



Student Criminal Reports to be Shared with Districts

Important changes to the parameters within which public schools may acquire and use information contained in law enforcement records about students who have been arrested and/or charged with criminal offenses are on the horizon. Public Act 97-1104, which takes effect on January 1, 2013, amends the Illinois School Code and Juvenile Court Act to allow law enforcement officials to provide school districts with information that can be used to maintain and enhance school safety and may lead to the provision of services to students who run afoul of the law.

School Code Changes

The new law amends the School Code to make it mandatory that all courts, law enforcement agencies of the State of Illinois and its political subdivisions report to the principal of any Illinois public school any time a child enrolled in that school is detained under the Juvenile Court Act, for any criminal offense, or for any violation of any municipal or county



ordinance. The report to be provided to the principal must contain the following information:

- the basis for detaining the child;
- the events that led up to the child's detention and;
- the status of the proceedings.

Law enforcement officials must update the report, as appropriate, to keep the principal aware of the status of the judicial proceedings. Principals who receive law enforcement reports under this provision must keep them separate and apart from the student's "official school record," and the reports do not constitute public records. The information obtained by the principal may be used only by "a school official or school officials who the school has determined have a legitimate educational or safety interest to aid the proper rehabilitation of the child and to protect the safety of students and employees in the school."

Juvenile Court Act Changes

This new law also amends the Juvenile Court Act to comport with the changes to the School Code governing the dissemination and use of law enforcement reports. Further, the list of persons and

agencies entitled to access to law enforcement reports about a child taken into custody on or before his/her 17 th birthday is expanded to include “appropriate school officials,” if a law enforcement officer or agency believes there is an imminent threat of physical harm to students, school personnel, or others who are present at the school or on school grounds. The Act makes it clear that not all school personnel may have unlimited access to these reports, however. Mirroring the changes to the School Code, the new provisions of the Juvenile Court Act restrict inspection and copying of the reports to “a school official or officials who the school has determined have a legitimate educational or safety interest by a local law enforcement agency under a reciprocal reporting system with respect to a minor arrested or taken into custody for any one of a series of serious offenses,” which include violation of the Illinois Controlled Substance Act, the Harassing and Obscene Communications Act, and “forcible felonies” under the Criminal Code.

The Act also makes other noteworthy amendments to the Juvenile Court Act. Law enforcement records related to the arrest or detention of a minor for specifically enumerated offenses before

or on their 17th birthday may be released to select school district personnel if the law enforcement agency or officer believes that there is an imminent threat of physical harm to students, school personnel or others who are present in the school or on school grounds. The reports obtained from law enforcement officers or agencies are to be kept in a separate file, shall not be made a part of the child's school record, and are not a public record. If law enforcement agencies and appropriate school officials conclude that it is in the best interest of the arrested or detained student, referral to school- or community-based services may be made, including a determination of eligibility for special education services or drug or alcohol prevention or treatment programs. Finally, if a child is the subject of an ongoing police investigation that is directly related to school safety, law enforcement agencies or officials may share the information contained in law enforcement reports with select school officials verbally but may not provide actual copies of their reports. School officials entitled to receive verbal information from ongoing investigative reports may reduce what they have learned to writing, but must keep their written summary separate from the child's official record and shall not consider it a part of the



child's official record or a public record.

Public Act 97-1104 presents a new and important opportunity for schools and law enforcement agencies to communicate for the purpose of ensuring that educators are kept abreast of the status of school children involved in the juvenile or criminal justice systems. These amendments to the School Code and Juvenile Court Act seek to strike a balance between the need to better protect safety in schools, the maintenance of confidentiality of student records, and the interests of court-involved students. We recommend that these new provisions be incorporated into any reciprocal reporting agreements your district has with local law enforcement.

If you have questions concerning these impending changes to the law or their impact on your policies and procedures on reciprocal reporting or student records, please contact one of our attorneys in Flossmoor (708-799-6766) or Oak Brook (630-928-1200).

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Districts Must Use Reasonable Care When Completing Employment Verification and Reference Forms

Last year we alerted you to *Doe-3 v. White*, an Illinois Appellate Court decision that appeared to greatly expand the possibility for school districts' and district officials' liability to students when failing to report an employee with a history of abusive conduct. *Doe-3* was appealed and the Illinois Supreme Court rendered a decision on August 9, 2012, that upholds a duty of districts to use reasonable care when completing employment forms, but does so narrowly, on the particular facts of the case.

Jon White was a teacher in McLean School District and, while employed by that district, sexually abused young girls in his

class. Lawsuits alleged that McLean administration knew about the abuse, but did not report it to the Illinois Department of Children and Family Services (“DCFS”). Instead, when White resigned, a McLean administrator gave him a positive letter of recommendation and a severance package that concealed the abuse. When White applied for employment at Urbana School District, McLean administrators not only allegedly failed to inform Urbana of White’s misconduct, but also provided false information to Urbana that White had taught the entire previous year at McLean.

Consistent with earlier decisions in the matter, the Illinois Supreme Court held that the students could not demonstrate an affirmative duty on the part of McLean School District to warn Urbana of White’s conduct or to protect the students from criminal acts of a third party. McLean School District had no special relationship to the students that created a duty to them and a school district has no duty to individual students in a district, separate from the district as a whole. However, under the specific facts of this case, where McLean officials allegedly falsely represented White’s employment history, a duty was created to protect the students from injuries that were reasonably foreseeable from the misstatements.

The Court applied a standard of ordinary care to the facts of this case, stating that every person owes a duty of ordinary care to others to guard against injuries that naturally flow as a reasonably foreseeable consequence of his or her action. In other words, where a person's action creates a foreseeable risk of injury, the person has a duty to protect others from that injury. According to the Court, McLean's alleged act of misstating White's employment history on Urbana's employment verification form created a duty to the abused students. The Court found that the sexual abuse suffered by Urbana students was not, as a matter of law, an unforeseeable result of the false employment verification. By stating that White taught a full school year, when in fact he was terminated during the school year, McLean School District implied that White's severance was routine. Had McLean truthfully disclosed White's employment history, it would likely have been a "red flag" to Urbana to investigate further. The Court held that the injuries were not so remote or unlikely as to preclude a duty of care. It was a reasonable possibility that if White abused students in one district, he would do it again in another district. Finally, the Court held that it is



According to the Court, the Abused and Neglected Child Reporting Act could provide a separate basis for liability because of the failure to report White's misconduct to DCFS. School personnel and school board members are mandated reporters to DCFS under the Abused and Neglected Child Reporting Act, 325 ILCS 5/1 et seq. Likewise, pursuant to Section 10-21.9(e-5) of the Illinois School Code, a local superintendent must notify the State Superintendent of Schools and the Regional Superintendent, of any certificate holder whom he or she has reasonable cause to believe has intentionally abused a student. Illinois public policy favors protection of children from sex offenders. The Court also noted that the Tort Immunity Act does not protect public employees against liability for willful and wanton conduct.

This decision confirms that, while School Districts have no affirmative duty to protect individual students from harm, providing false information that is reasonably foreseeable to cause injury may result in liability.

Based on this decision, we advise that extreme caution be exercised in providing any factual information about past employees. For additional information, please call one of our



attorneys in Flossmoor or Oak Brook.