



TESTIMONY OF THE

PENNSYLVANIA SCHOOL BOARDS ASSOCIATION

BEFORE THE HOUSE CHILDREN AND YOUTH COMMITTEE

REGARDING

**RESPECTING CONFIDENTIALITY WHILE PRESERVING
ACCOUNTABILITY: PROTECTING STUDENTS & STAFF IN OUR
SCHOOLS**

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Good morning Chairwomen DeLozier and DeLissio, and other distinguished members of the House Children and Youth Committee. I am humbled to speak with you today on behalf of the Pennsylvania School Boards Association (PSBA). My name is Vincent Champion and I'm the Immediate Past President of the Pennsylvania School Board Solicitor's Association and the Owner of Champion Law Office, LLC, a private law firm in Carlisle, PA specializing in education law. In the course of my practice, I represent school districts and colleges and universities.

Through my law practice, I have been asked by my school district clients to help them navigate the sometimes competing interests of student confidentiality and safety. In doing so, I have seen how these competing interests have sometimes delayed or undermined the free flow and exchange of important information between law enforcement, children and youth agencies and school district officials. This delay jeopardizes the prompt provision of valuable services potentially to the detriment of students and school staff. The Committee's work in reviewing and hopefully eliminating unintended barriers brought about by confidentiality requirements imposed by State and Federal law should be applauded. I am happy to lend my voice in aide of your review.

Reporting and confidentiality requirements are multifaceted in our commonwealth. For purposes of my testimony today, there are three significant legislative enactments at play. The Pennsylvania Child Protective Services Law (CPSL), the school safety provisions found in Article XIII of the Pennsylvania School Code (Article XIII), and the Federal Educational Rights and Privacy Act (FERPA).

To be sure, there are other important legal considerations like the possible interplay of Individuals with Disabilities Education Act (IDEA) and relevant School Board policies that could be implicated as well. However, the CPSL, Article XIII and FERPA are the most often involved statutes. Unfortunately, we do not have enough time to fully explore each of these statutes in detail today. However, I will provide a brief summary of each law as a launching point for your further review.

CPSL

As this Committee is well aware, the CPSL requires that certain adults report instances of suspected child abuse if this adult has reasonable cause to suspect that a child is a victim of child abuse. In general, a mandated reporter is someone that comes into direct contact with children. School district employees are mandated reporters. Once a report is made the law requires that the County Children and Youth Services (CYS) Agency start an investigation within 24 hours.

My school district clients report that once they make their required reports, they are often unable to discuss the status of the matter with CYS. Indeed, while CYS may from time to time be in a position to confirm receipt of a report of child abuse, school districts are often not provided any more information due to confidentiality restrictions. As you might imagine, if a school district is aware that one of its students is the victim of abuse, the district is better able to provide additional academic and emotional support as needed.

Article XIII

Sections 1301-A through 1301-E of the Pennsylvania School Code are dedicated to improving school safety. As relevant here, Section 1306-A-Availability of Records states: “[a] student's disciplinary record, as well as records maintained under section 1307-A, shall be available for inspection to the student and his parent, guardian or other person having control or charge of the student, to school officials and to State and local law enforcement officials *as provided by law*” (emphasis added). 24 P.S. § 13-1306-A.

In simple terms, this section contains an express provision limiting law enforcement access to a student's disciplinary record and section 1307-A records (which includes records recording incidences of violence, incidents involving possession of a weapon and convictions or adjudications of delinquency for acts committed on school property by students enrolled within the district) to those limited scenarios provided by law. By pointing out this language, I am not suggesting that this Committee should undertake steps to eliminate or curtail student privacy. Rather, I am emphasizing this language because it is a codified example of a potential barrier to the collaborative sharing of information between Pennsylvania schools and law enforcement in the realm of school safety.

FERPA

Lastly, FERPA restricts the disclosure of information from student education records. Specifically, FERPA restricts the disclosure of personally identifiable education records which are maintained by an educational agency or institution.

Pursuant to FERPA, an education record generally cannot be released without parental consent. There are a few exceptions. One such exception is in response to a subpoena issued for a law enforcement purpose. 20 USC § 1232g (j)(ii).

Furthermore, FERPA allows schools to disclose student records, without consent, to school officials with legitimate educational interest in a given student, and to appropriate parties in cases of health and safety emergencies, when there is an “articulable and significant threat”. 34 CFR § 99.31 and 34 C.F.R. § 99.36 respectively.

Schools may however disclose directory information without consent so long as parents and students are informed of the types of information the school district considers directory and provide them with an opportunity to opt out. Directory information as contemplated by FERPA includes the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

How does this apply in an everyday context? Consider that School Resource Officers (SROs) are often called upon to assist in scenarios where a special needs student is being disruptive. In most cases the SRO will have limited information relating to the student and their special needs as they attempt to peaceably resolve the situation. The SRO in turn could unknowingly exacerbate the situation by using the wrong de-escalation technique thereby reducing the chances of a positive resolution of the matter.

Particularly problematic from a school district's perspective is that improper disclosures of educational records in violation of FERPA can result in the district's loss of Federal funding. In light of this possible punitive measure, I regularly advise my clients to require law enforcement to

obtain subpoenas before releasing student records. In some cases, this approach impedes collaborative relationships between county officials and law enforcement. Although I jokingly tell my clients to tell their colleagues in law enforcement and CYS that “my lawyer won’t let me” it nonetheless creates dissonance as district officials want to be as helpful and forthcoming as possible if it will help keep students safe.

As you can see, even if district, law enforcement and county officials have a strong desire to collaborate and freely exchange information there are substantial legislative roadblocks that make such collaboration more difficult. To be sure, the more these three types of stakeholders are empowered to work together, while preserving important student privacy interests, the better able each of them will be to protect some of our most vulnerable citizens.

William J. Zee, M.S.Ed., J.D.

Partner and Chair, Education Law Group, Appel, Yost & Zee LLP

Good morning members of the House Children & Youth Committee. I appreciate the opportunity to speak with you this morning on behalf of the PSBA regarding an issue that is important to me both personally and in my professional capacity. I am an attorney representing roughly thirty school districts throughout the commonwealth, and I spent a number of years as an educator. My wife is a career public school teacher. I appear before you to share this perspective, but also as an individual who experienced significant childhood trauma. In fact, my “lifelines” as a young person came in the form of my teachers—teachers who understood intuitively the safety they could offer and the important role they served in helping me develop resilience and realize my full potential, long before the current widespread recognition of intergenerational trauma as a public health crisis. This in turn has enabled me to “pay forward” their kindness as an advocate for trauma-informed education in my work as a public speaker and trainer throughout the nation. In 2019, PSBA invited me to train school board members throughout Pennsylvania on trauma-informed programs in response to revisions to the Public School Code.

Many of our most vulnerable children experience contact with law enforcement and CYS, and that contact necessarily impacts their experiences at school. The issues surrounding information sharing among CYS, law enforcement, and schools through a trauma-informed lens is imperative to safeguarding our most vulnerable young people. When adults aren’t able—or perceive they’re not able—to share information that might lead to creative solutions for kids, the debilitating intergenerational cycle of childhood trauma is more likely to persist if such silos of information remain.

Recognizing the importance of a trauma-based needs, the Public School Code was amended in 2019 to provide for a trauma-informed approach in our schools. In so doing, the legislature acknowledged and codified the importance of the coordination among students, families, schools, and county-based services and other organizations. 24 P.S. § 1311-B. However, there remain areas of the law that must catch up to that ambitious goal of collaboration among these agencies.

The State of Schools Today

Imagine a twelve-year-old who spends a portion of his day in an emotional support classroom. He has experienced abuse and trauma, on top of having been involved with the foster care system and poverty. Perhaps the student is making some progress in school—demonstrating growth in regulating his emotions and is spending increasing portions of his day in the general education classroom. However, one night he is removed from his home. CYS has no obligation under current law to notify the school district, and with no knowledge of the situation, the school district has no chance at modifying existing services or putting appropriate behavioral and emotional supports in place once the student returns to school.

Think of a child who comes to school showing signs of abuse. His teacher, as a mandated reporter, contacts CYS. But as the investigation proceeds, the school receives no communication about the status of the investigation, and school personnel remain in the dark as to how they may best be a resource.

Concerns with Current Law

According to the Pennsylvania Child Protective Services Code, the purpose of the law is to “prevent [abused children] from further injury and impairment.” 23 Pa.C.S.A. § 6302. The preamble to the statute mentions collaboration with law enforcement, but there is no mention of the role of schools. *Id.* Indeed, CYS may only disclose information related to child abuse to officials in other state agencies, physicians, guardians *ad litem*, certain government workers, and courts of competent jurisdiction.

Although the current statutory scheme does include a section entitled “cooperation with other agencies,” this section merely imposes penalties on school districts if they fail to share information with CYS when asked to do so. *Id.* At § 6346. That type of “cooperation” is a far cry from the necessary level of information sharing that will benefit children in need.

Moreover, while the School Code speaks directly to a school districts’ reporting obligations to CYS and law enforcement, it is silent as to any requirement that those entities communicate in return. *See* 24 P.S. § 13-1301-A *et seq* (Safe Schools Act).

What Administrators are Saying

In my experience, my school district clients have been concerned with two major issues. First, there are situations in which a school district reports suspected abuse to CYS, but then hears nothing over the course of any subsequent investigation. Second, often in instances of severe cyberbullying occurring outside of school hours where law enforcement becomes involved, schools often are in the dark, unable to put supports and protections in place to address the challenges of the situation.

An Example From Other States

In light of increased awareness of the impacts of childhood trauma on educational outcomes, physical and mental health of our youth, and what has been termed the “school-to-prison pipeline” states are devising creative solutions to increase communication among schools, law enforcement, and CYS. One such effort, the Handle with Care project, aims to “... prevent children’s exposure to trauma and violence...and mitigate negative effects experienced by children’s exposure to trauma...” *Frequently Asked Questions*, Handle with Care: Florida, <https://handlewithcarefl.org/frequently-asked-questions/>.

The model is simple:

If a law enforcement officer encounters a child during a call, that child’s information is forwarded to the school before the school bell rings the next day. The school implements individual, class and whole school trauma-sensitive curricula so that traumatized children are “Handled With Care”. If a child needs more intervention, on-site trauma-focused mental healthcare is available at the school. *Id.*

To protect the privacy of families, law enforcement only sends a memo to the school with the child’s name and the words “handle with care.” Despite the simplicity of the approach, just this key piece of information can put schools in motion to support kids experiencing trauma. School districts and law enforcement agencies across Florida, West Virginia, Tennessee, and Texas are now implementing Handle with Care given the success of the pilot program.

Recommendations

There are many ways in which the General Assembly can increase collaboration among agencies to keep kids safe:

- Reporting obligations on the part of law enforcement and CYS to schools. When crises happen in students' lives, school administrators need to be informed in order to put appropriate supports in place for students. With an affirmative duty to inform schools, our most vulnerable students—many of whom are already struggling with the effects of trauma—have a better chance to succeed in school.
- Funding for pilot programs in Pennsylvania communities. To ensure legislative solutions can be successful we encourage any programs contemplated by the General Assembly be started as a pilot program and include state funding to provide these communities with needed resources to raise awareness, train key staff, and implement solutions.
- Similar to the CPSL this Committee should further consider enacting language providing immunity from liability for the three organizations if they share confidential information with one another relating to a minor in good faith.

Finally, since some of the barriers come from federal law and regulations, a solution at the federal level is needed. We encourage the Administration and this committee to work with the federal government to develop legislative and regulatory changes needed to ensure the prompt and efficient dissemination of student information to and from law enforcement and child protective services officials when the need arises.

Conclusion

School district officials, law enforcement officials and county officials each play important roles in the protection of student learners in our commonwealth. Although each is working towards this goal, Pennsylvania students could be better served if these organizations were better able to work together. State and Federal law in some cases, have help to create certain obstacles ultimately making it more difficult for each organization to freely share information.

This committee should consider proactive ways to remove these obstacles statewide and work collaboratively with the federal government, while balancing the privacy interests of students. Working to remove these obstacles will allow school district, law enforcement and county officials to provide at risk students with the much needed services they deserve. Thank you for your time and consideration.