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MSBA/MASA Model Policy 211

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211 CRIMINAL OR CIVIL ACTION AGAINST EDUCATION DISTRICT, GOVERNING BOARD MEMBER, EMPLOYEE, OR STUDENT

I. PURPOSE

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

II. GENERAL STATEMENT OF POLICY

- A. The education district recognizes that, when civil or criminal actions are pending against a governing board member, education district employee, or student, the education district may be requested or required to take action.
- B. In responding to such requests and/or requirements, the education 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 education district acknowledges its statutory obligations with respect to providing assistance to governing board members and teachers who are sued in connection with performance of education district duties. Collective bargaining agreement and education district policies may also apply.

III. CIVIL ACTIONS

- A. Pursuant to Minn. Stat. § 466.07, Subd. 1, the education district shall defend and indemnify any governing board member or education district employee for damages in school-related litigation, including punitive damages, claimed or levied against the governing 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. §123B.25(b), with respect to teachers employed by the education district, upon written request of the teacher involved, the education 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 education district. The education district will choose legal counsel after consultation with the teacher.

C. Data Practices

Educational data and personnel data maintained by the education district may be sought as evidence in a civil proceeding. The education 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 building administrator or designated supervisor, who shall immediately inform the executive director or designee. No governing board member or employee may release data without consultation in advance with the education district official who is designated as the authority responsible for the collection, use and dissemination of data.

D. Service of Subpoenas

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

E. Leave to Testify

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

IV. CRIMINAL CHARGES OR CONDUCT

A. Employees

1. The education district expects that its employees serve as positive role models for students. As role models for students, employees have a duty to conduct themselves in an exemplary manner.
2. If the education district receives information relating to activities of a criminal nature, by an employee, the education district will investigate and take appropriate disciplinary action, which may include discharge, subject to education district policies, statutes and provisions of applicable collective bargaining agreements.
3. Pursuant to Minn. Stat. § 123B.02, Subd. 20, if reimbursement for a criminal defense is requested by a education district employee, the governing board may, after consulting with its legal counsel, reimburse the employee for any costs and reasonable attorney fees incurred by the employee to defend criminal charges brought against the employee arising out of the performance of duties for the education district. The decision as to whether to reimburse shall be made in the discretion of the governing board. A governing board member who is a witness or an alleged victim

in the case may not vote on the reimbursement. If a quorum of the governing board is disqualified from voting on the reimbursement, the reimbursement must be approved by a judge of the district court.

B. Students

The education district 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 education district will take appropriate action regarding students convicted of crimes that relate to the school environment.

C. Criminal Investigations

1. The policy of the education district is to cooperate with law enforcement officials. The education district will make all efforts, however, to encourage law enforcement officials to question students and employees outside of school hours and off school premises unless there are extenuating circumstances or the matter being investigated is school-related, or as otherwise provided by law.
2. If such questioning at school is unavoidable, the education district will attempt to maintain confidentiality, to avoid embarrassment to students and employees and to avoid disruption of the educational program. The education district will attempt to notify parents of a student under age 18 that police will be questioning their child. Normally, the executive director, principal, or other appropriate school official 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 education district will release to juvenile justice and law enforcement authorities educational and personnel data only in accordance with Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act) and 20 U.S.C. § 1232g (FERPA).

V. STATEMENTS WHEN LITIGATION IS PENDING

The education 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, governing board members or education district employees shall make or release statements in that situation only in consultation with legal counsel.

Legal References: Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)
Minn. Stat. §§ 121A.40-121A.56 (Pupil Fair Dismissal Act)

Minn. Stat. § 123B.02, Subd. 20 (Legal Counsel, Reimbursement)
Minn. Stat. § 123B.25(b) (Actions Against Teachers)
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)
Minn.Op. Atty. Gen. 169 (Mar. 7, 1963)
Minn.Op. Atty. Gen. 169 (Nov. 3, 1943)
Dypress v. School Committee of Boston, 446 N.E.2d 1099 (Mass. App. Ct. 1983)
Wood v. Strickland, 420 U.S. 308, 95 S.Ct. 992, 43 L.Ed.2d 214 (1975)

Cross References: MSBA/MASA Model Policy 403 (Discipline, Suspension, and Dismissal of Education district Employees)
MSBA/MASA Model Policy 406 (Public and Private Personnel Data)
MSBA/MASA Model Policy 408 (Subpoena of a Education district Employee)
MSBA/MASA Model Policy 414 (Mandated Reporting of Child Neglect or Physical or Sexual Abuse)
MSBA/MASA Model Policy 506 (Student Discipline)
MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)