

GLENBROOK HIGH SCHOOLS
Office of the Superintendent
Glenview - Northbrook, Illinois

To: Board of Education

From: Mike Riggle 

Re: Board Policy 8460 Follow-Up

Date: August 7, 2008

As requested at the July 11 Board meeting, I asked our school attorneys to review case law regarding the requirement of having a student who is 18 years or older sign away their confidentiality rights as part of our Board Policy #8460. This would allow the student's parents to receive results of any drug/alcohol tests and any other assessments that are considered to be part of the student record.

On August 6, I received a written synopsis from our attorney, Jack Murphy, which I have attached for your review. According to Mr. Murphy, any assessments required by the school district are considered to be part of the school record, which comes under the control of the student on their 18th birthday. There are two provisions within the *Family Education Rights and Privacy Act* (FERPA) that allow access to this information. One is because the student is still considered a "dependent" if they are still living with their parents and are not financially independent (emancipated). The second, which is questionable for us, allows information of this type to be shared with parents if the student is guilty of a drug/alcohol related offense while attending a postsecondary institution.

The *Illinois School Student Records Act* (ISSRA) is more restrictive than FERPA regarding access by parents and does not provide access because the student is a dependent. ISSRA takes precedent over FERPA because it is more restrictive.

However, our attorneys feel that the district may require a student to allow parental access as a condition of the alternative plan because the student has no right to an alternative plan as the preferred form of discipline. This is based on *Donaldson v. Board of Education for Danville School District No. 118* which was a 1981 case heard in the 4th District. They do, however, feel it is important that "the policy make explicit that students 18 and older, by allowing parental access to the drug results, are waiving their rights to the confidentiality of the results." I have added language to the proposed policy changes to incorporate this concept.

It is my recommendation that Board Policy #8460 be approved with the language changes proposed. The modifications represent the best possible condition for our school staff to work in a positive manner with all parties for the overall benefit of the student. They also will give consistency to our procedures and eliminate inequities that would exist due to differing ages in the student population we serve.

MDR:mkw

enc.

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August 6, 2008

Dr. Michael Riggle, Superintendent
Glenbrook Township High School District No. 225
1835 Landwehr Road
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Re: Board Policy on Illegal Substances

Dear Dr. Riggle:

You have asked us whether the School District may require a student who has reached the age of 18 to release to his/her parents the results of his/her substance abuse assessment as a condition to being offered the benefits of the District's diversion program as outlined in Board Policy 8460, Section D.

We believe that the answer to your inquiry is that the School District may require the student to allow release to his/her parents of the substance abuse assessment as a condition to utilizing the diversionary program.

As background to your request, you should be aware of the following.

The results of a substance abuse assessment ("drug test") are considered a student record because the results of the drug test constitute "recorded information concerning a student and by which a student may be individually identified, maintained by a school or at its direction or by an employee of a school." 105 ILCS 10/2. Therefore, access to the drug test results are governed by the *Illinois School Student Records Act* ("ISSRA") and the *Family Educational Rights and Privacy Act* ("FERPA").

Both ISSRA and FERPA grant parental access to student records with the limitation that the rights of the parents shall become those of the student upon the student's 18th birthday. 105 ILCS 10/2; 20 U.S.C. § 1232g. Because of this transfer of rights, parents no longer have unfettered access to a student record – including a drug test result -- after the student turns 18 years of age. Thus, a school district is not permitted to turn over the results of a drug test of a student 18 or older to a parent without the student's consent.

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FERPA has numerous exceptions to the student consent requirement. Two of the exceptions relate to the District's situation.

The first exception permits student records to be disclosed to parents of a *dependent student* without prior consent. 34 C.F.R. § 99.31(a)(8). Therefore, even if the student has reached the age of 18, if the student is still considered a *dependent*, the parents may be granted access to that student's records. It is very likely that most 18 year old students in District 225 would be considered "dependent" pursuant to FERPA. This exception would allow the District to share the results of a drug test with parents without obtaining the student's consent.

However, in matters involving privacy rights, a more restrictive state law is followed over a permissive federal law. See *U.S. v. Gervasi*, 562 F.Supp. 632, 649 (N.D. Ill. 1983) (failure to respect a state's more stringent protection of privacy would violate principals of federalism). Because ISSRA does not provide an exception similar to the FERPA exception noted above, the District cannot turn over the results of a drug test to the parents of an 18 year old student without the student's prior consent.

The second relevant FERPA exception that allows parental access to student records applies only to institutions providing postsecondary education. Therefore, it does not apply to high schools. However, it is interesting to note that the exception explicitly addresses a student's violation of any rule or policy governing the use or possession of alcohol or a controlled substance. 34 C.F.R. § 99.31 (a)(15). If a student at a postsecondary institution violates that institution's drug policy, the records regarding that incident may be disclosed to a parent *without the student's prior consent*. *Id* (emphasis added). This exception that allows parents of postsecondary students access to records involving violations of drug policies, permits a reasonable inference that the same exception would be expected to apply to parents of high school students. However, because the exception does not specifically incorporate secondary educational institutions, the District cannot rely on this exception as a means of justifying the release of the drug test results to parents of an 18 year old student.

Despite the foregoing statutory provisions, we believe that the school district may require a student to allow parental access as a condition to receiving the benefits of the District's diversion program. The basis of our conclusion is that a student has no right to a drug diversion program as the preferred form of discipline. See *Donaldson v. Bd. of Educ. for Danville Sch. Dist. No. 118*, 98 Ill.App.3d 438, 439, 424 N.E.2d 737, 738 (4th Dist. 1981) (school boards are granted broad discretion in disciplinary actions). He/she is free to refuse the benefits of the diversion program as he/she sees fit.

Said another way, if a student does not want to allow his/her parent access to the results of his/her drug test, then the student can simply "say no" to the diversion and accept the harsher consequences of his/her refusal. In the proposed policy, the District has provided the student with a choice. The student may reduce the mandatory suspension from 10 days to 5 days by agreeing to participate in a substance abuse assessment, including a drug test, and sharing the

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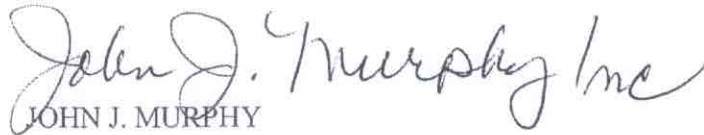
results of such an assessment with his/her parents. However, the student may also forgo the assessment and be suspended for 10 days. Because the student is not required or mandated to participate in the assessment, it is not a violation of the student's rights to require parental participation as part of the program.

We do recommend that the policy make explicit that students 18 and older, by allowing parental access to the drug test results, are waiving their rights to the confidentiality of the results.

We hope that this advice has been helpful. If you have any questions, please do not hesitate to call either Tony Scariano or me.

Very truly yours,

SCARIANO, HIMES AND PETRARCA, CHTD.


JOHN J. MURPHY

JJM/mc

C: Anthony G. Scariano, Esq.