

☞ 07hr_sb0251_SC-Ed_pt03



Details: Public Hearing – February 21, 2008

(FORM UPDATED: 07/12/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Education (SC-Ed)

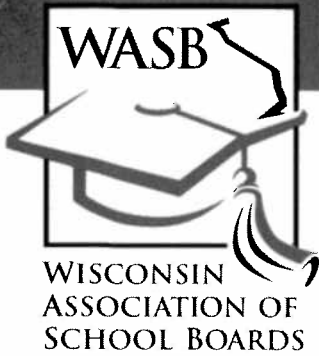
COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**
- Record of Comm. Proceedings ... **RCP**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt**
 - Clearinghouse Rules ... **CRule**
 - Hearing Records ... bills and resolutions
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution)
 - Miscellaneous ... **Misc**
- (**ajr** = Assembly Joint Resolution)
(**sjr** = Senate Joint Resolution)

9MB



122 W. WASHINGTON AVENUE, MADISON, WI 53703
PHONE: 608-257-2622 • FAX: 608-257-8386

JOHN H. ASHLEY, EXECUTIVE DIRECTOR

TO: Senate Committee on Education
FROM: Sheri Krause, Legislative Services Coordinator
DATE: February 21, 2008
RE: Senate Bill 251, relating to removal of a pupil from class, from any portion of school property, or from a school-sponsored activity.

The Wisconsin Association of School Boards (WASB) opposes Senate Bill (SB) 251 because it would interfere with the well-established policies currently used in schools to promote safe learning environments.

SB 251 would allow any school employee to remove a student from school property or from a school-sponsored activity if the student is dangerous, unruly or disruptive or if the student interferes with the ability of a school employee to perform his or her job effectively; and require school districts to replace their codes of classroom conduct with general codes of conduct.

Removal of a Student

The WASB is opposed to statutorily allowing all school employees the authority to remove students from school property or school-sponsored activities.

Current Practice

School districts are legally responsible for their students. They already have the authority to allow any school employee to remove a student from a particular situation and send the student to the school principal or address the situation in another manner to ensure a safe learning environment. Policies and procedures are in place and are working in school buildings throughout the state. SB 251 would preempt those policies and create legal conflicts.

Under current law, teachers or other licensed staff, including special education aides, have the authority to remove a student from a classroom. They are required to send the student to the school principal or his or her designee and notify the principal of the reasons for the removal. The principal then determines if the student will return to the classroom or be placed in another instructional setting. The teacher, principal or another administrator may also discipline the student.

Senate Bill 251

SB 251 would allow all school employees the authority to "remove" a student. If the disruption occurred in a classroom, an employee would still be required to send the student to the principal.

However, if the disruption occurred outside a classroom, an employee would have the authority under state law to “remove” the student from school property or from the activity and to determine whether or not to send the student to the school principal. SB 251 also indicates that this law would not prohibit a school employee from disciplining the student.

The WASB has serious concerns regarding SB 251. The legislation would:

- Preempt local policies and practices regardless of their effectiveness.
- Grant all school employees the authority to remove a student regardless of experience and training. A custodian or food service aide would have the authority to remove a student from school property on his or her first day on the job.
- Grant all school employees the authority to remove a student from any portion of school property and any school-sponsored activity regardless of the circumstances.
- Create a presumption that all school employees have the right to discipline students. Custodians, food service aides and all other non-licensed staff are not trained or qualified to discipline students.
- Give all school employees the right to remove students and the discretion of whether to send a student to the principal if the disruption occurred outside a classroom. However, if the disruption occurred inside a classroom, a teacher or other licensed staff would still be required to send the student to the principal and would have less discretion than an aide on the playground.
- Prohibit school boards from requiring school employees to send a student to the principal if a disruption occurs. Thus, a principal may not learn that a student had a conflict or even multiple conflicts in any given day until the following day when school employees begin submitting reports that they had removed the student.
- Prevent school boards and administrators from prohibiting individual school employees from removing students if they demonstrate poor judgment in student removals.

It is assumed that school boards would still have the authority to set policies in place regarding the removal of students to ensure their safety and well-being. However, there are questions as to the extent of school district policies:

- Would school boards have the authority to define “removal” differently for different circumstances – classrooms, hallways, playgrounds, field trips, etc – and different ages – i.e. kindergarteners vs. high school seniors?
- Would school boards have the authority to determine the length and placement of removed students?
- Would school boards have the authority to determine the circumstances for a student to be returned to a classroom or school activity?
- Would school boards have the authority to limit an employee to removing a student from the setting in which the disruption occurred? For instance, if a student misbehaves during lunch, can a food service aide be limited to removing the student from the lunchroom or must the aide be allowed to remove the student from school property entirely?
- Would school boards have the authority to set policies regarding the removal of a student if two or more school employees disagree on a removal?
- If a student is removed from school property during the school day, is it considered a suspension with due process rights?

- Would school boards have the authority to prohibit certain school employees from disciplining students?
- If all school employees have the right to remove students, do all school employees have the right to be informed of which students have behavior intervention plans in place as required under special education laws to ensure that the students are properly removed?

Senate Substitute Amendment 1 (LRB 0291/1)

Senate Substitute Amendment (SSA) 1 to SB 251 addresses many of the WASB's concerns regarding the original legislation. However, some concerns remain. SSA 1 to SB 251 would:

- Preempt local policies and practices regardless of their effectiveness.
- Grant all school employees the authority to remove a student regardless of experience and training.
- Prevent school boards and administrators from prohibiting individual school employees from removing students if they demonstrate poor judgment in student removals.

Classroom Codes of Conduct vs. Codes of Conduct

Under the language of SB 251, school districts would be required to replace their current codes of classroom conduct with more general "codes of conduct." A single "code of conduct" would have far greater legal implications and ought to be vetted thoroughly as a separate public policy proposal.

Current Practice

All school districts have a specific code of classroom conduct as well as many other student conduct codes, rules and policies, which are regularly reviewed and updated. Unlike the other policies, however, the code of classroom conduct is statutorily required to be developed in consultation with a committee of parents, students, school board members, school administrators, teachers, pupil services professionals and other district residents appointed by the school board.

Senate Bill 251

The WASB has serious concerns about the amount of time, effort and resources it will take for all 426 school boards to convene district committees and compile comprehensive "codes of conduct" and the legal implications of a mandated, single "code of conduct" in schools.

Senate Substitute Amendment 1 (LRB 0291/1)

Senate Substitute Amendment (SSA) 1 to SB 251 addresses some of the WASB's concerns regarding the original legislation. However, it should be noted that many school districts have rules and policies in place that are not classified as "codes of conduct," which may result in differing legal interpretations for the circumstances that allow student removals outside of classrooms.

Rather than create legal conflicts and inflexible policies that do not reflect the needs of local schools, the WASB requests that the Legislature continue to allow local policies to determine how and when a student can be removed and not advance SB 251. Thank you.



WISCONSIN EDUCATION ASSOCIATION COUNCIL

Affiliated with the National Education Association

*Every kid
deserves a
Great School!*

Testimony to the Senate Education Committee SB 251 Concerning Removal of a Pupil from Class February 21, 2008

Hello, my name is Lily Ramos and I am a teacher assistant or teacher's aide employed at Racine Unified School District. I have been a teacher assistant for 18 years. I have also been the Racine Education Assistant Association Union President for four years. I support SB 251 and empowering teacher's aides to send disruptive or dangerous students to the principal to help keep schools safe and orderly for everyone.

Respecting education assistants or teacher's aides is important. For several years, Racine Unified has been working with the Panasonic Company on improving the quality of education for our students. This month I had the opportunity to attend a Panasonic conference in Colorado along with teachers, principals, secretaries, and administrators. There were many other districts from all over the United State in attendance. I was very proud of the fact that Racine was the only district that included support staff in the very important discussions. Racine has taken the stand of All Means All. All students can achieve, all staff have input, and all staff affect the progress of students' achievement. Not all principals respect teacher assistants in this way. We have a way to go before all accept this belief.

One of the major discussions was how people sort other people. Why are teacher assistants sorted as non-authoritative staff? By saying, only teachers have the authority to send students to the office for not complying with the student conduct rules, a message is sent that the students only have to listen to teachers when told to follow the rules. Students need to know that the rules apply everywhere on school grounds no matter who is watching them.

One of my duties is to greet the students at the front door as they come off the bus. This Monday, two boys got off the bus shoving each other and calling each other names ready to throw punches. I know that they normally are best friends. I calmly asked them, "What is the problem?" They accused each other of starting the fight. I could tell that one of the boys had other feelings causing his anger than just being mad at his friend. I remembered seeing him in the office the Monday before at the end of the day. His behavior caused him to be suspended. He was disrespectful to his classroom teacher and disrupted the class. When this happened in the class, it took the teacher out of focusing on the lesson plan and the rest of the class misses instructional time.

When I witnessed these boys fighting I could have broke them up and just told them to go to class and send them on there way, but I knew that I would probably see that student in the office later. He was upset and his attitude would not have changed.

Mary Bell, President

Dan Burkhalter, Executive Director

He needed to talk to someone about his problems. I brought him to the principal with an explanation of what I saw. Later that day, I saw him at lunch walking with the boy he was fighting with earlier that morning. They were best friends again. He stopped me and thanked me for taking him to the office. He said he had a bad weekend and was upset about things at home. His family is in crisis and it is affecting him deeply. The principal helped him talk through it and he was able to attend the rest of the day without all that bottled up anger. If my principal did not accept the fact that I have the right--no, the responsibility to send students to the office when they are not following the student conduct rules, this student would probably have lost out on another day of class and the rest of the class would have missed class time again.

The fact is I believe teachers are great, but they cannot be everywhere. Teacher assistants or teacher's aides are at times the only staff in the lunchroom, on the playground, and in the hallways. Assistants know the kids in their buildings and want them to be safe. No one wants to see a child in trouble, but we have to face the fact that there are kids that are disrupting the progress of other students and themselves. We need to be able to control our school as a team.

The message that this bill sends is that all student must comply with the student conduct rules in their school regardless of whether it is a teacher or teacher's aide who witnesses the behavior.

Please show respect for the work teacher assistants do in our schools by passing this bill. When adults show respect, the students will also. It is an important lesson we all need to learn. Please support Senate Bill 251.

Thank you for listening.

Lily Ramos
1550 Holmes Avenue
Racine, WI 53405





JOAN BALLWEG

WISCONSIN STATE REPRESENTATIVE

PO Box 8952, State Capitol
Madison, Wisconsin 53708-8952
(608) 266-8077
Toll-free: (888) 534-0041
Rep.Ballweg@legis.wi.gov

41ST ASSEMBLY DISTRICT

**SB 251: Student Discipline Bill
Testimony by State Representative Joan Ballweg
For the Senate Committee on Education
February 21, 2008**

Thank you Chairman Lehman and committee members for holding this hearing on SB 251, which would modify the statutes related to dealing with a disruptive or unruly student in the classroom. Current law is restricted to the teacher and for disruptive behavior that occurs in the classroom.

When I was approached to work on this bill, I had no reservations taking up an issue related to the educational environment for students. My first job after graduating from U.W. Stevens Point, with a degree in elementary education, was as a school teacher. As a teacher, parent, and now a legislator, I think it is critical that we ensure our kids' safety and provide a learning environment that is free of negative disruptions.

SB 251, as drafted, would amend the statute to allow educational support professionals and other school district employees to deal with disruptive behavior. Many of these individuals work in the classroom with

the teacher on a daily basis, have responsibility for supervision of the children, and should have the authority and tools to keep kids safe. The bill as drafted would also expand the boundaries, so that it applies outside the classroom. SB 251 would apply to conduct that is observed in the school hallways, in the lunchroom or on the playground at recess.

I am also the author of AB 484 which is a companion bill to SB 251. Previously in the Assembly, there was a public hearing on AB 484, and we heard from a number of interested parties that had various concerns over the bill. Subsequently, we drafted a substitute amendment to the bill, and then made further revisions to that amendment. Sen. Lehman has drafted a sub amendment for SB 251 that will reflect all of the changes drafted for the assembly bill.

First, we limited the scope of the bill, so that it only applies to school activities on school grounds. Second, the sub now only applies to teacher's aides and not other school district employees. In addition, it limits the teacher's aides authority to situation when the teacher is not present. So, if the teacher and teacher's aide are both present in the classroom, it would be the teacher's discretion whether or not to send the student to the principal's office.

Further, the bill clarifies that the teacher's aide is to direct the student to the principal or his or her designee, and that the teacher's aide is not disciplining the student. There was significant concern that Special Education Students would be adversely affected by the bill, and the sub makes any action taken subject to the student's I.E.P. and the placement statutes. The final revision also directs each school district to adopt a policy that would specify under what circumstances the teacher's aide would be authorized to send a student to the principal. Also, there are requirements for the school district employee to provide a written explanation of the situation to the principal within 24-hours.

While we have not been able to overcome every objection to the bill by the various stakeholders, even those opposed to the bill, admit that the substitute amendment is an improvement over the original bills as introduced.

I hope that you would support SB 251 as amended, and I appreciated your consideration.





Wisconsin State Senate

John Lehman

Senator – 21st District

State Capitol • PO Box 7882 • Madison, WI 53707-7882 • (608) 266-1832 • Toll-free: 1-866-615-7510

**TESTIMONY OF SENATOR JOHN LEHMAN
SENATE COMMITTEE ON EDUCATION
February 21, 2008 – PUBLIC HEARING
SENATE BILL 251**

Members of the Senate Education Committee, thank you for the opportunity to address you today on Senate Bill 251, which would expand the statutes regarding disciplining disruptive behavior in the classroom.

For students to succeed, first and foremost, our schools must be safe. Recent years' tragic stories of school violence in Wisconsin and across the nation have reminded us that we must actively ensure school safety, and address behavioral problems as they arise.

SB-251 is a common sense bill. Under current law, teachers have the authority to remove students from the classroom when faced with incidents of disruptive behavior. This bill expands the school discipline law to include teacher's aides. Under SB-251, the disruptive student would be escorted to the principal's office. With this legislation in place, more adults in the school will be vested with disciplinary authority to enforce rules and meet safety needs. To students, this means a productive learning environment will be maintained. It sends a clear message that all school personnel are working together to keep schools running smoothly.

Last fall, the Assembly held a hearing on the Assembly companion, AB-484, and at that time, some concerns were raised regarding the language of the original bill. Rep. Ballweg and I have since drafted a substitute amendment that would limit the scope of the bill. First, we narrowed the language so that it would only apply to teacher's aides rather than all school staff. Also, the bill will only apply to school-sponsored activities on school grounds, like from a school assembly, recess, or in the hallways.

Further, it allows a teacher's aide to send the student to the principal's office only if the teacher is not present in the classroom. If the teacher were in the classroom, it would be up to that teacher to decide whether or not to send the student to the principal's office. The substitute amendment makes clear that while the teacher's aide would have the authority to send a student to the principal's office, but that the principal would be ultimately responsible for discipline decisions. It also requires the school district to adopt a policy for clear criteria for circumstances where a teacher's aide to send a student to the principal.

Because concerns were raised regarding discipline of special needs students, the sub makes very clear that any action taken must be subject to the student's IEP.

As a former teacher for over 20 years, I understand the importance of maintaining a harmonious learning environment at school. AB-484 gives school personnel another tool to keep kids safe and orderly.

I am pleased that this proposal has strong bipartisan support in both the Senate and the Assembly. At this time, I will be happy to address any questions you may have.





WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: SENATOR JOHN W. LEHMAN
FROM: Russ Whitesel, Senior Staff Attorney
RE: 2007 Senate Bill 251
DATE: March 5, 2008

This memorandum, prepared at your request, provides a brief description of Senate Bill 251 and also Senate Substitute Amendment __ (LRBs0318/1), relating to removal of a pupil from class or any portion of school property, or from a school-sponsored activity.

Current law generally allows a teacher to remove a pupil from his or her class if a pupil violates the code of classroom conduct adopted by the school board; is dangerous, unruly, or disruptive; or exhibits behavior that interferes with the teacher's ability to teach effectively as specified by the code of classroom conduct.

Senate Bill 251, as originally drafted, extended the ability to remove the pupil from class to any **school district employee** and allowed a school district employee to remove a pupil from school property or from a school-sponsored activity supervised by that employee. Under the bill, the code of conduct was also required to specify the kinds of behavior that interfere with the ability of a school district employee to perform his or her job effectively and would warrant removal of a pupil from school or from a school-sponsored activity.

Senate Substitute Amendment __ (LRBs0318/1) does the following:

1. Limits the additional authorization to remove a pupil from class or school district property to a teacher's aide. Thus, either the teacher or teacher's aide could remove a pupil from class or school district property. Other school employees would not be authorized to take such actions.
2. Provides that a teacher's aide may take action only when he or she is not under the direct supervision of a teacher.

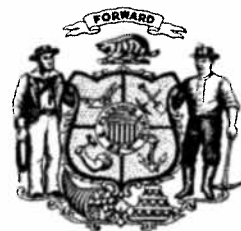
3. Limits the authority to remove a pupil only from class or school property; eliminating the express authority to remove a pupil from a school-sponsored activity.
4. Expressly provides that a teacher or a teacher's aide may send a pupil from any portion of school property other than class to the school principal or his or her designee if the pupil exhibits behavior that is a violation of the code of conduct, or exhibits that is dangerous, unruly, or disruptive. Action may also be based on behavior that interferes with the ability of a teacher or teacher's aide to effectively perform his or her job, as specified in the code of conduct.

If you have any questions regarding this legislation, please feel free to contact me directly at the Legislative Council staff offices.

RW:ty



WISCONSIN STATE LEGISLATURE



SB 251 ?



ADDRESSING ISSUES
PRESENTED BY VIOLENT SPECIAL
EDUCATION STUDENTS

A SPECIAL REPORT • 2007

When it enacted the IDEA, Congress created a federal right for children with disabilities to receive a public education that is designed for each child individually at no cost to their parents. Because the law is a funding statute, school districts must comply with it in order to receive federal education dollars.



IDEA entitles each child with disabilities in a school district the right to a “free appropriate public education” (FAPE), through an individual education program (IEP) designed to meet the child’s unique needs in the “least restrictive environment...appropriate.” In addition, parents of children with disabilities have the right to take legal action against school districts to ensure that their children receive FAPE.

Because of the IDEA, increasing numbers of students with violent behaviors are appearing in regular and special education classrooms in public schools.

Imagine the following news item appearing in the local association newsletter to members:

Your School, Wisconsin—Jason, a ten year old child with several disabilities, was well behaved while visiting a nursing home with his class last Friday, so the paraeducator assigned to work with him told him that he would get a treat. However, on the bus back to school he kicked another student and swore. As a result, he was told that he would not get a treat after all.

Jason became more and more agitated. When the bus reached the school, Jason began to scream obscenities while kicking and hitting the staff members. He gave his teacher a black eye and bruised the ribs of the bus driver. The police were called. The one staff member who had been trained to use passive restraint techniques eventually restrained Jason. When the police arrived, Jason attacked the police officer. Jason was handcuffed and placed in the squad car.

This is the fifth incident this year where Jason became so violent that he injured others. When asked whether Jason will be returned to the classroom or placed in an alternate educational setting, the District stated that it could not remove Jason to an alternate placement without the parents’ consent.

This fictional report is an amalgamation of actual reports received from educators and support staff across the state. Though such incidents are relatively rare, they are extremely traumatic for all involved.

Each year, serious injuries are inflicted on school staff by special education students whose violent behavior is often substantially related to or caused by their disability. In the past several years, WEAC members have suffered injuries including broken teeth, scratched corneas, dislocated jaws, disabling spinal injuries, bites, scratches, and bruises, among others. Among the primary reasons that teachers and paras are repeatedly injured by the same student is misunderstanding on the part of the school district about whether students with disabilities can be removed for safety reasons.

NOTE: This information is not intended to serve as legal advice. If you have questions about a specific situation, call your UniServ director.

The following issues are those that arise when staff must work with special education students whose violent behavior is uncontrolled:

- *whether the student can be removed from the regular or special education classroom,*
- *whether the district can suspend or expel the student,*
- *whether the member can call the police or press charges against a student,*
- *whether the member will be liable for injury inflicted on other children by the special education student,*
- *what recourse the member has if injured by a student, and*
- *whether a staff member who was injured can be required to continue working with the student.*

Even if a staff person's injuries do not require medical attention, where the aggressive behavior is repeated throughout the day, every day, the constant anxiety associated with the fear of being hurt causes teachers and other staff to suffer psychological injury and burnout. Some of these "invisible" injuries are depression, insomnia, anxiety attacks, and post-traumatic stress syndrome.

Despite clear evidence of the severity and frequency of injuries, however, some school districts are unwilling to remove the special education student to an alternate placement to keep staff and other students safe, especially if the parents insist that the child remain in the classroom. As a result, employees in some districts face the likelihood of serious injury each day they work with or near a violent child with disabilities.

In addition, some teachers and paraeducators are told that the student cannot be subject to consequences of any kind for behavior that injures others. School staff have even been told that students with disabilities cannot legally be removed from the classroom, despite the severity and frequency of the behavior. Such statements leave staff and students at the mercy of violent outbursts by students with disabilities whose behavior is allowed to continue unchecked. This does a disservice to the violent student as much as to those he/she may injure by failing to teach the child that in the world outside the classroom, real consequences will be forthcoming, and, without learning to stop the behavior, he/she is likely to end up in the criminal justice system.

Hence, the problem of violent behavior caused by students' disabilities continues to bedevil teachers who are trained in academic, not therapeutic, techniques. Because school personnel are not trained to work with children whose violent behavior stems from a disability and where the possibility of injury is discounted or ignored altogether by the District, they daily face a situation they are ill-suited to handle without suffering injury, both physical and psychological.

I. Can Special Education Students Be Removed From the Classroom for Engaging in Violent Behavior? YES.

A. Federal Law Permits Removal of Students if Certain Procedures Are Followed.

IDEA as amended in 1997 and in 2004 permits school personnel to remove dangerous students from the classroom for up to 10 days per school year before additional procedures must be used if parents object to a longer removal.

However, a school district can remove a special education student from the current placement for up to 45 days without parental consent in three situations: a) where the student has a weapon, or b) for illegal drug use or possession, or c) if the student inflicts "serious bodily harm" on someone at school or at a school function. Note that "serious bodily harm" is defined as being a life-threatening or permanently disabling injury, such as the loss of a limb or sensory function, such as sight, smell, touch, or hearing.

Whether short term removals to another location within the school count toward the ten day limit depends on factors such as the frequency of the short-term removals and whether the student continued to receive services required by the IEP while removed from the primary placement. If services are provided and IEP goals continue to be addressed, districts can unilaterally implement various short term removals which may not equal a change in placement, though cumulatively they add up to more than ten school days.

However, once the ten day limit has been reached, the law provides additional procedural safeguards to children with disabilities, including those whose disabilities cause them to be violent and dangerous.

For example, if a student's parents object to removal of the student from the classroom, the school district can and should seek an expedited hearing where it can



present evidence to a hearing officer who is empowered to order the removal of the student to an "interim alternate educational setting." Safety removals can be ordered for up to 45 days, during which students must continue to receive educational and other IEP services.

To obtain such an order, the district must show that it provided sufficient supplementary aids and services for the student to succeed in the original placement and that it has adequately addressed the student's behavioral issues. To do so, the IEP team must have conducted a functional behavior assessment and implemented a behavior improvement plan without success prior to the removal.

Following removal, the district must convene the IEP team to determine the appropriate placement for the student.

The IDEA requires school districts to provide a "continuum of placements" from the least restrictive environment (the regular education classroom) to increasingly restrictive environments, including hospitalization and home care, in order to meet the student's unique needs. Violent and dangerous students often need a more restrictive environment than can be provided in the regular or special education classroom.

IDEA gives special education students the right to have any removal for more than 10 days in a school year reviewed by the procedures set forth in the law. Where parents object, the law does not preclude such removals per se, but does require the school district to support its decision with evidence that it has provided sufficient help to the student for the placement to have succeeded but for the student's violent behavior.

B. Wisconsin Law Also Permits Removal of Violent Special Education Students.

The Wisconsin legislature acknowledged the need to keep educators and others safe from violent students when it passed § 120.13, Stats. This statute sets forth the bases upon which school officials can remove students: for violating school rules, for making a bomb threat, and for endangering or threatening to endanger the property, health, or safety of others.

Under § 120.13, school boards are empowered to allow school personnel to remove students for five days for one of the reasons stated above, and for 15 days if a notice of expulsion is sent to the parents. Note, however, that in the case of special education students, the length of the removal will be subject to the IDEA's 10-day limit for unilateral removals, after which a hearing officer's order must be sought if parents object to continued removal.

Under § 118.164, "Removal of Pupils from Class," teachers can remove students who "violate the code of classroom conduct," and who are "dangerous, unruly, or disruptive, or exhibit behavior that interferes with the ability of the teacher to teach effectively, as specified in

the code of classroom conduct." Again, the length of removal of special education students is subject to the 10-day-per-school-year-removal limit in the IDEA.

In addition, where teachers might need to intervene to protect their own or others' safety, § 118.31, Stats., allows teachers to use "reasonable and necessary force" in the following situations:

- (a) to quell a disturbance or prevent an act that threatens physical injury to any person . . .
- (b) . . . to obtain possession of a weapon or other dangerous object within a pupil's control . . .
- (c) . . . for the purpose of self defense or the defense of others . . .
- (d) . . . for the protection of property . . .
- (e) . . . to remove a disruptive pupil from a school premises or motor vehicle . . . or from school sponsored activities . . .
- (f) . . . to prevent a pupil from inflicting harm on himself or herself . . . or (g) . . . to protect the safety of others.

§ 118.31 also requires each school district to adopt a policy that "allows any official, employee or agent of the school board" to use reasonable and necessary force for the purposes enumerated above, and provides that "deference shall be given to reasonable, good faith judgments made by an official, employee or agent of a school board."

Thus, state law recognizes the need for teachers and school officials to be able to protect themselves and others from injury and threats of injury, whether inflicted by a regular or special education student. While state law must be applied subject to the IDEA's restrictions on removal of special education students, IEP teams should consider what behavior will result in removal. If the parents agree to a behavior management approach that permits unlimited removal to prevent injury to others, then the district is not bound by the IDEA's 10 day limit.



Teachers serving on IEP teams should ensure that the IEPs of students whose disability results in violent behavior contain provisions for dealing with the potential for violence, including the school conduct code and disciplinary measures that permit removal from the classroom to protect others' safety.

II. Special Education Students May be Suspended and/or Expelled From School If Provided Enhanced Procedural Review of the Decision.

In determining whether a student with a disability is eligible for enhanced due process prior to suspension or expulsion, the IEP team must make a "manifestation determination" in which it decides whether the student's behavior was caused by or is substantially related to the disability.

If the IEP team concludes that the behavior is unrelated to the disability, then the student can be disciplined like any other student, and is accorded no enhanced due process protection.

Even if the behavior is not related to the disability, the IDEA requires that students with disabilities must continue to receive the educational services required by their IEPs during the removal.

But if the IEP team concludes that the offense that would result in expulsion for a regular education student was caused by the student's disability, the school district must seek an expedited hearing and present evidence to convince a hearing officer that expulsion (essentially a change in placement to a location outside the school) is warranted.

III. A Staff Member Can Call Police or Press Charges if Attacked by a Special Education Student.

If any student, whether in special or regular education, attacks any staff member, the staff member may report the attack to police and can seek to press charges against the student, whether or not the attack resulted in physical injury. Staff may also call police if they witness an attack by a student.

Similarly, if any student threatens a staff member or someone else, the staff member may call the police to report the threat. Remember that the threat must be one that the student could carry out. For example, if a first grader threatens to kill his teacher with a knife, it is unlikely that such a threat could be acted upon. While such an unrealistic threat should never be ignored, common sense suggests that calling the police would not be appropriate. On the other hand, a high school student who sends an email threatening the life of a teacher with specific details

about how he could carry out the threat should never be ignored or minimized, and the police should be called.

Staff do not need the district's permission to report an attack or threat to police or to press charges against a student. However, it is up to the local prosecutor to determine whether charges will be filed against the student in court. If you work in a district where your administrator appropriately addresses violent student issues, the need to involve the police may not arise.

Even so, by reporting such incidents to police, a record of the student's behavior is created that can be presented in a hearing or other adjudication should the student be suspended or expelled.

IV. Barring Gross Negligence of the Staff Member, the Member Will Generally Not be Held Liable for Injury Inflicted on Other Children by a Special Education Student.

Staff members will almost certainly not incur liability for injury inflicted on others by a special education student unless the staff member is guilty of extreme negligence.

The following hypothetical may be illustrative:

A special education teacher is assigned to work with a child whose history includes violent behavior such as hitting, kicking, and biting. At the IEP team meeting, this behavior is discussed and interventions and preventive strategies are identified, including the provision of a one-on-one aide for the child. The teacher and aide have great success in reducing the violent behavior until one day when, before either staff member could intervene, the child suddenly dashed three feet away and bit another child in the face, inflicting an injury that required stitches and plastic surgery.

The parents of the injured child subsequently sued the school district and named the aide and teacher individually, claiming that they were negligent and are liable for their child's injuries.

Under state law, school employees who are acting within the scope of their employment are generally immune from suit as individuals. Employees may be liable in cases where their behavior was so negligent as to remove it from being within the scope of their employment.

In the hypothetical, the teacher and aide would almost certainly be immune from suit. They were present in the classroom, were carrying out their duties in the normal way, each was attending to assigned tasks, the IEP was followed, and the parents would not be able to prove that there was anything either could have done to prevent the tragic injury. (For similar reasons, the district also would likely prevail in a motion to dismiss the lawsuit.)

However, a staff member could be held individually liable for gross negligence resulting in injury inflicted by a special education student on another student. The following hypothetical will illustrate:

A staff member knew that the violent student in his/her class could not be trusted to remain unsupervised with other students without acting out violently. Nonetheless, on a day when the student's one-on-one aide was absent, the teacher went to the office to pick up his mail, leaving the student alone in the classroom with other students. The violent student broke another student's arm while the teacher was gone.

This injury arguably resulted from the staff member's gross negligence in knowingly leaving the violent student unsupervised without good reason in the presence of others vulnerable to harm.

V. Members Who Are Injured on the Job Are Generally Barred by Worker's Compensation From Filing Suit Against the School District to Recover Damages for Their Injuries.

In almost all instances where a staff member is injured by a student, the member's only recourse will be to claim state worker's compensation benefits.

In one rare instance, a staff member injured by a student who had been taken off medication that reduced violent behavior received workers compensation benefits, and also successfully sued the home insurance carrier of the parents of the student for negligence for failing to warn the school district that the student had been taken off his medication. (See *Nieuwendorp v. American Family Insurance*, 191 Wis. 2d 462 (1995).) But under state worker's compensation law, the worker's compensation insurer was eligible to claim a portion of the award for benefits it had paid the employee.



Because members can exert pressure on school districts through their local union, their best recourse is preventive. Bargaining over issues pertaining to staff safety is one way members have to prevent injury from occurring and provide enhanced benefits if injuries do occur.

In a case where the facts show that a district knowingly put an employee in a situation which it knew would result in injury to him/her, the employee may be able sustain a legal action against the employer. However, such a case is extremely difficult to win, even where the facts are clear.

VI. Because Staff Members Injured by a Student May Be Required to Work With the Student Following the Incident, It Is Important to Involve the Local Union and/or UniServ Director to Ensure That Staff Remain Safe From Injury.

Staff members who are injured by a student understandably wish to be removed from working with that student. However, the assignment of staff is one of the "management rights" about which districts are not required to bargain. Thus, whether a staff member's request will be honored depends on several factors.

Districts may consider the extent of physical and mental trauma suffered by the staff member as a result of the injurious behavior. Regardless of the extent of injury, however, most districts will try to honor the request of an injured staff member to have the injuring student removed from the class.

Another factor districts may consider is whether another staff member is available to provide services to the student. A smaller district might not remove the student, even where the behavior was significantly injurious, arguing that it has nowhere else to place the student. However, members should not acquiesce to such a stance.

Instead, the district should seek permission from the parents to change the placement to an alternate setting while it determines what it can do to deliver services to the child. If the parents object, the district can seek an expedited hearing to have the student placed in an alternate educational setting so that the staff member is not forced to choose between his/her job and his/her safety.

In addition, the local union can be instrumental in support of the injured colleague by putting pressure on the district to resolve the issue without placing the injured staff member in harm's way. Such organized activity is often most effective in convincing a district to remove a student from an injured member's caseload or to otherwise ensure that further injury does not occur.

In those rare cases where a district refuses to protect a teacher from further injury by a violent student, a



restraining order may be necessary to protect the safety of the teacher. If a teacher believes that he/she is subject to certain harm by a student, the teacher should contact his/her local union and UniServ director. The UniServ director will then determine whether to refer the case to WEAC's Office of General Counsel for legal action.

VII. What to Do When Faced With Aggressive Behavior

When faced with a student whose behavior is violent, including kicking, biting, scratching, chasing, pushing, head-butting, hitting, choking, grabbing, etc., it is important to have a plan in place to protect all involved. The following suggestions will help to address the problem, and perhaps either help the child stop the behavior, or place the child where the behavior can be appropriately treated and resolved.

- The first time aggression is shown, notify the administration and your local representatives and UniServ Director. You are entitled to support from your union in resolving the problem, and in ensuring your right to a safe working environment is respected.
- Keep out of the range of the student. Your safety is more important than the IEP goals when the student is being violent.
- Have in place a plan to remove the other children from harm's way, and to keep yourself out of the violent student's reach. Notify the administration of the plan, and ensure that the plan provides a safe way to have the student removed by an administrator.
- Document the behavior each time it happens.
- Ask to reconvene the IEP team to conduct a Functional Behavior Assessment, if one hasn't been completed, and to discuss the behavior management plan, what additional supports may work, and the

- appropriateness of the placement if they do not work.
- Ask for additional support and services for the student.
- Ask for training in how to help the student manage the behavior.
- Seek the parents' cooperation in finding a solution to the problem, even if it includes removal from the classroom.
- If necessary, call the police to have the student removed and/or to report assaults.
- Remind the district of its obligation to ensure the safety of staff and students, and of its obligation to provide a continuum of placements under IDEA.
- Explain to the district the importance of seeking an expedited hearing, if necessary, to have a student removed for inflicting injuries on others.

Injuries, both physical and psychological, to staff and students by special education students must not be tolerated. The degree to which public schools provide a safe teaching and learning environment depends on a number of factors, including 1) whether administrators, staff, parents and communities remain in a state of denial about violent behavior and the injuries inflicted on others by special education students because of their disabilities; 2) the degree to which school administrators and staff work together to find solutions rather than tolerate violent special education students' behaviors; 3) the education of the community about the existence of special education students' violent behaviors and the resulting injuries to staff and students; 4) the determination of the community to provide the programs, resources, and personnel with sufficient appropriate expertise to teach students to stop violent behaviors; and 5) the willingness and ability of school districts to make available the continuum of placements for special education students required under the IDEA.

Additional Resources

National Education Association. www.nea.org

American Federation of Teachers. www.aft.org

National Association of School Psychologists www.nasponline.org

Center for Positive Behavioral Intervention And Support www.air-dc.org/cecp/cecp.html

National Dissemination Center for Children With Disabilities www.nichcy.org

The Council for Exceptional Children . . www.cec.org

WEAC www.weac.org

Charlene S. Gearing, Ph.D.
Director, Teaching & Learning
Wisconsin Education Association Council
33 Nob Hill Road
Madison, WI 53713
Phone: 1 (800) 362-8034 ext. 215
Email: GearingC@weac.org

Joanne Huston
Legal Counsel, Teaching & Learning Consultant
Wisconsin Education Association Council
33 Nob Hill Road
Madison, WI 53713
Phone: 1 (800) 362-8034 ext. 226
Email: HustonJ@weac.org



33 Nob Hill Road
PO Box 8003
Madison, WI 53708-8003
608.276.7711
800.362.8034

weac.org

