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School Law Notes

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Schools of Choice Refresher

With the new school year approaching, now is the perfect time to review your school district's schools-of-choice procedural requirements to ensure compliance for the year ahead.

The State School Aid Act (SSAA) allows an enrolling district to count non-resident students in its membership without resident district approval under specific circumstances. Schools of choice is one such circumstance. Participation is voluntary, and a district must opt in.

The SSAA recognizes two choice options: (1) the enrollment of non-resident students who reside within the same ISD (Section 105), and (2) the enrollment of non-resident students who reside in a contiguous ISD (Section 105c). A district may choose to participate in either Section 105 or Section 105c, or both. If the district makes no affirmative choice to participate under Section 105 and/or 105c, then the district is not authorized for schools of choice. If a district participates in schools of choice, it must comply with all statutory requirements or risk forfeiting 5% of its total state aid allocation.

Limited Openings

If a district sets a limited number of openings for student enrollment, it must publish the grades, schools, and special programs available and notify the public that it is accepting applications. The notice must include when and how students may apply and be published by the second Friday in August (***August 8, 2025***). The application period must remain open between 15 and 30 calendar days.

Within 15 calendar days after the application period closes, the district must determine which applicants will be allowed to enroll. Students who live in the same household as a current student must be given enrollment preference. After enrolling those students, the district must select other students for enrollment based on a random draw. Students not selected must be placed on a waitlist. The district must notify parents of a student's acceptance and any enrollment procedures, including the enrollment deadline, which must be no later than the end of the first week of school.

If openings remain between the third Monday in August (***August 18, 2025***) and the end of the first week of school, the district may enroll students from the waitlist. School districts may not enroll school-of-choice students after the first week of school.

Unlimited Openings

A district may choose to have unlimited openings for its schools-of-choice program. If so, it must provide notice to the public that applications will be taken from non-residents and whether openings are only for specific grades, schools, or programs. The notice must also provide information on the place and manner for submitting an

application. The application period must remain open at least 15 calendar days.

A district can accept applications until the end of the first week of school. Again, all school-of-choice students must be enrolled before the end of the first week of school.

Second Semester or Trimester Openings

A district may choose to offer enrollment for the second semester or second trimester if openings are available. It must publish the specific grades, schools, or special programs for which enrollment is available not later than two weeks before the end of the first semester or trimester. Applications may be received during the last two weeks of the first semester or trimester.

By the beginning of the second semester or trimester, the district must determine which applicants will be allowed to enroll in the district and notify parents or legal guardians of the specific grade, school, or program, if applicable, for which the applicant has been accepted and the enrollment procedure and deadline. The Michigan State School Aid Act does not permit the reopening of schools of choice for enrollment during the third trimester. Therefore, the enrollment deadline cannot be later than the end of the first week of the second semester or trimester.

Right to Continued Enrollment and Preference for Children in Same Household

Once a student has enrolled, the term "choice" is no longer appropriate. A district must allow a student initially enrolled by choice to remain enrolled until graduation or until they enroll elsewhere. A school-of-choice student may, however, be expelled for misconduct consistent with the student code of conduct.

Nondiscriminatory Selection

When selecting students to enroll, a district may *not* base enrollment on a student's:

1. intellectual, academic, artistic, or other ability, talent, or accomplishment, or lack thereof, except that a district may refuse to admit a nonresident applicant to a specialized or magnet program if the applicant does not meet the same criteria, other than residence, that an applicant who is a resident must meet to be accepted for enrollment;
2. mental or physical disabilities if the student otherwise meets eligibility criteria;
3. age, if the student is age-appropriate for the program;
4. athletic ability; or
5. religion, race, color, national origin, sex, height, weight, marital status, or other legally protected status.

A district may deny enrollment to a student who has been suspended by another school during the previous two years, has ever been expelled from another school, or has been convicted of a felony. However, once an enrolling district has counted a previously suspended or expelled student in membership, that student may not be disenrolled unless subsequently expelled for violating a student code of conduct.

Before enrolling a school-of-choice student, school officials should contact a student's previous school(s) to obtain the student's disciplinary history and enrollment eligibility. FERPA permits a student's former school to disclose this disciplinary information without parental consent.

Special Education

If a student is enrolled under Section 105 (student resides within the same ISD) and is eligible for special education programs and services, that student is considered a resident of the enrolling district for purposes of receiving a free appropriate public education.

In contrast, Section 105c creates additional requirements for a student who resides in a contiguous ISD and is eligible for special education programs and services. To enroll a nonresident special education student under Section 105c, the enrolling district must have a written agreement with the student's resident district that addresses special education costs and how the agreement will be amended if there is a significant change in the costs or level of special education that the student requires. The law is silent, however, as to which district must pay for the student's special education programs and services. If the enrolling and resident districts do not reach an agreement before the student's initial enrollment, the student cannot be enrolled.

If a student is initially enrolled as a general education student under Section 105c but later becomes eligible for special education services, the enrolling district becomes the resident district for purposes of providing FAPE and may not "send back" the student.

Michigan's schools of choice law is complex, and significant state funding penalties may be imposed for noncompliance. School officials should consult with legal counsel on schools of choice and other enrollment questions.

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School Sports FAQs: Discipline, Eligibility, & Forms

The fall sports season is almost ready to kick off, so school officials should be ready to tackle issues related to student-athlete discipline, eligibility, physicals, annual consent forms, concussion awareness, and transfers. The below frequently asked questions (FAQs) will assist school officials with addressing questions about student athletics.

Michigan High School Athletic Association (MHSAA) member schools are bound by MHSAA rules, including those addressing eligibility and enrollment and other requirements. In some cases, MHSAA rules may be nuanced and may require consultation with the MHSAA. Please keep in mind that the FAQs below are general answers, but specific situations may require a close review of applicable MHSAA rules to ensure compliance.

(1) *Are student-athletes subject to the student code of conduct?*

Yes. Student-athletes are not only subject to the school's general student code of conduct, but also to any athletic code of conduct. Student handbooks and athletic codes of conduct should be distributed to students, describe behavior rules and expectations for students who participate in sports, and inform students of the disciplinary consequences for violations.

Rules must be carefully tailored and applied uniformly to reduce the risk of a legal challenge, including free speech and free exercise of religion. Please keep in mind that a federal court, in *Mahanoy Area Sch Dist v BL* (CA 3, June 23, 2021), held that public schools cannot impose *sports-related* discipline for private off-campus speech, even when that speech violates either a school code of conduct or a student-athlete code of conduct.

(2) *Is a school required to provide a student with due process before suspending the student from an athletic activity?*

It depends. Athletic participation is a privilege, not a right. Therefore, unless a school established due process procedures for student-athletes, additional due process procedures, such as providing notice and an opportunity to be heard by the board of education, are not required before imposing discipline. If due process procedures are in place, the procedures should be limited to providing the student notice of the allegations of wrongdoing and an opportunity to respond. We recommend reviewing athletic handbooks and codes of conduct before fall sports begin to ensure that any due process procedures for athletics are both legally compliant and not overly burdensome.

(3) *Are there age requirements to participate in MHSAA-sponsored sports?*

Yes. To participate in 7th grade sports, a student must be 13 years old or younger, unless the student will turn 14 on or after September 1 of the 7th grade school year. For 8th grade athletic eligibility, a student must be 14 years old or younger, unless the student will turn 15 on or after September 1 of the 8th grade school year. For high school athletic eligibility, a student must be 18 years old or younger, unless the student will turn 19 on or after September 1 of the competition school year.

(4) *When must a student be enrolled to participate in MHSAA-sponsored sports?*

Generally, a student must be enrolled in the school not later than the fourth Friday after Labor Day to be eligible for the fall season (i.e., September 26, 2025) and not later than the fourth Friday of February to be eligible for the winter season (i.e., February 27, 2026).

(5) *What forms must students submit before they can participate in MHSAA-sponsored sports?*

A student must submit a Medical Eligibility Form signed by a health care professional (M.D., D.O., physician assistant, or nurse practitioner), verifying that the student had a physical examination. This form also requests parental consent, emergency contact information, acknowledgment of an assumption of the risk statement, medical treatment consent, and proof of medical insurance.

Additionally, Michigan's sports concussion law requires the student and the student's parent or guardian to sign a Concussion Education Acknowledgement Form, verifying that they received educational materials on sports concussions, including a description of concussion signs and symptoms.

(6) *Are transfer students eligible to participate in MHSAA-sponsored sports?*

It depends. In general, students are eligible to participate in MHSAA-sponsored sports at the school located within the district in which one of the student's parents reside. Students who change schools and do not meet one of the MHSAA's 15 enumerated exceptions are not eligible for the upcoming season in the same sport that they participated in during the immediately preceding season. For example, if a student is participating in a sport and transfers to a new school mid-season, and the student does not qualify for an exception, the student is not eligible to participate in that same sport during the remainder of the current season and the following season.

To prepare for the upcoming season, school officials should review their school's athletic code of conduct to ensure compliance with any eligibility requirements

that may be more stringent than those imposed by the MHSAA.

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Due Diligence in Hiring

When hiring a new employee, the Revised School Code requires that schools: (1) obtain a criminal history and criminal records check from both the Michigan State Police (MSP) and the FBI; (2) perform an "unprofessional conduct" check; and (3) ascertain certification status when necessary. Schools should also ensure that each applicant completes and signs USCIS Form I-9 before beginning employment to verify the applicant's identity and authorization to work in the U.S.

Employment Eligibility: I-9 Documentation

All U.S. employers must properly complete an I-9 for citizens and noncitizens they hire for employment in the U.S. The form is used to verify the person's identity and employment authorization. To ensure compliance with the law, an employer must:

- verify the identity and employment authorization of each person they hire;
- complete and retain a Form I-9, Employment Eligibility Verification, for each employee; and
- refrain from discriminating against individuals on the basis of national origin, citizenship, or immigration status.

School officials can access the current version of Form I-9 here: https://www.uscis.gov/i-9.

Criminal History and Records Checks

Revised School Code Sections 1230 and 1230a require that every school district, intermediate school district, public school academy, and nonpublic school request both a criminal history check from the MSP and a criminal records check through the FBI: (1) upon an offer of initial employment to any individual to be hired for full-time or part-time employment; and (2) when school officials learn that an individual is being assigned to regularly and continuously work under contract in any school.

The law requires every applicant for employment to give written consent to conduct the criminal history and records checks. A school generally must obtain the criminal history record information (CHRI) *before* employing the individual as a regular employee or allowing the individual to regularly and continuously work under contract in any of its schools.

If a school needs to hire an individual during a school year, or within 30 days before the beginning of a school year, it may only employ the individual as a conditional employee without first receiving the CHRI if: (1) the board or governing body requests the required criminal history and records check before conditionally employing the individual; and (2) the individual signs a statement identifying all crimes for which he or she has been convicted, if any, and agrees that if the CHRI is inconsistent with the individual's statement, his or her employment contract is voidable at the school's option. A model statement may be found on pages 54-55 of the current MDE Office of Professional Preparation Services' Reference Manual, which is available here.

If an employment contract is voided as described above, the individual's employment is terminated and any collective bargaining agreement that would have otherwise applied to the individual's employment does not apply. The school is not liable for a termination that complies with Sections 1230 and 1230a.

Sections 1230 and 1230a prohibit schools from employing an individual in any capacity or allowing an individual to regularly and continuously work under contract if the CHRI discloses that the individual has been convicted of a "listed offense" and the CHRI is verified using public records. Examples of listed offenses include: accosting or soliciting a child for immoral purposes, child sexually abusive activity or material, criminal sexual conduct, and pandering.

When the CHRI discloses that an individual has been convicted of a felony *other* than a listed offense, and the CHRI has been verified using public records, the school *must not* employ the individual in any capacity or allow the individual to regularly and continuously work under contract *unless* the superintendent or chief administrator and the board or governing body of the school both approve the employment or work assignment in writing.

The CHRI received by a school *must only* be used for evaluating an individual's qualifications for employment or assignment. School employees and board members *must not* disclose the CHRI, *except* for a CHRI that reveals a felony conviction or a misdemeanor conviction involving sexual or physical abuse, to any person who is not directly involved in evaluating the applicant's qualifications for purposes of employment or assignment. The unlawful disclosure of a report or its contents constitutes a misdemeanor punishable by a fine of up to $10,000.

Unprofessional Conduct Check

Section 1230b requires that schools run an unprofessional conduct check on an applicant for employment. "Unprofessional conduct" means "1 or more acts of misconduct; 1 or more acts of immorality, moral turpitude, or inappropriate behavior involving a minor; or commission of a crime involving a minor." Unprofessional conduct does not require a criminal conviction, nor is it limited to sexual misconduct. The

Michigan Court of Appeals has interpreted Section 1230b "misconduct" to include "conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of [its] employee."

Before hiring any applicant for employment, a school must obtain a signed statement from the applicant that: (1) allows the applicant's current and former employers to disclose all information from the applicant's personnel files relating to unprofessional conduct; and (2) releases the current or former employer from any liability for providing the information. Section 1230b further requires that a school contact "*at least* the applicant's current employer or, if the applicant is not currently employed, the applicant's immediately previous employer" to provide unprofessional conduct information. A copy of the applicant's signed statement allowing disclosure must accompany each request.

An employer that receives a Section 1230b request for information must respond within 20 business days. Absent bad faith, school officials are entitled to immunity when they disclose unprofessional conduct committed by a former employee in response to a Section 1230b request. School officials should contact every former employer of an applicant to ensure a comprehensive unprofessional conduct check. All information concerning an applicant's or employee's unprofessional conduct should be maintained separately from that individual's personnel file to avoid an unintentional disclosure. This information must only be used for the purpose of evaluating an applicant's qualifications for employment. A person who violates this restriction can be found guilty of a misdemeanor punishable by a fine of not more than $10,000.

School officials can use Thrun Policy Service Form 4205-F to help ensure Section 1230b compliance. Please contact Lucas Savoie at LSavoie@ThrunLaw.com for more information about Thrun's policy service.

Teacher and Administrator Certification

To avoid potential state aid penalties, school officials must ensure that their teachers and administrators hold the appropriate certifications. Revised School Code Section 1233 prohibits schools from allowing a person who lacks a valid teaching certificate to teach a grade or department of a school. A school that allows a noncertificated person to teach is subject to a state aid deduction equal to the FTE foundation allowance provided for the students taught by the teacher during that period.

For administrators, State School Aid Act (SSAA) Section 163 prohibits school officials from employing someone who lacks a valid administrator certificate or permit in any of the following positions: superintendent, principal, assistant principal, or any other person whose primary responsibility is administering instructional programs. Although the law does not define "whose primary responsibility is administering instructional programs," MDE issued a memo explaining that a person has such a responsibility if the person has "final or executive decision-making responsibility" in at least one of the following areas:

- curriculum;
- oversight of school improvement plan design or implementation;
- oversight of instructional policies;
- executive-level reporting on academic progress to a governing authority; or
- supervision and evaluation of direct reports responsible for instruction.

A school that employs an administrator without a proper certification or permit is subject to a state aid penalty equal to 50% of the administrator's salary during the period he or she was not certificated.

If MDE notifies a school that it is employing an administrator in violation of SSAA Section 163, the school has 10 business days after notice to discontinue that person's employment or cure the noncertification status or MDE will impose an increased penalty of 100% of the person's salary for the period that extends beyond these 10 business days. A school official who continues the employment of a noncertificated administrator could also be charged with a misdemeanor punishable by a fine of $1,500 for each incident.

Under SSAA Section 163(4), the State Superintendent may waive a salary-based state aid penalty by determining that the school could not obtain a substitute permit due to "unusual and extenuating circumstances resulting from conditions not within the control of school authorities." Under the SSAA, such extenuating circumstances include:

- a natural disaster;
- death or serious illness of the individual or another employee;
- an emergency school closure;
- fraud or other intentional wrongdoing of the individual or another employee; and
- an emergency health condition.

To avoid incurring these state aid penalties, school officials should regularly review all teacher and administrator certifications to ensure they are valid. Certifications can be verified using MDE's Michigan Online Educator Certification System.

Dude, Where's My Tax Revenue?

For school districts with a July tax levy, local tax collecting units recently sent summer tax bills to school taxpayers. In most cases, the municipalities will collect school taxes on behalf of those districts. Every year, however, some Thrun clients report delayed disbursement of collected school tax revenue, causing unexpected cash flow problems. School officials should be mindful that tax collecting units are required by law to timely transfer school tax revenues.

Generally, township and city treasurers are responsible for tax collections. While a district may contract with a township or city to set a different disbursement schedule, General Property Tax Act Section 43 establishes the "default" disbursement schedule. Township and city treasurers must: (1) remit, within ten business days, all school taxes in their possession on the 1st and 15th day of each month; (2) account for and remit within ten business days 90% of school tax collections in their possession on the last day of February; and (3) transfer all school taxes on hand by April 1.

Unfortunately, the February and April deadlines in points (2) and (3) above clearly contemplate a December, rather than a July, tax levy. Michigan law does not establish a comparable default disbursement schedule for July tax levies.

Revised School Code Section 1613, however, requires that a school district enter into a contract with a tax collecting unit *before* that unit collects summer taxes on behalf of the district. That contract provides an opportunity to craft a summer-specific disbursement schedule that does not rely on the statutory timeline in points (2) and (3) above.

In the absence of a contractual disbursement schedule, even for a July 1 tax levy, collecting units must disburse tax dollars in their possession to schools on the 1st and 15th day of each month. Townships and cities that fail to do so likely violate the General Property Tax Act by unlawfully retaining school property taxes.

Tax collecting officials may be subject to civil and criminal penalties for failing to timely remit collected school taxes. A municipal official who willfully neglects or refuses to perform his or her duties under the General Property Tax Act is guilty of a misdemeanor and potentially liable for monetary damages.

If a municipality is not timely remitting tax revenues to your district, we recommend: (1) contacting the collecting unit's treasurer or chief administrative officer to inquire about the delay, (2) bringing the statutory or contractual requirements to the appropriate official's attention, and (3) if necessary, making a demand for timely disbursements. If the delay persists, we suggest contacting your school's finance attorney.

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Back to Basics: Closed Session Meetings IFAQs (In-Frequently Asked Questions)

This month's Back to Basics article fleshes out some of the Open Meetings Act's nuances related to closed session board meetings.

Q: *Our school board was scheduled to go into closed session to discuss a confidential attorney-client communication, but only four board members showed up for the meeting. Can we still meet in closed session as planned?*

A: If your board currently has seven members, then no, a closed session for that purpose would not be permissible at that meeting. The closed session exception that allows a school board to consider a confidential attorney-client communication requires approval by a 2/3 roll call vote of the full board, meaning 2/3 of all board members, not just those in attendance at the meeting. If your board has seven members, and only four attend a meeting, even a unanimous vote would not suffice to satisfy the 2/3 vote threshold. A seven member board would need five "yes" votes to authorize a closed session for one of the purposes that requires a 2/3 roll call vote.

If, however, there are one or more vacancies on your board, such that the board has six or fewer "elected or appointed and serving" board members, then four "yes" votes to move into closed session would be sufficient.

Please note that the following closed session purposes require a 2/3 roll call vote to allow a school board to meet in closed session:

1. to consider the purchase or lease of real property;
2. to consult with an attorney regarding trial or settlement strategy related to specific pending litigation;
3. to review the contents of an application for employment or appointment to public office (if the applicant requests the closed session);
4. to consider materials exempt from discussion or disclosure by law (including, but not limited to, a confidential attorney-client communication); and
5. to consider security planning to address existing threats or prevent potential threats to the safety of students and staff.

Q: *On the topic of the OMA's confidential attorney-client communication exception, is a formal attorney opinion letter required to meet in closed session? Also,*

does the attorney who provided the communication need to participate in the closed session?

A: A formal opinion letter is not needed for a school board to meet in closed session. The attorney-client communication just needs to be in written format and contain legal advice that the school board can discuss during the closed session. So, an opinion letter would suffice, as would an email message from the school's attorney, or legal advice written by the attorney on the back of an envelope or a napkin.

A closed session for this purpose must be restricted to discussing the legal advice contained in the attorney-client communication. Board member discussions must not stray into other topics beyond the advice contained in the written opinion. And, of course, no decisions concerning the legal advice should be made during closed session.

The communication must constitute a confidential attorney-client communication. Consequently, a letter or email that has been shared with third parties would not qualify. Sharing a confidential communication with a member of the public, or anyone else who isn't part of the attorney-client relationship, would likely result in the communication losing its confidential and privileged status. Without that status, such a communication could not provide the basis for discussion in a closed session.

The attorney who provided the communication does not need to attend or otherwise participate in the closed session meeting. That is an option, not a requirement.

Please note that, in addition to the confidential attorney-client communication exception for closed session meetings, there is a separate OMA exception that allows a board to meet in closed session to consult with its attorney regarding trial or settlement strategy related to "specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body." To satisfy that exception, the attorney must participate in the closed session and there must also be a specific pending (not just threatened or potential) lawsuit.

Q: *Is a school board allowed to meet in closed session to consider selling one of its properties or buildings?*

A: The OMA closed session exception related to real estate transactions only authorizes a school board to consider the school's purchase or lease of real property, not selling or leasing its own property.

If your board wants to meet in closed session to discuss selling school property, it may be possible to have the school's attorney provide an attorney-client communication on that subject and to enter into closed session under that exception. However, as discussed above, the board would need to limit its discussion to the legal advice contained in the letter and not veer into discussing policy or non-legal issues related to the potential sale.

Q: *A board can always go into closed session to discuss labor and personnel matters, right?*

A: No. There is no blanket "labor matters" exception for closed session meetings. Instead, the OMA only allows closed sessions for certain specific, limited purposes related to labor and employment matters. For example: (1) to consider an employee's dismissal, suspension, or discipline; to hear complaints about, or to consider a periodic evaluation of, a public officer, employee, or staff member; and (2) for strategy or negotiation sessions related to the negotiation of a collective bargaining agreement.

Q: *Our board needs to appoint someone to fill a vacancy on the board. Can we meet in closed session to interview an applicant? Or to discuss the applicants for that position?*

A: The OMA does not authorize such interviews to be conducted in closed session, so all interviews must be performed in an open session meeting.

The only related closed session exception would be to consider the contents of an application. Please note, however, that an application can only be reviewed in closed session if requested by the applicant. The school board cannot unilaterally decide to move into closed session to review an application.

Thrun Law Firm encourages school officials to ask legal counsel OMA-related questions to help ensure that school board meetings fully comply with the law. OMA violations could result in school board decisions being invalidated, potential criminal or civil liability, and negative media scrutiny.

Thrun Policy Service subscribers can refer to the following policies that address OMA-related issues, including proper OMA procedures: 2501 (Meetings), 2501A (Electronic Meetings), 2502 (Board Meeting Agenda), 2503 (Voting Requirements), and 2504 (Public Participation at Board Meetings).

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Title IX Training Reminders

With a new school year almost upon us, now is a good time to review your school's Title IX policies, procedures, and training protocols. Schools must have a sexual harassment policy and grievance procedures that comply with the 2020 Title IX regulations, which became effective again on January 9, 2025, when a federal court vacated the 2024 regulations.

To address Title IX sexual harassment complaints, schools must have a comprehensively trained team consisting of the following "key roles": Title IX Coordinator, Investigator, Decision-Maker, Appeals Officer, and Informal Resolution Facilitator. A Title IX Coordinator may also serve as an Investigator or Informal Resolution Facilitator, but no other roles may overlap.

Any person serving in a key role must be trained in the 2020 Title IX regulations and the school's specific Title IX grievance procedures. Individuals serving in key roles are not required to attend annual training, but Title IX compliance is complicated and Thrun attorneys recommend regular refresher training. Any new members of your Title IX team must receive comprehensive training before serving in a key role.

Thrun Law Firm will offer its three-hour Comprehensive Title IX Training, which satisfies the key role training requirement, on the following dates:

- Wednesday, August 6
- Wednesday, August 20
- Wednesday, September 24
- Wednesday, October 22
- Wednesday, November 19

All other school employees should receive at least basic Title IX training so that they understand the behaviors that may constitute sexual harassment, as well as their reporting obligation if they become aware of alleged sexual harassment. Thrun offers a short all-staff training video to meet this need.

Please contact Lucas Savoie at LSavoie@ThrunLaw.com for more information about registering for a scheduled training or to discuss your school's specific Title IX training needs.

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New for 2025: Updated Title IX All-Staff Training Video Available

After a school year filled with litigation and much confusion surrounding the Title IX regulations, the 2020 Title IX regulations are here to stay for the foreseeable future. So, with the new school year upon us, this is a good time to ensure that all staff are trained on their Title IX reporting obligations.

Under the current regulations, all school employees must receive basic training on identifying and reporting sexual harassment. In 2020, Thrun developed a training video for schools to meet this requirement. After the USDOE issued the 2024 Title IX regulations that became effective in August 2024, we released a new staff training video. Now that the 2024 regulations are no longer in effect, Thrun has updated its 2020 training video, which is now available for purchase. This 24-minute user-friendly video provides a concise overview of the current regulations and employee reporting requirements.

If you are a Thrun Policy Service subscriber, your school will receive the updated training video at no additional cost.

For schools that previously purchased Thrun's 2020 Title IX All-Staff Awareness Training video or Title IX Policy Package (which included the video), that video remains legally compliant, but you may choose to purchase the updated, shorter version.

If you purchased the Title IX All-Staff Awareness Training video under the 2024 regulations in the summer of 2024 or later, that video is no longer legally compliant and should *not* be used for training.

The cost for the updated 2020 Title IX training video is $400 and can be purchased by returning the attached order form. Additionally, if your Title IX policy and forms do not align with the 2020 regulations, you can use this same order form to purchase the current Title IX Policy and Awareness Training Package, which includes the new training video and legally compliant policy and forms, for $495 for retainer clients or $750 for non-retainer clients.

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Fifth Circuit: State Law Requiring Posting of Ten Commandments in Classrooms Is Unconstitutional

Last month, the federal Fifth Circuit Court of Appeals struck down as unconstitutional a Louisiana statute that required public schools to display the Ten Commandments in every classroom. *Rev Roake v Brumley* (CA 5, June 20, 2025). While not binding in Michigan, this decision proves instructive on how a court may rule on similarly required religious displays in schools.

Louisiana Act 676 of 2024

In June 2024, the Governor of Louisiana signed Act 676 into law. Act 676 mandated that by "January 1, 2025, each public school governing authority shall display the Ten Commandments in each classroom under its jurisdiction." The law specified size requirements for the required display and stated the required text for the Commandments. The law also required schools to display the Commandments with a context statement regarding "The History of the Ten Commandments in American Public Education."

Shortly after Act 676 went into effect, a group of public school parents sued in federal court, challenging the law as contrary to the First Amendment's Establishment Clause. The parents sought injunctive

relief to halt enforcement of the statute. The trial court granted an injunction, and the State of Louisiana appealed that decision to the Fifth Circuit.

Fifth Circuit Decision

In its appeal, Louisiana relied on U.S. Supreme Court precedent regarding state religious displays. Specifically, in 1980, the Supreme Court invalidated a Kentucky statute that required that the Ten Commandments be displayed in public school classrooms. Twenty-five years later, however, the Court ruled that a Ten Commandments display on Texas State Capitol grounds was constitutional and did not violate the First Amendment's Establishment Clause. Louisiana asserted that the Supreme Court's more recent Texas decision implicitly overturned the earlier Kentucky decision.

The Fifth Circuit disagreed. In the Texas decision, the Supreme Court distinguished between the context of a State capitol's grounds and a public school classroom, concluding that the Court's Kentucky decision remains binding precedent.

The Fifth Circuit also relied on the Supreme Court's opinion in *Kennedy v Bremerton Sch Dist*, 497 US 507 (2022), in which the Supreme Court held that "the Establishment Clause must be interpreted by 'reference to historical practices and understandings.'"

Consistent with the Supreme Court's emphasis on history and tradition in *Kennedy*, the Fifth Circuit found no common "historical practice" of posting the Ten Commandments in public schools. The Fifth Circuit relied on the expert testimony of a historian and law professor, who explained that the public school system did not exist in America until the late 1820s. Any posting of the Ten Commandments at schools at the time of the nation's founding was thus done at private schools, which typically held church affiliations. Looking beyond the founding era, the historian testified that no evidence supported the claim of a broader contemporaneous tradition of posting the Ten Commandments in American public schools.

Finding no historical or traditional precedent for displaying the Ten Commandments in public schools, the Fifth Circuit affirmed the trial court's injunction of Act 676, holding it unconstitutional under the Establishment Clause.

Conclusion

Last month, we reported on the U.S. Supreme Court's recent decision in *Mahmoud v Taylor*. In that case, the Court held that a school district's refusal to allow parents to opt elementary school children out of curriculum that includes "LGBTQ+-inclusive" storybooks substantially interfered with the parents' right to direct the religious upbringing of their children.

In contrast, the Fifth Circuit's holding in *Brumley* relies not on parents' religious rights but on the government's duty not to impose religion under the First Amendment. In Michigan, public funding for religious education is barred by Michigan Constitution Article VIII, Section 2. Ultimately, this ruling serves as a reminder that public schools must remain neutral forums for religion.

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Attorney Bradford W. Springer Joins Thrun Law Firm

We are pleased to announce that Bradford W. Springer has joined Thrun Law Firm to provide litigation support across our practice areas.

Brad graduated from the University of Michigan in 1993 with an undergraduate degree in history and, in 1998, he graduated from the University of Michigan Law School. Since that time, Brad has more than 26 years of experience litigating a wide range of cases in state and federal courts in Illinois, Vermont, and, since 2004, Michigan.

In 2019, Brad was invited to join the ACLU Lawyers Committee for the Western Branch of Michigan, and he has served as the committee's Chairperson since 2023. He grew up in West Michigan, where he still lives with his wife in Grand Haven. Brad will be based out of our West Michigan office and will primarily have a litigation and employment law focus for our clients throughout Michigan.

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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 5, 2025	UP Administrators Academy	Robert A. Dietzel	Special Education Update
August 5, 2025	MSBO	MaryJo D. Banasik	Employee Leave and Compensation to Start the Year Right
August 5, 2025	MSBO	Philip G. Clark	New Trends in the Law
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 6, 2025	Mecosta-Osceola ISD	Robert A. Dietzel	Legal Update
August 7, 2023	Lapeer ISD	Erin H. Walz	School Law Update
August 7, 2025	MASA	MaryJo D. Banasik	The Legal Essentials of Staff Reductions
August 7, 2025	COP ESD	Michele R. Eaddy Mackenzie D. Flynn	School Law Update
August 7, 2025	Lenawee ISD	Jennifer K. Starlin	Legal 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 14, 2025	Charlevoix-Emmet ISD	Katherine Broaddus	Legal Update
August 15, 2025	Coloma Community Schools	Daniel R. Martin	Conducting Investigations
August 20, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	2020 Title IX Regulations Comprehensive Training Webinar

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Date	Organization	Attorney(s)	Topic
August 22, 2025	Montcalm ISD	Robert A. Dietzel	Special Education Update & Seclusion/Restraint
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 12, 2025	SEAOC	Michele R. Eaddy	Special Education Law Update
September 18, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	Thrun Labor Webinar Series – Employee Evaluations: What You Need to Know
September 18, 2025	Calhoun ISD	Robert A. Dietzel	Hot Topics in Special Education Law
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
September 24, 2025	Muskegon Area ISD	Robert A. Dietzel	Student Discipline & Seclusion/Restraint
September 26, 2025	Ottawa Area ISD	Robert A. Dietzel	Legal Issues Related to Dyslexia
October 1, 2025	MNA	Lisa L. Swem	Keynote: Lessons Learned Over the Years of Bargaining
October 3, 2025	MNA	Robert A. Dietzel	Legal Update
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 10, 2025	Branch ISD	Robert A. Dietzel	Legal Update

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Date	Organization	Attorney(s)	Topic
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
October 22, 2025	Charlevoix-Emmett ISD	Robert A. Dietzel	Section 504
October 24, 2025	UP Special Education Conference	Robert A. Dietzel	Special Education Update
October 25, 2025	MASB	Cathleen M. Dooley	Effective Board Policies: Development, Adoption and Implementation
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