

Employees as Court Witness and Subpoena Policy

PURPOSE

The purpose of this policy is to provide guidance in understanding the compensation received, and the responsibilities of employees while summoned for the purpose of producing documents or appearing as a witness in a deposition or a court of law.

Fargo Public Schools does not discharge or in any manner discriminate against any employee for taking time off from his/her regular duties to serve as required by law as a witness in a deposition or a court of law.

COMPENSATION

- A) No employee shall receive paid time off unless they use vacation or personal time off, while such employee will be testifying on behalf of oneself or as a witness in a court of law, except as a witness on behalf of Fargo Public Schools or in relation to employee's responsibilities and duties connected with their employment.
- B) An employee subpoenaed to appear in court on behalf of Fargo Public Schools and/or connected with employee's official duties, shall receive full compensation. Mileage and/or witness fees paid by an attorney or the court shall be retained by the employee.
- C) In the case the employee must testify for Fargo Public Schools outside of regular contracted hours, the rate of pay shall be determined using the summer school salary schedule.

FERPA AND COMPLIANCE WITH SUBPOENAS

- A) If the subpoena is related to producing educational records or testifying and disclosing information from an educational record, Fargo Public Schools must make a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action. (See 34 C.F.R. § 99.31, Subd. (a)(9)(ii). There are some exceptions to this requirement. Please consult with Fargo Public Schools' legal counsel prior to producing documents or appearing to testify based on a subpoena, which may involve a student's educational record.
- B) If the subpoena is for the employee to appear and testify in a divorce, custody, or other family law proceeding, where one of the parents served the subpoena, there is no need to notify the parent or eligible student in advance in order to seek a protective order. However, when the employee is called to testify and be sworn in, they must inform the court that some or all of the information that they may testify about could be an educational record and either request the parents' consent on the record to disclose this information during the hearing or ask the court to order the witness to testify about information relating to an educational record so that no violation of FERPA occurs.
- C) Subpoena Duces Tecum. A subpoena duces tecum relates to production of student records. If a parent does not consent to the disclosure of a student record and an employee of FPS receives a subpoena duces tecum which does not require an employee to testify but requires an employee to produce documents by a certain date at a certain place, Fargo Public Schools will not disclose this information until reasonable efforts

have been made to notify the parent or eligible student of the order or subpoena in advance of compliance so that the parent or eligible student may seek a protective order. (See 34 C.F.R. § 99.31, Subd. (a)(9)(ii). The employee should consult with legal counsel to ensure compliance with FERPA.

COMPLIANCE WITH SUBPOENA

- A) Requirements Once a Subpoena is Received. If an employee receives a subpoena, they must show up at the date and time indicated, if they have been served by an uninterested party and have received the appropriate fees and mileage expenses. If the employee questions whether they should appear pursuant to the subpoena, they should contact legal counsel to discuss whether there is a basis to quash the subpoena. If there is no basis to quash the subpoena, the employee must show up at the date and time scheduled and testify truthfully.
- B) Requirements to Consult with Counsel for Any Party to the Litigation. Before or after an employee has received a subpoena, an employee may be contacted by legal counsel for any party in the litigation and asked questions. Employees have no obligation to speak to legal counsel who has served the subpoena or legal counsel representing the other side. Anytime that legal counsel contacts the employee after a subpoena has been served and would like to question the employee, it is recommended that the employee inform legal counsel that they are not allowed to speak to legal counsel and to refer any questions or requests for information to legal counsel of Fargo Public Schools.

INVOLVEMENT IN FAMILY LAW MATTERS

It is the policy of Fargo Public Schools that employees not become involved in family law matters unless subpoenaed to testify in court or to produce documents. Employees have no obligation to assist with the enforcement of custody orders or similar issues. Instead, when confronted with a conflict between guardians of a student, if the matter cannot be resolved quickly and civilly between the parties, the employee is to request that the parties remove themselves from school property and contact law enforcement if necessary to resolve the conflict.

CONSULT LEGAL COUNSEL

If any employee of the Fargo Public Schools has any question regarding procedure, protocol, fees, or compliance questions regarding any subpoena, employee is recommended to consult with legal counsel for Fargo Public Schools prior to appearing at the time and place set forth in the subpoena.

PROMPTLY REPORT SUBPOENA TO SUPERVISOR

An employee served with a subpoena to appear as a witness in any legal proceedings or produce any documents, must promptly report same to their supervisor, or the Human Resource office. The employee shall thereupon be excused from duties for the reasonable time required to answer such subpoena. The employee shall be entitled to retain all compensation received as such witness and no deduction shall be made from regular compensation for a reasonable absence from duty on account of responding to such subpoena. The above provision shall not apply to an employee appearing in any legal proceedings without being duly subpoenaed. No employee

utilizing witness leave as an agent of the district shall be required to pay the cost of employing a substitute to serve during his or her absence for such leave.

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