

I. PURPOSE

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

II. GENERAL STATEMENT OF POLICY

- A. NWSISD recognizes that, when civil or criminal actions are pending against a school board member, NWSISD staff member, or student, NWSISD may be requested or required to take action.
- B. In responding to such requests and/or requirements, NWSISD will take such measures as are appropriate to its primary mission of providing multicultural programs and activities of students in an environment that is safe for staff and students and is conducive to learning.
- C. NWSISD acknowledges its statutory obligations with respect to providing assistance to NWSISD school board members and staff who are sued in connection with performance of NWSISD duties. Collective bargaining agreement and NWSISD policies may also apply.

III. CIVIL ACTIONS

- A. Pursuant to Minn. Stat. § 466.07, Subd. 1, NWSISD shall defend and indemnify any NWSISD school board member or employee for damages in school-related litigation, including punitive damages, claimed or levied against the NWSISD school board member or staff member, 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 NWSISD, upon written request of the teacher involved, NWSISD 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 NWSISD. NWSISD will choose legal counsel after consultation with the teacher.
- C. **Data Practices**
Educational data and personnel data maintained by NWSISD may be sought as evidence in a civil proceeding. NWSISD 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 a NWSISD employee is subpoenaed and is expected to testify regarding educational data or personnel data, he or she is to inform the

Executive Director. No NWSISD school board member or staff may release data without consultation in advance with the NWSISD official who is designated as the authority responsible for the collection, use and dissemination of data.

D. Service of Subpoenas

It is NWSISD's policy that its officers and staff will normally not be involved in providing service of process for third parties in the school setting.

E. Leave to Testify

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

IV. CRIMINAL CHARGES OR CONDUCT

A. Staff

1. NWSISD expects that its staff serve as positive role models for students. As role models for students, staff has a duty to conduct themselves in an exemplary manner.
2. If NWSISD receives information relating to activities of a criminal nature, by a staff member, NWSISD will investigate and take appropriate disciplinary action, which may include discharge, subject to NWSISD policies, statutes and provisions of applicable collective bargaining agreements.

B. Students

NWSISD has an interest in maintaining a safe and healthful environment and in preventing disruption of the educational process. In order to further that interest, NWSISD will take appropriate action regarding students convicted of crimes that relate to the school environment.

C. Criminal Investigations

1. It is NWSISD's policy to cooperate with law enforcement officials. NWSISD will make all efforts, however, to encourage law enforcement officials to question students and staff outside of NWSISD program and activity hours and not at the NWSISD site programs or activities are being held, unless there are extenuating circumstances or the matter being investigated is NWSISD-related, or as otherwise provided by law.
2. If such questioning at a NWSISD program or activity site is unavoidable, NWSISD will attempt to maintain confidentiality, to avoid embarrassment to students and staff and to avoid disruption of the educational program. NWSISD will attempt to notify parents of a student under age 18 that police will be questioning their child. Normally, the Executive Director or another appropriate NWSISD 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.

3. Pursuant to Minn. Stat. § 123B.02, Subd. 20, if reimbursement for a criminal defense is requested by a school district employee, the school 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 school district. The decision as to whether to reimburse shall be made in the discretion of the school board. A school board member who is a witness or an alleged victim in the case may not vote on the reimbursement. If a quorum of the school board is disqualified from voting on the reimbursement, the reimbursement must be approved by a judge of the district court.

D. Data Practices

NWSISD 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

NWSISD 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, NWSISD school board members or staff shall make or release statements in that situation only in consultation with the NWSISD's 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.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)
Op. Atty. Gen. 169 (Minn, Mar. 7, 1963);
Op. Atty. Gen. 169 (Minn, Nov. 3, 1943).
Dyress 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:

NWSISD Policy 403 (Discipline, Suspension and Dismissal of NWSISD Staff)
NWSISD Policy 406 (Public and Private Personnel Data)
NWSISD Policy 408 (Subpoena of NWSISD Staff)
NWSISD Policy 414 (Mandated Reporting of Child Neglect or Physical or Sexual Abuse)
NWSISD Policy 506 (Student Discipline)
NWSISD Policy 515 (Protection and Privacy of Pupil Records)

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