

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

I. PURPOSE

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

II. GENERAL STATEMENT OF POLICY

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

III. CIVIL ACTIONS

- A. Pursuant to Minn. Stat. § 466.07, Subd. 1, the school district shall defend and indemnify any school board member or school district employee for damages in school-related litigation, including punitive damages, claimed or levied against the school board member or employee, provided that he or she was acting in the performance of the duties of the position and was not guilty of malfeasance, willful neglect of duty, or bad faith.
- B. Pursuant to Minn. Stat. § 127.03, Subd. 2, with respect to teachers employed by the school district, upon written request of the teacher involved, the school district shall provide legal counsel for any school teacher against whom a claim is made or action is brought for recovery of damages in any tort action involving physical injury to any person or property or for wrongful death arising out of or in connection with the employment of the teacher with the school district. The school district will choose legal counsel after consultation with the teacher.
- C. Data Practices.

Educational data and personnel data maintained by the school district may be sought as evidence in a civil proceeding. The school district will release the data only pursuant to the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13,

and to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and related regulations. When an employee is subpoenaed and is expected to testify regarding educational data or personnel data, he or she is to inform the board chairperson. No school board member or staff member may release data without consultation in advance with the school district official who is designated as the authority responsible for the collection, use and dissemination of data.

D. Service of Subpoenas.

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

IV. CRIMINAL CHARGES OR CONDUCT

A. Employees.

1. The school expects that its staff members serve as positive role models for students. As role models for students, staff members have a duty to conduct themselves in an exemplary manner.
2. If the school receives information relating to activities of a criminal nature, by an employee, the school will investigate and take appropriate action, which may include recommendation to the board for termination.

B. Students.

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

C. Criminal Investigations.

1. It is the policy of the school to cooperate with law enforcement officials. The school district will make all efforts, however, to encourage law enforcement officials to question students and staff members outside of school hours and off school premises unless there are extenuating circumstances or the matter being investigated is school-related, or as otherwise provided by law.
2. If such questioning at school is unavoidable, the school will attempt to maintain confidentiality and to avoid embarrassment to the students and staff members and to avoid disruption of the educational program. The school will attempt to notify parents of a student under age 18 that police will be questioning their child. Normally, a staff member will be present

during the interview, except as otherwise required by law (Minn. Stat. § 626.556, Subd. 10), or as otherwise determined in consultation with the parent or guardian.

D. Data Practices.

The school will release to law enforcement authorities educational and personnel data only in accordance with 124E.03, Applicable Law. Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act) and 20 U.S.C. § 1232g (FERPA).

V. **STATEMENTS WHEN LITIGATION IS PENDING**

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

Legal References: Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)
Minn. Stat. § 127.03, Subd. 2 (actions against teachers)
Minn. Stat. §§ 127.26-127.39 (Pupil Fair Dismissal Act)
Minn. Stat. § 466.07, Subd. 1 (Indemnification)
20 U.S.C. § 1232g (Family Educational Rights and Privacy Act)
42 U.S.C. § 1983 (Civil Action for depriving rights)
Op. Atty. Gen. 169 (Minn, Mar. 7, 1963);
Op. Atty. Gen. 169 (Minn, Nov. 3, 1943).
Dypress v. School Committee of Boston, 446 N.E.2d 1099 (Mass. App. Ct. 1983);
Wood v. Strickland, 420 U.S. 308, 95 S.Ct. 992, 43 L.Ed.2d 214 (1975);