March 5, 2025

To: Chairman Spiros and Members of the Assembly Committee on Criminal Justice and Public Safety

From: Wisconsin Chiefs of Police Association

Re: Support Assembly Bill 74 – Parental Notification of Alleged Sexual Misconduct by a School Staff Member or Volunteer

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Chairman Spiros, thank you for your willingness to hold a hearing on this legislation. We would also like to thank the authors, Representative Franklin and Senator Tomczyk, for introducing this bill.

We urge support for Assembly Bill 74.

This legislation comes on the heels of 2023 Wisconsin Act 200 which criminalizes sexual misconduct by a school staff member or volunteer against a pupil. The Wisconsin Chiefs of Police Association supported Act 200 last session.

Assembly Bill 74 would add a notification requirement to Act 200. School boards or governing bodies of private and charter schools would be required to notify parents of alleged sexual misconduct by the end of the day they receive any reports of misconduct.

Both Act 200 and Assembly Bill 74 are targeted at protecting some of the most vulnerable among us.

Our association constantly looks for ways to enhance public safety. Unfortunately, these proposals are necessary, and we should continue to look for ways to protect communities.

The Wisconsin Chiefs of Police Association supports this legislation and asks that the committee move forward on this legislation.

We would be happy to answer any questions regarding this legislation.

WISCONSIN DEPARTMENT OF
Public Instruction

Jill K. Underly, PhD, State Superintendent

March 5, 2025

Assembly Committee on Criminal Justice and Public Safety

Department of Public Instruction Testimony
2025 Assembly Bill 74

The Department of Public Instruction (DPI) thanks Chair Spiros and members of the committee for the opportunity to share testimony on 2025 Assembly Bill 74.

The DPI is providing testimony for information only on AB 74. The department supports efforts to ensure students at schools are kept safe and parents are properly informed. DPI has supported several efforts over the past handful of sessions to advance this policy goal. What follows is a list of legal questions DPI has regarding AB 74. We urge this committee and the bill's authors to work with DPI, the Wisconsin Association of School Boards, the School Administrator's Alliance, the Wisconsin Education Association Council (WEAC), and other school organizations to resolve these policy questions before proceeding with this proposal.

Proposed Wis. Stat. § 118.07(6) Is Under-Inclusive of the Conduct for Which Parents Should Receive Notice.

Wis. Stat. § 118.07(6) would require that parents be notified of alleged sexual misconduct under Wis. Stat. § 948.098 committed against their child by a staff member. Wis. Stat. § 948.098 defines sexual misconduct as physical contact of a sexual nature or verbal conduct of a sexual nature, which requires that the physical contact or the verbal conduct intended to sexually degrade, humiliate, arouse, or gratify either the pupil or actor. This definition of sexual misconduct under Wis. Stat. § 948.098 does encompass several other crimes against children in Ch. 948. However, multiple crimes are not covered by the § 948.098 definition of sexual misconduct but are none-the-less in the same vein. If proposed § 118.07(6) becomes law, failing to notify parents of allegations of those crimes would not violate § 118.07(6), but they would likely be characterized as loopholes.

The following list of crimes could occur against a student either (a) without physical contact of a sexual nature or verbal conduct of a sexual nature or (b) without intent (or without needing evidence or suspicion of intent) to sexually degrade, humiliate, arouse, or gratify the pupil or actor, or could occur lacking both (a) and (b), and thus, would not meet the definition of sexual

misconduct under § 948.098.[1] As a result, under proposed § 118.07(6) as currently drafted, schools would not always be required to notify parents of allegations of the following[2]:

- § 942.08(2)(a)-(d), invasion of privacy, involving the installation or use of a surveillance device in any private place with the intent to observe any nude or partially nude person without consent, or, for the purpose of sexual arousal or gratification and without consent, looking into a private place that is part of a public accommodation where a person may reasonably be expected to be nude or partially nude.

- § 942.09, representations depicting nudity. Subsections (2) through (5) encompass, generally, the capturing, reproducing, possessing, distributing, exhibiting, posting or publishing, causing to be posted or published, and soliciting of an intimate or private representation of another without that person's consent. Under § 942.09, children are unable to consent. Other motives for this conduct besides the motives listed in § 948.098 are possible.

- § 948.051, trafficking of a child, which involves, inter alia, soliciting or transporting or attempting to solicit or transport any child for the purpose of commercial sex acts.

- § 948.055, causing a child to view or listen to sexual activity.

- § 948.07, child enticement.

- § 948.075, use of a computer to facilitate a child sex crime.

- § 948.10, causing a child to expose genitals, pubic area, or intimate parts or exposes genitals, pubic area, or intimate parts to a child for the purposes of sexual arousal or sexual gratification.

- § 948.11, exposing a child to harmful material or harmful descriptions or narrations. § 948.11 makes it a crime to provide children pictures, photographs, videos, drawings, magazines, books, etc., of a person or portion of the human body that depicts nudity, sexually explicit conduct, sadomasochistic abuse, among other depictions, when the quality of said material is harmful to children, which means that, as one example, the material is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for children. It is not uncommon for adults who groom children for sexual contact to normalize sexual talk with the child or normalize the sharing of material that may fall under this statute.

Additionally, it is possible that a school could unlawfully permit, whether knowingly or inadvertently, a child sex offender to work with children in an occupational role or a volunteer position. Proposed § 118.07(6) should require schools to notify parents upon discovering that a child sex offender had been working with their child in violation of § 948.13 and whether the

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[1] *See e.g.*, Wisconsin Jury Instructions for §§ 942.08(2)(a), 942.08(2)(b), 942.09(2), 942.09(3m), 942.09(4), 948.075, 948.10 (JI 2140 and 2141), 948.11 (*e.g.*, JI 2142), 948.12 (*e.g.*, JI 2146A) (indicating a lack of either or both elements of § 948.098 involving physical contact or verbal conduct of a sexual nature or intent to sexually degrade, humiliate, arouse, or gratify the victim or actor).

[2] Further analysis of Wisconsin law is required to determine whether this is an exhaustive list of all crimes similar in nature to § 948.098 that do not by definition fall under § 948.098.

school has reason to believe the registered sex offender violated §948.14, relating to a registered sex offender photographing a minor without written consent of the parent. As currently drafted, it does not require disclosure under this circumstance.

Proposed § 118.07(6) should include offenses that lie in the same vein as § 948.098 misconduct and which, unfortunately, are not unheard of in the school setting. However, simply citing the above statutes could cause schools to engage in overly burdensome analyses of the technicalities of the statutes and, in many instances, would omit students who have reached 18 years of age. More careful, thoughtful drafting will be required for a statute that has the purpose of proposed §118.07(6).[3]

Important Exceptions Missing from Proposed § 118.07(6)

Proposed § 118.07(6) does not contain an essential exception to its parental notification requirement. The law should exclude parental notification for allegations that a staff member committed a violation against the staff member's own child, and instead, school officials should comply with mandatory reporting under § 48.981(3). Relatedly, § 118.07(6) should explicitly state that nothing in this section relieves those who are mandatory reporters under § 48.981(2) from their reporting duties under § 48.981(3) or relieves staff from their duties to report conduct under Title IX to the Title IX Coordinator pursuant to 34 C.F.R. § 106, et. seq.

Another exception to the notification requirement is when a school receives the report from a law enforcement agency that is actively investigating the allegation. An exception does not necessarily need to prohibit notifying parents, but it would enable the school to cooperate, or at least not interfere, with the law enforcement agency's investigation.

Potential Loopholes in Proposed § 118.07(6) that Would Reduce the Law's Efficacy

The proposed statute states which officials must have received the report of alleged sexual misconduct for the report to be considered "received by" the school board, operator of a charter school, or the governing body of a private school, which triggers the duty to notify parents. The officials include a public school principal or district administrator or a private school assistant principal, principal, or administrator.

However, under the Title IX Federal Regulations, staff must report instances of sexual harassment under Title IX to the Title IX Coordinator.[4] The definition of sexual harassment under Title IX largely encompasses violations of § 948.098. Adding the Title IX Coordinator to the list of officials "for when a report is considered to be received by a school board or the operator of a charter school" or by a private school subject to Title IX, would better achieve the goals of this legislation.

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[3] DPI is open to a revision of § 948.098 to include offenses that are recommended for inclusion under proposed § 118.07(6) and to include the definition of "sexual contact" under § 948.01(5)(a)2. DPI is also open to harmonizing §§ 948.095 and 948.098. As currently drafted, § 948.095 prohibits school staff from having sexual contact with 16- and 17-year-old children but not 18-year-old students (younger children are protected by § 948.02). The definition of sexual contact under § 948.095 is broader than the definition of physical contact of a sexual nature under § 948.098.

[4] *See* 34 C.F.R. 106.30(a) (defining "actual knowledge").

The department is not immediately aware of a state law that requires school staff at a private school to report sex discrimination, sexual harassment, or sexual misconduct to one of the individuals listed in proposed § 118.07(6). This may also be a loophole in the reporting requirement, further reducing the efficacy of this statute.

Impact of Ambiguous and Vague Terms and Solutions

The proposed law contains several ambiguous or vague terms that will complicate a school's ability to comply with the law. This will result in inconsistent application for similar circumstances and disputes between parents and schools about whether the law was complied with. Also, due to those terms, schools will likely incur legal expenses consulting with their attorneys on how to apply the facts of individual circumstances to the law.

First, proposed § 118.07(6) requires schools to notify parents of a "credible" report alleging sexual misconduct, as defined in § 948.098(1)(d). The term "credible" is not defined in the proposed law. The dictionary definition of credible in the Oxford Languages and the Cambridge dictionaries is simply "able to be believed," and in Merriam-Webster, "offering reasonable grounds for being believed or trusted." This meaning could range from barely credible or not-obviously-a-joke to any higher threshold. It is unclear whether the law requires or permits a school to investigate allegations, including hearsay allegations, before a report may be considered credible. Furthermore, investigating or questioning to ascertain credibility may not always be appropriate, such as when law enforcement is actively investigating the same allegations. Also, without careful application, such action could conflict with Title IX regulations.

The statute would be clearer if the word credible was removed altogether and schools were simply required to notify parents of all allegations under § 118.07(6). Any associated risk of notifying parents of incredible reports is minimal and is not outweighed by the risk of failing to notify parents of a report that appears incredible but is valid. If the report did not appear credible (e.g., appeared to be a joke made in poor taste), a school official could easily discuss that situation with the parent and explain that the law required notification none-the-less. That would be simpler and less time-consuming by reducing disagreement and deliberations among board members and staff about whether the allegations are credible or whether further questioning would conflict with Title IX and avoid disputes between schools and parents about whether the parent should have been notified.

Importantly, upon receiving notice of an allegation, a parent may be in a better position to assess or determine whether an allegation is credible, and, if notified, the parent could discuss the allegation with their child. It is not uncommon for students who have been groomed to minimize or deny misconduct when confronted for the first time or even multiple times. However, adults, including parents, are better able to see the conduct for what it is, and parents may have additional, relevant information not yet privy to school officials that would impact a credibility determination.

Notifying parents of all allegations without a credibility determination would not conflict with Title IX.[5] Attempting to ascertain credibility of an allegation before notifying a parent could

[5] *See* 34 CFR sec. 106.6(g). (*"Exercise of rights by parents or guardians.* Nothing in this part may be read in derogation of any legal right of a parent or guardian to act on behalf of a 'complainant,' 'respondent,' 'party,' or other individual, subject to paragraph (e) of this section, including but not limited to filing a formal complaint.")

conflict with Title IX. Title IX requires schools that receive federal funding to follow certain procedures upon having actual notice of sexual harassment, as that term is defined by Title IX.[6] Conduct covered by Wis. Stat. § 948.098 will almost always fall under the Title IX definition of sexual harassment.[7] Under those required procedures, a school may only investigate a report of sexual harassment when either (a) a formal complaint is filed (by the victim or victim's parent)[8] or (b) the Title IX Coordinator signs a formal complaint.[9] Under Title IX, formal complaints may only be investigated by individuals who have satisfied certain training requirements. The school would violate Title IX if a school official who has not received the required training begins investigating the credibility of an allegation that would fall under Title IX, or if a school official begins investigating the credibility before a formal complaint has been filed or signed. Additionally, a school official could violate Title IX if they fail to notify the Title IX Coordinator of the report of sexual harassment.[10]

Second, proposed § 118.07(6) requires schools to notify parents of the allegations "by no later than the end of the day on which a credible report alleging sexual misconduct [...] is received." This timeline is not entirely clear because "the end of the day" has different meanings in different contexts. The proposed law should be more specific, such as the end of the school day or the close of business, or a specific time of day. The statute should also clarify by when schools must notify parents if a report is received precisely at or after the end of the school day or a specific time and whether weekends or holidays impact the timeline.

Third, proposed § 118.07(6) should clarify the meaning of "notify" under the law. For example, clarifying whether schools may notify parents of the allegations by phone, voicemail, email, mailed letter, or phone and email, or phone or email, etc. Also, it may be helpful if the statute explains whether a school must make multiple attempts to notify parents. Lastly, it would be helpful if the statute clarified what information must be provided to parents and whether there are any limits on the information that may be provided (e.g., subject to FERPA, pupil records laws, and public records laws).

Prompt Notification to Parents of Sexual Harassment Is Required by Title IX

A parent has a legal right to sign a complaint on behalf of their minor child, and they have a right to act on behalf of their child when it comes to requesting supportive measures.[11] The Title IX Coordinator is required to "promptly respond to allegations of sexual harassment in a manner that is not deliberately indifferent, and deliberately indifferent means "unreasonable in light of the known circumstances."[12] However, a response "must" include offering supportive measures to the alleged victim and "must" include "promptly contact[ing] the alleged victim to discuss the availability of supportive measures."[13] Failing to promptly notify the parent interferes with the

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[6] 34 C.F.R. §§ 106.44 – 106.45.

[7] *Compare* 34 C.F.R. § 106.30 (defining "sexual harassment") *with* Wis. Stat. §948.098.

[8] The co-sponsors were likely referring to this situation when they mentioned how parents cannot file a Title IX complaint if they are unaware of the allegations.

[9] *See* 34 C.F.R. 106.45(b)(1)(i); 34 C.F.R. § 106.30 (defining "formal complaint" and "complainant"); *see also* 34 CFR sec. 106.6(g).

[10] *See* 34 CFR § 106.30 (defining "actual notice").

[11] *See* 34 CFR § 106.6(g).

[12] 34 CFR sec. 106.44.

[13] *Id.*

parent's right to act on behalf of their minor child.[14] Title IX sexual harassment will almost always cover misconduct under § 948.098 – and, depending on the circumstances, additional violations of Wisconsin law. Therefore, failing to promptly notify parents that their child is an alleged victim of § 948.098 likely violates Title IX.

If there is any dispute or confusion between school officials and parents about the meaning of a prompt response to Title IX sexual harassment, a response that would include notifying parents, this new law would make it clear that schools must notify parents of § 948.098 misconduct allegations committed against their child and set a clear deadline for promptly notifying parents.

Students Who Have Reached Age of Majority or Have Become Eligible Students (i.e., 18 years of age)

The proposed statutory language fails to consider pupil records laws under state law and education records laws under FERPA for students who have reached the age of majority or who have become eligible students, meaning 18 years of age. Information surrounding the allegation could constitute a pupil record or an education record, as those terms are defined under Wis. Stat. § 118.125 and FERPA. To avoid conflicting with those laws, when the alleged victim is a student who has reached the age of majority or who has become an eligible student under 34 C.F.R. § 99.5(a)(1), the statute should permit a school to obtain a student's written consent, consistent with 34 C.F.R. § 99.30, before notifying the student's parent of the allegation – unless disclosure may be made pursuant to 34 C.F.R. § 99.5(a)(2). It's important to note that in sexual misconduct situations where the information constitutes an education record and the eligible student's consent would be required before notifying the parent, the student's consent would not be required for school officials to notify the school resource officer.

Depending on the specifics of the record, it's possible the information would not constitute a pupil record or an education record subject to FERPA, but instead, could constitute an employment record of the suspect staff member, in which case, FERPA would not apply. Schools may need to work closely with their legal counsel to navigate these complexities on a case-by-case basis.

Employee Records

The annual reminder could, in effect, encourage harassment of school staff by members of the community. Public records laws are not specific to school environments, so annual notification seems unnecessary and gives the appearance of targeting teachers over other public workers. Additionally, the balancing test must be performed before releasing certain records in personnel files, and for certain records, the employer must provide the employee with written notice before releasing the records, and Wisconsin law provides the employee the opportunity to file with the circuit court an objection to the release of the records. A school may have difficulty responding to an abrupt, significant increase in records requests that could result due to the passage of this annual notification provision.

Impact on Law Enforcement Investigations

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[14] *Id.*

The department does not have a strong concern that this legislation would negatively impact law enforcement investigations since neither the parent nor the student is a suspect in this situation, though it's possible an investigation could be negatively impacted. It's also possible that notifying the parent could help investigations. A parent may have additional information to contribute, and a parent may be more likely to try to preserve text messages or any other evidence that a student who had been groomed might try to destroy or delete. As such, the department defers to law enforcement agencies' opinions of this law's impact on their investigations.

Thank you for allowing DPI to share this testimony. We stand ready to work with this committee and the bill's authors going forward and appreciate their attention to keep our kids safe. Please direct any questions to Laura Adams, Policy Initiatives Advisor, at laura.adams@dpi.wi.gov .