



FOR YOUR INFORMATION

July 2006

News For School Clients

Annual Survey of Wisconsin Law

In April, the State Bar of Wisconsin published the 2006 edition of the *Annual Survey of Wisconsin Law*, which examines the significant judicial and legislative developments of the past year. Lathrop & Clark LLP attorneys **Joanne Harmon Curry** and **Richard F. Verstegen** co-authored the chapter that surveys the past year's developments in school law. Joanne Harmon Curry wrote the Case Law. Rick Verstegen wrote the Statutory Developments

section. Because the *Survey* focuses on a wide range of issues that impact the public sector, it serves as a valuable resource for school administrators and board members. Enclosed is a copy of that chapter for your review.

If you have any questions regarding any matter addressed in the *Survey*, please feel free to call us.

Mark Your Calendars

The School Law Department of Lathrop & Clark LLP would like to remind everyone of the 6th Annual School Law Seminar. Please join us on Wednesday, November 15, 2006, from 9:00 a.m. – 3:00 p.m. at the Crowne Plaza, Madison, Wisconsin. Registration starts at 8:30 a.m. with a continental breakfast, followed by the morning programs.

Lunch will be provided, followed by additional presentations. The program is designed for the benefit of school district administrative personnel and board members. Mark your calendar now, and advise other interested people in your district, of this date. Watch for your detailed invitation, including topics, in the near future.

If you have any questions regarding this topic, please call any of the following members of the Lathrop & Clark LLP School, Municipal, Labor and Employment Law Team.

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School Law

by Joanne Harmon Curry and Richard F. Versteegen



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This chapter highlights several significant judicial and legislative developments in school law in the past year. The case law review includes judicial interpretations of the compulsory attendance, student expulsion, charter school, and special education laws, including a U.S. Supreme Court decision related to the burden of proof in special education cases. The Wisconsin Legislature enacted numerous school-related laws during 2005, including 2005 Wisconsin Act 25, commonly referred to as the budget bill, which contained several enacted educational initiatives. Some relevant cases affecting schools may be covered in the chapters on constitutional law, municipal law, insurance law, labor and employment law, and tort law.

CASE LAW

Students

In *State v. McGee*,¹ the court of appeals interpreted the compulsory school attendance law in relation to the parental disobedience defense against prosecution for failing to cause a child to attend school. The state brought proceedings against a parent pursuant to the compulsory school attendance law, section

118.15(1) of the Wisconsin Statutes,² which provides that “any person having under control a child who is between the ages of 6 and 18 years shall cause the child to attend school regularly.” The state alleged that the parent intentionally failed to cause her son to attend school regularly when the son had been absent 94 out of 168 school days during the school year.

Section 118.15(5) provides two exceptions that remove an individual from liability under the compulsory attendance law. One exception was at issue in the case and has two parts, the second of which—the so-called disobedience exception or disobedience defense—was asserted by the parent.³ That defense absolves a parent or guardian of liability if that person proves that he or she is unable to comply with the law because of the disobedience of the child. Here, the parent argued that the court should determine the applicability of the disobedience exception before trial. The parent contended that the disobedience relates to an element of the offense—that is, to whether the child was under the parent’s

control—and, therefore, it should not be construed to be an affirmative defense that the fact-finder could evaluate only after a trial. When the circuit court denied the parent’s motion to dismiss the criminal complaint as premature, the parent appealed.

The court of appeals agreed with the state, however, in holding that the disobedience exception is an affirmative defense to be presented during trial and submitted to the jury for resolution. First, the court explained that the term *control of the child*, as used in the compulsory attendance law, refers to who has the legal right, duty, and responsibility to control a child, not to who actually compels a child to do something.⁴ The court found that a parent’s legal duty to send his or her child to school is different from being relieved of criminal liability for failing to cause a child to attend school regularly because of the child’s disobedience.

Second, the court reasoned that a person’s due process constitutional rights would be violated if it allowed the trial court to rule on the disobedience exception before a trial by jury. It explained that the state has the burden to prove beyond a reasonable doubt the elements necessary to constitute the crime charged.

¹ 2005 WI App 97, 281 Wis. 2d 756, 698 N.W.2d 850 (review denied).

² Textual references to the Wisconsin Statutes are hereinafter indicated as “chapter xxx” or “section xxx.xx,” without designation “of the Wisconsin Statutes.”

³ Wis. Stat. § 118.15(5)(b)2.

⁴ *McGee*, 2005 WI App 97, ¶ 13, 281 Wis. 2d 756.

The court explained that if it adopted the parent's position, it would be a violation of due process by placing the burden of persuasion on a defendant who would be asserting a negative defense, that is, a defense that negates a fact that the state must prove.⁵ Concluding that the disobedience exception provides an affirmative defense to be asserted at trial, the court remanded the cause for trial.

In *Madison Metropolitan School District v. Burmaster*,⁶ a school district challenged the reversal by the state superintendent of the Department of Public Instruction (DPI) of the district's decision to expel a student. At issue in the dispute was the interpretation of section 120.13(1)(e)3., which provides that if a school district elects to have a hearing officer conduct an expulsion hearing, then the district must comply with the procedures specified in that provision. The procedures provide for review of a hearing officer's decision by the school board only if the officer has ordered an expulsion.

The student expulsion law authorizes a school board to expel a student when it finds the student's conduct has met certain specified criteria.⁷ Before expelling a student, the school board must hold a hearing. Here, the school district had adopted a resolution pursuant to section 120.13(1)(e)3., authorizing an independent hearing officer to determine student expulsions rather than requiring the board to conduct a hearing.

When a sixth-grade student used a pencil to stab a fellow student in the arm at school, the district charged the student with use of a weapon on school property and recommended the student's expulsion. At the expulsion hearing, the independent hearing officer concluded that the student had violated district policy by stabbing another student with a pencil, but found that the interest of the school did not require the student's expulsion (a required element of an expellable offense). The hearing officer reasoned that

the student was young and an honor student, was remorseful about what happened, had no prior infractions, had not been disciplined before, and indicated he would continue in counseling.⁸

The school board reviewed the hearing officer's decision in closed executive session. The district administration provided the board with a memorandum setting forth its position that the board should order the student's expulsion despite the hearing officer's decision. The student was invited to submit written comments to the board, but was not invited to attend the closed executive session. The board reversed the hearing officer's decision and ordered the student's expulsion.⁹

The student appealed the board's decision to the superintendent. The superintendent held for the student, finding that the board's decision contained procedural errors. The superintendent determined that the board did not have the statutory authority to review the hearing officer's decision *not* to expel the student, because section 120.13(1)(e)3. permits a school board that has appointed an independent hearing officer to review only those orders expelling a student. The superintendent also rejected the board's argument that its "plenary powers," pursuant to sections 120.13, 120.12, and 118.001, included the authority to review the hearing officer's decision. The district petitioned the circuit court for review, and the circuit court affirmed, concluding that under the plain language of section 120.13(1)(e)3., the board lacked the authority to review the hearing officer's decision. The district, then, appealed to the court of appeals.

The district argued that although section 120.13(1)(e)3. requires that the school board review a hearing officer's expulsion orders, it is silent on board review when the hearing officer does not order an expulsion. Therefore, the district reasoned, it was proper for the court to look to other statutes that describe the duties and powers of school boards in

broad language, including the provision that states that the duties and powers of school boards are to be broadly construed.¹⁰

Although the court agreed that the legislature had given school boards broad powers and wide discretion in exercising their powers, it rejected the district's position that it had the authority to review a hearing officer's decision not to expel a student. The court relied on the fact that the statute enumerates procedural safeguards that must be followed by school boards when expelling a student, including notice to the student that the board will review an expulsion order in a timely manner. The court found no concomitant procedural safeguards for situations involving a decision not to expel a student.¹¹ Further, the court reasoned, although school boards have powers beyond those enumerated in section 120.13, as described in the introductory language, they do not have the power to violate the specific provisions of the statute.¹²

The court also rejected the district's argument that the court of appeals' decision in *Pritchard v. Madison Metropolitan School District*¹³ supported its position that section 120.13 provided it with the power to review the hearing officer's decision. In *Pritchard*, the court concluded that a school district had the authority to provide health insurance benefits not only to the spouses and dependent children of its employees and officers,¹⁴ but also to other persons, such as designated family partners of employees, if that authority is granted by other statutes. The court found such authority in *Pritchard* by relying on section 120.13 and other provisions in chapter 120, when broadly construed as mandated by section 118.001.

⁵ *Id.* ¶ 15.

⁶ 2006 WI App 17, ___ Wis. 2d ___, 709 N.W.2d 73.

⁷ Wis. Stat. § 120.13(1)(c)1.-2.

⁸ *Madison Metro. Sch. Dist. v. Burmaster*, 2006 WI App 17, ¶ 6, ___ Wis. 2d ___.

⁹ *Id.* ¶ 7.

¹⁰ See Wis. Stat. § 118.001.

¹¹ *Madison Metro. Sch. Dist.*, 2006 WI App 17, ¶ 19, ___ Wis. 2d ___.

¹² *Id.* ¶ 20 (citing Wis. Stat. § 120.13(1)-(37)).

¹³ 2001 WI App 62, ¶ 14, 242 Wis. 2d 301, 625 N.W.2d 613.

¹⁴ *Id.* (citing Wis. Stat. § 66.185).

However, the court concluded that, here, section 120.13(1)(c)–(g) plainly expressed the legislature’s intent that a school board may expel a student only if it applies the standards and procedures specified in those statutory subdivisions. The court affirmed the holding of the lower court that concluded the board did not have the authority to review and reverse the hearing officer’s decision not to expel the student.

Noteworthy U.S. Supreme Court Decision

In *Schaffer v. Weast*,¹⁵ the U.S. Supreme Court was asked to determine which party bore the burden of proof in a case brought under the Individuals with Disabilities Education Act (IDEA).¹⁶ Under the IDEA, school districts must create an individualized education program (IEP) for each child determined to have a disability. If the parents believe their child’s IEP is inappropriate, they may request an impartial due process hearing.¹⁷ The IDEA, however, is silent as to which party bears the burden of persuasion at such a hearing.

The parents of a seventh-grader with learning and speech-language disabilities challenged the district’s offer to place their son at a public middle school, because they believed that their son required smaller classes and more intensive services. They initiated a due process hearing and sought reimbursement for their cost of placing their son in a private school. The administrative law judge (ALJ) held that the parents bore the burden of persuasion and ruled in favor of the school district when he found that the school district had offered the student a free, appropriate public education. The parents brought a civil action in federal district court, challenging the result. The federal district court reversed, ruling that the school district had the burden of

proof and awarding the parents reimbursement for their unilateral decision to place the child in a private school.

The school district appealed to the U.S. Court of Appeals for the Fourth Circuit, which found no persuasive reason to depart from the normal rule of allocating the burden of proof to the party seeking relief and ruled in favor of the school district. The U.S. Supreme Court granted certiorari to resolve the question of which party bears the burden of persuasion at an administrative hearing addressing the appropriateness of an IEP. The Court affirmed the decision of the Fourth Circuit Court of Appeals, adopting its reasoning that the burden of persuasion in an administrative hearing challenging an IEP is properly placed on the party seeking relief. The Court held that the rule applies with equal effect to school districts.

Noteworthy Seventh Circuit Court of Appeals Decisions

Special Education. The IDEA provides that a parent may seek attorney fees as the prevailing party in an administrative agency proceeding.¹⁸ In *Linda T. v. Rice Lake Area School District*,¹⁹ the parents of an autistic child sought attorney fees in federal district court after an administrative agency hearing in which the ALJ found for the school district in part, and for the parents in part. The ALJ had held that the school district’s placement of the student for half of the school day in a facility offering a functional-based, prevocational curriculum to students with disabilities was appropriate, but that the student’s IEP team should revise the IEP to state with greater specificity the available and appropriate opportunities for the student to interact with nondisabled peers. The ALJ also directed the IEP team to provide greater specificity regarding the amount and frequency of staff training, although the ALJ rejected the parents’ request that the district be ordered to hire an independent consultant to train the student’s teachers.

The district court held that the parents were entitled to prevailing party status because the ALJ ordered the IEP to be revised. However, the court found that the parents’ success before the ALJ was de minimis, because the issue of greater specificity in the IEP was merely a “secondary concern” to the parents’ allegation that the school district had failed to provide their son with a placement in the least restrictive environment, and the ALJ’s decision did not require the school district to provide the student with any new or additional services. The parents appealed the district court’s decision to the U.S. Court of Appeals for the Seventh Circuit.

The Seventh Circuit affirmed the lower court’s holding. It found that the parents had lost on the placement issue, which was the most important issue at the administrative proceeding. It reasoned that although the parents had achieved something of legal significance at the due process hearing, their victory did not justify an award of fees, because their victory was de minimis in terms of the degree of success obtained.

Open Enrollment. In *Racine Charter One, Inc. v. Hauck*,²⁰ an independent public charter school (Charter One) sued the school district in which the charter school was located, alleging that the district’s refusal to bus the charter school’s students constituted a violation of the equal protection clause of the 14th Amendment to the U.S. Constitution and 42 U.S.C. § 1983. The federal district court granted summary judgment in the school district’s favor, finding that the Charter One students were not similarly situated to those students receiving a busing benefit from the school district pursuant to the state’s student transportation laws.²¹ The court also found that the school district had a rational basis for its decision to deny the school’s request for transportation because of the additional cost of transportation. The charter school appealed the court’s decision to the U.S. Court of Appeals for the Seventh Circuit.

¹⁵ 126 S. Ct. 528 (2005). Justices Ginsburg and Breyer filed dissenting opinions in the case.

¹⁶ Pub. L. No. 91-230, 84 Stat. 175 (1970) (codified as amended at 20 U.S.C. §§ 1400–1482).

¹⁷ 20 U.S.C. § 1415(f).

¹⁸ 20 U.S.C. § 1415(i)(3)(B).

¹⁹ 417 F.3d 704 (7th Cir. 2005).

²⁰ 424 F.3d 677 (7th Cir. 2005).

²¹ Wis. Stat. § 121.54(2)(a), (b), (9).

The court of appeals affirmed the lower court's holding.

STATUTORY DEVELOPMENTS²²

School District Finance and Facilities

Unused Revenue Limit Carryover. Under prior law, if a school district did not levy the maximum amount allowed under its revenue limit in that school year, the district's revenue limit in the following year increased by an amount equal to 75% of the difference between the district's actual levy and the maximum amount allowed. Prior law also established a separate calculation of the 75% carryover if the school district received a positive prior year aid adjustment to its current year general aid payment. 2005 Wisconsin Act 25 modified the carryover adjustment for unused revenue limit authority from 75 to 100%, beginning with calculation of revenue limits for the 2004–05 school year.²³ Act 25 also repealed the related provisions for districts that receive positive prior year aid adjustments.²⁴ The Governor's Task Force on Educational Excellence recommended these amendments in its final report in 2004.

Negative Tertiary Aid Exclusion. Act 25 also provides that, for equalization aid paid in the 2006–07 and 2007–08 school years, certain specified costs will be excluded from shared costs if the result is an increase in the district's equalization aid payment.²⁵ Further, it requires that a school district only expend the funds under this provision on the balance of the district's unfunded pension liability un-

der the Wisconsin Retirement System or on debt service costs for debt that was issued to refinance the balance of the unfunded pension liability.²⁶

Project Lead the Way. Act 25 provides \$250,000 annually in a separate appropriation for annual grants to Project Lead the Way.²⁷ This appropriation is earmarked for Project Lead the Way to provide discounted professional development services and software for participating high schools in this state.²⁸ This appropriation sunsets as of June 30, 2007.²⁹

Transportation Costs. Pursuant to 2005 Wisconsin Act 43, the DPI can now provide school transportation aids to school districts that use bio-diesel fuel for school bus transportation.³⁰ The aids are intended to cover the increased costs incurred by school districts in using bio-diesel fuel as compared with the costs of using petroleum-diesel fuel. If the DPI provides such aids, Act 43 directs the DPI, in conjunction with the Department of Administration, to apply to the federal government for bio-diesel fuel cost assistance for the purpose of financing payment of the aids.³¹ In addition, if, as a condition of full federal financial participation, the federal government requires that the state provide similar assistance from state resources, the DPI must use state school transportation aids to match the federal aids in the minimum amount required to obtain full federal financial participation.³²

Each school district that receives these aids must report, for any fiscal year, to the DPI concerning its actual costs incurred in using bio-diesel fuel for school

bus transportation in that fiscal year.³³ If the actual increased costs incurred by a school district in using bio-diesel fuel for school bus transportation in any fiscal year, as compared to the costs that the school district would have incurred in using petroleum-diesel fuel for school bus transportation, are less than the amount of these aids received by the school district for that fiscal year, the DPI must deduct the amount of the difference from the amount of these aids payable to the school district for the current fiscal year.³⁴

Non-Instrumentality Charter School Eligibility for Special Education. Act 25 also provides that a school board may contract with a non-instrumentality charter school—i.e., a charter school that is not an instrumentality of the school district—to provide special education services to pupils attending the charter school.³⁵ Pursuant to the Act, the salary portion of these services and related transportation costs are also now eligible for state special education aid.³⁶ In effect, these amendments now authorize the DPI to reimburse district-sponsored non-instrumentality charter schools for special education costs in the same manner as school districts, district-sponsored instrumentality charter schools, and independent charter schools.

Low-Revenue Ceiling. Under prior law, any school district with base revenues per pupil for the prior school year could increase its revenues up to the low-revenue ceiling of \$7,800 per pupil. Act 25 increases the low-revenue ceiling to \$8,100 in 2005–06 and \$8,400 in 2006–07.³⁷

²⁶ *Id.*

²⁷ Wis. Stat. § 20.255(3)(dn), as created by 2005 Wis. Act 25.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Wis. Stat. § 121.575(2)(a), as created by 2005 Wis. Act 43.

³¹ Wis. Stat. § 121.575(2)(b), as created by 2005 Wis. Act 43.

³² Wis. Stat. § 20.255(2)(cr), as amended by 2005 Wis. Act 43; Wis. Stat. § 121.575(3), as created by 2005 Wis. Act 43.

³³ Wis. Stat. § 121.575(5), as created by 2005 Wis. Act 43.

³⁴ *Id.*

³⁵ Wis. Stat. § 115.88(1), as amended by 2005 Wis. Act 25.

³⁶ Wis. Stat. § 115.88(1m)(a), (2m), as amended by 2005 Wis. Act 25; 2005 Wis. Act 25, § 9337(7m)(a) (providing that amendments to section 115.88(1m)(a) first apply to state aid distributed in 2005–06 school year).

³⁷ Wis. Stat. § 121.905(1), as amended by 2005 Wis. Act 25.

²² Hereinafter and unless otherwise indicated, all references in this chapter to the Wisconsin Statutes are to the 2003–04 Wisconsin Statutes, as amended by acts through 2005 Wisconsin Act 82.

²³ Wis. Stat. § 121.91(4)(d), as amended by 2005 Wis. Act 25; 2005 Wis. Act 25, § 9337(4).

²⁴ Wis. Stat. § 121.91(4)(dg) and (dr), repealed by 2005 Wis. Act 25.

²⁵ Wis. Stat. § 121.07(6)(am), as repealed and recreated by 2005 Wis. Act 25.

School District Employees

Initial Educator Grants. 2005 Wisconsin Act 25 provides approximately \$1.4 million for mentoring grants for initial educators.³⁸ Pursuant to existing law, initial educators must be provided ongoing orientation, seminars, and a qualified mentor by the employing school district. Act 25 provides noncompetitive categorical aid for mentoring to any school district employing an initial educator beginning in the 2006–07 school year.³⁹

Choice School Teachers. Pursuant to Act 25, all teachers with primary responsibility for the academic instruction of pupils at schools in the Milwaukee Parental Choice Program are required to have graduated from high school or been granted a declaration of equivalency of high school graduation.⁴⁰ This provision becomes effective for the 2006–07 school year.⁴¹

Pupils and Curriculum

Alternative Education. 2005 Wisconsin Act 25 allocates funding for a number of different alternative education programs. In particular, the Act allocates \$190,000, in each of the 2005–06 and 2006–07 fiscal years, from the appropriation for alternative education grants to the Second Chance Partnership, a nonprofit corporation operating a pilot program in which “children at risk” participate in apprenticeships while earning high school diplomas.⁴² In addition, the Act allocates a total of approximately \$1 million from the Milwaukee Public Schools’ children at risk programs to the

Educare Center of Milwaukee during the 2005–06 and 2006–07 school years.⁴³

Educational Opportunity. Act 25 also included a number of provisions that earmarked funding for particular programs to provide opportunities in education. First, Act 25 provided aid above base-level funding for bilingual-bicultural education. Second, the Act established \$100,000 for funding for the Wausau School District for English instruction for three-, four-, and five-year-old Southeast Asian children.⁴⁴ These payments were previously funded from Temporary Assistance for Needy Families funds under the Department of Workforce Development. Next, funding is provided under the Act for grants to school districts to partially reimburse them for the costs related to offering advanced placement courses in high schools that are not yet offering such courses.⁴⁵ A grant cannot exceed an amount equal to \$300 multiplied by the number of pupils in the high school’s advanced placement courses in the fall or spring session in which the grant would be awarded.⁴⁶ Fourth, Act 25 also established funding annually for a grant program to provide advanced curricula and assessments for gifted and talented middle school pupils.⁴⁷ Finally, the Act provided funding for adult literacy grants to nonprofit organizations to support programs that train community-based adult literacy staff and to establish new volunteer-based programs in areas of the state that have a demonstrated need for adult literacy services.⁴⁸ Grants under

this program cannot exceed \$10,000, and no organization can receive more than one grant in a fiscal year.⁴⁹

Technology-Enhanced Curriculum. Act 25 also allocated \$25,000 for grants to consortia of school districts meeting specific criteria for developing and implementing a technology-enhanced high school curriculum.⁵⁰ The criteria required that: (1) the curriculum is developed for and implemented through streaming video conferencing and online course work; (2) the consortium includes high schools from at least eight school districts; (3) the participating school districts collectively contribute an amount equal to at least the amount of the grant received in the same fiscal year; and (4) the curriculum is made available to each high school participating in the consortium.⁵¹

Application System for Open Enrollment. Act 25 also required the DPI to submit a report to the governor and the Joint Finance Committee on the feasibility and cost of developing and implementing a statewide Internet-based application and reporting system for the open enrollment program.⁵² The report must be submitted by March 1, 2006.⁵³

Transportation of Open Enrollment Pupils. 2005 Wisconsin Act 68 changes the law regarding transportation for pupils participating in the public school open enrollment program. Prior to Act 68, school boards that chose to provide transportation for nonresident open enrollment pupils were generally prohibited from picking up or dropping off such pupils within the boundaries of the pupil’s resident district. Now, however, Act 68 authorizes a school board to provide transportation for a nonresident open enrollment pupil to or from a location

³⁸ Wis. Stat. § 20.255(2)(kg), as amended by 2005 Wis. Act 25.

³⁹ Wis. Stat. § 115.405(2m), as created by 2005 Wis. Act 25.

⁴⁰ Wis. Stat. § 119.23(2)(a)6., as created by 2005 Wis. Act 25.

⁴¹ 2005 Wis. Act 25, § 9437(4m).

⁴² Wis. Stat. § 20.255(2)(cf), as amended by 2005 Wis. Act 25; Wis. Stat. §§ 20.255(2)(ep), 115.28(54), 121.08(4)(c), as created by 2005 Wis. Act 25; 2005 Wis. Act 25, § 9137(3q).

⁴³ Wis. Stat. §§ 20.255(2)(bc), 118.153(4)(b), as amended by 2005 Wis. Act 25; 2005 Wis. Act 25, § 9137(2n).

⁴⁴ Wis. Stat. § 20.255(2)(ce), as created by 2005 Wis. Act 25.

⁴⁵ Wis. Stat. §§ 20.255(2)(fw), 115.28(45), as created by 2005 Wis. Act 25.

⁴⁶ Wis. Stat. § 115.28(45), as created by 2005 Wis. Act 25.

⁴⁷ Wis. Stat. §§ 20.255(2)(fy), 118.35(4), as created by 2005 Wis. Act 25.

⁴⁸ Wis. Stat. §§ 20.255(3)(b), 115.28(52), as created by 2005 Wis. Act 25.

⁴⁹ Wis. Stat. § 115.28(52), as created by 2005 Wis. Act 25.

⁵⁰ Wis. Stat. § 16.997(7), as created by 2005 Wis. Act 25; Wis. Stat. § 20.505(4)(s), as amended by 2005 Wis. Act 25.

⁵¹ Wis. Stat. § 16.977(7), as created by 2005 Wis. Act 25.

⁵² 2005 Wis. Act 25, § 9137(3m).

⁵³ *Id.*

within the boundaries of the school district in which the pupil resides, with the approval of the pupil's resident school board.⁵⁴ The Act took effect on January 6, 2006, and first applies to state aid distributed in the school year beginning after the effective date of the Act.⁵⁵

Recording of Custodial Interrogations of Juveniles. 2005 Wisconsin Act 60 now requires law enforcement agencies to make an audio or audio and visual recording of any custodial interrogation of a juvenile that is conducted at a place of detention and at a place other than a place of detention if feasible in accordance with the provisions outlined in the law.⁵⁶ A law enforcement officer or agent conducting a custodial interrogation is not required to inform the subject of the interrogation that the officer or agent is making the audio or audio and visual recording.⁵⁷ The Act first applies to custodial interrogations conducted on the effective date of the Act, which was December 31, 2005.⁵⁸ Although the Act does not cover interrogations by school district officials on matters related to school discipline, school districts officials should still consider the application that the law may have to interrogations by law enforcement agencies conducted at schools.

Sexual Offenders. Pursuant to 2005 Wisconsin Act 5, a police chief or sheriff is now authorized to provide to the school information from the sex offender registry concerning a juvenile who is a registered sex offender and concerning a juvenile proceeding in which an adult registrant was involved.⁵⁹ Information from the sex offender registry may be released to school authorities if the police chief or sheriff determines that doing so

is necessary to protect the public.⁶⁰ The Act took effect on May 17, 2005.

School District Governance

Public Records. 2005 Wisconsin Act 59 now prohibits an "authority" under the Wisconsin public records law from providing access to personally identifiable data that contains an individual's account or customer number with a financial institution, unless specifically required by law.⁶¹ Such personally identifiable data includes credit card numbers, debit card numbers, checking account numbers, or draft account numbers unless specifically required by law.⁶²

School District Performance Reports. 2005 Wisconsin Act 62 changes the manner in which school districts are required to provide information on school district performance to the parents or guardians of pupils. Prior law required each school board to distribute a copy of the school district performance report, by January of each year, to the parent or guardian of each pupil enrolled in the school district or to each pupil to take home. The school district performance report includes information by school and school district on items such as academic achievement, attendance data, staffing and financial data, and participation in the open enrollment program. It also includes a comparison of the school district's performance on academic performance and other indicators of performance with the performance of other school districts in the same athletic conference.

2005 Wisconsin Act 62 now requires a school board to distribute or send home the school performance report only upon request from the parent or guardian of a pupil.⁶³ The Act also requires the school board to notify annually by January 1 the parent or guardian of each pupil enrolled of the right to request the school perfor-

mance report.⁶⁴ If the report is requested, the school board must distribute the report or give it to the pupil to take home annually by May 1.⁶⁵ Finally, the report must be made available to the public if the school district maintains an Internet site.⁶⁶ This Act took effect on July 1, 2005.⁶⁷

⁵⁴ Wis. Stat. § 121.54(10), as amended by 2005 Wis. Act 68.

⁵⁵ 2005 Wis. Act 68, § 2.

⁵⁶ Wis. Stat. § 938.195, as created by 2005 Wis. Act 60.

⁵⁷ *Id.*

⁵⁸ 2005 Wis. Act 60, § 51.

⁵⁹ Wis. Stat. § 301.46(2)(c), (2m)(c), (5)(b), (5)(c), as amended by 2005 Wis. Act 5.

⁶⁰ Wis. Stat. § 301.46(2)(c) and (2m)(c), as amended by 2005 Wis. Act 5.

⁶¹ Wis. Stat. § 19.36(13), as created by 2005 Wis. Act 59.

⁶² *Id.*

⁶³ Wis. Stat. § 115.38(2), as amended by 2005 Wis. Act 62.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ 2005 Wis. Act 62, § 2.