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(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2011-12

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Education...

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

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

\* Contents organized for archiving by: Stefanie Rose (LRB) (December 2012)

# Senate

## Record of Committee Proceedings

### Committee on Education

#### Senate Bill 49

Relating to: revocation for immoral conduct of a license issued by the Department of Public Instruction.

By Senators Olsen, Leibham, Darling and Grothman; cosponsored by Representatives Kestell, Ziegelbauer, Bernier, Bies, Honadel, Jacque, Kerkman, Kleefisch, Krug, LeMahieu, Marklein, Mursau, A. Ott, Petryk, Pridemore, Spanbauer, Steineke and Strachota.

March 29, 2011 Referred to Committee on Education.

May 25, 2011 **PUBLIC HEARING HELD**

Present: (7) Senators Olsen, Vukmir, Grothman, Darling, Jauch, Vinehout and C. Larson.  
Absent: (0) None.  
Excused: (0) None.

#### Appearances For

- Luther Olsen — Senator, 14th Senate District
- Steve Kestell — Representative, 27th Assembly District
- Joe Quick, Madison — WI Assoc of School Boards
- Sheri Pollock, Madison — WI Dept. of Public Instruction

#### Appearances Against

- None.

#### Appearances for Information Only

- None.

#### Registrations For

- John Forester, Madison — School Administrators Alliance

#### Registrations Against

- None.

#### Registrations for Information Only

- None.

June 7, 2011 **EXECUTIVE SESSION HELD**

Present: (7) Senators Olsen, Vukmir, Grothman, Darling,  
Jauch, Vinehout and C. Larson.  
Absent: (0) None.  
Excused: (0) None.

Moved by Senator Olsen, seconded by Senator Darling that **Senate Substitute Amendment 1** be recommended for adoption.

Ayes: (7) Senators Olsen, Vukmir, Grothman, Darling,  
Jauch, Vinehout and C. Larson.  
Noes: (0) None.

ADOPTION OF SENATE SUBSTITUTE AMENDMENT 1  
RECOMMENDED, Ayes 7, Noes 0

Moved by Senator Olsen, seconded by Senator Vukmir that **Senate Bill 49** be recommended for passage as amended.

Ayes: (7) Senators Olsen, Vukmir, Grothman, Darling,  
Jauch, Vinehout and C. Larson.  
Noes: (0) None.

PASSAGE AS AMENDED RECOMMENDED, Ayes 7, Noes 0

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Sarah Archibald  
Committee Clerk

## Vote Record Committee on Education

Date: 6/3/08

Moved by: L. Olsen      Seconded by: Vukmir

AB \_\_\_\_\_ SB 49 \_\_\_\_\_ Clearinghouse Rule \_\_\_\_\_  
 AJR \_\_\_\_\_ SJR \_\_\_\_\_ Appointment \_\_\_\_\_  
 AR \_\_\_\_\_ SR \_\_\_\_\_ Other \_\_\_\_\_

A/S Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_  
 A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

Be recommended for passed  
 Passage     Adoption     Confirmation     Concurrence     Indefinite Postponement  
 Introduction     Rejection     Tabling     Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<b>Senator Luther Olsen, Chair</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Leah Vukmir</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Glenn Grothman</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Alberta Darling</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Robert Jauch</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Kathleen Vinehout</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Chris Larson</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Totals:</b>	<u>7</u>	<u>0</u>	_____	_____

# Vote Record Committee on Education

0119

Date: 6/7

Moved by: Olsen

Seconded by: Darling

AB \_\_\_\_\_ SB \_\_\_\_\_ Clearinghouse Rule \_\_\_\_\_  
 AJR \_\_\_\_\_ SJR \_\_\_\_\_ Appointment \_\_\_\_\_  
 AR \_\_\_\_\_ SR \_\_\_\_\_ Other \_\_\_\_\_

A/S Amdt \_\_\_\_\_

A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_

A/S Sub Amdt 1 to SB49

A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

Be recommended for:

- Passage      Adoption      Confirmation      Concurrence      Indefinite Postponement  
 Introduction      Rejection      Tabling      Nonconcurrence

Committee Member

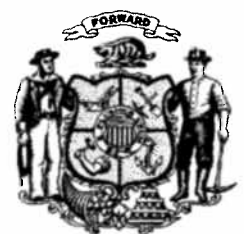
	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<b>Senator Luther Olsen, Chair</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Leah Vukmir</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Glenn Grothman</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Alberta Darling</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Robert Jauch</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Kathleen Vinehout</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Chris Larson</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Totals:</b>	<u>7</u>	<u>0</u>	_____	_____

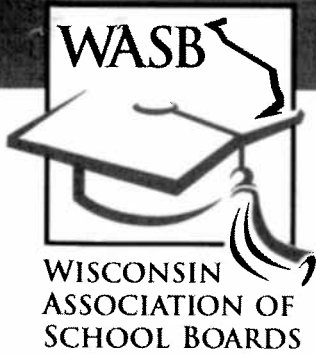
Motion Carried

Motion Failed



# WISCONSIN STATE LEGISLATURE





122 W. WASHINGTON AVENUE, MADISON, WI 53703  
PHONE: 608-257-2622 • TOLL FREE: 877-705-4422  
FAX: 608-257-8386 • WEB SITE: WWW.WASB.ORG

JOHN H. ASHLEY, EXECUTIVE DIRECTOR

**TO:** Members, Senate Committee on Education  
**FROM:** Dan Rossmiller, Government Relations Director  
**DATE:** May 25, 2011  
**RE:** **Senate Bill 49**, relating to revocation for immoral conduct of a license issued by the Department of Public Instruction.

The Wisconsin Association of School Boards (WASB) **supports** Senate Bill 49.

School board member delegates to the 2011 WASB Delegate Assembly, our policy making body, adopted the following resolution language last January:

“The WASB supports legislation to require the DPI to revoke the license of any teacher who has been dismissed or non-renewed by a school board for intentionally using school district technology to download, view or distribute pornographic material in violation of the district’s acceptable use policy. The WASB further supports requiring the DPI to make information about the disposition of such cases publicly available.”

The intent of this resolution is to establish a policy supporting requiring the DPI: a) to conduct revocation hearings and revoke the license of any teacher dismissed or non-renewed for intentionally using school district technology to download, view or distribute pornographic material in violation of the district’s acceptable use policy; and b) to make information on the disposition of cases involving such improper use of school district technology available to the public.

In adopting this resolution, school board members took the position that some misuses of school district technology are so clearly inappropriate and injurious to a proper educational environment that they constitute a special category of activities that not only may harm students’ health, safety, welfare and education, but have no educational purpose or place in schools but could further subject a school district to civil liability for sexual harassment or sex discrimination.

Because the Department of Public Instruction (DPI) process for investigating these cases is cumbersome and results are not made public, a teacher who is dismissed by one district for intentionally misusing district technology for conduct that does not belong in a school may be able to keep their license and potentially be hired to teach in another district where this conduct may be repeated. Further, even if the teaching license is revoked, because this information is not made readily available to the public, the revoked teacher maybe able to be hired, for example, as an aide in another district where this conduct may be repeated.

As a practical matter, under current law, a teacher terminated for repeatedly downloading and/or distributing obscene or pornographic, or other offensive materials in one district could potentially resume his or her teaching career in another district, particularly if for whatever reason proper background or reference checks do not disclose this activity. The board in that other district could face a potential situation in which it now has a teacher who parents do not wish to be teaching their children and who the community does not want to be in its classrooms.

The state of Vermont has made detailed information about teacher license revocation and other disciplinary actions available on its Website for years, allowing school districts to more easily conduct background checks on job applicants. We believe the DPI could easily provide similar information on its Website. (See: <http://education.vermont.gov/new/html/licensing/disciplinary.html#list>)

Some additional background may be helpful to committee members understanding of this issue.

Q: Who has the power to revoke a teaching license?

A: School boards have the power to dismiss or non-renew employees for the type of conduct described in the resolution, but cannot affect their teaching license. That is up to the DPI and the State Superintendent.

When such dismissals occur, school district administrators must report these dismissals to the state superintendent as “immoral conduct,” the category under which license revocations for such behavior are based.

While the applicable standard for disciplining or discharging an employee for this type of conduct is likely to be set forth in a school board’s policies and/or collective bargaining agreements, the standard for license revocation in these cases is, by statute, left to the discretion of the state superintendent. Through its resolution and its support of this legislation, the WASB seeks to change the statute to require revocation in those cases or fact situations described in the resolution.

Q: What standards govern license revocation?

A: The current license revocation statute (Wis. Stats. 115.31) *permits but does not require* revocation for this type of conduct. . It states that the state superintendent *may* revoke any



teaching license or permit issued by the DPI on the grounds of immoral conduct or incompetency.

*“Immoral conduct”* is currently defined as conduct or behavior that is contrary to commonly accepted moral or ethical standards **and** that endangers the health, safety, welfare or education of any pupil. (**emphasis added**)

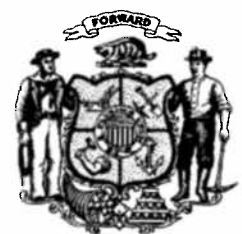
The word “and” in that definition is important. There must be **more** than a mere showing of immoral conduct. A 1995 Wisconsin Court of Appeals decision states that a finding of immoral conduct alone is not an appropriate basis on which to revoke a teacher’s license. There must be an additional finding that such conduct has a direct relationship to the health, safety, welfare or education of any pupil. Thus, under current law, the state superintendent must examine the conduct and its severity to determine the impact of the offense on the educational process.

The 1995 decision also held that a finding that a teacher can no longer be a “good role model” due to the immoral conduct **is not** sufficient grounds for revocation. Thus, when considering revoking a teacher’s license, the state superintendent must look specifically at the nature of the conduct involved, not the community’s reaction to it.

Under current law, in order to revoke a teacher’s license for immoral conduct, the state superintendent must find that there is clear and convincing evidence that the teacher engaged in the immoral conduct and the immoral conduct has a direct relationship to the health safety, welfare or education of any pupil. There is no requirement that the state superintendent act promptly to hold a hearing or render a decision. Further, there is no requirement to make the decision available to the general public. The WASB, through its resolution and its support of this legislation, seeks to change that.



# WISCONSIN STATE LEGISLATURE



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## School district racks up \$300,000 legal bill fighting teacher's porn-related firing

By GENA KITTNER | [gkittner@madison.com](mailto:gkittner@madison.com) | 608-252-6139 | Posted: Sunday, May 22, 2011 7:08 pm

The Middleton-Cross Plains School Board has spent about \$300,000 in the last year fighting a grievance filed on behalf of a teacher fired after an investigation found he viewed pornography at school.

Andrew Harris, a former seventh-grade science teacher at Glacier Creek Middle School, along with seven high school staff members and one administrator, were investigated and disciplined after the district discovered porn and other inappropriate adult content, including nudity and sexual jokes, in their email system during the fall of 2009.

"In these days in a shortage of cash we're loath to spend money on lawyers," said Ellen Lindgren, president of the Middleton-Cross Plains School Board. "On the other hand, we believe the community supports the termination of a teacher who intentionally accesses pornography."

Union leaders say the case isn't about teachers viewing porn on a school computer — an action they agree is wrong. Rather, they argue the discipline for Harris and the others was unjust and not based on clear standards or objective criteria.

A union lawyer, Willie Haus, also alleges the district went after Harris because he was a union leader who had criticized the School Board.

Superintendent Don Johnson said district policy prohibits the "deliberate accessing or transmitting materials that are obscene, sexually explicit or child pornography." It cited that language and other district policies regarding electronic communication when making its disciplinary decisions, he said.

Also at stake is the district's still unsettled teachers' contract, and both parties say those negotiations have been marred by the ongoing grievance case.

The grievance calls for reinstating Harris and reversing other disciplinary actions taken by the School Board, including back pay for teachers who served suspensions.

### Year in arbitration

The grievance is playing out when some lawmakers are trying to pass a law that would automatically revoke the teaching license of school employees who view pornography on the job. The proposed bill is still in committee in both the Senate and Assembly.

Harris was first put on paid leave on Dec. 3, 2009, while the School District investigated him and other staffers for accessing porn and other inappropriate adult content using the district's email system. A month later Harris was put on unpaid leave and in May 2010 the School Board voted to fire him.

The union challenged his dismissal along with other disciplinary steps taken by the School Board, and since then both sides have spent a year in arbitration, listening to testimony, which ended on May 2.

The union and district have until early July to file final written reports. Johnson said the arbitrator could make a decision as early as Oct. 15 or as late as Dec. 30.

Johnson said the district's investigation showed sufficient evidence — 23 emails in just over one year containing pornographic images, videos and inappropriate jokes — to justify firing Harris. Other staff members investigated and disciplined received between zero and nine emails with images.

### Varying discipline

Five staff members served up to 12 days of unpaid suspensions, one substitute teacher was dismissed and a veteran administrator resigned. Two other teachers were given verbal warnings.

"Every level of discipline is based upon the severity of what the person was involved in," Johnson said.

Officials say this grievance goes beyond just affecting the district's finances.

"Every dollar that goes toward arbitration is taken away from education programming," Johnson said. "It's unfortunate. There's no doubt that this is a significant distraction."

Harris did not return a call for comment.

Chris Bauman, president of the Middleton Education Association, said issues related to the grievance have overflowed into contract negotiations, specifically regarding issues of discipline and hiring a third-party arbitrator.

In a contract proposal earlier this year, the School Board suggested it be the final step in the grievance procedure, as opposed to hiring an arbitrator, as it has in the Harris grievance. Officials declined to say whether that was still part of the contract currently being negotiated.



**Senate Committee on Education**  
**May 25, 2011**

**Department of Public Instruction Testimony  
on 2011 Senate Bill 49**

Thank you to Chairperson Olsen and members of the committee for the opportunity to testify before you today. My name is Sheri Pollock and I am legal counsel for the Department of Public Instruction (DPI). On behalf of State Superintendent Tony Evers I am here today to testify in support of Senate Bill 49 (SB 49) as amended by the authors in the substitute amendment to the bill.

The substitute amendment addresses three areas that impede the ability of the department's efforts to investigate complaints and pursue revocations. First, the amendment clarifies the definition of immoral conduct by simply stating that certain behaviors related to pornography are, in and of themselves, immoral. The department will no longer have to prove that these behaviors also endangered the health, safety, welfare, or education of a student in order to pursue license revocation. Additionally, School districts will now be required to provide the department with needed personnel and investigation records. Finally, the department will no longer be required to destroy all records pertaining to an investigation that did not result in revocation after three years.

The bill also codifies current departmental practice regarding posting notice of revoked licenses and licenses under investigation on our website. For over 10 years, the department has maintained a website (see <https://www2.dpi.wi.gov/lic-tll/home.do>) that gives all members of the public access to any license granted by the department. With just a teacher or administrator's name, anyone can search our license look up database to see the licensing history of the individual. If a person's license has been revoked or denied, this is noted in bright red at the top of the page. If the person is currently under investigation or if an investigation was pending when the person's license expired, that is also noted in bright red at the top of the page.

The department takes very seriously its responsibility to keep people out of the classroom who do not belong there. This bill, as amended, gives us some much needed assistance. Thank you and I would be happy to answer any questions you may have about our process.