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School Law Notes

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U.S. Supreme Court Rejects "Bad Faith" Standard in Disability Discrimination Cases

On June 12, 2025, the U.S. Supreme Court unanimously eliminated the heightened protection public schools had against liability for compensatory damages in cases involving Section 504 of the Rehabilitation Act (Section 504) or Title II of the Americans with Disabilities Act (ADA). *AJT v Osseo Area Schools*, Docket No. 24-249 (2025). It will now be easier for a person to prevail against a public school in a disability discrimination lawsuit if the allegation involves provision of educational services, including the provision of a free appropriate public education (FAPE).

In 1982, the Eighth Circuit created the heightened protection for public schools when it held that a person seeking compensatory damages for disability discrimination relating to the provision of educational services had to prove not only that school officials violated the law, but also that those officials acted with "bad faith or gross misjudgment." See *Monahan v Nebraska*, 687 F2d 1164 (CA 8, 1982). The Sixth Circuit, whose decisions are binding in Michigan, adopted the same standard.

The "bad faith" standard made it more difficult for a person to prevail in disability claims against public schools than in lawsuits against other public entities. For example, a person alleging that school officials excluded their child from participating in field trips because of a disability had to be able to prove not only that the exclusion happened because of disability, but also that school officials acted in bad faith. In contrast, a person alleging that a public library had improperly excluded them from an event because of their service animal only had to prove the improper exclusion, not that there was personal animus against the individual with a disability. For many years, this higher standard made it more difficult for a plaintiff to obtain monetary damages from public schools when the case centered on the provision of a FAPE.

The student at issue in *AJT v Osseo Area Schools* has a form of epilepsy that significantly limits her physical and cognitive functioning. As a result of her disability, the student cannot attend school in the morning, when her seizures are much more frequent. The Minnesota school district she attended shortened her school day and did not provide educational services beyond the end of the school day. The student prevailed in an IDEA due process case against the district and was awarded significant compensatory education.

Her family then filed an ADA Title II and Section 504 lawsuit claiming disability discrimination and seeking compensatory money damages. A federal district court dismissed the claim because the student could not meet the high bar of proving "bad faith or gross misjudgment" on the part of school officials. A panel of Eighth Circuit judges upheld the dismissal but questioned the rationale for the

higher standard that had been created over 40 years earlier. When appealed to the Supreme Court, the justices unanimously rejected the heightened protection for public schools.

The Supreme Court held that there was no legal basis for subjecting disability discrimination lawsuits concerning the provision of educational services to a different standard of proof than other disability discrimination claims. The Court recognized that when the Eighth Circuit and other courts adopted the bad faith or gross misjudgment standard, they were trying to "harmonize" the IDEA's guarantee of a FAPE with Section 504's anti-discrimination mandate. However, Congress had since amended the statute to clarify that the IDEA (and its predecessor) was not intended to limit a person's ability to seek relief under Section 504, and later the ADA. See 20 USC § 1415(l).

The key takeaway from the Court's decision is that if a parent or student sues a public school for disability discrimination related to the provision of a FAPE or meaningful access to the educational program, school officials cannot rely on a "bad faith or gross misjudgment" standard to shield the school from liability. If school attorneys recommend settlement rather than defending a case, the change brought by *AJT v Osseo* may be the reason why.

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U.S. Supreme Court Rules in Favor of Heterosexual Woman in Reverse Discrimination Case

The U.S. Supreme Court recently held that an employee who is a member of a majority group may not be held to a heightened evidentiary standard to prevail on a Title VII disparate treatment claim. *Ames v Ohio Dept of Youth Services*, Docket No 23-1039 (June 5, 2025).

Marlean Ames, a heterosexual woman, applied for a management position that was filled by another female candidate, who was a lesbian. Subsequently, Ames' employer demoted her from a program administrator position and later filled that position with a gay man. Ames sued her employer, alleging that she was denied a promotion and demoted because of her sexual orientation in violation of Title VII.

Lower courts held that Ames failed to establish that her employer acted with discriminatory motive because she failed to show "background circumstances to support that [her employer] is that unusual employer who discriminates against the majority."

As the first step in a Title VII disparate treatment claim, the employee must show that the employer acted with discriminatory motive. The Supreme Court reasoned that the lower court's "background circumstances" test requires majority group members to meet a higher evidentiary standard than minority group members, which is not consistent with Title VII's text or case law interpreting the statute. Instead, the first step must focus on whether the employer's decision was based on Ames' sexual orientation. The Court vacated the lower court's decision and remanded the case for application of the proper standard.

Employees from a majority group will now be able to more easily assert a disparate treatment claim, making dismissal of such cases at the outset more difficult. In such a case, the employer must provide a legitimate nondiscriminatory reason for the employment decision. Documenting nondiscriminatory reasons for employment decisions will help school employers defend against disparate treatment claims.

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U.S. Supreme Court Splits on Religious Charter School Case

In 2023, the Oklahoma Statewide Virtual Charter School Board, a state agency responsible for approving statewide online or virtual charter schools, authorized state funding for a virtual Catholic charter school, which offered a faith-based curriculum. The Oklahoma State Attorney General sued the Virtual Charter School Board to invalidate their contract with the religious charter school on state and federal constitutional grounds that effectively bar a state from using public money for the establishment of a religious institution.

In 2024, the Oklahoma Supreme Court held that state funding for the religious charter school was an unconstitutional violation of the First Amendment's establishment clause and ordered the virtual charter school to rescind the charter contract. The charter school appealed.

Last month, the U.S. Supreme Court issued a deadlocked decision, 4-4, in the school's appeal after one justice recused herself. *Oklahoma Statewide Charter Sch Bd v Drummond*, Docket Nos. 24-394 and 24-396 (May 22, 2025). The Court's deadlock means that the Oklahoma Supreme Court's decision is final. On a national level, the United States Supreme Court's split means that, for now, public funding still may not be used for religious charter schools. In Michigan, public funding for denominational primary and secondary schools is barred by Article VIII, § 2 of the Michigan Constitution. We will continue to monitor decisions that may impact school funding.

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Parents Challenge Expulsion: Lessons From a Recent Michigan Case

The U.S. District Court for the Eastern District of Michigan recently ruled that a school did not violate a student's Fourth Amendment search and seizure rights or his Fourteenth Amendment due process rights when it expelled him for making a threat about bringing a gun to school. *Halasz v Cass City Public Schools,* Case No. 1:22-cv-13158 (May 23, 2025). The decision provides useful reminders about making legally sound student discipline decisions.

On December 6, 2021, a week after the Oxford High School shooting, Cass City High School spent a portion of the school day discussing the tragedy and providing school safety information to its students. Later that day, a student made a remark about bringing a gun to school. At least four other students understood this comment to be a threat and reported it to their parents or school administrators.

Administration alerted law enforcement, which responded to the school and conducted a joint interview of the student with school officials. Law enforcement later determined there was no basis for criminal charges. The school suspended the student pending a board expulsion hearing. The board expelled the student for 180 days. The student and his parents sued the school and various school administrators.

Search and Seizure Issues

The student claimed that the school improperly searched his person, backpack, and locker. The search of his person involved school staff directing him to remove his sweatshirt (the student was wearing a shirt underneath) and his boots. The student also alleged improper seizure because he was kept in the school office for approximately 30 minutes during the interview and searches.

The court considered the justification for and scope of each search to determine whether it was reasonable. While school officials can search a student's locker at any time, searching a student's person or property in a school setting is only justified if school administration reasonably suspects that the student engaged in misconduct and that the search will uncover evidence of wrongdoing. This is a lower standard than the probable cause standard that typically applies to law enforcement searches outside schools. Here, the court found that reports from four students stating that the student said either that he had a gun or was going to bring a gun to school justified the search.

The court also found that the scope of the search was appropriate. The search took no more than ten minutes in total and all locations searched could reasonably have concealed a gun.

Seizure in the school setting occurs when school officials limit a student's freedom of movement in a way that significantly exceeds the restriction "inherent in every-day compulsory attendance." By confining the student to the school office for approximately 30 minutes and not letting him leave, the school seized the student. The court found that the seizure was not unreasonable because the student was held in the office no longer than necessary to conduct the searches and question him about his remarks.

Due Process Issues

The student also alleged that his substantive and procedural due process rights were violated when the school expelled him. The student established that the school's actions deprived him of his legitimate property interest in a free public school education, but he was unable to convince the court that the deprivation violated either his substantive or procedural due process rights.

School officials violate a student's substantive due process rights if they take action that lacks *any* rational basis, and is, therefore, arbitrary and capricious. In the context of school discipline, this is a high standard, and a situation where there is no rational relationship between the discipline and the offense is rare. Here, the court held that the context of a recent school shooting made the student's remarks "significantly" more serious, and the discipline more rational, than it might otherwise have been.

In considering whether the student's procedural due process rights had been violated, the court expressed concern that school administrators had not shared with the board the police's determination that the student did not pose an immediate danger to the school. The court's concern, however, was not significant enough to overcome the governmental immunity that protects the school's administration from liability.

Takeaways

- Student searches must be justified at their inception. School officials should consider the nature of the report and the source of information when assessing whether a search is justified. For example, a parent's report that a student "looks suspicious" or is "probably" violating the law or board policy will likely not justify a search. However, a credible report that someone saw a student shove a knife into a backpack at the bus stop will likely justify a search of the backpack.
- Searches must be reasonable in scope. Do not search for a machete in a small purse. Do not read a student's entire text message history if the report is that the student had a photograph

of test answers. Do not conduct an invasive search of a student's person. Having a student remove a coat or turn pockets inside out will likely be reasonable, but pulling back the waist band of both pants and undergarments may not be reasonable. If a more invasive search is necessary, turn it over to law enforcement.

- Do not strip search students! Ever!
- Before issuing discipline, provide the board and student with all relevant evidence in the school's possession, including police reports or relevant law enforcement statements. Ensure that the student has an opportunity to respond to all evidence to avoid any procedural due process claim.
- Review the discipline sections of board policy, administrative guidelines, and student handbooks for consistency. Inconsistencies can lead to confusion and increase the possibility of due process claims. Summer vacation is a good time to review policy and handbook language to ensure that they are consistent and reflect your school's current practices.

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Student Dress as Free Speech: Threading the *Tinker* Needle

The words and images displayed on student t-shirts and hats are often more than just decoration. They are expressive activity and may be protected by the First Amendment.

To censor words or images on student clothing that do not clearly violate a school's dress code (e.g., obscenity, nudity, or promoting drugs or alcohol), the school, under the *Tinker* standard, must show the clothing is likely to "substantially disrupt" the educational environment. Two recently decided cases offer practical examples to assist school officials with applying the *Tinker* standard to students' clothing.

What is the Tinker Standard?

In 1969, the U.S. Supreme Court, in *Tinker v Des Moines*, recognized that while students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," these rights are not absolute. Schools may regulate on-campus student speech if the speech materially and substantially interferes with the operation of a school, or if school officials can reasonably forecast that the speech may cause a substantial disruption. The "substantial disruption" bar is high. A school may not regulate speech based on a mere belief that a disruption may occur. Nor may a school regulate speech to avoid the discomfort or unpleasantness that may accompany an unpopular viewpoint.

"COME AND TAKE IT"

The Sixth Circuit Court of Appeals, whose decisions are binding in Michigan, recently weighed a third-grade student's First Amendment right to display a gun-related political message on her hat against a school's interest in preventing disruption to the educational environment. *C.S. v McCrumb*, Docket No. 24-1364 (CA 6, May 2, 2025).

The student participated in "Wear a Hat Day" during her school's weeklong "Great Kindness Challenge," an initiative to encourage students to engage in acts of kindness. The student wore a baseball cap that displayed a star, an image of an AR-15-style rifle, and the capitalized phrase, "COME AND TAKE IT." School officials were concerned that the hat would cause a substantial disruption. Part of the school officials concern stemmed from the fact that some students in the school had transferred from a school where a shooting had recently occurred.

School officials contacted the student's parents to request a substitute hat, but the parents refused. The school officials then went to the student's classroom, called her out of class, and asked her to remove the hat and store it in her locker. The student complied, and the school issued no discipline. The parents sued the school, alleging violations of the student's rights under the First and Fourteenth Amendments.

Relying on *Tinker*, the parents argued that the school lacked sufficient evidence to reasonably forecast that the hat would cause a substantial disruption. The Sixth Circuit disagreed, holding that school officials reasonably forecasted a substantial disruption due to (1) the young age and emotional immaturity of elementary school students and (2) the recent enrollment of students who had attended a school where a shooting had occurred.

The court determined that an image of an AR-15-style weapon could cause traumatized children to become increasingly fearful about school shootings, which could result in a substantial disruption of or material interference with school activities. Importantly, if the other tragedy had not occurred less than an hour from the school, if the students from that school had not transferred to the school, or if the students were in high school as opposed to elementary school, the court may have reached a different conclusion.

"THERE ARE ONLY TWO GENDERS"

The U.S. Supreme Court recently declined to hear an appeal of a student speech case decided by the First Circuit Court of Appeals. This means that the First Circuit's decision will remain in place. *L.M. v Town of*

Middleborough, Docket No. 24-410 (May 27, 2025). Although not binding in Michigan, the First Circuit decision offers an example of how one outside circuit has applied *Tinker* to messages that do not target specific students but that other students may view as demeaning.

In *L.M.*, a seventh-grade student wore a t-shirt to school with the statement, "THERE ARE ONLY TWO GENDERS." School officials asked the student to remove the shirt before returning to class, citing concerns about the student's physical safety and the safety of LGBTQ+ students and forecasting a potential disruption. The student refused to remove the shirt and was sent home for the rest of the day. The school did not impose any discipline.

Following this incident, the student participated in multiple news interviews, the story gained significant local and national media attention, and the school received complaints from community members. Weeks later, the student wore the t-shirt to school again, but this time the word "GENDERS" covered by a piece of tape with the word "CENSORED" written over it. The student was again asked to remove the shirt. This time, the student complied and returned to class. Once again, the school did not issue any discipline.

The student's parents sued the school, alleging violations of the student's First and Fourteenth Amendment rights. The First Circuit upheld the school's decision to prohibit the "THERE ARE ONLY TWO GENDERS" t-shirt. The court's rationale for allowing the censorship was that the message was: (1) reasonably interpreted to demean a characteristic of personal identity, and (2) reasonably forecasted to cause a substantial disruption due to its "negative psychological impact on transgender and gender nonconforming students." The court found that the school's decision was more than an effort to avoid the discomfort and unpleasantness of an unpopular viewpoint; it was a thoughtful assessment that took into consideration "the demeaning nature of the message," as well as characteristics of and issues facing the school's student population.

The First Circuit also upheld the school's decision to prohibit the "CENSORED" t-shirt, noting that, due to the extensive news coverage, everyone knew the covered word. Therefore, the school reasonably forecasted that even the "CENSORED" t-shirt could cause a substantial disruption to school activities.

Student Speech Considerations

Courts often defer to well-reasoned decisions made by school officials. As discussed by the Sixth Circuit in *McCrumb*: "[C]ourts must be vigilant in safeguarding student expression in schools. But we must also account for the difficult jobs of school administrators and educators in maintaining a school environment that is, above all, conducive to learning for all of its students. Schools are under no obligation to tolerate speech that frustrates this goal or runs the reasonable risk of doing so." Courts recognize that school officials are often required to make game-time decisions based on the information available to them at the time, so school officials should not shy away from making those difficult calls.

Facts and context matter immensely when making those decisions. As the cases above illustrate, courts consider a wide range of factors when determining whether a student's speech rights were violated, including student population, age, and maturity, recent events, political context, news coverage, and even the school's geographic location. By carefully considering the unique facts and circumstances of each situation and working to balance students' rights with the need to protect the educational environment, school officials will be better equipped to regulate student speech without getting tangled up in legal disputes.

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Remove Library Books with Caution

Libraries and books remain in the spotlight across the nation. What books should and should not be on public school libraries' shelves is a hotly debated topic. Having a basic understanding of Michigan law and how other parts of the country view the issue may provide perspective for Michigan school officials.

In May 2025, the Fifth Circuit Court of Appeals, whose decisions are not binding in Michigan, ruled that a public library may select or remove books based on viewpoint and that library patrons have no First Amendment right to challenge the library's removal of books. *Little v Llano County*, No. 23-05224 (CA 5, 2025).

In *Little*, patrons of the Llano County, Texas, public library sued, alleging that library officials removed 17 books because of how the books treated racial and sexual themes, in violation of the patrons' First Amendment rights. The lower court ruled that library officials violated the Free Speech Clause of the First Amendment and ordered the books returned to the library shelves.

On review, the Fifth Circuit reversed, dismissing the free speech claims on two grounds, and reversing the ordered return of the books. First, the court held that there is no First Amendment right to receive information from the government (here, the library) and thus no right to challenge the library's decisions about which books to buy, keep, or remove. Second, the court found that library officials' decisions on which books to offer constitute "government speech" and thus are not subject to a free speech challenge.

The Fifth Circuit also expressly overruled its own prior decision holding that students could challenge the removal of a book from public school libraries. The *Little* decision now permits public libraries, including public school libraries, in Louisiana, Mississippi, and Texas, to decide which books will be on their shelves based on the viewpoint of library officials.

The U.S. Supreme Court has issued only one decision addressing the removal of books from public school libraries. *Board of Education v Pico*, 457 US 853 (1982). In *Pico*, a school board removed books from its school libraries that it characterized as "anti-American, anti-Christian, anti-[Semitic], and just plain filthy," and books they alleged contained "obscenities, blasphemies, brutality, and perversion beyond description."

The Supreme Court's plurality decision stated that, while it recognized the broad discretion of local school boards to manage school affairs, that discretion must be exercised in a manner that "comports with the transcendent imperatives of the First Amendment" because students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." The Court suggested that school boards "may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their removal to 'prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.'"

The *Pico* decision was a plurality opinion, which means it was not issued by a majority of the Supreme Court justices; thus the Fifth Circuit was not obligated to follow the case.

In April 2025, the Michigan Court of Appeals weighed in on a public school library book removal case. The Michigan Court of Appeals upheld a Kent County Circuit Court decision dismissing a lawsuit seeking to ban 14 "sexually explicit" and "pornographic" books from the school library. *Parents and Taxpayers Against Pornography in Rockford Public Schools v Rockford Public Schools*, COA Docket No. 369036 (April 11, 2025).

In the lower court's decision that the Court of Appeals upheld, the Kent County Circuit Court ruled that, while it agreed with the plaintiffs' concerns about the sexually explicit nature of some of the texts and illustrations in the books, the books were not "harmful to minors" because they, as a whole, had literary value. Further, the books did not qualify as "sex education" instructional materials (and therefore were not subject to Michigan Revised School Code's sex education procedures) simply because they were accessible in the school library.

School officials should exercise caution when considering the removal of books from a school library based on viewpoint. Courts across the country are adopting varying positions on this. Following the Court of Appeals' decision in *Rockford*, public schools in Michigan should use an objective process to determine whether library books are educationally suitable.

Your school likely has a specific procedure for handling challenges to library books in its policies. School officials should be familiar with this policy or procedure and ensure it is followed each time a complaint is made to ensure objectivity.

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Sixth Circuit Court: Search and Seizure of School Employee Deemed Constitutional

A recent unpublished Sixth Circuit Court of Appeals decision highlights the Fourth Amendment rights regarding searches and seizures of school employees. *Lawson v Creely*, Docket No. 24-5649 (CA 6, March 26, 2025). Holly Lawson, a guidance counselor, sued her former school board and school officials, alleging that school employees violated her constitutional rights when they searched her bag and subsequently detained and questioned her.

Background

Lawson alleged that her Fourth Amendment rights were violated on two separate occasions: (1) when her bag was searched by coworkers Kayla Creely and Lori Franke, and (2) when, the following day, the school superintendent detained Lawson in a school office and asked Lawson to search her own bag in the presence of law enforcement officers.

Creely and Franke worked in the same office as Lawson and were concerned about her behavior and possible drug use. Acting on their suspicions, the two employees looked in Lawson's bag after she stepped out of the office. They found a pistol in her bag next to a bottle of pills. The employees later notified the superintendent, who contacted law enforcement to address the issue. The next day, Lawson returned to the school with her bag and was met by the superintendent. The superintendent asked Lawson if they could talk about an issue in a nearby office, where two law enforcement officers were waiting to assist. When the superintendent asked Lawson if she had a firearm in the bag, she voluntarily checked her bag and admitted that it was "in there in the bottom" of the bag.

Court Analysis

The Sixth Circuit determined that Creely and Franke, when they searched Lawson's bag, did not possess authority to search and therefore did not act "under color of state law," a vital element for a successful Fourth Amendment claim.

The court's finding was supported by the fact that relevant board policy and employee handbooks did not authorize the employees to conduct searches or investigate. Rather, board policy specifically directed such employees to report suspicious activity to the building principal to conduct searches. Based on this analysis, the Sixth Circuit found that the employees, as private actors, did not violate Lawson's Fourth Amendment rights.

The court found that the superintendent "detained" Lawson when he met her in the school lobby and escorted her to an office for further questioning in the presence of law enforcement. Because the superintendent had a "reasonable, articulable suspicion" to temporarily detain Lawson for questioning regarding possession of a firearm on school grounds, the court ruled that the detention was constitutionally permissible. This suspicion was based on reports the superintendent had received, justifying a lawful detention. Further, Lawson's voluntary search of her own bag was a consensual search and therefore did not violate the Fourth Amendment.

Practical Considerations

The *Lawson* decision delivers several practical lessons. First, schools should ensure through board policy and employee manuals that only building administrators or other designated school officials are authorized to conduct search and seizure activities. Second, those board policies and manuals should also clearly specify staff members' responsibilities to report suspected criminal activity to appropriate personnel. Finally, administrators confronting potential weapons or safety threats should collaborate with law enforcement and legal counsel to safeguard employee constitutional rights while protecting the safety and well-being of the school buildings.

Following the steps outlined above will ensure that school officials only detain and search school employees when reasonable suspicion is present and potentially avoid Fourth Amendment and other constitutional violations.

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Guidance for Counting FMLA Leave on Holidays

This article provides a refresher on properly counting and allocating Family and Medical Leave Act (FMLA) time in connection with holidays.

The FMLA allows 12 weeks of unpaid leave over a 12-month period (for most qualifying reasons) if an employee has: (1) worked at least 12 months for a covered employer; (2) worked at least 1,250 hours immediately before the date FMLA leave begins; and (3) worked at a location where the employer has at least 50 employees within 75 miles.

FMLA leave may be used for the following reasons:

(1) parental care of a newborn child within 12 months following birth;

(2) placement of a child with the employee for adoption or foster care within 12 months after the date of placement;

(3) caring for an immediate family member's serious health condition, including the employee's spouse, child (under 18 or disabled), domestic partner, or parent;

(4) due to the employee's own serious health condition that makes the employee unable to perform the essential functions of the job;

(5) caring for a family member who is a member of the Armed Forces, including the National Guard or Reserves, if the employee is a spouse, child, parent, or next of kin of the member; or

(6) for up to 26 work weeks in response to any qualifying exigency arising out of the fact that the employee's spouse, child, or parent is on active duty or has been notified of an impending call or order to active duty in the Armed Forces in support of a war or similar combat operation.

FMLA leave calculations may be affected when a holiday occurs during an employee's leave time. The rule for leave calculation for a holiday falling within an FMLA leave is:

> When a holiday falls during a week in which an employee is taking a full week of FMLA, the entire week is counted as FMLA leave; however, when a holiday falls during a week when an employee is taking less than the full week of FMLA leave, the holiday is not counted as FMLA leave.

Further, in May 2023, the U.S. Department of Labor (DOL) released an opinion letter that explains that holidays do not extend the leave time employees take under the FMLA *unless* an employee is taking less than a full week of FMLA leave. The DOL Wage and Hour Division also updated its Fact Sheet #28I in March 2025 to provide additional guidance on counting leave use under the FMLA.

The following two examples illustrate the application of this rule:

Traditional Full Week FMLA Leave

Assume an employee is on a full week of FMLA leave when Thanksgiving occurs. Because FMLA leave is

calculated on a work-week basis, and since the employee was on leave for the entire week, Thanksgiving will count against the employee's 12-week FMLA leave allotment.

Intermittent or Partial Week FMLA Leave

Assume an employee is on intermittent leave (*i.e.*, increments of less than one week) or was scheduled for less than a full week of FMLA leave. The school has a scheduled holiday on a day the employee was scheduled for FMLA leave and similarly situated employees are not expected to report to work on that date. Only the amount of leave actually taken while on intermittent/reduced schedule leave may be charged; the holiday does not count toward the employee's FMLA leave allotment.

To properly calculate this FMLA leave, the hours missed because of FMLA leave must be divided by the number of hours that the employee otherwise would have worked, resulting in the employee using a fraction of the allotted FMLA leave.

School officials should develop a system for monitoring and recording employees' use of FMLA leave to ensure holidays will be properly allocated during the school year. Thrun Policy Service subscribers should also review Policy 4106 (Family and Medical Leave Act) and Administrative Guideline 4106-AG (Family and Medical Leave Act) for further guidance on this topic.

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Reminder: Budget and Financial Information Posting Requirements

School is out for the summer, and the fiscal year 2025-26 budget has been adopted, so administrators can *finally* rest, right? Almost! School officials must comply with State School Aid Act (SSAA) Section 18, which establishes a deadline for posting the school's annual budget and certain required financial information.

Budget Posting and Expenditure Displays

Within 15 days after the school board adopts its annual operating budget for the upcoming fiscal year (or a subsequent revision to the budget), the school must post or provide a link to the budget on either the school's homepage or its ISD's homepage. Importantly, ISDs have slightly different posting requirements, as described below.

Within the same 15-day window, the school also must post in two "visual displays" a summary of expenditures for the most recent fiscal year for which they are available.

The first display is a chart that breaks down personnel expenses into the following categories: (1) salaries and wages; (2) employee benefit costs (including, but not limited to, medical, dental, vision, life, disability, and long-term care benefits); (3) employee retirement benefit costs; and (4) all other personnel costs.

The second display is a chart that breaks down all expenses into the following categories: (1) instruction; (2) support services; (3) business and administration; and (4) operations and maintenance.

Schools must separately report the annual amount spent on association dues, lobbying or lobbying services, and certain information related to school credit cards and costs incurred for out-of-state travel. Schools subject to a deficit elimination or enhanced deficit elimination plan must post a copy of that plan. Finally, schools must report the compensation package for the superintendent and any other employee whose salary exceeds $100,000. This information must include the total salary and a description of each fringe benefit provided.

ISDs are subject to marginally different posting obligations under SSAA Section 18. Like a local school district, an ISD must post its annual operating budget and any subsequent revisions and a display breaking down its personnel expenses. Unlike a local school district, however, an ISD is *not* required to post the display breaking down the other categorical expenses or separately report the costs listed in the previous paragraph.

Other Required Documents

The SSAA also requires both local school districts and ISDs to post links to the following documents on their websites:

- the current collective bargaining agreement for each bargaining unit;
- each health care benefits plan (including, but not limited to, medical, dental, vision, disability, long-term care, and any other type of health care benefits) offered to each bargaining unit or employee;
- the audit report for the most recent fiscal year;
- the required bids when establishing a medical benefit plan pursuant to the Public Employees Health Benefits Act;
- the policy governing the procurement of supplies, materials, and equipment;
- the reimbursable expenses policy; and
- either the accounts payable check register for the most recent fiscal year or a statement of the

total amount of expenses incurred by board members and school employees that were reimbursed during the most recent fiscal year.

Failing to post budgets and other related transparency information on the school's website violates the SSAA, which may result in a misdemeanor punishable by imprisonment, a fine of up to $1,500, or both. The SSAA also authorizes state aid deductions for noncompliance.

Other ISD Postings

By December 31 of each year, ISDs also must post the annual website report required by Revised School Code Section 620. The annual website report generally contains information about the ISD's operations and school services, general budget information, employee compensation, certain contract reporting requirements, and information about other expenditures, including travel, public relations, and lobbying expenses.

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Governor Signs Bill Reducing Instruction Hours for Schools Impacted by Ice Storm

On June 2, 2025, Governor Whitmer signed House Bill 4345 into immediate effect as Public Act 5 of 2025, amending SSSA Section 101. PA 5 reduces the mandatory per pupil instruction hours for schools impacted by the severe ice storm that occurred in late March of this year.

To qualify for this reduction, the school must be located in a county covered by the state of emergency Governor Whitmer declared on March 31, 2025 (Alcona, Alpena, Antrim, Charlevoix, Cheboygan, Crawford, Emmett, Montmorency, Oscoda, Otsego, Presque Isle, and Mackinac). A majority of the school's board must vote to approve the exemption, which only applies to hours and days actually missed due to the state of emergency. This exemption applies in addition to the six days of forgiven time granted to schools each year. But, for schools that qualify, no more than 15 days of instruction may be exempted. PA 5 applies only to the 2024-2025 school year.

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Back to Basics: OMA Closed Sessions

This month's Back to Basics article focuses on closed sessions under the Michigan Open Meetings Act (OMA). Complying with the OMA will protect board decisions from invalidation and board members from potential civil and criminal liability.

The OMA permits a school board to meet in closed session *only* for certain specified purposes. Courts broadly construe the OMA's mandate for open public meetings and narrowly interpret the closed session exceptions.

Entering Closed Session

A two-thirds roll call vote of all board members (as opposed to just those attending the meeting) is required to convene a closed session for the following purposes:

- Section 8(1)(d) – Considering purchase or lease of another's property;
- Section 8(1)(e) – Consulting with an attorney on pending litigation;
- Section 8(1)(f) – Reviewing a job application when a candidate requests confidentiality;
- Section 8(1)(h) – Considering material exempt from disclosure under another statute, which includes reviewing attorney-client privileged materials that are exempt from disclosure under FOIA Section 13(1)(g); and
- Section 8(1)(k) – Considering security planning to address existing threats or prevent potential threats to the safety of the students and staff.

In contrast, a simple majority vote of all board members suffices to go into closed session for other permitted reasons, such as to consider employee or student discipline under Section 8(1)(a) or Section 8(1)(b) (if requested by the affected employee or student), or for strategy and negotiation sessions connected with a collective bargaining agreement under Section 8(1)(c). For any closed session meeting, the vote and the purpose for calling the closed session must be entered into the open session minutes of the meeting at which the vote is taken.

Attendees

A closed session is a meeting of at least a quorum of the board that is not open to the public. At the board's discretion, other people may attend the closed session if their presence is consistent with the purpose for which the closed session is being held (e.g., parents and a student who is the subject of a discipline hearing if they request closed session). The board determines who is permitted in a closed session.

Closed Session Minutes

The OMA requires that a board keep a separate set of minutes of closed session meetings. Copies of closed session minutes must be kept confidential and should not be publicly disclosed or even posted on a password-protected webpage.

According to OMA Section 9, *open session* meeting minutes must include the date, time, and place of the

meeting; names of the members present; names of the members absent; any decisions made by the public body; results of roll call votes; and purpose(s) of any closed sessions held. The Michigan Attorney General has opined that OMA Section 7 requires that *closed session* meeting minutes also reflect the date, time, and place of the meeting; names of the members present; and names of the members absent.

Closed session minutes are not available to the public and can be disclosed only if required by a civil action challenging the board's OMA compliance. It is therefore in a school board's interest to ensure that minutes from both open and closed sessions are sufficiently detailed to allow the board to defend against an alleged OMA violation.

Closed session minutes must be approved during open session at the board's next open meeting. If discussion of proposed closed session minutes is required before board approval, that discussion should occur in a closed session. Closed session minutes must be kept separate from the open session minutes in a special locked file at the school office.

Unlike open session minutes, which must be maintained permanently, closed session minutes may be destroyed one year and one day after the regular meeting at which they were approved. School officials should also comply with board policies, bylaws, and record retention and disposal schedules in determining when to destroy closed session minutes.

Complaints, Charges, Discipline, and Evaluations of School Officials

OMA Section 8(1)(a) allows a board to meet in closed session to "consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, *if the named person requests a closed hearing*." Therefore, absent a request for closed session consideration from the school official or employee whose conduct is being reviewed, the matter must be considered in open session, unless exempt from the public discussion for other reasons permitted by the OMA. A person who requests a closed hearing under OMA Section 8(1)(a) may rescind the request at any time, at which point the matter must be considered in an open session.

Student Discipline

OMA Section 8(1)(b) permits a board to convene in closed session to consider the dismissal, suspension, or discipline of a student if the student or the student's parent requests closed session consideration. If the student or parent requests an open session disciplinary hearing, care must be taken to safeguard the FERPA rights of other students involved.

Returning to Open Session

While the OMA permits boards to meet in closed session for certain specific circumstances, the OMA requires that all board decisions be made in open session. For this reason, a school board must return to open session before taking any action in connection with closed session deliberations. Since "decisions" are not to be made in closed session, school boards should not "vote" in a closed session to return to an open session. Instead, we recommend that the board president simply "declare" the time at which the board returns to the open session and direct the secretary to record that time in the minutes. If desired, or if required to resolve a dispute as to whether closed session deliberations should cease, the board may vote in an open session to ratify the board president's declaration.

We have seen an increase in the number of OMA complaints schools are receiving. We recommend reviewing current practices to ensure they align with the OMA.

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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
August 4, 2025	Wexford Missaukee ISD	Lisa L. Swem	School Law Update
August 5, 2025	Charlevoix-Emmet ISD Superintendent's Academy	Lisa L. Swem	School Law Update
August 6, 2025	UP Administrators Academy	Lisa L. Swem	School Law Update
August 6, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	2020 Title IX Regulations Comprehensive Training Webinar
August 7, 2023	Lapeer ISD	Erin H. Walz	School Law Update
August 11-13, 2025	MAASE Summer Institute	Thrun Attorneys	Hot Topics in Special Education Law
August 14, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	Thrun Labor Webinar Series – Employee Leave Rundown: FMLA, ADA, & Contractual Leaves
August 14, 2025	Eaton RESA	Michele R. Eaddy	Special Education Legal Update
August 20, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	2020 Title IX Regulations Comprehensive Training Webinar
September 5, 2025	Shiawassee RESD	Michele R. Eaddy	Section 504 Training
September 9, 2025	MASPA	Lisa L. Swem	Employee First Amendment Speech Rights
September 11 & 12, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	Policy Implementation Meetings
September 18, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	Thrun Labor Webinar Series – Employee Evaluations: What You Need to Know
September 23, 2025	MASSP	MaryJo D. Banasik Austin W. Munroe	Probationary Pitfalls: Navigating Teacher Evaluations and Non-Renewals Webinar
September 23, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	Thrun Special Education Law Boot Camp Webinar Series – Comprehensive Webinar
September 24, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	2020 Title IX Regulations Comprehensive Training Webinar

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Date	Organization	Attorney(s)	Topic
October 7, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	Thrun Special Education Law Boot Camp Webinar Series – Maneuvering Through the Maze of Special Education Discipline
October 21, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	Thrun Special Education Law Boot Camp Webinar Series – Developing Legally Compliant IEPs = FAPE For Kids
October 22, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	2020 Title IX Regulations Comprehensive Training Webinar
November 4, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	Thrun Special Education Law Boot Camp Webinar Series – LRE and Placement: Considering the Full Continuum
November 18, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	Thrun Special Education Law Boot Camp Webinar Series – The Devil's in the Docs and Data!
November 19, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	2020 Title IX Regulations Comprehensive Training Webinar
November 20, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	Thrun Labor Webinar Series – CBA Summary: Grievances & Collective Bargaining
December 4 & 5, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	Policy Implementation Meetings