



Sharing Information Across Systems

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November 2018



Wisconsin Department of Public Instruction
Tony Evers, PhD, State Superintendent
Madison, Wisconsin

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Student Services/Prevention and Wellness Team
Wisconsin Department of Public Instruction
125 South Webster Street
P.O. Box 7841
Madison, WI 53707-7841
(608) 266-8960

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November 2018 Wisconsin Department of Public Instruction

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Introduction

Each day professionals who serve youth attempt to work closely with their community partners to meet the needs of the youth they jointly serve. This dedication requires being able to determine when information may be disclosed without violating a youth's and family's rights to privacy by having an understanding of the various state and federal laws that govern the sharing of information.

In general, confidential information may only be shared under one of three conditions:

1. a signed authorization that consents to the release of information,
2. a court order, or
3. authorization by statute.

This publication focuses on the third of these three conditions and is designed for educators, child welfare staff, law enforcement personnel, youth justice and human service professionals, and community leaders who are interested in understanding the scope and parameters of the confidentiality laws that apply to the exchange of information between Wisconsin schools and other community systems. It identifies specific circumstances where statutes authorize one community system to share confidential information with another community system (e.g., schools, law enforcement, and human services). Some of the statutes cited allow disclosure while others require it, typically for reasons related to health or safety. Each specific circumstance includes what information may (or must) be shared and with whom, the provisions for disclosure, examples, and authorizing statutes.

The body of this guide is divided into two primary sections. The first identifies circumstances authorized in statute under which public schools may (or must) share information with other community systems. The second section identifies circumstances authorized in statute under which other community systems may (or must) share information with public schools.

Utilization of this document does not preclude the need to discuss the issues that information sharing raises. It is designed to be used as a resource to facilitate discussions within schools and with community partners. An interagency agreement or memorandum of understanding with another agency, absent statutory authority, does not enable a school to disclose education records without parental consent. Interagency agreements do not supersede the consent requirements under state and federal law.

This document can be used as a tool to guide practice, but it cannot replace personal review of the referenced statutes or the advice of legal counsel. As state and federal laws and policies change, the Department of Public Instruction (DPI) will update this publication to keep it current. The value of this document is enhanced when utilized in conjunction with local policy. Careful review can be made of existing policy to ascertain compliance with current law.

It is important to remember that when releasing confidential information the responsibility falls on the person and organization disclosing the information to justify the release, not on the person or organization asking for or receiving the information.

Note that links in the electronic version of this publication are current as of November 2018.

Questions regarding this publication can be directed to Julie Incitti, Education Consultant, School Social Work Services, at (608) 266-0963 or julie.incitti@dpi.wi.gov.

Schools Sharing Information With Other Community Systems

Information from Schools to Human Services

1. Reports of Suspected Child Abuse or Neglect

Context: Wisconsin Statutes Chapter 48 (the Children's Code) requires any mandated reporter (which includes all school district employees) who has reasonable cause to suspect that a child seen in the course of his/her professional duties has been abused or neglected or threatened with abuse or neglect to report that information to either the county department of social/human services or law enforcement. Mandated reporters must also report suspected sex trafficking of a child or youth. Additional information is available in the Department of Public Instruction (DPI) publication [The School's Role in Preventing Child Abuse and Neglect](#).

Provisions for Disclosure: The Federal Child Abuse Prevention, Adoption and Family Services Act of 1988, which amended the Child Abuse Prevention and Treatment Act (CAPTA), provides that a state must enact laws that require reporting of known and suspected instances of child abuse and neglect in order to receive grants for abuse prevention and treatment programs. This mandatory reporting may require the release of personally identifiable information from education records protected under the Family Educational Rights and Privacy Act (FERPA). The Family Policy Compliance Office (FPCO), the department tasked with enforcing FERPA, has issued guidance to reconcile the conflicts between these two federal laws. Following standards of statutory construction, the FPCO has concluded that Congress, by amending CAPTA, intended to supersede FERPA in this instance and to allow reports of child abuse and neglect, including the disclosure of personally identifiable information from education records, without parental consent. Schools should disclose only those pupil records that are necessary. The county department and law enforcement agency are prohibited from revealing the source of the report, except under very limited circumstances. Anyone who reports suspected child abuse or neglect in good faith is immune from any civil or criminal liability. Schools must keep any reports that contain the reporter's identity confidential. Reports of child abuse or neglect are not pupil records and must not be maintained in student files or transferred if a student changes schools.

Example: A teacher suspects that a child's black eye may be the result of child abuse based on the child's explanation of the injury. The teacher reports the child's injury to the county child protective services unit, including the awkwardness with which the child explained how the injury occurred. She adds that the student is highly impulsive and is prone to behavioral outbursts and that she has observed on two occasions at school the student's father became very frustrated with this behavior.

Statute(s): Wis. Stat. §§ [48.981\(2\)](#), [\(3\)\(a\)1.](#), [\(4\)](#), and [118.125\(2\)\(p\)](#); [34 C.F.R. § 99.36](#);
<https://www2.ed.gov/policy/speced/guid/idea/letters/2000-4/hoekstra102600confident.4q2000.pdf>

2. Sharing Pupil Records with County Caseworkers

Context: On request, a school board may disclose those pupil records that are pertinent to addressing a pupil's educational needs to a caseworker or other representative of the Department of Children and Families (DCF), a county social or human services department, or a tribal organization that is legally responsible for the care and protection of the pupil without written authorization from a parent or guardian if the caseworker or other representative is authorized to access the pupil's case plan. Further, a school board may enter into a memorandum of understanding with a county department or tribal organization that permits the school board to disclose information contained in pupil records in cases in which the pupil's parent or guardian, if the pupil is a minor, or the pupil, if the pupil is an adult, does not grant permission for such disclosure.

Provisions for Disclosure: An individual that receives pupil records under this statute may only redisclose those records in three cases:

- a. To a person who is engaged in addressing the pupil's educational needs, who is authorized by the department or tribal organization that has received the records.
- b. Upon request, to any court of this state or of the United States that needs to review those records or that information for the purpose of addressing the educational needs of a pupil who is the subject of a proceeding in that court.
- c. In response to an order of a court conducting certain proceedings under Chapters 48 and 938 or in response to a subpoena issued in such a proceeding, to any person who is engaged in addressing the educational needs of the pupil and

who is authorized to receive that disclosure under that order or subpoena. A department, county department, or tribal organization that is issued an order or subpoena shall provide notice of the order or subpoena to the pupil's parent or guardian before complying with the order or subpoena, except when a parent is a party to a court proceeding involving child abuse and neglect or dependency matters, and the order is issued in the context of that proceeding.

Example: A caseworker working on a case plan of a student where the county is responsible for the student's care and protection asks for a report of the student's grades, behavior, and attendance. A school staff member shares the information with the caseworker. The caseworker may then redisclose this information to the student's foster parent.

Statute(s): Wis. Stat. §§ [115.298](#) and [118.125\(2\)\(q\)](#); [20 U.S.C. §§ 1232g\(b\)\(1\)\(L\)-\(2\)](#).

3. Attendance Records for Students Under Court Supervision

Context: Youth who are under court supervision commonly have school attendance as one of the conditions of their dispositional orders. If school attendance is a condition of a child's dispositional order, the order shall specify what constitutes a violation of the condition and shall direct the school district to notify the county department that is responsible for supervising the child within 5 days after any violation of the condition by the child.

Provisions for Disclosure: This disclosure falls under the court order exception of FERPA. Under this exception, a school may disclose information to comply with a judicial order or lawfully issued subpoena. Although consent is not required under this exception, the school must make a reasonable effort to notify the parent of the order prior to disclosure. The notice requirement may be satisfied by making a reasonable effort to contact the parent upon receipt of the order and informing the parent of the school's reporting requirement. The school district must notify the county department within five days of the violation. There is no express authority to redisclose or not redisclose this information provided for in statute.

Example: A student under court supervision with the county social/human services department is required to attend school daily without absences. The student misses school for one day. The school

notifies the student's parents and the caseworker by the end of the week.

Statute(s): Wis. Stat. §§ [48.355\(2\)\(c\)](#), [118.125\(2\)\(cm\)](#), and [938.355\(2\)\(c\)](#); [20 U.S.C. § 1232g\(b\)\(1\)\(J\)\(ii\)](#); [34 C.F.R. § 99.31\(a\)\(9\)](#).

4. Indigent Children

Context: Under Wisconsin law, when a public school becomes aware of a child in the school whose parent, guardian, or other person having control, charge, or custody of the child does not have sufficient means to furnish the child with food or clothing necessary to enable the child to attend school, the school is to report the name and address of the child to the county department of social/human services. There is no uniform standard for determining indigency or “sufficient means” under this provision. School district boards may wish to adopt a policy with a standard and method of applying it uniformly.

Provisions for Disclosure: Out of courtesy to families, school boards may wish to consider having the policy require a personal notification to the parents that the school is about to give their name to county officials. If the family's indigency also prevents the family from establishing a fixed, regular, and adequate nighttime residence, then the child may qualify for services under the McKinney-Vento Homeless Assistance Act. See [5. Students without Parents or Guardians](#) for more information on the requirements of the Act.

Example: A family with few resources loses its home to a fire. They have no renter's insurance and lose everything. School staff contact the parents about the required report to the county and assures them that this notification is just to help them access services for which they may be eligible (i.e., the report is not for suspected neglect). During this conversation the school staff member asks if there is anything they could do to be helpful. Together, they work to organize a drive for donations of clothing and household items held at the school for the family.

Statute(s): Wis. Stat. § [118.17](#); [42 U.S.C. §§ 11431 et seq.](#)

5. Students without Parents or Guardians

Context: Under Wisconsin law, a public school must notify the county department of social or human services if the school becomes aware that a pupil is without a parent or guardian. This notification requirement does not apply to any pupil who has a legal custodian or is cared for by a kinship care relative, as defined in state statute.

Additionally, the McKinney-Vento Homeless Assistance Act requires school districts to identify all unaccompanied children and youth who are homeless as defined by the Act. The Act prohibits school districts from enacting any barriers to the enrollment, attendance, and academic success of such children and youth.

Provisions for Disclosure: School districts may wish to share the individual circumstances of the student (e.g., the student is or is not in a safe living environment) in order to help the county department of social/human services respond in an appropriate and timely manner. School districts and county departments of social/human services may wish to meet proactively to determine how referrals will be processed, especially with unaccompanied homeless youth, to prevent any barriers to school enrollment, attendance and academic success.

Under the McKinney-Vento Act, “unaccompanied youth,” includes homeless children or youth not in the physical custody of a parent or guardian. Guidance from the National Center for Homeless Education (NCHE), in connection with the U.S. Department of Education, stresses the importance of handling the required identification with sensitivity and respect, keeping the academic well-being and best interests of the student at the forefront. Additional advice on best practices in identification is available in the NCHE’s publication [*Confirming Eligibility for McKinney-Vento Services: Do’s and Don’ts for School Districts.*](#)

Example #1: School officials become aware that one of their middle school students is now living with a friend’s family. The student’s mother is deceased and the father has left the community and his whereabouts cannot be determined. The school contacts the parents of the student’s friend and learns that no steps have been taken to establish a legal placement. The school informs the student and the parents of the student’s friend of the notification requirement and then contacts the county department of social/human services about the student’s circumstances.

Example #2: An unaccompanied 16-year-old youth seeks to enroll in a high school. The student reports he has a few different places he “crashes” at night but does not appear to be in any immediate danger. The school district enrolls the student, consistent with the requirements in the McKinney-Vento Homeless Assistance Act. After enrolling the student, a school social worker or McKinney-Vento liaison speaks with the student to inform him of the services that might be available and to gain more information about his situation. The school social worker or liaison makes sure to avoid using terms

such as “unaccompanied” and “homeless” due to the associated stigma and informs the student that any information provided will be confidential and will only be used for the purpose of ensuring that the student receives appropriate services. The school social worker contacts the county department of social/human services about the student’s circumstances.

Statute(s): Wis. Stat. §§ [48.02\(11\)](#), [48.57\(3m\)\(a\)2.](#), [118.175](#), and [938.02\(11\)](#); [42 U.S.C. §§ 11431 et seq.](#)

6. Referral of Special Education Students Who May Require Mental Health or AODA Services

Context: State statute requires each school district to report to the appropriate county department(s), on or before August 15th, the names of children who:

- a. Reside in the school district;
- b. Are at least 16 years old;
- c. Are enrolled in or are eligible to be enrolled in a special education program;
- d. Are not expected to be enrolled in an educational program in two years; and
- e. May require alcohol or other drug or mental health services.

This referral does not in any way affect a school district’s responsibility to provide services to a student with a disability. Before filing this report, written consent must be obtained from the student’s parent or guardian, or the student if the student has reached 18 years of age. A school district may wish to consult with its respective 51.42 or 51.437 Board to help determine what local standard will be established for referral under this statute.

Provisions for Disclosure: FERPA dictates that information shared may not be based upon confidential pupil records without consent or court order. Districts must comply with both state and federal law. Accordingly, after identifying the students who fit the profile in the statute and the standard for referral, the school district must contact the parents of the students identified to obtain informed consent. The contact should explain the purpose of the statute and the advance referral.

The report to the county can only include the names of pupils for whom proper consent has been obtained. The district's written pupil confidentiality policy should be clear on this point and decisions applying the policy should be noted in the pupil's record as they occur.

If the school district's belief that a student may require alcohol or other drug services is based upon the self-disclosure of the student, there are additional confidentiality considerations. State law requires that pupil services and other staff, designated by the school board, to keep confidential information received from a pupil that indicates the pupil or another pupil is using or is experiencing problems resulting from the use of alcohol or other drugs. This law allows disclosure only with the student's written permission. See [19. Privileged Communication Related to Alcohol and Other Drug Issues](#).

Example: A school district annually convenes a work group in early August made up of administrators and special education staff to determine which students meet the standard for referral. The work group examines a current enrollment list of special education students who will be at least 16 years old as of August 15th. The list includes that names of students who qualified for special education but are not enrolled (e.g., dropouts, parents declined special education placement). The work group identifies those youth who are anticipated to not be enrolled in an educational program in two years and who meet the previously established standard for referral. A pupil services staff member from the high school contacts the parents to explain the reason for referral and informs them that no information can be shared without the parents' informed consent. A letter summarizing this same information is also delivered to the parents of the identified students. The school notes the parents' decision in the students' respective records and forwards the pupils' names as well as the parents' names only if the parents have provided written permission for disclosure to the county 51.42 or 51.437 Board agency.

Statute(s): Wis. Stat. §§ [115.812\(2\)](#) and [118.126](#).

Information from Schools to Courts

7. Reports for Dispositional Hearings

Context: State law requires school boards to coordinate and provide for continuity of educational programming for students receiving educational services as a result of being adjudicated delinquent or in need of protection and services. Specifically, a school district must provide a report to the court assigned jurisdiction over the student

that describes the student's educational status and makes recommendations for educational programming. The responsible agency, defined under Wis. Stat. §§ [48.38\(1\)\(a\)](#) or [938.38\(1\)\(a\)](#), is to submit a report to the court that includes a plan for the provision of educational services to the child, prepared after consultation with the staff of the school in which the child is enrolled or the last school in which the child was enrolled. Note: this provision does not apply to children with disabilities, as defined in Wis. Stat. § [115.76\(5\)](#).

Provisions for Disclosure: Reports from the school are to be in writing and provided to the court at least three days before the date of the student's dispositional hearing, unless the report is presented orally to the court for an educational plan under Wis. Stat. § [938.33\(1\)\(e\)](#).

Example #1: A caseworker from the county department of social services notifies an elementary school principal of an upcoming dispositional hearing for one of the school's students and delivers a court order, referencing Wis. Stat. §§ [118.125\(2\)\(g\)1](#) and [120.12\(18\)](#). The principal assigns the student's teacher and the school social worker to meet with the student's caseworker to discuss the student's educational status and recommendations for the student's educational programming. The classroom teacher reviews the student's records and gathers the student's most recent grades and standardized test scores. The school social worker prepares the report, adding in a summary of an educational evaluation completed by the school the previous year, including a recommendation for counseling within the school to support the student's educational progress during any transition to a new setting, and forwards the report to the court via the caseworker.

Example #2: A school district receives a letter from a county youth justice worker informing the district that one of its students is scheduled for a dispositional hearing and requesting an educational report under Wis. Stat. § [120.12\(18\)](#). Consistent with [34 C.F.R. § 99.38](#), the letter states that the request is to help identify appropriate educational services for the student and the information will not be redisclosed unless otherwise authorized under state law. The school counselor reviews the student's pupil records, gathers input from the student's teachers, summarizes this information, and sends the report to the youth justice worker.

Statutes: Wis. Stat. §§ [48.33\(1\)\(d\)-\(e\)](#), [48.345\(12\)](#), [48.38\(1\)\(a\)](#), [938.33\(1\)](#), [938.34\(7d\)](#), and [120.12\(18\)](#); [34 C.F.R. §§ 99.31\(a\)](#) and [99.38](#).

Information from Schools to Law Enforcement and District Attorney

8. Reports of Suspected Child Abuse or Neglect

See [1. Reports of Suspected Child Abuse and Neglect](#).

9. Reports of Threats of School Violence

Context: Wisconsin law requires all school employees who believe in good faith, that there is a serious and imminent threat to the health or safety of a student, school employee, or the public, to immediately inform a law enforcement agency of the facts and circumstances contributing to the belief. A good faith belief that a serious and imminent threat exists must be based on a threat made by an individual seen in the course of professional duties regarding violence in or targeted at a school. The report may be made either by phone or in person. Additionally, Wisconsin law requires school boards to have in effect a school safety plan that includes guidelines and procedures to address, among other incidents, threats of school violence and attacks. School staff must comply with any reporting requirements regarding threats of school violence and attacks as outlined in the school safety plan.

Provisions for Disclosure: Under FERPA and state laws, personally identifiable information may be disclosed without consent if it is necessary to protect the health or safety of the student or other individuals. Only the information needed to alleviate the health or safety emergency should be shared. Schools must keep any reports that contain the reporter's identity confidential. The law enforcement agency is prohibited from revealing the source of the report, except under very limited circumstances. Anyone who reports threats of school violence in good faith is immune from any civil or criminal liability.

Example: At the end of the school day, a student reports to one of the high school assistant principals that he overheard a conversation in which another student states the intent to kill a third student later that night. The threatening student has a history of severe, physical fights and the assistant principal believes he may be capable of carrying out this threat. The assistant principal notifies the threatened student's parents and local law enforcement authorities of the threat. He discloses to the law enforcement officer the threatening student's history of excessive violence, in order to convey the appropriate level of concern.

Statutes: Wis. Stat. §§ [118.07\(5\)](#), [118.126\(1\)\(c\)](#), and [175.32](#).

10. Attendance Records as Part of Formal Arson or Criminal Investigations

Context: Wisconsin law requires school districts to share the attendance record of any student that is the subject of an investigation for arson or for a criminal or delinquent act with a fire investigator or law enforcement officials, respectively.

FERPA does not contain a specific exception to its general consent requirements that permits this disclosure without written parental authorization. However, FERPA would permit an educational agency or institution to disclose personally identifiable information from a student's education records if it determines that there is an articulable and significant threat to the health and safety of a student or other individuals and the recipient of the records needs the information to protect the health and safety of the student or others. Additionally, this information may be disclosed in order to comply with a court order.

Provisions for Disclosure: Prior to disclosure of the attendance record, the law enforcement official or fire investigator must certify in writing that the student is under investigation and that the information will not be further disclosed unless specifically allowed by law. The school district must notify the parents or legal guardian of the disclosure as soon as is practicable after the disclosure.

Example: A police officer is investigating a daytime assault and wants to know if one of the suspects was in school that day. Due to particulars of the situation, this student is considered an ongoing threat to the community. The police officer provides the school with written notification of the student's suspected involvement in the investigation. The school office staff checks the attendance record and provides the police officer with a written copy of the student's attendance record. The school staff telephones the student's mother to notify her of the release of information and the purpose.

Statute(s): Wis. Stat. §§ [118.125\(2\)\(cg\)-\(ch\)](#), and [938.396\(1\)\(d\)](#).

11. Referral of Information Related to Crimes Committed by Students with Disabilities to Law Enforcement and Judicial Authorities

Context: Neither federal nor state pupil records law require a school district to provide otherwise confidential pupil record information to a law enforcement agency when a pupil commits a crime. However, the Individuals with Disabilities Education Act (IDEA) regulations state that if a school district chooses to report a crime committed by a child with a disability to law enforcement, the school district must send copies of the special education and disciplinary records of the child for consideration by the law enforcement agency receiving the report, to the extent allowed under FERPA.

Provisions for Disclosure: School districts may not unilaterally share the special education and discipline records of a pupil with a disability who is suspected of committing a crime with law enforcement agencies. In order to comply with IDEA regulations, the school must contact the parents and obtain informed consent prior to releasing these records. Absent such consent, a court order, or another applicable exception, no information other than directory data may be disclosed.

Example: A high school student with a disability is found in possession of illicit drugs and is suspected of having intent to deliver. The school reports this to the police-school liaison and he arrests the child. The principal contacts the student's parents and notifies them of the incident and the federal requirement to share copies of the student's special education and discipline records with law enforcement, but only if the parent consents. After consulting with an attorney, the student's mother comes to school and signs the appropriate release form to have part of her child's special education records released. Specifically, she consents to have the portion of the record released which documents the student's immaturity, poor impulse control, and lack of understanding of the relationship between personal actions and consequences. The student's mother does not give the school permission to share any other records, including discipline records.

Statute(s): Wis. Stat. §§ [118.125\(2\)\(c\)](#), [\(e\)](#), [\(j\)](#), and [\(L\)](#), [938.396\(1\)\(c\)-\(d\)](#), and [938.78\(2\)\(b\)2.](#); [34 C.F.R. Part 99](#); [34 C.F.R. § 300.535](#).

12. Pupil Records of Students Being Prosecuted or Evaluated for Sexually Violent Crimes

Context: Wisconsin law requires school districts to share pupil records, upon request, with authorized representatives of the Department of Corrections (DOC), the Department of Health Services (DHS), the Department of Justice (DOJ), or the county district attorney for use in the prosecution of any proceeding or any evaluation conducted under Ch. 980 related to violent sexual offenses, if the pupil records involve or relate to an individual who is the subject of the proceeding or evaluation. However, this disclosure is not specifically authorized in FERPA.

Provisions for Disclosure: Disclosure of pupil records of a student who is being prosecuted or evaluated in relation to a violent sexual offense are not specifically authorized under federal law. However, both federal and state law authorize the disclosure of pupil records to protect the health and safety of any individual in an emergency. See [22. Health and Safety Emergencies](#). If there is no health or safety emergency, the information may only be disclosed without obtaining consent if such disclosure is required by court order or subpoena. If neither the health and safety emergency nor the judicial order or lawfully issued subpoena exceptions apply, the school must obtain consent prior to disclosing the requested records.

Example: The principal is notified by the local police department that a student was arrested for a violent sexual assault. The incident did not occur on school grounds or during a school-sponsored activity and the student is not subject to discipline under school district policy. The county district attorney's office contacts the school and requests the student's discipline records. The school administration meets to discuss the request and determines that, due to the severity of the alleged sexual assault and the student's release on bail pending the court proceeding, the student presents a serious and imminent threat to the safety of both students and adults in the school. The principal directs school staff to copy and share the student's discipline records, including a history of sexual harassment in the school, with the county district attorney's office.

Statute(s): Wis. Stat. § [118.125\(2\)\(ck\)](#); [34 C.F.R. §§ 99.31](#) and [99.36](#).

13. Pupil Records to Law Enforcement

Context #1: Wisconsin law requires a school district to make pupil records available to a law enforcement officer who is individually designated by the school board and assigned to the school district (commonly referred to as a “police-school liaison officer” or a “school resource officer”), if the officer has legitimate educational interests, including safety interests, in those pupil records. Similarly, FERPA allows a school district to disclose information from a student’s education records to school officials with legitimate educational interests. A police-school liaison officer or school resource officer permitted to view pupil records may be considered a school official under FERPA if the individual:

- a. Performs a service or function for which the school district would otherwise use employees;
- b. Is under the direct control of the school district with respect to the use and maintenance of education records;
- c. Agrees the information will not be redisclosed to any other party without the prior consent of the parent or adult student; and
- d. Agrees the information will be used only for the purposes for which the disclosure was made.

School districts may wish to include language in the contract or memorandum of understanding with the law enforcement agency that specifically addresses how information from pupil records shared with a law enforcement officer assigned to the school district may be used and the limitations regarding disclosure.

Provisions for Disclosure: The law enforcement officer designated by the school board may not redisclose the information except as otherwise authorized by statute. Specifically, FERPA requires prior consent of the parent or adult student for the information to be redisclosed, including to any individuals in the officer’s law enforcement agency.

Example: The middle school assistant principal contacts the police-school liaison officer and shares that a student has been bullying other students, including that the two most recent incidents resulted in one-day and three-day suspensions. The assistant principal asks the police-school liaison officer to talk to the student and his parents about what charges could be brought against the student, if the bullying behavior continues.

Statute(s): Wis. Stat. § [118.125\(2\)\(d\)](#); [34 C.F.R. §§ 99.31\(a\)\(1\)\(B\)](#) and [99.33\(a\)](#).

Context #2: Wisconsin law requires a school board to disclose pertinent pupil 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 1) concern the youth justice system and the system's ability to effectively serve the student, 2) relate to an ongoing investigation or pending delinquency petition, and 3) will not be disclosed to any other person except as otherwise authorized by law.

Provisions for Disclosure: Neither the Wisconsin statute nor FERPA provides a definition for the phrase, "effectively serve the student." However, the U.S. Department of Education and the U.S. Department of Justice jointly published a report on FERPA and participation in youth justice programs in which the departments provide the following guidance:

The Secretary of Education believes that each school, working in conjunction with State and local authorities, can best determine whether a release of personally identifiable information from an education record 'concerns the juvenile justice system's ability to effectively serve a student prior to adjudication.' Thus, FERPA gives schools flexibility in determining whether an education record of a juvenile may be released without the prior written consent of the parent.

Given this guidance, and the flexibility provided, school officials should establish procedures for determining which pupil records may be pertinent when a request is filed. This may be done on a case by case basis or school districts and law enforcement agencies may choose to meet proactively to discuss what types of pupil records (e.g., discipline, behavioral interventions) are generally pertinent to various investigations (e.g., drug possession, theft, battery) and what information is necessary to serve students under this exception. This statute does not authorize disclosure of information on students being investigated as adults.

Example: A local police officer contacts the high school principal about a student at the high school who is under investigation for battery. The police officer brings a written request for pertinent pupil records that states the records 1) concern the youth justice system and the system's ability to effectively serve the student, 2) relate to an ongoing investigation or pending delinquency petition, and 3) will

not be disclosed to any other person except as otherwise authorized by law. The high school principal has the assistant principal review the student's pupil records. Information found to be pertinent is 1) the student's history of fighting in school since middle school, and 2) reports that document the student's limited impulse and anger control.

Statute(s): Wis. Stat. § [118.125\(2\)\(n\)2.](#); [34 C.F.R. §§ 99.31](#) and [99.38](#).

Information from School-Based Health Care Providers to Others

14. Patient Health Care Records

Context: To the extent that performance of their duties requires access to the records, Wisconsin law allows both community- and school-based health care professionals to release information from patient health care records without informed consent if any of the following is applicable:

- a. The person is rendering assistance to the student.
- b. The person is being consulted regarding the health of the student.
- c. The life or health of the student appears to be in danger and the information contained in the patient health care records may aid the person in rendering assistance.
- d. The person prepares or stores health care records, for the purposes of the preparation or storage of those records.

Additionally, patient health care records may be released under a court order or if the information is needed to comply with a requirement in federal or state law, including specific duties relating to identification, evaluation, placement, and provision of a free appropriate public education (FAPE) to a child with a disability.

Health care providers are defined in Wis. Stat. § [146.81\(1\)](#). A school counselor, school social worker, or school psychologist holding only a DPI license does not meet the statutory definition of a health care provider.

Provisions for Disclosure: In order to limit access and avoid unnecessary or unlawful disclosure, best practice may be to store these files separately from pupil progress and behavioral records. Redisclosure is not authorized except under specific circumstances

cited in Wis. Stat. §§ [146.82\(2\)\(c\)](#) and [\(cm\)](#). For each release of patient health care records, the health care provider is to record the name of the person and agency to which the records were released, the date and time of the release, and the identification of the records released.

Example #1: An ambulance is called to school following a serious accident. The school nurse informs the emergency medical technician the injured student has a history of epilepsy and asthma.

Example #2: A school nurse seeks out and receives clinical consultation from a pediatric neurologist regarding symptoms being exhibited by a medically fragile student with a past history of seizures.

Statute(s): Wis. Stat. §§ [146.82\(2\)\(a\)2](#), [3](#), and [12](#).

Information from Schools to Public Health Officials

15. Lead Screening Records

Context: Wisconsin law requires that any person screening a child under six (6) years of age for lead exposure and any nurse or health officer who has verified information of an individual with a positive lead test, regardless of the person's age, shall report the findings to public health officials for the purposes of carrying out the activities in Wis. Stat. §§ [254.11-254.178](#). These activities include school-based programs serving children under 6 years of age, including kindergarten, special education and related services for children with disabilities, as defined in Wis. Stat. § [115.76\(5\)](#), and other early childhood programs. Results of lead screenings are progress records and may include the student's name, address, date of birth, and a positive or negative result. FERPA and Wis. Stat. § [118.125](#) do not permit this unauthorized disclosure. Unless such disclosure is in connection with a health or safety emergency or is required to comply with a court order, consent must be obtained prior to disclosure.

Provisions for Disclosure: There are no express provisions regarding redisclosure of this information provided for in statute. Any additional health-related information regarding the lead screening results would be considered a patient health care record and remain confidential.

Example: A school completes an annual lead screening for all entering kindergarten students and determines a child tested positive for lead. The school nurse obtains written parental consent and reports the child's name and the positive test result within 48 hours to the local health department.

Statute(s): Wis. Stat. § [118.125\(2\)\(hm\)](#).

16. Immunization Records

Context: Wisconsin law requires schools to release information from immunization records, upon request, to DHS to determine if students have been immunized consistent with Wis. Stat. § [252.04](#). However, the FPCO has issued guidance stating that such disclosures are not permitted under FERPA.

Provisions for Disclosure: The name of the student, immunizations(s) and date(s) given, and whether the student has a waiver of immunization are all part of a student's progress records and subject to release under the noted statutes. Because such disclosures are not explicitly stated as an exception under FERPA and the FPCO has issued guidance stating that such disclosures are not permitted, if a school receives a request from DHS for immunization records, the school must notify parents or eligible students and receive written permission to disclose the information. A relevant exception under FERPA applies to health and safety emergencies. See [22. Health and Safety Emergencies](#). These records may also be released to comply with a court order. There is no express authority to redisclose this information provided for in statute. Expanded information about the reason for a medical waiver and communication among health care providers regarding immunization status is part of the student's patient health care record and is subject to the restrictions of Wis. Stat. § [146.82](#).

Example: DHS conducts a random audit of immunization compliance and requests the school district's immunization records. The school determines that no exceptions to consent apply and parental consent is required to release the information. The school sends a notice to students' parents and upon receipt of parental consent, shares those student immunization records for which disclosure has been authorized with DHS.

Statute(s): Wis. Stat. §§ [118.125\(2\)\(h\)](#) and [252.04](#).

17. Communicable Disease Records

Context: Any person licensed under Wis. Stat. Chs. 441 or 448 must report the suspicion of a communicable disease, including the individual's name, sex, age, residence, and the disease in question to the local health officer.

Provisions for Disclosure: Reports and records of communicable disease must be treated as patient health care records and are confidential. See [14. Patient Health Care Records](#). Such records may be disclosed without consent if the disclosure is in connection with a health or safety emergency or is required to comply with a court order. The health or safety emergency exception does not permit the disclosure of personally identifiable information from education records due to general public health concerns.

Example: A school district shares pupil record information with DHS, without written consent, following the death of six students from unknown causes that occurred within a five month period.

Statute(s): Wis. Stat. §§ [118.125\(2\)\(h\)](#) and [\(p\)](#), [252.04](#), and [252.05\(1\)](#); [34 C.F.R. §§ 99.31](#) and [99.36](#).

Information from Schools to Others

18. Directory Information

Context: FERPA and Wisconsin state law permit the disclosure of directory information if the school has given public notice to parents and eligible students. Directory information may include the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, photographs, degrees and awards received and the name of the school most recently attended by the student. Please note that "dates of attendance" refers to the period of time over which a student was enrolled in a school, not the specific days that a student attended school or was absent from school, which is a progress record. Within its local policy, a school district may limit what it chooses to classify as directory data, beyond the statutory definition. The public notice requirement may be satisfied through publication in various sources including newsletters, student handbooks, or letters to parents and eligible students. Additionally, the school could include the directory information notification as part of the general notification of rights under FERPA.

Provisions for Disclosure: The school district may not release directory data without having first:

- a. Notified the parent as to what information it has designated as directory data for the student, and

- b. Allowing the parent at least 14 days to notify the school district the information may not be released without the parent's prior consent.

There is no provision on the disclosure by these various public agencies under this section, but each agency may be limited by restrictions on confidentiality in its own statutes and policies. FERPA requires a record be kept by the school district of all disclosures.

For safety concerns, it is recommended that Safe at Home participants opt-out of any type of school directory. Please work with Safe at Home participants to identify any directories or public listings that your district publishes. A Safe at Home participant's actual address may not be listed in a school directory.

Example: A school district routinely notifies all parents at the beginning of each school year of 1) what school records it has designated as directory information and 2) the school district's authority to disclose this information upon request unless the parent notifies the school district within 14 days not to disclose the information without prior consent. The local police officer requests photographs of three students under investigation for a series of daytime robberies in the neighborhood. The school checks to make sure none of the parents of the three students notified the school not to share this information prior to giving the photographs to the police officer.

Statute(s): Wis. Stat. §§ [118.125\(1\)\(b\)](#) and [\(2\)\(j\)](#); [34 C.F.R. § 99.37](#).

19. Privileged Communication Related to Alcohol and Other Drug Issues

Context: Wisconsin law prohibits a school psychologist, counselor, social worker, nurse, or any teacher or administrator who is designated by the school board to engage in alcohol and other drug abuse program activities from sharing information received from a student that the student or another student is using or experiencing problems resulting from the use of alcohol or other drugs.

Provisions for Disclosure: This information may be disclosed if:

- The student consents in writing;
- There is a reason to believe there is serious and imminent danger to the health, safety, or life of any person; or

- The information is required to be reported as suspected child abuse or neglect.

In order to disclose information related to serious and imminent danger, the disclosure must be necessary to alleviate the danger. Only that information that is necessary to alleviate the danger may be disclosed. It is not specified in statute with whom this information may be shared, but it is presumably only those people who have the ability or authority to alleviate the danger.

Example: Through the course of counseling, a school counselor learns that a student regularly drinks to intoxication and serves as a “chauffeur” for her circle of friends while she is in that state. The school counselor later learns at the end of the school day on a Friday that this group plans to engage in this activity that night. The counselor makes the decision to contact the parents of the students so they can take steps to prevent their children from driving drunk or riding with a drinking driver.

Statute(s): Wis. Stat. § [118.126](#).

20. Privileged Communication Related to Health Care Services

Context: An exception to Wisconsin law that requires licensed school staff to report suspected cases of child abuse and neglect (i.e., sexual intercourse or sexual contact involving a child) is intended to allow children to obtain confidential health care services. A physician, as defined under Wis. Stat. § [448.01\(5\)](#), a physician assistant, as defined under Wis. Stat. § [448.01\(6\)](#), or a nurse holding a certificate of registration under Wis. Stat. § [441.06\(1\)](#) or a license under Wis. Stat. § [441.10](#) who provides any health care service to a child is not required to report as suspected or threatened abuse, sexual intercourse, or sexual contact involving a child. In addition, any person who obtains information about a child who is receiving or has received health care services from a health care provider is also not required to report as suspected or threatened abuse, sexual intercourse, or sexual contact involving a child.

Provisions for Disclosure: Sexual intercourse or sexual contact involving a child *must still be reported* as suspected or threatened abuse by a health care provider or any person required to report under Wisconsin law who obtains information about a child who is receiving or has received health care services if any of the following circumstances may be true:

- The sexual activity occurred or is likely to occur with a caregiver.

- The child is incapable of understanding the consequences of his or her actions or the nature of sexual contact or sexual intercourse; this lack of understanding may be due to mental illness or deficiency, age, or immaturity.
- The child was not able to communicate unwillingness during the sexual intercourse or contact.
- The other participant in the sexual contact was or is exploiting the child.
- The health care provider (or person who has obtained information about a child who is receiving or has received health care services) has some doubt as to the voluntariness of the child's participation in the sexual intercourse or contact.

Example #1: A high school sophomore, age 15, asks the school nurse if a symptom she is experiencing might be from a sexually transmitted disease. The girl states that she and her 16-year-old boyfriend willingly had intercourse. The nurse provides information and referral to a health department clinic, documents the visit in the student's patient health care record, but does not report the information further.

Example #2: A high school sophomore, age 15, approaches the school social worker because she just received a positive pregnancy test result from a medical clinic. The student states she and her 20-year-old boyfriend are in love and are going to get married. Even though the student has accessed health care services, the school social worker informs the student of the need to report to the county child protective services unit because of the possibility of exploitation or manipulation by a sexual partner who is significantly older than her.

Statute(s): Wis. Stat. §§ [48.981\(2\)](#), [\(2m\)](#), and [\(3\)\(a\)1](#).

Note: The circumstances under which a mandated reporter must or must not report a sexually active adolescent for possible sexual abuse are complex. More information may be obtained from [Reporting Requirements for Sexually Active Adolescents](#).

21. **Armed Forces Recruiter and Institution of Higher Education Access to Students and Student Recruiting Information**

Context: The federal Every Student Succeeds Act (ESSA) requires schools receiving assistance through ESSA to provide access to secondary school students' names, addresses, and telephone listings

upon request from military recruiters or an institution of higher education. Military recruiters must be provided the same access to students (e.g., career days, recruiting) as is provided to post-secondary educational institutions or to students' prospective employers.

Provisions for Disclosure: A secondary school student or the parent of a secondary school student may request that the student's name, address, and telephone listing not be released without prior written consent. The student or parent makes such a request, the school must comply.

Example: A high school includes in its student handbook a summary of the requirement that the school disclose students' names, addresses, and telephone listings upon request to military recruiters and representatives from institutions of higher education, unless the student or the student's parent notifies the school not to share this information. The student handbook is given to all students and their parents at the beginning of each school year.

Statute(s): [20 U.S.C. § 7908](#).

22. Health and Safety Emergencies

Context: Federal and state law allow a school district to disclose pupil records to appropriate parties in connection with a health or safety emergency if knowledge of the information is necessary to protect the health or safety of any individual.

Provisions for Disclosure: The health or safety emergency provision in FERPA must be construed narrowly. The statute provides that, in making a determination of whether an emergency exists, the school may take into account the totality of the circumstances pertaining to the threat to the health or safety of a student or other individuals. If the school determines that there is an articulable and significant threat to the health or safety of any student or other individuals, the school may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. Federal law states that if, based upon the information available at the time of the determination, there is a rational basis for the determination, the U.S. Department of Education will not substitute its judgment for that of the school in evaluating the situation and making its determination. "Appropriate parties" is limited to those parties whose knowledge of the information is necessary to provide immediate protection of the health and safety of the student or other individuals. Only that

information from pupil records that is necessary to protect the health and safety of the student or other individuals may be disclosed.

Example #1: A high school student passes out in a hallway during passing time. A supervising teacher calls the principal and school nurse for immediate assistance. The student is breathing but unresponsive. The principal calls an ambulance and a teacher calls the student's parents. The school nurse discloses to the emergency responders the student's name and contact information, parent information, and preferred hospital (as indicated on the student's emergency medical card). The nurse further shares that the student has diabetes and gives information on the student's insulin injections.

Example #2: There is an outbreak of measles in an elementary school. The county public health department contacts the school principal and requests the names and contact information of all students who have not been immunized for measles. The principal meets with the school nurse and they consult with the school district's medical advisor and they collaboratively determine the situation is emergent. The principal has the school's health assistant prepare a list of the students who have not been immunized for measles and their contact information to share with the county public health department.

Statute(s): Wis. Stat. § [118.125\(2\)\(p\)](#); [34 C.F.R. §§ 99.31](#) and [99.36](#).

23. Disclosure of Pupil Records to Provide Services

Context: A school district may disclose pupil records to a city attorney, corporation counsel, county social services agency, child welfare or youth justice intake worker, court of record, municipal court, private school, or another school district, if:

- a. The school district has entered into an interagency agreement;
- b. The organization or individual requesting the pupil records is a party to that interagency agreement;
- c. The purpose of the request concerns the youth justice system and its ability to effectively provide services to a youth before adjudication; and
- d. The requesting party certifies in writing that the records will not be redisclosed to anyone except as otherwise authorized by law.

Provisions for Disclosure: The interagency agreement must be signed by the authorized representatives of any school district(s) and

agencies that are party to that agreement. Under this provision, pupil records may be shared with a representative of the youth justice system prior to a youth being adjudicated delinquent or in need of protection or services, but not afterwards. See [13. Pupil Records to Law Enforcement](#) for information regarding the meaning of “effectively serve the student.” Consent is required for any post-adjudication disclosures unless disclosure is otherwise authorized by statute. Disclosure is not authorized by this statute for students being investigated as adults.

Example: A student has been arrested for shoplifting at a local department store. The municipal court contacts the school’s assistant principal to discuss her educational and behavioral performance in school as part of determining the student’s suitability for a community services diversion program. The school and the court have an interagency agreement in place, and the court specifies in writing that the purpose of the request concerns the youth justice system and its ability to effectively provide services before adjudication. The court puts in writing that the records will not be redisclosed to anyone except as otherwise authorized by law.

Statute(s): Wis. Stat. § [118.125\(2\)\(n\)1](#).

24. Disclosure of Pupil Records for Scholarships

Context: A school may disclose pupil record information without written authorization if the disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to:

- a. Determine eligibility for the aid;
- b. Determine the amount of the aid;
- c. Determine the conditions for the aid; or
- d. Enforce the terms and conditions of the aid.

Provisions for Disclosure: Unless an exception applies, a party receiving a student’s financial aid information may not redisclose the information to another party without prior consent of the parent or eligible student.

Example: A university requests pupil records to determine if a student qualifies for, and should be granted, financial aid for which the student has applied. The school counselor discloses the relevant pupil record information.

Other Community Systems

Sharing Information With Schools

Information from Social/Human Services to Schools

25. Information Regarding a Child in the Care or Legal Custody of the County or a Licensed Child-Placing Agency

Context: Wisconsin law allows the confidential transfer of information regarding a child in the care or legal custody of the county or a licensed child-placing agency with another child welfare agency, the child's school, a law enforcement agency, and other organizations.

Provisions for Disclosure: The school must keep the information received confidential as required under Wis. Stat. §§ [118.125\(1\)\(d\)](#) and [\(2\)](#).

Example: A county caseworker who has access to the child's case plan talks with a teacher regarding the child's needs. Since the county has been granted care and protection responsibility, both the caseworker and teacher share information pertinent to serving the educational needs of the child.

Statute(s): Wis. Stat. §§ [48.78\(2\)\(b\)](#), [118.125\(2\)\(g\)](#), and [938.78\(2\)\(b\)1](#).

26. Actions Taken Following a Child Abuse or Neglect Investigation

Context: Wisconsin law requires school staff to report suspected child abuse or neglect. Likewise, Wisconsin law requires the county social service agency to inform the mandated reporter of what action, if any, was taken to protect the health and welfare of the child who was the subject of the report. The notification must be made within 60 days after the county receives the report from the mandated reporter.

Provisions for Disclosure: Wis. Stat. § [48.981\(7\)\(e\)](#) prohibits redisclosure of confidential information by any person or agency authorized to receive it.

Example: A school counselor reports suspected abuse to the county child protective services unit. Subsequent to the investigation, the school counselor is informed the child was removed from the home and both a Child in Need of Protection and Services (CHIPS) petition and criminal charges will be filed.

Statute(s): Wis. Stat. §§ [48.981\(3\)\(c\)6.](#) and [\(7\)\(e\).](#)

27. Reports and Records Related to Child Abuse and Neglect

Context: Wisconsin law allows a county to recognize a multidisciplinary child abuse and neglect team. Team members may include educators, social service and mental health professionals, law enforcement, and medical personnel. A team may be established for prevention or treatment of child abuse and neglect or to address a particular case or investigation. Reports and records governed by Wisconsin Chapter 48 may be shared with the members of this team. The county department of social or human services is responsible for maintaining this information.

Provisions for Disclosure: The multidisciplinary team would have to be recognized by the county prior to any disclosure of records or reports, which would be limited to those specifically related to the task(s) of the multidisciplinary team. Rediscovery is not authorized, except under specific circumstances in Wis. Stat. §§ [48.981\(7\)\(a\)](#) and [\(e\).](#)

Example: The county establishes a team to meet monthly to discuss cases of suspected child abuse and neglect and improve the child protective services system (e.g., communication, reporting, and investigations, services for families). The team includes representatives from schools, law enforcement, county child protective services, mental health, and hospitals and medical clinics. The county department of social/human services shares records of cases of child abuse and neglect with the team.

Statute(s): Wis. Stat. §§ [48.981\(7\)\(a\)6.](#) and [\(e\).](#)

28. Referral of Children to be Placed in Residential Care Centers

Context: Whenever a county department of social/human services recommends to a court that a child be placed in a residential care center or a state agency anticipates placing a child will be placed in a residential care center, Wisconsin law requires the agency to notify the responsible school district as defined in Wis. Stat. § [115.81\(1\)\(b\).](#)

The steps the responsible school district must take upon receipt of such notice are described below.

- a. If the child is a child with a disability, the responsible school district must appoint an individual educational plan (IEP) team to review, and if necessary, revise the child's IEP and develop a placement offer.
- b. If the child has not been identified as a child with a disability, the school district must appoint staff to review the child's education records, develop a status report, and send a copy of the report to the county department or state agency, as appropriate, within 30 days of receiving the notice.
- c. If the school district has reasonable cause to believe that the child is a child with a disability, the school district must appoint an IEP team to conduct an evaluation. If the IEP team determines that the child is a child with a disability, the IEP team, in consultation with the referring department or agency, shall develop an IEP and educational placement offer for the child.

Provisions for Disclosure: Disclosure is limited to education records (i.e., treatment records are not included under this statutory provision). When a student transfers to a school district and the district does not receive the student's education records, the district must request the records from the student's previous school. The student's previous school must transfer the records to the new district within one working day of receipt of the notice.

Example: DOC plans to place a child currently in one of its facilities in a residential care center and notifies the school district in which the residential care center is located. The child has not been identified as a child with a disability. Based on a review of the child's education records, which includes information regarding behavioral concerns and poor school performance, the district believes that the child may have a disability. The school appoints an IEP team and invites appropriately licensed staff from the residential care center to participate in the evaluation. The IEP team finds that the child is eligible for special education, consults with the DOC representatives, and develops an IEP and an education placement offer.

Statute(s): Wis. Stat. §§ [115.81\(1\)\(b\)](#), [\(3\)](#), and [118.125\(4\)](#); Wis. Admin Code §§ [DCF 52.41\(1\)\(b\)](#) and [PI 11.07\(2\)](#).

29. Notification of New Foster Homes

Context: When DCF, a county department of social/human services, or a child-placing agency issues a license to operate a foster home in a school district, the licensing agency is to notify the school district.

Provisions for Disclosure: The responsibility to receive this information may be delegated to one or more school district employees.

Example: The county department of social/human services issues a license for a new foster home and contacts the school district administration office to relate the address and the number and age range of the children eligible to be placed in the foster home.

Statute(s): Wis. Stat. § [48.62\(3\)](#).

30. Notification of Licensure of a Group Home

Context: When DCF licenses a group home in a school district, the agency must notify the school district.

Provisions for Disclosure: Although the release of this information is to be made to the school district, the responsibility to receive this information may be delegated to one or more school district employees.

Example: DCF licenses a group home that is authorized to serve up to six female adolescents. A DCF employee contacts the school district administration office with this information, which is passed on to the school district and the affected middle school and high school.

Statute(s): Wis. Stat. § [48.625\(2m\)](#).

31. Notification of Children Placed in Foster and Group Homes

Context: When an agency places a school-age child in a foster home or a group home in a school district, the agency is required to notify the school district and the child's school. The agency may choose to assist the school district in the child's enrollment (e.g., facilitate the transfer of the child's school records).

Provisions for Disclosure: Although the release of this information is to be made to the school district and the child's school, the responsibility to receive this information may be delegated to one or more school district employees, including the foster care point of contact.

Example: A licensed child-placing agency places a seventh grade student in a group home in a new school district. An agency representative consults with the school of origin and the school of residence to make a best interest determination to determine which school the child should attend. If the agency determines the student will move to the school of residence, the school of residence, with the help of the child's out-of-home care providers, will immediately enroll the student and request records from the school of origin. The school of origin will transfer records to the school of residence no later than the next working day.

Statute(s): Wis. Stat. §§ [48.64\(1r\)](#) and [118.125\(4\)](#).

32. Notification of Permanency Hearing

Context: Wisconsin law requires each child living in a foster home, group home, residential care center, youth detention facility, shelter care facility, or supervised independent living arrangement, and each child living in the home of a guardian or a relative other than a parent to have a written permanency plan in place if certain conditions, as specified in statute, exist. The permanency plan must be developed by the agency that either placed or arranged the placement of the child or the agency assigned primary responsibility for providing services. The court is required to hold a hearing to review the permanency plan and make required determinations regarding the child's placement, services, and permanency goals no later than 12 months after the child was first removed from the home and every 12 months after a previous permanency hearing. The court is required to notify, among others, the child's school of the time, place, and purpose of the hearing, of the issues to be determined at the hearing, and of the fact that they may have an opportunity to be heard at the hearing. The notice must be provided in writing not less than 30 days before the hearing. The notice to the school must include the name and contact information for the caseworker or social worker assigned to the child's case.

Provisions for Disclosure: Although the release of this information is to be made to the school district and the child's school, the responsibility to receive this information may be delegated to one or more school district employees, including the foster care point of contact. The school must keep the information received confidential as required under Wis. Stat. §§ [118.125\(1\)\(d\)](#) and [\(2\)](#).

When sharing information from the pupil record about a student for the purpose of a permanency plan hearing or administrative review, it

is important that school districts adhere to state and federal laws governing the confidentiality and disclosure of pupil records. A notice from a court related to a permanency hearing is not a court order. When sharing information about a student for this purpose, it is important to not only consider the requirements of the law, but to also adhere to ethically sound practice. Information shared should be factual, backed by evidence, and include professional opinion only. Personal opinion is neither warranted nor appropriate. Information related to any educational goals that were established may be particularly relevant.

Example: A student was placed in a foster home within the past year. The agency that placed the child has developed a permanency plan with the goal of placing the student in a planned permanent living arrangement. The court received the plan and set a date for the permanency hearing. The court provided written notice to the school one month before the hearing. Specifically, the court notified the school that the court will be addressing the proposed planned permanent living arrangement. The school meets with the student's caseworker to discuss the contents of the permanency plan and educational considerations in determining a permanent living arrangement. Two weeks before the hearing, the school provides the court with written comments regarding the educational considerations discussed with the student's caseworker.

Statutes: Wis. Stat. §§ [48.38\(2\)](#), [\(5\)\(b\)-\(c\)](#), and [\(5m\)\(a\)-\(c\)1.](#), and [938.38\(2\)](#), [\(5\)\(b\)-\(c\)](#), and [\(5m\)\(a\)-\(c\)1.](#)

33. Birth to 3 Programs—Referral of Children with Disabilities for Special Education

Context: In order to ensure a smooth transition to public school special education services from county Birth to 3 Programs, federal and state laws include requirements for providing information to LEAs, offering transition planning conferences, referring students for special education evaluations, and sharing records in the IEP process. DHS and DPI have developed a web-based Program Participation System to facilitate information sharing. More information regarding early childhood special education is available at <https://dpi.wi.gov/sped/early-childhood>.

Provisions for Disclosure: Families in county Birth to 3 Programs may request that the program not provide any information about the child to the LEA before the child reaches 2 years, 3 months of age. If a family does not opt-out, the program may provide the relevant

information to the LEA. This identifiable information is not a referral for LEA special education services and the LEA may send the parent an introductory letter about special education services. If the child's Individualized Family Service Plan (IFSP) team determines that the child may be eligible for special education services, the program will make a special education referral and must offer the parent a transition planning conference. The program must obtain parental permission to invite the LEA to the transition planning conference and to release additional program records and reports to the LEA. The LEA must obtain parental consent for evaluation and special education services.

Example: Upon enrollment of their child in a Birth to 3 Program, the child's parents receive information regarding referrals for special education and decide not to opt-out of the information sharing. The program notifies the LEA of the child's name, date of birth, parent contact information, and parent native language when the child is 2 years, 3 months old. The IFSP team determines that the child may be eligible for special education services, offers the parents a transition planning conference, and makes a referral to the LEA. The transition planning conference is held with the LEA in attendance, pursuant to the parents' consent. Following the conference, the program sends the LEA a special education referral for the student and the LEA begins the IEP process.

Statute(s): Wis. Stat. §§ [115.77\(1m\)\(c\)](#), [115.777\(3\)\(e\)](#); Wis. Admin. Code §§ [DHS 90.10\(5\)\(f\)3.-4.](#); [34 C.F.R. §§ 300.124\(c\)](#), [303.209\(b\)](#), and [303.211\(b\)\(6\)](#).

Information from Law Enforcement and District Attorney to Schools

34. Law Enforcement Information

Context: Wisconsin statutes allow law enforcement agencies to share information in records related to a youth with school officials where the youth attends school. The records may include documentation of the following:

- The use, possession, or distribution of alcohol, controlled substance or a controlled substance analog;
- The illegal possession by a youth of a dangerous weapon as defined in Wis. Stat. § [939.22\(10\)](#);

- An act for which the youth was taken into custody based upon a law enforcement officer's belief that the youth was committing or had committed a violation of any state or federal criminal law; and
- An act for which the student has been adjudged delinquent.

Provisions for Disclosure: Release of this information is subject to the policy of the local law enforcement agency. The law enforcement agency may release this information on its own initiative or at the request of the school district administrator. The school may share the information only with school district employees who have a legitimate educational interest, including safety. The school district may not use information from law enforcement as the sole basis for expelling or suspending a student or as the sole basis for any other kind of disciplinary action against a student. However, the school may use the information as the sole basis for discipline under the school district's athletic code. The school district may conduct its own independent investigation and, if warranted, students may be disciplined on that basis.

Example #1: A district administrator hears that a student has been arrested for allegedly dealing drugs off of school grounds and not during a school-sponsored activity. He contacts the law enforcement agency to confirm the arrest and then notifies the student's principal. The principal convenes the pupil services team so they can make a plan for support, assessment, and intervention to help identify and ameliorate needs and challenges the student may be experiencing.

Example #2: The local police department notifies the administrator that a student has been arrested for underage drinking. The administrator notices that the student participates in the district's athletics programs. Consistent with the school district's athletic code, the student is suspended from the team for the remainder of the season. Additionally, the school conducts its own investigation and decides to set up a meeting for the student and his parents with the pupil services team to create plans for support and interventions needed to assist the student with challenges that may be affecting his health or education.

Statute(s): Wis. Stat. §§ [48.396\(1\)](#), [118.125\(5\)\(b\)](#), [118.127](#), [938.34\(4h\)\(a\)](#), [938.396\(1\)](#), and [939.22\(10\)](#).

Note: In both of these examples, the school district is allowed but not required to notify both the student and the student's parents of the receipt of this information. School district officials may wish to ask the

involved law enforcement officer if disclosure to the student and parents would adversely affect the investigation.

35. Notification of Registered Sex Offenders Moving into the Community

Context: When a person is registered with DOC as a sex offender, DOC is to immediately notify the community police chief and sheriff of the county in which the person is residing, is employed, or is attending school. The police chief or sheriff may provide this information to any organization or entity statutorily entitled to request this information, including schools.

Provisions for Disclosure: In order to disclose the information, the police chief or sheriff must believe disclosure of the information is necessary to protect the public.

Example: DOC notifies the police chief in a community that a registered 23-year-old sex offender has moved into the community into an apartment near the high school. This individual had been convicted of sexual assault of a 14-year-old girl. The police department notifies the school and holds a public meeting in the neighborhood to ensure the community is aware of the potential danger.

Statute(s): Wis. Stat. §§ [301.45](#) and [301.46](#).

36. Information to be Provided by District Attorneys to Schools in Criminal Cases

Context: If a criminal complaint is issued under Wis. Stat. § [968.02](#) or if a petition for waiver is granted pursuant to Wis. Stat. § [938.18](#), and the district attorney reasonably believes the person charged is a pupil enrolled in a school district, a private school, or a charter school, the district attorney shall make a reasonable attempt to notify the school board, private school governing body, or charter school governing body of the charges pending against the pupil. The district attorney shall also notify the school board, private school governing body, or charter school governing body of the final disposition of the charges.

Provisions for Disclosure: Wis. Stat. § [968.02](#) addresses the issuance and filing of complaints. Wis. Stat. § [938.18](#) addresses the procedures for waiving youth court jurisdiction for youth 14 years of age and older. In order to limit access and avoid unnecessary or unlawful disclosure, best practice may be to store these files separately from pupil progress and behavioral records.

Example: A petition is granted to waive a 16-year-old youth into adult court for intent to deliver a controlled substance. The investigation revealed the youth is enrolled in a high school in a neighboring county. The district attorney notifies the building principal of the charges against the student.

Statute(s): Wis. Stat. § [950.08\(2w\)](#).

Information from the Courts to Schools

37. Petition Alleging a Felony

Context: Wisconsin law requires the clerk of courts to notify the school board of the youth's school district if a petition alleging the youth committed a felony has been filed. In addition, the nature of the crime must also be shared.

Provisions for Disclosure: The school may share the information only with school district employees who have a legitimate educational interest, including safety. The school district may not use information from law enforcement as the sole basis for expelling or suspending a pupil or as the sole basis for taking any other disciplinary action, but may use the information as the sole basis for taking action against a pupil under the school district's athletic code. The school may use the information to offer services to the student. If the proceeding on the petition is later closed, dismissed, or otherwise terminated without a finding that the youth has committed a delinquent act, the court must notify the school. In order to limit access and avoid unnecessary or unlawful disclosure, best practice may be to store these files separately from pupil progress and behavioral records.

Example: A petition has been filed alleging a youth was party to the crime of battery. The court notifies the youth's building principal, who in turn notifies school employees who have contact with the student. The building's support team meets with the student and family to create plans for support and interventions needed to assist the student with challenges that may be affecting the student's health or education.

Statute(s): Wis. Stat. § [938.396\(2g\)\(m\)1](#).

38 Finding of Delinquency

Context: Wisconsin law requires the clerk of courts to notify the school board of the youth's school district if a youth has been found delinquent. In addition, the nature of the crime and the disposition

imposed must be shared. If school attendance is a condition of the disposition or if the youth was found delinquent for a felony crime that was for the benefit of a criminal gang, the school must be notified. If the youth is placed in a new school district, the new school is also to be notified whether the student has previously been adjudicated delinquent by that court, the nature of any previous crimes, and the dispositions.

Provisions for Disclosure: The court clerk is required to make the notification within five days after the court order is entered. The school may share the information only with school district employees who have a legitimate educational interest, including safety. The school district may not use information from law enforcement as the sole basis for expelling or suspending a pupil or as the sole basis for taking any other disciplinary action, but may use the information as the sole basis for taking action against a pupil under the school district's athletic code. In order to limit access and avoid unnecessary or unlawful disclosure, best practice may be to store these files separately from pupil progress and behavioral records.

Example: A youth is found delinquent for being party to the crime of battery. The youth is ordered to attend school daily and have no contact with three other students involved in the incident. Placement at a youth correction facility is held in abeyance. The court notifies the youth's building principal, who in turn notifies school employees who have contact with the student. The building's support team meets with the student and family to create plans for support and interventions needed to assist the student with challenges that may be affecting the student's health or education.

Statute(s): Wis. Stat. §§ [118.125\(5\)](#) and [938.396\(2g\)\(m\)2.-4.](#)

39. Court Records

Context: Wisconsin law allows anyone to request the court records of any youth who 1) has been found delinquent for committing a serious youth offense as specified in Wis. Stat. § [938.34\(4h\)\(a\)](#), or 2) is alleged to have committed a crime that would be a felony if committed by an adult and has been previously found to be delinquent and that finding remains of record and unreversed. Reports under Wis. Stat. §§ [938.295](#) or [938.33](#), or other records that deal with sensitive personal information of the youth and the juvenile's family are not included.

Provisions for Disclosure: This information may be redisclosed to anyone. In order to limit access and avoid unnecessary disclosure,

best practice may be to store these files separately from pupil progress and behavioral records.

Example: A school district believes that a student has been found delinquent of being party to the crime of first degree sexual assault. The school requests the court records of this youth because it wants to know the details of the incident, so as to be aware of any possible security concerns. The court shares the information with the youth's building principal, who in turn notifies school employees who have contact with the student to develop a plan for support and safety.

Statute(s): Wis. Stat. §§ [938.34\(4h\)\(a\)](#) and [938.396\(2g\)\(k\)](#) and [\(L\)](#).

40. Referral of Children to be Placed in Residential Care Centers

See [28. Referral of Children to be Placed in Residential Care Centers](#).

Definitions

“Behavioral records” means those pupil records that include psychological tests, personality evaluations, records of conversations, any written statement relating specifically to an individual pupil's behavior, tests relating specifically to achievement or measurement of ability, the pupil's physical health records other than his or her immunization records or any lead screening records required under Wis. Stat. § 254.162, law enforcement officers' records obtained under Wis. Stat. §§ 48.396(1) or 938.396(1)(b)2. or (c)3., and any other pupil records that are not progress records. Wis. Stat. § 118.125(1)(a).

“Court” when used without further qualification, generally means the court assigned to exercise jurisdiction over a particular matter. For the purposes of this document, that could include the family court, children's court, youth court, municipal court, or circuit court. The term may also refer to the judge and the court staff (i.e., court clerk, court secretary). The term “court” does not include officers of the court: prosecutors, defense attorneys, public defenders, or youth court intake workers unless specifically articulated by court policy.

“Dangerous weapon” means any firearm, whether loaded or unloaded; any device designed as a weapon and capable of producing death or great bodily harm; any ligature or other instrumentality used on the throat, neck, nose, or mouth of another person to impede, partially or completely, breathing or circulation of blood; any electric weapon, as defined in Wis. Stat. § [941.295\(1c\)\(a\)](#); or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm. Wis. Stat. § [939.22\(10\)](#).

“Directory data” means those pupil records which include the pupil's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, photographs, degrees and awards received and the name of the school most recently previously attended by the pupil. Wis. Stat. § [118.125\(1\)\(b\)](#).

“Education records” means those records that are directly related to a student and are maintained by an educational agency or institution or by a party acting for the agency or institution. The term does not include:

- (1) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.

- (2) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of [34 C.F.R. Part 99.8](#).
- (3) (i) Records relating to an individual who is employed by an educational agency or institution, that:
 - (a) Are made and maintained in the normal course of business;
 - (b) Relate exclusively to the individual in that individual's capacity as an employee; and
 - (c) not available for use for any other purpose.
- (ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition.
- (4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education that are:
 - (i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;
 - (ii) Made, maintained, or used only in connection with treatment of the student; and
 - (iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and
- (5) Records created or received by an educational agency or institution after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student.
- (6) Grades on peer-graded papers before they are collected and recorded by a teacher. [34 C.F.R. Part 99.3](#)

"Family Educational Rights and Privacy Act" (FERPA) is a federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. [20 U.S.C. § 1232g](#); [34 C.F.R. Part 99](#).

“Firearm,” as defined in federal law for the purposes of gun-free schools, means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm. [18 U.S.C. § 921\(a\)\(3\)](#).

“Health care providers” as defined in Wis. Stat. § [146.81](#), include, but are not limited to, the following licensed or certified personnel: nurse, dentist, physician, physician assistant, physical therapist, occupational therapist or assistant, dietitian, psychologist, social worker, marriage and family therapist or professional counselor, speech-language pathologist, audiologist, a partnership or corporation of health care providers.

“Human services” refers to county departments of social services and human services as defined in Wis. Stat. §§ [46.215](#), [46.22](#), and [46.23](#), unless otherwise specified. The term is often used interchangeably with the term “social services.”

“Informed consent” is the action people are entitled to provide prior to any significant intrusion of their person or privacy. The three key elements of informed consent are that it must be knowing, competent, and voluntary. The person seeking consent must make a good faith effort to disclose enough information to the person from whom consent is sought that the individual can make an informed choice.

“Law enforcement unit” means any individual, office, department, division, or other component of a school district that is authorized or designated by the school board to do any of the following:

- (1) Enforce any law or ordinance, or refer to the appropriate authorities a matter for enforcement of any law or ordinance, against any person other than the school district.
- (2) Maintain the physical security and safety of a public school. Wis. Stat. § [118.125\(1\)\(bL\)](#).

“Law enforcement unit records” means records maintained by a law enforcement unit that were created by that law enforcement unit for the purpose of law enforcement. Wis. Stat. § [118.125\(1\)\(bs\)](#).

“Mandated reporters” are those persons who are required to report suspected child abuse or neglect if they have reason to believe that a child seen in the course of their professional duties has been abused or neglected or that a child has been threatened with abuse or neglect. The statute lists the following persons as mandated reporters: physicians, coroners, medical examiners, nurses, dentists, chiropractors, optometrists, acupuncturists,

other medical or mental health professionals, social workers, marriage and family therapists, professional counselors, public assistance workers, including financial and employment planners, school teachers, administrators, school counselors, school employees not otherwise specified in the statute, mediators, child care workers, child care providers, alcohol or other drug abuse counselors, members of the treatment staff employed under contract by a county department, physical therapists, physical therapist assistants, occupational therapists, dietitians, speech-language pathologists, audiologists, emergency medical services practitioners, emergency medical responders, police or law enforcement officers, and youth correctional officers. Wis. Stat. § [48.981\(2\)](#).

“Patient health care records” are those records relating to the health of a student that are authored by or under the supervision of a health care provider, as defined under Wis. Stat. § [146.81\(1\)](#), except for records containing basic health information included in the definition of pupil physical health records. Wis. Stat. §§ [118.125\(2m\)](#) and [146.81\(4\)](#).

“Personal notes” are those records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the records. Wis. Stat. § [118.125\(1\)\(d\)1](#).

“Progress records” means those pupil records which include the pupil's grades, a statement of the courses the pupil has taken, the pupil's attendance record, the pupil's immunization records, any lead screening records required under Wis. Stat. § [254.162](#) and records of the pupil's school extracurricular activities. Wis. Stat. § [118.125\(1\)\(c\)](#).

“Public schools” are defined as the elementary and high schools supported by public taxation. The phrase includes charter schools and Milwaukee Public Schools’ “contract schools.” The phrase generally does not apply to the technical college or UW Systems, but certain K-12 pupil rights may follow them under youth options or other shared programs. Wis. Stat. § [115.01\(1\)](#).

“Pupil physical health records” means those pupil records that include basic health information about a pupil, including the pupil's immunization records, an emergency medical card, a log of first aid and medicine administered to the pupil, an athletic permit card, a record concerning the pupil's ability to participate in an education program, any lead screening records required under Wis. Stat. § [254.162](#), the results of any routine screening test, such as for hearing, vision, or scoliosis, and any follow-up to such test, and any other basic health information, as determined by the state superintendent. Wis. Stat. § [118.125\(1\)\(cm\)](#).

“Pupil records” means all records relating to individual pupils maintained by a school but does not include any of the following:

- (1) Notes or records maintained for personal use by a teacher or other person who is required by the state superintendent under Wis. Stat. § [115.28\(7\)](#) to hold a certificate, license, or permit if such records and notes are not available to others.
- (2) Records necessary for, and available only to persons involved in, the psychological treatment of a pupil.
- (3) Law enforcement unit records. Wis. Stat. § [118.125\(1\)\(d\)](#).

“Record” means any material on which written, drawn, printed, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics. Wis. Stat. § [118.125\(1\)\(e\)](#).

“Social services” refers to county departments of social services and human services as defined in Wis. Stat. §§ [46.215](#), [46.22](#), and [46.23](#), unless otherwise specified. The term is often used interchangeably with the term “human services.”

Resources

Student Records and Confidentiality. Department of Public Instruction.

<https://dpi.wi.gov/sspw/pupil-services/school-social-work/contents/confidentiality/student-records>

Safe Schools Legal Resource Manual. Department of Justice.

<https://www.doj.state.wi.us/sites/default/files/2013-news/safe-school-manual-2013.pdf>

Reporting Requirements for Sexually Active Adolescents. Department of Public Instruction.

<https://dpi.wi.gov/sites/default/files/imce/sspw/pdf/sswreporting-requirements-2018.pdf>

Information Update Bulletins from the Department of Public Instruction Special Education Team.

<https://dpi.wi.gov/sped/laws-procedures-bulletins/bulletins>

Child Protective Services information from the Department of Children and Families.

<https://dcf.wisconsin.gov/cps/process>

How To Access Referenced Statutes

Family Educational Right and Privacy Act FERPA Regulations

<https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=34:1.1.1.1.33>

Wisconsin Statutes

<http://docs.legis.wisconsin.gov/statutes/prefaces/toc>