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SCHOOL LAW NOTES

NOVEMBER 20, 2025

JEFFREY J. SOLES
MICHAEL D. GRESENS
CHRISTOPHER J. IAMARINO
RAYMOND M. DAVIS
MICHELE R. EADDY
KIRK C. HERALD
ROBERT A. DIETZEL
KATHERINE WOLF BROADDUS
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AUSTIN W. MUNROE

GORDON W. VAN WIEREN, JR. (OF COUNSEL)
LISA L. SWEM (OF COUNSEL)
ROY H. HENLEY (OF COUNSEL)
BRADFORD W. SPRINGER (OF COUNSEL)

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Sixth Circuit Blocks Ohio School from Disciplining Students for Use of "Biological Pronouns"

An *en banc* panel of all 17 judges on the Sixth Circuit Court of Appeals, whose decisions are binding on Michigan schools, recently ruled that a parent group *was* likely to succeed on the merits of its claim that an Ohio school violated students' free speech rights when it prohibited them from using "biological pronouns" when referring to transgender and nonbinary students, rather than those students' preferred pronouns. In a case that highlights the tension between anti-discrimination laws and First Amendment principles, the court held that the school's enforcement of its policies violated the First Amendment and compelled speech by requiring a student to use transgender or nonbinary students' preferred pronouns when those pronouns were contrary to that student's sincerely held belief. *Defending Education v Olentangy Local Sch Dist Bd of Educ*, No. 23-3630 (6th Cir, 2025).

The matter first arose when parents who believed that only two "biological genders" exist challenged the school's enforcement of its nondiscrimination and anti-harassment policy, personal communication device policy, and provisions of the Student Code of Conduct. These policies and Student Code of Conduct provisions prohibited harassment and bullying based on protected classifications, including gender identity, and extended that prohibition to messages exchanged on personal communication devices. The parents asked the school whether these policies and Code of Conduct provisions required their students to use a transgender or nonbinary student's preferred pronouns, rather than their "biological pronouns," and questioned whether their students could be disciplined for failing to follow the policies and provisions. The school's legal counsel told the parents that the school's anti-harassment policy prohibited discrimination and harassment based on sex, including sexual orientation and gender identity, and that one student purposefully referring to another student with "biological pronouns" rather than the student's preferred pronouns "would be an example of discrimination under Board Policy."

In response, a group of parents sought a preliminary injunction barring the school from enforcing those two policies and applicable Code of Conduct provisions. The parent group alleged that these policies and provisions: (1) compelled speech by requiring students to use preferred pronouns rather than "biological pronouns," (2) were unconstitutionally overbroad, and (3) engaged in improper content- and viewpoint-based discrimination.

Overturning a previous decision by a three-judge panel in the Circuit, the entire Sixth Circuit panel voted (10-7) to grant the parent group's request for what the court called a "particularly narrow" injunction. Specifically, the injunction bars the school from disciplining students solely for using "biological pronouns" to refer to transgender and nonbinary individuals without any subjective "ill

will" toward those individuals. The court concluded that the school's ban on the use of "biological pronouns" regulated student speech based on the viewpoint of the speech. Further, citing *Tinker*, the court held that the school had not met the "demanding" standard of proving that a student's use of "biological pronouns" for transgender and nonbinary students when motivated by a sincerely held religious belief would materially and substantially disrupt the education environment or amount to harassment under Ohio law. The court was careful to note, however, that this holding did not prohibit a school from disciplining a student for unlawful harassment or bullying separate from the use of "biological pronouns" without "ill will" towards transgender and nonbinary students.

For Michigan schools, it is important to note that no Ohio law specifically prohibits gender identity and gender expression discrimination, but Michigan's Elliott-Larsen Civil Rights Act (ECLRA) explicitly does. We cannot predict how a court would analyze the interplay between the First Amendment and ELCRA in a similar case from a Michigan school.

This decision is fact-specific, and the injunction issued by the court is narrow. Rather than simply prohibiting the school from disciplining a student for refusing to use a transgender or nonbinary student's preferred pronouns in any situation, the court instead issued an order prohibiting the school from disciplining students who are solely using "biological pronouns" for transgender and nonbinary students without any "ill will." School officials must still address allegations of student-to-student harassment and bullying. Schools cannot compel speech, as the Sixth Circuit held, but a school must still address and can issue discipline for unlawful student-to-student harassment that creates a hostile educational environment or a substantial disruption.

With several significant cases on this topic pending, we continue to recommend that each issue be addressed on a case-by-case basis, with a thorough review of the facts specific to any particular matter, and in consultation with legal counsel.

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Beware of Penalties Under New State Budget

Last month, we provided a general overview of the new state budget, which amends the State School Aid Act ("SSAA") for State fiscal year 2025-2026. We are now drawing attention to SSAA Section 164k to highlight potential penalties resulting from non-compliance.

Section 164k mandates that schools comply with the following, or risk losing 5% of designated Section 22b funding for school districts, or Section 81 funding for ISDs, during the period of noncompliance if a violation is reported and confirmed:

- Ensure that all food made available to a student in the breakfast or lunch program complies with all federal rules and regulations related to school meals.
- To the extent practicable under federal regulations, require each student's household to complete the child nutrition and benefits application, as provided by MDE, for free and reduced-price meals, regardless of whether the school opts to provide universal breakfast or lunch.
- No longer provide financial incentives for students to attend pupil membership count day beginning with the February 2026 count day.
- Ensure that student survey questions and results are made available to the public, posted on the school's website, and that parents and legal guardians are notified of the survey. For purposes of this section, "survey" includes any survey from the school or from the local, state, or federal government.

Schools should take steps to ensure compliance with Section 164k to reduce the risk of incurring penalties. If you have questions regarding Section 164k compliance, please contact a Thrun attorney.

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REMINDER: State Minimum Wage Increase Effective January 2026

As explained in our February 24, 2025, E-Blast, under Public Act 1 of 2025, Michigan's minimum wage will increase as follows for staff who are not exempt from Fair Labor Standards Act minimum wage requirements (e.g., hourly staff members):

- ***January 1, 2026: $13.73/hour***
- January 1, 2027: $15.00/hour

By November 1 of each year, starting in 2027, the State Treasurer will publish minimum wage rates for the immediately succeeding calendar year based on the Consumer Price Index for the Midwest region, CPI-U.

Effective January 1, 2026, schools must ensure that all non-exempt employees are paid at least the new State minimum wage of $13.73 per hour regardless of any collective bargaining agreement or individual employment contract that contains a lower pay rate.

If your school has implementation questions, or needs assistance navigating discussions with local bargaining units, please contact a Thrun labor attorney.

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Non-Disparagement Clauses: A Cautionary Tale

Is a school liable for an administrator's casual, off-the-clock comments about a former employee? According to a recent arbitration decision handled by Thrun Law Firm, a separation agreement with an overly broad non-disparagement clause could lead to school liability for such comments.

A school and an employee agreed to part ways in a separation agreement that included a non-disparagement provision. Specifically, the parties agreed "not to make any negative public statement and/or disparaging remark (whether verbal, written, or through a third party) regarding [the] employee or publicly share information that would cast [the] employee in a negative light." The separation agreement also included language that a violation of the non-disparagement clause could be remedied through arbitration.

After entering into the separation agreement, a school administrator, unaware of the agreement's terms, made vague comments about the former employee's departure during a personal lunch with a longtime friend, who also happened to be friends with the former employee. Approximately three months later, the former employee learned about the conversation and initiated arbitration, alleging that the school violated the non-disparagement clause.

The arbitrator disagreed with the employee, ruling that the administrator's comments were not attributable to the school because the administrator was not acting within the scope of his employment when he made the comments to his friend during his duty-free lunch hour.

Even if the administrator were acting within the scope of his employment, the arbitrator also found that the comments did not constitute disparagement. "Disparagement" is not consistently defined by courts – some courts define disparagement as merely "speaking of another in a slighting or disrespectful way," while others define it as "a false statement causing harm to another's reputation."

The arbitrator defined disparagement as "an act of unfairly castigating or detracting from the reputation of someone or a false and injurious statement that discredits or detracts from the reputation of another's character." The arbitrator found that the comments did not constitute disparagement because the employee failed to provide any evidence that his character or reputation were negatively affected, or that anyone was deterred from association with him, because of the comments.

Despite the favorable outcome for the school, the case involved months of discovery, time, and resources, highlighting the risks of including an overly broad non-disparagement clause in a separation agreement.

As noted in our October 30, 2025 *School Law Notes* article entitled "Don't Let Separation Agreements Trick You," schools should only agree to refrain from disparagement that is clearly defined and contains terms such as libel, slander, or defamation. Those terms, however, still carry risk and should only be used after consultation with legal counsel. Such provisions should also be limited to *official* school statements made by the board, rather than encompassing all school employee speech.

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Teacher Midyear Progress Reports

As the school year's midpoint approaches, school officials who evaluate teachers should start preparing for midyear progress reports. Revised School Code Section 1249 requires school officials to complete midyear progress reports for all first-year probationary teachers and all teachers who were rated as "needing support" or "developing" in their most recent annual year-end evaluation. School officials should consider conducting a midyear progress report for non-first-year probationary teachers to measure individualized development plan (IDP) progress even though such a report is not legally required.

The midyear progress report is a supplemental tool used to gauge a teacher's improvement from the preceding school year (or current year for first-year teachers) and is designed to assist teacher growth. As a "supplemental tool," the midyear progress report does not replace a teacher's annual year-end evaluation. Before conducting a midyear progress report, be sure to review collective bargaining agreements and policies for any applicable terms, as sometimes these policies and/or agreements provide alternative deadlines or other procedural requirements.

Although the midyear progress report does not replace a year-end evaluation, it is an essential part of the teacher evaluation process. If a midyear progress report is not completed, the evaluator will not have a complete picture of the teacher's performance at the end of the school year.

The midyear progress report must align with the teacher's IDP and include specific performance goals for the remainder of the school year. As a practice point, the evaluator should document in the midyear progress

report the teacher's progress toward *all* IDP goals, trainings, and other requirements.

Aligning the midyear progress report with the teacher's IDP will help an evaluator assess the teacher's performance and improvement during the first half of the school year. The midyear progress report should clearly indicate whether any past performance deficiencies remain. Evaluators should refrain from "sugarcoating" and report all progress in a neutral and factual manner.

Including specific performance goals in the midyear progress report will help an evaluator assess the teacher's progress at the end of the school year. These goals must be developed by the school official who conducts the teacher's annual year-end evaluation and should include recommended training to help the teacher achieve the goals. Evaluators should ensure that the goals are measurable and are developed to specifically address the teacher's performance deficiencies.

Revised School Code Section 1249 arguably requires a meeting with the teacher before a midyear progress report is issued, stating that "[a]t the midyear progress report, the school administrator or designee shall develop, *in consultation with the teacher*, a written improvement plan." "Consultation," as interpreted by the State Tenure Commission, means that the teacher receives a meaningful opportunity to review and respond to the improvement plan before adoption. Best practice is to meet with the teacher to discuss the midyear progress report's alignment with the IDP, review the newly drafted goals and training recommendations, and obtain the teacher's input and signature.

The evaluator should have the teacher sign the midyear progress report to confirm that the document was developed in consultation with the teacher. If the teacher refuses to sign the midyear report, the evaluator should indicate that refusal on the document. The evaluator should sign and date the midyear progress report, and a copy should be placed in the teacher's personnel file.

Evaluators should prioritize midyear progress reports during the next two months to ensure full statutory compliance. Failing to follow the evaluation process required by Revised School Code Section 1249, including midyear progress reports, could impact teacher-related decisions such as non-renewal, discipline, and layoff.

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Tips for Employee Misconduct Investigations

Schools are typically required by law, policy, or contract to conduct an investigation before an employee is discharged, suspended without pay, or otherwise deprived of an employment benefit due to alleged misconduct. This article offers guidance for school officials conducting or overseeing employee misconduct investigations *not involving Title IX*.

This article is not intended as a checklist for all employee investigations or to enumerate all rights employees may have during an investigation. Additional legal requirements and practices may apply depending on factual circumstances, as well as policy and contractual requirements.

Beginning an Investigation

After receiving a complaint or report of alleged misconduct, school officials must first determine whether to investigate the matter. An investigation's purpose is to conduct fact-finding and determine whether a preponderance of evidence (i.e., more likely than not) indicates that the employee engaged in the alleged conduct and, if so, whether that conduct violated a law, policy, rule, or directive.

School officials decide who will investigate and must ensure that the investigator is not biased. Schools should consider engaging a third-party investigator when allegations involve high-level administrators, when there is a potential conflict of interest for internal staff, or when the investigation's credibility could reasonably be questioned if handled internally. Using an independent investigator can also be beneficial when the allegations are particularly serious, complex, or likely to attract public scrutiny. Using a third-party investigator may help to ensure objectivity and trust in the investigative process and provide for confidentiality of sensitive matters.

When an investigation is conducted by a third-party attorney or private investigator, a resulting fact-finding report is typically subject to attorney-client or investigator-client privilege. In such case, the report is not typically subject to disclosure unless the board of education votes to waive the privilege.

Further, an employee who is the subject of an investigation may need to be placed on paid, non-disciplinary administrative leave pending the investigation's outcome, depending on the severity of the alleged misconduct and whether the employee's presence at work could interfere with the investigation.

Previous Discipline

School officials should review the employee's personnel file to identify the nature and extent of any previous discipline. Past misconduct, especially of a

similar nature, may suggest a pattern of behavior that will impact the discipline level imposed if the alleged misconduct is substantiated.

Preserving Evidence

School officials should identify and preserve any physical or electronic evidence, including potentially relevant surveillance videos and emails. Depending on whether evidence is stored on an employee's school-issued device or school-related accounts, it may be necessary to disable the employee's access to this technology and accounts until the investigation is complete.

Interview List

School officials should prepare a preliminary list of interviewees including witnesses and others who may have direct information about the alleged misconduct. This list is likely to evolve during the investigation, as witnesses often identify additional individuals who have relevant information. Generally, the first interviewee should be the alleged victim or the person who reported the alleged misconduct, and the employee being investigated should be the last interviewee so they have the opportunity to respond to any additional allegations that may emerge during interviews.

Witness Interviews

The investigator should prepare for witness interviews by carefully reviewing the complaint or allegations along with any available documentation and evidence. Then, the investigator should outline topics and preliminary questions for each witness. The investigator should be prepared to ask follow-up questions and to change course if a witness's answers lead to other relevant information.

At the beginning of each interview, the investigator should explain to the interviewee that the school takes alleged misconduct seriously and direct each interviewee to answer all questions truthfully, forthrightly, and without evasion. When applicable, the investigator should inform the interviewee that failure to do so could constitute insubordination and result in discipline, up to and including discharge. The investigator should also notify witnesses that, to preserve the integrity of the investigation, they are directed to refrain from discussing the investigation with colleagues, students, or other school stakeholders until the investigation is complete.

If the investigator is handling a complex investigation, they should have another staff member take notes during the interview. Whether notes are taken by the investigator, a third party, or both, be aware that the notes may be subject to disclosure in response to a Freedom of Information Act request, subpoena, or court order.

At the end of each interview, the investigator should ask the witness to identify any other potential witnesses who may have relevant information and to provide any other relevant evidence or information they may have, including evidence that substantiates the alleged misconduct or exonerates an employee. Evidence could include, but is not limited to, emails, text messages, screenshots of social media posts, or videos.

Employee Due Process Interview

Notably, a bargaining unit employee has the right to union representation at any interview that the employer reasonably believes could result in discipline for that employee (i.e., "*Weingarten* rights"). Unless the applicable collective bargaining agreement states otherwise, school officials are not obligated by law to inform the employee of that right to union representation, but must typically permit union representation if requested.

The employee alleged to have engaged in the misconduct is entitled to a due process interview at the conclusion of an investigation to ensure fairness and transparency before any disciplinary action is taken. This interview provides the employee with an opportunity to review and respond to all evidence gathered during the investigation, present their side of the story, and clarify any misunderstandings. Affording this opportunity helps the school make an informed and balanced decision, protects the employee's constitutional and contractual due process rights, and demonstrates the school's commitment to a fair and objective disciplinary process.

Concluding the Investigation

After the interviews have been completed, the investigator must review all relevant evidence and notes. If witness statements conflict, the investigator must determine which witness(es) is (are) more credible. To make this determination, the investigator should consider whether any witness or party has an incentive to fabricate facts, has an existing personal relationship with any party that may impact credibility, has a more detailed recollection of the facts than another, has made inconsistent statements, or has a history of being untruthful. The investigator must remain neutral and refrain from making judgments before concluding the investigation.

Evidentiary Standard

The evidentiary standard in employee misconduct investigations is, in most cases, a preponderance of the evidence, which requires the evidence gathered by the investigator to establish that it is more likely than not (i.e., 51% to 49%) that the employee engaged in the alleged conduct. If the investigator decides that a preponderance of the evidence supports that the employee engaged in the alleged conduct, the

investigator must then determine whether that conduct violates a law, policy, rule, or directive, or is of a nature that a reasonable person would know the conduct was not permitted.

Report

The investigator should then draft an investigation report that identifies all individuals interviewed and summarizes interviewees' statements and the tangible evidence gathered and considered. The report also should specify whether the investigator believes a preponderance of evidence exists that the alleged conduct occurred and, if so, whether it violates a law, policy, work rule, or directive.

The investigator may recommend next steps to the decision-maker in the investigation report, (such as training) or discipline (such as discharge or suspension). Policy or contract provisions may address discipline or require additional steps, such as sending written notice of the investigation's outcome to each party.

The above tips are applicable to most employee misconduct investigations. Title IX sexual harassment investigations, however, require a specific and more complex process. If you are investigating an allegation covered by your anti-discrimination or anti-harassment policies that does not implicate Title IX, be sure to review these policies to ensure that all necessary procedures are followed.

Conducting an employee misconduct investigation can be a daunting task. School officials unfamiliar with conducting investigations should seek guidance from an experienced colleague or legal counsel. Failing to properly investigate could lead to an erroneous decision and potential legal liability.

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Filing Deadlines "Yule" Regret Missing

With the excitement of the holiday season, finance-related filings can easily fall to the bottom of priority lists. We recommend making a list (and checking it twice) of important end-of-the-calendar-year deadlines related to continuing disclosure and qualified status.

Continuing Disclosure

If your school has outstanding bonds, it likely entered into a continuing disclosure agreement (CDA) when those bonds were issued. A CDA requires school officials to submit an annual report containing certain continuing disclosure documents (e.g., audits and key financial and operating information) annually to the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System (EMMA).

If your school entered into a CDA and the related bonds remain outstanding, school officials must file the annual continuing disclosure documents soon. The annual filing deadline depends on the CDA's specific terms but typically falls between December 27 and December 31. For Thrun Policy Service subscribers, continuing disclosure protocols are addressed in Policy 3212.

We recommend that school officials confirm the filing has been completed before leaving for winter break. If your school works with a financial advisor to prepare and submit the annual disclosure filings, you should coordinate with that advisor well before the deadline to ensure timely filing.

Qualified Status

In last month's edition of *School Law Notes*, we discussed the importance of annually filing the Municipal Finance Qualifying Statement form with the Michigan Department of Treasury by December 31. A successful Qualifying Statement submission gives a school "qualified status" for the upcoming year. Obtaining qualified status allows schools to issue most types of municipal obligations (e.g., bonds, state aid notes, and tax anticipation notes) without the delay and additional cost of applying for Treasury pre-approval before each borrowing.

As a service to our retainer and regular finance clients, Thrun Law Firm's finance attorneys will, at a client's request and at no additional charge, review a draft Qualifying Statement before filing. Due to Treasury's electronic submission process, clients should provide a screenshot of the draft online submission form for review. Clients that wish to take advantage of this service should provide that draft Qualifying Statement by early December to allow sufficient time for review.

If your school is denied qualified status for any reason, please contact our office before submitting a request for reconsideration of that denial. Treasury allows only one reconsideration request each year, so it is critical that the reconsideration request be error-free. A flawed reconsideration request may result in a final denial of qualified status for the upcoming calendar year.

To avoid finding a lump of coal in your stocking, please contact a Thrun finance attorney if you have any questions related to these important filing deadlines.

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Parent Observations at School

Parents are generally welcome visitors at schools; however, establishing ground rules for visitors is essential to maintaining a productive learning environment. Every school should have a board policy addressing school visitors that aligns with Michigan law, and rules governing parent observations should be in board policy and referenced in the student handbook. For Thrun Policy Service subscribers, school visitors and volunteers are addressed in Policy 3105.

Visitors who wish to observe at a school may disrupt the learning environment unless appropriate rules are established and followed. While the general public has no right to access school buildings or observe classroom activities, Revised School Code Section 1137 requires schools to allow parents who are responsible for the care and custody of a student to observe instructional activity in a class or course in which their student is enrolled and present, subject to reasonable restrictions.

"Reasonable restrictions" may include requiring prior approval by school administration, requiring a certain amount of advance notice (e.g., 24 hours), and limiting observations to certain days or specified times and duration. Further, parents should be instructed to not interact with the teacher or other students during their observation.

When a student is or may be eligible for special education services, parents may seek a different type of observation. Parents of special education students (or those being evaluated for special education eligibility) may request an independent educational evaluation (IEE) by an outside evaluator under the Individuals with Disabilities Education Act. The outside evaluator may need to observe the student in the educational environment.

Guidance from the U.S. Department of Education's Office of Special Education and Rehabilitative Services generally requires school officials to provide outside IEE evaluators with access to the student at school in a manner that is comparable to the access given to the school's own evaluators. School officials should schedule outside evaluator observations in a manner that minimizes disruption to the classroom. Special education personnel should also address the specific parameters for IEE observations with outside evaluators on a case-by-case basis.

The general parameters for any classroom observations by both parents or outside individuals should be addressed in board policy and shared with building administrators to ensure consistency.

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"I Have Something to Say" - OMA & Public Comment

Public comment at board meetings is a right under the Open Meetings Act (OMA) and First Amendment. The OMA requires that members of the public be permitted to "address a meeting of a public body under rules established and recorded by the public body." In other words, every meeting must include at least one public comment period. Compliance with the OMA protects board decisions from invalidation and board members from civil and criminal liability.

Reasonable Rules

The "rules established and recorded" by the public body must be designed to balance the board's interests in conducting meetings in an orderly manner with attendees' OMA rights and First Amendment free speech rights. The Michigan Attorney General has opined that the rules must be reasonable, flexible, and encourage public participation.

A board-adopted policy or bylaw can satisfy the "rules established and recorded" requirement. The rules should be printed and available at each board meeting and referenced on the school website where board meeting notices are posted, so that members of the public are aware of their rights and responsibilities during public comment.

The rules may dictate when public comment will occur on the meeting agenda. A public body may therefore determine by rule whether members of the public may address the board at the beginning, middle, or end of the meeting. Providing two public comment periods – one for agenda items and one for non-agenda items – is not legally required and may unnecessarily extend the duration of a public meeting. Thrun Policy Service subscribers can find public comment rules in Policy 2504 – *Public Participation at Board Meetings*.

A public body may *not* adopt a rule that denies a member of the public the right to address the public body. For example, a board cannot set a designated time limit for the public comment period as a whole, as doing so could deny a person the right to participate in a public comment period once that time limit has been reached.

A public body may, however, adopt a rule imposing a reasonable time limit on each individual speaker (e.g., 3 minutes each). Accordingly, a board may limit the time any one person addresses the board but should extend the public comment period as necessary to ensure that everyone wishing to speak has an opportunity to do so. Similarly, a board may not prohibit a person from addressing the public body based on that person's residency.

Limits on Censorship

Any rule that limits comment at a public meeting must be viewpoint-neutral. In other words, the public body may not censor speech merely because it disagrees with the speaker's viewpoint.

The Michigan Attorney General opined that the purpose of a board meeting "is to discuss public business and not to deal with individual personalities." Accordingly, a board may adopt rules prohibiting personal attacks on an individual during public comment *if* the comments are unrelated to an employee's or board member's performance of his or her public duties. For example, a board may prohibit a personal attack on an employee concerning the employee's religion.

Attempting to otherwise prohibit personal attacks during public comment may violate the First Amendment. The Sixth Circuit Court of Appeals, whose decisions are binding in Michigan, determined that public comment at a board meeting is typically protected First Amendment speech, subject only to legitimate, viewpoint-neutral restrictions. Therefore, a board may not restrict speech that it finds to be harassing or objectionable based solely on the speaker's viewpoint. We recommend that boards proceed very cautiously before restricting any speech at public comment.

Meeting Disruptions

The OMA states that a person must not be excluded from a meeting that is otherwise open to the public except for a breach of the peace *actually committed at the meeting*. The OMA does not permit a board to exclude someone from an open meeting based on disruptive conduct at past meetings or concerns that the individual might become disruptive.

While the OMA does not define "breach of the peace," Revised School Code Section 1808 states:

> If a person conducts himself or herself in a disorderly manner at a board of education meeting or a school district meeting and, after notice from the officer presiding, persists therein, the officer presiding may order the disorderly person to withdraw from the meeting, and on the person's refusal may order a law enforcement officer or other person to take the disorderly person into custody until the meeting is adjourned.

Further, in 2020, the Michigan Court of Appeals interpreted "breach of the peace" under the OMA as "seriously disruptive conduct involving abusive, disorderly, dangerous, aggressive, or provocative speech and behaviors tending to threaten or incite violence." Accordingly, only seriously disruptive behavior that continues after notice from the presiding officer will justify a board's decision to exclude a person from a meeting for a breach of the peace.

We have recently seen an uptick in OMA legal challenges, some of which have stemmed from public comment rules. Becoming familiar with your board's public comment rules may help avoid such challenges. School officials also should consider having their school's public comment rules reviewed by legal counsel for OMA and First Amendment compliance.

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Deadline to Join PowerSchool Litigation Fast Approaching

As announced in our September 30, 2025 E-Blast, schools nationwide are joining a lawsuit against PowerSchool and related defendants concerning the December 2024 PowerSchool data breach and PowerSchool's alleged contract breaches, specifically MDL No. 3149 in the United States District Court for the Southern District of California.

To join the litigation, your board must approve a resolution and contract. To obtain those documents, please email pmatusiak@thrunlaw.com.

Signed resolutions and signed and initialed contracts must be returned as soon as possible, but no later than December 31, 2025 to that same email address. If you would like more information about the litigation, please contact Piotr Matusiak at pmatusiak@thrunlaw.com or call (517) 374-8824.

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THRUN LAW FIRM, P.C.

Schedule of Upcoming Speaking Engagements

Thrun Law Firm attorneys are scheduled to speak on the legal topics listed below.
For additional information, please contact the sponsoring organization.
www.thrunlaw.com/calendar/list

Date	Organization	Attorney(s)	Topic
December 4, 2025	MASPA	Lisa L. Swem	Swem's Swan Song: Lessons Learned Over the Years
December 4, 2025	MASPA	Robert A. Dietzel	Legal Update
December 4 & 5, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	Policy Implementation Meetings
January 20, 2026	MASSP	Erin H. Walz Cathleen M. Dooley	Beyond the Red Flag: What to Do (and Not Do) When Threat Assessments Raise Concerns
April 21, 2026	MSBO	Christopher J. Iamarino	Bonding, Borrowing and Investing