

Elisabeth Lambert: Wisconsin schools must strike balance on student privacy

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In recent years, public schools in Wisconsin and across the country have come under intense scrutiny. At issue are some of the most politically engaging, high-stakes issues of our time: what we teach children about race, gender and identity; how we police the line between free speech and anti-discrimination law; and the role of parents in shaping their childrens' world view.

These are political questions, but they are also highly personal, reaching into the most intimate details of children's and families' lives.

That puts schools in a significant bind. On the one hand, the public has a right to know how public schools act, meaning that schools have a duty to be transparent. On the other hand, students have special rights to privacy enshrined in both state and federal law. How do schools balance the transparency they owe the public with the confidentiality they owe their students?

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Schools across Wisconsin are approaching these challenges in wildly different ways — some reasonable; others nonsensical and legally insupportable. In my work as an attorney representing students and families in school matters, I've encountered a grab bag.

For example, at one extreme, I recently filed a public records request asking a school district to provide records showing the district's disciplinary response to

incidents where students used racial slurs. Essentially, I was asking the district to search its disciplinary record-keeping system for incidents coded as involving racial harassment (about 50 for the requested time period, I believe), redact any information that could identify individual pupils, and provide a document showing the school's response (detention, suspension, counseling, etc.) in each case. The district refused to provide those records, claiming it would violate student privacy.

At the other extreme, I have represented parents whose children's highly sensitive information has been made public through open records requests. The recurring pattern goes something like this:

A parent emails a school administrator highly sensitive information — for example, asking that a child be barred from accessing library books with sexual content, or notifying the school that the child is navigating issues related to gender identity. Another community member (often politically motivated) files an open record request asking for all emails to the district addressing issues of library book access or student gender identity. The school then releases the highly sensitive email — sometimes with no redactions, other times just deleting the child's name but leaving in enough detail to easily discern which student it applies to.

These examples are extreme, but they're also not uncommon. They speak to the lack of coherent understanding in Wisconsin of how school district transparency can be reconciled with student privacy.

Fortunately, there is a workable solution. Under federal law, schools are prohibited from releasing "personally identifiable information" about students. That means that schools can share records, data and information with the public, so long as they make sure to redact any language or details that can be tied to an individual student.

Wisconsin school districts that diverge from this practice standard claim to be acting based on differences between the federal and state student privacy laws. But the federal approach strikes the right balance. It would, for instance, allow districts to redact identifying information from the racial harassment disciplinary records while showing what (if any) discipline was applied.

This shared understanding of the requirements of state student privacy laws will restore consistency between school districts, ensure that sensitive information regarding individual students is kept confidential, and give communities the big-

picture information they need to understand what's happening in their schools.

—Your Right to Know is a monthly column distributed by the Wisconsin Freedom of Information Council (wisfoic.org), a group dedicated to open government. Elisabeth Lambert is the founder and principal of the Wisconsin Education Law and Policy Hub (wisconsinelph.org).