

School Law Briefing

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Reciprocal Reporting: What Can the Police Be Told?

*The Illinois Attorney General has recently determined that the reciprocal reporting of criminal offenses committed by students is not simply limited to reporting delinquent students. Instead, the Attorney General found that school districts can report to the police **any** suspected criminal activities committed by students.*

SECTION 5/10-20.14 OF THE *Illinois School Code* provides that school boards must establish parent-teacher advisory committees to develop guidelines concerning student discipline. This section further requires that the committees develop reciprocal reporting systems with local law enforcement agencies to exchange information about criminal offenses committed by students.

The Illinois Attorney General found that the statute allows not only for the reciprocal reporting of criminal offenses that students are found *guilty* of, but also of criminal offenses they are simply *accused* of.

The Attorney General stated that the intent of the statute was to encourage the sharing of information between school officials and the police “without regard to whether the student had been arrested or detained or whether any charge or petition had been filed in court.”

The Attorney General correctly identified the more difficult question: What information can properly be shared under a reciprocal reporting agreement? He decided that school districts and the police have different responsibilities.

Relying in part on the *Illinois School Student Records Act*, the Attorney General found that school districts can report “any alleged or suspected criminal acts to the police.” He reasoned that documents and other information concerning criminal offenses committed by students were not considered confidential under the *Illinois School Student Records Act*, which generally requires parental consent before the disclosure of student records.

However, the Attorney General found that the police were somewhat restricted in what information they could pass on to school districts. He found that the police could only report on the following criminal activities: (1) the unlawful use of weapons, (2) violations of the *Illinois Controlled Substances Act*, (3) violations of the *Cannabis Control Act*, and (4) forcible felonies, including murder, criminal sexual assault, robbery, arson, and kidnapping. The Attorney General found that the police are governed by the *Juvenile Court Act*, which specifically says that they can release only the above information to school districts.

School districts should use this Attorney General opinion to their advantage since the opinion clarifies what information school districts can give to the police under reciprocal reporting agreements. For this reason, take a minute to review your reciprocal reporting agreements concerning student criminal offenses and revise them if necessary to provide that you have broad authority to report suspected student criminal activity to your local police.

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Legislative U P D A T E

Literally hundreds of proposed legislative bills concerning schools have been filed with the Illinois General Assembly for consideration in the current session. It is our practice to hold off discussing these proposed bills until they are passed, since the vast majority will either not be enacted into law or will be substantially rewritten. The Legislature will be considering these proposed bills in the coming months, and we will keep you apprised of their status.

We can, however, report to you that Public Act 89-698 was enacted into law, effective January 14, 1997. This Public Act contains a number of amendments to the *Illinois School Code*, including changes to sections concerning student transfers after expulsion, student residency for special education students, and the powers of the Illinois State Board of Education with regard to private schools.

Powers and Duties of the Illinois State Board of Education (105 ILCS 5/1A-4)

Prior to the recent amendment, the Illinois State Board of Education was responsible for the educational policies and guidelines for all Illinois schools, both public and private. The amended statute now provides that the Illinois State Board of Education is responsible only for the educational policies and guidelines in *public*, not private, schools.

Scholastic Records of Transferring Students (105 ILCS 5/2-3.13a)

As we reported to you in our November issue of *School Law Briefing*, the Illinois Legislature made numerous revisions to the student expulsion and student transfer provisions of the *School Code*. One of these amendments concerned the transfer of records for students who had been suspended or expelled for (1) knowingly possessing a weapon in a school building or on school grounds; (2) knowingly possessing, selling, or delivering in a school building or on school grounds a controlled substance or cannabis; or (3) battering a staff member of the school. The *School Code* requires that students who are suspended or expelled for these

offenses must not be permitted to attend school in another district until the students have served the entire period of their suspensions or expulsions.

However, the recent amendment modified this section by providing that these students can be allowed to transfer into the Department of Corrections school district during the pendency of their suspensions or expulsions.

Residency of Special Education Students (105 ILCS 5/14-1.11)

This amendment applies *only* to students receiving special education and related services. This section of the *School Code* describes how school districts must make residency determinations for special education students.

Prior to the amendment, this section provided that in cases of divorced parents who both retained legal guardianship or custody, the resident district was the district in which the parent lived who claimed the child as a dependent on his or her federal income tax return.

This section now provides that a special education student's resident district is the district in which the parent lives who provides the student with a "primary regular fixed night-time abode" provided that "the election of resident district may be made only one time per school year."

Be certain to pass this information to your administrators since this amendment will significantly affect how you determine the residency of special education students whose parents are joint custodians. You would also be well advised to revise your special education student residency policies accordingly.

Student Residency Hearing Procedures

As we reported in the November 1996 issue of [School Law Briefing](#), the Illinois Legislature added a new section to the Illinois School Code effective January 1, 1997, regarding student residency. One important element of this new statute is a detailed hearing procedure.

PRIOR TO THE PASSAGE OF THE NEW STATUTE, ILLINOIS cases provided that boards of education had to afford students some measure of due process when students were denied tuition-free enrollment:

[I]t cannot be questioned that the Illinois School Code conferred upon plaintiff an interest in attending a school on a tuition-free basis and that the retention of such a benefit is protected by the requirements of due process of law.

Kraut v. Rachford, 51 Ill.App.3d 206, 213 (1977).

In the absence of a clear and concise statute, however, school districts were without guidance about the practical elements of student residency hearings. For example, it was unclear whether students whose residency was questioned after they were already enrolled could continue to attend school and whether they could be charged tuition for that period of time.

Fortunately, the new statute provides detailed hearing procedures in the event that a board of education determines that a student is a non-resident of the district. First, the board must notify the person who enrolled the student of the amount of tuition due.

Within 10 days, the person who enrolled the student may request a hearing in writing to challenge the residency decision. The board of education must conduct a hearing between 10 and 20 days after the notice of the hearing is given.

The board of education may conduct the hearing itself or it may appoint a hearing officer to conduct the hearing. The person who enrolled the student has the burden of proving the residency of the student.

If the hearing is conducted by a hearing officer, a written report of his or her findings must be sent to the parties. Within five (5) days of receiving these findings, the person who enrolled the student may file written objections with the school board.

Within 15 days after the conclusion of the hearing (whether conducted by the board itself or a hearing officer), the board of education must decide whether or not the student is a *bona fide* resident of the district. The school board must send a copy of its decision to the person who enrolled the student. This decision of the school board is final.

The statute further provides that during the residency hearing, the student in question must be allowed to attend school tuition-free. We believe that this right does not come to a *new* student who has been denied enrollment on residency grounds. We read the statute as giving a new and important right to a student who, for whatever reason, has already been enrolled and whose school year would be disrupted if he or she were required to leave after having enrolled in classes.

If the board affirms its decision that the student is a non-resident, the board may charge the parent/guardian tuition for the student's prior attendance and the school board must refuse to permit the pupil to continue attending school unless tuition is paid.

Keep in mind that the statute does not apply to homeless children, children placed in the custody of the Department of Children and Family Services (DCFS), students who become non-residents during a school term (who are entitled to attend school within the school district for the remainder of the term tuition-free), or special education students.

A student residency policy should be contained in your board policy manual. Current student residency policies should be revised to ensure that they comport with the new law. A well-written student residency policy will come in handy when the next inevitable student residency case arises.

Certification of School Nurses

Brady v. Board of Education of Palatine Community Consolidated School District 15, 672 N.E.2d 810 (1st Dist. 1996)

School nurses and other health-care aides who perform professional nursing services and are employed by Illinois school districts must possess school service personnel certificates and are thus entitled to all applicable benefits, compensation, and working conditions.

The *Illinois School Code* provides that boards of education have the authority to:

employ a registered professional nurse and define the duties of the school nurse within the guidelines of rules and regulations promulgated by the State Board of Education. Any nurse first employed on or after July 1, 1976 must be certificated under Section 21-25 of this Act.

Despite the fact that the statute mandates that all nurses obtain certificates from the Illinois State Board of Education, some school districts employ school nurses or aides who do not hold such certificates. The reasoning behind this is that nurses do not need certificates if they do not perform any teaching duties and are not normally present in the classroom.

The Illinois Appellate Court finally shed some light on this issue in the case of *Brady v. Board of Education of Palatine Community Consolidated School District 15*. In *Brady*, prior to the 1990-91 school year, the Palatine School District employed six school nurses, all of whom held certificates from the Illinois State Board of Education. Beginning in 1990, the school district began replacing these certificated school nurses with “health-aides.” The “health-aides” were registered nurses, but they did not possess school personnel certificates. Three taxpayers filed a lawsuit, alleging that the school district violated the law by replacing the certificated school nurses.

All of us probably know why the school district chose to replace the certificated school nurses with “health-aides.” As the appellate court aptly pointed out, certificated school nurses are much more expensive to employ because they are “entitled to all the rights and privileges granted holders of a valid teaching certificate, including teacher benefits, compensation and working conditions.” 105 ILCS 5/21-25. “Health aides” are not entitled to these privileges.

The school district argued that the “health-aides” performed no teaching duties; thus they were not required to be certificated. However, the Appellate Court held that the statute was clear and unambiguous; it provides that “any nurse...must be certificated.” When the language of a statute is clear and unambiguous, there is no need for interpretation by a court of law: “[b]ecause the statute is clear in its terms, it is not within our purview to investigate the legislature’s intent or purpose.”

The *Brady* court cited to a 1986 Illinois Appellate Court case wherein the court held that the very purpose behind the statute requiring school nurses to be certificated is:

to provide nurses with some degree of job stability free from arbitrary hiring and firing, to attract nurses of high capabilities, and to provide for the retention of qualified nurses.

Implications for school districts...

All school nurses must hold school service personnel certificates from the Illinois State Board of Education, regardless of the time spent in classrooms and their job title. The *Illinois School Code* and its implementing regulations clearly state this. However, school districts can request a waiver of this *School Code* and Administrative Code requirement. You will recall that on February 27, 1995, the Illinois Legislature authorized school districts to petition the Illinois State Board of Education for waivers or modifications of certain *School Code* mandates and Administrative rules (see section 5/2-3.25g of the *Illinois School Code*).

The State Board of Education has granted waivers of the *School Code* and Administrative Code sections regarding the certification of school nurses 11 times since March of 1996. (Source: ISBE Reports on Waiver of School Code Mandates, dated April 19, 1996 and September 27, 1996.)

Keep in mind that the *Brady* case may impact how the Illinois State Board of Education and General Assembly handle future requests for waivers of the school nurse certification requirements. If the issue of school nurse certification is one your school district is facing, your legal counsel is in the best position to advise you as to the appropriate course of action.

Unlawful Search of Student

People of the State of Illinois v. Parker, 672 N.E.2d 813 (1st Dist. 1996)

Seizure of a student carrying a gun who turned to leave school building after seeing a metal detector was not based on reasonable suspicion. The student could have been leaving school grounds for any number of appropriate reasons.

It is not often that we report on criminal cases; however, this interesting Illinois case caught our attention.

On April 12, 1995, a 16-year-old Bogan High School (Chicago) student entered school. He saw that students were lined up to walk through a metal detector, and he turned around to leave the building. A Chicago police officer stopped him and told him that he would have to walk through the metal detector. The student responded by raising his shirt and showing the police officer a gun in his pants. The student then told the police officer that “someone put this gun on me.”

The police officer retrieved the gun and arrested the student on the charge of unlawful use of a weapon. The case does not indicate whether the student was disciplined by the school.

The trial court granted the student’s motion to quash his arrest and suppress evidence. The appellate court upheld the decision of the trial court, finding that the detention constituted an unreasonable seizure under the Fourth Amendment to the United States Constitution. The court reasoned that:

The only reason the officer had for stopping defendant was because defendant entered the building, looked in the general area of the metal detectors and turned around to leave.

Once he stepped inside the school, defendant, for whatever reason, decided he was not going to stay in the building. While exercising his right to go another way, defendant was stopped by an officer in front of all the other students.

We agree with the trial court which stated that: “the defendant could have, even — if there were no signs, if there was no metal detector, he could have just turned around and gone home for any number of reasons, being sick, forgot something, forgot his lunch, forgot his books, forgot his homework or what have you.”

The Appellate Court affirmed the trial court’s dismissal of the case. Clearly, the legality of the search of a student depends on the reasonableness of the search under the circumstances. Whether a search is reasonable will depend largely on the particular facts of each case.

Keep in mind that this case involved the search of a student’s person or body. Such searches are generally considered more intrusive than searches of lockers, desks, *etc.*

Implications for school districts...

Your goal is to keep weapons out of schools. Fortunately, school district personnel need not learn criminal law to accomplish this. However, you must keep in mind that students cannot be searched or detained without restriction.

In the November issue of *School Law Briefing*, we reported that sections 5/10-22.6(d) and 5/10-22.6(e) of the *Illinois School Code* had been amended to broadly define the term “weapon” to include even sticks, pencils and pens. The new statute also allows more comprehensive school searches to be conducted. One way that school districts can combat the presence of weapons in schools is to implement comprehensive search and seizure policies and weapon-free schools policies that comport with the new provisions of the *Illinois School Code*.

School Funding in Illinois

Committee For Educational Rights v. Edgar, 672 N.E.2d 1178 (Ill. 1996)

The question of how the State of Illinois funds its public schools was considered “outside the sphere of the judicial function.” The court held that the Illinois Legislature was the only entity authorized to determine how Illinois schools should be funded.

As most of you are probably well aware, the Illinois Supreme Court has declined to enter the debate regarding school funding in Illinois. The Supreme Court affirmed the dismissal of plaintiff’s complaint, concluding that “the question of whether the educational institutions and services in Illinois are ‘high quality’ is outside the sphere of the judicial function.”

A number of school districts, parents, and students in the State of Illinois sued Governor Jim Edgar and the Illinois State Board of Education, alleging that school funding in Illinois violated the Illinois Constitution.

The crux of plaintiffs’ argument was that “wealthy” school districts (those with high levels of assessed value per student) are able to raise more money per pupil for use in schools than “poor” school districts (those with low levels of assessed value per student). The court discussed at length how the State of Illinois finances its schools.

Plaintiffs alleged that Illinois’ system of school finance violated section 1 of article X of the Illinois Constitution, which provides in part:

A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities. The State shall provide for an efficient system of high quality public educational institutions and services.... The State has the primary responsibility for financing the system of public education.

First of all, plaintiffs argued that the State does not provide an “efficient” system of education since there are such vast disparities in the level of funding because of various taxable property amounts.

Second, plaintiffs argued that education in certain Illinois school districts is not of “high quality,” again on the basis that funding inequities exist between school districts.

The court noted that plaintiffs did not argue for absolute uniformity or equal spending per student throughout Illinois. Plaintiffs did argue, however, that property wealth should be considered “educationally irrelevant” and that school financing should be based on other more relevant factors. The Court held that the disparities in funding did not make education in Illinois “inefficient.”

The Court ultimately held that the question of what constituted a “high quality” education could not be decided by the courts; it was a matter to be left to the Legislature and the people of Illinois to decide. The dissenting judge accused the majority of side-stepping the issue:

The majority fears “legislating” in the field of public education.... Out of fear of entering a “political thicket” [citation omitted], the majority completely abdicates its constitutional duty to interpret the Illinois Constitution.

A correlation exists between educational resources and educational quality or opportunity. Lesser educational resources, below a certain level, results in lower educational quality or opportunity. These propositions form the premise upon which the Illinois public school funding scheme is based.

Implications for school districts...

Changes in the way that Illinois schools are funded will significantly impact your school district. Since the Illinois courts will not address the school funding issue, we must wait and see what, if anything, the Illinois Legislature is going to do. Both the Senate and the House have drafted bills that address school funding. Rest assured, we will be tracking these bills and will update you periodically on their status.

Prior Restraint of Religious Material

Muller v. Jefferson Lighthouse School, 98 F.3d 1530 (7th Cir. 1996)

Student was properly restrained from giving invitations to his classmates seeking their attendance at a religious function. The school had an appropriate “prior restraint” policy in place which it correctly applied.

A fourth grade Wisconsin school student, Andrew, asked his teachers if he could hand out invitations to his classmates concerning a religious meeting to be held at his church. The principal told him that he could not hand out the invitations. The teachers and the principal thought that Andrew wanted to pass the invitations out during class, although Andrew’s parents asserted that the invitations would have been distributed during non-instructional times.

Three months after he asked to pass out the invitations, Andrew’s parents filed a lawsuit against the school district alleging that Andrew’s free speech, free exercise of religion, and equal protection rights had been violated.

The *Muller* court embarked on a detailed discussion of what free speech rights that students, particularly elementary school students, possess. The court noted that age is a critical factor in student speech cases, since elementary school children:

are just beginning to acquire the means of expression [citation omitted]. Grammar schools are more about learning, including learning to sit still and be polite, than about robust debate.

The Seventh Circuit held that the school was a nonpublic forum; the school did not open its facilities for “indiscriminate use by the general public.” Speech in nonpublic forums can be more regulated than speech in public forums. For this reason, the court found that students attending the school were subject to reasonable restrictions of their speech.

The school district had a policy in place requiring publications without school sponsorship to be viewed by the principal 24 hours before distribution. This is called “prior restraint” and is routinely held to be constitutional in a nonpublic forum as long as it is reasonable. The court held:

Prior restraint in the public school context, and especially where elementary schools are concerned, can be an important tool in preserving a proper educational environment.... Where public school children are involved there is no practical way to protect students from materials that can disrupt the educational environment or even severely traumatize a child without some form of prior restraint.

It is important to note that the court did not rest its decision on the fact that the invitations Andrew wished to pass out were for a religious function. In fact, the court specifically found that speech cannot be suppressed solely because it is religious in nature. The school district’s policy of “prior restraint” applied to both religious and non-religious material. Had the policy simply dealt with religious material, then the court would likely not have upheld the school district’s prior restraint policy.

Implications for school districts...

This is an important decision for Illinois school districts because it was decided by the Seventh Circuit Court of Appeals, the federal court that hears appeals from the States of Illinois, Wisconsin, and Indiana. The decision is also very well written and provides a very detailed discussion of the state of the law.

School personnel often hesitate to restrict student speech, both oral and written, because they are not sure what authority they have to do so. This case stands for the proposition that school district personnel can review non-school sponsored materials before the materials are passed out. School district personnel can also prevent the distribution of such materials to students. It is an opinion worth reading if you are currently dealing with these issues in your school district.

Profile: Alan Mullins

Alan M. Mullins concentrates his practice in school, employment, civil rights, contract and election law. He started his career in school law as a staff attorney for Community High School District 218 in Oak Lawn, Illinois. That experience taught him the value of practical, and timely, solutions to the issues facing schools. Today he routinely advises school boards and administrators on the daily administration of school districts, board procedures

and special projects. He also represents school districts in court and before various administrative bodies. Alan has written numerous articles for the Illinois Association of School Boards Journal and has made presentations at state and national conferences. With over fifteen years of experience working with and on behalf of school districts, Alan provides insightful and practical legal counsel to our school district clients.

Firm News

Robert W. Rolek would like to welcome new school districts who have retained him and the firm for various corporate and special assignment work. A hearty welcome for those using our services this past year include Big Hollow School District No. 38, Lake Villa Community Consolidated School District No. 41, Grant Community High School District No. 124, Lake Forest School District No. 67, and Round Lake Area School District No. 116.

Stewart H. Diamond gave a speech on March 6, 1997, to the Illinois Association of School Business Officials on the topic of governmental self-insurance pooling. This law firm represents a large number of Illinois governmental self-insurance pools, and we wrote the contract and by-laws document for the first school self-insurance pool in Illinois.

Ronald S. Cope and **Alan M. Mullins** were recently successful in defeating a petition filed by the Village of Westchester to detach from Proviso School District 209. The petition was denied by both the Cook

County Regional Superintendent of Schools and the Superintendent of the Illinois State Board of Education.

Robert K. Bush spoke at the 1996 Association of School Business Officials International (ASBO) annual meeting held in November. His topic was "Issues and Recent Developments of Benefits Statutes," which included a discussion of workers' compensation law, the *Americans With Disabilities Act*, and the *Family Medical Leave Act*.

Darcy L. Kriha was a guest lecturer at the annual Chicago Bar Association seminar entitled "Current Issues in Special Education Law" held in October. She spoke on the topic of inclusion, commonly referred to as "mainstreaming."

Alan and **Darcy** co-authored an article for the Illinois Association of School Board's Journal entitled "New Law Helps in Residency Cases," published in the March/April 1997 issue.

Darcy was recently a guest reader at a grade school in her community. The school has developed an innovative "Guest Speaker Program" where parents and other leaders in the community volunteer their time to read to students.

Darcy and **Jeffrey D. Greenspan** spoke at a graduate level class entitled "History of Philosophy of Education" at National-Louis University. They discussed some contemporary legal issues in education today, including freedom of speech, religion in the schools, student newspapers, access to classrooms and student dress codes.

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