



January 12, 2018

Assembly Judiciary Committee
Representative Ott, Chair
State Capitol, Room 317 North
Madison, WI 53708

Dear Representative Ott and members of the committee:

Thank you for the opportunity to provide public comment on AB 693. BPDD is strongly opposed to this bill because it will disproportionately and negatively impact students with disabilities. BPDD recommends that the committee table this bill.

BPDD has many concerns with this bill, but will focus on the following provisions we feel are especially harmful to students with disabilities:

- Reporting of incidents that occur within the school to law enforcement.
- Requiring access to law enforcement information about unsubstantiated incidents that occurred outside school
- Violations of due process and student privacy.

Reporting of incidents that occur within the school to law enforcement.

Schools and school personnel are not prohibited in any way from contacting police to intervene in dangerous situations. If an incident serious enough that a witness or victim feels a physical assault or violent crime is happening, law enforcement can be called to respond as the incident is occurring.

Many students with disabilities may have behaviors that are a direct result of their disability; the bill does not take disability related behavior into account. Wisconsin already has the 3rd-highest rate in the nation of school referral of students with disabilities to law enforcement. This bill would make that trend worse. There is no evidence that law enforcement engagement makes schools safer, but there is evidence that positive behavioral supports (PBIS) prevent and reduce disciplinary actions. The bill does not require schools to implement PBIS, which we contend will improve teacher's responses to challenging behaviors and student engagement in learning.

It also appears that these reports to law enforcement can be submitted anonymously. We do not see any requirements that the student or parents are notified when any report is being sent to law enforcement. It is possible that quiet (and unsubstantiated by law enforcement) reporting can be used against a student to create documentation that may lead to discrimination against the student or used as evidence in suspension or expulsion hearings.

Requiring access to law enforcement information about unsubstantiated incidents that occurred outside school

The bill appears to give teachers the right to get information about an individual student if they have been “taken into custody based upon a law enforcement officer's belief that the pupil was committing or had committed a felony or violent misdemeanor.” “Taken into custody” is not an indication of guilt or even involvement in an incident, it means the student was detained by law enforcement. Law enforcement encounter information—especially when no charges have been filed and when the courts have not evaluated the case—serves only to satisfy teacher curiosity and bias the teacher through reinforcing negative attitudes or interactions with the student who has a disability. It is irrelevant to the educational needs of the individual student, and does not provide the teacher with any constructive methods or practices that will help the student achieve their educational goals.

We also question how this provision contradicts the long-established privacy requirements with regard to juvenile justice system records.

Violations of due process and student privacy

We question the provision granting teachers the right to review the behavioral records of their students.

Giving access to information—including law enforcement records, psychological tests, personality evaluations, records of conversations, any written statement relating specifically to an individual pupil's behavior, and physical health records—can bias teachers against individual students and lead to discrimination against students with disabilities by teachers, especially students with disabilities who have disability-related challenging behaviors. Behavioral incidents in a student's past—which could be from years ago—could influence teacher/student relations even and haunt a student throughout his education. Past is not prologue, and teachers should not be allowed to speculate based on the presence of a behavioral record that a past incident—with another student or different teacher—is predictive of how they will respond in their current classroom.

Current law prohibits pupil discrimination (Wis. Stats. 118.13 (1)) in any curricular, extracurricular, pupil services, recreational or other program or activity because of any physical, mental, emotional or learning disability. School employees who discriminate against students are subject to penalties under Wis. Stats. 118.13 (4). Allowing access to records that can influence how teachers perceive a student makes it far more likely that a teacher will—consciously or unconsciously—treat that student differently, and perhaps in a discriminatory way.

BPDD is charged under the federal Developmental Disabilities Assistance and Bill of Rights Act with advocacy, capacity building, and systems change to improve self-determination, independence, productivity, and integration and inclusion in all facets of community life for people with developmental disabilities.

Our role is to seek continuous improvement across all systems—education, transportation, health care, employment, etc.—that touch the lives of people with disabilities. Our work requires us to have a long-term vision of public policy that not only sees current systems as they are, but how these systems could be made better for current and future generations of people with disabilities.

Thank you for your consideration,

A handwritten signature in cursive script that reads "Beth Sweden". The ink is dark and the signature is fluid, with a long, sweeping underline.

Beth Swedeen, Executive Director, Wisconsin Board for People with Developmental Disabilities