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SCHOOL LAW NOTES

NOVEMBER 21, 2024

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Federal Judge Vacates FLSA Minimum Salary Threshold Increases

On Friday, November 15, 2024, a federal Texas court vacated the April 23, 2024 U.S. Department of Labor (DOL) final rule that increased the minimum salary threshold for Fair Labor Standards Act (FLSA) exemptions (Final Rule), concluding that the Final Rule was unlawful. The court's decision applies *nationwide* and results in the minimum salary threshold for FLSA exemptions reverting to the pre-Final Rule level of $684 per week ($35,568 per year).

The Administrative Procedures Act requires that a reviewing court set aside agency action found to be unlawful. As such, the Federal District Court Judge's ruling applies nationwide, which includes Michigan. As explained in our June 2024 *School Law Notes*, the Final Rule increased the minimum salary threshold to $844 per week ($43,888 per year) effective July 1, 2024, and the Final Rule would have increased the minimum salary threshold for exempt employees to $1,128 per week ($58,656 per year) effective January 1, 2025. Given the court's decision, employers are no longer required to comply with the Final Rule.

Employers that already granted salary increases for FLSA exemption purposes and that want to revert back to pre-Final Rule salary levels should proceed with caution. Although the Final Rule no longer requires higher salaries for FLSA exemptions, employers may have contractually obligated themselves to pay higher salaries. The DOL may also appeal the federal court's decision. If you have questions about this recent development, please contact your Thrun labor attorney.

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Midpoint Marker: Navigating Teacher Midyear Progress Reports

As the school year's midpoint approaches, school officials evaluating teachers should focus on 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 rated "minimally effective," "ineffective," "needing support," or "developing" in their most recent annual year-end evaluation. It is also prudent to conduct a midyear progress report for *all* probationary teachers to measure individualized development plan (IDP) progress. For schools that have negotiated collective bargaining agreement terms covering teacher evaluations, school officials are reminded to review any terms that may apply to midyear progress reports.

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. Nevertheless, the

midyear progress report 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: (1) align with the teacher's IDP; and (2) 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. Where applicable, the report must also review the teacher's improvement from the "preceding school year" to assist the teacher's future growth.

Aligning the midyear progress report with the teacher's IDP will help an evaluator assess the teacher's performance and improvement, if any, during the first half of the school year. The midyear progress report should clearly indicate whether any past performance deficiencies remain.

Including specific performance goals in the midyear progress report will help gauge a teacher's progress at the end of the 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 rigorous and aligned with the teacher's performance deficiencies. Additional goals should identify performance deficiencies and provide the teacher with ample opportunities to improve. The goals and training should also address any persistent previously-identified performance deficiencies.

RSC Section 1249 requires that "[a]t the midyear progress report, the school administrator or designee . . . develop, in consultation with the teacher, a written improvement plan." That language could be construed as requiring a meeting. "Consultation," as interpreted by the State Tenure Commission, means that the teacher receives an opportunity to review and respond to the improvement plan before adoption. The best practice, therefore, is to meet with the teacher to align the midyear progress report 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 certify that the document was developed in consultation with the teacher. If the teacher refuses to sign the midyear report, the evaluator should so indicate on the document. The evaluator should sign and date the midyear report. The teacher should receive a copy of the midyear progress report, and a copy should be placed in the teacher's personnel file.

Scheduling time to meet with a teacher and assembling the relevant information can inadvertently take a back seat to other pressing issues. Skipping this step in the evaluation process could undermine the annual year-end evaluation process and future employment decisions for the teacher. Evaluators should prioritize midyear progress reports during the next two months to ensure full statutory compliance.

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Refresher: Hiring Retirees & Tenure Implications

Last year, Public Act 147 of 2023 (PA 147) amended the Michigan Public School Employees Retirement Act (MPSER) to allow certain retirees to continue to receive their retirement allowance and subsidy for health care benefits when returning to work for a "reporting unit" (e.g., a public school district, ISD, or public school academy). Specifically, a person who retires from a non-superintendent position may return to work to a reporting unit and continue to receive their retirement allowance and health care subsidy after a six-month post-retirement waiting period following a bona fide termination or without a waiting period if the retiree earns no more than $15,100 in a calendar year.

A person who retires from a superintendent position may return to work for a reporting unit and continue to receive their retirement allowance and health care subsidy after a six-month post-retirement waiting period following a bona fide termination or without a waiting period if the retiree earns no more than $15,100 in a calendar year in a *non-superintendent* position. Effectively, a superintendent cannot retire and return to a superintendent position within 6 months of retirement without forfeiting their retirement allowance and health care subsidy. PA 147 is in effect until October 10, 2028.

A retired tenured teacher who returns to work for a school as a teacher cannot forfeit their tenure rights when returning to work if returning to the same school. They therefore regain their tenure rights immediately upon their return as a certificated teacher.

The Michigan Court of Appeals has long held that rights under the Teachers' Tenure Act (TTA) cannot be waived or bargained away in any contract. Further, the TTA does not allow a school to terminate a tenured teacher without observing TTA protections. An employment contract for a returning retired teacher (probationary or tenured) should *not* include a requirement that the teacher will resign their employment at the end of the school year. Such a requirement is not legally enforceable because teachers' TTA rights cannot be waived. By operation of law, a retired, certificated tenured teacher who returns to work in the school in which they held tenure will

have their TTA tenure status immediately restored. No board action is required.

Retired tenured teachers who return to work to a different school from which they earned tenure are subject to a two-year probationary period, unless the controlling board immediately places the teacher on continuing tenure. Once a teacher has successfully completed the two-year probationary period, that teacher will acquire tenure in that school.

Regardless of retiree status, school officials must follow Revised School Code (RSC) requirements for all teachers, including obligations for evaluation (RSC Section 1249), and teacher placement, layoff, and recall decisions (RSC Section 1248). Further, a retiree who returns to teaching is subject to provisions of any applicable collective bargaining agreement, unless a different agreement is reached with the teachers' union.

School officials should be mindful of the implications of hiring a retired tenured teacher, including tenure status and applicability of collective bargaining agreement terms. If you have questions about hiring a retiree, please consult with your Thrun labor attorney.

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Employee Speech & Social Media

Employee social media use can present challenges for school officials, particularly during times of charged political and social climates. When school officials receive a complaint about an employee's social media speech, school officials must balance several factors to ensure they do not infringe on the employee's First Amendment rights.

Background

The U.S. Supreme Court first recognized public employee free speech rights in *Pickering v Board of Education* (1968), holding that a teacher had the right to submit to the local newspaper a letter criticizing his school board's handling of funds. The Court wrote, "The problem in any case is to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the state, as an employer, in promoting the efficiency of the public services it performs through its employees."

In 2006, the Supreme Court provided additional analysis in *Garcetti v Ceballos*. In that decision, the Court determined that a public employee has a First Amendment right to speech: (1) that the employee makes as a private citizen; (2) that addresses a matter of public concern; and (3) for which the employee's interest in expression is not outweighed by the government's interests as an employer in promoting effective and efficient public service. The Court further held that a public employee does not speak as a private citizen "if he make[s] statements pursuant to [his] official duties."

Speaking As a Private Citizen on Matters of Public Concern

When determining whether an employee is speaking as a private citizen or a public employee, school officials should consider whether: (1) the speech is related to employment or the employer's functions; (2) the speech is of public concern or related more to internal operations; (3) the employee used school resources to engage in the speech; and (4) the speech identified the employee as a school employee.

School officials must also analyze whether the speech relates to issues of "political, social, or other concern to the community." An employee's personal grievances against a public employer are not usually matters of public concern.

The Balancing Test

If the employee is speaking as a private citizen on a matter of public concern, the employer must balance the employee's interest in speaking on that issue with the school's interest in promoting the efficiency of the public services it performs (i.e., educating pupils). In evaluating the speech, pertinent considerations include whether the statement: (1) impairs discipline by superiors or harmony among coworkers; (2) has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary; (3) impedes the performance of the speaker's duties or interferes with the regular operation of the enterprise; or (4) undermines the employer's mission.

The U.S. Court of Appeals for the Sixth Circuit's ruling in *Bennett v Metro Gov't of Nashville*, 977 F3d 530 (CA 6, 2020), is instructive and binding in Michigan. In 2016, Bennett, a dispatch operator, posted about President Trump's election victory on Facebook. In the replies to her post, Bennett used a racial slur. The next day, she deleted the post. Before its deletion, several of Bennett's coworkers saw the post and filed complaints. Ultimately, the employer fired Bennett for using the racial slur.

The Sixth Circuit upheld the employer's right to terminate Bennett. The court noted sufficient disruption was shown to tip the *Pickering* balance test towards the employer. The court observed that the post likely disrupted the harmony of the workplace, had a detrimental impact on working relationships, and detracted from the employer's mission. The court also found that the fact that Bennett's public Facebook profile identified her as a government employee weighed in the employer's favor. Finally, the Sixth Circuit recognized that the use of a slur enjoys less

protection than other types of speech, so less proof of a disruption is required.

Conclusion

School employees have a strong interest in their personal speech – including online – about matters of public concern. To overcome that interest in the context of employment discipline, a school must show that the speech resulted in disruption to the school environment. The analysis of a school employee's right to speak on such matters includes subjective factors that can be difficult to weigh.

Before acting on employee speech issues, school officials must minimally have proof that the speech adversely affected the school's ability to operate. Consequently, we encourage school officials to consult legal counsel before disciplining an employee for a social media post. For Thrun Policy Service subscribers, employee social media use on district property, during work hours, or while using district-owned devices is addressed in Policy 4217.

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December Filing Deadlines "Yule" Regret Missing

With the excitement of the holiday season, finance-related filings may be the last thing on school officials' priority lists. Please keep in mind two important end-of-the-calendar-year deadlines to stay off the "naughty" list: (1) continuing disclosure and (2) 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 certain continuing disclosure documents annually to the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System (EMMA). The required documents include the school's audit and updates to key financial and operating information.

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 terms, but it typically falls between December 27 and December 31. For Thrun Policy Service subscribers, additional 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 disclosure agent (e.g., a financial advisor) to prepare and submit the annual disclosure filings, we recommend that you coordinate with that agent 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 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 the 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 adequate 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.

Please contact a Thrun finance attorney if you have any questions related to these important deadlines.

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The ABCs of Student Behavior Management: BIPs, FBAs, & PBIS

Managing student behavior is integral to a successful educational experience for all students but becomes a mandate when a student has a disability. The IDEA and Section 504 recognize the connection between behavior and providing a free appropriate public education (FAPE) to students with disabilities. When a student's behavior impairs their or others ability to learn, school staff likely need to address the causes of and seek solutions for the problematic behavior.

School staff may use a variety of strategies to address problem behaviors, including positive behavioral interventions and supports (PBIS), generally adopted on a campus-wide basis, and behavior intervention plans (BIPs), designed for individual students.

In July 2023, the Michigan Department of Education's (MDE) Office of Special Education published a brief *Family Matters* fact sheet to explain the basics of PBIS, which it described as an evidence-based practice that creates "a framework for supporting whole school practices (schoolwide) to promote a safe school setting by supporting social, learning, behavioral, and emotional needs of all students." Though PBIS is a schoolwide general education approach to behavior management, it also provides an excellent framework for developing student-specific interventions and, therefore, can be a valuable tool for IEP teams.

The IDEA requires IEP teams to consider the use of PBIS when a student's behavior interferes with their learning or that of others. Though the requirement is only to "consider" the use of PBIS, hearing officers generally expect an IEP team to have developed a BIP that incorporates PBIS strategies when adjudicating a failure to provide a FAPE claim for a student who did not make progress on IEP goals, was moved to a more restrictive setting, or experienced a disciplinary change of placement because of behaviors.

A BIP should be included in a student's IEP when it is necessary to provide a FAPE. It should describe with specificity the behaviors that interfere with the student's learning and identify the positive behavioral interventions and other strategies that staff will implement to try to replace those problematic behaviors with appropriate ones. A BIP is *not* a behavior contract that sets out what a student will and will not do. Instead, a BIP is a document that identifies the proactive and reactive actions adults will take to address a student's behaviors. For example, a BIP may include strategies to use if staff recognize that a student may become escalated because of stimuli in the environment. The BIP will also identify the interventions to use if the student is already escalated.

The IDEA does not regulate how BIPs are developed, but the best practice is to create a written document based on data about a student's behaviors, the recommendations of a professional who has experience working with students with similar behaviors, and input from staff and parents. A BIP may be more effective if it is based on the findings of a functional behavior assessment (FBA), which involves identifying a target behavior, observing and collecting data about the antecedents and consequences of the behavior, and developing a hypothesis about the behavior's function.

The IDEA does not impose requirements regarding who can conduct an FBA and how it should be administered, but school officials should ensure that FBAs are conducted by a person who has experience collecting the required data and using that information to identify the behavior's probable function. A team then uses that information to develop a BIP, generally with input and guidance from the person who conducted the FBA. The BIP will include strategies to avoid problematic behavior (such as elopement) by satisfying the behavior's function (which might be escape from a non-preferred task) in a safer and more acceptable way (perhaps a short break to engage in a preferred activity).

If a BIP is necessary for a FAPE, it must be implemented by all staff with fidelity and it should be revisited if new behaviors emerge or existing behaviors do not improve.

The IDEA expressly requires school officials to conduct an FBA and implement a BIP in only one situation – when a student has engaged in behavior that may result in a disciplinary "change of placement." A change of placement occurs when a student is moved out of the setting identified by the IEP as the student's least restrictive environment (LRE). If the behavior is a manifestation of a disability, school officials must conduct an FBA and implement a BIP. If, however, a BIP has already been implemented, the IEP team must review and modify the BIP to better address the behavior. If the behavior is not a manifestation of a disability, school officials may still obtain an FBA, if appropriate, and implement behavioral intervention strategies and modifications designed to prevent the behavior from recurring.

Proactively addressing behaviors that impede learning by using FBAs and BIPs and adequately training staff on how to implement behavior interventions will help avoid special education due process and state complaints and create a calmer learning environment for students and staff.

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Next Stop: Pupil Transportation

The Michigan Department of Education (MDE) recently released guidance to help schools navigate the complexities of pupil transportation. MDE's guidance explains new funding and reporting requirements established by Public Act 120 of 2024 (PA 120) and provides important reminders to help schools steer clear of common pupil transportation pitfalls.

Funding Requirements

PA 120 allocated $125 million to school transportation reimbursement funding for the 2024-2025 school year. Michigan school districts and intermediate school districts are eligible for this funding under State School Aid Act Section 22l. As you are likely aware, to remain eligible, school districts are to submit the District Nonpublic School Student Transportation Reporting Form by December 1, 2024 to its ISD. On this form, school districts identify the

number of riders that it expects to transport to nonpublic schools each day of the week.

Revised School Code Section 1321 requires school districts to transport nonpublic school riders if the school district provides transportation to the grade level that the pupil is enrolled in and the pupil attends the nearest state-approved nonpublic school in the school district. A school district is not required to transport or pay for the transportation of a resident pupil who lives less than 1.5 miles from the nonpublic school or who attends a state-approved nonpublic school located outside of the district, unless the school district also transports its resident pupils to public schools outside of the district.

By February 1, 2025, ISDs must collect and submit the Nonpublic School Student Transportation Reporting Form to MDE. This form requires an ISD to list each school district and public school academy within its boundaries and identify each entity's total number of anticipated nonpublic school riders. It also requires a projected total number of nonpublic school riders within the entire ISD, which can be calculated by tallying the totals provided by constituent districts.

MDE will compile this information and issue a report no later than March 1 of each fiscal year.

Reminders

MDE issued several important reminders that will help schools avoid common pupil transportation pitfalls:

1. Schools cannot use vehicles other than school buses with a manufacturer's rated seating capacity of 11 or more passengers, including the driver, to transport pupils to or from school-related events. Schools may contract with a licensed passenger motor carrier to use a motor bus for occasional pupil transportation to or from school-related events, but certified motor carriers cannot use a motor bus to transport pupils to and from school.
2. Schools must submit a MDE-approved school transportation vehicle waiver for all of its vehicles with a seating capacity of 10 passengers or less.
3. The owner or lessor of a school bus must remove or destroy the pass sticker (i.e., green tag) before selling or returning a leased school bus.
4. School buses must be inspected before use. See the Michigan State Police School Bus Inspection Manual for more information.
5. If a defect or deficiency is discovered or reported to a school-employed or contracted driver, the driver must prepare and sign a vehicle inspection report.
6. Pre-trip school bus inspections are mandatory, must be retained for two years, and will be audited by either MDE or the Michigan State Police beginning in the 2025-2026 school year.

For Thrun Policy Service subscribers, bus inspection requirements are outlined in Policy 3309.

By following this guidance, school officials can help ensure they satisfy pupil transportation reimbursement requirements and provide safe and reliable transportation for their students.

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Board Approval Isn't Boring, It's Required

Revised School Code Section 11a provides: "[A]n act of a school board is not valid unless approved, at a meeting of the school board, by a majority vote of the members lawfully serving on the board." Further, the Michigan Supreme Court has held that a school board speaks only through its minutes and resolutions.

For each contract entered into by a school, there must be a corresponding approval of that contract by the school's governing body contained in meeting minutes or a resolution. As a result, your school board must approve every contract through either: (1) an express action, such as a motion or resolution for that specific transaction, or (2) an action or approved board policy that delegates authority to an individual administrator to enter into the contract on the school's behalf.

Selecting a vendor and negotiating a contract can be a time-consuming process, and sometimes a vendor may demand that a school official immediately sign a form contract. In either circumstance, school officials need to be mindful that, unless the board has taken one of the above two actions, there is no authority for an individual administrator to approve and sign a contract. Contracts are meant to be binding on both parties, and without the school board's approval, a contract is arguably unenforceable. But the legal risks may not stop there for an individual administrator who signs contracts without board approval.

Courts have held that entities that contract with government entities assume the risk that the public official signing the contract has the authority to bind the government entity (e.g., the school). In other words, implied authority does not exist for public schools. If a school official's act is beyond the limits of his or her authority, the school may not be bound by the contract. Many vendors, in an attempt to protect themselves, include "personal guarantee" clauses in contracts. These clauses place personal liability on the school

official signing the contract in the event the school board has not properly authorized the contract. The school official in his or her individual capacity becomes legally responsible for the consequences if the contract is not binding on the school. Needless to say, that is both high risk and potentially fiscally bad for such school officials.

For Thrun Policy Service subscribers, Policy 2202 "Authority to Enter into Contracts" addresses these tenets. Absent express authority delegated by the board to an individual administrator, the board can only be bound by a contract that it has expressly approved at an open meeting. It is our position that the form of contracts, and not just the proposed contract terms, must be presented to the board for approval. To ensure transparency, your board should approve a contract in its entirety and not just basic terms, such as the price. Some of the most important contract terms that could have significant consequences in the event of a dispute are buried deep within the contract documents. Keep in mind many vendors include indemnification provisions in contracts, but schools generally do not have the authority under Michigan law to indemnify third parties except in very limited circumstances.

Additionally, for all purchase and service contracts, it is important to follow the relevant process required by board policy. For instance, when purchasing materials, supplies, and equipment in an amount more than $30,512 for 2024-25, school administrators should be familiar with the board's relevant purchasing and procurement policies. For Thrun Policy Service subscribers, please refer to Policy 3301 "Purchasing and Procurement".

When negotiating a vendor contract, there should be a clear message that the contract must be approved by the board. At the outset, let the vendor know the upcoming meeting dates as well as deadlines for board packet materials. Vendors that regularly work with schools should be aware of the need for board approval, as their contracts likely include that requirement.

We are here to assist in the contract review and approval process for schools and have reviewed contracts from many major school vendors.

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SORA Unraveled: Legal Insights for Educators

The Sex Offenders Registration Act (SORA) requires individuals convicted of sex offenses to register with the State. The law imposes various reporting requirements and restrictions on registered offenders aimed at monitoring offenders' activities and ensuring community awareness. SORA has been amended seven times, most recently in 2021. The 2021 amendments implemented three significant changes:

1. *Elimination of the School Safety Zone*: The prohibition on living, working, or "loitering" within 1,000 feet of a school ("school safety zone") was eliminated.
2. *Prosecution Standards*: Individuals cannot be prosecuted for unintentional or mistaken SORA violations. To secure a conviction, the prosecution must prove that any violations were "willful."
3. *Registry Removals*: Certain individuals may be removed from the registry if their offenses have been expunged, set aside, or if they successfully complete a term of supervision under the Holmes Youthful Trainee Act.

A recent decision from the U.S. District Court for the Eastern District of Michigan, *Does III v Whitmer*, stems from the 2021 amendments to SORA. The plaintiffs brought several claims alleging that the 2021 SORA amendments violate registrants' constitutional rights. The court agreed with the plaintiffs on a critical point – it deemed the retroactive application of SORA unconstitutional, ruling that registered individuals cannot be subjected to provisions that were not in effect at the time of their offenses. Additionally, the court struck down the 2021 amendment that required individuals convicted of a crime without any sexual element to be indefinitely labeled as sex offenders, thus subjecting them to SORA's reporting requirements.

For school officials, it is crucial to note that the court left untouched the removal of the school safety zone provision. See "Student Safety Zone" Repealed by Amendments to Sex Offenders Registration Act; therefore, the 2021 removal of this provision is still valid law. Schools can no longer use the school safety zone as a basis to exclude registered sex offenders from school grounds.

Despite the abolishment of the school safety zone, the Revised School Code still prohibits schools from employing or hiring individuals who have been convicted of a listed sex offense. Moreover, school officials retain the authority to implement reasonable rules and regulations to protect students, staff, and visitors on school property. However, policies that rely on the now-defunct definitions of the "school safety zone" and "loiter" may face challenges. To the extent your board policies reference or include these definitions, we recommend contacting a Thrun attorney for assistance with necessary revisions.

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Social Media Litigation Update & Extended Deadline to Join

As previously announced in our *School Law Notes* and E-Blasts, schools nationwide are joining a lawsuit against Facebook ("Meta"), Instagram, Snapchat, TikTok, and other social media platforms. The lawsuit asserts that the defendants targeted minors to maximize profits despite knowing the severe detrimental effects of excessive social media use by children.

The lawsuit was filed in the U.S. District Court for the Northern District of California. On October 24, 2024, the court denied the defendants' motion to dismiss the schools' negligence and public nuisance claims.

In broad strokes, negligence is a failure to act as a reasonable person would under similar circumstances. Public nuisance is unreasonable interference with public rights, such as creating a condition dangerous to public health. The court concluded: "In sum, defendants' conduct is plausibly alleged to have contributed to negative mental health outcomes for students, causing foreseeable resources expenditures by the school districts to combat that alleged public health crisis."

At least 120 Thrun school clients are currently participating in the social media litigation. The trial date has been pushed back to April 2026, meaning schools that have not yet joined the litigation may still do so. There is currently no deadline for joining, but Frantz Law Group – the law firm representing schools in the litigation – anticipates that schools joining before December 31, 2024 will likely be entitled to higher settlement amounts (if there is a settlement) than schools joining after that date.

Frantz is representing schools in the litigation on a contingency fee basis, meaning Frantz will not charge any fees or costs unless there is a financial recovery. Frantz would receive 25% of any recovery, but a recovery in the litigation is not guaranteed. Thrun would receive a portion of that 25% in relation to Thrun-referred clients. If there is a recovery, schools would also reimburse Frantz out of the recovery only (not out-of-pocket) for costs such as court filing costs and expert witness fees incurred by Frantz during the litigation.

Thrun is not co-counsel in the litigation – our role is limited to referring clients to Frantz.

To join the litigation, your governing body would need to approve a resolution and contract. To obtain those documents, please email pmatusiak@thrunlaw.com. Signed resolutions – and signed and initialed contracts – should be returned to that same email address. To confirm that your school has joined the litigation, or if you have questions about the litigation, please contact Piotr Matusiak at pmatusiak@thrunlaw.com or call (517) 374-8824.

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Brian Baaki Joins Thrun Law Firm

We are pleased to announce that Brian D. Baaki has joined Thrun Law Firm as an associate attorney in our East Lansing office. Brian was sworn in to practice law in Michigan on November 12, 2024.

Brian earned his bachelor's degree from Wayne State University before heading west for his master's at the University of Nevada, Reno. In 2024, Brian graduated from the Michigan State University College of Law. He was a member and editor of the *Michigan State Law Review*, and he competed on teams representing Michigan State at the national Gibbons Criminal Procedure and Chicago Bar Association moot court competitions. At the latter competition, Brian's team earned points that contributed to Michigan State's national first place moot court ranking.

While in law school, Brian also worked at the Ingham County Prosecutor's Office, the Lapeer County Prosecutor's Office, and the Michigan Department of Attorney General-Children and Youth Services Division.

Brian has an extensive background in education. Before entering law school, he earned a Ph.D. in English from the City University of New York, Graduate Center, and taught in the English Departments at Hunter College, University of California-Davis, Rutgers University, and University of Memphis.

Brian is a Detroit native and currently resides in Okemos with his wife and their three children.

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Saving Trees and Updating Contacts

Thrun Law Firm offers an electronic version of *School Law Notes* delivered right to your email. If you would like to stop receiving a paper copy of SLN with your monthly invoice, please contact Rachel Hewitt at rhewitt@thrunlaw.com or call 517.374.8856.

As a Thrun retainer client, you can sign up as many of your school's administrators as desired to receive the digital copy of SLN and our E-Blast email updates. To add a new contact or update an existing contact, please send their name, title, and email address to Rachel Hewitt at rhewitt@thrunlaw.com. To access previous editions of SLN or previous E-Blasts, please create an account on ThrunLaw.com.

We look forward to another great year of serving your school in 2025.

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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 5, 2024	MASPA	Lisa L. Swem	Is Telework a Reasonable ADA Accommodation? It Depends.
December 5, 2024	MASPA	Katherine Broaddus Kathryn R. Church	Are You in Compliance?
December 5, 2024	MASPA	Robert A. Dietzel	Legal Update
December 5 & 6, 2024	Thrun Law Firm, P.C.	Thrun Attorneys	Policy Implementation Meetings Webinar
January 15, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	Comprehensive Title IX Training Webinar – 2024 Regulations
January 30, 2025	Thrun Law Firm, P.C.	Jessica E. McNamara Kelly S. Bowman	Open Meetings Act Webinar
March 6, 2025	MNA	Lisa L. Swem	Bargaining Teacher Contracts: Implications of "Caving" on Just Cause, Placement, and Evaluation
March 14, 2025	MSBO	Philip G. Clark	Prevailing Wage
March 20, 2025	MASA Region 7	Lisa L. Swem	School Law Update
May 8, 2025	MASA Region 6	Lisa L. Swem	School Law Update