

Employees as Court Witness and Subpoena Policy

PURPOSE

The purpose of this policy is to provide guidance in understanding 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.

COMPENSATION

An employee who is required to give testimony or evidence in matters related to the employee's official capacity is not required to take leave and will receive either their normal compensation from the District or compensation received for testifying, but not both. The only exception is when an employee appears as the plaintiff, or appears voluntarily, as an adverse witness in action against the District. An employee who elects to receive compensation from the District must remit to the District any compensation, excluding mileage, received for serving as a witness.

An employee subpoenaed to appear before a court of law or for a deposition for matters not related to the employee's official capacity, but as an individual, must apply for personal or vacation leave in order to receive compensation for their leave.

FERPA AND COMPLIANCE WITH SUBPOENAS

- A) If the subpoena is related to producing educational records or testifying and disclosing information from an educational record, the District 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. All employees must contact the District's 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 records. If a parent does not consent to the disclosure of a student record and an employee of the District 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, the District 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). All employees must consult with legal counsel upon receiving a subpoena duces tecum to ensure compliance with FERPA.

COMPLIANCE WITH SUBPOENA

- A) Consultation with Legal Counsel. If an employee receives a subpoena in their official capacity, they must immediately contact the District's legal counsel. District legal counsel will advise the employee whether they should appear pursuant to the subpoena, or if there is a basis to quash the subpoena. If there is no basis to quash the subpoena, the employee will work with District legal counsel to ensure they are able to provide testimony at the scheduled time.
- 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. Anytime that legal counsel contacts an employee and would like to question the employee, the employee must inform legal counsel that they are not allowed to speak to legal counsel and to refer any questions or requests for information to the District's legal counsel. The employee should immediately contact the District's legal counsel.

INVOLVEMENT IN FAMILY LAW MATTERS

Employees are not to become involved in family law matters. Employees should not assist with the enforcement of custody orders or similar issues.

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