

Adopted: 3/23/98

Revised:

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

I. PURPOSE

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

II. GENERAL STATEMENT OF POLICY

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

III. CIVIL ACTIONS

- A. Pursuant to Minn. Stat. § 466.07, Subd. 1, the Cooperative district shall defend and indemnify any Cooperative board member or Cooperative district employee for damages in Cooperative-related litigation, including punitive damages, claimed or levied against the Cooperative 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 Cooperative district, upon written request of the teacher involved, the Cooperative district shall provide legal counsel for any Cooperative 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 Cooperative district. The Cooperative district will choose legal counsel after consultation with the teacher.

C. Data Practices.

Educational data and personnel data maintained by the Cooperative district may be sought as evidence in a civil proceeding. The Cooperative 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 superintendent or designee. No Cooperative board member or employee may release data without consultation in advance with the Cooperative 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 Cooperative district that its officers and employees will normally not be involved in providing service of process for third parties in the Cooperative 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 Cooperative district personnel policies and applicable collective bargaining agreements.

IV. **CRIMINAL CHARGES OR CONDUCT**

A. Employees.

1. The Cooperative 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 Cooperative district receives information relating to activities of a criminal nature, by an employee, the Cooperative district will investigate and take appropriate disciplinary action, which may include discharge, subject to Cooperative district policies, statutes and provisions of applicable collective bargaining agreements.

B. Students.

The Cooperative 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 Cooperative district 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 Cooperative district to cooperate with law enforcement officials. The Cooperative 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 a school site is unavoidable, the Cooperative district will attempt to maintain confidentiality and to avoid embarrassment to the students and employees and to avoid disruption of the educational program. The Cooperative district will attempt to notify parents of a student under age 18 that police will be questioning their child. Normally, the superintendent, principal, or other appropriate Cooperative 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 Cooperative district will release to 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 Cooperative 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, Cooperative board members or Cooperative 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. § 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);

Cross References: MSBA Model Policy 403 (Discipline, Suspension and Dismissal of School

District Employees)

MSBA Model Policy 406 (Public and Private Personnel Data)

MSBA Model Policy 408 (Subpoena of a School District Employee)

MSBA Model Policy 414 (Mandated Reporting of Child Neglect or Physical or Sexual Abuse)

MSBA Model Policy 506 (Student Discipline)

MSBA Model Policy 515 (Protection and Privacy of Pupil Records)