appointment to a multmember agency pursuant to Minn-esota Statutes, section-§ 15.0597; and
    - i. veteran status.
  2. Once an individual is appointed to a public body, the following additional

items of data are public:

- a. residential address;
- b. either a telephone number or electronic mail address where the appointee can be reached, or both at the request of the appointee;
- c. first and last dates of service on the public body;
- d. the existence and status of any complaints or charges against an appointee; and
- e. upon completion of an investigation of a complaint or charge against an appointee, the final investigative report is public, unless access to the data would jeopardize an active investigation.

3. Notwithstanding paragraph 2., 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.

E. Regardless of whether there has been a final disposition as defined in ~~Minnesota Statutes, section~~ § 13.43, ~~s~~Subdivision 2(b), upon completion of an investigation of a complaint or charge against a public official, as defined in ~~Minnesota Statutes, section~~ § 13.43, ~~S~~subdivision 2(e), or if a public official resigns or is terminated from employment while the complaint or charge is pending, all data relating to the complaint or charge are public, unless access to the data would jeopardize an active investigation or reveal confidential sources.

~~F.~~ Data relating to a complaint or charge against a public official is public only if:

- ~~(1.)~~ the complaint or charge results in disciplinary action or the employee resigns or is terminated from employment while the complaint or charge is pending; or
- ~~(2.)~~ potential legal claims arising out of the conduct that is the subject of the complaint or charge are released as part of a settlement agreement.

Data that is classified as private under another law is not made public by this provision.

## V. PRIVATE PERSONNEL DATA

A. All other personnel data not listed in Section IV are private ~~and will only be shared with school district staff whose work requires such access. Private data will not be otherwise released unless authorized by law or by the employee's informed written consent.~~

- B. Data pertaining to an employee's dependents are private data on individuals.
- C. Data created, collected, or maintained by the school district to administer employee assistance programs are private.
- D. Parking space leasing data with regard to data on individuals are private.
- E. An individual's checking account number is private when submitted to a government entity.
- F. Personnel data may be disseminated to labor organizations to the extent the responsible authority school district determines it is the dissemination is necessary for the labor organization to conduct its business selections, notify employees of fair share fee assessments and implement the provisions of Minnesota Statutes chapters 179 and 179A. Personnel data shall be disseminated to labor organizations and the Bureau of Mediation Services ("BMS") to the extent the dissemination is or when ordered or authorized by the Commissioner of the Bureau of Mediation Services BMS.
- G. The school district may display a photograph of a current or former employee to prospective witnesses as part of the school district's investigation of any complaint or charge against the employee.
- H. The school district may, if the responsible authority or designee reasonably determines that the release of personnel data is necessary to protect an employee from harm to self or to protect another person who may be harmed by the employee, release data that are relevant to the concerns for safety to:
  1. the person who may be harmed and to the attorney representing the person when the data are relevant to obtaining a restraining order;
  2. a pre-petition screening team conducting an investigation of the employee under Minnesota Statutes, section -§ 253B.07, §subdivision- 1; or
  3. a court, law enforcement agency, or prosecuting authority.
- I. Private personnel data or confidential investigative data on employees may be disseminated to a law enforcement agency for the purpose of reporting a crime or alleged crime committed by an employee, or for the purpose of assisting law enforcement in the investigation of such a crime or alleged crime committed by an employee.
- J. A complainant has access to a statement provided by the complainant to the school district in connection with a complaint or charge against an employee.
- K. When allegations of sexual or other types of harassment are made against an employee, the employee shall does not have access to data that would identify the

complainant or other witnesses if the ~~school district~~responsible authority determines that the employee's access to that data would:

1. threaten the personal safety of the complainant or a witness; or
2. subject the complainant or witness to harassment.

If a disciplinary proceeding is initiated against the employee, data on the complainant or witness shall be available to the employee as may be necessary for the employee to prepare for the proceeding.

- L. The school district ~~shall~~must make any report to the Minnesota Professional Educator Licensing and Standards Board ("PELSB") ~~or the state board of education~~ the Board of School Administrators ("BOSA"), whichever has jurisdiction over the teacher's or administrator's license, as required by ~~Minnesota Statutes, section~~ § 122A.20, Ssubdivision. 2, and shall, upon written request from the licensing board having jurisdiction over ~~a teacher's~~ license, provide the licensing board with information about the teacher or administrator from the school district's files, any termination or disciplinary proceeding, and settlement or compromise, or any investigative file in accordance with ~~Minnesota Statutes, section~~ § 122A.20, Ssubdivision. 2.

*[Note: The obligation to make a report set forth in this section applies equally to charter school boards and their executive directors and charter school authorizers.]*

- M. Private personnel data shall be disclosed to the ~~d~~Department of Employment and eEconomic security-Development for the purpose of administration of the unemployment insurance program under ~~Minnesota Statutes~~. Ch. 268.
- N. When a report of alleged maltreatment of a student in an elementary, middle school, high school or charter school facility, as defined under Minn. Stat. section 260E.03, is made to the Commissioner of the Minnesota Department of Education ("MDE") under Minnesota Statutes eChapter 260E, data that are relevant and collected by the school facility about the person alleged to have committed maltreatment must be provided to the Commissioner on request for purposes of an assessment or investigation of the maltreatment report. Additionally, personnel data may be released for purposes of informing-providing information to a parent, legal guardian, or custodian of a child in accordance with MDE Screening Guidelines~~that an incident has occurred that may constitute maltreatment of the child, when the incident occurred, and the nature of the conduct that may constitute maltreatment.~~
- O. The school district shall release to a requesting school district or charter school private personnel data on a current or former employee related to acts of violence toward or sexual contact with a student, if

1. an investigation conducted by or on behalf of the school district or law

enforcement affirmed the allegations in writing prior to release and the investigation resulted in the resignation of the subject of the data; or

2. the employee resigned while a complaint or charge involving the allegations was pending, the allegations involved acts of sexual contact with a student, and the employer informed the employee in writing, before the employee resigned, that if the employee resigns while the complaint or charge is still pending, the employer must release private personnel data about the employee's alleged sexual contact with a student to a school district or charter school requesting the data after the employee applies for employment with that school district or charter school and the data remain classified as provided in ~~Minnesota Statutes Chapter~~ 13.

       Data that are released under this paragraph must not include data on the student.

- P. ~~The identity of an employee making a suggestion as part of an organized self-evaluation effort by the school district to cut costs, make the school district more efficient, or to improve school district operations is private. Data submitted by an employee to the school district as part of an organized self-evaluation effort by the school district to request suggestions from all employees on ways to cut costs, make the school district more efficient, or improve the school district operations is private data. An employee who is identified in a suggestion, however, shall have access to all data in the suggestion except the identity of the employee making the suggestion.~~
- Q. ~~Protected Hhealth information, as defined in 45 C.F.R. Parts 160 and 164, on employees is private and will not be disclosed—except as permitted or required unless otherwise provided—by law. To the extent that the school district transmits protected health information, the school district will comply with all privacy requirements.~~
- R. Personal home contact information for employees may be used by the school district to ensure that an employee can be reached in the event of an emergency or other disruption affecting continuity of school district operations ~~—and may be~~ shared with another government entity in the event of an emergency or other disruption to ensure continuity of operation for the school district or government entity.
- S. The personal telephone number, home address, and electronic mail address of a current or former employee of a contractor or subcontractor maintained as a result of a contractual relationship between the school district and a contractor or subcontractor entered on or after August 1, 2012, are private data. These data must be shared with another government entity to perform a function authorized by law. The data also must be disclosed to a government entity or any person for prevailing wage purposes.
- T. When a continuing contract teacher is discharged immediately because the teacher's license has been revoked due to a conviction for child abuse or sexual

~~offenses involving a child as set forth in Minnesota Statutes, section 122A.40, subdivision 13(b), or sexual abuse~~ or when the Commissioner of the ~~Minnesota Department of Education~~ (MDE) makes a final determination of child maltreatment involving a teacher under Minnesota Statutes, section 260E.21, subdivision 4 or 260E.35, the school principal or other person having administrative control of the school must include in the teacher's employment record the information contained in the record of the disciplinary action or the final maltreatment determination, consistent with the definition of public data under ~~Minnesota Statutes, section §~~ 13.41, Subdivision. 5, and must provide ~~the Minnesota Professional Educator Licensing and Standards Board (PELSB)~~ and the ~~licensing division at MDE~~ with the necessary and relevant information to enable ~~the Minnesota Professional Educator Licensing and Standards Board PELSB~~ and MDE's licensing division to fulfill their statutory and administrative duties related to issuing, renewing, suspending, or revoking a teacher's license. In addition to the background check required under ~~Minnesota Statutes, section §~~ 123B.03, a school board or other school hiring authority must contact ~~the Minnesota Professional Educator Licensing and Standards Board PELSB~~ and MDE to determine whether the teacher's license has been suspended or revoked, consistent with the discharge and final maltreatment determinations. Unless restricted by federal or state data practices law or by the terms of a collective bargaining agreement, the responsible authority for a school district must disseminate to another school district private personnel data on a current or former teacher (employee or contractor) of the district, including the results of background investigations, if the requesting school district seeks the information because the subject of the data has applied for employment with the requesting school district.

## **VI. MULTIPLE CLASSIFICATIONS**

If data on individuals are classified as both private and confidential by ~~Minnesota Statutes Chapter-~~ 13, or any other state or federal law, the data are private.

## **VII. CHANGE IN CLASSIFICATIONS**

The school district shall change the classification of data in its possession if it is required to do so to comply with ~~either~~ judicial or administrative rules pertaining to the conduct of legal actions or with a specific statute applicable to the data in the possession of the disseminating or receiving agency.

## **VIII. RESPONSIBLE AUTHORITY**

The school district has designated [*name and title, telephone*] as the authority responsible for personnel data.

The responsible authority, or a school district employee if so designated, shall serve as the school district's data practices compliance official and, as such, shall be the employee to whom persons may direct questions or concerns regarding problems in obtaining access to data or other data practices problems.

~~If you have any questions, contact [him/her].~~

## IX. EMPLOYEE AUTHORIZATION/RELEASE FORM

An employee authorization form is included as an addendum to this policy.

- Legal References:** Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)
- Minn. Stat. § 13.02 (Definitions)
  - [Minn. Stat. § 13.03 \(Access to Government Data\)](#)
  - [Minn. Stat. § 13.05 \(Duties of Responsible Authority\)](#)
  - Minn. Stat. § 13.37 (General Nonpublic Data)
  - Minn. Stat. § 13.39 (Civil Investigation Data)
  - [Minn. Stat. § 13.41 \(Licensing Data – Public Data\)](#)
  - Minn. Stat. § 13.43 (Personnel Data)
  - Minn. Stat. § 13.601, ~~§~~subd. 3 (~~Elected and Appointed Officials~~[Applicants for Employment](#))
  - [Minn. Stat. § 15.0597 \(Appointment to Multimember Agencies\)](#)
  - Minn. Stat. § 122A.20, ~~§~~subd. 2 (Mandatory Reporting)
  - Minn. Stat. § 122A.40, ~~§~~subds. 13 and 16 (Employment; Contracts; Termination)
  - [Minn. Stat. § 123B.03 \(Background Check\)](#)
  - [Minn. Stat. § 123B.143, §](#)subd. 2 ([Disclose Past Buyouts](#))
  - [Minn. Stat. Ch. 179 \(Minnesota Labor Relations Act\)](#)
  - [Minn. Stat. Ch. 179A \(Minnesota Public Labor Relations Act\)](#)
  - [Minn. Stat. § 253B.07;\(Judicial Commitment: Preliminary Procedures\)](#)
  - Minn. Stat. ~~Ch. § 260E 626.556, Subd. 7~~ (Reporting of Maltreatment of Minors)
  - [Minn. Stat. Ch. 268 \(Unemployment Insurance\)](#)
  - [Minn. R. Pt. 1205 \(Data Practices\)](#)
  - P.L. 104-191 (HIPAA)
  - 45 C.F.R. Parts 160, [162](#) and 164 (HIPAA Regulations)
- Cross References:** MSBA/MASA Model Policy 206 (Public Participation in School Board Meetings/Complaints about Persons at School Board Meetings and Data Privacy Considerations)
- MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)
- [MSBA/MASA Model Policy 722 \(Public Data Requests\)](#)
- MSBA ~~Service Manual, Chapter 13, School~~ Law Bulletin “T” (School Records – Privacy – Access to Data)

Adopted: \_\_\_\_\_

MSBA/MASA Model Policy 413

Orig. 1995

Revised: \_\_\_\_\_

Rev. 2017/21

## 413 HARASSMENT AND VIOLENCE

*[Note: State law (Minnesota Statutes, section § 121A.03) requires that school districts adopt a sexual, religious, and racial harassment and violence policy that conforms with the Minnesota Human Rights Act, Minnesota Statutes, section 363A (MHRA). This policy complies with that statutory requirement and addresses the other classifications protected by the MHRA and/or federal law. While the recommendation is that school districts incorporate the other protected classifications, in addition to sex, religion, and race, into this policy, they are not specifically required to do so by Minnesota Statutes, section § 121A.03. The Minnesota Department of Education (MDE) is required to maintain and make available a model sexual, religious, and racial harassment policy in accordance with Minnesota Statutes, section § 121A.03. MDE's policy differs from that of MSBA and imposes greater requirements upon school districts than required by law. For that reason, MSBA recommends the adoption of its model policy by school districts. Each school board must submit a copy of the policy the board has adopted to the Commissioner of MDE.]*

### I. PURPOSE

The purpose of this policy is to maintain a learning and working environment ~~that is~~ free from harassment and violence on the basis of race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability (Protected Class).

~~*[Note: The Minnesota Human Rights Act defines "sexual orientation" to include "having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness." Minn. Stat. § 363A.03, Subd. 44.]*~~

### II. GENERAL STATEMENT OF POLICY

A. The policy of the school district is to maintain a learning and working environment ~~that is~~ free from harassment and violence on the basis of ~~race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability~~ Protected Class. The school district prohibits any form of harassment or violence on the basis of Protected Class ~~race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability~~.

B. A violation of this policy occurs when any student, teacher, administrator, or other school district personnel harasses a student, teacher, administrator, or other

school district personnel or group of students, teachers, administrators, or other school district personnel through conduct or communication based on a person's ~~Protected Class~~race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability, as defined by this policy. (For purposes of this policy, school district personnel include school board members, school employees, agents, volunteers, contractors, or persons subject to the supervision and control of the district.)

- C. A violation of this policy occurs when any student, teacher, administrator, or other school district personnel inflicts, threatens to inflict, or attempts to inflict violence upon any student, teacher, administrator, or other school district personnel or group of students, teachers, administrators, or other school district personnel based on a person's ~~Protected Class~~race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability.
- D. The school district will act to investigate all complaints, either formal or informal, verbal or written, of harassment or violence based on a person's ~~Protected Class~~race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability, and to discipline or take appropriate action against any student, teacher, administrator, or other school district personnel ~~who is~~ found to have violated this policy.

### III. DEFINITIONS

- A. "Assault" is:
  - 1. an act done with intent to cause fear in another of immediate bodily harm or death;
  - 2. the intentional infliction of or attempt to inflict bodily harm upon another; or
  - 3. the threat to do bodily harm to another with present ability to carry out the threat.
- B. "Harassment" prohibited by this policy consists of physical or verbal conduct, including, but not limited to, electronic communications, relating to an individual's or group of individuals' race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability, when the conduct:
  - 1. has the purpose or effect of creating an intimidating, hostile, or offensive working or academic environment;

2. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance; or
3. otherwise adversely affects an individual's employment or academic opportunities.

C. "Immediately" means as soon as possible but in no event longer than 24 hours.

D. Protected Classifications; Definitions

1. "Disability" means, ~~with respect to an individual any condition or characteristic that renders a person a disabled person. A disabled person is any person who~~who:
  - a. ~~has~~ a physical, ~~sensory, sensory~~ or mental impairment ~~which that~~ substantially materially materially limits one or more major life activities of such individual;
  - b. has a record of such an impairment; or
  - c. is regarded as having such an impairment.
2. "Familial status" means the condition of one or more minors being domiciled with:
  - a. their parent or parents or the minor's legal guardian; or
  - b. the designee of the parent or parents or guardian with the written permission of the parent or parents or guardian. The protections afforded against harassment or violence discrimination on the basis of family status apply to any person who is pregnant or is in the process of securing legal custody of an individual who has not attained the age of majority.
3. "Marital status" means whether a person is single, married, remarried, divorced, separated, or a surviving spouse and, in employment cases, includes protection against harassment or violence discrimination on the basis of the identity, situation, actions, or beliefs of a spouse or former spouse.
4. "National origin" means the place of birth of an individual or of any of the individual's lineal ancestors.
5. "Sex" includes, but is not limited to, pregnancy, childbirth, and disabilities related to pregnancy or childbirth.
6. "Sexual orientation" means having or being perceived as having an

emotional, physical, or sexual attachment to another person without regard to the sex of that person or having or being perceived as having an orientation for such attachment, or having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness. "Sexual orientation" does not include a physical or sexual attachment to children by an adult.

7. "Status with regard to public assistance" means the condition of being a recipient of federal, state, or local assistance, including medical assistance, or of being a tenant receiving federal, state, or local subsidies, including rental assistance or rent supplements.

E. "Remedial response" means a measure to stop and correct acts of harassment or violence, prevent acts of harassment or violence from recurring, and protect, support, and intervene on behalf of a student who is the target or victim of acts of harassment or violence.

F. Sexual Harassment; Definition

1. Sexual harassment ~~includes—consists—of~~ unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct or communication of a sexual nature when:

a. submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment or an education; or

b. submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment or education; or

c. that conduct or communication has the purpose or effect of substantially ~~or—unreasonably~~ interfering with an individual's employment or education, or creating an intimidating, hostile, or offensive employment or educational environment.

2. Sexual harassment may include, but is not limited to:

a. unwelcome verbal harassment or abuse;

b. unwelcome pressure for sexual activity;

c. unwelcome, sexually motivated, or inappropriate patting, pinching, or physical contact, other than necessary restraint of student(s) by teachers, administrators, or other school district personnel to avoid physical harm to persons or property;

d. unwelcome sexual behavior or words, including demands for

sexual favors, accompanied by implied or overt threats concerning an individual's employment or educational status;

- e. unwelcome sexual behavior or words, including demands for sexual favors, accompanied by implied or overt promises of preferential treatment with regard to an individual's employment or educational status; or
- f. unwelcome behavior or words directed at an individual because of sexual orientation, including gender identity or expression.

#### G. Sexual Violence; Definition

1. Sexual violence is a physical act of aggression or force or the threat thereof ~~which that~~ involves the touching of another's intimate parts or forcing a person to touch any person's intimate parts. Intimate parts, as defined in ~~Minnesota Statutes, §section~~ 609.341, includes the primary genital area, groin, inner thigh, buttocks, or breast, as well as the clothing covering these areas.
2. Sexual violence may include, but is not limited to:
  - a. touching, patting, grabbing, or pinching another person's intimate parts, ~~whether that person is of the same sex or the opposite sex;~~
  - b. coercing, forcing, or attempting to coerce or force the touching of anyone's intimate parts;
  - c. coercing, forcing, or attempting to coerce or force sexual intercourse or a sexual act on another; or
  - d. threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another.

#### H. Violence; Definition

Violence prohibited by this policy is a physical act of aggression or assault upon another or group of individuals because of, or in a manner reasonably related to, ~~race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability~~ an individual's Protected Class.

### IV. REPORTING PROCEDURES

- A. Any person who believes he or she has been the target or victim of harassment or violence on the basis of ~~race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability~~ Protected Class

by a student, teacher, administrator, or other school district personnel, or any person with knowledge or belief of conduct which may constitute harassment or violence prohibited by this policy toward a student, teacher, administrator, or other school district personnel or group of students, teachers, administrators, or other school district personnel should report the alleged acts immediately to an appropriate school district official designated by this policy. A person may report conduct ~~which~~that may constitute harassment or violence anonymously. However, the school district may not rely solely on an anonymous report to determine discipline or other remedial responses.

- B. The school district encourages the reporting party or complainant to use the report form available from the principal or building supervisor of each building or available from the school district office, but oral reports shall be considered complaints as well.
- C. Nothing in this policy shall prevent any person from reporting harassment or violence directly to a school district human rights officer or to the superintendent. If the complaint involves the building report taker, the complaint shall be made or filed directly with the superintendent or the school district human rights officer by the reporting party or complainant.
- D. In Each School Building. The building principal, the principal's designee, or the building supervisor (hereinafter the "building report taker") is the person responsible for receiving oral or written reports of harassment or violence prohibited by this policy at the building level. Any adult school district personnel who receives a report of harassment or violence prohibited by this policy shall inform the building report taker immediately. If the complaint involves the building report taker, the complaint shall be made or filed directly with the superintendent or the school district human rights officer by the reporting party or complainant. The building report taker shall ensure that this policy and its procedures, practices, consequences, and sanctions are fairly and fully implemented and shall serve as a primary contact on policy and procedural matters.
- E. A teacher, school administrator, volunteer, contractor, or other school employee shall be particularly alert to possible situations, circumstances, or events that might include acts of harassment or violence. Any such person who witnesses, observes, receives a report of, or has other knowledge or belief of conduct that may constitute harassment or violence shall make reasonable efforts to address and resolve the harassment or violence and shall inform the building report taker immediately. School district personnel who fail to inform the building report taker of conduct that may constitute harassment or violence or who fail to make reasonable efforts to address and resolve the harassment or violence in a timely manner may be subject to disciplinary action.
- F. Upon receipt of a report, the building report taker must notify the school district human rights officer immediately, without screening or investigating the report. The building report taker may request, but may not insist upon, a written

complaint. A written statement of the facts alleged will be forwarded as soon as practicable by the building report taker to the human rights officer. If the report was given verbally, the building report taker shall personally reduce it to written form within 24 hours and forward it to the human rights officer. Failure to forward any harassment or violence report or complaint as provided herein may result in disciplinary action against the building report taker.

- G. In the District. The school board hereby designates \_\_\_\_\_ as the school district human rights officer(s) to receive reports or complaints of harassment or violence prohibited by this policy. If the complaint involves a human rights officer, the complaint shall be filed directly with the superintendent.<sup>1</sup>
- H. The school district shall conspicuously post the name of the human rights officer(s), including mailing addresses and telephone numbers.
- I. Submission of a good faith complaint or report of harassment or violence prohibited by this policy will not affect the complainant or reporter's future employment, grades, work assignments, or educational or work environment.
- J. Use of formal reporting forms is not mandatory.
- K. Reports of harassment or violence prohibited by this policy are classified as private educational and/or personnel data and/or confidential investigative data and will not be disclosed except as permitted by law.
- L. The school district will respect the privacy of the complainant(s), the individual(s) against whom the complaint is filed, and the witnesses as much as possible, consistent with the school district's legal obligations to investigate, to take appropriate action, and to comply with any discovery or disclosure obligations.
- M. Retaliation against a victim, good faith reporter, or a witness of violence or harassment is prohibited.
- N. False accusations or reports of violence or harassment against another person are prohibited.
- O. A person who engages in an act of violence or harassment, reprisal, retaliation, or false reporting of violence or harassment, or permits, condones, or tolerates violence or harassment shall be subject to discipline or other remedial responses for that act in accordance with the school district's policies and procedures.

Consequences for students who commit, or are a party to, prohibited acts of violence or harassment or who engage in reprisal or intentional false reporting may range from remedial responses or positive behavioral interventions up to and including suspension and/or expulsion.

---

<sup>1</sup> In some school districts the superintendent may be the human rights officer. If so, an alternative individual should be designated by the school board.

Consequences for employees who permit, condone, or tolerate violence or harassment or engage in an act of reprisal or intentional false reporting of violence or harassment may result in disciplinary action up to and including termination or discharge.

Consequences for other individuals engaging in prohibited acts of violence or harassment may include, but not be limited to, exclusion from school district property and events and/or termination of services and/or contracts.

## **V. INVESTIGATION**

- A. By authority of the school district, the human rights officer, within three (3) days of the receipt of a report or complaint alleging harassment or violence prohibited by this policy, shall undertake or authorize an investigation. The investigation may be conducted by school district officials or by a third party designated by the school district.
- B. The investigation may consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other methods and documents deemed pertinent by the investigator.
- C. In determining whether alleged conduct constitutes a violation of this policy, the school district should consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved, and the context in which the alleged incidents occurred. Whether a particular action or incident constitutes a violation of this policy requires a determination based on all the facts and surrounding circumstances.
- D. In addition, the school district may take immediate steps, at its discretion, to protect the target or victim, the complainant, and students, teachers, administrators, or other school district personnel pending completion of an investigation of alleged harassment or violence prohibited by this policy.
- E. The alleged perpetrator of the act(s) of harassment or violence shall be allowed the opportunity to present a defense during the investigation or prior to the imposition of discipline or other remedial responses.
- F. The investigation will be completed as soon as practicable. The school district human rights officer shall make a written report to the superintendent upon completion of the investigation. If the complaint involves the superintendent, the report may be filed directly with the school board. The report shall include a determination of whether the allegations have been substantiated as factual and whether they appear to be violations of this policy.

## VI. SCHOOL DISTRICT ACTION

- A. Upon completion of an investigation that determines a violation of this policy has occurred, the school district will take appropriate action. Such action may include, but is not limited to, warning, suspension, exclusion, expulsion, transfer, remediation, termination, or discharge. Disciplinary consequences will be sufficiently severe to try to deter violations and to appropriately discipline prohibited behavior. School district action taken for violation of this policy will be consistent with requirements of applicable collective bargaining agreements, Minnesota and federal law, and applicable school district policies and regulations.
- B. The school district is not authorized to disclose to a victim private educational or personnel data regarding an alleged perpetrator who is a student or employee of the school district. School officials will notify the targets or victims and alleged perpetrators of harassment or violence, the parent(s) or guardian(s) of targets or victims of harassment or violence and the parent(s) or guardian(s) of alleged perpetrators of harassment or violence who have been involved in a reported and confirmed harassment or violence incident of the remedial or disciplinary action taken, to the extent permitted by law.
- C. In order to prevent or respond to acts of harassment or violence committed by or directed against a child with a disability, the school district shall, where determined appropriate by the child's individualized education program (IEP) or Section 504 team, allow the child's IEP or Section 504 plan to be drafted to address the skills and proficiencies the child needs as a result of the child's disability to allow the child to respond to or not to engage in acts of harassment or violence.

## VII. RETALIATION OR REPRISAL

The school district will discipline or take appropriate action against any student, teacher, administrator, or other school district personnel who commits an act of reprisal or who retaliates against any person who asserts, alleges, or makes a good faith report of alleged harassment or violence prohibited by this policy, who testifies, assists, or participates in an investigation of retaliation or alleged harassment or violence, or who testifies, assists, or participates in a proceeding or hearing relating to such harassment or violence. Retaliation includes, but is not limited to, any form of intimidation, reprisal, harassment, or intentional disparate treatment. Disciplinary consequences will be sufficiently severe to deter violations and to appropriately discipline the individual(s) who engaged in the harassment or violence. Remedial responses to the harassment or violence shall be tailored to the particular incident and nature of the conduct.

## VIII. RIGHT TO ALTERNATIVE COMPLAINT PROCEDURES

These procedures do not deny the right of any individual to pursue other avenues of recourse which may include filing charges with the Minnesota Department of Human Rights or another state or federal agency, initiating civil action, or seeking redress under state criminal statutes and/or federal law.

## IX. HARASSMENT OR VIOLENCE AS ABUSE

- A. Under certain circumstances, alleged harassment or violence may also be possible abuse under Minnesota law. If so, the duties of mandatory reporting under ~~Minnesota Statutes: Chapter. 260E § 626.556~~ may be applicable.
- B. Nothing in this policy will prohibit the school district from taking immediate action to protect victims of alleged harassment, violence, or abuse.

## X. DISSEMINATION OF POLICY AND TRAINING

- A. This policy shall be conspicuously posted throughout each school building in areas accessible to students and staff members.
- B. This policy shall be given to each school district employee and independent contractor who regularly interacts with students at the time of initial employment with the school district.
- C. This policy shall appear in the student handbook.
- D. The school district will develop a method of discussing this policy with students and employees.
- E. The school district may implement violence prevention and character development education programs to prevent and reduce policy violations. Such programs may offer instruction on character education including, but not limited to, character qualities such as attentiveness, truthfulness, respect for authority, diligence, gratefulness, self-discipline, patience, forgiveness, respect for others, peacemaking, resourcefulness, and/or sexual abuse prevention.
- F. This policy shall be reviewed at least annually for compliance with state and federal law.

**Legal References:** Minn. Stat. § 120B.232 (Character Development Education)  
Minn. Stat. § 120B.234 (Child Sexual Abuse Prevention Education)  
Minn. Stat. § 121A.03, Subd. 2 (Sexual, Religious, and Racial Harassment and Violence Policy)  
Minn. Stat. § 121A.031 (School Student Bullying Policy)  
Minn. Stat. Ch. 363A (Minnesota Human Rights Act)  
Minn. Stat. § 609.341 (Definitions)  
Minn. Stat. ~~§ Ch. 260E 626.556 et seq.~~ (Reporting of Maltreatment of Minors)  
20 U.S.C. §§ 1681-1688 (Title IX of the Education Amendments of 1972)  
29 U.S.C. § 621 *et seq.* (Age Discrimination in Employment Act)  
29 U.S.C. § 794 (~~Section 504 of the~~ Rehabilitation Act of 1973, ~~§ 504~~)  
42 U.S.C. § 1983 (Civil Action for Deprivation of Rights)

42 U.S.C. § 2000d *et seq.* (Title VI of the Civil Rights Act of 1964)  
42 U.S.C. § 2000e *et seq.* (Title VII of the Civil Rights Act)  
42 U.S.C. § 12101 *et seq.* (Americans with Disabilities Act)

***Cross References:***

MSBA/MASA Model Policy 102 (Equal Educational Opportunity)  
MSBA/MASA Model Policy 401 (Equal Employment Opportunity)  
MSBA/MASA Model Policy 402 (Disability Nondiscrimination Policy)  
MSBA/MASA Model Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)  
MSBA/MASA Model Policy 406 (Public and Private Personnel Data)  
MSBA/MASA Model Policy 414 (Mandated Reporting of Child Neglect or Physical or Sexual Abuse)  
MSBA/MASA Model Policy 415 (Mandated Reporting of Maltreatment of Vulnerable Adults)  
MSBA/MASA Model Policy 506 (Student Discipline)  
MSBA/MASA Model Policy 514 (Bullying Prohibition Policy)  
MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)  
MSBA/MASA Model Policy 521 (Student Disability Nondiscrimination)  
MSBA/MASA Model Policy 522 ([Title IX Sex Nondiscrimination, Grievance Procedures and Process Policy Student Sex Nondiscrimination](#))  
MSBA/MASA Model Policy 524 (Internet Acceptable Use and Safety Policy)  
MSBA/MASA Model Policy 525 (Violence Prevention)  
MSBA/MASA Model Policy 526 (Hazing Prohibition)  
MSBA/MASA Model Policy 528 (Student Parental, Family, and Marital Status Nondiscrimination)

Adopted: \_\_\_\_\_

MSBA/MASA Model Policy 501

Orig. 1995

Revised: \_\_\_\_\_

Rev. 20142021

## 501 SCHOOL WEAPONS POLICY

*[Note: School districts are required by statute to have a policy addressing these issues. ATTENTION: This policy incorporates certain provisions of the Minnesota Citizens' Personal Protection Act (often referred to as the "conceal and carry" law).]*

### I. PURPOSE

The purpose of this policy is to assure a safe school environment for students, staff and the public.

### II. GENERAL STATEMENT OF POLICY

No student or nonstudent, including adults and visitors, shall possess, use, or distribute a weapon when in a school location except as provided in this policy. The school district will act to enforce this policy and to discipline or take appropriate action against any student, teacher, administrator, school employee, volunteer, or member of the public who violates this policy.

### III. DEFINITIONS

#### A. "Weapon"

1. A "weapon" means any object, device or instrument designed as a weapon or through its use is capable of threatening or producing bodily harm or which may be used to inflict self-injury including, but not limited to, any firearm, whether loaded or unloaded; airguns; pellet guns; BB guns; all knives; blades; clubs; metal knuckles; numchucks; throwing stars; explosives; fireworks; mace and other propellants; stunguns; ammunition; poisons; chains; arrows; and objects that have been modified to serve as a weapon.
2. No person shall possess, use, or distribute any object, device or instrument having the appearance of a weapon and such objects, devices or instruments shall be treated as weapons including, but not limited to, weapons listed above which are broken or non-functional, look-alike guns; toy guns; and any object that is a facsimile of a real weapon.
3. No person shall use articles designed for other purposes (i.e., lasers or laser pointers, belts, combs, pencils, files, scissors, etc.), to inflict bodily harm and/or intimidate and such use will be treated as the possession and use of a weapon.

- B. “School Location” includes any school building or grounds, whether leased, rented, owned or controlled by the school, locations of school activities or trips, bus stops, school buses or school vehicles, school-contracted vehicles, the area of entrance or departure from school premises or events, all locations where school-related functions are conducted, and anywhere students are under the jurisdiction of the school district.
- C. “Possession” means having a weapon on one’s person or in an area subject to one’s control in a school location.
- D. “Dangerous Weapon” means any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, any combustible or flammable liquid or other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm. As used in this definition, “flammable liquid” means any liquid having a flash point below 100 degrees Fahrenheit and having a vapor pressure not exceeding 40 pounds per square inch (absolute) at 100 degrees Fahrenheit but does not include intoxicating liquor. As used in this subdivision, “combustible liquid” is a liquid having a flash point at or above 100 degrees Fahrenheit.

#### IV. EXCEPTIONS

- A. A student who finds a weapon on the way to school or in a school location, or a student who discovers that he or she accidentally has a weapon in his or her possession, and takes the weapon immediately to the principal’s office shall not be considered to possess a weapon. If it would be impractical or dangerous to take the weapon to the principal’s office, a student shall not be considered to possess a weapon if he or she immediately turns the weapon over to an administrator, teacher or head coach or immediately notifies an administrator, teacher or head coach of the weapon’s location.
- B. It shall not be a violation of this policy if a nonstudent (or student where specified) falls within one of the following categories:
  - 1. active licensed peace officers;
  - 2. military personnel, or students or nonstudents participating in military training, who are on duty performing official duties;
  - 3. persons authorized to carry a pistol under ~~Minnesota Statutes, §~~section 624.714 while in a motor vehicle or outside of a motor vehicle for the purpose of directly placing a firearm in, or retrieving it from, the trunk or rear area of the vehicle;
  - 4. persons who keep or store in a motor vehicle pistols in accordance with ~~Minnesota Statutes, §§~~sections 624.714 or 624.715 or other firearms in accordance with Minnesota Statutes, section 97B.045;

- a. Section 624.714 specifies procedures and standards for obtaining pistol permits and penalties for the failure to do so. Section 624.715 defines an exception to the pistol permit requirements for “antique firearms which are carried or possessed as curiosities or for their historical significance or value.”
  - b. Section 97B.045 generally provides that a firearm may not be transported in a motor vehicle unless it is (1) unloaded and in a gun case without any portion of the firearm exposed; (2) unloaded and in the closed trunk; or (3) a handgun carried in compliance with §§Sections 624.714 and 624.715.
5. firearm safety or marksmanship courses or activities for students or nonstudents conducted on school property;
  6. possession of dangerous weapons, BB guns, or replica firearms by a ceremonial color guard;
  7. a gun or knife show held on school property;
  8. possession of dangerous weapons, BB guns, or replica firearms with written permission of the principal or other person having general control and supervision of the school or the director of a child care center; or
  9. persons who are on unimproved property owned or leased by a child care center, school or school district unless the person knows that a student is currently present on the land for a school-related activity.

*[Note: Nothing prevents a school district from being more stringent in its weapons policy with respect to students and school district employees than the criminal law, except that the school district may not prohibit the lawful carry or possession of firearms in a parking facility or parking area. Although some school districts may choose to incorporate all of the exceptions to the criminal law, other school districts may choose either not to incorporate some or all of the exceptions or to further limit them. For example, a school district may choose to require written permission from the superintendent, not just a principal, for someone to possess a dangerous weapon in a school location. This would impose a more stringent requirement than the exceptions to the general prohibition of having a weapon on school grounds set forth in (7) to Minnesota Statutes, Section 609.66, Subdivision 1d (f) listed in Section IV.B. above. However, a school district may not regulate firearms, ammunition, or their respective components, when possessed or carried by nonstudents or nonemployees, in a manner that is inconsistent with Minnesota Statutes, Section 609.66, Subdivision 1d.]*

C. Policy Application to Instructional Equipment/Tools

While the school district does not allow the possession, use, or distribution of

weapons by students or nonstudents, such a position is not meant to interfere with instruction or the use of appropriate equipment and tools by students or nonstudents. Such equipment and tools, when properly possessed, used, and stored, shall not be considered in violation of the rule against the possession, use, or distribution of weapons. However, when authorized instructional and work equipment and tools are used in a potentially dangerous or threatening manner, such possession and use will be treated as the possession and use of a weapon.

D. Firearms in School Parking Lots and Parking Facilities

A school district may not prohibit the lawful carry or possession of firearms in a school parking lot or parking facility. For purposes of this policy, the “lawful” carry or possession of a firearm in a school parking lot or parking facility is specifically limited to nonstudent permit-holders authorized under Minnesota Statutes, §section 624.714 to carry a pistol in the interior of a vehicle or outside the motor vehicle for the purpose of directly placing a firearm in, or retrieving it from, the trunk or rear area of the vehicle. Any possession or carry of a firearm beyond the immediate vicinity of a permit-holder’s vehicle shall constitute a violation of this policy.

V. **CONSEQUENCES FOR STUDENT WEAPON POSSESSION/USE/DISTRIBUTION**

A. The school district does not allow the possession, use, or distribution of weapons by students. Consequently, the minimum consequence for students willfully possessing, using, or distributing weapons shall include:

1. immediate out-of-school suspension;
2. confiscation of the weapon;
3. immediate notification of police;
4. parent or guardian notification; and
5. recommendation to the superintendent of dismissal for a period of time not to exceed one year.

B. Pursuant to Minnesota law, a student who brings a firearm, as defined by federal law, to school will be expelled for at least one year. The school board may modify this requirement on a case-by-case basis.

C. The appropriate school official building principal shall, as soon as practicable, refer to the criminal justice or juvenile delinquency system, as appropriate, a pupil student who brings a firearm to school unlawfully.

ED. Administrative Discretion

While the school district does not allow the possession, use, or distribution of weapons by students, the superintendent may use discretion in determining whether, under the circumstances, a course of action other than the minimum consequences specified above is warranted. If so, other appropriate action may be taken, including consideration of a recommendation for lesser discipline.

## **VI. CONSEQUENCES FOR WEAPON POSSESSION/USE/DISTRIBUTION BY NONSTUDENTS**

### **A. Employees**

1. An employee who violates the terms of this policy is subject to disciplinary action, including nonrenewal, suspension, or discharge as deemed appropriate by the school board.
2. Sanctions against employees, including nonrenewal, suspension, or discharge shall be pursuant to and in accordance with applicable statutory authority, collective bargaining agreements, and school district policies.
3. When an employee violates the weapons policy, law enforcement may be notified, as appropriate.

*[Note: An employer may establish policies that restrict the carry or possession of firearms by its employees while acting in the course and scope of employment. Employment-related sanctions may be invoked for a violation. Thus, for example, reasonable limitations may be imposed on the method of storing firearms by permit-holding employees while at work or performing employment-related duties. Reasonable limitations may include requiring firearms to have trigger locks and to be stored in a locked container or locked compartment of the vehicle.]*

### **B. Other Nonstudents**

1. Any member of the public who violates this policy shall be informed of the policy and asked to leave the school location. Depending on the circumstances, the person may be barred from future entry to school locations. In addition, if the person is a student in another school district, that school district may be contacted concerning the policy violation.
2. If appropriate, law enforcement will be notified of the policy violation by the member of the public and may be asked to provide an escort to remove the member of the public from the school location.

## **VII. REPORTS OF DANGEROUS WEAPON INCIDENTS IN SCHOOL ZONES**

- A. The school district must electronically report to the Commissioner of Education incidents involving the use or possession of a dangerous weapon in school zones, as required under Minnesota Statutes, section 121A.06.

**Legal References:** Minn. Stat. § 97B.045 (Transportation of Firearms)  
Minn. Stat. § 121A.05 (Referral to Police)  
[Minn. Stat. § 121A.06 \(Reports of Dangerous Weapon Incidents in School Zones\)](#)  
Minn. Stat. §§ 121A.40-121A.56 (Pupil Fair Dismissal Act)  
Minn. Stat. § 121A.44 (Expulsion for Possession of Firearm)  
[Minn. Stat. § 152.01, subd. 14\(a\) \(Definition of a School Zone\)](#)  
Minn. Stat. § 609.02, ~~S~~subd. 6 (Definition of Dangerous Weapon)  
Minn. Stat. § 609.605 (Trespass)  
Minn. Stat. § 609.66 (Dangerous Weapons)  
Minn. Stat. § 624.714 (Carrying of Weapons without Permit; Penalties)  
Minn. Stat. § 624.715 (Exemptions; Antiques and Ornaments)  
18 U.S.C. § 921 (Definition of Firearm)  
*In re C.R.M.*, 611 N.W.2d 802 (Minn. 2000)  
[\*In re A.D.\*, 883 N.W.2d 251 \(Minn. 2016\)](#)

**Cross References:** MSBA/MASA Model Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)  
MSBA/MASA Model Policy 506 (Student Discipline)  
MSBA/MASA Model Policy 525 (Violence Prevention)  
[MSBA/MASA Model Policy 903 \(Visitors to School District Buildings and Sites\)](#)

Adopted: \_\_\_\_\_

MSBA/MASA Model Policy 524

Orig. 1996

Revised: \_\_\_\_\_

Rev. 2019/2021

## **524 INTERNET ACCEPTABLE USE AND SAFETY POLICY**

*[Note: School districts are required by statute to have a policy addressing these issues.]*

### **I. PURPOSE**

The purpose of this policy is to set forth policies and guidelines for access to the school district computer system and acceptable and safe use of the Internet, including electronic communications.

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

In making decisions regarding student and employee access to the school district computer system and the Internet, including electronic communications, the school district considers its own stated educational mission, goals, and objectives. Electronic information research skills are now fundamental to preparation of citizens and future employees. Access to the school district computer system and to the Internet enables students and employees to explore thousands of libraries, databases, bulletin boards, and other resources while exchanging messages with people around the world. The school district expects that faculty will blend thoughtful use of the school district computer system and the Internet throughout the curriculum and will provide guidance and instruction to students in their use.

### **III. LIMITED EDUCATIONAL PURPOSE**

The school district is providing students and employees with access to the school district computer system, which includes Internet access. The purpose of the system is more specific than providing students and employees with general access to the Internet. The school district system has a limited educational purpose, which includes use of the system for classroom activities, educational research, and professional or career development activities. Users are expected to use Internet access through the district system to further educational and personal goals consistent with the mission of the school district and school policies. Uses which might be acceptable on a user's private personal account on another system may not be acceptable on this limited-purpose network.

### **IV. USE OF SYSTEM IS A PRIVILEGE**

The use of the school district system and access to use of the Internet is a privilege, not a right. Depending on the nature and degree of the violation and the number of previous violations, unacceptable use of the school district system or the Internet may result in one or more of the following consequences: suspension or cancellation of use or access privileges; payments for damages and repairs; discipline under other appropriate school district policies, including suspension, expulsion, exclusion, or termination of

employment; or civil or criminal liability under other applicable laws.

## V. UNACCEPTABLE USES

- A. While not an exhaustive list, the following uses of the school district system and Internet resources or accounts are considered unacceptable:
1. Users will not use the school district system to access, review, upload, download, store, print, post, receive, transmit, or distribute:
    - a. pornographic, obscene, or sexually explicit material or other visual depictions that are harmful to minors;
    - b. obscene, abusive, profane, lewd, vulgar, rude, inflammatory, threatening, disrespectful, or sexually explicit language;
    - c. materials that use language or images that are inappropriate in the education setting or disruptive to the educational process;
    - d. information or materials that could cause damage or danger of disruption to the educational process;
    - e. materials that use language or images that advocate violence or discrimination toward other people (hate literature) or that may constitute harassment or discrimination.
  2. Users will not use the school district system to knowingly or recklessly post, transmit, or distribute false or defamatory information about a person or organization, or to harass another person, or to engage in personal attacks, including prejudicial or discriminatory attacks.
  3. Users will not use the school district system to engage in any illegal act or violate any local, state, or federal statute or law.
  4. Users will not use the school district system to vandalize, damage, or disable the property of another person or organization, will not make deliberate attempts to degrade or disrupt equipment, software, or system performance by spreading computer viruses or by any other means, will not tamper with, modify, or change the school district system software, hardware, or wiring or take any action to violate the school district's security system, and will not use the school district system in such a way as to disrupt the use of the system by other users.
  5. Users will not use the school district system to gain unauthorized access to information resources or to access another person's materials, information, or files without the implied or direct permission of that person.
  6. Users will not use the school district system to post private information

about another person, personal contact information about themselves or other persons, or other personally identifiable information, including, but not limited to, addresses, telephone numbers, school addresses, work addresses, identification numbers, account numbers, access codes or passwords, labeled photographs, or other information that would make the individual's identity easily traceable, and will not repost a message that was sent to the user privately without permission of the person who sent the message. *[Note: School districts should consider the impact of this paragraph on present practices and procedures, including, but not limited to, practices pertaining to employee communications, school or classroom websites, and student/employee use of social networking websites. Depending upon school district policies and practices, school districts may wish to add one or more of the following clarifying paragraphs.]*

- a. This paragraph does not prohibit the posting of employee contact information on school district webpages or communications between employees and other individuals when such communications are made for education-related purposes (i.e., communications with parents or other staff members related to students).
- b. Employees creating or posting school-related webpages may include personal contact information about themselves on a webpage. However, employees may not post personal contact information or other personally identifiable information about students unless:
  - (1) such information is classified by the school district as directory information and verification is made that the school district has not received notice from a parent/guardian or eligible student that such information is not to be designated as directory information in accordance with Policy 515; or
  - (2) such information is not classified by the school district as directory information but written consent for release of the information to be posted has been obtained from a parent/guardian or eligible student in accordance with Policy 515.

In addition, prior to posting any personal contact or personally identifiable information on a school-related webpage, employees shall obtain written approval of the content of the postings from the building administrator.

- c. These prohibitions specifically prohibit a user from utilizing the school district system to post personal information about a user or

another individual on social networks, including, but not limited to, social networks such as “Facebook,” “Twitter,” “Instagram,” “Snapchat,” “TikTok,” ~~and~~ “Reddit,” and similar websites or applications.

7. Users must keep all account information and passwords on file with the designated school district official. Users will not attempt to gain unauthorized access to the school district system or any other system through the school district system, attempt to log in through another person’s account, or use computer accounts, access codes, or network identification other than those assigned to the user. Messages and records on the school district system may not be encrypted without the permission of appropriate school authorities.
8. Users will not use the school district system to violate copyright laws or usage licensing agreements, or otherwise to use another person’s property without the person’s prior approval or proper citation, including the downloading or exchanging of pirated software or copying software to or from any school computer, and will not plagiarize works they find on the Internet.
9. Users will not use the school district system for conducting business, for unauthorized commercial purposes, or for financial gain unrelated to the mission of the school district. Users will not use the school district system to offer or provide goods or services or for product advertisement. Users will not use the school district system to purchase goods or services for personal use without authorization from the appropriate school district official.
10. Users will not use the school district system to engage in bullying or cyberbullying in violation of the school district’s Bullying Prohibition Policy (~~MSBA/MASA Model Policy 514~~). This prohibition includes using any technology or other electronic communication off school premises to the extent that student learning or the school environment is substantially and materially disrupted.

- B. The school district has a special interest in regulating off-campus speech that materially disrupts classwork or involves substantial disorder or invasion of the rights of others. A student or employee engaging in the foregoing unacceptable uses of the Internet when off school district premises also may be in violation of this policy as well as other school district policies. Examples of such violations may include, but are not limited to, ~~situations—serious or severe bullying or harassment targeting particular individuals, threats aimed at teachers or other students, failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities, and breaches of school security devices. where the school district system is compromised or if a school district employee or student is negatively impacted.~~ If the school district receives a report of an unacceptable use originating from a non-school computer

or resource, the school district may investigate such reports to the best of its ability. Students or employees may be subject to disciplinary action for such conduct, including, but not limited to, suspension or cancellation of the use or access to the school district computer system and the Internet and discipline under other appropriate school district policies, including suspension, expulsion, exclusion, or termination of employment.

- C. If a user inadvertently accesses unacceptable materials or an unacceptable Internet site, the user shall immediately disclose the inadvertent access to an appropriate school district official. In the case of a school district employee, the immediate disclosure shall be to the employee's immediate supervisor and/or the building administrator. This disclosure may serve as a defense against an allegation that the user has intentionally violated this policy. In certain rare instances, a user also may access otherwise unacceptable materials if necessary to complete an assignment and if done with the prior approval of and with appropriate guidance from the appropriate teacher or, in the case of a school district employee, the building administrator.

## VI. FILTER

*[Note: Pursuant to state law, school districts are required to restrict access to inappropriate materials on school computers with Internet access. School districts ~~which~~ seeking technology revenue pursuant to Minnesota Statutes, §section 125B.26 or certain federal funding, such as e-rate discounts, for purposes of Internet access and connection services and/or receive funds to purchase Internet accessible computers are subject to the federal Children's Internet Protection Act, effective in 2001. Those districts are required to comply with additional standards in restricting possible access to inappropriate materials. Therefore, school districts should select one of the following alternative sections depending upon whether the school district is seeking such funding and the type of funding sought.]*

### ALTERNATIVE NO. 1

*[Note: For a school district ~~which~~that does not seek either state or federal funding in connection with its computer system, the following language should be adopted. It reflects a mandatory requirement under ~~state law,~~ Minnesota Statutes, §section 125B.15.]*

All computers equipped with Internet access and available for student use at each school site will be equipped to restrict, by use of available software filtering technology or other effective methods, all student access to materials that are reasonably believed to be obscene, child pornography or harmful to minors under state or federal law. Software filtering technology shall be narrowly tailored and shall not discriminate based on viewpoint.

*[Note: The purchase of filtering technology is not required by state law if the school site would incur more than incidental expense in making the purchase. In the absence of filtering technology, school sites still are required to use "other effective methods" to restrict student access to such materials.]*

## ALTERNATIVE NO. 2

***[Note: Technology revenue is available to school districts that meet the additional condition of also restricting adult access to inappropriate materials. School districts that seek such state technology revenue may adopt or retain the following language. However, the school district is not required to do so.]***

- A. All school district computers with Internet access and available for student use will be equipped to restrict, by use of available software filtering technology or other effective methods, all student access to materials that are reasonably believed to be obscene, child pornography or harmful to minors under state or federal law.
- B. All school district computers with Internet access, not just those accessible and available to students, will be equipped to restrict, by use of available software filtering technology or other effective methods, adult access to materials that are reasonably believed to be obscene or child pornography under state or federal law.
- C. Software filtering technology shall be narrowly tailored and shall not discriminate based on viewpoint.

## ALTERNATIVE NO. 3

***[Note: School districts ~~which that~~ receive certain federal funding, such as e-rate discounts, for purposes of Internet access and connection services and/or receive funds to purchase Internet accessible computers are subject to the federal Children's Internet Protection Act, effective in 2001. This law requires school districts to adopt an Internet safety policy ~~whichthat~~ contains the provisions set forth below. Also, the Act requires such school districts to provide reasonable notice and hold at least one public hearing or meeting to address the proposed Internet safety policy prior to its implementation. School districts that do not seek such federal financial assistance need not adopt the alternative language set forth below nor meet the requirements with respect to a public meeting to review the policy. The following alternative language for school districts that seek such federal financial assistance satisfies both state and federal law requirements.]***

- A. With respect to any of its computers with Internet access, the school district will monitor the online activities of both minors and adults and employ technology protection measures during any use of such computers by minors and adults. The technology protection measures utilized will block or filter Internet access to any visual depictions that are:
  - 1. Obscene;
  - 2. Child pornography; or
  - 3. Harmful to minors.

- B. The term “harmful to minors” means any picture, image, graphic image file, or other visual depiction that:
  - 1. Taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion; or
  - 2. Depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and
  - 3. Taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.
- C. Software filtering technology shall be narrowly tailored and shall not discriminate based on viewpoint.
- D. An administrator, supervisor, or other person authorized by the Superintendent may disable the technology protection measure, during use by an adult, to enable access for bona fide research or other lawful purposes.
- E. The school district will educate students about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response.

*[Note: Although school districts are not required to adopt the more restrictive provisions contained in either Alternative No. 2 or No. 3 if they do not seek state or federal funding, they may choose to adopt the more restrictive provisions as a matter of school policy.]*

## **VII. CONSISTENCY WITH OTHER SCHOOL POLICIES**

Use of the school district computer system and use of the Internet shall be consistent with school district policies and the mission of the school district.

## **VIII. LIMITED EXPECTATION OF PRIVACY**

- A. By authorizing use of the school district system, the school district does not relinquish control over materials on the system or contained in files on the system. Users should expect only limited privacy in the contents of personal files on the school district system.
- B. Routine maintenance and monitoring of the school district system may lead to a discovery that a user has violated this policy, another school district policy, or the law.
- C. An individual investigation or search will be conducted if school authorities have a reasonable suspicion that the search will uncover a violation of law or school district policy.

- D. Parents may have the right at any time to investigate or review the contents of their child's files and e-mail files in accordance with the school district's Protection and Privacy of Pupil Records Policy. Parents have the right to request the termination of their child's individual account at any time.
- E. School district employees should be aware that the school district retains the right at any time to investigate or review the contents of their files and e-mail files. In addition, school district employees should be aware that data and other materials in files maintained on the school district system may be subject to review, disclosure or discovery under Minnesota Statutes Chapter 13 (~~the~~ Minnesota Government Data Practices Act).
- F. The school district will cooperate fully with local, state and federal authorities in any investigation concerning or related to any illegal activities or activities not in compliance with school district policies conducted through the school district system.

#### **IX. INTERNET USE AGREEMENT**

- A. The proper use of the Internet, and the educational value to be gained from proper Internet use, is the joint responsibility of students, parents, and employees of the school district.
- B. This policy requires the permission of and supervision by the school's designated professional staff before a student may use a school account or resource to access the Internet.
- C. The Internet Use Agreement form for students must be read and signed by the user, the parent or guardian, and the supervising teacher. The Internet Use Agreement form for employees must be signed by the employee. The form must then be filed at the school office. As supervising teachers change, the agreement signed by the new teacher shall be attached to the original agreement.

#### **X. LIMITATION ON SCHOOL DISTRICT LIABILITY**

Use of the school district system is at the user's own risk. The system is provided on an "as is, as available" basis. The school district will not be responsible for any damage users may suffer, including, but not limited to, loss, damage, or unavailability of data stored on school district diskettes, tapes, hard drives, or servers, or for delays or changes in or interruptions of service or misdeliveries or nondeliveries of information or materials, regardless of the cause. The school district is not responsible for the accuracy or quality of any advice or information obtained through or stored on the school district system. The school district will not be responsible for financial obligations arising through unauthorized use of the school district system or the Internet.

## **XI. USER NOTIFICATION**

- A. All users shall be notified of the school district policies relating to Internet use.
- B. This notification shall include the following:
  - 1. Notification that Internet use is subject to compliance with school district policies.
  - 2. Disclaimers limiting the school district's liability relative to:
    - a. Information stored on school district diskettes, hard drives, or servers.
    - b. Information retrieved through school district computers, networks, or online resources.
    - c. Personal property used to access school district computers, networks, or online resources.
    - d. Unauthorized financial obligations resulting from use of school district resources/accounts to access the Internet.
  - 3. A description of the privacy rights and limitations of school sponsored/managed Internet accounts.
  - 4. Notification that, even though the school district may use technical means to limit student Internet access, these limits do not provide a foolproof means for enforcing the provisions of this acceptable use policy.
  - 5. Notification that goods and services can be purchased over the Internet that could potentially result in unwanted financial obligations and that any financial obligation incurred by a student through the Internet is the sole responsibility of the student and/or the student's parents.
  - 6. Notification that the collection, creation, reception, maintenance, and dissemination of data via the Internet, including electronic communications, is governed by ~~Policy 406~~, Public and Private Personnel Data Policy, and ~~Policy 515~~, Protection and Privacy of Pupil Records Policy.
  - 7. Notification that, should the user violate the school district's acceptable use policy, the user's access privileges may be revoked, school disciplinary action may be taken and/or appropriate legal action may be taken.
  - 8. Notification that all provisions of the acceptable use policy are subordinate to local, state, and federal laws.

## **XII. PARENTS' RESPONSIBILITY; NOTIFICATION OF STUDENT INTERNET USE**

- A. Outside of school, parents bear responsibility for the same guidance of Internet use as they exercise with information sources such as television, telephones, radio, movies, and other possibly offensive media. Parents are responsible for monitoring their student's use of the school district system and of the Internet if the student is accessing the school district system from home or a remote location.
- B. Parents will be notified that their students will be using school district resources/accounts to access the Internet and that the school district will provide parents the option to request alternative activities not requiring Internet access. This notification should include:
  - 1. A copy of the user notification form provided to the student user.
  - 2. A description of parent/guardian responsibilities.
  - 3. A notification that the parents have the option to request alternative educational activities not requiring Internet access and the material to exercise this option.
  - 4. A statement that the Internet Use Agreement must be signed by the user, the parent or guardian, and the supervising teacher prior to use by the student.
  - 5. A statement that the school district's acceptable use policy is available for parental review.

## **XIII. IMPLEMENTATION; POLICY REVIEW**

- A. The school district administration may develop appropriate user notification forms, guidelines, and procedures necessary to implement this policy for submission to the school board for approval. Upon approval by the school board, such guidelines, forms, and procedures shall be an addendum to this policy.
- B. The administration shall revise the user notifications, including student and parent notifications, if necessary, to reflect the adoption of these guidelines and procedures.
- C. The school district Internet policies and procedures are available for review by all parents, guardians, staff, and members of the community.
- D. Because of the rapid changes in the development of the Internet, the school board shall conduct an annual review of this policy.

**Legal References:** [Minn. Stat. Ch. 13 \(Minnesota Government Data Practices Act\)](#)  
 15 U.S.C. § 6501 *et seq.* (Children’s Online Privacy Protection Act)  
 17 U.S.C. § 101 *et seq.* (Copyrights)  
[20 U.S.C. § 1232g \(Family Educational Rights and Privacy Act\)](#)  
 47 U.S.C. § 254 (Children’s Internet Protection Act of 2000 (CIPA))  
 47 C.F.R. § 54.520 (FCC rules implementing CIPA)  
 Minn. Stat. § 121A.031 (School Student Bullying Policy)  
 Minn. Stat. § 125B.15 (Internet Access for Students) \_\_\_\_\_  
 Minn. Stat. § 125B.26 (Telecommunications/Internet Access Equity Act)  
[Mahanoy Area Sch. Dist. v. B.L., 594 U.S. \\_\\_\\_\\_\\_, 141 S. Ct. 2038 \(2021\)](#)  
[Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, ~~89 S.Ct. 733, 21 L.Ed.2d 731~~ \(1969\)](#)  
[United States v. Amer. Library Assoc., 539 U.S. 194, ~~123 S.Ct. 2297, 56 L.Ed.2d 221~~ \(2003\)](#)  
[Doninger v. Niehoff, 527 F.3d 41 \(2<sup>nd</sup> Cir. 2008\)](#)  
[Sagehorn v. Indep. Sch. Dist. No. 728, 122 F.Supp.2d 842 \(D. Minn. 2015\)](#)  
[R.S. v. Minnewaska Area Sch. Dist. No. 2149, No. ~~12-588, 2012 WL 3870868-894 F.Supp.2d 1128~~ \(D. Minn. 2012\)](#)  
[Tatro v. Univ. of Minnesota, 800 N.W.2d 811 \(Minn. App. 2011\), aff’d on other grounds 816 N.W.2d 509 \(Minn. 2012\)](#)  
[S.J.W. v. Lee’s Summit R-7 Sch. Dist., 696 F.3d 771 \(8<sup>th</sup> Cir. 2012\)](#)  
[Kowalski v. Berkeley County Sch., 652 F.3d 565 \(4<sup>th</sup> Cir. 2011\)](#)  
[Layshock v. Hermitage Sch. Dist., 650 F.3d 205 \(3<sup>rd</sup> Cir. 2011\)](#)  
[Parents, Families and Friends of Lesbians and Gays, Inc. v. Camdenton R-III Sch. Dist., 853 F.Supp.2d 888 \(W.D. Mo. 2012\)](#)  
[M.T. v. Cent. York Sch. Dist., 937 A.2d 538 \(Pa. Commw. Ct. 2007\)](#)

**Cross References:** MSBA/MASA Model Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)  
 MSBA/MASA Model Policy 406 (Public and Private Personnel Data)  
 MSBA/MASA Model Policy 505 (Distribution of Nonschool-Sponsored Materials on School Premises by Students and Employees)  
 MSBA/MASA Model Policy 506 (Student Discipline)  
 MSBA/MASA Model Policy 514 (Bullying Prohibition Policy)  
 MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)  
 MSBA/MASA Model Policy 519 (Interviews of Students by Outside Agencies)  
 MSBA/MASA Model Policy 521 (Student Disability Nondiscrimination)  
 MSBA/MASA Model Policy 522 ([Title IX Sex Nondiscrimination Grievance Procedures and Process](#)~~Student Sex Nondiscrimination~~)  
 MSBA/MASA Model Policy 603 (Curriculum Development)  
 MSBA/MASA Model Policy 604 (Instructional Curriculum)  
 MSBA/MASA Model Policy 606 (Textbooks and Instructional Materials)  
 MSBA/MASA Model Policy 806 (Crisis Management Policy)  
 MSBA/MASA Model Policy 904 (Distribution of Materials on School District Property by Nonschool Persons)

Adopted: May 3, 2004

Revised: August 6, 2018

## **102 EQUAL EDUCATIONAL OPPORTUNITY**

### **I. PURPOSE**

The purpose of this policy is to ensure that equal educational opportunity is provided for all students of the school district.

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

- A. The policy of the school district is to provide equal educational opportunity for all students. The school district does not unlawfully discriminate on the basis of race, color, creed, religion, national origin, sex, marital status, parental status, status with regard to public assistance, disability, sexual orientation, including gender identity and expression, or age. The school district also makes reasonable accommodations for students with disabilities.
- B. The school district prohibits harassment and discrimination of any individual based on any of the protected classifications listed above. For information about the types of conduct that constitute violation of the school district's policy on harassment and violence and the school district's procedures for addressing such complaints, refer to the school district's policy on harassment and violence (Policy 413).
- C. The school district prohibits discrimination of students with a disability, within the intent of Section 504 of the Rehabilitation Act of 1973 ("Section 504"), who need services, accommodations, or programs in order to receive a free appropriate public education. For information as to protections that may apply pursuant to Section 504 and the school district's corresponding procedures for addressing disability discrimination complaints, refer to the school district's policy on student disability nondiscrimination (Policy 521).
- D. The school district prohibits sexual harassment discrimination of any individual on the basis of sex in its education programs or activities. For information as to the protections that apply pursuant to Title IX and school district's corresponding procedures and processes for addressing sexual harassment and discrimination, refer to the school district's policy on Title IX sex nondiscrimination (Policy 522).
- E. This policy applies to all areas of education including academics, coursework, co-curricular and extracurricular activities, or other rights or privileges of enrollment.
- F. Every school district employee shall be responsible for complying with this policy.
- G. Any student, parent, or guardian having a question regarding this policy should discuss it with the appropriate school district official as provided by policy. In the absence of a specific designee, an inquiry or a complaint should be referred to the superintendent.

**Legal References:** Minn. Stat. § 121A.03, Subd. 2 (Sexual, Religious, and Racial Harassment and Violence Policy)  
Minn. Stat. Ch. 363A (Minnesota Human Rights Act)  
20 U.S.C. § 1681 *et seq.* (Title IX of the Education Amendments of 1972)  
42 U.S.C. § 2000d *et seq.* (Title VI of the Civil Rights Act of 1964)  
42 U.S.C. § 12101 *et seq.* (Americans with Disabilities Act)

**Cross References:**  
Policy 413 (Harassment and Violence)  
Policy 521 (Student Disability Nondiscrimination)  
Policy 522 (Title IX Sex Nondiscrimination Policy, Grievance Procedure and Process)

Adopted: May 17, 2006

Revised: June 1, 2015

## **406 PUBLIC AND PRIVATE PERSONNEL DATA**

### **I. PURPOSE**

The purpose of this policy is to provide guidance to school district employees as to the data the school district collects and maintains regarding its employees, volunteers, independent contractors, and applicants (“personnel”).

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

- A. All data on individuals collected, created, received, maintained, or disseminated by the school district, which is classified by statute or federal law as public, shall be accessible to the public pursuant to the procedures established by the school district.
- B. All other data on individuals is private or confidential.

### **III. DEFINITIONS**

- A. “Public” means that the data is available to anyone who requests it.
- B. “Private” means the data is not public and is accessible only to the following: the subject of the data, as limited by any applicable state or federal law; individuals within the school district whose work assignments reasonably require access; entities and agencies as determined by the responsible authority who are authorized by law to gain access to that specific data; and entities or individuals given access by the express written direction of the data subject.
- C. “Confidential” means the data are not public and are not accessible to the subject.
- D. “Parking space leasing data” means the following government data on an applicant for, or lessee of, a parking space: residence address, home telephone number, beginning and ending work hours, place of employment, location of parking space, and work telephone number.
- E. “Personnel data” means government data on individuals maintained because they are or were employees, applicants for employment, volunteers or independent contractors for the school district. Personnel data include data submitted by an employee to the school district as part of an organized self-evaluation effort by the school district to request suggestions from all employees on ways to cut costs, make the school district more efficient, or to improve school district operations.
- F. “Finalist” means an individual who is selected to be interviewed by the school board for a position.

- G. “Protected health information” means individually identifiable health information as defined in 45 C.F.R. § 160.103, that is transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium by a health care provider, in connection with a transaction covered by 45 C.F.R. Parts 160, 162 and 164. “Protected health information” excludes individually identifiable health information in education records covered by the Family Educational Rights and Privacy Act, employment records held by a school district in its role as employer; and records regarding a person who has been deceased for more than fifty (50) years..
- H. “Public officials” means business managers; human resource directors; athletic directors whose duties include at least fifty (50) percent of their time spent in administration, personnel, supervision, and evaluation; chief financial officers; directors; and individuals defined as superintendents and principals and in a charter school, individuals employed in comparable positions.

#### **IV. PUBLIC PERSONNEL DATA**

- A. The following information on current and former employees, volunteers and independent contractors of the school district, is public:
1. name;
  2. employee identification number, which may not be the employee’s Social Security number;
  3. actual gross salary;
  4. salary range;
  5. terms and conditions of employment relationship;
  6. contract fees;
  7. actual gross pension;
  8. the value and nature of employer-paid fringe benefits;
  9. the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary;
  10. job title;
  11. bargaining unit;
  12. job description;
  13. education and training background;

14. previous work experience;
15. date of first and last employment;
16. the existence and status of any complaints or charges against the employee, regardless of whether the complaint or charge resulted in a disciplinary action;
17. 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 school district;
18. the complete terms of any agreement settling any dispute arising out of the employment relationship, including superintendent buyout agreements, except that the agreement must include specific reasons for the agreement if it involves the payment of more than \$10,000 of public money, and such agreement may not have the purpose or effect of limiting access to or disclosure of personnel data or limiting the discussion of information or opinions related to personnel data;
19. work location;
20. work telephone number;
21. badge number;
22. work-related continuing education;
23. honors and awards received; and
24. payroll time sheets or other comparable data that are used only 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.

B. The following information on current and former applicants for employment by the school district is public:

1. veteran status;
2. relevant test scores;
3. rank on eligible list;
4. job history;
5. education and training; and
6. work availability.

- C. Names of applicants are private data except when certified as eligible for appointment to a vacancy or when applicants are considered by the school board to be finalists for public employment.
- D. Applicants for appointment to a public body.
  - 1. Data about applicants for appointment to a public body collected by the school district as a result of the applicant's application for employment are private data on individuals except that the following are public:
    - a. name;
    - b. city of residence, except when the appointment has a residency requirement that requires the entire address to be public;
    - c. education and training;
    - d. employment history;
    - e. volunteer work;
    - f. awards and honors;
    - g. prior government service;
    - h. any data required to be provided or that are voluntarily provided in an application for appointment to a multimember agency pursuant to Minnesota Statutes, section 15.0597; and
    - i. veteran status.
  - 2. Once an individual is appointed to a public body, the following additional items of data are public:
    - a. residential address;
    - b. either a telephone number or electronic mail address where the appointee can be reached, or both at the request of the appointee;
    - c. first and last dates of service on the public body;
    - d. the existence and status of any complaints or charges against an appointee; and
    - e. upon completion of an investigation of a complaint or charge against an appointee, the final investigative report is public, unless access to the data would jeopardize an active investigation.

3. Notwithstanding paragraph 2., 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.
- E. Regardless of whether there has been a final disposition as defined in Minnesota Statutes, section 13.43, subdivision 2(b), upon completion of an investigation of a complaint or charge against a public official, as defined in Minnesota Statutes, section 13.43, subdivision 2(e), or if a public official resigns or is terminated from employment while the complaint or charge is pending, all data relating to the complaint or charge are public, unless access to the data would jeopardize an active investigation or reveal confidential sources. Data relating to a complaint or charge against a public official is public only if:
    1. the complaint or charge results in disciplinary action or the employee resigns or is terminated from employment while the complaint or charge is pending; or
    2. potential legal claims arising out of the conduct that is the subject of the complaint or charge are released as part of a settlement agreement

Data that is classified as private under another law is not made public by this provision.

## **V. PRIVATE PERSONNEL DATA**

- A. All other personnel data not listed in Section IV are private data will not be otherwise released unless authorized by law.
- B. Data pertaining to an employee's dependents are private data on individuals.
- C. Data created, collected, or maintained by the school district to administer employee assistance programs are private.
- D. Parking space leasing data with regard to data on individuals are private.
- E. An individual's checking account number is private when submitted to a government entity.
- F. Personnel data may be disseminated to labor organizations to the extent the responsible authority determines is the dissemination is necessary for the labor organization to conduct elections, notify employees of fair share fee assessments and implement the provisions of Minnesota Statutes chapters 179 and 179A. Personnel data shall be disseminated to labor organizations and the Bureau of Mediation Services ("BMS") to the extent the dissemination is ordered or authorized by the Commissioner of the BMS.
- G. The school district may display a photograph of a current or former employee to prospective witnesses as part of the school district's investigation of any complaint or charge against the employee.

- H. The school district may, if its responsible authority or designee reasonably determines that the release of personnel data is necessary to protect an employee from harm to self or to protect another person who may be harmed by the employee, release data that are relevant to the concerns for safety to:
1. the person who may be harmed and to the attorney representing the person when the data are relevant to obtaining a restraining order;
  2. a prepetition screening team conducting an investigation of the employee under Minnesota Statutes, section 253B.07, subdivision 1; or
  3. a court, law enforcement agency, or prosecuting authority.
- I. Private personnel data or confidential investigative data on employees may be disseminated to a law enforcement agency for the purpose of reporting a crime or alleged crime committed by an employee, or for the purpose of assisting law enforcement in the investigation of a crime or alleged crime committed by an employee.
- J. A complainant has access to a statement provided by the complainant to the school district in connection with a complaint or charge against an employee.
- K. When allegations of sexual or other types of harassment are made against an employee, the employee does not have access to data that would identify the complainant or other witnesses if the responsible authority determines that the employee's access to that data would:
1. threaten the personal safety of the complainant or a witness; or
  2. subject the complainant or witness to harassment.
- If a disciplinary proceeding is initiated against the employee, data on the complainant or witness shall be available to the employee as may be necessary for the employee to prepare for the proceeding.
- L. The school district must report to the Minnesota Professional Educator Licensing and Standards Board ("PELSB") or the Board of School Administrators ("BOSA"), whichever has jurisdiction over the teacher's or administrator's license, as required by Minnesota Statutes, section 122A.20, subdivision. 2, and shall, upon written request from the licensing board having jurisdiction over license, provide the licensing board with information about the teacher or administrator from the school district's files, any termination or disciplinary proceeding, and settlement or compromise, or any investigative file in accordance with Minnesota Statutes, section 122A.20, subdivision 2.
- M. Private personnel data shall be disclosed to the Department of Employment and Economic Development for the purpose of administration of the unemployment insurance program under Minnesota Statutes. Ch. 268.

- N. When a report of alleged maltreatment of a student in an elementary, middle school, high school or charter school is made to the Commissioner of the Minnesota Department of Education (“MDE”) under Minnesota Statutes Chapter 260E, data that are relevant and collected by the school facility about the person alleged to have committed maltreatment must be provided to the Commissioner on request for purposes of an assessment or investigation of the maltreatment report. Additionally, personnel data may be released for purposes of providing information to a parent, legal guardian, or custodian of a child in accordance with MDE Screening Guidelines.
- O. The school district shall release to a requesting school district or charter school private personnel data on a current or former employee related to acts of violence toward or sexual contact with a student, if
1. an investigation conducted by or on behalf of the school district or law enforcement affirmed the allegations in writing prior to release and the investigation resulted in the resignation of the subject of the data; or
  2. the employee resigned while a complaint or charge involving the allegations was pending, the allegations involved acts of sexual contact with a student, and the employer informed the employee in writing, before the employee resigned, that if the employee resigns while the complaint or charge is still pending, the employer must release private personnel data about the employee’s alleged sexual contact with a student to a school district or charter school requesting the data after the employee applies for employment with that school district or charter school and the data remain classified as provided in Minnesota Statutes Chapter 13.

Data that are released under this paragraph must not include data on the student.

- P. Data submitted by an employee to the school district as part of an organized self-evaluation effort by the school district to request suggestions from all employees on ways to cut costs, make the school district more efficient, or improve the school district operations is private data. An employee who is identified in a suggestion, however, shall have access to all data in the suggestion except the identity of the employee making the suggestion.
- Q. Protected health information, as defined in 45 C.F.R. Parts 160 and 164, on employees is private and will not be disclosed except as permitted or required by law.
- R. Personal home contact information for employees may be used by the school district to ensure that an employee can be reached in the event of an emergency or other disruption affecting continuity of school district operations and may be shared with another government entity in the event of an emergency or other disruption to ensure continuity of operation for the school district or government entity.
- S. The personal telephone number, home address, and electronic mail address of a current or former employee of a contractor or subcontractor maintained as a result of a contractual relationship between the school district and a contractor or subcontractor entered on or after August 1, 2012, are private data. These data must be shared with another

government entity to perform a function authorized by law. The data also must be disclosed to a government entity or any person for prevailing wage purposes.

- T. When a continuing contract teacher is discharged immediately because the teacher's license has been revoked due to a conviction for child abuse or sexual offenses involving a child as set forth in Minnesota Statutes, section 122A.40, subdivision 13(b), or when the Commissioner of the MDE makes a final determination of child maltreatment involving a teacher under Minnesota Statutes, section 260E.21, subdivision 4 or 260E.35, the school principal or other person having administrative control of the school must include in the teacher's employment record the information contained in the record of the disciplinary action or the final maltreatment determination, consistent with the definition of public data under Minnesota Statutes, section 13.41, subdivision. 5, and must provide PELSB and the licensing division at MDE with the necessary and relevant information to enable PELSB and MDE's licensing division to fulfill their statutory and administrative duties related to issuing, renewing, suspending, or revoking a teacher's license. In addition to the background check required under Minnesota Statutes, section 123B.03, a school board or other school hiring authority must contact PELSB and MDE to determine whether the teacher's license has been suspended or revoked, consistent with the discharge and final maltreatment determinations. Unless restricted by federal or state data practices law or by the terms of a collective bargaining agreement, the responsible authority for a school district must disseminate to another school district private personnel data on a current or former teacher (employee or contractor) of the district, including the results of background investigations, if the requesting school district seeks the information because the subject of the data has applied for employment with the requesting school district.

## **VI. MULTIPLE CLASSIFICATIONS**

If data on individuals are classified as both private and confidential by Minnesota Statutes Chapter 13, or any other state or federal law, the data are private.

## **VII. CHANGE IN CLASSIFICATIONS**

The school district shall change the classification of data in its possession if it is required to do so to comply with either judicial or administrative rules pertaining to the conduct of legal actions or with a specific statute applicable to the data in the possession of the disseminating or receiving agency.

## **VIII. RESPONSIBLE AUTHORITY**

The school district has designated [*name and title, telephone*] as the authority responsible for personnel data.

The responsible authority, or a school district employee if so designated, shall serve as the school district's data practices compliance official and, as such, shall be the employee to whom persons may direct questions or concerns regarding problems in obtaining access to data or other data practices problems.

## **IX. EMPLOYEE AUTHORIZATION/RELEASE FORM**

An employee authorization form is included as an addendum to this policy.

- Legal References:*** Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)  
Minn. Stat. § 13.02 (Definitions)  
Minn. Stat. § 13.03 (Access to Government Data)  
Minn. Stat. § 13.05 (Duties of Responsible Authority)  
Minn. Stat. § 13.37 (General Nonpublic Data)  
Minn. Stat. § 13.39 (Civil Investigation Data)  
Minn. Stat. § 13.41 (Licensing Data – Public Data)  
Minn. Stat. § 13.43 (Personnel Data)  
Minn. Stat. § 13.601, subd. 3 (Applicants for Employment)  
Minn. Stat. § 15.0597 (Appointment to Multimember Agencies)  
Minn. Stat. § 122A.20, subd. 2 (Mandatory Reporting)  
Minn. Stat. § 122A.40, subds. 13 and 16 (Employment; Contracts; Termination)  
Minn. Stat. § 123B.03 (Background Check)  
Minn. Stat. § 123B.143, subd. 2 (Disclose Past Buyouts)  
Minn. Stat. Ch. 179 (Minnesota Labor Relations Act)  
Minn. Stat. Ch. 179A (Minnesota Public Labor Relations Act)  
Minn. Stat. § 253B.07 (Judicial Commitment: Preliminary Procedures)  
Minn. Stat. Ch. 260E (Reporting of Maltreatment of Minors)  
Minn. Stat. Ch. 268 (Unemployment Insurance)  
Minn. R. Pt. 1205 (Data Practices)  
P.L. 104-191 (HIPAA)  
45 C.F.R. Parts 160, 162 and 164 (HIPAA Regulations)
- Cross References:*** Policy 206 (Public Participation in School Board Meetings/Complaints about Persons at School Board Meetings and Data Privacy Considerations)  
Policy 515 (Protection and Privacy of Pupil Records)  
Policy 722 (Public Data Requests)  
MSBA Law Bulletin “I” (School Records – Privacy – Access to Data)

*Adopted: October 7, 1993*

*Revised: September 10, 2018*

*Reviewed: July 12, 2021*

## **413 HARASSMENT AND VIOLENCE**

### **I. PURPOSE**

The purpose of this policy is to maintain a learning and working environment free from harassment and violence on the basis of race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability (Protected Class).

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

- A. The policy of the school district is to maintain a learning and working environment free from harassment and violence on the basis of Protected Class. The school district prohibits any form of harassment or violence on the basis of Protected Class.
- B. A violation of this policy occurs when any student, teacher, administrator, or other school district personnel harasses a student, teacher, administrator, or other school district personnel or group of students, teachers, administrators, or other school district personnel through conduct or communication based on a person's Protected Class, as defined by this policy. (For purposes of this policy, school district personnel include school board members, school employees, agents, volunteers, contractors, or persons subject to the supervision and control of the district.)
- C. A violation of this policy occurs when any student, teacher, administrator, or other school district personnel inflicts, threatens to inflict, or attempts to inflict violence upon any student, teacher, administrator, or other school district personnel or group of students, teachers, administrators, or other school district personnel based on a person's Protected Class.
- D. The school district will act to investigate all complaints, either formal or informal, verbal or written, of harassment or violence based on a person's Protected Class, and to discipline or take appropriate action against any student, teacher, administrator, or other school district personnel found to have violated this policy.

### **III. DEFINITIONS**

- A. "Assault" is:
  - 1. an act done with intent to cause fear in another of immediate bodily harm or death;

2. the intentional infliction of or attempt to inflict bodily harm upon another; or
  3. the threat to do bodily harm to another with present ability to carry out the threat.
- B. “Harassment” prohibited by this policy consists of physical or verbal conduct, including, but not limited to, electronic communications, relating to an individual’s or group of individuals’ race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability, when the conduct:
1. has the purpose or effect of creating an intimidating, hostile, or offensive working or academic environment;
  2. has the purpose or effect of substantially or unreasonably interfering with an individual’s work or academic performance; or
  3. otherwise adversely affects an individual’s employment or academic opportunities.
- C. “Immediately” means as soon as possible but in no event longer than 24 hours.
- D. Protected Classifications; Definitions
1. “Disability” means, with respect to an individual who
    - a. a physical sensory or mental impairment that materially limits one or more major life activities of such individual;
    - b. has a record of such an impairment; or
    - c. is regarded as having such an impairment.
  2. “Familial status” means the condition of one or more minors being domiciled with:
    - a. their parent or parents or the minor’s legal guardian; or
    - b. the designee of the parent or parents or guardian with the written permission of the parent or parents or guardian. The protections afforded against harassment or discrimination on the basis of family status apply to any person who is pregnant or is in the process of securing legal custody of an individual who has not attained the age of majority.
  3. “Marital status” means whether a person is single, married, remarried, divorced, separated, or a surviving spouse and, in employment cases, includes protection against harassment or discrimination on the basis of the identity, situation, actions, or beliefs of a spouse or former spouse.

4. “National origin” means the place of birth of an individual or of any of the individual’s lineal ancestors.
  5. “Sex” includes, but is not limited to, pregnancy, childbirth, and disabilities related to pregnancy or childbirth.
  6. “Sexual orientation” means having or being perceived as having an emotional, physical, or sexual attachment to another person without regard to the sex of that person or having or being perceived as having an orientation for such attachment, or having or being perceived as having a self-image or identity not traditionally associated with one’s biological maleness or femaleness. “Sexual orientation” does not include a physical or sexual attachment to children by an adult.
  7. “Status with regard to public assistance” means the condition of being a recipient of federal, state, or local assistance, including medical assistance, or of being a tenant receiving federal, state, or local subsidies, including rental assistance or rent supplements.
- E. “Remedial response” means a measure to stop and correct acts of harassment or violence, prevent acts of harassment or violence from recurring, and protect, support, and intervene on behalf of a student who is the target or victim of acts of harassment or violence.

F. Sexual Harassment; Definition

1. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct or communication of a sexual nature when:
  - a. submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment or an education; or
  - b. submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual’s employment or education; or
  - c. that conduct or communication has the purpose or effect of substantially interfering with an individual’s employment or education, or creating an intimidating, hostile, or offensive employment or educational environment.
2. Sexual harassment may include, but is not limited to:
  - a. unwelcome verbal harassment or abuse;
  - b. unwelcome pressure for sexual activity;
  - c. unwelcome, sexually motivated, or inappropriate patting, pinching, or physical contact, other than necessary restraint of student(s) by teachers,

administrators, or other school district personnel to avoid physical harm to persons or property;

- d. unwelcome sexual behavior or words, including demands for sexual favors, accompanied by implied or overt threats concerning an individual's employment or educational status;
- e. unwelcome sexual behavior or words, including demands for sexual favors, accompanied by implied or overt promises of preferential treatment with regard to an individual's employment or educational status; or
- f. unwelcome behavior or words directed at an individual because of sexual orientation, including gender identity or expression.

G. Sexual Violence; Definition

- 1. Sexual violence is a physical act of aggression or force or the threat thereof that involves the touching of another's intimate parts or forcing a person to touch any person's intimate parts. Intimate parts, as defined in Minnesota Statutes, section 609.341, includes the primary genital area, groin, inner thigh, buttocks, or breast, as well as the clothing covering these areas.
- 2. Sexual violence may include, but is not limited to:
  - a. touching, patting, grabbing, or pinching another person's intimate parts
  - b. coercing, forcing, or attempting to coerce or force the touching of anyone's intimate parts;
  - c. coercing, forcing, or attempting to coerce or force sexual intercourse or a sexual act on another; or
  - d. threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another.

H. Violence; Definition

Violence prohibited by this policy is a physical act of aggression or assault upon another or group of individuals because of, or in a manner reasonably related to an individual's Protected Class.

**IV. REPORTING PROCEDURES**

- A. Any person who believes he or she has been the target or victim of harassment or violence on the basis of Protected Class by a student, teacher, administrator, or other school district personnel, or any person with knowledge or belief of conduct which may constitute harassment or violence prohibited by this policy toward a student, teacher,

administrator, or other school district personnel or group of students, teachers, administrators, or other school district personnel should report the alleged acts immediately to an appropriate school district official designated by this policy. A person may report conduct that may constitute harassment or violence anonymously. However, the school district may not rely solely on an anonymous report to determine discipline or other remedial responses.

- B. The school district encourages the reporting party or complainant to use the report form available from the principal or building supervisor of each building or available from the school district office, but oral reports shall be considered complaints as well.
- C. Nothing in this policy shall prevent any person from reporting harassment or violence directly to a school district human rights officer or to the superintendent. If the complaint involves the building report taker, the complaint shall be made or filed directly with the superintendent or the school district human rights officer by the reporting party or complainant.
- D. In Each School Building. The building principal, the principal's designee, or the building supervisor (hereinafter the "building report taker") is the person responsible for receiving oral or written reports of harassment or violence prohibited by this policy at the building level. Any adult school district personnel who receives a report of harassment or violence prohibited by this policy shall inform the building report taker immediately. If the complaint involves the building report taker, the complaint shall be made or filed directly with the superintendent or the school district human rights officer by the reporting party or complainant. The building report taker shall ensure that this policy and its procedures, practices, consequences, and sanctions are fairly and fully implemented and shall serve as a primary contact on policy and procedural matters.
- E. A teacher, school administrator, volunteer, contractor, or other school employee shall be particularly alert to possible situations, circumstances, or events that might include acts of harassment or violence. Any such person who witnesses, observes, receives a report of, or has other knowledge or belief of conduct that may constitute harassment or violence shall make reasonable efforts to address and resolve the harassment or violence and shall inform the building report taker immediately. School district personnel who fail to inform the building report taker of conduct that may constitute harassment or violence or who fail to make reasonable efforts to address and resolve the harassment or violence in a timely manner may be subject to disciplinary action.
- F. Upon receipt of a report, the building report taker must notify the school district human rights officer immediately, without screening or investigating the report. The building report taker may request, but may not insist upon, a written complaint. A written statement of the facts alleged will be forwarded as soon as practicable by the building report taker to the human rights officer. If the report was given verbally, the building report taker shall personally reduce it to written form within 24 hours and forward it to the human rights officer. Failure to forward any harassment or violence report or complaint as provided herein may result in disciplinary action against the building report taker.

- G. In the District. The school board hereby designates the Superintendent as the school district human rights officer(s) to receive reports or complaints of harassment or violence prohibited by this policy. If the complaint involves a human rights officer, the complaint shall be filed directly with the superintendent.
- H. The school district shall conspicuously post the name of the human rights officer(s), including mailing addresses and telephone numbers.
- I. Submission of a good faith complaint or report of harassment or violence prohibited by this policy will not affect the complainant or reporter's future employment, grades, work assignments, or educational or work environment.
- J. Use of formal reporting forms is not mandatory.
- K. Reports of harassment or violence prohibited by this policy are classified as private educational and/or personnel data and/or confidential investigative data and will not be disclosed except as permitted by law.
- L. The school district will respect the privacy of the complainant(s), the individual(s) against whom the complaint is filed, and the witnesses as much as possible, consistent with the school district's legal obligations to investigate, to take appropriate action, and to comply with any discovery or disclosure obligations.
- M. Retaliation against a victim, good faith reporter, or a witness of violence or harassment is prohibited.
- N. False accusations or reports of violence or harassment against another person are prohibited.
- O. A person who engages in an act of violence or harassment, reprisal, retaliation, or false reporting of violence or harassment, or permits, condones, or tolerates violence or harassment shall be subject to discipline or other remedial responses for that act in accordance with the school district's policies and procedures.

Consequences for students who commit, or are a party to, prohibited acts of violence or harassment or who engage in reprisal or intentional false reporting may range from remedial responses or positive behavioral interventions up to and including suspension and/or expulsion.

Consequences for employees who permit, condone, or tolerate violence or harassment or engage in an act of reprisal or intentional false reporting of violence or harassment may result in disciplinary action up to and including termination or discharge.

Consequences for other individuals engaging in prohibited acts of violence or harassment may include, but not be limited to, exclusion from school district property and events and/or termination of services and/or contracts.

## V. INVESTIGATION

- A. By authority of the school district, the human rights officer, within three (3) days of the receipt of a report or complaint alleging harassment or violence prohibited by this policy, shall undertake or authorize an investigation. The investigation may be conducted by school district officials or by a third party designated by the school district.
- B. The investigation may consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other methods and documents deemed pertinent by the investigator.
- C. In determining whether alleged conduct constitutes a violation of this policy, the school district should consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved, and the context in which the alleged incidents occurred. Whether a particular action or incident constitutes a violation of this policy requires a determination based on all the facts and surrounding circumstances.
- D. In addition, the school district may take immediate steps, at its discretion, to protect the target or victim, the complainant, and students, teachers, administrators, or other school district personnel pending completion of an investigation of alleged harassment or violence prohibited by this policy.
- E. The alleged perpetrator of the act(s) of harassment or violence shall be allowed the opportunity to present a defense during the investigation or prior to the imposition of discipline or other remedial responses.
- F. The investigation will be completed as soon as practicable. The school district human rights officer shall make a written report to the superintendent upon completion of the investigation. If the complaint involves the superintendent, the report may be filed directly with the school board. The report shall include a determination of whether the allegations have been substantiated as factual and whether they appear to be violations of this policy.

## **VI. SCHOOL DISTRICT ACTION**

- A. Upon completion of an investigation that determines a violation of this policy has occurred, the school district will take appropriate action. Such action may include, but is not limited to, warning, suspension, exclusion, expulsion, transfer, remediation, termination, or discharge. Disciplinary consequences will be sufficiently severe to try to deter violations and to appropriately discipline prohibited behavior. School district action taken for violation of this policy will be consistent with requirements of applicable collective bargaining agreements, Minnesota and federal law, and applicable school district policies and regulations.
- B. The school district is not authorized to disclose to a victim private educational or personnel data regarding an alleged perpetrator who is a student or employee of the

school district. School officials will notify the targets or victims and alleged perpetrators of harassment or violence, the parent(s) or guardian(s) of targets or victims of harassment or violence and the parent(s) or guardian(s) of alleged perpetrators of harassment or violence who have been involved in a reported and confirmed harassment or violence incident of the remedial or disciplinary action taken, to the extent permitted by law.

- C. In order to prevent or respond to acts of harassment or violence committed by or directed against a child with a disability, the school district shall, where determined appropriate by the child's individualized education program (IEP) or Section 504 team, allow the child's IEP or Section 504 plan to be drafted to address the skills and proficiencies the child needs as a result of the child's disability to allow the child to respond to or not to engage in acts of harassment or violence.

## **VII. RETALIATION OR REPRISAL**

The school district will discipline or take appropriate action against any student, teacher, administrator, or other school district personnel who commits an act of reprisal or who retaliates against any person who asserts, alleges, or makes a good faith report of alleged harassment or violence prohibited by this policy, who testifies, assists, or participates in an investigation of retaliation or alleged harassment or violence, or who testifies, assists, or participates in a proceeding or hearing relating to such harassment or violence. Retaliation includes, but is not limited to, any form of intimidation, reprisal, harassment, or intentional disparate treatment. Disciplinary consequences will be sufficiently severe to deter violations and to appropriately discipline the individual(s) who engaged in the harassment or violence. Remedial responses to the harassment or violence shall be tailored to the particular incident and nature of the conduct.

## **VIII. RIGHT TO ALTERNATIVE COMPLAINT PROCEDURES**

These procedures do not deny the right of any individual to pursue other avenues of recourse which may include filing charges with the Minnesota Department of Human Rights or another state or federal agency, initiating civil action, or seeking redress under state criminal statutes and/or federal law.

## **IX. HARASSMENT OR VIOLENCE AS ABUSE**

- A. Under certain circumstances, alleged harassment or violence may also be possible abuse under Minnesota law. If so, the duties of mandatory reporting under Minnesota Statutes Chapter. 260E may be applicable.
- B. Nothing in this policy will prohibit the school district from taking immediate action to protect victims of alleged harassment, violence, or abuse.

## **X. DISSEMINATION OF POLICY AND TRAINING**

- A. This policy shall be conspicuously posted throughout each school building in areas accessible to students and staff members.

- B. This policy shall be given to each school district employee and independent contractor who regularly interacts with students at the time of initial employment with the school district.
- C. This policy shall appear in the student handbook.
- D. The school district will develop a method of discussing this policy with students and employees.
- E. The school district may implement violence prevention and character development education programs to prevent and reduce policy violations. Such programs may offer instruction on character education including, but not limited to, character qualities such as attentiveness, truthfulness, respect for authority, diligence, gratefulness, self-discipline, patience, forgiveness, respect for others, peacemaking, resourcefulness, and/or sexual abuse prevention.
- F. This policy shall be reviewed at least annually for compliance with state and federal law.

**Legal References:** Minn. Stat. § 120B.232 (Character Development Education)  
Minn. Stat. § 120B.234 (Child Sexual Abuse Prevention Education)  
Minn. Stat. § 121A.03, Subd. 2 (Sexual, Religious, and Racial Harassment and Violence Policy)  
Minn. Stat. § 121A.031 (School Student Bullying Policy)  
Minn. Stat. Ch. 363A (Minnesota Human Rights Act)  
Minn. Stat. § 609.341 (Definitions)  
Minn. Stat. Ch. 260E (Reporting of Maltreatment of Minors)  
20 U.S.C. §§ 1681-1688 (Title IX of the Education Amendments of 1972)  
29 U.S.C. § 621 *et seq.* (Age Discrimination in Employment Act)  
29 U.S.C. § 794 (Section 504 of the Rehabilitation Act of 1973)  
42 U.S.C. § 1983 (Civil Action for Deprivation of Rights)  
42 U.S.C. § 2000d *et seq.* (Title VI of the Civil Rights Act of 1964)  
42 U.S.C. § 2000e *et seq.* (Title VII of the Civil Rights Act)  
42 U.S.C. § 12101 *et seq.* (Americans with Disabilities Act)

**Cross References:** Policy 102 (Equal Educational Opportunity)  
Policy 401 (Equal Employment Opportunity)  
Policy 402 (Disability Nondiscrimination Policy)  
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 415 (Mandated Reporting of Maltreatment of Vulnerable Adults)  
Policy 506 (Student Discipline)  
Policy 514 (Bullying Prohibition Policy)  
Policy 515 (Protection and Privacy of Pupil Records)  
Policy 521 (Student Disability Nondiscrimination)  
Policy 522 (Title IX Sex Nondiscrimination, Grievance Procedures and Process)  
Policy 524 (Internet Acceptable Use and Safety Policy)

Policy 525 (Violence Prevention)

Policy 526 (Hazing Prohibition)

Policy 528 (Student Parental, Family, and Marital Status Nondiscrimination)

*Adopted:* March 16, 2005

*Revised:* August 21, 2006

## **501 SCHOOL WEAPONS POLICY**

### **I. PURPOSE**

The purpose of this policy is to assure a safe school environment for students, staff and the public.

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

No student or nonstudent, including adults and visitors, shall possess, use, or distribute a weapon when in a school location except as provided in this policy. The school district will act to enforce this policy and to discipline or take appropriate action against any student, teacher, administrator, school employee, volunteer, or member of the public who violates this policy.

### **III. DEFINITIONS**

#### **A. "Weapon"**

1. A "weapon" means any object, device or instrument designed as a weapon or through its use is capable of threatening or producing bodily harm or which may be used to inflict self-injury including, but not limited to, any firearm, whether loaded or unloaded; airguns; pellet guns; BB guns; all knives; blades; clubs; metal knuckles; numchucks; throwing stars; explosives; fireworks; mace and other propellants; stunguns; ammunition; poisons; chains; arrows; and objects that have been modified to serve as a weapon.
2. No person shall possess, use, or distribute any object, device or instrument having the appearance of a weapon and such objects, devices or instruments shall be treated as weapons including, but not limited to, weapons listed above which are broken or non-functional, look-alike guns; toy guns; and any object that is a facsimile of a real weapon.
3. No person shall use articles designed for other purposes (i.e., lasers or laser pointers, belts, combs, pencils, files, scissors, etc.), to inflict bodily harm and/or intimidate and such use will be treated as the possession and use of a weapon.

- #### **B. "School Location"**
- "School Location" includes any school building or grounds, whether leased, rented, owned or controlled by the school, locations of school activities or trips, bus stops, school buses or school vehicles, school-contracted vehicles, the area of entrance or departure from school premises or events, all locations where school-related functions are conducted, and anywhere students are under the jurisdiction of the school district.

- C. “Possession” means having a weapon on one’s person or in an area subject to one’s control in a school location.
- D. “Dangerous Weapon” means any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, any combustible or flammable liquid or other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm. As used in this definition, "flammable liquid" means any liquid having a flash point below 100 degrees Fahrenheit and having a vapor pressure not exceeding 40 pounds per square inch (absolute) at 100 degrees Fahrenheit but does not include intoxicating liquor. As used in this subdivision, "combustible liquid" is a liquid having a flash point at or above 100 degrees Fahrenheit.

#### IV. EXCEPTIONS

- A. A student who finds a weapon on the way to school or in a school location, or a student who discovers that he or she accidentally has a weapon in his or her possession, and takes the weapon immediately to the principal’s office shall not be considered to possess a weapon. If it would be impractical or dangerous to take the weapon to the principal’s office, a student shall not be considered to possess a weapon if he or she immediately turns the weapon over to an administrator, teacher or head coach or immediately notifies an administrator, teacher or head coach of the weapon’s location.
- B. It shall not be a violation of this policy if a nonstudent (or student where specified) falls within one of the following categories:
  - 1. active licensed peace officers;
  - 2. military personnel, or students or nonstudents participating in military training, who are on duty performing official duties;
  - 3. persons authorized to carry a pistol under Minnesota Statutes, section 624.714 while in a motor vehicle or outside of a motor vehicle for the purpose of directly placing a firearm in, or retrieving it from, the trunk or rear area of the vehicle;
  - 4. persons who keep or store in a motor vehicle pistols in accordance with Minnesota Statutes sections 624.714 or 624.715 or other firearms in accordance with Minnesota Statutes, section 97B.045;
    - a. Section 624.714 specifies procedures and standards for obtaining pistol permits and penalties for the failure to do so. Section 624.715 defines an exception to the pistol permit requirements for “antique firearms which are carried or possessed as curiosities or for their historical significance or value.”
    - b. Section 97B.045 generally provides that a firearm may not be transported in a motor vehicle unless it is (1) unloaded and in a gun case without any

portion of the firearm exposed; (2) unloaded and in the closed trunk; or (3) a handgun carried in compliance with Sections 624.714 and 624.715.

5. firearm safety or marksmanship courses or activities for students or nonstudents conducted on school property;
6. possession of dangerous weapons, BB guns, or replica firearms by a ceremonial color guard;
7. a gun or knife show held on school property;
8. possession of dangerous weapons, BB guns, or replica firearms with written permission of the principal or other person having general control and supervision of the school or the director of a child care center; or
9. persons who are on unimproved property owned or leased by a child care center, school or school district unless the person knows that a student is currently present on the land for a school-related activity.

C. Policy Application to Instructional Equipment/Tools

While the school district does not allow the possession, use, or distribution of weapons by students or nonstudents, such a position is not meant to interfere with instruction or the use of appropriate equipment and tools by students or nonstudents. Such equipment and tools, when properly possessed, used, and stored, shall not be considered in violation of the rule against the possession, use, or distribution of weapons. However, when authorized instructional and work equipment and tools are used in a potentially dangerous or threatening manner, such possession and use will be treated as the possession and use of a weapon.

D. Firearms in School Parking Lots and Parking Facilities

A school district may not prohibit the lawful carry or possession of firearms in a school parking lot or parking facility. For purposes of this policy, the “lawful” carry or possession of a firearm in a school parking lot or parking facility is specifically limited to nonstudent permit-holders authorized under Minnesota Statutes, section 624.714 to carry a pistol in the interior of a vehicle or outside the motor vehicle for the purpose of directly placing a firearm in, or retrieving it from, the trunk or rear area of the vehicle. Any possession or carry of a firearm beyond the immediate vicinity of a permit-holder’s vehicle shall constitute a violation of this policy.

**V. CONSEQUENCES FOR STUDENT WEAPON POSSESSION/USE/ DISTRIBUTION**

- A. The school district does not allow the possession, use, or distribution of weapons by students. Consequently, the minimum consequence for students willfully possessing, using, or distributing weapons shall include:
1. immediate out-of-school suspension;

2. confiscation of the weapon;
  3. immediate notification of police;
  4. parent or guardian notification; and
  5. recommendation to the superintendent of dismissal for a period of time not to exceed one year.
- B. Pursuant to Minnesota law, a student who brings a firearm, as defined by federal law, to school will be expelled for at least one year. The school board may modify this requirement on a case-by-case basis.
- C. The building principal shall, as soon as practicable, refer to the criminal justice or juvenile delinquency system, as appropriate, a student who brings a firearm to school unlawfully.
- D. Administrative Discretion

While the school district does not allow the possession, use, or distribution of weapons by students, the superintendent may use discretion in determining whether, under the circumstances, a course of action other than the minimum consequences specified above is warranted. If so, other appropriate action may be taken, including consideration of a recommendation for lesser discipline.

## **VI. CONSEQUENCES FOR WEAPON POSSESSION/USE/DISTRIBUTION BY NONSTUDENTS**

- A. Employees
1. An employee who violates the terms of this policy is subject to disciplinary action, including nonrenewal, suspension, or discharge as deemed appropriate by the school board.
  2. Sanctions against employees, including nonrenewal, suspension, or discharge shall be pursuant to and in accordance with applicable statutory authority, collective bargaining agreements, and school district policies.
  3. When an employee violates the weapons policy, law enforcement may be notified, as appropriate.
- B. Other Nonstudents
1. Any member of the public who violates this policy shall be informed of the policy and asked to leave the school location. Depending on the circumstances, the person may be barred from future entry to school locations. In addition, if the

person is a student in another school district, that school district may be contacted concerning the policy violation.

2. If appropriate, law enforcement will be notified of the policy violation by the member of the public and may be asked to provide an escort to remove the member of the public from the school location.

## **VII. REPORTS OF DANGEROUS WEAPON INCIDENTS IN SCHOOL ZONES**

- A. The school district must electronically report to the Commissioner of Education incidents involving the use or possession of a dangerous weapon in school zones, as required under Minnesota Statutes, section 121A.06.

***Legal References:*** Minn. Stat. § 97B.045 (Transportation of Firearms)  
Minn. Stat. § 121A.05 (Referral to Police)  
Minn. Stat. § 121A.06 (Reports of Dangerous Weapon Incidents in School Zones)  
Minn. Stat. §§ 121A.40-121A.56 (Pupil Fair Dismissal Act)  
Minn. Stat. § 121A.44 (Expulsion for Possession of Firearm)  
Minn. Stat. § 152.01, subd. 14(a) (Definition of a School Zone)  
Minn. Stat. § 609.02, subd. 6 (Definition of Dangerous Weapon)  
Minn. Stat. § 609.605 (Trespass)  
Minn. Stat. § 609.66 (Dangerous Weapons)  
Minn. Stat. § 624.714 (Carrying of Weapons without Permit; Penalties)  
Minn. Stat. § 624.715 (Exemptions; Antiques and Ornaments)  
18 U.S.C. § 921 (Definition of Firearm)  
*In re C.R.M.*, 611 N.W.2d 802 (Minn. 2000)  
*In re A.D.*, 883 N.W.2d 251 (Minn. 2016)

***Cross References:*** Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)  
Policy 506 (Student Discipline)  
Policy 525 (Violence Prevention)  
Policy 903 (Visitors to School District Buildings and Sites)

Adopted: June 21, 2004

Revised: November, 2019

Reviewed: July 12, 2021

## **524 INTERNET ACCEPTABLE USE AND SAFETY POLICY**

### **I. PURPOSE**

The purpose of this policy is to set forth policies and guidelines for access to the school district computer system and acceptable and safe use of the Internet, including electronic communications.

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

In making decisions regarding student and employee access to the school district computer system and the Internet, including electronic communications, the school district considers its own stated educational mission, goals, and objectives. Electronic information research skills are now fundamental to preparation of citizens and future employees. Access to the school district computer system and to the Internet enables students and employees to explore thousands of libraries, databases, bulletin boards, and other resources while exchanging messages with people around the world. The school district expects that faculty will blend thoughtful use of the school district computer system and the Internet throughout the curriculum and will provide guidance and instruction to students in their use.

### **III. LIMITED EDUCATIONAL PURPOSE**

The school district is providing students and employees with access to the school district computer system, which includes Internet access. The purpose of the system is more specific than providing students and employees with general access to the Internet. The school district system has a limited educational purpose, which includes use of the system for classroom activities, educational research, and professional or career development activities. Users are expected to use Internet access through the district system to further educational and personal goals consistent with the mission of the school district and school policies. Uses which might be acceptable on a user's private personal account on another system may not be acceptable on this limited-purpose network.

### **IV. USE OF SYSTEM IS A PRIVILEGE**

The use of the school district system and access to use of the Internet is a privilege, not a right. Depending on the nature and degree of the violation and the number of previous violations, unacceptable use of the school district system or the Internet may result in one or more of the following consequences: suspension or cancellation of use or access privileges; payments for damages and repairs; discipline under other appropriate school

district policies, including suspension, expulsion, exclusion, or termination of employment; or civil or criminal liability under other applicable laws.

**V. UNACCEPTABLE USES**

- A. The following uses of the school district system and Internet resources or accounts are considered unacceptable:
1. Users will not use the school district system to access, review, upload, download, store, print, post, receive, transmit, or distribute:
    - a. pornographic, obscene, or sexually explicit material or other visual depictions that are harmful to minors;
    - b. obscene, abusive, profane, lewd, vulgar, rude, inflammatory, threatening, disrespectful, or sexually explicit language;
    - c. materials that use language or images that are inappropriate in the education setting or disruptive to the educational process;
    - d. information or materials that could cause damage or danger of disruption to the educational process;
    - e. materials that use language or images that advocate violence or discrimination toward other people (hate literature) or that may constitute harassment or discrimination.
  2. Users will not use the school district system to knowingly or recklessly post, transmit, or distribute false or defamatory information about a person or organization, or to harass another person, or to engage in personal attacks, including prejudicial or discriminatory attacks.
  3. Users will not use the school district system to engage in any illegal act or violate any local, state, or federal statute or law.
  4. Users will not use the school district system to vandalize, damage, or disable the property of another person or organization, will not make deliberate attempts to degrade or disrupt equipment, software, or system performance by spreading computer viruses or by any other means, will not tamper with, modify, or change the school district system software, hardware, or wiring or take any action to violate the school district's security system, and will not use the school district system in such a way as to disrupt the use of the system by other users.

5. Users will not use the school district system to gain unauthorized access to information resources or to access another person's materials, information, or files without the implied or direct permission of that person.
6. Users will not use the school district system to post private information about another person, personal contact information about themselves or other persons, or other personally identifiable information, including, but not limited to, addresses, telephone numbers, school addresses, work addresses, identification numbers, account numbers, access codes or passwords, labeled photographs, or other information that would make the individual's identity easily traceable, and will not repost a message that was sent to the user privately without permission of the person who sent the message.
  - a. This paragraph does not prohibit the posting of employee contact information on school district webpages or communications between employees and other individuals when such communications are made for education-related purposes (i.e., communications with parents or other staff members related to students).
  - b. Employees creating or posting school-related webpages may include personal contact information about themselves on a webpage. However, employees may not post personal contact information or other personally identifiable information about students unless:
    - (1) such information is classified by the school district as directory information and verification is made that the school district has not received notice from a parent/guardian or eligible student that such information is not to be designated as directory information in accordance with Policy 515; or
    - (2) such information is not classified by the school district as directory information but written consent for release of the information to be posted has been obtained from a parent/guardian or eligible student in accordance with Policy 515.

In addition, prior to posting any personal contact or personally identifiable information on a school-related webpage, employees shall obtain written approval of the content of the postings from the building administrator.

- c. These prohibitions specifically prohibit a user from utilizing the school district system to post personal information about a user or another individual on social networks, including, but not limited to, social networks such as “Facebook,” “Twitter,” “Instagram,” “Snapchat,” and “Reddit,” and similar websites or applications.
  - 7. Users must keep all account information and passwords on file with the designated school district official. Users will not attempt to gain unauthorized access to the school district system or any other system through the school district system, attempt to log in through another person’s account, or use computer accounts, access codes, or network identification other than those assigned to the user. Messages and records on the school district system may not be encrypted without the permission of appropriate school authorities.
  - 8. Users will not use the school district system to violate copyright laws or usage licensing agreements, or otherwise to use another person’s property without the person’s prior approval or proper citation, including the downloading or exchanging of pirated software or copying software to or from any school computer, and will not plagiarize works they find on the Internet.
  - 9. Users will not use the school district system for conducting business, for unauthorized commercial purposes, or for financial gain unrelated to the mission of the school district. Users will not use the school district system to offer or provide goods or services or for product advertisement. Users will not use the school district system to purchase goods or services for personal use without authorization from the appropriate school district official.
  - 10. Users will not use the school district system to engage in bullying or cyberbullying in violation of the school district’s Bullying Prohibition Policy 514. This prohibition includes using any technology or other electronic communication off school premises to the extent that student learning or the school environment is substantially and materially disrupted.
- B. A student or employee engaging in the foregoing unacceptable uses of the Internet when off school district premises also may be in violation of this policy as well as other school district policies. Examples of such violations include, but are not limited to, situations where the school district system is compromised or if a school district employee or student is negatively impacted. If the school district receives a report of an unacceptable use originating from a non-school computer or resource, the school district may investigate such reports to the best of its ability. Students or employees may be subject to disciplinary action for such conduct, including, but not limited to, suspension or cancellation of the use or

access to the school district computer system and the Internet and discipline under other appropriate school district policies, including suspension, expulsion, exclusion, or termination of employment.

- C. If a user inadvertently accesses unacceptable materials or an unacceptable Internet site, the user shall immediately disclose the inadvertent access to an appropriate school district official. In the case of a school district employee, the immediate disclosure shall be to the employee's immediate supervisor and/or the building administrator. This disclosure may serve as a defense against an allegation that the user has intentionally violated this policy. In certain rare instances, a user also may access otherwise unacceptable materials if necessary to complete an assignment and if done with the prior approval of and with appropriate guidance from the appropriate teacher or, in the case of a school district employee, the building administrator.

## **VI. FILTER**

- A. With respect to any of its computers with Internet access, the school district will monitor the online activities of both minors and adults and employ technology protection measures during any use of such computers by minors and adults. The technology protection measures utilized will block or filter Internet access to any visual depictions that are:
  - 1. Obscene;
  - 2. Child pornography; or
  - 3. Harmful to minors.
- B. The term "harmful to minors" means any picture, image, graphic image file, or other visual depiction that:
  - 1. Taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion; or
  - 2. Depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and
  - 3. Taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.
- C. Software filtering technology shall be narrowly tailored and shall not discriminate based on viewpoint.

- D. An administrator, supervisor, or other person authorized by the Superintendent may disable the technology protection measure, during use by an adult, to enable access for bona fide research or other lawful purposes.
- E. The school district will educate students about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response.

## **VII. CONSISTENCY WITH OTHER SCHOOL POLICIES**

Use of the school district computer system and use of the Internet shall be consistent with school district policies and the mission of the school district.

## **VIII. LIMITED EXPECTATION OF PRIVACY**

- A. By authorizing use of the school district system, the school district does not relinquish control over materials on the system or contained in files on the system. Users should expect only limited privacy in the contents of personal files on the school district system.
- B. Routine maintenance and monitoring of the school district system may lead to a discovery that a user has violated this policy, another school district policy, or the law.
- C. An individual investigation or search will be conducted if school authorities have a reasonable suspicion that the search will uncover a violation of law or school district policy.
- D. Parents have the right at any time to investigate or review the contents of their child's files and e-mail files. Parents have the right to request the termination of their child's individual account at any time.
- E. School district employees should be aware that the school district retains the right at any time to investigate or review the contents of their files and e-mail files. In addition, school district employees should be aware that data and other materials in files maintained on the school district system may be subject to review, disclosure or discovery under Minn. Stat. Ch. 13 (the Minnesota Government Data Practices Act).
- F. The school district will cooperate fully with local, state and federal authorities in any investigation concerning or related to any illegal activities or activities not in compliance with school district policies conducted through the school district system.

## **IX. INTERNET USE AGREEMENT**

- A. The proper use of the Internet, and the educational value to be gained from proper Internet use, is the joint responsibility of students, parents, and employees of the school district.
- B. This policy requires the permission of and supervision by the school's designated professional staff before a student may use a school account or resource to access the Internet.
- C. The Internet Use Agreement form for students must be read and signed by the user, the parent or guardian, and the supervising teacher. The Internet Use Agreement form for employees must be signed by the employee. The form must then be filed at the school office. As supervising teachers change, the agreement signed by the new teacher shall be attached to the original agreement.

**X. LIMITATION ON SCHOOL DISTRICT LIABILITY**

Use of the school district system is at the user's own risk. The system is provided on an "as is, as available" basis. The school district will not be responsible for any damage users may suffer, including, but not limited to, loss, damage, or unavailability of data stored on school district diskettes, tapes, hard drives, or servers, or for delays or changes in or interruptions of service or mis-deliveries or non-deliveries of information or materials, regardless of the cause. The school district is not responsible for the accuracy or quality of any advice or information obtained through or stored on the school district system. The school district will not be responsible for financial obligations arising through unauthorized use of the school district system or the Internet.

**XI. USER NOTIFICATION**

- A. All users shall be notified of the school district policies relating to Internet use.
- B. This notification shall include the following:
  - 1. Notification that Internet use is subject to compliance with school district policies.
  - 2. Disclaimers limiting the school district's liability relative to:
    - a. Information stored on school district diskettes, hard drives, or servers.
    - b. Information retrieved through school district computers, networks, or online resources.
    - c. Personal property used to access school district computers, networks, or online resources.

- d. Unauthorized financial obligations resulting from use of school district resources/accounts to access the Internet.
3. A description of the privacy rights and limitations of school sponsored/managed Internet accounts.
4. Notification that, even though the school district may use technical means to limit student Internet access, these limits do not provide a foolproof means for enforcing the provisions of this acceptable use policy.
5. Notification that goods and services can be purchased over the Internet that could potentially result in unwanted financial obligations and that any financial obligation incurred by a student through the Internet is the sole responsibility of the student and/or the student's parents.
6. Notification that the collection, creation, reception, maintenance, and dissemination of data via the Internet, including electronic communications, is governed by Policy 406, Public and Private Personnel Data, and Policy 515, Protection and Privacy of Pupil Records.
7. Notification that, should the user violate the school district's acceptable use policy, the user's access privileges may be revoked, school disciplinary action may be taken and/or appropriate legal action may be taken.
8. Notification that all provisions of the acceptable use policy are subordinate to local, state, and federal laws.

## **XII. PARENTS' RESPONSIBILITY; NOTIFICATION OF STUDENT INTERNET USE**

- A. Outside of school, parents bear responsibility for the same guidance of Internet use as they exercise with information sources such as television, telephones, radio, movies, and other possibly offensive media. Parents are responsible for monitoring their student's use of the school district system and of the Internet if the student is accessing the school district system from home or a remote location.
- B. Parents will be notified that their students will be using school district resources/accounts to access the Internet and that the school district will provide parents the option to request alternative activities not requiring Internet access. This notification should include:
  1. A copy of the user notification form provided to the student user.
  2. A description of parent/guardian responsibilities.

3. A notification that the parents have the option to request alternative educational activities not requiring Internet access and the material to exercise this option.
4. A statement that the Internet Use Agreement must be signed by the user, the parent or guardian, and the supervising teacher prior to use by the student.
5. A statement that the school district's acceptable use policy is available for parental review.

### **XIII. IMPLEMENTATION; POLICY REVIEW**

- A. The school district administration may develop appropriate user notification forms, guidelines, and procedures necessary to implement this policy for submission to the school board for approval. Upon approval by the school board, such guidelines, forms, and procedures shall be an addendum to this policy.
- B. The administration shall revise the user notifications, including student and parent notifications, if necessary, to reflect the adoption of these guidelines and procedures.
- C. The school district Internet policies and procedures are available for review by all parents, guardians, staff, and members of the community.
- D. Because of the rapid changes in the development of the Internet, the school board shall conduct an annual review of this policy.

**Legal References:** 15 U.S.C. § 6501 *et seq.* (Children's Online Privacy Protection Act)  
 17 U.S.C. § 101 *et seq.* (Copyrights)  
 47 U.S.C. § 254 (Children's Internet Protection Act of 2000 (CIPA))  
 47 C.F.R. § 54.520 (FCC rules implementing CIPA)  
 Minn. Stat. § 121A.031 (School Student Bullying Policy)  
 Minn. Stat. § 125B.15 (Internet Access for Students)  
 Minn. Stat. § 125B.26 (Telecommunications/Internet Access Equity Act)  
*Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969)  
*United States v. Amer. Library Assoc.*, 539 U.S. 194, 123 S.Ct. 2297, 56 L.Ed.2d 221 (2003)  
*Doninger v. Niehoff*, 527 F.3d 41 (2<sup>nd</sup> Cir. 2008)  
*R.S. v. Minnewaska Area Sch. Dist. No. 2149*, No. 12-588, 2012 WL 3870868 (D. Minn. 2012)  
*Tatro v. Univ. of Minnesota*, 800 N.W.2d 811 (Minn. App. 2011), *aff'd* on other grounds 816 N.W.2d 509 (Minn. 2012)  
*S.J.W. v. Lee's Summit R-7 Sch. Dist.*, 696 F.3d 771 (8<sup>th</sup> Cir. 2012)

*Kowalski v. Berkeley County Sch.*, 652 F.3d 565 (4<sup>th</sup> Cir. 2011)  
*Layshock v. Hermitage Sch. Dist.*, 650 F.3d 205 (3<sup>rd</sup> Cir. 2011)  
*Parents, Families and Friends of Lesbians and Gays, Inc. v. Camdenton R-III Sch. Dist.*, 853 F.Supp.2d 888 (W.D. Mo. 2012)  
*M.T. v. Cent. York Sch. Dist.*, 937 A.2d 538 (Pa. Commw. Ct. 2007)

***Cross References:*** Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)  
Policy 406 (Public and Private Personnel Data)  
Policy 505 (Distribution of Nonschool-Sponsored Materials on School Premises by Students and Employees)  
Policy 506 (Student Discipline)  
Policy 514 (Bullying Prohibition Policy)  
Policy 515 (Protection and Privacy of Pupil Records)  
Policy 519 (Interviews of Students by Outside Agencies)  
Policy 521 (Student Disability Nondiscrimination)  
Policy 522 (Student Sex Nondiscrimination)  
Policy 603 (Curriculum Development)  
Policy 604 (Instructional Curriculum)  
Policy 606 (Textbooks and Instructional Materials)  
Policy 806 (Crisis Management Policy)  
Policy 904 (Distribution of Materials on School District Property by Nonschool Persons)