

EMPLOYEES/PERSONNEL

Series 400

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Adopted: January 12, 2009
Revised: May 5, 2016

Fisher Public Schools Policy 401

401 EQUAL EMPLOYMENT OPPORTUNITY

I. PURPOSE

The purpose of this policy is to provide equal employment opportunity for all applicants for school district employment and school district employees.

II. GENERAL STATEMENT OF POLICY

- A. The policy of the school district is to provide equal employment opportunity for all applicants and employees. The school district does not unlawfully discriminate on the basis of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, age, family care leave status, or veteran status. The school district also makes reasonable accommodations for disabled employees.
- B. The school district prohibits the harassment of any individual for any of the categories listed above. For information about the types of conduct that constitute impermissible harassment and the school district's internal procedures for addressing complaints of harassment, please refer to the school district's policy on harassment and violence.
- C. This policy applies to all areas of employment including hiring, discharge, promotion, compensation, facilities, or privileges of employment.
- D. It is the responsibility of every school district employee to follow this policy.
- E. Any person having questions regarding this policy should discuss it with Evan Hanson.

Legal References: Minn. Stat. Ch. 363A (Minnesota Human Rights Act)
29 U.S.C. § 621 *et seq.* (Age Discrimination in Employment Act)
29 U.S.C. § 2615 (Family and Medical Leave Act)
38 U.S.C. § 4211 *et seq.* (Employment and Training of Veterans)
38 U.S.C. § 4301 *et seq.* (Employment and Reemployment Rights of Members of the Uniformed Services)
42 U.S.C. § 2000e *et seq.* (Title VII of the Civil Rights Act)
42 U.S.C. § 12101 *et seq.* (Equal Opportunity for Individuals with Disabilities)

Cross References: Policy 402 (Disability Nondiscrimination)
Policy 405 (Veteran's Preference)
Policy 413 (Harassment and Violence)

Adopted: January 12, 2009
Revised: May 5, 2016

Fisher Public Schools Policy 402

402 DISABILITY NONDISCRIMINATION POLICY

I. PURPOSE

The purpose of this policy is to provide a fair employment setting for all persons and to comply with state and federal law.

II. GENERAL STATEMENT OF POLICY

- A. The school district shall not discriminate against qualified individuals with disabilities because of the disabilities of such individuals in regard to job application procedures, hiring, advancement, discharge, compensation, job training, and other terms, conditions, and privileges of employment.
- B. The school district shall not engage in contractual or other arrangements that have the effect of subjecting its qualified applicants or employees with disabilities to discrimination on the basis of disability. The school district shall not exclude or otherwise deny equal jobs or job benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association.
- C. The school district shall make reasonable accommodations for the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless the accommodation would impose undue hardship on the operation of the business of the school district.
- D. Any job applicant or employee wishing to discuss the need for a reasonable accommodation, or other matters related to a disability or the enforcement and application of this policy, should contact Evan Hanson/Superintendent. This individual is the school district's appointed ADA/Section 504 coordinator.

Legal References: 29 U.S.C. 794 *et seq.* (§ 504 of Rehabilitation Act of 1973)
42 U.S.C., Ch. 126 § 12112 (Americans with Disabilities Act)
29 C.F.R. Part 32
34 C.F.R. Part 104

Cross References: Policy 521 (Student Disability Nondiscrimination)

Revised: _____

403 DISCIPLINE, SUSPENSION, AND DISMISSAL OF SCHOOL DISTRICT EMPLOYEES

I. PURPOSE

The purpose of this policy is to achieve the effective operation of the school district's programs through the cooperation of all employees under a system of policies and rules applied fairly and uniformly.

II. GENERAL STATEMENT OF POLICY

The disciplinary process described herein is designed to utilize progressive steps, where appropriate, to produce positive corrective action. While the school district intends that in most cases progressive discipline will be administered, the specific form of discipline chosen in a particular case and/or the decision to impose discipline in a manner otherwise, is solely within the discretion of the school district.

III. DISCIPLINE

A. Violation of School Laws and Rules

The form of discipline imposed for violations of school laws and rules may vary from an oral reprimand to termination of employment or discharge depending upon factors such as the nature of the violation, whether the violation was intentional, knowing and/or willful and whether the employee has been the subject of prior disciplinary action of the same or a different nature. School laws and rules to which this provision applies include:

1. policies of the school district;
2. directives and/or job requirements imposed by administration and/or the employee's supervisor; and
3. federal, state and local laws, rules and regulations, including, but not limited to, the rules and regulations adopted by federal and state agencies.

B. Substandard Performance

An employee's substandard performance may result in the imposition of discipline ranging from an oral reprimand to termination of employment or discharge. In most instances, discipline imposed for the reason of substandard performance will follow a progressive format and will be accompanied by guidance, help and encouragement to improve from the employee's supervisor and reasonable time for correction of the employee's deficiency.

C. Misconduct

Misconduct of an employee will result in the imposition of discipline consistent with the seriousness of the misconduct. Conduct which falls into this category includes, but is not limited to:

1. unprofessional conduct;
2. failure to observe rules, regulations, policies and standards of the school district and/or directives and orders of supervisors and any other act of an insubordinate nature;
3. continuing neglect of duties in spite of oral warnings, written warnings and/or other forms of discipline;
4. personal and/or immoral misconduct;
5. use of illegal drugs, alcohol or any other chemical substance on the job or any use off the job which impacts on the employee's performance;
6. deliberate and serious violation of the rights and freedoms of other employees, students, parents or other persons in the school community;
7. activities of a criminal nature relating to the fitness or effectiveness of the employee to perform the duties of the position;
8. failure to follow the canons of professional and personal ethics;
9. falsification of credentials and experience;
10. unauthorized destruction of school district property;
11. other good and sufficient grounds relating to any other act constituting inappropriate conduct;

12. neglect of duty;
13. violation of the rights of others as provided by federal and state laws related to human rights.

IV. FORMS OF DISCIPLINE

- A. The forms of discipline that may be imposed by the school district include, but are not limited to:
1. oral warning;
 2. written warning or reprimand;
 3. probation;
 4. disciplinary suspension, demotion or leave of absence with pay;
 5. disciplinary suspension, demotion or leave of absence without pay; and
 6. dismissal/termination or discharge from employment.
- B. Other forms of discipline, including any combination of the forms described in Paragraph A., above, may be imposed if, in the judgment of the administration, another form of discipline will better accomplish the school district's objective of stopping or correcting the offending conduct and improving the employee's performance.

V. PROCEDURES FOR ADMINISTERING POLICY

- A. In an instance where any form of discipline is imposed, the employee's supervisor will:
1. Advise the employee of any inadequacy, deficiency or conduct which is the cause of the discipline, either orally or in writing. If given orally, the supervisor will document the fact that an oral warning was given to the employee specifying the date, time and nature of the oral warning.
 2. Provide directives to the employee to correct the conduct or performance.
 3. Forward copies of all writings to the administrator in charge of personnel for filing in the employee's personnel file.
 4. Allow a reasonable period of time, when appropriate, for the employee to correct or remediate the performance or conduct.
 5. Specify the expected level of performance or modification of conduct to be required from the employee.
- B. The school district retains the right to immediately discipline, terminate or discharge an employee as appropriate, subject to relevant governing law and collective bargaining agreements where applicable.

Legal References: Minn. Stat. § 122A.40 (Teachers – Employment; Contracts; Termination)
Minn. Stat. § 122A.41 (Teacher Tenure)
Minn. Stat. § 122A.44 (Contracting with Teachers)
Minn. Stat. § 122A.58 (Coaches)
Minn. Stat. § 123B.02, Subd. 14 (Employees; Contracts for Services)
Minn. Stat. § 123B.143 (Superintendent)
Minn. Stat. § 123B.147 (Principals)
Minn. Stat. § 197.46 *et seq.* (Veterans Preference Act)

Cross References: MSBA Service Manual, Chapter 3, Employees

Revised: _____

404 EMPLOYMENT BACKGROUND CHECKS

I. PURPOSE

The purpose of this policy is to maintain a safe and healthful environment in the school district in order to promote the physical, social, and psychological well-being of its students. To that end, the school district will seek a criminal history background check for applicants who receive an offer of employment with the school district and on all individuals, except enrolled student volunteers, who are offered the opportunity to provide athletic coaching services or other extracurricular academic coaching services to the school district, regardless of whether any compensation is paid, or such other background checks as provided by this policy. The school district may also elect to do background checks of other volunteers, independent contractors, and student employees in the school district.

II. GENERAL STATEMENT OF POLICY

- A. The school district shall require that applicants for school district positions who receive an offer of employment and all individuals, except enrolled student volunteers, who are offered the opportunity to provide athletic coaching services or other extracurricular academic coaching services to the school district, regardless of whether any compensation is paid, submit to a criminal history background check. The offer of employment or the opportunity to provide services shall be conditioned upon a determination by the school district that an individual's criminal history does not preclude the individual from employment with, or provision of services to, the school district.
- B. The school district specifically reserves any and all rights it may have to conduct background checks regarding current employees, applicants, or service providers without the consent of such individuals.
- C. Adherence to this policy by the school district shall in no way limit the school district's right to require additional information, or to use procedures currently in place or other procedures to gain additional background information concerning employees, applicants, volunteers, service providers, independent contractors, and student employees.

III. PROCEDURES

- A. Normally an individual will not commence employment or provide services until the school district receives the results of the criminal history background check. The school district may conditionally hire an applicant or allow an individual to provide services pending completion of the background check, but shall notify the individual that the individual's employment or opportunity to provide services may be terminated based on the result of the background check. Background checks will be performed by the Minnesota Bureau of Criminal Apprehension (BCA). The BCA shall conduct the background check by retrieving criminal history data as defined in Minn. Stat. § 13.87. The school district reserves the right to also have criminal history background checks conducted by other organizations or agencies.
- B. In order for an individual to be eligible for employment or to provide athletic coaching services or other extracurricular academic coaching services to the school district, except for an enrolled student volunteer, the individual must sign a criminal history consent form, which provides permission for the school district to conduct a criminal history background check, and provide payment in an amount equal to the ½ the actual cost of conducting the criminal history background check. The cost of the criminal history background check is the responsibility of the individual, unless the school district decides to pay the costs for a volunteer, an independent contractor, or a student employee. If the individual fails to provide the school district with a signed Informed Consent Form and fee at the time the individual receives a job offer, or permission to provide services, the individual will be considered to have voluntarily withdrawn the application for employment or request to provide services.

- C. The school district, in its discretion, may elect not to request a criminal history background check on an individual who holds an initial entrance license issued by the state board of teaching or the commissioner of education within the 12 months preceding an offer of employment or permission to provide services.
- D. The school district may use the results of a criminal background check conducted at the request of another school hiring authority if:
 1. the results of the criminal background check are on file with the other school hiring authority or otherwise accessible;
 2. the other school hiring authority conducted a criminal background check within the previous 12 months;
 3. the individual executes a written consent form giving the school district access to the results of the check; and
 4. there is no reason to believe that the individual has committed an act subsequent to the check that would disqualify the individual for employment or provision of services.
- E. For all nonstate residents who are offered employment with or the opportunity to provide athletic coaching services or other extracurricular academic coaching services to the school district, the school district shall request a criminal history background check on such individuals from the superintendent of the BCA and from the government agency performing the same function in the resident state or, if no government entity performs the same function in the resident state, from the Federal Bureau of Investigation. The offer of employment or the opportunity to provide services shall be conditioned upon a determination by the school district that an individual's criminal history does not preclude the individual from employment with, or provision of services to, the school district. Such individuals must provide an executed criminal history consent form.
- F. When required, individuals must provide fingerprints to assist in a criminal history background check. If the fingerprints provided by the individual are unusable, the individual will be required to submit another set of prints.
- G. Copies of this policy shall be available in the school district's employment office and will be distributed to applicants for employment and individuals who are offered the opportunity to provide athletic coaching services or other extracurricular academic coaching services upon request. The need to submit to a criminal history background check may be included with the basic criteria for employment or provision of services in the position posting and position advertisements.
- H. The individual will be informed of the results of the criminal background check(s) to the extent required by law.
- I. If the criminal history background check precludes employment with, or provision of services to, the school district, the individual will be so advised.
- J. The school district may apply these procedures to other volunteers, independent contractors, or student employees.
- K. At the beginning of each school year or when a student enrolls, the school district will notify parents and guardians about this policy and identify those positions subject to a background check and the extent of the school district's discretion in requiring a background check. The school district may include this notice in its student handbook, a school policy guide, or other similar communication. A form notice for this purpose is included with this policy.

IV. CRIMINAL HISTORY CONSENT FORM

A form to obtain consent for a criminal history background check is included with this policy.

- Legal References:**
- Minn. Stat. § 13.04, Subd. 4 (Inaccurate or Incomplete Data)
 - Minn. Stat. § 13.87, Subd. 1 (Criminal History Data)
 - Minn. Stat. § 123B.03 (Background Check)
 - Minn. Stat. §§ 299C.60-299C.64 (Minnesota Child Protection Background Check Act)
 - Minn. Stat. § 364.09(b) (Exception for School Districts)

Cross References:

405 VETERAN'S PREFERENCE

I. PURPOSE

The purpose of this policy is to comply with the Minnesota Veterans Preference Act (VPA) which provides preference points for veterans applying for employment with political subdivisions, including school districts, as well as additional rights for veterans in the discharge process.

II. GENERAL STATEMENT OF POLICY

- A. The school district's policy is to comply with the VPA regarding veteran's preference rights and mandated preference points to veterans and spouses of deceased veterans or disabled veterans.
- B. The school district's policy is also to comply with the VPA requirement that no covered veteran may be removed from public employment except for incompetency or misconduct shown after a hearing upon due notice and in writing. This paragraph does not apply to the position of teacher.
- C. Veteran's preference points will be applied pursuant to applicable law as follows:
 - 1. A credit of five points shall be added to the competitive open examination rating of a non-disabled veteran, who so elects, provided that the veteran obtained a passing rating on the examination without the addition of the credit points.
 - 2. A credit of ten points shall be added to the competitive open examination rating of a disabled veteran, who so elects, provided that the veteran obtained a passing rating on the examination without the addition of the credit points.
 - 3. A credit of five points shall be added to the competitive promotional examination rating of a disabled veteran, who so elects, provided that (a) the veteran obtained a passing rating on the examination without the addition of the credit points and (b) the veteran is applying for a first promotion after securing public employment.
 - 4. A preference may be used by the surviving spouse of a deceased veteran and by the spouse of a disabled veteran who, because of the disability, is unable to qualify.
- D. Eligibility for and application of veteran's preference, the definition of a veteran, and the definition of a disabled veteran for purposes of this policy will be pursuant to the VPA.
- E. When notifying applicants that they have been accepted into the selection process, the school district shall notify applicants that they may elect to use veteran's preference.
- F. The school district's policy is to use a 100-point hiring system to enable allocation of veteran's preference points. The school district may or may not use a 100-point hiring system for filling teaching positions. If a 100-point hiring system is not used for filling a teaching position, preference points will not be added, but all veteran applicants who have proper licensure for the teaching position will be granted an interview for the position.
- G. If the school district rejects a member of the finalist pool who has claimed veteran's preference, the school district shall notify the finalist in writing of the reasons for the rejection and file the notice with the school district's personnel officer.
- H. In accordance with the VPA, no honorably discharged veteran shall be removed from a position of employment except for incompetency, misconduct, or good faith abolishment of position.
 - 1. Incompetency or misconduct must be shown after a hearing, upon due notice, upon stated charges, in writing.
 - 2. A veteran must irrevocably elect to be governed either by the VPA or by arbitration provisions set forth in a collective bargaining agreement in the event of a discharge.
- I. The VPA and the provisions of this policy do not apply to the position of private secretary, superintendent, head of a department, or any person holding a strictly confidential relation to the school board or school district. The VPA and the provisions of this policy apply to teachers only with respect to the hiring process, as set forth in Paragraph F., above.

Legal References:

Minn. Stat. § 43A.11 (Veteran's Preference)
Minn. Stat. § 197.455 (Veteran's Preference Applied)
Minn. Stat. § 197.46 (Veterans Preference Act)
Hall v. City of Champlin, 463 N.W.2d 502 (Minn. 1990)
Young v. City of Duluth, 410 N.W.2d 27 (Minn. Ct. App. 1987)

Cross References:

Policy 401 (Equal Employment Opportunity)

406 PUBLIC AND PRIVATE PERSONNEL DATA

I. PURPOSE

The purpose of this policy is to provide guidance to school district employees as to the data the school district collects and maintains regarding its personnel.

II. GENERAL STATEMENT OF POLICY

- A. All data on individuals collected, created, received, maintained or disseminated by the school district, which is classified by statute or federal law as public, shall be accessible to the public pursuant to the procedures established by the school district.
- B. All other data on individuals is private or confidential.

III. DEFINITIONS

- A. "Public" means that the data is available to anyone who requests it.
- B. "Private" means the data is available to the subject of the data and to school district staff who need it to conduct the business of the school district.
- C. "Confidential" means the data is not available to the subject.
- D. "Parking space leasing data" means the following government data on an application for, or lease of, a parking space: residence address, home telephone number, beginning and ending work hours, place of employment, location of parking space, and work telephone number.
- E. "Personnel data" means government data on individuals maintained because they are or were employees of the school district, applicants for employment, or volunteers or independent contractors for the school district, or members of or applicants for an advisory board or commission. Personnel data include data submitted to the school district by an employee as part of an organized self-evaluation effort by the school district to request suggestions from all employees on ways to cut costs, make the school district more efficient, or to improve school district operations. An employee who is identified in a suggestion shall have access to all data in the suggestion except the identity of the employee making the suggestion.
- F. "Finalist" means an individual who is selected to be interviewed by the school board for a position.
- G. "Protected health information" means individually identifiable health information transmitted in electronic form by a school district acting as a health care provider. "Protected health information" excludes health information in education records covered by the federal Family Educational Rights and Privacy Act and employment records held by a school district in its role as employer.
- H. "Public officials" means business managers; human resource directors; athletic directors whose duties include at least 50 percent of their time spent in administration, personnel, supervision, and evaluation; chief financial officers; directors; and individuals defined as superintendents and principals.

IV. PUBLIC PERSONNEL DATA

- A. The following information on employees, including volunteers and independent contractors, is public:
 - 1. name;
 - 2. employee identification number, which may not be the employee's social security number;
 - 3. actual gross salary;
 - 4. salary range;
 - 5. terms and conditions of employment relationship;
 - 6. contract fees;

7. actual gross pension;
 8. the value and nature of employer-paid fringe benefits;
 9. the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary;
 10. job title;
 11. bargaining unit;
 12. job description;
 13. education and training background;
 14. previous work experience;
 15. date of first and last employment;
 16. the existence and status of any complaints or charges against the employee, regardless of whether the complaint or charge resulted in a disciplinary action;
 17. the final disposition of any disciplinary action, as defined in Minn. Stat. § 13.43, Subd. 2(b), together with the specific reasons for the action and data documenting the basis of the action, excluding data that would identify confidential sources who are employees of the school district;
 18. the complete terms of any agreement settling any dispute arising out of the employment relationship, including superintendent buyout agreements, except that the agreement must include specific reasons for the agreement if it involves the payment of more than \$10,000 of public money, and such agreement may not have the purpose or effect of limiting access to or disclosure of personnel data or limiting the discussion of information or opinions related to personnel data;
 19. work location;
 20. work telephone number;
 21. badge number;
 22. work-related continuing education;
 23. honors and awards received; and
 24. payroll time sheets or other comparable data that are used only to account for employee's work time for payroll purposes, except to the extent that release of time sheet data would reveal the employee's reasons for the use of sick or other medical leave or other not public data.
- B. The following information on applicants for employment is public:
1. veteran status;
 2. relevant test scores;
 3. rank on eligible list;
 4. job history;
 5. education and training; and
 6. work availability.
- C. Names of applicants are private data except when certified as eligible for appointment to a vacancy or when they become finalists for an employment position.
- D. Applicants for appointment to a public body.
1. Data about applicants for appointment to a public body are private data on individuals except that the following are public:
 - a. name;
 - b. city of residence, except when the appointment has a residency requirement that requires the entire address to be public;
 - c. education and training;
 - d. employment history;
 - e. volunteer work;
 - f. awards and honors;
 - g. prior government service;
 - h. any data required to be provided or that are voluntarily provided in an application for appointment to a multimember agency pursuant to Minn. Stat. § 15.0597; and
 - i. veteran status.

2. Once an individual is appointed to a public body, the following additional items of data are public:
 - a. residential address;
 - b. either a telephone number or electronic mail address where the appointee can be reached, or both at the request of the appointee;
 - c. first and last dates of service on the public body;
 - d. the existence and status of any complaints or charges against an appointee; and
 - e. upon completion of an investigation of a complaint or charge against an appointee, the final investigative report is public, unless access to the data would jeopardize an active investigation.
 3. Notwithstanding paragraph 2., any electronic mail address or telephone number provided by a public body for use by an appointee shall be public. An appointee may use an electronic mail address or telephone number provided by the public body as the designated electronic mail address or telephone number at which the appointee can be reached.
- E. Regardless of whether there has been a final disposition as defined in Minn. Stat. § 13.43, Subd. 2(b), upon completion of an investigation of a complaint or charge against a public official, as defined in Minn. Stat. § 13.43, Subd. 2(e), or if a public official resigns or is terminated from employment while the complaint or charge is pending, all data relating to the complaint or charge are public, unless access to the data would jeopardize an active investigation or reveal confidential sources.
- F. Data relating to a complaint or charge against a public official is public only if: (1) the complaint or charge results in disciplinary action or the employee resigns or is terminated from employment while the complaint or charge is pending; or (2) potential legal claims arising out of the conduct that is the subject of the complaint or charge are released as part of a settlement agreement. Data that is classified as private under another law is not made public by this provision.

V. PRIVATE PERSONNEL DATA

- A. All other personnel data are private and will only be shared with school district staff whose work requires such access. Private data will not be otherwise released unless authorized by law or by the employee's informed written consent.
- B. Data pertaining to an employee's dependents are private data on individuals.
- C. Data created, collected or maintained by the school district to administer employee assistance programs are private.
- D. Parking space leasing data are private.
- E. An individual's checking account number is private when submitted to a government entity.
- F. Personnel data may be disseminated to labor organizations to the extent the school district determines it is necessary for the labor organization to conduct its business or when ordered or authorized by the Commissioner of the Bureau of Mediation Services.
- G. The school district may display a photograph of a current or former employee to prospective witnesses as part of the school district's investigation of any complaint or charge against the employee.
- H. The school district may, if the responsible authority or designee reasonably determines that the release of personnel data is necessary to protect an employee from harm to self or to protect another person who may be harmed by the employee, release data that are relevant to the concerns for safety to:
 1. the person who may be harmed and to the attorney representing the person when the data are relevant to obtaining a restraining order;
 2. a pre-petition screening team conducting an investigation of the employee under Minn. Stat. § 253B.07, Subd. 1; or
 3. a court, law enforcement agency, or prosecuting authority.
- I. Private personnel data or confidential investigative data on employees may be disseminated to a law enforcement agency for the purpose of reporting a crime or alleged crime committed by an employee, or for the purpose of assisting law enforcement in the investigation of such a crime or alleged crime.

- J. A complainant has access to a statement provided by the complainant to the school district in connection with a complaint or charge against an employee.
- K. When allegations of sexual or other types of harassment are made against an employee, the employee shall not have access to data that would identify the complainant or other witnesses if the school district determines that the employee's access to that data would:
1. threaten the personal safety of the complainant or a witness; or
 2. subject the complainant or witness to harassment.
- If a disciplinary proceeding is initiated against the employee, data on the complainant or witness shall be available to the employee as may be necessary for the employee to prepare for the proceeding.
- L. The school district shall make any report to the board of teaching or the state board of education as required by Minn. Stat. § 122A.20, Subd. 2, and shall, upon written request from the licensing board having jurisdiction over a teacher's license, provide the licensing board with information about the teacher from the school district's files, any termination or disciplinary proceeding, and settlement or compromise, or any investigative file in accordance with Minn. Stat. § 122A.20, Subd. 2.
- M. Private personnel data shall be disclosed to the department of economic security for the purpose of administration of the unemployment insurance program under Minn. Stat. Ch. 268.
- N. When a report of alleged maltreatment of a student in a school is made to the Commissioner of Education, data that are relevant and collected by the school about the person alleged to have committed maltreatment must be provided to the Commissioner on request for purposes of an assessment or investigation of the maltreatment report. Additionally, personnel data may be released for purposes of informing a parent, legal guardian, or custodian of a child that an incident has occurred that may constitute maltreatment of the child, when the incident occurred, and the nature of the conduct that may constitute maltreatment.
- O. The school district shall release to a requesting school district or charter school private personnel data on a current or former employee related to acts of violence toward or sexual contact with a student, if an investigation conducted by or on behalf of the school district or law enforcement affirmed the allegations in writing prior to release and the investigation resulted in the resignation of the subject of the data; or the employee resigned while a complaint or charge involving the allegations was pending, the allegations involved acts of sexual contact with a student, and the employer informed the employee in writing, before the employee resigned, that if the employee resigns while the complaint or charge is still pending, the employer must release private personnel data about the employee's alleged sexual contact with a student to a school district or charter school requesting the data after the employee applies for employment with that school district or charter school and the data remain classified as provided in Minn. Stat. Ch. 13. Data that are released under this paragraph must not include data on the student.
- P. The identity of an employee making a suggestion as part of an organized self-evaluation effort by the school district to cut costs, make the school district more efficient, or to improve school district operations is private.
- Q. Health information on employees is private unless otherwise provided by law. To the extent that the school district transmits protected health information, the school district will comply with all privacy requirements.
- R. Personal home contact information for employees may be used by the school district and shared with another government entity in the event of an emergency or other disruption to ensure continuity of operation for the school district or government entity.
- S. The personal telephone number, home address, and electronic mail address of a current or former employee of a contractor or subcontractor maintained as a result of a contractual relationship between the school district and a contractor or subcontractor entered on or after August 1, 2012, are private data. These data must be shared with another government entity to perform a function authorized by law. The data also must be disclosed to a government entity or any person for prevailing wage purposes.
- T. When a teacher is discharged immediately because the teacher's license has been revoked due to a conviction for child abuse or sexual abuse or when the Commissioner of the Minnesota Department of Education (MDE) makes a final determination of child maltreatment involving a teacher, the school principal or other person having administrative control of the school must

include in the teacher's employment record the information contained in the record of the disciplinary action or the final maltreatment determination, consistent with the definition of public data under Minn. Stat. § 13.41, Subd. 5, and must provide the Board of Teaching and the licensing division at MDE with the necessary and relevant information to enable the Board of Teaching and MDE's licensing division to fulfill their statutory and administrative duties related to issuing, renewing, suspending, or revoking a teacher's license. In addition to the background check required under Minn. Stat. § 123B.03, a school board or other school hiring authority must contact the Board of Teaching and MDE to determine whether the teacher's license has been suspended or revoked, consistent with the discharge and final maltreatment determinations. Unless restricted by federal or state data practices law or by the terms of a collective bargaining agreement, the responsible authority for a school district must disseminate to another school district private personnel data on a current or former teacher (employee or contractor) of the district, including the results of background investigations, if the requesting school district seeks the information because the subject of the data has applied for employment with the requesting school district.

VI. MULTIPLE CLASSIFICATIONS

If data on individuals are classified as both private and confidential by Minn. Stat. Ch. 13, or any other state or federal law, the data are private.

VII. CHANGE IN CLASSIFICATIONS

The school district shall change the classification of data in its possession if it is required to do so to comply with other judicial or administrative rules pertaining to the conduct of legal actions or with a specific statute applicable to the data in the possession of the disseminating or receiving agency.

VIII. RESPONSIBLE AUTHORITY

The school district has designated *Evan Hanson, Superintendent* as the authority responsible for personnel data. If you have any questions, contact *him*.

IX. EMPLOYEE AUTHORIZATION/RELEASE FORM

An employee authorization form is included as an addendum to this policy.

Legal References:

Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)
Minn. Stat. § 13.02 (Definitions)
Minn. Stat. § 13.37 (General Nonpublic Data)
Minn. Stat. § 13.39 (Civil Investigation Data)
Minn. Stat. § 13.43 (Personnel Data)
Minn. Stat. § 13.601, Subd. 3 (Elected and Appointed Officials)
Minn. Stat. § 122A.20, Subd. 2 (Mandatory Reporting)
Minn. Stat. § 122A.40, Subds. 13 and 16 (Employment; Contracts; Termination)
Minn. Stat. § 626.556, Subd. 7 (Reporting of Maltreatment of Minors)
P.L. 104-191 (HIPAA)
45 C.F.R. Parts 160 and 164 (HIPAA Regulations)

Cross References:

Policy 206 (Public Participation in School Board Meetings/Complaints about Persons at School Board Meetings and Data Privacy Considerations)
Policy 515 (Protection and Privacy of Pupil Records)
MSBA Service Manual, Chapter 13, School Law Bulletin "I" (School Records – Privacy – Access to Data)

Consent to Release – Request from an Individual

An individual asks the government entity to release his/her private data to an outside entity or person. Because the entity does not have statutory authority to release the data, it must get the individual's written informed consent.

Explanation of Your Rights

If you have a question about anything on this form, or would like more explanation, please talk to

_____ before you sign it.
[entity contact person name and contact information]

I, _____, give my permission for _____
[name of individual data subject] [name of government entity]

to release data about me to _____ as described on this form.
[name of other entity or person]

1. The specific data I want _____ to release _____.
[name of government entity] [explanation of data]
2. I understand that I have asked _____ to release the data.
[name of government entity]
3. I understand that although the data are classified as private at _____, the
[name of government entity]
classification/treatment of the data at _____ depends on laws or
[name of other entity or person]
policies that apply to _____.
[name of other entity or person]

This authorization to release expires _____.
[date/time of expiration]

Individual data subject's signature _____ Date _____

Parent/guardian's signature [if needed] _____ Date _____

407 EMPLOYEE RIGHT TO KNOW – EXPOSURE TO HAZARDOUS SUBSTANCES

I. PURPOSE

The purpose of this policy is to provide school district employees a place of employment and conditions of employment free from recognized hazards that are likely to cause death or serious injury or harm. (Minn. Stat. § 182.653, Subd. 2)

II. GENERAL STATEMENT OF POLICY

It is the policy of this school district to provide information and training to employees who may be routinely exposed to a hazardous substance, harmful physical agent or infectious agent.

III. DEFINITIONS

- A. “Commissioner” means the Commissioner of Labor and Industry.
- B. “Routinely exposed” means that there is a reasonable potential for exposure during the normal course of assigned work or when an employee is assigned to work in an area where a hazardous substance has been spilled.
- C. “Hazardous substance” means a chemical or substance, or mixture of chemicals and substances, which:
 - 1. is regulated by the Federal Occupational Safety and Health Administration under the Code of Federal Regulations; or
 - 2. is either toxic or highly toxic; an irritant; corrosive; a strong oxidizer; a strong sensitizer; combustible; either flammable or extremely flammable; dangerously reactive; pyrophoric; pressure-generating; compressed gas; carcinogen; teratogen; mutagen; reproductive toxic agent; or that otherwise, according to generally accepted documented medical or scientific evidence, may cause substantial acute or chronic personal injury or illness during or as a direct result of any customary or reasonably foreseeable accidental or intentional exposure to the chemical or substance; or
 - 3. is determined by the commissioner as a part of the standard for the chemical or substance or mixture of chemicals and substances to present a significant risk to worker health and safety or imminent danger of death or serious physical harm to an employee as a result of foreseeable use, handling, accidental spill, exposure, or contamination.
- D. “Harmful physical agent” means a physical agent determined by the commissioner as a part of the standard for that agent to present a significant risk to worker health or safety or imminent danger of death or serious physical harm to an employee. This definition includes but is not limited to radiation, whether ionizing or nonionizing.
- E. “Infectious agent” means a communicable bacterium, rickettsia, parasites, virus, or fungus determined by the commissioner by rule, with approval of the commissioner of health, which according to documented medical or scientific evidence causes substantial acute or chronic illness or permanent disability as a foreseeable and direct result of any routine exposure to the infectious agent. Infectious agent does not include an agent in or on the body of a patient before diagnosis.
- F. “Blood borne pathogens” means pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV).

IV. TARGET JOB CATEGORIES

Training will be provided to all full and part-time employees who are routinely exposed to a hazardous substance, harmful physical agent or infectious substance as set forth above.

V. TRAINING SCHEDULE

Training will be provided to employees before beginning a job assignment as follows:

- A. Any newly-hired employee assigned to a work area where he or she is determined to be “routinely

- exposed” under the guidelines above.
- B. Any employee reassigned to a work area where he or she is determined to be routinely exposed under the above guidelines.

Legal References: Minn. Stat. Ch. 182 (Occupational Safety and Health)
Minn. Rules Ch. 5205 (Safety and Health Standards)
Minn. Rules Ch. 5206 (Employee Right to Know Standards)
29 C.F.R. § 1910.1050, App. B (Substance Technical Guidelines)

Cross References: Policy 420 (Students and Employees with Sexually Transmitted Infections and Diseases and Certain Other Communicable Diseases and Infectious Conditions)

408 SUBPOENA OF A SCHOOL DISTRICT EMPLOYEE

I. PURPOSE

The purpose of this policy is to protect the privacy rights of school district employees and students under both state and federal law when requested to testify or provide educational records for a judicial or administrative proceeding.

II. GENERAL STATEMENT OF POLICY

This policy is to provide guidance and direction for school district employees who may be subpoenaed to testify and/or provide educational records for a judicial or administrative proceeding.

III. DATA CLASSIFICATION

A. Educational Data

1. State Law

The Minnesota Government Data Practices Act (MGDPA), Minn. Stat. Ch. 13, classifies all educational data, except for directory information as designated by the school district, as private data on individuals. The state statute provides that **private data on individuals may not be released, except pursuant to a valid court order or informed consent by the subject of the data or a parent if the subject of the data is a minor.**

2. Federal Law

The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, provides that educational data may not be released, except pursuant to informed consent by the individual subject of the data or any lawfully issued subpoena. Regulations promulgated under the federal law require that the school district must first make a reasonable effort to notify the parent of the student, or the student if the student is 18 years of age or older, of the subpoena in advance of releasing the information pursuant to the subpoena.

B. Personnel Data

The MGDPA, Minn. Stat. Ch. 13, also classifies all personnel data, except for certain data specifically classified as public, as private data on individuals. The state statute provides that **private data on individuals may not be released, except pursuant to a valid court order or informed consent by the subject of the data.**

IV. APPLICATION AND PROCEDURES

A. Any employee who receives a subpoena for any purpose related to employment is to inform the building administrator or designated supervisor when the employee receives the subpoena. The building administrator or designated supervisor shall immediately inform the superintendent that the employee has received a subpoena.

B. No employee may release educational data, personnel data, or any other data of any kind without consultation in advance with the school district official who is designated as the authority responsible for the collection, use and dissemination of data.

C. Payment for attendance at judicial or administrative proceedings and the retention of witness and mileage fees is to be determined in accordance with the applicable school board policies and collective bargaining agreements.

D. The administration shall not release any information except in strict compliance with state and federal law and this policy. Recognizing that an unauthorized release may expose the school district or its employees to civil or criminal penalties or loss of employment, the administration shall confer with school district legal counsel prior to release of such data.

Legal References:

Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)
Minn. Rules 1205.0100, Subp. 5 (Minnesota Rules Regarding Data Practices)
20 U.S.C. § 1232g (Family Educational Rights and Privacy Act)

Cross References:

Policy 211 (Criminal or Civil Action Against School District, School Board Member, Employee, or Student)
Policy 515 (Protection and Privacy of Pupil Records)
MSBA Service Manual, Chapter 13, School Law Bulletin "I" (School Records – Privacy – Access to Data)

Revised: _____

409 EMPLOYEE PUBLICATIONS, INSTRUCTIONAL MATERIALS, INVENTIONS, AND CREATIONS

I. PURPOSE

The purpose of this policy is to identify and reserve the proprietary rights of the school district to certain publications, instructional materials, inventions, and creations which employees may develop or create, or assist in developing or creating, while employed by the school district.

II. GENERAL STATEMENT OF POLICY

Unless the employee develops, creates or assists in developing or creating a publication, instructional material, computer program, invention or creation entirely on the employee's own time and without the use of any school district facilities or equipment, the employee shall immediately disclose and, on demand of the school district, assign any rights to publications, instructional materials, computer programs, materials posted on websites, inventions or creations which the employee develops or creates or assists in developing or creating during the term of employee's employment and for one year thereafter. In addition, employees shall sign such documents and perform such other acts as may be necessary to secure the rights of the school district relating to such publications, instructional materials, computer programs, materials posted on websites, inventions and/or creations, including domestic and foreign patents and copyrights.

III. NOTICE OF POLICY

The school district shall give employees notice of this policy by such means as are reasonably likely to inform them of this policy.

Legal References: Minn. Stat. § 181.78 (Agreements; Terms Relating to Inventions)
17 U.S.C. § 101 *et seq.* (Copyrights)

Cross References:

410 FAMILY AND MEDICAL LEAVE POLICY

I. PURPOSE

The purpose of this policy is to provide for family and medical leave to school district employees in accordance with the Family and Medical Leave Act of 1993 (FMLA) and also with parenting leave under state law.

II. GENERAL STATEMENT OF POLICY

The following procedures and policies regarding family and medical leave are adopted by the school district, pursuant to the requirements of the FMLA and consistent with the requirements of the Minnesota parenting leave laws.

III. DEFINITIONS

- A. "Covered active duty" means:
1. in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and
 2. in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in 10 U.S.C. § 101(a)(13)(B).
- B. "Covered servicemember" means:
1. a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or
 2. a covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness and who was a member of the Armed Forces, including a member of the National Guard or Reserves, and was discharged or released under conditions other than dishonorable, at any time during the period of five years preceding the first date the eligible employee takes FMLA leave to care for the covered veteran.
- C. "Eligible employee" means an employee who has been employed by the school district for a total of at least 12 months and who has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave. An employee returning from fulfilling his or her Uniformed Services Employment and Reemployment Rights Act (USERRA)-covered service obligation shall be credited with the hours of service that would have been performed but for the period of absence from work due to or necessitated by USERRA-covered service. In determining whether the employee met the hours of service requirement, and to determine the hours that would have been worked during the period of absence from work due to or necessitated by USERRA-covered service, the employee's pre-service work schedule can generally be used for calculations. While the 12 months of employment need not be consecutive, employment periods prior to a break in service of seven years or more may not be counted unless the break is occasioned by the employee's fulfillment of his or her USERRA-covered service obligation or a written agreement, including a collective bargaining agreement, exists concerning the school district's intention to rehire the employee after the break in service.
- D. "Military caregiver leave" means leave taken to care for a covered servicemember with a serious injury or illness.
- E. "Next of kin of a covered servicemember" means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or

her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin, and the employee may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin.

- F. "Outpatient status" means, with respect to a covered servicemember who is a current member of the Armed Forces, the status of a member of the Armed Forces assigned to:
1. a military medical treatment facility as an outpatient; or
 2. a unit established for the purpose of providing command and control of members of the Armed Forces receiving care as outpatients.
- G. "Qualifying exigency" means a situation where the eligible employee seeks leave for one or more of the following reasons:
1. to address any issues that arise from a short-notice deployment (seven calendar days or less) of a covered military member;
 2. to attend military events and related activities of a covered military member;
 3. to address issues related to childcare and school activities of a covered military member's child;
 4. to address financial and legal arrangements for a covered military member;
 5. to attend counseling provided by someone other than a health care provider for oneself, a covered military member, or his/her child;
 6. to spend up to 15 calendar days with a covered military member who is on short-term, temporary rest and recuperation leave during a period of deployment;
 7. to attend post-deployment activities related to a covered military member;
 8. to address parental care needs; and
 9. to address other events related to a covered military member that both the employee and school district agree is a qualifying exigency.
- H. "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:
1. inpatient care in a hospital, hospice, or residential medical care facility; or
 2. continuing treatment by a health care provider.
- I. "Spouse" means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the state in which the marriage was entered into or, in the case of a marriage entered into outside of any state, if the marriage is valid in the place where entered into and could have been entered into in at least one state. This definition includes an individual in a same-sex or common law marriage that either: (1) was entered into in a state that recognizes such marriages; or (2) if entered into outside of any state, is valid in the place where entered into and could have been entered into in at least one state.
- J. "Veteran" has the meaning given in 38 U.S.C. § 101.

IV. LEAVE ENTITLEMENT

- A. Twelve-week Leave under Federal Law
1. Eligible employees are entitled to a total of 12 work weeks of unpaid family or medical leave during the applicable 12-month period as defined below, plus any additional leave as required by law. Leave may be taken for one or more of the following reasons in accordance with applicable law:
 - a. birth of the employee's child and to care for such child;
 - b. placement of an adopted or foster child with the employee;
 - c. to care for the employee's spouse, son, daughter, or parent with a serious health condition;
 - d. the employee's serious health condition makes the employee unable to perform the functions of the employee's job; and/or

- e. any qualifying exigency arising from the employee's spouse, son, daughter, or parent being on covered active duty, or notified of an impending call or order to covered active duty in the Armed Forces.
- 2. For the purposes of this policy, "year" is defined as a rolling 12-month period measured backward from the date an employee's leave is to commence.
- 3. An employee's entitlement to FMLA leave for the birth, adoption, or foster care of a child expires at the end of the 12-month period beginning on the date of the birth or placement.
- 4. A "serious health condition" typically requires either inpatient care or continuing treatment by or under the supervision of a health care provider, as defined by applicable law. Family and medical leave generally is not intended to cover short-term conditions for which treatment and recovery are very brief.
- 5. A "serious injury or illness," in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means:
 - a. injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and
 - b. in the case of a covered veteran who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time, during the period of five years preceding the date on which the veteran undergoes the medical treatment, recuperation, or therapy, means a qualifying injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty in the Armed Forces and that manifested itself before or after the member became a veteran, and is:
 - (1) a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or
 - (2) a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability (VASRD) rating of 50 percent or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or
 - (3) a physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or
 - (4) an injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.
- 6. Eligible spouses employed by the school district are limited to an aggregate of 12 weeks of leave during any 12-month period for the birth and care of a newborn child or adoption of a child, the placement of a child for foster care, or to care for a parent. This limitation for spouses employed by the school district does not apply to leave taken: by one spouse to care for the other spouse who is seriously ill; to care for a child with a serious health condition; because of the employee's own serious health condition; or pursuant to Paragraph IV.A.1.e. above.
- 7. Depending on the type of leave, intermittent or reduced schedule leave may be granted in the discretion of the school district or when medically necessary. However, part-time employees are only eligible for a pro-rata portion of leave to be used on an intermittent or reduced schedule basis, based on their average hours worked per week. Where an intermittent or reduced schedule leave is foreseeable based on planned medical treatment,

the school district may transfer the employee temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position, and which has equivalent pay and benefits.

8. If an employee requests a leave for the serious health condition of the employee or the employee's spouse, child, or parent, the employee will be required to submit sufficient medical certification. In such a case, the employee must submit the medical certification within 15 days from the date of the request or as soon as practicable under the circumstances.
9. If the school district has reason to doubt the validity of a health care provider's certification, it may require a second opinion at the school district's expense. If the opinions of the first and second health care providers differ, the school district may require certification from a third health care provider at the school district's expense. An employee may also be required to present a certification from a health care provider indicating that the employee is able to return to work.
10. Requests for leave shall be made to the school district. When leave relates to an employee's spouse, son, daughter, parent, or covered servicemember being on covered active duty, or notified of an impending call or order to covered active duty pursuant to Paragraph IV.A.1.e. above, and such leave is foreseeable, the employee shall provide reasonable and practical notice to the school district of the need for leave. For all other leaves, employees must give 30 days' written notice of a leave of absence where practicable. The failure to provide the required notice may result in a delay of the requested leave. Employees are expected to make a reasonable effort to schedule leaves resulting from planned medical treatment so as not to disrupt unduly the operations of the school district, subject to and in coordination with the health care provider.
11. The school district may require that a request for leave under Paragraph IV.A.1.e. above be supported by a copy of the covered military member's active duty orders or other documentation issued by the military indicating active duty or a call to active duty status and the dates of active duty service. In addition, the school district may require the employee to provide sufficient certification supporting the qualifying exigency for which leave is requested.
12. During the period of a leave permitted under this policy, the school district will provide health insurance under its group health plan under the same conditions coverage would have been provided had the employee not taken the leave. The employee will be responsible for payment of the employee contribution to continue group health insurance coverage during the leave. An employee's failure to make necessary and timely contributions may result in termination of coverage. An employee who does not return to work after the leave may be required, in some situations, to reimburse the school district for the cost of the health plan premiums paid by it.
13. The school district may request or require the employee to substitute accrued paid leave for any part of the 12-week period. Employees may be allowed to substitute paid leave for unpaid leave by meeting the requirements set out in the administrative directives and guidelines established for the implementation of this policy, if any. Employees eligible for leave must comply with the family and medical leave directives and guidelines prior to starting leave. The superintendent shall be responsible to develop directives and guidelines as necessary to implement this policy. Such directives and guidelines shall be submitted to the school board for annual review.
The school district shall comply with written notice requirements as set forth in federal regulations.
14. Employees returning from a leave permitted under this policy are eligible for reinstatement in the same or an equivalent position as provided by law. However, the employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the leave.

B. Twelve-week Leave under State Law

An employee who does not qualify for parenting leave under Paragraphs IV.A.1.a. or IV.A.1.b. above may qualify for a 12-week unpaid leave which is available to a biological or adoptive parent in conjunction with the birth or adoption of a child, or to a female employee for prenatal care or incapacity due to pregnancy, childbirth, or related health conditions. The length of the leave shall be determined by the employee but must not exceed 12 weeks unless agreed by the employer. The employee may qualify if he or she has worked for the school district for at least 12 months and has worked an average number of hours per week equal to one-half of the full time equivalent during the 12-month period immediately preceding the leave. This leave is separate and exclusive of the family and medical leave described in the preceding paragraphs but may be reduced by any period of paid parental, disability, personal, or medical, or sick leave, or accrued vacation provided by the employer so that the total leave does not exceed 12 weeks, unless agreed by the employer, or leave taken for the same purpose under the FMLA. The leave taken under this section shall begin at a time requested by the employee. An employee who plans to take leave under this section must give the employer reasonable notice of the date the leave shall commence and the estimated duration of the leave. For leave taken by a biological or adoptive parent in conjunction with the birth or adoption of a child, the leave must begin within 12 months of the birth or adoption; except that, in the case where the child must remain in the hospital longer than the mother, the leave must begin within 12 months after the child leaves the hospital.

C. Twenty-six-week Servicemember Family Military Leave

1. An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of 26 work weeks of leave during a 12-month period to care for the servicemember. The leave described in this paragraph shall be available only during a single 12-month period. For purposes of this leave, the need to care for a servicemember includes both physical and psychological care.
2. During a single 12-month period, an employee shall be entitled to a combined total of 26 work weeks of leave under Paragraphs IV.A. and IV.C. above.
3. The 12-month period referred to in this section begins on the first day the eligible employee takes leave to care for a covered servicemember and ends 12 months after that date.
4. Eligible spouses employed by the school district are limited to an aggregate of 26 weeks of leave during any 12-month period if leave is taken for birth of the employee's child or to care for the child after birth; for placement of a child with the employee for adoption or foster care or to care for the child after placement; to care for the employee's parent with a serious health condition; or to care for a covered servicemember with a serious injury or illness.
5. The school district may request or require the employee to substitute accrued paid leave for any part of the 26-week period. Employees may be allowed to substitute paid leave for unpaid leave by meeting the requirements set out in the administrative directives and guidelines established for the implementation of this policy, if any. Employees eligible for leave must comply with the family and medical leave directives and guidelines prior to starting leave.
6. An employee will be required to submit sufficient medical certification issued by the health care provider of the covered servicemember and other information in support of requested leave and eligibility for such leave under this section within 15 days from the date of the request or as soon as practicable under the circumstances.
7. The provisions of Paragraphs IV.A.7., IV.A.10., IV.A.12., IV.A.13., and IV.A.14. above shall apply to leaves under this section.

V. **SPECIAL RULES FOR INSTRUCTIONAL EMPLOYEES**

- A. An instructional employee is one whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This includes, but is not limited to, teachers, coaches, driver's education instructors, and special education assistants.
- B. Instructional employees who request foreseeable medically necessary intermittent or reduced work schedule leave greater than 20 percent of the work days in the leave period may be required to:

1. take leave for the entire period or periods of the planned medical treatment; or
 2. move to an available alternative position for which the employee is qualified, and which provides equivalent pay and benefits, but not necessarily equivalent duties.
- C. Instructional employees who request continuous leave near the end of a semester may be required to extend the leave through the end of the semester. The number of weeks remaining before the end of a semester does not include scheduled school breaks, such as summer, winter, or spring break.
1. If an instructional employee begins leave for any purpose more than five weeks before the end of a semester and it is likely the leave will last at least three weeks, the school district may require that the leave be continued until the end of the semester.
 2. If the employee begins leave for a purpose other than the employee's own serious health condition during the last five weeks of a semester, the school district may require that the leave be continued until the end of the semester if the leave will last more than two weeks or if the employee's return from leave would occur during the last two weeks of the semester.
 3. If the employee begins leave for a purpose other than the employee's own serious health condition during the last three weeks of the semester and the leave will last more than five working days, school district may require the employee to continue taking leave until the end of the semester.
- D. The entire period of leave taken under the special rules will be counted as leave. The school district will continue to fulfill the school district's leave responsibilities and obligations, including the obligation to continue the employee's health insurance and other benefits, if an instructional employee's leave entitlement ends before the involuntary leave period expires.

VI. OTHER

- A. The provisions of this policy are intended to comply with applicable law, including the FMLA and applicable regulations. Any terms used from the FMLA will have the same meaning as defined by the FMLA and/or applicable regulations. To the extent that this policy is ambiguous or contradicts applicable law, the language of the applicable law will prevail.
- B. The requirements stated in the collective bargaining agreement between employees in a certified collective bargaining unit and the school district regarding family and medical leaves (if any) shall be followed.

VII. DISSEMINATION OF POLICY

- A. This policy shall be conspicuously posted in each school district building in areas accessible to employees.
- B. This policy will be reviewed at least annually for compliance with state and federal law.

Legal References:

Minn. Stat. §§ 181.940-181.944 (Parenting Leave)
 10 U.S.C. § 101 *et seq.* (Armed Forces General Military Law)
 29 U.S.C. § 2601 *et seq.* (Family and Medical Leave Act)
 38 U.S.C. § 101 (Definitions)
 29 C.F.R. Part 825 (Family and Medical Leave Act)

Cross References:

MSBA Service Manual, Chapter 13, School Law Bulletin "M" (Statutory Provisions Which Grant Leaves to Licensed as well as Non-Licensed School District Employees – Family and Medical Leave Act Summary)

412 EXPENSE REIMBURSEMENT

I. PURPOSE

The purpose of this policy is to identify school district business expenses that involve initial payment by an employee and qualify for reimbursement from the school district, and to specify the manner by which the employee seeks reimbursement.

II. AUTHORIZATION

All school district business expenses to be reimbursed must be approved by the supervising administrator. Such expenses to be reimbursed may include transportation, meals, lodging, registration fees, required materials, parking fees, tips, and other reasonable and necessary school district business-related expenses.

III. REIMBURSEMENT

- A. Requests for reimbursement must be itemized on the official school district form and are to be submitted to the designated administrator. Receipts for lodging, commercial transportation, registration, and other reasonable and necessary expenses must be attached to the reimbursement form.
- B. Automobile travel shall be reimbursed at the mileage rate set by the school board. Commercial transportation shall reflect economy fares and shall be reimbursed only for the actual cost of the trip.

IV. AIRLINE TRAVEL CREDIT

- A. Employees utilizing school district funds to pay for airline travel are required to ensure that any credits or other benefits issued by any airline accrue to the benefit of the school district rather than the employee.
 - 1. To the extent an airline will not honor a transfer or assignment of credit or benefit from the employee to the school district, the employee shall report receipt of the credit or benefit to the designated administrator within 90 days of receipt of the credit or benefit.
 - 2. Reports of the receipt of an airline credit or benefit shall be made in writing and shall include verification from the airline as to the credit or benefit received. Reimbursement for airline travel expenses will not be made until such documentation is provided.
- B. Employees who have existing credits or benefits issued by an airline based upon previously reimbursed airline travel for school district purposes will be required to utilize those credits or benefits toward any subsequent airline travel related to school district purposes, prior to reimbursement for such travel, to the extent permitted and/or feasible.
- C. The requirements of this section apply to all airline travel, regardless of where or how the tickets are purchased.

V. ESTABLISHMENT OF DIRECTIVES AND GUIDELINES

The superintendent shall develop a schedule of reimbursement rates for school district business expenses, including those expenses requiring advance approval and specific rates of reimbursement. The superintendent shall also develop directives and guidelines to address methods and times for submission of requests for reimbursement.

- Legal References:** Minn. Stat. § 15.435 (Airline Travel Credit)
Minn. Stat. § 471.665 (Mileage Allowances)
Minn. Op. Atty. Gen. 1035 (Aug. 23, 1999) (Retreat Expenses)
Minn. Op. Atty. Gen. 161b-12 (Aug. 4, 1997) (Transportation Expenses)
Minn. Op. Atty. Gen. 161B-12 (Jan. 24, 1989) (Operating Expenses of Car)
- Cross References:** Policy 214 (Out-of-State Travel by School Board Members).

413 HARASSMENT AND VIOLENCE

I. PURPOSE

The purpose of this policy is to maintain a learning and working environment that is free from harassment and violence on the basis of race, color, creed, religion, national origin, sex, gender, age, marital status, familial status, status with regard to public assistance, sexual orientation, or disability.

II. GENERAL STATEMENT OF POLICY

- A. The policy of the school district is to maintain a learning and working environment that is free from harassment and violence on the basis of race, color, creed, religion, national origin, sex, gender, age, marital status, familial status, status with regard to public assistance, sexual orientation, or disability. The school district prohibits any form of harassment or violence on the basis of race, color, creed, religion, national origin, sex, gender, age, marital status, familial status, status with regard to public assistance, sexual orientation, or disability.
- B. A violation of this policy occurs when any student, teacher, administrator, or other school district personnel harasses a student, teacher, administrator, or other school district personnel or group of students, teachers, administrators, or other school district personnel through conduct or communication based on a person's race, color, creed, religion, national origin, sex, gender, age, marital status, familial status, status with regard to public assistance, sexual orientation, or disability, as defined by this policy. (For purposes of this policy, school district personnel includes school board members, school employees, agents, volunteers, contractors, or persons subject to the supervision and control of the district.)
- C. A violation of this policy occurs when any student, teacher, administrator, or other school district personnel inflicts, threatens to inflict, or attempts to inflict violence upon any student, teacher, administrator, or other school district personnel or group of students, teachers, administrators, or other school district personnel based on a person's race, color, creed, religion, national origin, sex, gender, age, marital status, familial status, status with regard to public assistance, sexual orientation, or disability.
- D. The school district will act to investigate all complaints, either formal or informal, verbal or written, of harassment or violence based on a person's race, color, creed, religion, national origin, sex, gender, age, marital status, familial status, status with regard to public assistance, sexual orientation, or disability, and to discipline or take appropriate action against any student, teacher, administrator, or other school district personnel who is found to have violated this policy.

III. DEFINITIONS

- A. "Assault" is:
 - 1. an act done with intent to cause fear in another of immediate bodily harm or death;
 - 2. the intentional infliction of or attempt to inflict bodily harm upon another; or
 - 3. the threat to do bodily harm to another with present ability to carry out the threat.
- B. "Harassment" prohibited by this policy consists of physical or verbal conduct, including, but not limited to, electronic communications, relating to an individual's or group of individuals' race, color, creed, religion, national origin, sex, gender, age, marital status, familial status, status with regard to public assistance, sexual orientation, or disability when the conduct:
 - 1. has the purpose or effect of creating an intimidating, hostile, or offensive working or academic environment;
 - 2. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance; or
 - 3. otherwise adversely affects an individual's employment or academic opportunities.
- C. "Immediately" means as soon as possible but in no event longer than 24 hours.

D. Protected Classifications; Definitions

1. "Disability" means any condition or characteristic that renders a person a disabled person. A disabled person is any person who:
 - a. has a physical, sensory, or mental impairment which materially limits one or more major life activities;
 - b. has a record of such an impairment; or
 - c. is regarded as having such an impairment.
2. "Familial status" means the condition of one or more minors being domiciled with:
 - a. their parent or parents or the minor's legal guardian; or
 - b. the designee of the parent or parents or guardian with the written permission of the parent or parents or guardian. The protections afforded against harassment on the basis of family status apply to any person who is pregnant or is in the process of securing legal custody of an individual who has not attained the age of majority.
3. "Marital status" means whether a person is single, married, remarried, divorced, separated, or a surviving spouse and, in employment cases, includes protection against harassment on the basis of the identity, situation, actions, or beliefs of a spouse or former spouse.
4. "National origin" means the place of birth of an individual or of any of the individual's lineal ancestors.
5. "Sex" includes, but is not limited to, pregnancy, childbirth, and disabilities related to pregnancy or childbirth.
6. "Sexual orientation" means having or being perceived as having an emotional, physical, or sexual attachment to another person without regard to the sex of that person or having or being perceived as having an orientation for such attachment, or having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness. "Sexual orientation" does not include a physical or sexual attachment to children by an adult.
7. "Status with regard to public assistance" means the condition of being a recipient of federal, state, or local assistance, including medical assistance, or of being a tenant receiving federal, state, or local subsidies, including rental assistance or rent supplements.

E. "Remedial response" means a measure to stop and correct acts of harassment or violence, prevent acts of harassment or violence from recurring, and protect, support, and intervene on behalf of a student who is the target or victim of acts of harassment or violence.

F. Sexual Harassment; Definition

1. Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature when:
 - a. submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment or an education; or
 - b. submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment or education; or
 - c. that conduct or communication has the purpose or effect of substantially or unreasonably interfering with an individual's employment or education, or creating an intimidating, hostile, or offensive employment or educational environment.
2. Sexual harassment may include, but is not limited to:
 - a. unwelcome verbal harassment or abuse;
 - b. unwelcome pressure for sexual activity;
 - c. unwelcome, sexually motivated, or inappropriate patting, pinching, or physical contact, other than necessary restraint of student(s) by teachers, administrators, or other school district personnel to avoid physical harm to persons or property;
 - d. unwelcome sexual behavior or words, including demands for sexual favors, accompanied by implied or overt threats concerning an individual's employment or educational status;

- e. unwelcome sexual behavior or words, including demands for sexual favors, accompanied by implied or overt promises of preferential treatment with regard to an individual's employment or educational status; or
 - f. unwelcome behavior or words directed at an individual because of gender.
- G. Sexual Violence; Definition
- 1. Sexual violence is a physical act of aggression or force or the threat thereof which involves the touching of another's intimate parts, or forcing a person to touch any person's intimate parts. Intimate parts, as defined in Minn. Stat. § 609.341, includes the primary genital area, groin, inner thigh, buttocks, or breast, as well as the clothing covering these areas.
 - 2. Sexual violence may include, but is not limited to:
 - a. touching, patting, grabbing, or pinching another person's intimate parts, whether that person is of the same sex or the opposite sex;
 - b. coercing, forcing, or attempting to coerce or force the touching of anyone's intimate parts;
 - c. coercing, forcing, or attempting to coerce or force sexual intercourse or a sexual act on another; or
 - d. threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another.
- H. Violence; Definition
- Violence prohibited by this policy is a physical act of aggression or assault upon another or group of individuals because of, or in a manner reasonably related to, race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, or disability.

IV. REPORTING PROCEDURES

- A. Any person who believes he or she has been the target or victim of harassment or violence on the basis of race, color, creed, religion, national origin, sex, gender, age, marital status, familial status, status with regard to public assistance, sexual orientation, or disability by a student, teacher, administrator, or other school district personnel, or any person with knowledge or belief of conduct which may constitute harassment or violence prohibited by this policy toward a student, teacher, administrator, or other school district personnel or group of students, teachers, administrators, or other school district personnel should report the alleged acts immediately to an appropriate school district official designated by this policy. A person may report conduct which may constitute harassment or violence anonymously. However, the school district may not rely solely on an anonymous report to determine discipline or other remedial responses.
- B. The school district encourages the reporting party or complainant to use the report form available from the principal or building supervisor of each building or available from the school district office, but oral reports shall be considered complaints as well.
- C. Nothing in this policy shall prevent any person from reporting harassment or violence directly to a school district human rights officer or to the superintendent. If the complaint involves the building report taker, the complaint shall be made or filed directly with the superintendent or the school district human rights officer by the reporting party or complainant.
- D. In Each School Building. The building principal, the principal's designee, or the building supervisor (hereinafter the "building report taker") is the person responsible for receiving oral or written reports of harassment or violence prohibited by this policy at the building level. Any adult school district personnel who receives a report of harassment or violence prohibited by this policy shall inform the building report taker immediately. If the complaint involves the building report taker, the complaint shall be made or filed directly with the superintendent or the school district human rights officer by the reporting party or complainant. The building report taker shall ensure that this policy and its procedures, practices, consequences, and sanctions are fairly and fully implemented and shall serve as a primary contact on policy and procedural matters.
- E. A teacher, school administrator, volunteer, contractor, or other school employee shall be particularly alert to possible situations, circumstances, or events that might include acts of harassment or violence. Any such person who witnesses, observes, receives a report of, or has

other knowledge or belief of conduct that may constitute harassment or violence shall make reasonable efforts to address and resolve the harassment or violence and shall inform the building report taker immediately. School district personnel who fail to inform the building report taker of conduct that may constitute harassment or violence or who fail to make reasonable efforts to address and resolve the harassment or violence in a timely manner may be subject to disciplinary action.

- F. Upon receipt of a report, the building report taker must notify the school district human rights officer immediately, without screening or investigating the report. The building report taker may request, but may not insist upon, a written complaint. A written statement of the facts alleged will be forwarded as soon as practicable by the building report taker to the human rights officer. If the report was given verbally, the building report taker shall personally reduce it to written form within 24 hours and forward it to the human rights officer. Failure to forward any harassment or violence report or complaint as provided herein may result in disciplinary action against the building report taker.
- G. In the District. The school board hereby designates Catherine Steinmetz as the school district human rights officer(s) to receive reports or complaints of harassment or violence prohibited by this policy. If the complaint involves a human rights officer, the complaint shall be filed directly with the superintendent.¹
- H. The school district shall conspicuously post the name of the human rights officer(s), including mailing addresses and telephone numbers.
- I. Submission of a good faith complaint or report of harassment or violence prohibited by this policy will not affect the complainant or reporter's future employment, grades, work assignments, or educational or work environment.
- J. Use of formal reporting forms is not mandatory.
- K. Reports of harassment or violence prohibited by this policy are classified as private educational and/or personnel data and/or confidential investigative data and will not be disclosed except as permitted by law.
- L. The school district will respect the privacy of the complainant(s), the individual(s) against whom the complaint is filed, and the witnesses as much as possible, consistent with the school district's legal obligations to investigate, to take appropriate action, and to comply with any discovery or disclosure obligations.
- M. Retaliation against a victim, good faith reporter, or a witness of violence or harassment is prohibited.
- N. False accusations or reports of violence or harassment against another person are prohibited.
- O. A person who engages in an act of violence or harassment, reprisal, retaliation, or false reporting of violence or harassment, or permits, condones, or tolerates violence or harassment shall be subject to discipline or other remedial responses for that act in accordance with the school district's policies and procedures.
Consequences for students who commit, or are a party to, prohibited acts of violence or harassment or who engage in reprisal or intentional false reporting may range from remedial responses or positive behavioral interventions up to and including suspension and/or expulsion.
Consequences for employees who permit, condone, or tolerate violence or harassment or engage in an act of reprisal or intentional false reporting of violence or harassment may result in disciplinary action up to and including termination or discharge.
Consequences for other individuals engaging in prohibited acts of violence or harassment may include, but not be limited to, exclusion from school district property and events and/or termination of services and/or contracts.

V. INVESTIGATION

- A. By authority of the school district, the human rights officer, within three (3) days of the receipt of a report or complaint alleging harassment or violence prohibited by this policy, shall undertake or authorize an investigation. The investigation may be conducted by school district officials or by a third party designated by the school district.

¹ In some school districts the superintendent may be the human rights officer. If so, an alternative individual should be designated by the school board.

- B. The investigation may consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other methods and documents deemed pertinent by the investigator.
- C. In determining whether alleged conduct constitutes a violation of this policy, the school district should consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved, and the context in which the alleged incidents occurred. Whether a particular action or incident constitutes a violation of this policy requires a determination based on all the facts and surrounding circumstances.
- D. In addition, the school district may take immediate steps, at its discretion, to protect the target or victim, the complainant, and students, teachers, administrators, or other school district personnel pending completion of an investigation of alleged harassment or violence prohibited by this policy.
- E. The alleged perpetrator of the act(s) of harassment or violence shall be allowed the opportunity to present a defense during the investigation or prior to the imposition of discipline or other remedial responses.
- F. The investigation will be completed as soon as practicable. The school district human rights officer shall make a written report to the superintendent upon completion of the investigation. If the complaint involves the superintendent, the report may be filed directly with the school board. The report shall include a determination of whether the allegations have been substantiated as factual and whether they appear to be violations of this policy.

VI. SCHOOL DISTRICT ACTION

- A. Upon completion of an investigation that determines a violation of this policy has occurred, the school district will take appropriate action. Such action may include, but is not limited to, warning, suspension, exclusion, expulsion, transfer, remediation, termination, or discharge. Disciplinary consequences will be sufficiently severe to try to deter violations and to appropriately discipline prohibited behavior. School district action taken for violation of this policy will be consistent with requirements of applicable collective bargaining agreements, Minnesota and federal law, and applicable school district policies and regulations.
- B. The school district is not authorized to disclose to a victim private educational or personnel data regarding an alleged perpetrator who is a student or employee of the school district. School officials will notify the parent(s) or guardian(s) of targets or victims of harassment or violence and the parent(s) or guardian(s) of alleged perpetrators of harassment or violence who have been involved in a reported and confirmed harassment or violence incident of the remedial or disciplinary action taken, to the extent permitted by law.
- C. In order to prevent or respond to acts of harassment or violence committed by or directed against a child with a disability, the school district shall, where determined appropriate by the child's individualized education program (IEP) or Section 504 team, allow the child's IEP or Section 504 plan to be drafted to address the skills and proficiencies the child needs as a result of the child's disability to allow the child to respond to or not to engage in acts of harassment or violence.

VII. RETALIATION OR REPRISAL

The school district will discipline or take appropriate action against any student, teacher, administrator, or other school district personnel who commits an act of reprisal or who retaliates against any person who asserts, alleges, or makes a good faith report of alleged harassment or violence prohibited by this policy, who testifies, assists, or participates in an investigation of retaliation or alleged harassment or violence, or who testifies, assists, or participates in a proceeding or hearing relating to such harassment or violence. Retaliation includes, but is not limited to, any form of intimidation, reprisal, harassment, or intentional disparate treatment. Disciplinary consequences will be sufficiently severe to deter violations and to appropriately discipline the individual(s) who engaged in the harassment or violence. Remedial responses to the harassment or violence shall be tailored to the particular incident and nature of the conduct.

VIII. RIGHT TO ALTERNATIVE COMPLAINT PROCEDURES

These procedures do not deny the right of any individual to pursue other avenues of recourse which may include filing charges with the Minnesota Department of Human Rights, initiating civil action, or seeking redress under state criminal statutes and/or federal law.

IX. HARASSMENT OR VIOLENCE AS ABUSE

- A. Under certain circumstances, alleged harassment or violence may also be possible abuse under Minnesota law. If so, the duties of mandatory reporting under Minn. Stat. § 626.556 may be applicable.
- B. Nothing in this policy will prohibit the school district from taking immediate action to protect victims of alleged harassment, violence, or abuse.

X. DISSEMINATION OF POLICY AND TRAINING

- A. This policy shall be conspicuously posted throughout each school building in areas accessible to students and staff members.
- B. This policy shall be given to each school district employee and independent contractor who regularly interacts with students at the time of initial employment with the school district.
- C. This policy shall appear in the student handbook.
- D. The school district will develop a method of discussing this policy with students and employees.
- E. The school district may implement violence prevention and character development education programs to prevent and reduce policy violations. Such programs may offer instruction on character education including, but not limited to, character qualities such as attentiveness, truthfulness, respect for authority, diligence, gratefulness, self-discipline, patience, forgiveness, respect for others, peacemaking, and resourcefulness.
- F. This policy shall be reviewed at least annually for compliance with state and federal law.

Legal References:

Minn. Stat. § 120B.232 (Character Development Education)
Minn. Stat. § 121A.03, Subd. 2 (Sexual, Religious, and Racial Harassment and Violence Policy)
Minn. Stat. § 121A.031 (School Student Bullying Policy)
Minn. Stat. Ch. 363A (Minnesota Human Rights Act)
Minn. Stat. § 609.341 (Definitions)
Minn. Stat. § 626.556 *et seq.* (Reporting of Maltreatment of Minors)
20 U.S.C. §§ 1681-1688 (Title IX of the Education Amendments of 1972)
29 U.S.C. § 621 *et seq.* (Age Discrimination in Employment Act)
29 U.S.C. § 794 (Rehabilitation Act of 1973, § 504)
42 U.S.C. § 1983 (Civil Action for Deprivation of Rights)
42 U.S.C. § 2000d *et seq.* (Title VI of the Civil Rights Act of 1964)
42 U.S.C. § 2000e *et seq.* (Title VII of the Civil Rights Act)
42 U.S.C. § 12101 *et seq.* (Americans with Disabilities Act)

Cross References:

Policy 102 (Equal Educational Opportunity)
Policy 401 (Equal Employment Opportunity)
Policy 402 (Disability Nondiscrimination Policy)
Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)
Policy 406 (Public and Private Personnel Data)
Policy 414 (Mandated Reporting of Child Neglect or Physical or Sexual Abuse)
Policy 415 (Mandated Reporting of Maltreatment of Vulnerable Adults)
Policy 506 (Student Discipline)
Policy 514 (Bullying Prohibition Policy)
Policy 515 (Protection and Privacy of Pupil Records)
Policy 521 (Student Disability Nondiscrimination)
Policy 522 (Student Sex Nondiscrimination)
Policy 524 (Internet Acceptable Use and Safety Policy)
Policy 525 (Violence Prevention)
Policy 526 (Hazing Prohibition)
Policy 528 (Student Parental, Family, and Marital Status Nondiscrimination)

INDEPENDENT SCHOOL DISTRICT NO. 600
RELIGIOUS, RACIAL, OR SEXUAL HARASSMENT AND VIOLENCE REPORT FORM

General Statement of Policy Prohibiting Religious, Racial, or Sexual Harassment

Independent School District No. 600 maintains a firm policy prohibiting all forms of discrimination. Religious, racial, or sexual harassment or violence against students or employees is discrimination. All persons are to be treated with respect and dignity. Sexual violence, sexual advances or other forms of religious, racial, or sexual harassment by any pupil, teacher, administrator or other school personnel, which create an intimidating, hostile or offensive environment will not be tolerated under any circumstances.

Complainant _____
Home Address _____
Work Address _____
Home Phone _____ Work Phone _____

Date of Alleged Incident(s) _____

Circle as appropriate **sexual** \ **racial** \ **religious**.

Name of person you believe harassed or was violent toward you or another person. _____

If the alleged harassment or violence was toward another person, identify that person. _____

Describe the incident(s) as clearly as possible, including such things as: what force, if any, was used; any verbal statements (i.e. threats, requests, demands, etc.); what, if any, physical contact was involved; etc. (Attach additional pages if necessary.) _____

Where and when did the incident(s) occur? _____

List any witnesses that were present _____

This complaint is filed based on my honest belief that _____ has harassed or has been violent to me or to another person. I hereby certify that the information I have provided in this complaint is true, correct and complete to the best of my knowledge and belief.

(Complainant Signature) (Date)

Received by _____
(Date)

414 MANDATED REPORTING OF CHILD NEGLECT OR PHYSICAL OR SEXUAL ABUSE

I. PURPOSE

The purpose of this policy is to make clear the statutory requirements of school personnel to report suspected child neglect or physical or sexual abuse.

II. GENERAL STATEMENT OF POLICY

- A. The policy of the school district is to fully comply with Minn. Stat. § 626.556 requiring school personnel to report suspected child neglect or physical or sexual abuse.
- B. It shall be a violation of this policy for any school personnel to fail to immediately report instances of child neglect, or physical or sexual abuse when the school personnel knows or has reason to believe a child is being neglected or physically or sexually abused or has been neglected or physically or sexually abused within the preceding three years.

III. DEFINITIONS

- A. "Accidental" means a sudden, not reasonably foreseeable, and unexpected occurrence or event which:
 - 1. is not likely to occur and could not have been prevented by exercise of due care; and
 - 2. if occurring while a child is receiving services from a facility, happens when the facility and the employee or person providing services in the facility are in compliance with the laws and rules relevant to the occurrence of event.
- B. "Child" means one under age 18 and, for purposes of Minn. Stat. Ch. 260C [Child Protection], includes an individual under age 21 who is in foster care.
- C. "Immediately" means as soon as possible but in no event longer than 24 hours.
- D. "Mandated Reporter" means any school personnel who knows or has reason to believe a child is being neglected or physically or sexually abused, or has been neglected or physically or sexually abused within the preceding three years.
- E. "Neglect" means the commission or omission of any of the acts specified below, other than by accidental means:
 - 1. failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter, health, medical, or other care required for the child's physical or mental health when reasonably able to do so, including a growth delay, which may be referred to as a failure to thrive, that has been diagnosed by a physician and is due to parental neglect;
 - 2. failure to protect a child from conditions or actions that seriously endanger the child's physical or mental health when reasonably able to do so;
 - 3. failure to provide for necessary supervision or child care arrangements appropriate for a child after considering factors such as the child's age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for his or her own basic needs or safety or the basic needs or safety of another child in his or her care;
 - 4. failure to ensure that a child is educated in accordance with state law, which does not include a parent's refusal to provide his or her child with sympathomimetic medications;
 - 5. prenatal exposure to a controlled substance used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child's birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance;
 - 6. medical neglect as defined by Minn. Stat. § 260C.007, Subd. 4, Clause (5);
 - 7. chronic and severe use of alcohol or a controlled substance by a parent or person responsible for the care of the child that adversely affects the child's basic needs and

safety; or

8. emotional harm from a pattern of behavior which contributes to impaired emotional functioning of the child which may be demonstrated by a substantial and observable effect in the child's behavior, emotional response, or cognition that is not within the normal range for the child's age and stage of development, with due regard to the child's culture.

Neglect does not include spiritual means or prayer for treatment or care of disease where the person responsible for the child's care in good faith has selected and depended on those means for treatment or care of disease, except where the lack of medical care may cause serious danger to the child's health.

- F. "Nonmaltreatment mistake" means: (1) at the time of the incident, the individual was performing duties identified in the center's child care program plan required under Minn. Rules Part 9503.0045; (2) the individual has not been determined responsible for a similar incident that resulted in a finding of maltreatment for at least seven years; (3) the individual has not been determined to have committed a similar nonmaltreatment mistake under this paragraph for at least four years; (4) any injury to a child resulting from the incident, if treated, is treated only with remedies that are available over the counter, whether ordered by a medical professional or not; and (5) except for the period when the incident occurred, the facility and the individual providing services were both in compliance with all licensing requirements relevant to the incident. This definition only applies to child care centers licensed under Minn. Rules Ch. 9503.

- G. "Physical abuse" means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care other than by accidental means; or any physical or mental injury that cannot reasonably be explained by the child's history of injuries or any aversive or deprivation procedures, or regulated interventions, that have not been authorized by Minn. Stat. § 121A.67 or § 245.825.

Abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury. Abuse does not include the use of reasonable force by a teacher, principal, or school employee as allowed by Minn. Stat. § 121A.582.

Actions which are not reasonable and moderate include, but are not limited to, any of the following that are done in anger or without regard to the safety of the child: (1) throwing, kicking, burning, biting, or cutting a child; (2) striking a child with a closed fist; (3) shaking a child under age three; (4) striking or other actions which result in any nonaccidental injury to a child under 18 months of age; (5) unreasonable interference with a child's breathing; (6) threatening a child with a weapon, as defined in Minn. Stat. § 609.02, Subd. 6; (7) striking a child under age one on the face or head; (8) purposely giving a child poison, alcohol, or dangerous, harmful, or controlled substances which were not prescribed for the child by a practitioner, in order to control or punish the child, or giving the child other substances that substantially affect the child's behavior, motor coordination, or judgment or that result in sickness or internal injury, or subject the child to medical procedures that would be unnecessary if the child were not exposed to the substances; (9) unreasonable physical confinement or restraint not permitted under Minn. Stat. § 609.379 including, but not limited to, tying, caging, or chaining; or (10) in a school facility or school zone, an act by a person responsible for the child's care that is a violation under Minn. Stat. § 121A.58.

- H. "School personnel" means professional employee or professional's delegate of the school district who provides health, educational, social, psychological, law enforcement, or child care services.

- I. "Sexual Abuse" means the subjection of a child by a person responsible for the child's care, by a person who has a significant relationship to the child (as defined in Minn. Stat. § 609.341, Subd. 15), or by a person in a position of authority (as defined in Minn. Stat. § 609.341, Subd. 10) to any act which constitutes a violation of Minnesota statutes prohibiting criminal sexual conduct. Such acts include sexual penetration as well as sexual contact. Sexual abuse also includes any act involving a minor which constitutes a violation of Minnesota statutes prohibiting prostitution, or use of a minor in a sexual performance. Sexual abuse includes threatened sexual abuse.

- J. "Mental injury" means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to the child's culture.

- K. "Person responsible for the child's care" means (1) an individual functioning within the family unit and having responsibilities for the care of the child such as a parent, guardian, or other person having similar care responsibilities, or (2) an individual functioning outside the family unit and having responsibilities for the care of the child such as a teacher, school administrator, other school employees or agents, or other lawful custodian of a child having either full-time or short-term care responsibilities including, but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching, and coaching.
- L. "Threatened injury" means a statement, overt act, condition, or status that represents a substantial risk of physical or sexual abuse or mental injury. Threatened injury includes, but is not limited to, exposing a child to a person responsible for the child's care who has subjected the child to, or failed to protect a child from, egregious harm, or a person whose parental rights were involuntarily terminated, been found palpably unfit, or one from whom legal and physical custody of a child has been involuntarily transferred to another.

IV. REPORTING PROCEDURES

- A. A mandated reporter as defined herein shall immediately report the neglect or physical or sexual abuse, which he or she knows or has reason to believe is happening or has happened within the preceding three years to the local welfare agency, police department, county sheriff, or agency responsible for assisting or investigating maltreatment.
- B. If the immediate report has been made orally, by telephone or otherwise, the oral report shall be followed by a written report within 72 hours (exclusive of weekends and holidays) to the appropriate police department, the county sheriff, local welfare agency, or agency responsible for assisting or investigating maltreatment. The written report shall identify the child, any person believed to be responsible for the abuse or neglect of the child if the person is known, the nature and extent of the abuse or neglect and the name and address of the reporter.
- C. A mandated reporter who knows or has reason to know of the deprivation of parental rights or the kidnapping of a child shall report the information to the local police department or the county sheriff.
- D. With the exception of a health care professional or a social service professional who is providing the woman with prenatal care or other health care services, a mandated reporter shall immediately report to the local welfare agency if the person knows or has reason to believe that a woman is pregnant and has used a controlled substance for a nonmedical purpose during the pregnancy, including, but not limited to, tetrahydrocannabinol, or has consumed alcoholic beverages during the pregnancy in any way that is habitual or excessive.
- E. A person mandated by Minnesota law and this policy to report who fails to report may be subject to criminal penalties and/or discipline, up to and including termination of employment.
- F. Submission of a good faith report under Minnesota law and this policy will not adversely affect the reporter's employment, or the child's access to school.
- G. Any person who knowingly or recklessly makes a false report under the provisions of applicable Minnesota law or this policy shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury, and the reckless making of a false report may result in discipline. The court may also award attorney's fees.

V. INVESTIGATION

- A. The responsibility for investigating reports of suspected neglect or physical or sexual abuse rests with the appropriate county, state, or local agency or agencies. The agency responsible for assessing or investigating reports of child maltreatment has the authority to interview the child, the person or persons responsible for the child's care, the alleged perpetrator, and any other person with knowledge of the abuse or neglect for the purpose of gathering the facts, assessing safety and risk to the child, and formulating a plan. The investigating agency may interview the child at school. The interview may take place outside the presence of a school official. The investigating agency, not the school, is responsible for either notifying or withholding notification of the interview to the parent, guardian or person responsible for the child's care. School officials may not disclose to the parent, legal custodian, or guardian the contents of the notification or any other

related information regarding the interview until notified in writing by the local welfare or law enforcement agency that the investigation or assessment has been concluded.

- B. When the investigating agency determines that an interview should take place on school property, written notification of intent to interview the child on school property will be received by school officials prior to the interview. The notification shall include the name of the child to be interviewed, the purpose of the interview, and a reference to the statutory authority to conduct an interview on school property.
- C. Except where the alleged perpetrator is believed to be a school official or employee, the time and place, and manner of the interview on school premises shall be within the discretion of school officials, but the local welfare or law enforcement agency shall have the exclusive authority to determine who may attend the interview. The conditions as to time, place, and manner of the interview set by the school officials shall be reasonable and the interview shall be conducted not more than 24 hours after the receipt of the notification unless another time is considered necessary by agreement between the school officials and the local welfare or law enforcement agency. Every effort must be made to reduce the disruption of the educational program of the child, other students, or school employees when an interview is conducted on school premises.
- D. Where the alleged perpetrator is believed to be a school official or employee, the school district shall conduct its own investigation independent of MDE and, if involved, the local welfare or law enforcement agency.
- E. Upon request by MDE, the school district shall provide all requested data that are relevant to a report of maltreatment and are in the possession of a school facility, pursuant to an assessment or investigation of a maltreatment report of a student in school. The school district shall provide the requested data in accordance with the requirements of the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, and the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

VI. MAINTENANCE OF SCHOOL RECORDS CONCERNING ABUSE OR POTENTIAL ABUSE

- A. When a local welfare or local law enforcement agency determines that a potentially abused or abused child should be interviewed on school property, written notification of the agency's intent to interview on school property must be received by school officials prior to the interview. The notification shall include the name of the child to be interviewed, the purpose of the interview, and a reference to the statutory authority to conduct the interview. The notification shall be private data. School officials may not disclose to the parent, legal custodian, or guardian the contents of the notice or any other related information regarding the interview until notified in writing by the local welfare or law enforcement agency that the investigation has been concluded.
- B. All records regarding a report of maltreatment, including any notification of intent to interview which was received by the school as described above in Paragraph A., shall be destroyed by the school only when ordered by the agency conducting the investigation or by a court of competent jurisdiction.

VII. PHYSICAL OR SEXUAL ABUSE AS SEXUAL HARASSMENT OR VIOLENCE

Under certain circumstances, alleged physical or sexual abuse may also be sexual harassment or violence under Minnesota law. If so, the duties relating to the reporting and investigation of such harassment or violence may be applicable.

VIII. DISSEMINATION OF POLICY AND TRAINING

- A. This policy shall appear in school personnel handbooks.
- B. The school district will develop a method of discussing this policy with school personnel.
- C. This policy shall be reviewed at least annually for compliance with state law.

Legal References: Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)
Minn. Stat. § 121A.58 (Corporal Punishment)
Minn. Stat. § 121A.582 (Student Discipline; Reasonable Force)
Minn. Stat. § 121A.67 (Aversive and Deprivation Procedures)

Minn. Stat. § 245.825 (Use of Aversive or Deprivation Procedures)
Minn. Stat. § 260C.007, Subd.4, Clause (5) (Child in Need of Protection)
Minn. Stat. § 609.02, Subd.6 (Definitions – Dangerous Weapon)
Minn. Stat. § 609.341, Subd. 10 (Definitions – Position of Authority)
Minn. Stat. § 609.341, Subd. 15 (Definitions – Significant Relationship)
Minn. Stat. § 609.379 (Reasonable Force)
Minn. Stat. § 626.556 *et seq.* (Reporting of Maltreatment of Minors)
Minn. Stat. § 626.5561 (Reporting of Prenatal Exposure to Controlled Substances)
20 U.S.C. § 1232g (Family Educational Rights and Privacy Act)

Cross References:

Policy 415 (Mandated Reporting of Maltreatment of Vulnerable Adults)

Revised: _____

415 MANDATED REPORTING OF MALTREATMENT OF VULNERABLE ADULTS

I. PURPOSE

The purpose of this policy is to make clear the statutory requirements of school personnel to report suspected maltreatment of vulnerable adults.

II. GENERAL STATEMENT OF POLICY

- A. The policy of the school district is to fully comply with Minn. Stat. § 626.557 requiring school personnel to report suspected maltreatment of vulnerable adults.
- B. It shall be a violation of this policy for any school personnel to fail to report suspected maltreatment of vulnerable adults when the school personnel has reason to believe that a vulnerable adult is being or has been maltreated, or has knowledge that a vulnerable adult has sustained a physical injury which is not reasonably explained.

III. DEFINITIONS

- A. "Mandated Reporters" means any school personnel who has reason to believe that a vulnerable adult is being or has been maltreated.
- B. "Maltreatment" means the neglect, abuse, or financial exploitation of a vulnerable adult.
- C. "Neglect" means the failure or omission by a caregiver to supply a vulnerable adult with care or services, including but not limited to, food, clothing, shelter, health care, or supervision which is: (1) reasonable and necessary to obtain or maintain the vulnerable adult's physical or mental health or safety, considering the physical and mental capacity or dysfunction of the vulnerable adult; and (2) which is not the result of an accident or therapeutic conduct. Neglect also includes the absence or likelihood of absence of care or services, including but not limited to, food, clothing, shelter, health care, or supervision necessary to maintain the physical and mental health of the vulnerable adult which a reasonable person would deem essential to obtain or maintain the vulnerable adult's health, safety, or comfort considering the physical or mental capacity or dysfunction of the vulnerable adult. Neglect does not include actions specifically excluded by Minn. Stat. § 626.5572, Subd. 17.
- D. "Abuse" means: (a) An act against a vulnerable adult that constitutes a violation of, an attempt to violate, or aiding and abetting a violation of: (1) assault in the first through fifth degrees as defined in sections 609.221 to 609.224; (2) the use of drugs to injure or facilitate crime as defined in section 609.235; (3) the solicitation, inducement, and promotion of prostitution as defined in section 609.322; and (4) criminal sexual conduct in the first through fifth degrees as defined in sections 609.342 to 609.3451. A violation includes any action that meets the elements of the crime, regardless of whether there is a criminal proceeding or conviction. (b) Conduct which is not an accident or therapeutic conduct as defined in this section, which produces or could reasonably be expected to produce physical pain or injury or emotional distress including, but not limited to, the following: (1) hitting, slapping, kicking, pinching, biting, or corporal punishment of a vulnerable adult; (2) use of repeated or malicious oral, written, or gestured language toward a vulnerable adult or the treatment of a vulnerable adult which would be considered by a reasonable person to be disparaging, derogatory, humiliating, harassing, or threatening; (3) use of any aversive or deprivation procedure, unreasonable confinement, or involuntary seclusion, including the forced separation of the vulnerable adult from other persons against the will of the vulnerable adult or the legal representative of the vulnerable adult; and (4) use of any aversive or deprivation procedures for persons with developmental disabilities or related conditions not authorized under section 245.825. (c) Any sexual contact or penetration as defined in section 609.341, between a facility staff person or a person providing services in the facility and a resident, patient, or client of that facility. (d) The act of forcing, compelling, coercing, or enticing a vulnerable adult against the vulnerable adult's will to perform services for the advantage of another. Abuse does not include

actions specifically excluded by Minn. Stat. § 626.5572, Subd. 2.

- E. “Financial Exploitation” means a breach of a fiduciary duty by an actor’s unauthorized expenditure of funds entrusted to the actor for the benefit of the vulnerable adult or by an actor’s failure to provide food, clothing, shelter, health care, therapeutic conduct or supervision, the failure of which results or is likely to result in detriment to the vulnerable adult. Financial exploitation also includes: the willful use, withholding or disposal of funds or property of a vulnerable adult; the obtaining of services for wrongful profit or advantage which results in detriment to the vulnerable adult; the acquisition of a vulnerable adult’s funds or property through undue influence, harassment, duress, deception or fraud; and the use of force, coercion, or enticement to cause a vulnerable adult to perform services against the vulnerable adult’s will for the profit or advantage of another.
- F. “Vulnerable Adult” means any person 18 years of age or older who: (1) is a resident or inpatient of a facility; (2) receives services at or from a licensed facility which serves adults as set forth in Minn. Stat. § 626.5572, Subd. 21(a)(2); (3) receives services from a licensed home care provider or home care provider service; or (4) regardless of residence or type of service received possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction that impairs the individual’s ability to adequately provide the person’s own care without assistance or supervision and, because of the dysfunction or infirmity and need for care or services, has an impaired ability to protect the individual’s self from maltreatment.
- G. “Caregiver” means an individual or facility who has responsibility for the care of a vulnerable adult as a result of a family relationship, or who has assumed responsibility for all or a portion of the care of a vulnerable adult voluntarily, by contract, or by agreement.
- H. “School Personnel” means professional employees or their delegates of the school district engaged in providing health, educational, social, psychological, law enforcement, or other caretaking services of vulnerable adults.
- I. “Immediately” means as soon as possible, but no longer than 24 hours from the time initial knowledge that the incident occurred has been received.

IV. REPORTING PROCEDURES

- A. A mandated reporter as defined herein shall immediately report the suspected maltreatment to the designated county entity.
- B. Whenever a mandated reporter, as defined herein, knows or has reason to believe that an individual made an error in the provision of therapeutic conduct to a vulnerable adult which results in injury or harm, which reasonably requires the care of a physician, such information shall be reported immediately to the designated county agency. The mandated reporter also may report a belief that the error did not constitute neglect and why the error does not constitute neglect.
- C. The reporter shall to the extent possible identify the vulnerable adult, the caregiver, the nature and extent of the suspected maltreatment, any evidence of previous maltreatment, the name and address of the reporter, the time, date, and location of the incident, and any other information that the reporter believes might be helpful in investigating the suspected abuse or neglect. A mandated reporter may disclose *not public data* as defined under Minn. Stat. § 13.02 to the extent necessary to comply with the above reporting requirements.
- D. A person mandated to report suspected maltreatment of a vulnerable adult who negligently or intentionally fails to report is liable for damages caused by the failure. A negligent or intentional failure to report may result in discipline. A mandatory reporter who intentionally fails to make a report, who knowingly provides false or misleading information in reporting, or who intentionally fails to provide all the material circumstances surrounding the reported incident may be guilty of a misdemeanor.
- E. Retaliation against a person who makes a good faith report under Minnesota law and this policy, or against vulnerable adult who is named in a report is prohibited.
- F. Any person who intentionally makes a false report under the provisions of applicable Minnesota law or this policy shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury. The intentional making of a false report may result in discipline.

V. INVESTIGATION

The responsibility for investigating reports of suspected maltreatment of a vulnerable adult rests with the entity designated by the county for receiving reports.

VI. DISSEMINATION OF POLICY AND TRAINING

- A. This policy shall appear in school personnel handbooks where appropriate.
- B. The school district will develop a method of discussing this policy with employees where appropriate.
- C. This policy shall be reviewed at least annually for compliance with state law.

Legal References:

Minn. Stat. § 13.02 (Collection, Security, and Dissemination of Records; Definitions)
Minn. Stat. § 245.825 (Aversive and Deprivation Procedures; Licensed Facilities and Services)
Minn. Stat. §§ 609.221-609.224 (Assault)
Minn. Stat. § 609.234 (Crimes Against the Person)
Minn. Stat. § 609.235 (Use of Drugs to Injure or Facilitate Crime)
Minn. Stat. § 609.322 (Solicitation, Inducement, and Promotion of Prostitution; Sex Trafficking)
Minn. Stat. § 609.341 (Definitions)
Minn. Stat. §§ 609.342-609.3451 (Criminal Sexual Conduct)
Minn. Stat. § 626.557 (Reporting of Maltreatment of Vulnerable Adults)
Minn. Stat. § 626.5572 (Definitions)
In re Kleven, 736 N.W.2d 707 (Minn. App. 2007)

Cross References:

Policy 103 (Complaints – Students, Employees, Parents, Other Persons)
Policy 211 (Criminal or Civil Action Against School District, School Board Member, Employee, or Student)
Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)
Policy 406 (Public and Private Personnel Data)
Policy 414 (Mandated Reporting of Child Neglect or Physical or Sexual Abuse)

416 DRUG AND ALCOHOL TESTING

I. PURPOSE

- A. The school board recognizes the significant problems created by drug and alcohol use in society in general, and the public schools in particular. The school board further recognizes the important contribution that the public schools have in shaping the youth of today into the adults of tomorrow.
- B. It is the belief of the school board that a work environment free of drug and alcohol use will not only be safer, healthier, and more productive, but will also be more conducive to effective learning. Therefore, to provide such an environment, the purpose of this policy is to provide authority so that the school board may require all employees and/or job applicants to submit to drug and alcohol testing in accordance with the provisions of this policy and as provided in federal law and Minn. Stat. §§ 181.950-181.957.

II. GENERAL STATEMENT OF POLICY

- A. All school district employees and job applicants whose positions require a commercial driver's license will be required to undergo drug and alcohol testing in accordance with federal law and the applicable provisions of this policy. The school district also may request or require that drivers submit to drug and alcohol testing in accordance with the provisions of this policy and as provided in Minn. Stat. §§ 181.950-181.957.
- B. The school district may request or require that any school district employee or job applicant, other than an employee or applicant whose position requires a commercial driver's license, submit to drug and alcohol testing in accordance with the provisions of this policy and as provided in Minn. Stat. §§ 181.950-181.957.
- C. The use, possession, sale, purchase, transfer, or dispensing of any drugs not medically prescribed is prohibited on school district property (which includes school district vehicles), while operating school district vehicles or equipment, and at any school-sponsored program or event. Use of drugs which are not medically prescribed is also prohibited throughout the school or work day, including lunch or other breaks, whether or not the employee is on or off school district property. Employees under the influence of drugs which are not medically prescribed are prohibited from entering or remaining on school district property.
- D. The use, possession, sale, purchase, transfer, or dispensing of alcohol is prohibited on school district property (which includes school district vehicles), while operating school district vehicles or equipment, and at any school-sponsored program or event. Use of alcohol is also prohibited throughout the school or work day, including lunch or other breaks, whether or not the employee is on or off school district property. Employees under the influence of alcohol are prohibited from entering or remaining on school district property.
- E. Any employee who violates this section shall be subject to discipline which includes, but is not limited to, immediate suspension without pay and immediate discharge.

III. FEDERALLY MANDATED DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS

- A. General Statement of Policy
All persons subject to commercial driver's license requirements shall be tested for alcohol, marijuana, cocaine, amphetamines, opiates (including heroin), and phencyclidine (PCP), pursuant to federal law. Drivers who test positive for alcohol or drugs shall be subject to disciplinary action, which may include termination of employment.
- B. Definitions
 - 1. "Actual Knowledge" means actual knowledge by the school district that a driver has used alcohol or controlled substances based on: (a) direct observation of the employee's use (not observation of behavior sufficient to warrant reasonable suspicion testing); (b)

information provided by a previous employer; (c) a traffic citation; or (d) an employee's admission, except when made in connection with a qualified employee self-admission program.

2. "Alcohol Screening Device" (ASD) means a breath or saliva device, other than an Evidential Breath Testing Device (EBT), that is approved by the National Highway Traffic Safety Administration and placed on its Conforming Products List for such devices.
3. "Breath Alcohol Technician" (BAT) means an individual who instructs and assists individuals in the alcohol testing process and who operates the Evidential Breath Testing Device (EBT).
4. "Commercial Motor Vehicle" (CMV) includes a vehicle which is designed to transport 16 or more passengers, including the driver.
5. "Designated Employer Representative" (DER) means a designated school district representative authorized to take immediate action to remove employees from safety-sensitive duties, to make required decisions in the testing and evaluation process, and to receive test results and other communications for the school district.
6. "DOT" means United States Department of Transportation.
7. "Driver" is any person who operates a Commercial Motor Vehicle, including full-time, regularly employed drivers, casual, intermittent or occasional drivers, leased drivers, and independent owner-operator contractors.
8. "Evidential Breath Testing Device" (EBT) means a device approved by the National Highway Traffic Safety Administration for the evidentiary testing of breath for alcohol concentration and placed on its Conforming Products List for such devices.
9. "Medical Review Officer" (MRO) means a licensed physician responsible for receiving and reviewing laboratory results generated by the school district's drug testing program and for evaluating medical explanations for certain drug tests.
10. "Refusal to Submit" (to an alcohol or controlled substances test) means that a driver: (a) fails to appear for any test within a reasonable time, as determined by the school district, consistent with applicable DOT regulations, after being directed to do so; (b) fails to remain at the testing site until the testing process is complete; (c) fails to provide a urine specimen or an adequate amount of saliva or breath for any DOT drug or alcohol test; (d) fails to permit the observation or monitoring of the driver's provision of a specimen in the case of a directly observed or monitored collection in a drug test; (e) fails to provide a sufficient breath specimen or sufficient amount of urine when directed and a determination has been made that no adequate medical explanation for the failure exists; (f) fails or declines to take an additional test as directed; (g) fails to undergo a medical examination or evaluation, as directed by the Medical Review Officer or the Designated Employer Representative; (h) fails to cooperate with any part of the testing process (e.g., refuses to empty pockets when so directed by the collector, behaves in a confrontational way that disrupts the collection process, fails to sign the certification on the forms); or (i) is reported by the Medical Review Officer as having a verified adulterated or substituted test result. An applicant who fails to appear for a pre-employment test, who leaves the testing site before the pre-employment testing process commences, or who does not provide a urine specimen because he or she has left before it commences is not deemed to have refused to submit to testing.
11. "Safety-sensitive functions" are on-duty functions from the time the driver begins work or is required to be in readiness to work until relieved from work, and include such functions as driving, loading and unloading vehicles, or supervising or assisting in the loading or unloading of vehicles, servicing, repairing, obtaining assistance to repair, or remaining in attendance during the repair of a disabled vehicle.
12. "Screening Test Technician" (STT) means anyone who instructs and assists individuals in the alcohol testing process and operates an Alcohol Screening Device.
13. "Stand Down" means to temporarily remove an employee from performing safety-sensitive functions after a laboratory reports a confirmed positive, an adulterated, or a substituted test result but before a Medical Review Officer completes the verification

process.

14. "Substance Abuse Professional" (SAP) means a qualified person who evaluates employees who have violated a Department of Transportation drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

C. Policy and Educational Materials

1. The school district shall provide a copy of this policy and procedures to each driver prior to the start of its alcohol and drug testing program and to each driver subsequently hired or transferred into a position requiring driving of a Commercial Motor Vehicle.
2. The school district shall provide to each driver information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or drug problem; and available methods of intervening when an alcohol or drug problem is suspected, including confrontation, referral to an employee assistance program, and/or referral to management.
3. The school district shall provide written notice to representatives of employee organizations that the information described above is available.
4. The school district shall require each driver to sign a statement certifying that he or she has received a copy of the policy and materials. This statement should be in the form of Attachment A to this policy. The school district will maintain the original signed certificate and will provide a copy to the driver if the driver so requests.

D. Alcohol and Controlled Substances Testing Program Manager

1. The program manager will coordinate the implementation, direction, and administration of the alcohol and controlled substances testing policy for bus drivers. The program manager is the principal contact for the collection site, the testing laboratory, the Medical Review Officer, the Breath Alcohol Technician, the Substance Abuse Professional, and the person submitting to the test. Employee questions concerning this policy shall be directed to the program manager.
2. The school district shall designate a program manager and provide written notice of the designation to each driver along with this policy.

E. Specific Prohibitions for Drivers

1. Alcohol Concentration. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. Drivers who test greater than 0.04 will be taken out of service and will be subject to evaluation by a professional and retesting at the driver's expense.
2. Alcohol Possession. No driver shall be on duty or operate a Commercial Motor Vehicle while the driver possesses alcohol.
3. On-Duty Use. No driver shall use alcohol while performing safety-sensitive functions.
4. Pre-Duty Use. No driver shall perform safety-sensitive functions within four (4) hours after using alcohol.
5. Use Following an Accident. No driver required to take a post-accident test shall use alcohol for eight (8) hours following the accident, or until he or she undergoes a post-accident alcohol test, whichever occurs first.
6. Refusal to Submit to a Required Test. No driver shall refuse to submit to an alcohol or controlled substances test required by post-accident, random, reasonable suspicion, return-to-duty, or follow-up testing requirements. A verified adulterated or substituted drug test shall be considered a refusal to test.
7. Use of Controlled Substances. No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to instructions (which have been presented to the school district) from a licensed physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a Commercial Motor Vehicle.
8. Positive, Adulterated, or Substituted Test for Controlled Substance. No driver shall report for duty, remain on duty, or perform a safety-sensitive function if the driver tests positive for controlled substances or has adulterated or substituted a test specimen for

controlled substances.

9. General Prohibition. Drivers are also subject to the general policies and procedures of the school district which prohibit the possession, transfer, sale, exchange, reporting to work under the influence of drugs or alcohol, and consumption of drugs or alcohol while at work or while on school district premises or operating any school district vehicle, machinery, or equipment.

F. Other Alcohol-Related Conduct

No driver found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform safety-sensitive functions for at least twenty-four (24) hours following administration of the test. The school district will not take any action under this policy other than removal from safety-sensitive functions based solely on test results showing an alcohol concentration of less than 0.04 but may take action otherwise consistent with law and policy of the school district.

G. Prescription Drugs

A driver shall inform his or her supervisor if at any time the driver is using a controlled substance pursuant to a physician's prescription. The physician's instructions shall be presented to the school district upon request. Use of a prescription drug shall be allowed if the physician has advised the driver that the prescribed drug will not adversely affect the driver's ability to safely operate a Commercial Motor Vehicle.

H. Testing Requirements

1. Pre-Employment Testing

- a. A driver applicant shall undergo testing for [alcohol and] controlled substances before the first time the driver performs safety-sensitive functions for the school district.
- b. Tests shall be conducted only after the applicant has received a conditional offer of employment.
- c. In order to be hired, the applicant must test negative and must sign an agreement in the form of Attachment B to this policy, authorizing former employers to release to the school district all information on the applicant's alcohol tests with results of blood alcohol concentration of 0.04 or higher, or verified positive results for controlled substances, or refusals to be tested (including verified adulterated or substituted drug test results), or any other violations of DOT agency drug and alcohol testing regulations, or, if the applicant violated the testing regulations, documentation of the applicant's successful completion of DOT return-to-duty requirements (including follow-up tests), within the preceding two (2) years.
- d. The applicant also must be asked whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee, during the last two (2) years, applied for, but did not obtain, safety-sensitive transportation work covered by DOT testing rules.

2. Post-Accident Testing

- a. As soon as practicable following an accident involving a Commercial Motor Vehicle, the school district shall test the driver for alcohol and controlled substances if the accident involved the loss of human life or if the driver receives a citation for a moving traffic violation arising from an accident which results in bodily injury or disabling damage to a motor vehicle.
- b. Drivers should be tested for alcohol use within two (2) hours and no later than eight (8) hours after the accident.
- c. Drivers should be tested for controlled substances no later than thirty-two (32) hours after the accident.
- d. A driver subject to post-accident testing must remain available for testing, or shall be considered to have refused to submit to the test.
- e. If a post-accident alcohol test is not administered within two (2) hours following the accident, the school district shall prepare and maintain on file a record stating the reasons the test was not promptly administered and continue to

- attempt to administer the alcohol test within eight (8) hours.
- f. If a post-accident alcohol test is not administered within eight (8) hours following the accident or a post-accident controlled substances test is not administered within thirty-two (32) hours following the accident, the school district shall cease attempts to administer the test, and prepare and maintain on file a record stating the reasons for not administering the test.
3. Random Testing
- a. The school district shall conduct tests on a random basis at unannounced times throughout the year, as required by the federal regulations.
- b. The school district shall test for alcohol at a minimum annual percentage rate of 10% of the average number of driver positions, and for controlled substances, at a minimum annual percentage of 50%.
- c. The school district shall adopt a scientifically valid method for selecting drivers for testing, such as random number table or a computer-based random number generator that is matched with identifying numbers of the drivers. Each driver shall have an equal chance of being tested each time selections are made.
- d. Random tests shall be unannounced. Dates for administering random tests shall be spread reasonably throughout the calendar year.
- e. Drivers shall proceed immediately to the collection site upon notification of selection; provided, however, that if the driver is performing a safety-sensitive function, other than driving, at the time of notification, the driver shall cease to perform the function and proceed to the collection site as soon as possible.
4. Reasonable Suspicion Testing
- a. The school district shall require a driver to submit to an alcohol test and/or controlled substances test when a supervisor or school district official, who has been trained in accordance with the regulations, has reasonable suspicion to believe that the driver has used alcohol and/or controlled substances on duty or within four (4) hours before coming on duty. The test shall be done as soon as practicable following the observation of the behavior indicative of the use of controlled substances or alcohol.
- b. The reasonable suspicion determination must be based on specific, contemporaneous, articulable observations concerning the driver's appearance, behavior, speech, or body odors. The required observations for reasonable suspicion of a controlled substances violation may include indications of the chronic and withdrawal effects of controlled substances.
- c. Alcohol testing shall be administered within two (2) hours following a determination of reasonable suspicion. If it is not done within two (2) hours, the school district shall prepare and maintain a record explaining why it was not promptly administered and continue to attempt to administer the alcohol test within eight (8) hours. If an alcohol test is not administered within eight (8) hours following the determination of reasonable suspicion, the school district shall cease attempts to administer the test and state in the record the reasons for not administering the test.
- d. The supervisor or school district official who makes observations leading to a controlled substances reasonable suspicion test shall make and sign a written record of the observations within twenty-four (24) hours of the observed behavior or before the results of the drug test are released, whichever is earlier.
5. Return-To-Duty Testing. A driver found to have violated this policy shall not return to work until a Substance Abuse Professional has determined the employee has successfully complied with prescribed education and/or treatment and until undergoing return-to-duty tests indicating an alcohol concentration of less than 0.02 and a confirmed negative result for the use of controlled substances.
6. Follow-Up Testing. When a Substance Abuse Professional (SAP) has determined that a driver is in need of assistance in resolving problems with alcohol and/or controlled substances, the driver shall be subject to unannounced follow-up testing as directed by

the SAP for up to sixty (60) months after completing a treatment program.

7. Refusal to Submit and Attendant Consequences

- a. A driver or driver applicant may refuse to submit to drug and alcohol testing.
- b. Refusal to submit to a required drug or alcohol test subjects the driver or driver applicant to the consequences specified in federal regulations as well as the civil and/or criminal penalty provisions of 49 U.S.C. § 521(b). In addition, a refusal to submit to testing establishes a presumption that the driver or driver applicant would test positive if a test were conducted and makes the driver or driver applicant subject to discipline or disqualification under this policy.
- c. A driver applicant who refuses to submit to testing shall be disqualified from further consideration for the conditionally offered position.
- d. An employee who refuses to submit to testing shall not be permitted to perform safety-sensitive functions and will be considered insubordinate and subject to disciplinary action, up to and including dismissal. If an employee is offered an opportunity to return to a DOT safety-sensitive duty, the employee will be evaluated by a Substance Abuse Professional and must submit to a return-to-duty test prior to being considered for reassignment to safety-sensitive functions.
- e. Drivers or driver applicants who refuse to submit to required testing will be required to sign Attachment C to this policy.

I. Testing Procedures

1. Drug Testing

- a. Drug testing is conducted by analyzing a donor's urine specimen. Split urine samples will be collected in accordance with federal regulations. The donor will provide a urine sample at a designated collection site. The collection site personnel will then pour the sample into two sample bottles, labeled "primary" and "split," seal the specimen bottles, complete the chain of custody form, and prepare the specimen bottles for shipment to the testing laboratory for analysis. The specimen preparation shall be conducted in sight of the donor.
- b. If the donor is unable to provide the appropriate quantity of urine, the collection site person shall instruct the individual to drink up to forty (40) ounces of fluid distributed reasonably through a period of up to three (3) hours to attempt to provide a sample. If the individual is still unable to provide a complete sample, the test shall be discontinued and the school district notified. The Designated Employer Representative shall refer the donor for a medical evaluation to determine if the donor's inability to provide a specimen is genuine or constitutes a refusal to test. For pre-employment testing, the school district may elect to not have a referral made, and revoke the employment offer.
- c. Drug test results are reported directly to the Medical Review Officer (MRO) by the testing laboratory. The MRO reports the results to the Designated Employer Representative. If the results are negative, the school district is informed and no further action is necessary. If the test result is confirmed positive, adulterated, substituted, or invalid, the MRO shall give the donor an opportunity to discuss the test result. The MRO will contact the donor directly, on a confidential basis, to determine whether the donor wishes to discuss the test result. The MRO shall notify each donor that the donor has seventy-two (72) hours from the time of notification in which to request a test of the split specimen at the donor's expense.
- d. If the donor requests an analysis of the split specimen within seventy-two (72) hours of having been informed of a confirmed positive test, the Medical Review Officer (MRO) shall direct, in writing, the laboratory to provide the split specimen to another Department of Health and Human Services – SAMHSA certified laboratory for analysis. If the donor has not contacted the MRO within seventy-two (72) hours, the donor may present the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the confirmed positive test, or other circumstances unavoidably

prevented the donor from timely making contact. If the MRO concludes that a legitimate explanation for the donor's failure to contact him/her within seventy-two (72) hours exists, the MRO shall direct the analysis of the split specimen. The MRO will review the confirmed positive test result to determine whether an acceptable medical reason for the positive result exists. The MRO shall confirm and report a positive test result to the Designated Employer Representative and the employee when no legitimate medical reason for a positive test result as received from the testing laboratory exists.

- e. If, after making reasonable efforts and documenting those efforts, the Medical Review Officer (MRO) is unable to reach the donor directly, the MRO must contact the Designated Employer Representative (DER) who will direct the donor to contact the MRO. If the DER is unable to contact the donor, the donor will be suspended from performing safety-sensitive functions.
- f. The Medical Review Officer may confirm the test as a positive without having communicated directly with the donor about the test results under the following circumstances:
 - (1) The donor expressly declines the opportunity to discuss the test results;
 - (2) The donor has not contacted the Medical Review Officer within seventy-two (72) hours of being instructed to do so by the Designated Employer Representative; or
 - (3) The Medical Review Officer and the Designated Employer Representative, after making and documenting all reasonable efforts, have not been able to contact the donor with ten (10) days of the date the confirmed test result was received from the laboratory.

2. Alcohol Testing

- a. The federal alcohol testing regulations require testing to be administered by a Breath Alcohol Technician using an Evidential Breath Testing Device (EBT) or a Screening Test Technician using an Alcohol Screening Device (ASD). EBTs and ASDs can be used for screening tests but only EBTs can be used for confirmation tests.
- b. Any test result less than 0.02 alcohol concentration is considered a "negative" test.
- c. If the donor is unable to provide sufficient saliva for an Alcohol Screening Device, the Designated Employer Representative will immediately arrange to use an Evidential Breath Testing Device. If the donor attempts and fails to provide an adequate amount of breath, the school district will direct the donor to obtain a written evaluation from a licensed physician to determine if the donor's inability to provide a breath sample is genuine or constitutes a refusal to test.
- d. If the screening test results show alcohol concentration of 0.02 or higher, a confirmatory test conducted on an Evidential Breath Testing Device will be required to be performed between 15 and 30 minutes after the completion of the screening test.
- e. Alcohol tests are reported directly to the Designated Employer Representative.

J. Driver/Driver Applicant Rights

- 1. All drivers and driver applicants subject to the controlled substances testing provisions of this policy who receive a confirmed positive test result for the use of controlled substances have the right to request, at the driver's or driver applicant's expense, a confirming retest of the split urine sample. If the confirming retest is negative, no adverse action will be taken against the driver, and a driver applicant will be considered for employment.
- 2. The school district will not discharge a driver who, for the first time, receives a confirmed positive drug or alcohol test UNLESS:
 - a. The school district has first given the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program,

whichever is more appropriate, as determined by the school district after consultation with the Substance Abuse Professional; and

- b. The employee refuses to participate in the recommended program, or fails to successfully complete the program as evidenced by withdrawal before its completion or by a positive test result on a confirmatory test after completion of the program.
- c. This limitation on employee discharge does not bar discharge of an employee for reasons independent of the first confirmed positive test result.

K. Testing Laboratory

The testing laboratory for controlled substances will be Quest Diagnostics, 506 East State Parkway, Schaumburg, IL 60173, (800-877-7484), which is a laboratory certified by the Department of Health and Human Services – SAMHSA to perform controlled substances testing pursuant to federal regulations.

L. Confidentiality of Test Results

All alcohol and controlled substances test results and required records of the drug and alcohol testing program are considered confidential information under federal law and private data on individuals as that phrase is defined in Minn. Stat. Ch. 13. Any information concerning the individual's test results and records shall not be released without written permission of the individual, except as provided for by regulation or law.

M. Recordkeeping Requirements and Retention of Records

- 1. The school district shall keep and maintain records in accordance with the federal regulations in a secure location with controlled access.
- 2. The required records shall be retained for the following minimum periods:

Basic records	5 years
"Basic records" includes records of: (a) alcohol test results with concentration of 0.02 or greater; (b) verified positive drug test results; (c) refusals to submit to required tests (including substituted or adulterated drug test results); (d) SAP reports; (e) all follow-up tests and schedules for follow-up tests; (f) calibration documentation; (g) administration of the testing programs; and (h) each annual calendar year summary.	
Information obtained from previous employers	3 years
Collection records	2 years
Negative and cancelled drug tests	1 year
Alcohol tests with less than 0.02 concentration	1 year
Education and training records	indefinite
"Education and training records" must be maintained while the individuals perform the functions which require training and for the two (2) years after ceasing to perform those functions.	

N. Training

The school district shall ensure all persons designated to supervise drivers receive training. The designated employees shall receive at least sixty (60) minutes of training on alcohol misuse and at least sixty (60) minutes of training on controlled substances use. The training shall include physical, behavioral, speech, and performance indicators of probable misuse of alcohol and use of controlled substances. The training will be used by the supervisors to make determinations of reasonable suspicion.

O. Consequences of Prohibited Conduct and Enforcement

- 1. Removal. The school district shall remove a driver who has engaged in prohibited conduct from safety-sensitive functions. A driver shall not be permitted to return to safety-sensitive functions until and unless the return-to-duty requirements of federal DOT regulations have been completed.
- 2. Referral, Evaluation, and Treatment
 - a. A driver or driver applicant who has engaged in prohibited conduct shall be provided a listing of Substance Abuse Professionals readily available to the driver or applicant and acceptable to the school district.
 - b. If the school district offers a driver an opportunity to return to a DOT safety-

sensitive duty following a violation, the driver must be evaluated by a Substance Abuse Professional (SAP) and the driver is required to successfully comply with the SAP's evaluation recommendations (education, treatment, follow-up evaluation(s), and/or ongoing services). The school district is not required to provide a SAP evaluation or any subsequent recommended education or treatment.

- c. Drivers are responsible for payment for Substance Abuse Professional evaluations and services unless a collective bargaining agreement or employee benefit plan provides otherwise.
- d. Drivers who engage in prohibited conduct also are required to comply with follow-up testing requirements.

3. Disciplinary Action

- a. Any driver who refuses to submit to post-accident, random, reasonable suspicion, or follow-up testing not only shall not perform or continue to perform safety-sensitive functions, but also may be subject to disciplinary action, which may include immediate suspension without pay and/or immediate discharge.
- b. Drivers who test positive with verification of a confirmatory test or are otherwise found to be in violation of this policy or the federal regulations shall be subject to disciplinary action, which may include immediate suspension without pay and/or immediate discharge.
- c. Nothing in this policy limits or restricts the right of the school district to discipline or discharge a driver for conduct which not only constitutes prohibited conduct under this policy but also violates the school district's other rules or policies.

P. Other Testing

The school district may request or require that drivers submit to drug and alcohol testing other than that required by federal law. For example, drivers may be requested or required to undergo drug and alcohol testing on an annual basis as part of a routine physical examination. Such additional testing of drivers will be conducted only in accordance with the provisions of this policy and as provided in Minn. Stat. §§ 181.950-181.957. For purposes of such additional, non-mandatory testing, drivers fall within the definition of "other employees" covered by Section IV. of this policy.

IV. DRUG AND ALCOHOL TESTING FOR OTHER EMPLOYEES

The school district may request or require drug and alcohol testing for other school district personnel, i.e., employees who are not school bus drivers, or job applicants for such positions. The school district does not have a legal duty to request or require any employee or job applicant to undergo drug and alcohol testing as authorized in this policy, except for school bus drivers and other drivers of Commercial Motor Vehicles who are subject to federally mandated testing. (See Section III. of this policy.) If a school bus driver is requested or required to submit to drug or alcohol testing beyond that mandated by federal law, the provisions of Section IV. of this policy will be applicable to such testing.

A. Circumstances Under Which Drug or Alcohol Testing May Be Requested or Required:

1. General Limitations

- a. The school district will not request or require an employee or job applicant whose position does not require a commercial driver's license to undergo drug or alcohol testing, unless the testing is done pursuant to this drug and alcohol testing policy; and is conducted by a testing laboratory which participates in one of the programs listed in Minn. Stat. § 181.953, Subd. 1.
- b. The school district will not request or require an employee or job applicant whose position does not require a commercial driver's license to undergo drug and alcohol testing on an arbitrary and capricious basis.

2. Job Applicant Testing

The school district may request or require any job applicant whose position does not require a commercial driver's license to undergo drug and alcohol testing, provided a job offer has been made to the applicant and the same test is requested or required of all job

applicants conditionally offered employment for that position. If a job applicant has received a job offer which is contingent on the applicant's passing drug and alcohol testing, the school district may not withdraw the offer based on a positive test result from an initial screening test that has not been verified by a confirmatory test. In the event the job offer is subsequently withdrawn, the school district shall notify the job applicant of the reason for its action.

3. Random Testing

The school district may request or require employees to undergo drug and alcohol testing on a random selection basis only if they are employed in safety-sensitive positions.

4. Reasonable Suspicion Testing

The school district may request or require any employee to undergo drug and alcohol testing if the school district has a reasonable suspicion that the employee:

- a. is under the influence of drugs or alcohol;
- b. has violated the school district's written work rules prohibiting the use, possession, sale, or transfer of drugs or alcohol while the employee is working or while the employee is on the school district's premises or operating the school district's vehicles, machinery, or equipment;
- c. has sustained a personal injury, as that term is defined in Minn. Stat. § 176.011, Subd. 16, or has caused another employee to sustain a personal injury; or
- d. has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident.

5. Treatment Program Testing

The school district may request or require any employee to undergo drug and alcohol testing if the employee has been referred by the school district for chemical dependency treatment or evaluation or is participating in a chemical dependency treatment program under an employee benefit plan, in which case the employee may be requested or required to undergo drug and alcohol testing without prior notice during the evaluation or treatment period and for a period of up to two (2) years following completion of any prescribed chemical dependency treatment program.

6. Routine Physical Examination Testing

The school district may request or require any employee to undergo drug and alcohol testing as part of a routine physical examination provided the drug or alcohol test is requested or required no more than once annually and the employee has been given at least two weeks' written notice that a drug or alcohol test may be requested or required as part of the physical examination.

B. No Legal Duty to Test

The school district does not have a legal duty to request or require any employee or job applicant whose position does not require a commercial driver's license to undergo drug and alcohol testing.

C. Definitions

1. "Drug" means a controlled substance as defined in Minnesota Statutes.
2. "Drug and alcohol testing," "drug or alcohol testing," and "drug or alcohol test" mean analysis of a body component sample according to the standards established under one of the programs listed in Minn. Stat. § 181.953, Subd. 1, for the purpose of measuring the presence or absence of drugs, alcohol, or their metabolites in the sample tested.
3. "Other Employees" means any persons, independent contractors, or persons working for an independent contractor who perform services for the school district for compensation, either full time or part time, in whatever form, except for persons whose positions require a commercial driver's license, and includes both professional and nonprofessional personnel. Persons whose positions require a commercial driver's license are primarily governed by the provisions of the school district's drug and alcohol testing policy relating to school bus drivers (Section III.). To the extent that the drug and alcohol testing of persons whose positions require a commercial driver's license is not mandated by federal law and regulations, such testing shall be governed by Section IV. of this policy and the drivers shall fall within this definition of "other employees."
4. "Job applicant" means a person, independent contractor, or person working for an

independent contractor who applies to become an employee of the school district in a position that does not require a commercial driver's license, and includes a person who has received a job offer made contingent on the person's passing drug or alcohol testing. Job applicants for positions requiring a commercial driver's license are governed by the provisions of the school district's drug and alcohol testing policy relating to school bus drivers (Section III.).

5. "Positive test result" means a finding of the presence of drugs, alcohol, or their metabolites in the sample tested in levels at or above the threshold detection levels contained in the standards of one of the programs listed in Minn. Stat. § 181.953, Subd. 1.
6. "Random selection basis" means a mechanism for selection of employees that:
 - a. results in an equal probability that any employee from a group of employees subject to the selection mechanism will be selected; and
 - b. does not give the school district discretion to waive the selection of any employee selected under the mechanism.
7. "Reasonable suspicion" means a basis for forming a belief based on specific facts and rational inferences drawn from those facts.
8. "Safety-sensitive position" means a job, including any supervisory or management position, in which an impairment caused by drug or alcohol usage would threaten the health or safety of any person.

D. Right of Other Employee or Job Applicant to Refuse Drug and Alcohol Testing and Consequences of Such Refusal

1. Right of Other Employee or Job Applicant to Refuse Drug and Alcohol Testing
Any employee or job applicant whose position does not require a commercial driver's license has the right to refuse drug and alcohol testing subject to the provisions contained in Paragraphs 2. and 3. of this Section D.
2. Consequences of an Employee's Refusal to Undergo Drug and Alcohol Testing
Any employee in a position that does not require a commercial driver's license who refuses to undergo drug and alcohol testing in the circumstances set out in the Random Testing, Reasonable Suspicion Testing, and Treatment Program Testing provisions of this policy may be subject to disciplinary action, up to and including immediate discharge.
3. Consequences of a Job Applicant's Refusal to Undergo Drug and Alcohol Testing
Any job applicant for a position which does not require a commercial driver's license who refuses to undergo drug and alcohol testing pursuant to the Job Applicant Testing provision of this policy shall not be employed.

E. Reliability and Fairness Safeguards

1. Pretest Notice
Before requesting an employee or job applicant whose position does not require a commercial driver's license to undergo drug or alcohol testing, the school district shall provide the employee or job applicant with a Pretest Notice in the form of Attachment D to this policy on which to acknowledge that the employee or job applicant has received the school district's drug and alcohol testing policy.
2. Notice of Test Results
Within three (3) working days after receipt of a test result report from the testing laboratory, the school district shall inform in writing an employee or job applicant who has undergone drug or alcohol testing of a negative test result on an initial screening test or of a negative or positive test result on a confirmatory test.
3. Notice of and Right to Test Result Report
Within three (3) working days after receipt of a test result report from the testing laboratory, the school district shall inform in writing, an employee or job applicant who has undergone drug or alcohol testing of the employee or job applicant's right to request and receive from the school district a copy of the test result report on any drug or alcohol test.
4. Notice of and Right to Explain Positive Test Result
 - a. If an employee or job applicant has a positive test result on a confirmatory test, the school district shall provide him or her with notice of the test results and, at

the same time, written notice of the right to explain the results and to submit additional information.

- b. The school district may request that the employee or job applicant indicate any over-the-counter or prescription medication that the individual is currently taking or has recently taken and any other information relevant to the reliability of, or explanation for, a positive test result.
- c. Within three (3) working days after notice of a positive test result on a confirmatory test, an employee or job applicant may submit information (in addition to any information already submitted) to the school district to explain that result.

5. Notice of and Right to Request Confirmatory Retests

- a. If an employee or job applicant has a positive test result on a confirmatory test, the school district shall provide him or her with notice of the test results and, at the same time, written notice of the right to request a confirmatory retest of the original sample at his or her expense.
- b. An employee or job applicant may request a confirmatory retest of the original sample at his or her own expense after notice of a positive test result on a confirmatory test. Within five (5) working days after notice of the confirmatory test result, the employee or job applicant shall notify the school district in writing of his or her intention to obtain a confirmatory retest. Within three (3) working days after receipt of the notice, the school district shall notify the original testing laboratory that the employee or job applicant has requested the laboratory to conduct the confirmatory retest or to transfer the sample to another laboratory licensed under Minn. Stat. § 181.953, Subd. 1 to conduct the confirmatory retest. The original testing laboratory shall ensure that appropriate chain-of-custody procedures are followed during transfer of the sample to the other laboratory. The confirmatory retest must use the same drug or alcohol threshold detection levels as used in the original confirmatory test. If the confirmatory retest does not confirm the original positive test result, no adverse personnel action based on the original confirmatory test may be taken against the employee or job applicant.

6. If an employee or job applicant has a positive test result on a confirmatory test, the school district, at the time of providing notice of the test results, shall also provide written notice to inform him or her of other rights provided under Sections F. or G., below, whichever is applicable.

Attachments E and F to this policy provide the Notices described in Paragraphs 2. through 6. of this Section E.

F. Discharge and Discipline of Employees Whose Positions Do Not Require a Commercial Driver's License

- 1. The school district may not discharge, discipline, discriminate against, request, or require rehabilitation of an employee on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test.
- 2. In the case of a positive test result on a confirmatory test, the employee shall be subject to discipline which includes, but is not limited to, immediate suspension without pay and immediate discharge, pursuant to the provisions of this policy.
- 3. The school district may not discharge an employee for whom a positive test result on a confirmatory test was the first such result for the employee on a drug or alcohol test requested by the school district, unless the following conditions have been met:
 - a. The school district has first given the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the school district after consultation with a certified chemical abuse counselor or a physician trained in the diagnosis and treatment of chemical dependency; and
 - b. The employee has either refused to participate in the counseling or rehabilitation

program or has failed to successfully complete the program, as evidenced by withdrawal from the program before its completion or by a positive test result on a confirmatory test after completion of the program.

4. Notwithstanding Paragraph 1., the school district may temporarily suspend the tested employee or transfer that employee to another position at the same rate of pay pending the outcome of the confirmatory test and, if requested, the confirmatory retest, provided the school district believes that it is reasonably necessary to protect the health or safety of the employee, co-employees or the public. An employee who has been suspended without pay must be reinstated with back pay if the outcome of the confirmatory test or requested confirmatory retest is negative.
5. The school district may not discharge, discipline, discriminate against, request, or require rehabilitation of an employee on the basis of medical history information revealed to the school district, unless the employee was under an affirmative duty to provide the information before, upon or after hire.
6. An employee must be given access to information in his or her personnel file relating to positive test result reports and other information acquired in the drug and alcohol testing process and conclusions drawn from and actions taken based on the reports or other acquired information.

G. Withdrawal of Job Offer for an Applicant for a Position That Does Not Require a Commercial Driver's License

If a job applicant has received a job offer made contingent on the applicant's passing drug and alcohol testing, the school district may not withdraw the offer based on a positive test result from an initial screening test that has not been verified by a confirmatory test. In the case of a positive test result on a confirmatory test, the school district may withdraw the job offer.

H. Chain-of-Custody Procedures

The school district has established its own reliable chain-of-custody procedures to ensure proper record keeping, handling, labeling, and identification of the samples to be tested. The procedures require the following:

1. Possession of a sample must be traceable to the employee from whom the sample is collected, from the time the sample is collected through the time the sample is delivered to the laboratory;
2. The sample must always be in the possession of, must always be in view of, or must be placed in a secure area by a person authorized to handle the sample;
3. A sample must be accompanied by a written chain-of-custody record; and
4. Individuals relinquishing or accepting possession of the sample must record the time the possession of the sample was transferred and must sign and date the chain-of-custody record at the time of transfer.

I. Privacy, Confidentiality and Privilege Safeguards

1. Privacy Limitations

A laboratory may only disclose to the school district test result data regarding the presence or absence of drugs, alcohol or their metabolites in a sample tested.

2. Confidentiality Limitations

With respect to employees and job applicants, test result reports and other information acquired in the drug or alcohol testing process are private data on individuals as that phrase is defined in Minn. Stat. Ch. 13, and may not be disclosed by the school district or laboratory to another employer or to a third-party individual, governmental agency, or private organization without the written consent of the employee or job applicant tested.

3. Exceptions to Privacy and Confidentiality Disclosure Limitations

Notwithstanding Paragraphs 1. and 2., evidence of a positive test result on a confirmatory test may be: (1) used in an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under Minn. Stat. Ch. 43A or other applicable state or local law, or a judicial proceeding, provided that information is relevant to the hearing or proceeding; (2) disclosed to any federal agency or other unit of the United States government as required under federal law, regulation or order, or in accordance with compliance requirements of a federal government contract; and (3) disclosed to a

substance abuse treatment facility for the purpose of evaluation or treatment of the employee.

4. Privilege

Positive test results from the school district drug or alcohol testing program may not be used as evidence in a criminal action against the employee or job applicant tested.

J. Notice of Testing Policy to Affected Employees

The school district shall provide written notice of this drug and alcohol testing policy to all affected employees upon adoption of the policy, to a previously non-affected employee upon transfer to an affected position under the policy, and to a job applicant upon hire and before any testing of the applicant if the job offer is made contingent on the applicant's passing drug and alcohol testing. Affected employees and applicants will acknowledge receipt of this written notice in the form of Attachment G to this policy.

V. POSTING

The school district shall post notice in an appropriate and conspicuous location on its premises that it has adopted a drug and alcohol testing policy and that copies of the policy are available for inspection during regular business hours by its employees or job applicants in its personnel office or other suitable locations.

Legal References:

Minn. Stat. §§ 181.950-181.957 (Drug and Alcohol Testing in the Workplace)
Minn. Stat. § 221.031 (Motor Carrier Rules)
49 U.S.C. § 31306 (Omnibus Transportation Employee Testing Act of 1991)
49 U.S.C. § 521(b) (Civil and Criminal Penalties for Violations)
49 C.F.R. Parts 40 and 382 (Department of Transportation Rules Implementing Omnibus Transportation Employee Testing Act of 1991)

Cross-References:

Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)
Policy 417 (Chemical Use and Abuse)
Policy 418 (Drug-Free Workplace/Drug-Free School)

ATTACHMENTS TO DRUG AND ALCOHOL TESTING POLICY

Attachments A through C are to be used in conjunction with the drug and alcohol testing of bus drivers and driver applicants.

- Attachment A is a “Driver Acknowledgment–Drug and Alcohol Testing Policy Materials” form which should be used to document receipt of the policy and other materials by drivers and driver applicants. It is referred to in Article III., Section C., Paragraph 4. of the policy.
- Attachment B is a “Bus Driver or Driver Applicant–Authorization to Release Information” form. It is referred to in Article III., Section H., Paragraph 1. of the policy.
- Attachment C is a “Bus Driver or Driver Applicant–Refusal to Submit to Testing” form. It is referred to in Article III., Section H., Paragraph 7. of the policy.

Attachments D through G are to be used in conjunction with drug and alcohol testing of non-bus drivers and applicants.

- Attachment D is a “Pretest Notice” that must be provided to non-school bus driver employees or job applicants before requesting that the employee or job applicant undergo drug or alcohol testing. It is referred to in Article IV., Section E., Paragraph 1. of the policy.
- Attachment E is a “Notice of Test Results and Various Rights” which should be used by the District when notifying non-school bus driver employees or job applicants of test results and other rights. It is referred to in Article IV., Section E., Paragraph 6. of the policy.
- Attachment F is an “Explanation of Positive Test Result” form which should be used by the school district to request that the employee or job applicant submit information to the school district relevant to the reliability of, or explanation for, a positive test result. It is referred to in Article IV., Section E., Paragraph 4. of the policy.
- Finally, the District may wish to use Attachment G, entitled “Acknowledgment–Drug and Alcohol Testing Policy,” to document that written notice of the policy was given to all affected employees. It is referred to in Article IV., Section J. of the policy.

ATTACHMENT A

Fisher Independent School District #600

MR. DAVID R. VIK, SUPERINTENDENT/PRINCIPAL
MS. TAMI NEWHOUSE, DISTRICT COORDINATOR

313 PARK AVENUE
FISHER, MINNESOTA 56723

Phone 218-891-4105
FAX 218-891-4251

— DRIVER ACKNOWLEDGMENT —

DRUG AND ALCOHOL TESTING POLICY AND MATERIALS

I have received a copy of the Drug and Alcohol Testing Policy of Independent School District No. 600, Fisher, Minnesota and have read it in its entirety. I understand that I am subject to the provisions of Article III of the policy, entitled Drug and Alcohol Testing for Bus Drivers, because the position involves operating a commercial motor vehicle and requires a commercial driver's license.

The District's policy was provided to me:

- G Upon adoption of the policy. (employee).
- G Upon my hire. (job applicant/new employee).
- G After receipt of my conditional job offer, before any testing if my job offer is contingent upon my passing of drug and alcohol testing. (job applicant).

I also received materials concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or drug problem; and available methods of intervening when an alcohol or drug problem is suspected.

I have been advised that the Alcohol and Controlled Substances Testing Program Manager is _____ and that any questions I may have concerning the Policy should be directed to the Program Manager.

Dated: _____

Signature of Employee/Applicant

Typed or Printed Name

ATTACHMENT B

Fisher Independent School District #600

MR. DAVID R. VIK, SUPERINTENDENT/PRINCIPAL
MS. TAMI NEWHOUSE, DISTRICT COORDINATOR

313 PARK AVENUE
FISHER, MINNESOTA 56723

Phone 218-891-4105
FAX 218-891-4251

— BUS DRIVER OR DRIVER APPLICANT —
AUTHORIZATION TO RELEASE INFORMATION

Section I. To be completed by the school district, signed by the bus driver, or driver applicant, and transmitted to the previous employer:

Employee Printed or Typed Name: _____

Employee SS or ID Number: _____

I hereby authorize release of information from my Department of Transportation regulated drug and alcohol testing records by my previous employer, listed in *Section I-B*, to the employer listed in *Section I-A*. This release is in accordance with DOT Regulation 49 CFR Part 40, Section 40.25. I understand that information to be released in *Section II-A* by my previous employer, is limited to the following DOT-regulated testing items:

1. Alcohol tests with a result of 0.04 or higher;
2. Verified positive drug tests;
3. Refusals to be tested;
4. Other violations of DOT agency drug and alcohol testing regulations;
5. Information obtained from previous employers of a drug and alcohol rule violation;
6. Documentation, if any, of completion of the return-to-duty process following a rule violation.

Employee Signature: _____ Date: _____

I-A.
School District Name: _____

Address:

Phone #: _____ Fax #: _____

Designated Employer Representative:

I-B.

Previous Employer Name:

Address:

Phone #: _____

Designated Employer Representative (if known):

Section II. To be completed by the previous employer and transmitted by mail or fax to the new employer:

II-A. In the two years prior to the date of the employee's signature (in Section I), for DOT-regulated testing:

- | | | | | |
|---|-----|-----|-----|-----|
| 1. Did the employee have alcohol tests with a result of 0.04 or higher? | YES | ___ | NO | ___ |
| 2. Did the employee have verified positive drug tests? | YES | ___ | NO | ___ |
| 3. Did the employee refuse to be tested? | YES | ___ | NO | ___ |
| 4. Did the employee have other violations of DOT agency drug and alcohol testing regulations? | YES | ___ | NO | ___ |
| 5. Did a previous employer report a drug and alcohol rule violation to you? | YES | ___ | NO | ___ |
| 6. If you answered "yes" to any of the above items, did the employee complete the return-to-duty process? | N/A | ___ | YES | ___ |
| | | | NO | ___ |

NOTE: If you answered "yes" to item 5, you must provide the previous employer's report. If you answered "yes" to item 6, you must also transmit the appropriate return-to-duty documentation (e.g., SAP report(s), follow-up testing record).

II-B.

Name of person providing information in *Section II-A*: _____

Title: _____

Phone #: _____

Date: _____

ATTACHMENT C

Fisher Independent School District #600

MR. DAVID R. VIK, SUPERINTENDENT/PRINCIPAL
MS. TAMI NEWHOUSE, DISTRICT COORDINATOR

313 PARK AVENUE
FISHER, MINNESOTA 56723

Phone 218-891-4105
FAX 218-891-4251

— **BUS DRIVER OR DRIVER APPLICANT** —
REFUSAL TO SUBMIT TO TESTING

I hereby refuse to submit to drug/alcohol testing by doing the following:

- G Failing to appear for any test within a reasonable time, as determined by the school district, consistent with applicable DOT regulations, after being directed to do so;
- G Failing to remain at the testing site until the testing process is complete;
- G Failing to provide a urine specimen or an adequate amount of saliva or breath for any DOT drug or alcohol test;
- G Failing to permit the observation or monitoring of any provision of a specimen in the case of a directly observed or monitored collection in a drug test;
- G Failing to provide a sufficient breath specimen or sufficient amount of urine when directed and it has been determined that there was no adequate medical explanation for the failure;
- G Failing or declining to take a second test as directed;
- G Failing to undergo a medical examination or evaluation, as directed by the Medical Review Officer (MRO) or the Designated Employer Representative (DER);
- G Failing to cooperate with any part of the testing process (e.g., refusing to empty pockets when so directed by the collector, behaving in a confrontational way that disrupts the collection process, failing to sign the certification on the form; or
- G Having a verified adulterated or substituted test as reported by the MRO.

[An applicant who fails to appear for a preemployment test, who leaves the testing site before the preemployment testing process commences, or who does not provide a urine specimen because he or she left before it commences, is not deemed to have refused to submit to testing.]

I recognize that my refusal subjects me to the consequences specified in federal law and regulations. It also constitutes a presumption of a positive result. I further recognize that if I am an applicant, I will be disqualified from consideration for the conditionally-offered position. If I am an employee, I will not be permitted to perform safety-sensitive functions, and will be considered insubordinate and subject to disciplinary action, up to and including dismissal. If the school district offers me an opportunity to return to a DOT safety-sensitive function, I understand I will be evaluated by a substance abuse professional, and will be required to submit to a return-to-duty test prior to being considered for reassignment to safety-sensitive functions.

Date: _____

Time: _____

Signature of Employee/Applicant

Supervisor: _____

Supervisor's Signature

Comments: _____

G Employee refusal to sign

Supervisor's Initials: _____

ATTACHMENT D

Fisher Independent School District #600

MR. DAVID R. VIK, SUPERINTENDENT/PRINCIPAL
MS. TAMI NEWHOUSE, DISTRICT COORDINATOR

313 PARK AVENUE
FISHER, MINNESOTA 56723

Phone 218-891-4105
FAX 218-891-4251

— PRETEST NOTICE —

I the undersigned employee/job applicant of Independent School District No. 600, Fisher, Minnesota ("School District") do hereby acknowledge that I have been provided a copy of the School District's Drug and Alcohol Testing Policy.

Date: _____

Signature of Employee/Job Applicant

Typed or Printed Name

ATTACHMENT E

Fisher Independent School District #600

MR. DAVID R. VIK, SUPERINTENDENT/PRINCIPAL
MS. TAMI NEWHOUSE, DISTRICT COORDINATOR

313 PARK AVENUE
FISHER, MINNESOTA 56723

Phone 218-891-4105
FAX 218-891-4251

[Employee Name]
[Employee Address]

RE: Drug and/or Alcohol Test
[Date of Testing]

NOTICE OF TEST RESULTS AND VARIOUS RIGHTS

Test Results:

Independent School District No. 600, Fisher, Minnesota has received the test result report from the testing laboratory:

- G Your initial screening test result was negative.
- G Your confirmatory test result was negative.
- G Your confirmatory test result was positive.

Test Result Report:

You have the right to request and receive from the school district a copy of the test result on any drug or alcohol test.

Right to Explain Positive Test Result:

In the case of a positive test result on a confirmatory test, you have the right to explain the results. You may, within three (3) working days after notice of a positive test result on a confirmatory test, submit information to the school district, in addition to any information already submitted, to explain that result. Attached to this Notice is a document entitled "Explanation of Positive Test Result" for this purpose.

Right to Request Confirmatory Retests:

In the case of a positive test result on a confirmatory test, you have the right to request a confirmatory retest of the original sample at your own expense.

Within five (5) working days after notice of the confirmatory test result, you must notify the school district in writing of your intention to obtain a confirmatory retest.

Within three (3) working days after receipt of the notice, the school district shall notify the original testing laboratory that you have requested the laboratory to conduct the confirmatory retest or to transfer the sample to another laboratory licensed under Minn. Stat. § 181.953, Subd. 1 to conduct the confirmatory retest. The original testing laboratory shall ensure that appropriate chain-of-custody procedures are followed during transfer of the sample to the other laboratory. The confirmatory retest must use the same drug or alcohol threshold detection levels as used in the original confirmatory test. If the confirmatory retest does not confirm the original positive test result, no adverse personnel action based on the original confirmatory test may be taken against you.

Other Rights:

In the case of a positive test result on a confirmatory test, you may have other rights provided under the sections detailed below.

A. Employee Discharge and Discipline

1. The school district may not discharge, discipline, discriminate against, request or require rehabilitation of an employee whose position does not require a commercial driver's license on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test.

In the case of a positive test result on a confirmatory test, the employee shall be subject to discipline which includes, but is not limited to, immediate suspension without pay and immediate discharge, pursuant to the provisions of this policy.

2. The school district may not discharge an employee whose position does not require a commercial driver's license for whom a positive test result on a confirmatory test was the first such result for the employee on a drug or alcohol test requested by the school district, unless the following conditions have been met:
 - a. The school district has first given the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the school district after consultation with a certified chemical use counselor or a physician trained in the diagnosis and treatment of chemical dependency; and
 - b. The employee has either refused to participate in the counseling or rehabilitation program or has failed to successfully complete the program, as evidenced by

withdrawal from the program before its completion or by a positive test result on a confirmatory test after completion of the program.

3. Notwithstanding Paragraph 1., the school district may temporarily suspend the tested employee or transfer that employee to another position at the same rate of pay pending the outcome of the confirmatory test and, if requested, the confirmatory retest, provided the school district believes that it is reasonably necessary to protect the health or safety of the employee, co-employees or the public. An employee who has been suspended without pay must be reinstated with back pay if the outcome of the confirmatory test or requested confirmatory retest is negative.
4. The school district may not discharge, discipline, discriminate against, request, or require rehabilitation of an employee on the basis of medical history information revealed to the school district, unless the employee was under an affirmative duty to provide the information before, upon, or after hire.
5. An employee must be given access to information in the employee's personnel file relating to positive test result reports and other information acquired in the drug and alcohol testing process and conclusions drawn from and actions taken based on the reports or other acquired information.

B. Withdrawal of Applicant's Job Offer

If a job applicant for a position that does not require a commercial driver's license has received a job offer made contingent on the applicant passing drug and alcohol testing, the school district may not withdraw the offer based on a positive test result from an initial screening test that has not been verified by a confirmatory test. In the case of a positive test result on a confirmatory test, the school district may withdraw the job offer.

Fisher Independent School District #600

MR. DAVID R. VIK, SUPERINTENDENT/PRINCIPAL
MS. TAMI NEWHOUSE, DISTRICT COORDINATOR

313 PARK AVENUE
FISHER, MINNESOTA 56723

Phone 218-891-4105
FAX 218-891-4251

EXPLANATION OF POSITIVE TEST RESULT

I the undersigned employee/job applicant of Independent School District No. 600, Fisher, Minnesota acknowledge receipt of a Notice of Test Results and Various Rights. This includes my right to explain the positive test result on a confirmatory test.

I am currently taking or have recently taken:

- G no over-the-counter or prescription medications; or
- G the following over-the-counter or prescription medications:

I also offer the following information relevant to the reliability of, or explanation for, a positive test result:

Date: _____

Signature of Employee/Job Applicant

Typed or Printed Name

ATTACHMENT G

Fisher Independent School District #600

MR. DAVID R. VIK, SUPERINTENDENT/PRINCIPAL
MS. TAMI NEWHOUSE, DISTRICT COORDINATOR

313 PARK AVENUE
FISHER, MINNESOTA 56723

Phone 218-891-4105
FAX 218-891-4251

— ACKNOWLEDGMENT —

DRUG AND ALCOHOL TESTING POLICY

I have received a copy of the Drug and Alcohol Testing Policy of Independent School District No. 600, Fisher, Minnesota and have read it in its entirety.

The District's policy was provided to me:

- G Upon adoption of the policy. (employee).
- G Upon my hire. (job applicant/new employee).
- G After receipt of my conditional job offer, before any testing if my job offer is contingent upon my passing of drug and alcohol testing. (job applicant).

Dated: _____

Signature of Employee/Applicant

Typed or Printed Name

417 CHEMICAL USE AND ABUSE

I. PURPOSE

The school board recognizes that chemical use and abuse constitutes a grave threat to the physical and mental well-being of students and employees and significantly impedes the learning process. Chemical use and abuse also creates significant problems for society in general. The school board believes that the public school has a role in education, intervention, and prevention of chemical use and abuse. The purpose of this policy is to assist the school district in its goal to prevent chemical use and abuse by providing procedures for education and intervention.

II. GENERAL STATEMENT OF POLICY

- A. Use of controlled substances, medical cannabis, toxic substances, and alcohol is prohibited in the school setting in accordance with school district policies with respect to a Drug-Free Workplace/Drug-Free School.
- B. The policy of this school district is to provide an instructional program in every elementary and secondary school in chemical abuse and the prevention of chemical dependency.
- C. The school district shall establish and maintain in every school a chemical abuse preassessment team. The team is responsible for addressing reports of chemical abuse problems and making recommendations for appropriate responses to the individual reported cases.
- D. The superintendent, with the advice of the school board, shall be responsible for establishing a school and community advisory team to address chemical abuse problems in the district.
- E. The school district shall establish and maintain a program to educate and assist employees, students and others in understanding this policy and the goals of achieving drug-free schools and workplaces.

III. DEFINITIONS

- A. "Chemical abuse" means use of any psychoactive or mood-altering chemical substance, without compelling medical reason, in a manner that induces mental, emotional, or physical impairment and causes socially dysfunctional or socially disordering behavior, to the extent that the student's normal function in academic, school, or social activities is chronically impaired.
- B. "Chemicals" includes, but is not limited to, alcohol, toxic substances, medical cannabis, and controlled substances as defined in the school district's Drug-Free Workplace/Drug-Free School policy.
- C. "Use" includes to sell, buy, manufacture, distribute, dispense, use, or be under the influence of alcohol and/or controlled substances, whether or not for the purpose of receiving remuneration.
- D. "School location" includes any school building or on any school premises; on any school-owned vehicle or in any other school-approved vehicle used to transport students to and from school or school activities; off-school property at any school-sponsored or school-approved activity, event, or function, such as a field trip or athletic event, where students are under the jurisdiction of the school district; or during any period of time such employee is supervising students on behalf of the school district or otherwise engaged in school district business.

IV. STUDENTS

- A. Instruction
 - 1. Every school shall provide an instructional program in chemical abuse and the prevention of chemical dependency. The school district may involve parents, students, health care professionals, state department staff, and members of the community in developing the curriculum.

2. Each school shall have age-appropriate and developmentally based activities that:
 - a. address the consequences of violence and the illegal use of drugs, as appropriate;
 - b. promote a sense of individual responsibility;
 - c. teach students that most people do not illegally use drugs;
 - d. teach students to recognize social and peer pressure to use drugs illegally and the skills for resisting illegal drug use;
 - e. teach students about the dangers of emerging drugs;
 - f. engage students in the learning process; and
 - g. incorporate activities in secondary schools that reinforce prevention activities implemented in elementary schools.
3. Each school shall have activities that involve families, community sectors (which may include appropriately trained seniors), and a variety of drug and violence prevention providers in setting clear expectations against violence and illegal use of drugs and appropriate consequences for violence and illegal use of drugs.
4. Each school shall disseminate drug and violence prevention information within the school and to the community.
5. Each school shall have professional development and training for, and involvement of, school personnel, student services personnel, parents, and interested community members in prevention, education, early identification and intervention, mentoring, or rehabilitation referral, as related to drug and violence prevention.
6. Each school shall have drug and violence prevention activities that may include the following:
 - a. Community-wide planning and organizing activities to reduce violence and illegal drug use, which may include gang activity prevention.
 - b. The hiring and mandatory training, based on scientific research, of school security personnel who interact with students in support of youth drug and violence prevention activities under this policy that are implemented in the school.
 - c. Conflict resolution programs, including peer mediation programs that educate and train peer mediators and a designated faculty supervisor, and youth anti-crime and anti-drug councils and activities.
 - d. Counseling, mentoring, referral services, and other student assistance practices and programs, including assistance provided by qualified school-based mental health services providers and the training of teachers by school-based mental health services providers in appropriate identification and intervention techniques for students at risk of violent behavior and illegal use of drugs.
 - e. Programs that encourage students to seek advice from, and to confide in, a trusted adult regarding concerns about violence and illegal drug use.

B. Reports of Chemical Use and Abuse

1. In the event that a school district employee knows that a student is abusing, possessing, transferring, distributing, or selling chemicals in a school location:
 - a. The employee shall immediately either take the student to an administrator or notify an appropriate administrator of the observation and continue to observe the student until the administrator arrives.
 - b. The administrator will notify the student's parents. If there is a medical emergency, the administrator will notify the school nurse and/or outside medical personnel as appropriate.
 - c. The administrator will notify law enforcement officials, the student's counselor, and the chemical preassessment team.
 - d. The administrator and/or law enforcement officials will confiscate the chemicals and/or conduct a search of the student's person, effects, locker, vehicle, or areas within the student's control. Searches by school district officials shall be in accordance with school board policies regarding search and seizure.

- e. The school district will take appropriate disciplinary action in compliance with the student discipline code. Such discipline may include immediate suspension, initiation of expulsion proceedings, and/or referral to a detoxification center or medical center.
 - 2. If a school district employee has reason to believe that a student is abusing, possessing, transferring, distributing, or selling chemicals:
 - a. The employee shall notify the building administrator or a member of the preassessment team and shall describe the basis for the suspicion. The building administrator and/or team will determine what action should be taken. Action may include conducting an investigation, gathering data, scheduling a conference with the student or parents, or providing a meeting between a single member of the team and the student to discuss the behaviors that have been reported and attempting to ascertain facts regarding chemical abuse.
 - b. The team may determine there is no chemical abuse. If the team determines there is chemical abuse, the team will select an appropriate course of action, which may include referral to a school counselor; referral to a treatment program; referral for screening, assessment, and treatment planning; participation in support groups; or other appropriate measures.
 - 3. Students involved in the abuse, possession, transfer, distribution, or sale of chemicals shall be suspended in compliance with the student discipline policy and the Pupil Fair Dismissal Act, Minn. Stat. § 121A.40-121A.56, and proposed for expulsion.
 - 4. Searches by school district officials in connection with the abuse, possession, transfer, distribution, or sale of chemicals will be conducted in accordance with school board policies related to search and seizure.
- C. Preassessment Team
- 1. Every school shall have a chemical abuse preassessment team designated by the superintendent or designee. The team will be composed of classroom teachers, administrators, and other appropriate professional staff to the extent they exist in each school, such as the school nurse, school counselor or psychologist, social worker, chemical abuse specialist, or others.
 - 2. The team is responsible for addressing reports of chemical abuse problems and making recommendations for appropriate responses to the individual reported cases.
 - 3. Within forty-five (45) days after receiving an individual reported case, the team shall make a determination whether to provide the student and, in the case of a minor, the student's parents with information about school and community services in connection with chemical abuse.
- D. Data Practices
- 1. Student data may be disclosed without consent in health and safety emergencies pursuant to Minn. Stat. § 13.32 and applicable federal law and regulations.
 - 2. Destruction of Records
 - a. If the preassessment team decides not to provide a student and, in the case of a minor, the student's parents with information about school or community services in connection with chemical abuse, records created or maintained by the team about the student shall be destroyed not later than six (6) months after the determination is made.
 - b. If the team decides to provide the student and, in the case of a minor or a dependent student, the student's parents with such information, records created or maintained by the team about the student shall be destroyed not later than six (6) months after the student is no longer enrolled in the district.
 - c. This section shall govern destruction of records notwithstanding provisions of the Records Management Act, Minn. Stat. § 138.163.
- E. Consent
- Any minor may give effective consent for medical, mental, and other health services to determine the presence of or to treat conditions associated with alcohol and other drug abuse, and the consent of no other person is required.

- F. School and Community Advisory Team
1. The superintendent, with the advice of the school board, shall establish a school and community advisory team to address chemical abuse problems. The advisory team will be composed of representatives from the school preassessment teams to the extent possible, law enforcement agencies, county attorney's office, social service agencies, chemical abuse treatment programs, parents, and the business community.
 2. The advisory team shall:
 - a. build awareness of the problem within the community, identify available treatment and counseling programs for students, and develop good working relationships and enhance communication between the schools and other community agencies; and
 - b. develop a written procedure clarifying the notification process to be used by the chemical abuse preassessment team when a student is believed to be in possession of or under the influence of alcohol or a controlled substance. The procedure must include contact with the student and the student's parents or guardian in the case of a minor student.

V. EMPLOYEES

- A. The superintendent or designee shall undertake and maintain a drug-free awareness and prevention program to inform employees, students, and others about:
 1. The dangers and health risks of chemical abuse in the workplace/school.
 2. The school district's drug-free workplace/drug-free school policy.
 3. Any available drug or alcohol counseling, treatment, rehabilitation, re-entry, and/or assistance programs available to employees and/or students.
 4. The penalties that may be imposed on employees for drug abuse violations.
- B. The superintendent or designee shall notify any federal granting agency required to be notified under the Drug-Free Workplace Act within ten (10) days after receiving notice of a conviction of an employee for a criminal drug statute violation occurring in the workplace. To facilitate the giving of such notice, any employee aware of such a conviction shall report the same to the superintendent.

Legal References:

- Minn. Stat. § 13.32 (Educational Data)
- Minn. Stat. § 121A.25-121A.29 (Chemical Abuse)
- Minn. Stat. § 121A.40-121A.56 (Pupil Fair Dismissal Act)
- Minn. Stat. § 138.163 (Records Management Act)
- Minn. Stat. § 144.343 (Pregnancy, Venereal Disease, Alcohol or Drug Abuse, Abortion)
- Minn. Stat. § 152.22 (Medical Cannabis; Definitions)
- Minn. Stat. § 152.23 (Medical Cannabis; Limitations)
- 20 U.S.C. § 1232g (Family Educational Rights and Privacy Act)
- 20 U.S.C. §§ 7101-7165 (Safe and Drug-Free Schools and Communities Act)
- 41 U.S.C. §§ 8101-8106 (Drug-Free Workplace Act)
- 34 C.F.R. Part 84 (Government-wide Requirements for Drug-Free Workplace)

Cross References:

- Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)
- Policy 416 (Drug and Alcohol Testing)
- Policy 418 (Drug-Free Workplace/Drug Free School)
- Policy 502 (Search of Student Lockers, Desks, Personal Possessions, and Student's Person)
- Policy 506 (Student Discipline)
- Policy 515 (Protection and Privacy of Pupil Records)
- Policy 527 (Student Use and Parking of Motor Vehicles; Patrols, Inspections, and Searches)

418 DRUG-FREE WORKPLACE/DRUG-FREE SCHOOL

I. PURPOSE

The purpose of this policy is to maintain a safe and healthful environment for employees and students by prohibiting the use of alcohol, toxic substances, medical cannabis, and controlled substances without a physician's prescription.

II. GENERAL STATEMENT OF POLICY

- A. Use or possession of controlled substances, toxic substances, medical cannabis, and alcohol before, during, or after school hours, at school or in any other school location, is prohibited as general policy. Paraphernalia associated with controlled substances is prohibited.
- B. A violation of this policy occurs when any student, teacher, administrator, other school district personnel, or member of the public uses or possesses alcohol, toxic substances, controlled substances, or medical cannabis in any school location.
- C. The school district will act to enforce this policy and to discipline or take appropriate action against any student, teacher, administrator, school personnel, or member of the public who violates this policy.

III. DEFINITIONS

- A. "Alcohol" includes any alcoholic beverage, malt beverage, fortified wine, or other intoxicating liquor.
- B. "Controlled substances" include narcotic drugs, hallucinogenic drugs, amphetamines, barbiturates, marijuana, anabolic steroids, or any other controlled substance as defined in Schedules I through V of the Controlled Substances Act, 21 U.S.C. § 812, including analogues and look-alike drugs.
- C. "Medical cannabis" means any species of the genus cannabis plant, or any mixture or preparation of them, including whole plant extracts and resins, and is delivered in the form of: (1) liquid, including, but not limited to, oil; (2) pill; (3) vaporized delivery method with use of liquid or oil but which does not require the use of dried leaves or plant form; or (4) any other method, excluding smoking, approved by the commissioner.
- D. "Toxic substances" includes glue, cement, aerosol paint, or other substances used or possessed with the intent of inducing intoxication or excitement of the central nervous system.
- E. "Use" includes to sell, buy, manufacture, distribute, dispense, possess, use, or be under the influence of alcohol and/or controlled substances, whether or not for the purpose of receiving remuneration or consideration.
- F. "Possess" means to have on one's person, in one's effects, or in an area subject to one's control.
- G. "School location" includes any school building or on any school premises; in any school-owned vehicle or in any other school-approved vehicle used to transport students to and from school or school activities; off school property at any school-sponsored or school-approved activity, event, or function, such as a field trip or athletic event, where students are under the jurisdiction of the school district; or during any period of time such employee is supervising students on behalf of the school district or otherwise engaged in school district business.

IV. EXCEPTIONS

- A. A violation of this policy does not occur when a person brings onto a school location, for such person's own use, a controlled substance, except medical cannabis, which has a currently accepted medical use in treatment in the United States and the person has a physician's prescription for the substance. The person shall comply with the relevant procedures of this policy.
- B. A violation of this policy does not occur when a person possesses an alcoholic beverage in a school location when the possession is within the exceptions of Minn. Stat. § 624.701, Subd. 1a (experiments in laboratories; pursuant to a temporary license to sell liquor issued under Minnesota

laws or possession after the purchase from such a temporary license holder).

V. PROCEDURES

- A. Students who have a prescription from a physician for medical treatment with a controlled substance, except medical cannabis, must comply with the school district's student medication policy.
- B. Employees who have a prescription from a physician for medical treatment with a controlled substance, except medical cannabis, are permitted to possess such controlled substance and associated necessary paraphernalia, such as an inhaler or syringe. The employee must inform his or her supervisor. The employee may be required to provide a copy of the prescription.
- C. Each employee shall be provided with written notice of this Drug-Free Workplace/Drug-Free School policy and shall be required to acknowledge that he or she has received the policy.
- D. Employees are subject to the school district's drug and alcohol testing policies and procedures.
- E. Members of the public are not permitted to possess controlled substances in a school location except with the express permission of the superintendent.
- F. No person is permitted to possess or use medical cannabis on a school bus or van; or on the grounds of any preschool or primary or secondary school; or on the grounds of any child care facility.
- G. Possession of alcohol on school grounds pursuant to the exceptions of Minn. Stat. § 624.701, Subd. 1a, shall be by permission of the school board only. The applicant shall apply for permission in writing and shall follow the school board procedures for placing an item on the agenda.

VI. ENFORCEMENT

- A. Students
 - 1. A student who violates the terms of this policy shall be subject to discipline in accordance with the school district's discipline policy. Such discipline may include suspension or expulsion from school.
 - 2. The student may be referred to a drug or alcohol assistance or rehabilitation program and/or to law enforcement officials when appropriate.
- B. Employees
 - 1. As a condition of employment in any federal grant, each employee who is engaged either directly or indirectly in performance of a federal grant shall abide by the terms of this policy and shall notify his or her supervisor in writing of his or her conviction of any criminal drug statute for a violation occurring in any of the places listed above on which work on a school district federal grant is performed, no later than five (5) calendar days after such conviction. Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes.
 - 2. An employee who violates the terms of this policy is subject to disciplinary action, including nonrenewal, suspension, termination, or discharge as deemed appropriate by the school board.
 - 3. In addition, any employee who violates the terms of this policy may be required to satisfactorily participate in a drug and/or alcohol abuse assistance or rehabilitation program approved by the school district. Any employee who fails to satisfactorily participate in and complete such a program is subject to nonrenewal, suspension, or termination as deemed appropriate by the school board.
 - 4. Sanctions against employees, including nonrenewal, suspension, termination, or discharge shall be pursuant to and in accordance with applicable statutory authority, collective bargaining agreements, and school district policies.
- C. The Public

A member of the public who violates this policy shall be informed of the policy and asked to leave. If necessary, law enforcement officials will be notified and asked to provide an escort.

Legal References:

Minn. Stat. § 121A.22 (Administration of Drugs and Medicine)
Minn. Stat. § 152.22 (Medical Cannabis; Definitions)
Minn. Stat. § 152.23 (Medical Cannabis; Limitations)
Minn. Stat. § 340A.403 (3.2 Percent Malt Liquor Licenses)
Minn. Stat. § 340A.404 (Intoxicating Liquor; On-Sale Licenses)
Minn. Stat. § 609.684 (Sale of Toxic Substances to Children; Abuse of Toxic Substances)
Minn. Stat. § 624.701 (Liquor in Certain Buildings or Grounds)
20 U.S.C. § 7101-7165 (Safe and Drug-Free Schools and Communities Act)
21 U.S.C. § 812 (Schedules of Controlled Substances)
41 U.S.C. §§ 8101-8106 (Drug-Free Workplace Act)
21 C.F.R. §§ 1308.11-1308.15 (Controlled Substances)
34 C.F.R. Part 84 (Government-wide Requirements for Drug-Free Workplace)

Cross References:

Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)
Policy 416 (Drug and Alcohol Testing)
Policy 417 (Chemical Use and Abuse)
Policy 506 (Student Discipline)
Policy 516 (Student Medication)

Fisher Independent School District #600

MR. EVAN HANSON, Superintendent
MRS. CATHERINE STEINMETZ K-12 Principal

313 Park Ave
Fisher MN 56723
Phone: 218-891-4105
Fax: 218-891-4251

— ACKNOWLEDGMENT —

DRUG-FREE WORKPLACE/DRUG-FREE SCHOOL POLICY

I have received a copy of the Drug-Free Workplace/Drug-Free School Policy of Fisher Independent School District No. 600, 313 Park Avenue, Fisher, Minnesota.

Dated: _____

Signature of Employee/Applicant

Typed or Printed Name

419 TOBACCO-FREE ENVIRONMENT

I. PURPOSE

The purpose of this policy is to maintain a learning and working environment that is tobacco free.

II. GENERAL STATEMENT OF POLICY

- A. A violation of this policy occurs when student, teacher, administrator, other school personnel of the school district, or person smokes or uses tobacco, tobacco-related devices, or electronic cigarettes in a public school. This prohibition extends to all facilities, whether owned, rented, or leased, and all vehicles that a school district owns, leases, rents, contracts for, or controls. In addition, this prohibition includes vehicles used, in whole or in part, for work purposes, during hours of school operation, if more than one person is present. This prohibition includes all school district property and all off-campus events sponsored by the school district.
- B. A violation of this policy occurs when any elementary school, middle school, or secondary school student to possesses any type of tobacco or tobacco-related device, or electronic cigarette in a public school. This prohibition extends to all facilities, whether owned, rented, or leased, and all vehicles that a school district owns, leases, rents, contracts for, or controls and includes vehicles used, in whole or in part, for work purposes, during hours of school operation, if more than one person is present. This prohibition includes all school district property and all off-campus events sponsored by the school district.
- C. The school district will act to enforce this policy and to discipline or take appropriate action against any student, teacher, administrator, school personnel, or person who is found to have violated this policy.
- D. The school district will not solicit or accept any contributions or gifts of money, curricula, materials, or equipment from companies that directly manufacture and are identified with tobacco products, devices, or electronic cigarettes. The 419-2 school district will not promote or allow promotion of tobacco products or e-cigarettes on school property or at school-sponsored events.

III. TOBACCO AND TOBACCO RELATED DEVICES DEFINED

- A. "Electronic cigarette" means any oral device that provides a vapor of liquid nicotine, lobelia, and/or other similar substance, and the use or inhalation of which simulates smoking. The term shall include any such devices, whether they are manufactured, distributed, marketed, or sold as e-cigarettes, e-cigars, e-pipes, or under another product name or descriptor.
- B. "Tobacco" means cigarettes and any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product; cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco.
- C. "Tobacco-related devices" means cigarette papers or pipes for smoking.
- D. "Smoking" means inhaling smoke from any lighted cigar, cigarette, pipe, or any other lighted tobacco or plant product. Smoking also includes carrying a lighted cigar, cigarette, pipe, or any other lighted tobacco or plant product intended for inhalation.

IV. EXCEPTIONS

- A. A violation of this policy does not occur when an Indian adult lights tobacco on school district property as a part of a traditional Indian spiritual or cultural ceremony. An Indian is a person who is a member of an Indian tribe as defined under Minnesota law.

- B. A violation of this policy does not occur when an adult nonstudent possesses a tobacco or nicotine product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

V. ENFORCEMENT

- A. All individuals on school premises shall adhere to this policy.
- B. Students who violate this tobacco-free policy shall be subject to school district discipline procedures.
- C. School district administrators and other school personnel who violate this tobacco-free policy shall be subject to school district discipline procedures.
- D. School district action taken for violation of this policy will be consistent with requirements of applicable collective bargaining agreements, Minnesota or federal law, and school district policies.
- E. Persons who violate this tobacco-free policy may be referred to the building administration or other school district supervisory personnel responsible for the area or program at which the violation occurred.
- F. School administrators may call the local law enforcement agency to assist with enforcement of this policy. Smoking or use of any tobacco product in a public school is a violation of the Minnesota Clean Indoor Air Act and/or the Freedom to Breathe Act of 2007 and is a petty misdemeanor. A court injunction may be instituted against a repeated violator.
- G. No persons shall be discharged, refused to be hired, penalized, discriminated against, or in any manner retaliated against for exercising any right to a smoke-free environment provided by the Freedom to Breathe Act of 2007 or other law.

VI. DISSEMINATION OF POLICY

- A. This policy shall appear in the student handbook.
- B. The school district will develop a method of discussing this policy with students and employees.

Legal References: Minn. Stat. §§ 144.411-144.417 (Minnesota Clean Indoor Air Act)
Minn. Stat. § 609.685 (Sale of Tobacco to Children)
2007 Minn. Laws Ch. 82 (Freedom to Breathe Act of 2007)

Cross References: Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)
Policy 506 (Student Discipline)
MSBA Service Manual, Chapter 2, Students; Rights, Responsibilities and Behavior

420 STUDENTS AND EMPLOYEES WITH SEXUALLY TRANSMITTED INFECTIONS AND DISEASES AND CERTAIN OTHER COMMUNICABLE DISEASES AND INFECTIOUS CONDITIONS

I. PURPOSE

Public concern that students and staff of the school district be able to attend the schools of the district without becoming infected with serious communicable or infectious diseases, including but not limited to, Human Immunodeficiency Virus (HIV), Acquired Immunodeficiency Syndrome (AIDS), Hepatitis B, and Tuberculosis, requires that the school board adopt measures effectively responding to health concerns while respecting the rights of all students, employees, and contractors, including those who are so infected. The purpose of this policy is to adopt such measures.

II. GENERAL STATEMENT OF POLICY

A. Students

It is the policy of the school board that students with communicable diseases not be excluded from attending school in their usual daily attendance setting so long as their health permits and their attendance does not create a significant risk of the transmission of illness to students or employees of the school district. A procedure for minimizing interruptions to learning resulting from communicable diseases will be established by the school district in its IEP and Section 504 team process, if applicable, and in consultation with community health and private health care providers. Procedures for the inclusion of students with communicable diseases will include any applicable educational team planning processes, including the review of the educational implications for the student and others with whom the student comes into contact.

B. Employees

It is the policy of the school board that employees with communicable diseases not be excluded from attending to their customary employment so long as they are physically, mentally and emotionally able to safely perform tasks assigned to them and so long as their employment does not create a significant risk of the transmission of illness to students, employees, or others in the school district. If a reasonable accommodation will eliminate the significant risk of transmission, such accommodation will be undertaken unless it poses an undue hardship to the school district.

C. Circumstances and Conditions

1. Determinations of whether a contagious individual's school attendance or job performance creates a significant risk of the transmission of the illness to students or employees of the school district will be made on a case by case basis. Such decisions will be based upon the nature of the risk (how it is transmitted), the duration of the risk (how long the carrier is infectious), the severity of the risk (what is the potential harm to third parties) and the probabilities the disease will be transmitted and will cause varying degrees of harm. When a student is disabled, such a determination will be made in consultation with the educational planning team.
2. The school board recognizes that some students and some employees, because of special circumstances and conditions, may pose greater risks for the transmission of infectious conditions than other persons infected with the same illness. Examples include students who display biting behavior, students or employees who are unable to control their bodily fluids, who have oozing skin lesions or who have severe disorders which result in spontaneous external bleeding. These conditions need to be taken into account and considered in assessing the risk of transmission of the disease and the resulting effect upon the educational program of the student or employment of the employee by consulting with the Commissioner of Health, the physician of the student or employee, and the parent(s)/guardian(s) of the student.

- D. Students with Special Circumstances and Conditions
The school (title), along with the infected individual's physician, the infected individual or parent(s)/guardian(s), and others, if appropriate, will weigh risks and benefits to the student and to others, consider the least restrictive appropriate educational placement, and arrange for periodic reevaluation as deemed necessary by the state epidemiologist. The risks to the student shall be determined by the student's physician.
- E. Extracurricular Student Participation
Student participation in nonacademic, extracurricular and non-educational programs of the school district are subject to a requirement of equal access and comparable services.
- F. Precautions
The school district will develop routine procedures for infection control at school and for educating employees about these procedures. The procedures shall be developed through cooperation with health professionals taking into consideration any guidelines of the Minnesota Department of Education and the Minnesota Department of Health. (These precautionary procedures shall be consistent with the school district's procedures regarding blood-borne pathogens developed pursuant to the school district's employee right to know policy.)
- G. Information Sharing
 1. Employee and student health information shall be shared within the school district only with those whose jobs require such information and with those who have a legitimate educational interest (including health and safety) in such information and shall be shared only to the extent required to accomplish legitimate educational goals and to comply with employees' right to know requirements.
 2. Employee and student health data shall be shared outside the school district only in accordance with state and federal law and with the school district's policies on employee and student records and data.
- H. Reporting
If a medical condition of student or staff threatens public health, it must be reported to the Commissioner of Health.
- I. Prevention
The school district shall, with the assistance of the Commissioners of Health and Education, implement a program to prevent and reduce the risk of sexually transmitted diseases in accordance with Minn. Stat. § 121A.23 which includes:
 1. planning materials, guidelines, and other technically accurate and updated information;
 2. a comprehensive, developmentally appropriate, technically accurate, and updated curriculum that includes helping students to abstain from sexual activity until marriage;
 3. cooperation and coordination among school districts and Service Cooperatives;
 4. a targeting of adolescents, especially those who may be at high risk of contracting sexually transmitted diseases and infections, for prevention efforts;
 5. involvement of parents and other community members;
 6. in-service training for district staff and school board members;
 7. collaboration with state agencies and organizations having a sexually transmitted infection and disease prevention or sexually transmitted infection and disease risk reduction program;
 8. collaboration with local community health services, agencies and organizations having a sexually transmitted infection and disease risk reduction program; and
 9. participation by state and local student organizations.
 10. The program must be consistent with the health and wellness curriculum.
 11. The school district may accept funds for sexually transmitted infection and disease prevention programs developed and implemented under this section from public and private sources including public health funds and foundations, department professional development funds, federal block grants or other federal or state grants.
- J. Vaccination and Screening
The school district will develop procedures regarding the administration of Hepatitis B vaccinations and Tuberculosis screenings in keeping with current state and federal law.

Legal References:

Minn. Stat. § 121A.23 (Health-Related Programs)
Minn. Stat. Ch. 363A (Minnesota Human Rights Act)
Minn. Stat. § 144.441-442 (Tuberculosis)
20 U.S.C. § 1400 *et seq.* (Individuals with Disabilities Education Improvement Act of 2004)
29 U.S.C. § 794 *et seq.* (Rehabilitation Act of 1973, § 504)
42 U.S.C. § 12101 *et seq.* (Americans with Disabilities Act)
Kohl by Kohl v. Woodhaven Learning Center, 865 F.2d 930 (8th Cir.), *cert. denied*, 493 U.S. 892, 110 S.Ct. 239 (1989)
School Board of Nassau County, Fla. v. Arline, 480 U.S. 273, 107 S.Ct. 1123 (1987)
16 EHLR 712, OCR Staff Memo, April 5, 1990

Cross References:

Policy 402 (Disability Nondiscrimination)
Policy 407 (Employee Right to Know – Exposure to Hazardous Substances)
Policy 521 (Student Disability Nondiscrimination)

Revised: _____

421 GIFTS TO EMPLOYEES

I. PURPOSE

The purpose of this policy is to avoid the appearance of impropriety or the appearance of a conflict of interest with respect to gifts given to school district employees.

II. GENERAL STATEMENT OF POLICY

- A. The school district recognizes that students, parents, and others may wish to show appreciation to school district employees. It is the policy of the school district, however, to discourage gift-giving to employees, and to encourage donors instead to write letters and notes of appreciation or to give small tokens of gratitude as memorabilia.
- B. It shall be a violation of this policy for any employee to solicit, accept, or receive either by direct or indirect means, a gift from a student, parent, or other individual or organization of greater than nominal value.
- C. It shall be a violation of this policy for any employee to solicit, accept, or receive a gift from a person or entity doing business with or seeking to do business with the school district. Employees may accept items of insignificant value of a promotional or public relations nature. The superintendent has discretion to determine what value is "insignificant."
- D. Teachers may accept from publishers free samples of textbooks and related teaching materials.
- E. This policy applies only to gifts given to employees where the donor's relationship with the employee arises out of the employee's employment with the school district. It does not apply to gifts given to employees by personal friends, family members, other employees, or others unconnected to the employee's employment with the school district.

III. DEFINITION

"Gift" means money, real or personal property, a service, a loan, a forbearance or forgiveness of indebtedness, or a promise of future employment, that is given without something of equal or greater value being received in return.

IV. PROCEDURES

Any employee considering the acceptance of a gift shall confer with the administration for guidance related to the interpretation and application of this policy.

V. VIOLATIONS

Employees who violate the provisions of this policy may be subject to discipline, which may include reprimand, suspension, and/or termination or discharge.

Legal References: Minn. Stat. § 10A.07 (Conflicts of Interest)
Minn. Stat. § 10A.071 (Prohibition of Gifts)
Minn. Stat. § 15.43 (Acceptance of Advantage by State Employee; Penalty)
Minn. Stat. § 471.895 (Certain Gifts by Interested Persons Prohibited)

Cross References: Policy 209 (Code of Ethics)
Policy 210 (Conflict of Interest – School Board Members)
Policy 306 (Administrator Code of Ethics)

Revised: _____

422 POLICIES INCORPORATED BY REFERENCE

PURPOSE

Certain policies as contained in this policy reference manual are applicable to employees as well as to students. In order to avoid undue duplication, the school district provides notice by this section of the application and incorporation by reference of the following policies which also apply to employees:

- 102 Equal Educational Opportunity
- 103 Complaints – Students, Employees, Parents, Other Persons
- 206 Public Participation in School Board Meetings/Complaints about Persons at School Board Meetings and Data Privacy Considerations
- 211 Criminal or Civil Action Against School District, School Board Member, Employee, or Student
- 305 Policy Implementation
- 505 Distribution of Nonschool-Sponsored Materials on School Premises by Students and Employees
- 507 Corporal Punishment
- 510 Student Activities
- 511 Student Fundraising
- 517 Student Recruiting
- 518 DNR-DNI Orders
- 519 Interviews of Students by Outside Agencies
- 524 Internet Acceptable Use and Safety Policy
- 525 Violence Prevention
- 610 Field Trips
- 710 Extracurricular Transportation
- 802 Disposition of Obsolete Equipment and Material

Employees are charged with notice that the above cited policies are also applicable to employees; however, employees are also on notice that the provisions of the various policies speak for themselves and may be applicable although not specifically listed above.

Legal References:

Cross References:

Revised: _____

423 EMPLOYEE-STUDENT RELATIONSHIPS

I. PURPOSE

The school district is committed to an educational environment in which all students are treated with respect and dignity. Every school district employee is to provide students with appropriate guidance, understanding, and direction while maintaining a standard of professionalism and acting within accepted standards of conduct.

II. GENERAL STATEMENT OF POLICY

- A. This policy applies to all school district employees at all times, whether on or off duty and on or off of school district locations.
- B. At all times, students will be treated by teachers and other school district employees with respect, courtesy, and consideration and in a professional manner. Each school district employee is expected to exercise good judgment and professionalism in all interpersonal relationships with students. Such relationships must be and remain on a teacher-student basis or an employee-student basis.
- C. Teachers must be mindful of their inherent positions of authority and influence over students. Similarly, other school district employees also may hold positions of authority over students of the school district and must be mindful of their authority and influence over students.
- D. Sexual relationships between school district employees and students, without regard to the age of the student, are strictly forbidden and may subject the employee to criminal liability.
- E. Other actions that violate this policy include, but are not limited to, the following:
 - 1. Dating students.
 - 2. Having any interaction/activity of a sexual nature with a student.
 - 3. Committing or attempting to induce students or others to commit an illegal act or act of immoral conduct which may be harmful to others or bring discredit to the school district.
 - 4. Supplying alcohol or any illegal substance to a student, allowing a student access to such substances, or failing to take reasonable steps to prevent such access from occurring.
- F. School district employees shall, whenever possible, employ safeguards against improper relationships with students and/or claims of such improper relationships.
- G. Excessive informal and social involvement with individual students is unprofessional, is not compatible with employee-student relationships, and is inappropriate.
- H. School district employees will adhere to applicable standards of ethics and professional conduct in Minnesota law.

III. REPORTING AND INVESTIGATION

- A. Complaints and/or concerns regarding alleged violations of this policy shall be handled in accordance with MSBA/MASA Model Policy 103 (Complaints – Students, Employees, Parents, Other Persons) unless other specific complaint procedures are provided within any other policy of the school district.
- B. All employees shall cooperate with any investigation of alleged acts, conduct, or communications in violation of this policy.

IV. SCHOOL DISTRICT ACTION

Upon receipt of a report, the school district will take appropriate action. Such action may include, but is not limited to, warning, suspension, exclusion, expulsion, transfer, remediation, termination, or discharge. It also may include reporting to appropriate state or federal authorities, including the Board of Teaching or the appropriate licensing authority and appropriate agencies responsible for investigating reports of maltreatment of minors and/or vulnerable adults. School district action taken for violation of this policy will be consistent with requirements of applicable collective bargaining agreements, Minnesota and federal

law, and school district policies.

V. SCOPE OF LIABILITY

Employees are placed on notice that if an employee acts outside the performance of the duties of the position for which the employee is employed or is guilty of malfeasance, willful neglect of duty, or bad faith, the school district is not required to defend and indemnify the employee for damages in school-related litigation.

Legal References: Minn. Stat. § 13.43, Subd. 16 (School District or Charter School Disclosure of Violence or Inappropriate Sexual Contact)
Minn. Stat. § 122A.20, Subd 2 (Mandatory Reporting to Minnesota Board of Teaching)
Minn. Stat. § 122A.40, Subds. 5(b) and 13(b) (Mandatory immediate discharge of teachers with license revocations due to child or sex abuse convictions)
Minn. Stat. §§ 609.341-609.352 (Defining “intimate parts” and “position of authority” as well as detailing various sex offenses)
Minn. Stat. § 626.556 (Reporting of Maltreatment of Minors)
Minn. Stat. § 626.557 (Reporting of Maltreatment of Vulnerable Adults)
Minn. Rules Part 3512.5200 (Code of Ethics for School Administrators)
Minn. Rules Part 8700.7500 (Code of Ethics for Minnesota Teachers)

Cross References: Policy 103 (Complaints – Students, Employees, Parents, Other Persons)
Policy 211 (Criminal or Civil Action Against School District, School Board Member, Employee, or Student)
Policy 306 (Administrator Code of Ethics)
Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)
Policy 413 (Harassment and Violence)
Policy 414 (Mandated Reporting of Child Neglect or Physical or Sexual Abuse)
Policy 415 (Mandated Reporting of Maltreatment of Vulnerable Adults)
Policy 421 (Gifts to Employees)
Policy 507 (Corporal Punishment)

424 LICENSE STATUS

I. PURPOSE

The purpose of this policy is to ensure that qualified teachers are employed by the school district and to fulfill its duty to ascertain the licensure status of its teachers. A school board that employs a teacher who does not hold a valid teaching license or permit places itself at risk for a reduction in state aid. This policy does not negate a teacher's duty and responsibility to maintain a current and valid teaching license.

II. GENERAL STATEMENT OF POLICY

- A. A qualified teacher is one holding a valid license to perform the particular service for which the teacher is employed by the school district.
- B. No person shall be a qualified teacher until the school district verifies through the Minnesota education licensing system available on the Minnesota Department of Education website that the person is a qualified teacher consistent with state law.
- C. The school district has a duty to ascertain the licensure status of its teachers and ensure that the school district's teacher license files are up to date. The school district shall establish a procedure for annually reviewing its teacher license files to verify that every teacher's license is current and appropriate to the particular service for which the teacher is employed by the school district.

III. PROCEDURE

- A. The superintendent or the superintendent's designee shall establish a schedule for the annual review of teacher licenses.
- B. Where it is discovered that a teacher's license will expire within one year from the date of the annual review, the superintendent or the superintendent's designee will advise the teacher in writing of the approaching expiration and that the teacher must complete the renewal process and file the license with the superintendent prior to the expiration of the current license. However, failure to provide this notice does not relieve a teacher from his/her duty and responsibility of ensuring that his/her teaching license is valid, current and appropriate to his/her teaching assignment.
- C. If it is discovered that a teacher's license has expired, the superintendent will immediately investigate the circumstances surrounding the lack of license and will take appropriate action. The teacher shall be advised that the teacher's failure to have the license reinstated will constitute gross insubordination, inefficiency and willful neglect of duty which are grounds for immediate discharge from employment.
- D. The duty and responsibility of maintaining a current and valid teaching license appropriate to the teaching assignment as required by this policy shall remain with the teacher, notwithstanding the superintendent's failure to discover a lapsed license or license that does not support the teaching assignment. A teacher's failure to comply with this policy may be grounds for the teacher's immediate discharge from employment.

Legal References: Minn. Stat. § 122A.16 (Highly Qualified Teacher Defined)
Minn. Stat. § 122A.22 (District Verification of Teacher Licenses)
Minn. Stat. § 122A.40, Subd. 13 (Employment; Contracts; Termination – Immediate Discharge)
Minn. Stat. § 127A.42 (Reduction of Aid for Violation of Law)
Vettleson v. Special Sch. Dist. No. 1, 361 N.W.2d 425 (Minn. App. 1985)
Lucio v. School Bd. of Independent Sch. Dist. No. 625, 574 N.W.2d 737 (Minn. App. 1998)
In the Matter of the Proposed Discharge of John R. Statz (Christine D. VerPloeg), June 8, 1992, *affirmed*, 1993 WL 129639 (Minn. App. 1993)

Cross References:

427 WORKLOAD LIMITS FOR CERTAIN SPECIAL EDUCATION TEACHERS

I. PURPOSE

The purpose of this policy is to establish general parameters for determining the workload limits of special education staff who provide services to children with disabilities receiving direct special education services 60 percent or less of the instructional day.

II. DEFINITIONS

- A. Special Education Staff; Special Education Teacher
“Special education staff” and “special education teacher” both mean a teacher employed by the school district who is licensed under the rules of the Minnesota Board of Teaching to instruct children with specific disabling conditions.
- B. Direct Services
“Direct services” means special education services provided by a special education teacher when the services are related to instruction, including cooperative teaching.
- C. Indirect Services
“Indirect services” means special education services provided by a special education teacher which include ongoing progress reviews; cooperative planning; consultation; demonstration teaching; modification and adaptation of the environment, curriculum, materials, or equipment; and direct contact with children with disabilities to monitor and observe.
- D. Workload
“Workload” means a special education teacher’s total number of minutes required for all due process responsibilities, including direct and indirect services, evaluation and reevaluation time, management of individualized education programs (IEPs), travel time, parental contact, and other services required in the IEPs.

III. GENERAL STATEMENT OF POLICY

- A. Workload limits for special education teachers shall be determined by the appropriate special education administrator, in consultation with the building principal and the superintendent.
- B. In determining workload limits for special education staff, the school district shall take into consideration the following factors: student contact minutes, evaluation and reevaluation time, indirect services, management of IEPs, travel time, and other services required in the IEPs of eligible students.

IV. COLLECTIVE BARGAINING AGREEMENT UNAFFECTED

This policy shall not be construed as a reopening of negotiations between the school district and the special education teachers’ exclusive representative, nor shall it be construed to alter or limit in any way the managerial rights or other authority of the school district set forth in the Public Employers Labor Relations Act or in the collective bargaining agreement between the school district and the special education teachers’ exclusive representative.

- Legal References:** Minn. Stat. § 179A.07, Subd. 1 (Inherent Managerial Policy)
Minn. Rule 3525.0210, Subps. 14, 27, 44, and 49 (Definitions of “Direct Services,” “Indirect Services,” “Teacher,” and “Workload”)
Minn. Rule 3525.2340, Subp. 4.B. (Case Loads for School-Age Educational Service Alternatives)
- Cross References:** Policy 508 (Extended School Year for Certain Students with Individualized Education Programs)
Policy 608 (Instructional Services – Special Education)