



Adopted: August, 1996

EMID 6067Board Policy 211

Revised: December 15, 2004; February, 2008; October, 2014

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

I. PURPOSE

The purpose of this policy is to provide guidance to EMID's position, rights, and responsibilities when a civil or criminal action is pending against EMID, or an EMID Board member, employee or student participating in its integration programs.

II. GENERAL STATEMENT OF POLICY

- A. When civil or criminal actions are pending against a Board member, employee, or student, EMID may be requested or required to take action.
- B. In responding to such requests and/or requirements, EMID will take such measures as are appropriate to its primary mission of providing for the education of students in an environment that is safe for staff and students and is conducive to learning.
- C. EMID acknowledges its statutory obligations with respect to providing assistance to Board members and EMID employees who are sued in connection with performance of duties. EMID policies may also apply.

III. CIVIL ACTIONS

- A. Pursuant to Minn. Stat. § 466.07, Subd. 1, EMID shall defend and indemnify any Board member or employee for damages in program related litigation, including punitive damages, claimed or levied against the Board member or employee, provided that he or she was acting in the performance of the duties of the position and was not guilty of malfeasance, willful neglect of duty, or bad faith.
- B. Pursuant to Minn. Stat. §123B.25 (b), with respect to EMID employees, upon written request of the employee involved, EMID shall provide legal counsel for any employee against whom a claim is made or action is brought for recovery of damages in any tort action involving physical injury to any person or property or for wrongful death arising out of or in connection with the employment with EMID. EMID will choose legal counsel after consultation with the employee.
- C. Data Practices.

Educational data and personnel data maintained by EMID may be sought as evidence in a civil proceeding. EMID will release the data only pursuant to the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, and to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and related regulations. When an employee is subpoenaed and is expected to testify regarding educational data or personnel data, he or she is to inform their supervisor, who shall immediately inform the Executive Director or designee. No Board member or employee may release data without consultation in advance with the EMID official who is designated as the authority responsible for the collection, use and dissemination of data.

D. Service of Subpoenas.

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

E. Leave to Testify.

Leave for employees appearing in court, either when sued or under subpoena to testify, will be considered in accordance with EMID personnel policies.

IV. **CRIMINAL CHARGES OR CONDUCT**

A. Employees.

1. EMID expects that its employees serve as positive role models for students. As such employees have a duty to conduct themselves in an exemplary manner.
2. If EMID receives information relating to activities of a criminal nature, by an employee, EMID will investigate and take appropriate disciplinary action, which may include discharge, subject to EMID policies and statutes.
3. Pursuant to Minn. Stat. § 123B.02 Subd. 20 if reimbursement for a criminal defense is requested by an EMID employee, the EMID Board may, after consulting with its legal counsel, reimburse the employee for any costs and reasonable attorney fees incurred by the employee to defend criminal charges brought against the employee arising out of the performance of duties for EMID. The decision as to whether to reimburse shall be made in the discretion of the EMID Board. An EMID Board member who is a witness or an alleged victim in the case may not vote on the reimbursement. If a quorum of the EMID Board is disqualified from voting on the reimbursement, the reimbursement must be approved by a judge of the district court.

B. Students.

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

C. Criminal Investigations.

1. It is the policy of EMID to cooperate with law enforcement officials. EMID will make all efforts, however, to encourage law enforcement officials to question students and employees outside of program hours and off school/program premises unless there are extenuating circumstances or the matter being investigated is program related, or as otherwise provided by law.
2. If such questioning at the program site is unavoidable, EMID will attempt to maintain confidentiality, to avoid embarrassment to students and employees and to avoid disruption of the educational program. EMID will attempt to notify parents of a student under age 18 that police will be questioning their child. Normally, the Executive Director or other appropriate EMID official will be present during the interview, except as otherwise required by law (Minn. Stat. § 626.556, Subd. 10), or as otherwise determined in consultation with the parent or guardian.

D. Data Practices.

EMID will release to juvenile justice and law enforcement authorities educational and personnel data only in accordance with Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act) and 20 U.S.C. § 1232g (FERPA).

V. STATEMENTS WHEN LITIGATION IS PENDING

EMID recognizes that when a civil or criminal action is commenced or pending, parties to the lawsuit have particular duties in reference to persons involved or named in the lawsuit, as well as insurance carrier(s). Therefore, EMID Board members or employees shall make or release statements in that situation only in consultation with legal counsel.

Legal References:

Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)
Minn. Stat. § 123B.02, Subd. 20 (Legal Counsel, Reimbursement)
Minn. Stat. § 123B.02 Subd. 20 (Legal Counsel, Reimbursement)
Minn. Stat. § 123B.25(b) (Actions Against Teachers)
Minn. Stat. § 466.07, Subd. 1 (Indemnification)
20 U.S.C. § 1232g (Family Educational Rights and Privacy Act)
42 U.S.C. § 1983 (Civil Action for Depriving Rights)
Minn. Op. Atty. Gen. 169 (Mar. 7, 1963)
Minn. Op. Atty. Gen. 169 (, Nov. 3, 1943)
Dypress v. School Committee of Boston, 446 N.E.2d 1099 (Mass. App. Ct. 1983)
Wood v. Strickland, 420 U.S. 308, 95 S.Ct. 992, 43 L.Ed.2d 214 (1975)

Cross References:

EMID Policy 403 (Discipline, Suspension and Dismissal of District Employees)

EMID Policy 406 (Public and Private Personnel Data)

EMID Policy 408 (Subpoena of a District Employee)

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

EMID Policy 506 (Student Discipline)

EMID Policy 515 (Protection and Privacy of Pupil Records)