

Policy #: 211
Title: CRIMINAL OR CIVIL ACTION AGAINST MINNESOTA STATE ACADEMIES; MSA BOARD MEMBER, EMPLOYEE, OR STUDENT
Date of Initial Approval: 2/24/2021
Revision/Re-authorization Dates:
Reviewers: MSA Superintendent; MSA Human Resources Office; MSA Instructional Leadership Team; MSA Board

I. PURPOSE

The purpose of this policy is to provide guidance as to the Minnesota State Academies (MSA)'s position, rights, and responsibilities when a civil or criminal action is pending against MSA, MSA board member, MSA employee, or MSA student.

II. GENERAL STATEMENT OF POLICY

- A. MSA recognizes that, when civil or criminal actions are pending against a MSA board member, employee, or student, MSA may be requested or required to take action.
- B. In responding to such requests and/or requirements, MSA 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 students and employees and is conducive to learning.
- C. MSA acknowledges its statutory obligations with respect to providing assistance to board members and teachers who are sued in connection with performance of MSA duties. Collective bargaining agreements and MSA policies may also apply.
- D. MSA instructional staff have statutory responsibilities related to implementation of students' Individualized Education Programs. In situations where employees willfully ignore their statutory responsibilities, they may be held personally liable.

III. CIVIL ACTIONS

- A. Pursuant to Minn. Stat. § 3.76, the state shall defend, save harmless, and indemnify any MSA board member or employee against expenses, attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the board member or employee in connection with any tort, civil, or equitable claim or demand, or expenses, attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the board member or employee in connection with any claim or demand arising out of an alleged act or omission occurring during the period of board membership or employment if the board member or employee provides complete disclosure and cooperation in the defense of the claim or demand and if the board member or employee was acting within the scope of employment.
- B. Data Practices
Educational data and personnel data maintained by MSA may be sought as evidence in a civil proceeding. MSA 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, they are to inform the campus director or department supervisor, who shall immediately inform the superintendent or designee and the Attorney General's Office. No MSA board member or employee may release data without consultation in advance with the MSA official who is designated as the authority responsible for the collection, use, and dissemination of data. The Attorney General's Office must be consulted before any release of data.

C. Service of Subpoenas

The policy of MSA is that its officers and employees will normally not be involved in providing service of process for third parties in the school setting.

D. Leave to Testify

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

IV. CRIMINAL CHARGES OR CONDUCT

A. Employees

1. MSA 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 MSA receives information relating to activities of a criminal nature by an employee, MSA will investigate and take appropriate disciplinary action, which may include discharge, subject to MSA policies, statutes, and provisions of applicable collective bargaining agreements. During such investigations, employees may be placed on leave as appropriate and following applicable collective bargaining agreements.

B. Students

MSA has an interest in maintaining a safe and healthful environment and in preventing disruption of the educational process. In order to further that interest, MSA will take appropriate action regarding students convicted of crimes that relate to the school environment, following procedures outlined in the Individuals with Disabilities Education Act (IDEA) and the Minnesota Pupil Fair Dismissal Act.

C. Criminal Investigations

1. The policy of MSA is to cooperate with law enforcement officials. MSA 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. MSA will also remind law enforcement officials of their responsibilities regarding providing access to deaf, deafblind, or blind individuals. MSA shall not be responsible for providing interpreting services, audio description, or any other accessibility services for criminal investigations.

2. If such questioning at school is unavoidable, MSA will attempt to maintain confidentiality, to avoid embarrassment to students and employees and to avoid disruption of the educational program. MSA will attempt to notify parents of a student under age 18 that police will be questioning their child. Normally, the superintendent, campus director, or other appropriate school official will be present during the interview, except as otherwise required by law (such as Minn. Stat. § 260E.22), or as otherwise determined in consultation with the parent or guardian.

D. Data Practices

MSA will release to juvenile justice and 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

MSA 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. Therefore, MSA board members or employees shall make or release statements in that situation only in consultation with legal counsel from the Attorney General's Office.

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) (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)
34 C.F.R. § Individuals with Disabilities Education Act (IDEA)
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, 95 S.Ct. 992, 43 L.Ed.2d 214 (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)
MSA Procedure 6302 (Law Enforcement Interpreting)