

1999 DRAFTING REQUEST

Assembly Amendment (AA-AB481)

Received: 09/21/1999

Received By: malaigm

Wanted: Today

Identical to LRB:

For: Bonnie Ladwig (608) 266-9171

By/Representing: Anne Sappenfield

This file may be shown to any legislator: NO

Drafter: malaigm

May Contact:

Alt. Drafters:

Subject: Education - miscellaneous

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Disclosure of pupil alcohol or drug use information; immunity from liability

Instructions:

Delete treatment of s. 118.126 (2) from the bill--reference to disclosure to parent is unnecessary as first sentence already provides for immunity from liability for disclosure made in good faith, i.e., if disclosure information is pursuant to a legal requirement, then disclosure ipso facto must be in good faith.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For:

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1?	malaigm	cmh 9/21 /1	9/21 6/21	9/21 7/21			

FE Sent For:

<END>



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBa0624/7

GMM.....

Chaf

Today (Hearing tomorrow)
✓ (Date)

ASSEMBLY AMENDMENT,
TO 1999 ASSEMBLY BILL 481

1 At the locations indicated, amend the bill as follows:

2 1. Page 5, line 3: delete lines 3 to 9 and substitute:

3 "SECTION 5d. 118.126 (2) of the statutes is amended to read:

4 118.126 (2) A school psychologist, counselor, social worker or nurse, or any
5 teacher or administrator designated by the school board who engages in alcohol or
6 drug abuse program activities, who in good faith discloses or fails to disclose
7 information under sub. (1) is immune from civil liability for such acts or omissions.

8 ~~This~~ The immunity provided under this subsection for failure to disclose information
9 under sub. (1) does not apply to information required to be reported under sub. (3)
10 or s. 48.981.

History: 1979 c. 331; 1985 a. 163; 1987 a. 188, 339.

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0624/1dn
GMM.....

cmr

SALUTATION
component
← Anne:

I think that the attached amendment accomplishes the intent of this draft, as well as the intent of current law, better than simply deleting s. 118.126 (2) from the draft and leaving current law as is. Specifically:

1. The first sentence of s. 118.126 (2) provides for immunity from civil liability for two things: 1) *disclosing* pupil alcohol or drug information in good faith; and 2) *failure to disclose* that information in good faith.

2. The second sentence of s. 118.126 (2), however, provides that "this subsection," that is, the immunity from civil liability provided under the subsection, *does not apply* to information required to be reported under the child abuse reporting law or, under this bill, information required to be disclosed to the pupil's parent. In other words, because the immunity from civil liability *does not* apply, a person *would* be liable for reporting under the child abuse reporting law or for disclosing information to a pupil's parent under the bill.

3. Of course, that outcome does not make a bit of sense. What does make sense, though, is to say that the immunity provided under the subsection *for failure to disclose* ~~pupil drug or alcohol~~ information in good faith does not apply to *the mandatory reporting* of child abuse or to the *mandatory disclosure* of information to a pupil's parents. Thus, if a person is legally required to report, that person should not be immune from liability for failure to report as legally required. Moreover, when a person is legally required to report, it would be difficult for that person to argue that his or her failure to report as legally required was done *in good faith*.

4. So, see what you think of this amendment. I think it clears up a puzzling ambiguity both in the bill and in current law.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: Gordon.Malaise@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa0624/1dn
GMM:cmh:jf

September 21, 1999

Anne:

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