

## WORKING DRAFT – PROPOSED NEW POLICY

The Policy Committee reviewed the proposed policy at its public work session on 10/29/19.

File: KDBA

### PROCEDURES GOVERNING THE RESPONSE TO A SUBPOENA OR A SUBPOENA DUCES TECUM

#### I. Purpose

The purpose of Policy KDBA is to establish a consistent process for responding to a subpoena or a subpoena duces tecum issued to the Board of Education or Washington County Public Schools (“school system”).

#### II. Background

From time-to-time, employees of the school system are served with a subpoena to appear in court on a certain date or are served with a subpoena duces tecum to appear in court and to produce certain records on a certain date. A person who is served with a subpoena or a subpoena duces tecum must comply with the requirements set forth in the subpoena or the subpoena duces tecum unless the court excuses the person or the subpoena or subpoena duces tecum is withdrawn.

School system employees are being served with an increasing number of subpoenas or subpoena duces tecums that involve litigation between two private individuals. Often times, it is time consuming and costly to comply with a subpoena or subpoena duces tecum. On some occasions, a substitute teacher must be assigned so that an employee may attend a court proceeding. The gathering and copying of documents and the redaction of confidential information is also time consuming and costly.

The Maryland Constitution provides that the “School fund of the state shall be kept inviolate, and appropriated only to the purpose of education.” School system staff resources and school system funds are to be devoted solely to the education of students. It is not appropriate to redirect such resources to fund the litigation efforts of private individuals engaged in a private legal dispute. Such private litigants seeking the testimony of school system employees or certain records in the custody of the school system must bear the cost of complying with the provisions of a subpoena or subpoena duces tecum.

#### III. Definitions

Within the context of this policy, the following definitions apply:

- A. Applicant: A person, entity, or governmental unit requesting records or the presence of a school system employee at a legal proceeding.
- B. Custodian: The official custodian or an authorized person employed by the school system having physical custody and control of public records of the school system.
- C. Official Custodian: The person who is responsible for maintaining and keeping the public records of the school system whether or not the person has physical custody and control of the public record.
- D. Subpoena: A written order or writ directed to a person and requiring attendance at a particular time and place to take the action specified therein.
- E. Subpoena Duces Tecum: A court process compelling the production of certain specific documents and other items that are in the custody and control of the school system.

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### IV. Policy Statement/Procedures

#### A. Service of a Subpoena Duces Tecum

1. A subpoena or subpoena duces tecum shall be addressed to the custodian of the record with a courtesy copy provided to the Office of Chief Legal Counsel. If the custodian is unknown, the request may be addressed to the Office of Chief Legal Counsel, the receipt of which by the Office of Chief Legal Counsel does not constitute service of process of the subpoena or subpoena duces tecum.
2. In accordance with Maryland Rules, a good faith effort should be made to serve the subpoena or subpoena duces tecum on the custodian of the record at least five (5) days before the trial or hearing.

#### B. Reasonable Fees

1. Background – Upon the service of a subpoena duces tecum, staff is to search for, review, prepare (i.e., redact certain confidential information), and reproduce records that are the subject of the subpoena.
2. Search Time
  - a. The custodian may charge a reasonable fee for the search, review, preparation, and reproduction of a record.
  - b. A search fee at the employee's hourly rate (minus benefits) will be charged for the official's or employee's time expended searching for, reviewing, preparing (i.e., redacting certain confidential information), and reproducing the requested records. The official custodian may also charge a reasonable fee for supervising the making of a copy, printout, or photograph of a record.
  - c. In order to minimize the official's or employee's search time and the cost to the applicant, requests should be clear and concise.
3. Reproduction Fees - The fee schedule for reproducing and certifying copies of records is as follows:
  - a. The fee for each copy is 50 cents per page if reproduction is made by a photocopying machine within the school system. If records are not susceptible to photocopying (punch cards, magnetic tape, blueprints, and microfilm), the fee for copies will be based on the actual cost of reproduction.
  - b. The fee for reproduction of other formats (large documents, DVD's, CD's) will be the actual cost.
  - c. If the custodian is unable to reproduce a record within the school system, the custodian shall make arrangements for the prompt reproduction of the record at public or private facilities outside the school system and charge a reasonable coordination fee. The custodian shall either collect from the applicant a fee to cover the actual cost of reproduction or direct the applicant to pay the cost of reproduction directly to the facility making the reproduction.
  - d. If reproductions are mailed or delivered to the applicant or the court, the custodian shall charge the applicant for the cost of postage or delivery to the applicant or the court.

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4. Appearance Fee

If it is necessary for a school system staff member to appear at a court proceeding with the requested records, the school system reserves the right to charge a fee:

- a. The employee's hourly rate (minus benefits) will be charged for the employee's time.
- b. The charges will begin from the time the employee leaves his/her worksite to the time he/she returns to his/her worksite.
- c. If the school system is required to hire a substitute teacher or other substitute staff to cover the absence of an employee from the classroom, the cost of the substitute teacher or other substitute staff will also be charged to the applicant.

C. Administrative Regulation

The Superintendent is authorized to promulgate an administrative regulation to implement this policy.

Policy Adopted: \_\_\_\_\_  
Board of Education of Washington County