

## Liability Protection

School social work practice is challenging for a variety of reasons, one of which being a level of professional risk in circumstances where parents or other individuals responsible for students object to services provided or the outcomes related to services provided. While social workers are expected to accept a certain level of professional and personal risk in their professional practice, there are some steps school social workers and other pupil services professionals can take to minimize their liability risk. These steps fall into three categories:

- legal,
- policy, and
- group practice.

State and federal statutes provide some immunity from civil and/or criminal liability for actions and/or inactions. Clearly, educators face many other situations where the law is silent regarding immunity from liability. In those circumstances, a school district may afford a level of protection to its employees by establishing policies and procedures that guide how specific situations will be handled. Finally, if there is no local policy approved by the school board, school social workers and other pupil services professionals who provide related services can meet and agree on what procedures will be followed in given circumstances.

In civil lawsuits where an individual professional or group of professionals are alleged to have engaged in inappropriate conduct, the typical standard of care the court will apply is what an ordinary, reasonable, and prudent professional, with the same or similar training, would have done under the same or similar circumstances. Consequently, when there is no legal immunity from liability concerning a particular activity, it is helpful to have established procedures that all involved school professionals will follow in given circumstances, in order to establish a local “standard of care.”

### Legal Protection

School staff who in good faith attempt to prevent a student suicide are immune from civil liability.

**Wis. Stat. sec. 118.295 Suicide intervention; civil liability exemption.** Any school board, private school, county children with disabilities education board or cooperative educational service agency, and any officer, employee or volunteer thereof, who in good faith attempts to prevent suicide by a pupil is immune from civil liability for his or her acts or omissions in respect to the suicide or attempted suicide. The civil liability immunity provided in this section is in addition to and not in lieu of that provided under s. 895.48 (1).

For more information from the School Social Work Practice Guide visit:  
<https://dpi.wi.gov/sspw/pupil-services/school-social-work/contents>

A pupil services professional or designated school staff member who discloses or fails to disclose information regarding a student's self-disclosed AOD concerns is immune from civil liability.

**Wis. Stat. sec. 118.126 Privileged communications.**

(2) A school psychologist, counselor, social worker or nurse, or any teacher or administrator designated by the school board who engages in alcohol or drug abuse program activities, who in good faith discloses or fails to disclose information under sub. (1) is immune from civil liability for such acts or omissions. This subsection does not apply to information required to be reported under s. 48.981.

Any person making a report of suspected child abuse or neglect in good faith is immune from civil and criminal liability.

**Wis. Stat. sec. 48.981 Abused or neglected children and abused unborn children.**

(4) Immunity from liability. Any person or institution participating in good faith in the making of a report, conducting an investigation, ordering or taking of photographs or ordering or performing medical examinations of a child or of an expectant mother under this section shall have immunity from any liability, civil or criminal, that results by reason of the action. For the purpose of any proceeding, civil or criminal, the good faith of any person reporting under this section shall be presumed. The immunity provided under this subsection does not apply to liability for abusing or neglecting a child or for abusing an unborn child.

A school administrator, principal, pupil services professional, or teacher is not liable for referring a student to law enforcement authorities for alcohol- or drug-related offenses.

**Wis. Stat. sec. 118.257 Liability for referral to police.**

(1) In this section:

(a) "Controlled substance" has the meaning specified in s. 961.01 (4).

am) "Controlled substance analog" has the meaning given in s. 961.01 (4m).

(at) "Delivery" has the meaning given in s. 961.01 (6).

(b) "Distribute" has the meaning specified in s. 961.01 (9).

(c) "Pupil services professional" means a school counselor, school social worker, school psychologist or school nurse.

(d) "School" means a public, parochial or private school which provides an educational program for one or more grades between grades 1 and 12 and which is commonly known as an elementary school, middle school, junior high school, senior high school or high school.

(2) A school administrator, principal, pupil services professional or teacher employed by a school board is not liable for referring a pupil enrolled in the school district to law enforcement authorities, or for removing a pupil from the school premises or from participation in a school-sponsored activity, for suspicion of possession, distribution, delivery or consumption of an alcohol beverage or a controlled substance or controlled substance analog.

State and federal law does not explicitly provide immunity from liability for disclosures related to health and safety emergencies. However, by allowing confidential information to be shared under these circumstances without written consent, the implication is a school staff member is expected to act in these situations and could be held liable for failure to disclose information that could prevent or alleviate a health and safety emergency.

**Wis. Stat. sec. 118.125 Pupil Records**

(2) Confidentiality. All pupil records maintained by a public school shall be confidential, except as provided in pars. (a) to (p) and sub. (2m). The school board shall adopt regulations to maintain the confidentiality of such records.

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

**Sec. 99.31 Under what conditions is prior consent not required to disclose information?**

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by sec. 99.30 if the disclosure meets one or more of the following conditions:

(10) The disclosure is in connection with a health or safety emergency, under the conditions described in sec. 99.36.

(Authority: 20 U.S.C. 1232g(a)(5)(A), (b), (h), (i), and (j)).

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988, as amended at 58 FR 3189, Jan. 7, 1993; 61 FR 59296, Nov. 21, 1996; 65 FR 41853, July 6, 2000; 73 FR 74852, Dec. 9, 2008; 74 FR 401, Jan. 6, 2009]

**Sec. 99.36 What conditions apply to disclosure of information in health and safety emergencies?**

(a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties, including parents of an eligible student, in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) Nothing in this Act or this part shall prevent an educational agency or institution from—

(1) Including in the education records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community;

(2) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials within the agency or institution who the agency or institution has determined have legitimate educational interests in the behavior of the student; or

(3) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials in other schools who have been determined to have legitimate educational interests in the behavior of the student.

(c) In making a determination under paragraph (a) of this section, an educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. If, based on the information available at the time of the determination, there is a rational basis for the determination, the Department will not substitute its judgment for that of the educational agency or institution in evaluating the circumstances and making its determination.

(Authority: 20 U.S.C. 1232g (b)(1)(I) and (h))

[53 FR 11943, Apr. 11, 1988; 53 FR 19368, May 27, 1988, as amended at 61 FR 59297, Nov. 21, 1996; 73 FR 74854, Dec. 9, 2008]

## **Policies Approved by Local School Board**

One of the most fundamental and important responsibilities of local school boards is to establish policies that provide direction to administrators and other local school officials concerning what should be done in specific circumstances. For instance, a school board could establish a policy that states if a student is suspected of being suicidal, the building crisis team will follow an established set of procedures that include an interview with the student, contact with the student's teachers and friends, contact with the family, and referral to community mental health professionals and law enforcement, as appropriate. Typically, these policies are drafted by qualified local school district officials and then approved by the school board.

### **Group Practice Decisions**

When no policy exists, it is still possible for school social workers and other pupil services professionals to create some measure of liability protection by developing a standard of care through a group practice decision. Simply stated, the school-based mental health professionals (who have certain responsibilities in specific circumstances) meet and collectively agree how they will all handle a given situation (e.g., suicide risk screening). This group practice decision should be based upon reputable professional sources, identified best practices in the literature, and the pupil services professionals' expertise.

### **Individual Practice Decisions**

School social workers make individual practice decisions daily. It is not possible, nor advisable, to have school district policies or group practice decisions that cover everything that a school social worker does. However, for practice decisions that have a relatively higher possibility of civil litigation should parents' prove to be dissatisfied with an outcome, school social workers may wish to consider the alternatives listed above to create a measure of liability protection.