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MSBA/MASA Model Policy 211

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

I. PURPOSE

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

II. GENERAL STATEMENT OF POLICY

- A. The cooperative recognizes that, when civil or criminal actions are pending against a cooperative board member, cooperative 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 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 acknowledges its statutory obligations with respect to providing assistance to cooperative board members and teachers who are sued in connection with performance of school district duties. Collective bargaining agreements and cooperative policies may also apply.

III. CIVIL ACTIONS

- A. Pursuant to Minnesota Statutes section 466.07, subd. 1, the cooperative shall defend and indemnify any cooperative board member or cooperative employee for damages in school-related litigation, including punitive damages, claimed or levied against the cooperative board member or employee, provided that the cooperative board member or employee 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 Minnesota Statutes Section 123B.25(b), with respect to teachers employed by the cooperative, upon written request of the teacher involved, the cooperative must 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 cooperative.

The cooperative will choose legal counsel after consultation with the teacher.

C. Data Practices

Educational data and personnel data maintained by the cooperative may be sought as evidence in a civil proceeding. The cooperative will release the data only pursuant to the Minnesota Government Data Practices Act, Minnesota Statutes chapter 13 and to the Family Educational Rights and Privacy Act, 20 United States Code § 1232g, and related regulations. When an employee is subpoenaed and is expected to testify regarding educational data or personnel data, the employee will inform the building administrator or designated supervisor, who shall immediately inform the director or designee. No cooperative board member or employee may release data without consultation in advance with the cooperative official designated as the responsible authority for the collection, use, and dissemination of data.

D. Service of Subpoenas

Cooperative 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 cooperative personnel policies and applicable collective bargaining agreements.

IV. CRIMINAL CHARGES OR CONDUCT

A. Employees

1. The cooperative 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 receives information relating to activities of a criminal nature by an employee, the cooperative will investigate and take appropriate disciplinary action, which may include discharge, subject to cooperative policies, statutes, and provisions of applicable collective bargaining agreements.
3. Pursuant to Minnesota Statutes section 123B.02, Subd. 20, if reimbursement for a criminal defense is requested by a cooperative employee, the cooperative 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 cooperative.

The decision whether to reimburse shall be made in the cooperative board's discretion. A cooperative board member who is a witness or an alleged victim in the case may not vote on the reimbursement. If a quorum of the cooperative board is disqualified from voting on the reimbursement, the reimbursement must be approved by a judge of the district court.

B. Students

The cooperative has an interest in maintaining a safe and healthful environment and in preventing disruption of the educational process. To promote that interest, the cooperative will take appropriate action regarding students convicted of crimes that relate to the school environment.

C. Criminal Investigations

1. The policy of the cooperative is to cooperate with law enforcement officials. The cooperative will make all efforts, however, to encourage law enforcement officials to question students and employees outside of school hours and off school premises unless extenuating circumstances exist, the matter being investigated is school-related, or as otherwise provided by law.
2. If questioning at school is unavoidable, the cooperative will attempt to maintain confidentiality to avoid embarrassment to students and employees and to avoid disruption of the educational program. The cooperative will attempt to notify parents of a student under age 18 that police will be questioning their child. Normally, the director, principal, or other appropriate school official will be present during the interview, except as otherwise required by law (Minnesota Statutes section 260E.22), or as otherwise determined in consultation with the parent or guardian.

D. Data Practices

The cooperative will release to juvenile justice and law enforcement authorities educational and personnel data only in accordance with Minnesota Statutes chapter 13 (Minnesota Government Data Practices Act) and 20 United States Code section. 1232g (FERPA).

V. STATEMENTS WHEN LITIGATION IS PENDING

The cooperative 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 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) (Legal Actions Against Districts and Teachers)
Minn. Stat. § 260E.22 (Interviews)
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 Deprivation of 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(1975)

Cross References: MSBA/MASA Model Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)
MSBA/MASA Model Policy 406 (Public and Private Personnel Data)
MSBA/MASA Model Policy 408 (Subpoena of a School 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)