WISCONSIN ASSOCIATION OF SCHOOL BOARDS

"LEADERSHIP IN PUBLIC SCHOOL GOVERNANCE"

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TO: Legislative Council Special Committee on School Safety
FROM: Sheri Krause, Government Relations Specialist
DATE: October 28, 2008
RE: State Statutes Related to School Safety and Information Sharing

In September, Attorney General J.B. Van Hollen presented a series of recommendations to the committee for changes in state law to facilitate information sharing between school districts and law enforcement. The Wisconsin Association of School Boards (WASB) has reviewed the recommendations. The purpose of this memo is to:

- Identify the Attorney General's recommendations which the WASB supports;
- Outline concerns regarding two of the recommendations which the WASB may be able to support with further clarification; and
- Outline several additional recommendations, some of which were included in the original testimony submitted by the WASB.

The WASB supports the following recommendations from the Attorney General:

1. Repeal section 118.128 of state statutes and retain section 118.125 to remove the ambiguity regarding the sharing of information with law enforcement.
2. Define school liaison officers as "school officials" for the purpose of record-sharing.
3. Conform the state definition of directory data to federal law. (See additional recommendation #4 for related suggestion.)
4. Require schools to be notified of legal proceedings when a student is tried as an adult.
5. Eliminate the requirement for schools to notify students and guardians when they receive information from law enforcement.
6. Include a statement of purpose in section 118.125 of state statutes to specify that this law is not intended to be an obstacle to school safety.

The WASB may be able to support the following recommendations with further clarification:

1. Require the release of pupil records to law enforcement agencies that make a request and certify it is for juvenile justice purposes.

    - How would a law enforcement agency "certify" that the records are to be used for juvenile justice purposes?
    - Would the requirement to release pupil records also apply to students 18 years of age and older for law enforcement purposes?
    - Because this recommendation would remove school officials' discretion in sharing pupil records, the WASB believes it would be appropriate to remove school officials from any liability for pupil records released to law enforcement agencies upon their request.

2. Require schools to report to law enforcement crimes of violence or acts that constitute a felony when there are reasonable grounds to believe the crime has occurred or will occur on school grounds.

    - How would all school district employees be trained to identify crimes of violence or acts that constitute a felony to ensure they were reporting incidents accurately?
    - How would all school employees be trained to predict when a crime of violence or act that constitutes a felony will occur on school grounds?
    - What would be the liability for school districts and its employees if an incident did occur and it was not reported to law enforcement ahead of time?
    - How much time would a school district and its employees have to report an incident or predicted incident?
    - What would be the liability of a school district and its employees for incidents that occurred on school grounds, but when school was not in session?
    - What would be the liability of a school district and its employees for incidents which occurred on school district property, but not on school grounds, or when students were attending a school-sponsored event held off school district grounds?
    - Would school district employees have the discretion to discipline students based on the unique circumstances of an incident without involving law enforcement?
    - Would this requirement create unintended negative consequences by potentially bringing children into the law enforcement and juvenile justice systems at an earlier age rather than addressing some incidents solely through a school district's disciplinary process?

Additional specific statutory recommendations from the WASB:

1. Allow a Wisconsin public school board to refuse to enroll a student expelled from a school district in another state or a private school.

    - Section 120.13(1)(f) allows a Wisconsin public school board to refuse to enroll a student who is currently expelled from another school district. The state's Attorney General and State Superintendent have determined that this law only applies to students expelled from Wisconsin school districts. School boards cannot refuse to enroll a student expelled from a school district in another state or a private school *regardless* of the circumstances.

2. Clarify that county departments or state agencies that place youth in a residential care center must pay for the educational services of a student who is 18 to 21 years of age if the student has been identified as a student with disabilities and is eligible for an individualized education plan as required by state and federal law.

    - Section 115.81(4)(c) requires a county department or state agency to pay all of the residential care center costs for children and youths placed in a residential care center, including the costs of the educational services, if the child is placed in the center under court order or by the state agency. State and federal special education laws require services be provided to eligible students until the age of 21. State statutes do not address who pays for the costs of special education services for students aged 18 to 21 who have been placed in a residential care center by a county department or state agency. Thus, a court recently ruled that a school district where a residential care center is located is responsible for paying for the educational services of an adult student with an individualized education plan even though the school district had no role in the placement and the costs were paid by the entity responsible for the placement until the student reached his 18th birthday. This court ruling has the potential to cast a huge financial burden on school districts that happen to have specialized facilities within their borders.

3. Clarify that video surveillance tapes are not subject to the law requiring public records to be retained for seven years.

    - Section 19.21 requires public records to be retained for seven years. Whether this law applies to video surveillance tapes, regardless of activity or inactivity captured on the tapes, is not clear. Requiring school districts to retain all of these tapes for seven years would serve as a disincentive to school districts to monitor activities on buses, hallways, etc. with video surveillance equipment to help ensure safety.

4. Clarify that designating pupil record information as directly data does not require release of all directory data to any person under the public records law.

    - Section 118.125(2)(j) provides that directory data may be disclosed (with the exception of two provisions), but it does not require disclosure. However, the public records law may be interpreted to require disclosure of pupil directory data to any requester regardless of the requester's purpose or identity. The possibility of such required disclosure of personal information to any person looking for lists of pupils would give parents legitimate safety concerns that might cause them to refuse to permit disclosure of directory data for any purpose, even school-related purposes such as athletic programs and honor rolls.