

Interactions with School Resource Officers and Other Law Enforcement Personnel

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Robert Butler

WASB Associate Executive Director and Staff Counsel

bbutler@wasb.org

(608)512-1703



Presentation Outline

This presentation will address the following:

- I. Cooperation with Law Enforcement Officers/Obstructing Justice**
- II. Parent Notification of Student Interviews with Outside Agency Personnel at School**
- III. School Staff Presence During Interview with Outside Agency Personnel**
- IV. Law Enforcement Officer Responsibilities Related to the Protection of Student Rights**

- V. Searches**
- VI. Information Sharing**
- VII. Release of Address of Participants in State's Address Confidentiality Program**
- VIII. Removing a Student from School**
- IX. Referral to Law Enforcement Authorities or Removal from School for Alcohol or Controlled Substances**
- X. Components of SRO Agreements**

Interaction with Law Enforcement

- ▶ General Authority to Adopt Policies/Rules:
 1. **Student Questioning at School:** School boards have broad authority under state law to do all things reasonable to promote the cause of education, which may include adopting policies to minimize the disruption to the educational process that student questioning at school may cause.
 2. **School Resource Officers**
 3. **Information Sharing**

Interaction with Law Enforcement

- ▶ According to a [Wisconsin Attorney General's opinion \[81 Op. Att'y. Gen. 126 \(1994\)\]](#), school boards have authority to adopt policies regarding how law enforcement officer interviews of students may be conducted in order to:
 - (1) minimize disruption of the student's normal school day;
 - (2) minimize disruption of the normal functioning of the school; and
 - (3) minimize the extent to which students may be distracted from their school work and classes. Although school boards have authority to adopt such policies, they cannot totally ignore the legitimate needs of law enforcement officers.

Interaction with Law Enforcement

- ▶ According to a [Wisconsin Attorney General's opinion \[81 Op. Att'y. Gen. 126 \(1994\)\]](#):
 - “The preferable course is for school boards and local law enforcement to work together to jointly develop policies that will best serve the legitimate needs of each government arm, without unnecessarily intruding on those of the other.”

Cooperation with Law Enforcement Officers/Obstructing Justice

▶ **School Request:**

- If school officials have requested the assistance of law enforcement officers in investigating student misconduct, the law enforcement officers have implied permission to interview a student during school hours and will expect the full cooperation of school officials.

▶ **Law Enforcement Request:**

- If law enforcement officers request to interview/interrogate students at school on their own initiative, however, it is advisable to have the law enforcement officer first contact the building principal or designee regarding the planned interview/interrogation.
- School officials should be aware of what is going on in the schools if they are to look out for the best interests of the students and maintain a favorable academic atmosphere.

Cooperation with Law Enforcement Officers/Obstructing Justice

- ▶ **Obstruction of Justice:** School officials should be cautious not to obstruct justice or to be uncooperative with law enforcement officials. In warrant situations, school officials must abide by conditions set forth in the warrant.
 - [Section 946.41](#) of the state statutes outlines criminal penalties for any person who knowingly resists or obstructs an officer while such officer is doing any act in an official capacity and with lawful authority.
 - [Section 946.40](#) of the state statutes outlines criminal penalties for any person who, without a reasonable excuse, refuses or fails, upon command, to aid any person known by the person to be a peace officer. This section does not apply if under the circumstances the officer was not authorized to command such assistance.

Cooperation with Law Enforcement Officers/Obstructing Justice

- ▶ **Obstruction of Justice:** School officials should be cautious not to obstruct justice or to be uncooperative with law enforcement officials. In warrant situations, school officials must abide by conditions set forth in the warrant.
 - Any building principal or designee who refuses to allow a law enforcement officer to interview/interrogate a student within the school after having been informed of the necessity to do so by the law enforcement officer should be required, as a matter of policy, to clearly state the reason(s) for objecting to the in-school interview/interrogation.
 - School boards may also want to include an opportunity in policy for the law enforcement officer to appeal to a higher administrative authority if the officer believes the approval is being unreasonably withheld by the principal or designee.

Parent Notification of Student Interviews with Outside Agency Personnel at School

- ▶ There is no legal requirement for school officials to contact parents or guardians before they or law enforcement officers question students, regardless of whether the investigation involves violations of school rules or involves criminal activity.
- ▶ School boards may choose to require parent or guardian notification of student interviews with law enforcement officers as a matter of local policy so as to allow parents or guardians an opportunity to be present during questioning when it is warranted.

Parent Notification of Student Interviews with Outside Agency Personnel at School

- ▶ School Boards may also decide that different notification requirements may be appropriate depending upon the purpose and subject matter of the interview.
- ▶ School boards should not, however, require parental consent before allowing law enforcement officer questioning to take place.
- ▶ While it is not required to have parents or any trusted adult present at the interview site, their inclusion makes it easier to demonstrate voluntariness if the statements are challenged.
- ▶ According to a Wisconsin Attorney General's opinion Wisconsin Attorney General's opinion [[Wisconsin Attorney General's opinion \[81 Op. Att'y. Gen. 126 \(1994\)\]](#)], requiring parent consent for law enforcement officer questioning is not legitimate under any circumstances.

Parent Notification of Student Interviews with Outside Agency Personnel at School

- ▶ [Section 48.981\(3\)\(c\)](#) of the state statutes permits county departments to contact, observe, or interview a child at any location, including a school, without permission from the child's parent or guardian if necessary to determine if the child is in need of protection or services.
- ▶ A Wisconsin Attorney General's opinion [[79 Op. Att'y. Gen. 49 \(1990\)](#)] provides further clarification regarding this statute. According to the Attorney General, school personnel may not require parent notification before allowing social services department staff members to question a child at school for child abuse or neglect investigation purposes.

School Staff Presence During Interview with Outside Agency Personnel

- ▶ School boards may require as a matter of local policy that a school employee or official be present during a student interview with outside agency personnel unless the student or his/her parent or guardian requests otherwise. This provides the student with a familiar presence and may make the situation less intimidating.
- ▶ School districts requiring or allowing school staff to be present during questioning should be cautious of having staff participate in the questioning or serve as the student's representative during questioning.

School Staff Presence During Interview with Outside Agency Personnel

- ▶ According to a Wisconsin Attorney General's opinion [[79 Op. Att'y. Gen. 49 \(1990\)](#)], county departments of social services investigating child abuse and neglect may in some instances properly request the cooperation of a school teacher, counselor, or other person whose presence would aid in the interview process.
- ▶ They may also, in the exercise of professional judgment and in accordance with department standards, exclude school personnel from the interview.

Law Enforcement Officer Responsibilities Related to the Protection of Student Rights

- ▶ The U.S. Constitution protects persons against compelled self-incrimination.
- ▶ Any person who is subjected to a custodial interview with a law enforcement officer regarding matters that might tend to incriminate him/her is entitled to procedural safeguards outlined in a [1966 U.S. Supreme Court decision](#), commonly referred to as a “Miranda” warning.
- ▶ This includes custodial interviews with school resource officers. Without such warning, an admission of guilt made while in custody may be excluded from a criminal proceeding.

Law Enforcement Officer Responsibilities Related to the Protection of Student Rights

- ▶ According to the [Wisconsin Department of Justice](#), law enforcement officers must provide *Miranda* warnings before questioning a person "in custody" even if the person is a juvenile.
- ▶ A person is "in custody" for purposes of *Miranda* as soon as his/her freedom of movement is curtailed to the degree associated with a formal arrest.

Law Enforcement Officer Responsibilities Related to the Protection of Student Rights

- ▶ School employees are not bound by *Miranda* and do not have to give the warning, unless they are acting as a direct agent for the police.
- ▶ If officers direct, control or involve themselves in the questioning of a juvenile in custody by using a school employee in a way likely to induce the juvenile to make an incriminating statement without the presence of counsel, then the resulting statements are subject to suppression under *Miranda*.

Law Enforcement Officer Responsibilities Related to the Protection of Student Rights

- ▶ School officials should be cautious in including statements in their district policies/procedures that require law enforcement officers to inform students of their *Miranda* rights.
- ▶ A district may be taking on potential liability if it requires law enforcement officers to take particular actions and the officers fail to take them.

Law Enforcement Officer Responsibilities Related to the Protection of Student Rights

- ▶ Law enforcement officers have certain obligations under the law and it is up to them to comply with them.
- ▶ The Wisconsin Supreme Court has held that all law enforcement officer "custodial" interviews/interrogations of juveniles for delinquent matters (matters that would be crimes if they were adults) must be recorded, either video or audio or both.
- ▶ This is true even if such interviews take place at a school.
- ▶ Once again, it is the responsibility of the law enforcement officer to comply with this requirement.

Removing a Student from School

- ▶ There are cases where outside agency personnel may ask a student to accompany them to a different location for further questioning or for protection or services.
- ▶ Schools, however, need to be able to account for the presence or absence of students during the school day.
- ▶ The district should have procedures in place to coordinate with law enforcement officers or social service agency staff concerning any student's removal from school.

Removing a Student from School

- ▶ Except when such questioning involves alleged child abuse or neglect, the outside agency personnel or school should notify the student's parent or guardian that his/her child has left school.
- ▶ When a student is arrested or taken into custody, it is the responsibility of the arresting officer or person taking the student into custody to notify the student's parents or guardians in accordance with state law.

Restraining a Student at School - Reporting

- ▶ [Wis. Stats. 118.305](#) states that “whenever seclusion or physical restraint is used on a pupil at school,” the notification and reporting requirements apply.
- ▶ According to [DPI](#): “these requirements also apply to incidents involving police officers or liaisons. However, keep in mind police officers and liaisons are not covered individuals under the Act, so other provisions do not apply. Police have their own training and protocols to respond to crisis situations.”

Searches - Involvement of Law Enforcement Officials in Conducting a Search

- ▶ The Wisconsin Supreme Court has held that school resource officers and other law enforcement officers may become involved in conducting searches on school premises at the request of and in conjunction with school authorities and in furtherance of the school's objective to maintain a safe and proper educational environment. [State v. Angelia D.B., 211 Wis. 2d 140, 564 N.W.2d 682 \(1997\)](#)
- ▶ According to [Angelia](#), supra, *"When faced with a potentially dangerous situation beyond their expertise and training, school officials must be allowed a certain degree of flexibility to seek the assistance of trained law enforcement officials without losing the protections afforded by the reasonable grounds standards."*

Searches - Involvement of Law Enforcement Officials in Conducting a Search

- ▶ When conducting a search at the request of or in conjunction with school authorities, the officers may comply with the same standards and procedures as school personnel in conducting the search as opposed to their usual ***probable cause*** standard.
- ▶ If a law enforcement officer initiates a search of a student or their belongings on their own, the ***probable cause*** standard applies.

Searches - Involvement of Law Enforcement Officials in Conducting a Search

- ▶ According to the advice of the Wisconsin Department of Justice in the [Safe Schools Legal Resource Manual](#), absent danger to the student or others, school resource officers should probably not engage in **“reasonable suspicion standard”** searches at the request of school officials for evidence of activities that merely violate school rules, but not other laws that the officers typically enforce.
- ▶ Also, absent a school board policy designating the school resource officer as an agent of the school district for purposes of locker searches, and absent any other independent authority to conduct a search, the school resource officer should not conduct a school locker search. If a school district has a policy that designates the school resource officer as someone who may conduct a locker search and lacking another justification for conducting a warrantless search, the officer should only conduct the locker search under the direction of school officials.

Searches – Reasonable Suspicion

- ▶ Students have a legitimate expectation of privacy in their persons and their possessions. According to a 1985 U.S. Supreme Court decision in [New Jersey v. T.L.O., 469 U.S. 325 \(1985\)](#), a search is considered reasonable under the Fourth Amendment of the United States Constitution if it meets two tests:
 1. There must be **reasonable grounds** to suspect the search will reveal evidence of violations of either the law or school rules.
 2. The way in which the search is conducted **must be reasonably related to the objectives of the search** and **must not be overly intrusive** in light of the age and sex of the student and nature of the infraction.

Reasonable suspicion does not mean absolute certainty. Rather, it refers to the sort of common-sense conclusion about human behavior upon which practical people are entitled to rely.

Searches – Reasonable Suspicion

- ▶ Standards and criteria developed by the Wisconsin Court of Appeals in a 1979 decision may also be helpful to school officials in determining when reasonable grounds to initiate a search are present. These standards and criteria include:
 - (a) the sex, age, history, and school record of the student to be searched;
 - (b) the prevalence and seriousness of the problem in the school to which the search is directed;
 - (c) any exigency requiring a search without delay;
 - (d) the probative value and reliability of the information used as justification for initiating the search; and
 - (e) a teacher's prior experience with the student.

Searches – Reasonable Suspicion

- ▶ Searches of a student's person or personal belongings should be conducted outside the presence of other students.
- ▶ A school official of the same gender as the student should do any physical touching of the student.
- ▶ According to the DOJ, when school officials have reasonable suspicion to believe a student has contraband or evidence of a violation in his or her jacket or other outer clothing, backpack, purse, or other bag, the student should be asked to put the object down and remove any outer clothing so that these objects can be searched without physically touching the student's person.
- ▶ The DOJ does caution against using this approach where the suspected contraband is a firearm. In such circumstances, call law enforcement.

Searches – Consent Searches

- ▶ School officials may search a student or his/her belongings with the student's consent.
- ▶ Prior to asking for consent to search, the Wisconsin Department of Justice (DOJ) recommends that school officials advise the student as to what is being sought and why it is believed that the sought-after object(s) will be in the student's belongings.
- ▶ Although the law does not require that this information be provided to the student, it will help to demonstrate that the consent is valid.

Searches – Consent Searches

- ▶ **Voluntary:** Consent must be voluntary.
- ▶ **Authority:** Person giving consent must have the authority to do so.
- ▶ **Clear:** Consent must be clear.
- ▶ **Scope of Search:** A student can only give valid consent to a search of places or things that are owned or controlled by the student.
- ▶ **Written:** Consent does not have to be in writing, but it is preferable that it be so.

Searches – Consent Searches

- ▶ In order for a consent search to be valid, **the student's consent must be voluntary, clear and unequivocal**. According to the DOJ, the question of whether consent was voluntary is determined from the totality of the circumstances. Some of the factors considered by the courts when deciding whether consent was given voluntarily include, for example:
 - whether the student was informed of the right to refuse to consent;
 - the student's age, intelligence, and physical and mental condition;
 - whether the student appeared to be under the influence of alcohol or other drugs when asked to give consent;
 - the student's prior experience with the police or school officials;
 - the presence of a trusted adult; and
 - the student's cultural background.

Searches – Consent Searches

- ▶ The courts also examine the nature and circumstances of the request for consent to search including:
 - (1) who made the request;
 - (2) whether the request was made in an inherently intimidating or coercive environment; and,
 - (3) whether physical or psychological coercive tactics were used. Under no circumstances may the person seeking consent threaten a student with punishment if the student refuses to give consent to a search.
- ▶ Consent does not have to be in writing, but it is preferable that it is, according to the DOJ.

Searches – Consent Searches

- ▶ A student can only give valid consent to a search of places or things that are owned or controlled by the student.
- ▶ Consent provides authorization to search only those places or areas where consent to search has been given. Consent to search a generalized area is a consent to search any items found in that area. A student may, however, limit the scope of the search. A refusal to consent does not give a school official reasonable suspicion to believe the student is hiding something.
- ▶ If during the course of a valid consent search contraband or evidence of a crime or violation of school rules is discovered, the object may be seized, according to the DOJ. Also, the discovery may provide reasonable grounds to conduct a search that goes beyond the scope of the consent that was given initially.

Searches – Strip Search of a Student

- ▶ School officials, employees or agents are specifically prohibited by sections [118.32](#) and [948.50](#) of the state statutes from conducting a strip search of any student.
- ▶ For law purposes, "strip search" means a search in which a person's genitals, pubic area, buttock or anus, or a female person's breast, is uncovered and either is exposed to view or is touched by a person conducting the search. These laws do not prohibit law enforcement officials from conducting a strip search in accordance with [section 968.255](#) of the state statutes.

Searches – Locker Searches

- ▶ According to [section 118.325](#) of the state statutes, a school or school district official, employee or agent may search a student's locker as determined necessary or appropriate without the consent of the student, without notifying the student, and without obtaining a search warrant if the school board has:
 - Adopted a policy specifying that the board retains ownership and possessory control of all student lockers and designating the school official, employee, or agent positions who may conduct the locker searches.
 - Distributed a copy of the policy to students enrolled in the district.

Searches – Locker Searches

- ▶ If a district does not have such a policy in place and has not distributed it to students, school officials can only search a student's locker on the basis of reasonable suspicion that a law or policy has been violated, with the consent of the student whose locker is being searched, or with a search warrant.
- ▶ While state law allows designated persons to search a student's locker under established conditions, it does not specifically address searching a student's personal belongings within the locker.
- ▶ It may be necessary for school officials to apply the reasonable suspicion standard when searching a student's personal belongings within the locker.

Searches – Vehicle Searches

- ▶ According to the Wisconsin Department of Justice, school officials may search a vehicle that is owned or operated by a student and that is parked on school grounds if:
 - (1) the school has a reasonable suspicion that there is evidence or contraband in the vehicle, or
 - (2) the student has given consent to the search of the vehicle.
- ▶ Based on court decisions, it may be appropriate for school officials to require a student to sign a consent to allow his/her vehicle to be checked or searched as a condition of being allowed to operate or park a motor vehicle on school premises.

Searches – Vehicle Searches

- ▶ School officials should not conduct a non-consensual search of a student-owned or operated vehicle that is not parked on school grounds.
- ▶ Law enforcement officers, within the restraints of the Fourth Amendment, may conduct such a search.

Searches – Point of Entry

- ▶ According to the Wisconsin Department of Justice, random inspections of student items at specific locations such as entering the building are permissible if the school has a clear policy as to this practice, clearly marks the area involved, and performs these inspections in a fair and even-handed way.

Searches – Metal Detectors

- ▶ According to the Wisconsin Department of Justice, metal detectors are considered minor intrusions and thus can be justified without reasonable suspicion or student consent.
- ▶ The use of a "wand" metal detector is more intrusive than stationary metal detection equipment and should be limited to those occasions where the school official has an articulable suspicion that the student being examined may be carrying a weapon.
- ▶ To minimize the degree of intrusion caused by the use of metal detectors, it is important for school officials to provide advance notice to students and their parents/guardians that such metal detectors are being used and to post a written warning notice conspicuously at the entrances of the school so as to provide notice to others entering the school that they will be subject to this form of inspection.

Searches – Searches Related to Personal Electronic Communication Devices/Internet Use

- ▶ There must be reasonable grounds to believe that such a search will turn up evidence that the student has violated or is violating either the law or the rules of the school, and the extent of the search must be based on the circumstances justifying the search in the first place.
- ▶ For example, according to the [Safe Schools Legal Resource Manual](#) published by the Wisconsin Department of Justice, if school officials have a reasonable suspicion that there is illegal material on a student's cell phone, it is possible that a school official's decision to search the cell phone may be justified. In such a situation, school officials may decide to solicit law enforcement assistance in this process. The school may also ask for the student's consent for the search.

Searches – Searches Related to Personal Electronic Communication Devices/Internet Use

- ▶ If a student violates a cell phone policy (e.g., the student possesses a phone at a time prohibited by policy), but it is not suspected that the student was engaging in illegal conduct or otherwise violating school rules, the DOJ advises that the prudent course is to confiscate the phone but not to search it.
- ▶ When school officials determine that a search of a student's personal electronic communication device (e.g., cell phone) is reasonably justified, it does not mean that they have the right to search any content stored on the device. **The search should be as narrow in scope as possible to avoid inappropriately interfering with a student's right to privacy in the contents of the device.** The scope of the search should be limited to those parts of the device's contents that are reasonably related to the sought-after evidence of the particular policy/rule violation or illegal conduct.

Searches – Searches Related to Personal Electronic Communication Devices/Internet Use

- ▶ [Section 995.55](#) of the state statutes outlines specific restrictions on educational institution access to personal internet accounts. For purposes of this law, “personal Internet account” means an internet-based account that is created and used by an individual exclusively for purposes of personal communications.
- ▶ Except as otherwise specifically provided by law, no school district may:
 - Request or require a student, as a condition of admission or enrollment, to disclose access information for their personal internet account or to otherwise grant access to or allow observation of that account; or

Searches – Searches Related to Personal Electronic Communication Devices/Internet Use

- ▶ [Section 995.55:](#) Except as otherwise specifically provided by law, no school district may:
 - Expel, suspend, discipline, or otherwise penalize any student for: (a) exercising the right to refuse to disclose access information for, grant access to, or allow observation of their personal Internet account; (b) opposing a practice prohibited under item 1 above; (c) filing a complaint or attempting to enforce any right under item 1 above; or (d) testifying or assisting in any action or proceeding to enforce any right under item 1 above.
 - State law does not prohibit the district from viewing, accessing, or using information about a student that can be obtained without access information or that is available in the public domain.

Searches – Searches Related to Personal Electronic Communication Devices/Internet Use

- ▶ [Section 995.55](#): Except as otherwise specifically provided by law, no school district may:
 - In addition, state law does not prohibit the school district from requesting or requiring a student to disclose access information to the district in order to gain access to or operate an electronic communication device supplied or paid for in whole or in part by the district or in order to gain access to an account or service provided by the district, obtained by virtue of the student's admission to the district, or used for educational purposes. Although this exception allows access to a laptop, Chromebook, or other electronic communication devices that the district provides to a student, a personal Internet account accessed through the device is still protected.
 - Any student who is expelled, suspended, disciplined, or otherwise penalized in violation of this law may file a complaint with the Department of Workforce Development. The DWD is required to process the complaint in the same manner as employment discrimination complaints.

Referral to Law Enforcement Authorities or Removal from School for Alcohol or Controlled Substances

- ▶ According to [section 118.257\(2\)](#) of the state statutes, a school administrator, principal, pupil services professional, or teacher employed by a school board may refer a student enrolled in the district to law enforcement authorities, or remove a student from the school premises or from participation in a school-sponsored activity, for suspicion of possession, distribution, delivery, or consumption of an alcohol beverage or a controlled substance or a controlled substance analog without liability.

Information Sharing

- ▶ School officials may be asked to disclose information regarding a student who is the subject of questioning by law enforcement officers or social service personnel.
- ▶ School officials should keep in mind provisions of the federal [Family Educational Rights and Privacy Act](#) (FERPA) and the state student records law ([section 118.125](#) of the state statutes) when making decisions regarding the disclosure of student record information.

Information Sharing

- ▶ The laws have been revised in recent years to encourage more sharing of information between schools and outside agencies, particularly in relation to student health and safety.
- ▶ In fact, [section 118.125\(2\)](#) of the state statutes now specifically authorizes the school board to adopt policies to promote the disclosure of student records and information permitted by law for purposes of school safety.

Information Sharing

- ▶ A school may only release student record information to a party outside the school system if:
 - (1) the school obtains the **consent** of a minor student's parent or guardian or the adult student, or
 - (2) the release falls under **one of the exceptions to the consent** requirement listed in state and/or federal law.

Information Sharing

- ▶ **The following are only a few examples of such exceptions:**
 - **Disclosure to an SRO:** Under certain conditions, schools are authorized to disclose student records to school resource officers (SRO). Disclosure of student records to an SRO is generally permissible if:
 - (1) a school district has individually designated one or more law enforcement officers who are assigned to the school district, and
 - (2) the district has determined that any such officer is serving as a school district official who has a legitimate educational interest (including a safety interest) in the records. [[Section 118.125\(2\)\(d\)](#) of the state statutes]

Information Sharing

- ▶ **Attendance:** A student's attendance record must be provided law enforcement if the school receives written verification from a law enforcement officer or agency that a student is being investigated for truancy, delinquency, or criminal conduct. [Section 118.125\(2\)\(cg\)](#)
- ▶ The law enforcement representative must attest that he or she will not further disclose this information except as may be permitted by [Chapter 938 of the Juvenile Justice Code](#).

Information Sharing

- ▶ **Juvenile Justice System:** A school board must disclose pertinent student records to an investigating law enforcement agency or district attorney if the person to whom the records are disclosed certifies in writing that the records concern the juvenile justice system and the system's ability to effectively serve the student, relate to an ongoing investigation or pending delinquency petition, and will not be disclosed to any other person except as authorized by law. [[Section 118.125\(2\)\(n\)2](#) of the state statutes]

Information Sharing

- ▶ **Directory Data Request & Health and Safety:** If there is a health and safety reason (accident for example), then when the accident or safety issue occurs law enforcement may request the information and the district can disclose it at that time. Please see below:

118.125(2) (p) A school board may disclose pupil records to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of any individual.

- ▶ If not, then access would be based upon your directory data policy. Based upon your local school district policy, they would only get a copy of the specific items that are designated in the directory data policy provided the parent has not opted their child out of such release.

Information Sharing

- ▶ **Health and Safety:** School districts may disclose student records to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of any individual.
 - If the district determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from student records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals.
 - In making this determination, the district may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals.

Information Sharing

- ▶ **Health and Safety:** When the district discloses student record information under this exception, the district must record the following information:
 - (1) the articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure, and
 - (2) the parties to whom the district disclosed the information. [[Section 118.125\(2\)\(p\)](#) of the state statutes and [FERPA](#)]

Information Sharing

- ▶ **Caseworker:** School districts have specific authority under [section 118.125\(2\)\(q\)](#) of the state statutes to, on request, disclose student records that are pertinent to addressing a student's educational needs to a caseworker or other representative of the Department of Children and Families, a county department of social services or human services, or a tribal organization [as defined in [25 USC 450b \(L\)](#)].

Information Sharing

- ▶ **Caseworker:** In order for a school district to disclose student records under this confidentiality exception:
 1. the applicable department or organization must be legally responsible for the care and protection of the student, and
 2. the caseworker or other representative must be authorized to access the student's case plan. School boards also have specific authority under [section 115.298\(1\)\(b\)](#) of the state statutes to enter into an optional memorandum of understanding (MOU) with any county department of social services or any qualifying tribal organization to further structure and facilitate the disclosure of student record information under [section 118.125\(2\)\(q\)](#).

Surveillance Video - [FERPA Records Request](#)

The U.S. Department of Education released a guidance letter ([Letter to Wachter, Dec. 7, 2017](#)). See also the following [FAQ on this topic from the DOE](#).

FERPA requires the District to allow an individual parent of a student who was disciplined for the incident (or the student if the student is an eligible student) to inspect and review his or her child's (or his or her) education records upon request but generally does not require the District to release copies of education records.

In providing access to the video, the District must provide the parents of a disciplined student (or the student if the student is an eligible student) with the opportunity to inspect and review the video so long as the video cannot be segregated and redacted without destroying its meaning.

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Privacy & Access

- ▶ **Common exceptions to confidentiality – disclosures to other schools - Section [118.125](#):**
 - **Law enforcement unit records** that a school district has received may be disclosed only when it relates to a juvenile and:
 - (1) the use, possession, or distribution of alcohol or a controlled substance (or its analog);
 - (2) illegal possession of a dangerous weapon; or
 - (3) commission of a state or federal crime.

Privacy & Access

- ▶ **Common exceptions to confidentiality – disclosures to other schools - Section [118.125](#):**
 - **Legitimate Educational Interests** - A school district may disclose this information only to DPI licensed employees and to other school district or private school officials who have been determined by the school board (or private school governing body) to have legitimate educational interests, including safety interests, in the information.
 - This may be established in board policy by naming the positions of the employees with legitimate educational interests (such as district administrators and building principals).

Privacy & Access

- ▶ **Common exceptions to confidentiality – disclosures to other schools - Section [118.125](#) :**
 - ***Note:** A school district **may not** use law enforcement officers' records obtained under s. 938.396 (1) (c) 3. **as the sole basis for expelling or suspending a pupil or as the sole basis for taking any other disciplinary action against a pupil**, but **may** use law enforcement officers' records obtained under s. 938.396 (1) (c) 3. **as the sole basis for taking action against a pupil under the school district's athletic code.**

Privacy & Access

- ▶ **Common exceptions to confidentiality – disclosures to other schools – Law enforcement unit records under FERPA:**
 - FERPA mirrors these state law provisions regarding law enforcement unit records, but adds the following guidance:
 - A component of an educational agency or institution does not lose its status as a law enforcement unit if it also performs other, non-law enforcement functions for the agency or institution, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceedings against the student.

Privacy & Access

- ▶ **Common exceptions to confidentiality – disclosures to other schools – Law enforcement unit records under FERPA:**
 - FERPA mirrors these state law provisions regarding law enforcement unit records, but adds the following guidance:
 - Records of a law enforcement unit does not mean—
 - (i) Records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the district other than the law enforcement unit; or
 - (ii) Records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the district.

Privacy & Access

- ▶ **Common exceptions to confidentiality – disclosures to other schools – Law enforcement unit records under FERPA:**
 - FERPA mirrors these state law provisions regarding law enforcement unit records, but adds the following guidance:
 - Nothing in the Act prohibits a district from contacting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate a possible violation of, or to enforce, any local, state, or federal law.
 - Education records, and personally identifiable information contained in education records, do not lose their status as education records and remain subject to the Act, including the disclosure provisions, while in the possession of the law enforcement unit.

Privacy & Access

- ▶ **Common exceptions to confidentiality – disclosures to other schools – Law enforcement unit records under FERPA:**
 - FERPA mirrors these state law provisions regarding law enforcement unit records, but adds the following guidance:
 - The Act neither requires nor prohibits the disclosure by an educational agency or institution of its law enforcement unit records.

Privacy & Access

- ▶ **Release of Address of Participants in State's Address Confidentiality Program:**
 - School districts are specifically prohibited under [section 165.68](#) of the state statutes from releasing the actual address of any student or other individual who is a participant in the state's address confidentiality program (the Safe at Home program).
 - Significantly, state law defines a program participant's "actual address" to mean "*the residential street address, school address, or work address, or any portion thereof, of a program participant.*"

Privacy & Access

- ▶ **Release of Address of Participants in State's Address Confidentiality Program:**
- ▶ Law enforcement officials may request a release of participant information directly from the Safe at Home program.
- ▶ Human services personnel can ask law enforcement officials to request a release of participant information from the Safe at Home program, according to the Wisconsin Department of Justice (DOJ).
- ▶ Refer to the DOJ's ["Safe at Home Guide for Schools"](#) for additional information and guidance regarding the Safe at Home program.

School Resource Offices and FERPA – Additional Resources

- The Privacy Technical Assistance Center of the U.S. Department of Education recently released a guidance document entitled [“School Resource Officers, School Law Enforcement Units, and the Family Educational Rights and Privacy Act”](#) (February 2019).
- The guidance document addresses questions about how FERPA applies to schools’ and districts’ disclosures of personally-identifiable information from student records to school security units, outside law enforcement entities, School Resource Officers (SROs), and other schools.

School Resource Officer (SRO) Agreements

- Authorizing Resolution
- Intergovernmental Agreement – [Section 66.0301](#)
- Purpose/Mission
- Municipality Responsibilities
- School District Responsibilities
- Shared Responsibilities and Communication Procedures between Municipality and School District
- School Resource Officer Duties
- Emergency Powers Unaffected
- District and Municipality Review of SRO Performance

School Resource Officer Agreements

- **Selection, Reassignment, and Replacement of SRO**
- **Records for the Program**
- **Records Access/Confidentiality**
- **Body Cameras**
- **Video Surveillance Access**
- **Weapons Storage**
- **District and Municipality Review of SRO Program**
- **Liability and Indemnification**
- **Program Costs and Allocation of Costs**
- **Term and Renewal**

Presenter Bio

Bob Butler has been a WASB staff counsel since 1990. He is also, along with attorney Barry Forbes, the Association's co-associate executive director. Bob directly represents more than 40 school districts in Wisconsin on employment, human resources and school law matters. Bob also provides membership services, including general legal information, to all school districts that are members of WASB.

He graduated from the University of Wisconsin Law School and received his undergraduate degree in industrial and labor relations from Cornell University. Bob can be contacted at:

bbutler@wasb.org

1-877-705-4422 (phone)

1-608-512-1703 (direct phone)

1-608-257-8386 (fax)



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