

Adopted: MSBA/MASA Model Policy 408

Revised: 2022 (Originated 1995)

408 Subpoena of a Service Cooperative Employee

I. PURPOSE

The purpose of this policy is to protect the privacy rights of BrightWorks employees 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 BrightWorks 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), Minnesota Statutes chapter 13, classifies all educational data, except for directory information as designated by the service cooperative, 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 United States Code section 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 service cooperative 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 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 executive director or designated supervisor when the employee receives the subpoena.
- B. No employee may release educational data, personnel data, or any other data of any kind without consultation in advance with the service cooperative executive director 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 service cooperative policies.
- D. The executive director 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 service cooperative or its employees to civil or criminal penalties or loss of employment, the executive director shall confer with service cooperative 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 (How These Rules Apply)
20 U.S.C. § 1232g (Family Educational Rights and Privacy Act)

Cross References: MSBA/MASA Model Policy 211 (Criminal or Civil Action Against School District, School Board Member, Employee, or Student)
MSBA/MASA Model Policy 515 (Protection and Privacy of Pupil Records)
MSBA Law Bulletin "I" (School Records – Privacy – Access to Data)