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SCHOOL LAW NOTES

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Wrapping Up Teacher Evaluations: Incorporating Data & Avoiding Common Mistakes

As the school year winds down, school officials should review the legal requirements and best practices for incorporating student growth and assessment data into teacher evaluations to avoid common evaluation mistakes.

Student Growth and Assessment Data

Revised School Code (RSC) Section 1249 requires school officials to consider student growth and assessment data or student learning objectives in a teacher's year-end evaluation. Section 1249 defines "student learning objectives" as "measurable, long-term, academic goals, informed by available data, that a teacher or teacher team sets at the beginning of the year for all students." This portion of the year-end evaluation must be based on locally agreed-on student growth and assessment data or student learning objectives metrics, which must be collectively bargained if the teachers are covered by a collective bargaining agreement. Student growth and assessment data or student learning objectives must account for 20% of a teacher's performance evaluation.

To assist school officials with Section 1249's implementation, the Michigan Department of Education published Educator Evaluations FAQs.

School officials should note that, while student growth and assessment data may be a factor in determining a teacher's ability to impart knowledge, such data cannot, by itself, prove that a tenured teacher is incompetent, and schools are prohibited from discharging a tenured teacher solely due to poor student growth and assessment data. To discharge a tenured teacher for incompetency, school officials must base their decision on five factors, a deficiency in any one of which may support a finding of incompetence: (1) the teacher's knowledge of the subject; (2) the teacher's ability to impart it; (3) the manner and efficacy of the teacher's discipline over students; (4) the teacher's rapport with parents, students, and other faculty; and (5) the teacher's physical and mental ability to withstand the strains of teaching.

Common Mistakes

School officials should avoid the following common mistakes when conducting teacher evaluations:

- *Failing to recognize which teachers need an Individualized Development Plan (IDP)*. The Teachers' Tenure Act broadly requires that *all* probationary teachers receive an IDP, and the RSC requires that all *first-year* probationary teachers and *any teacher* rated "minimally effective," "ineffective," "needing support," or "developing" on their most recent annual year-end evaluation receive an IDP. Schools must comply with both the Teachers' Tenure Act and the RSC,

meaning all probationary teachers should receive an IDP. School officials also may place an "effective" teacher on an IDP to address a specific performance-related issue or simply to improve performance.

- *Failing to identify performance goals for the next school year in the year-end evaluation*. The RSC requires that all annual year-end teacher evaluations include specific performance goals that: (1) assist the teacher with improving effectiveness for the next school year; (2) are developed by the school official conducting the evaluation in consultation with the teacher; and (3) include recommended training, in consultation with the teacher, to assist the teacher with meeting performance goals.
- *Failing to give a teacher notice of deficiencies and ample opportunities to improve.* It is a best practice to provide written deficiency notices and to observe or monitor the teacher's progress often to determine whether the teacher's performance has improved. School officials should provide teachers with notice of deficient performance and opportunities to improve throughout the school year to ensure compliance with Section 1249. In addition, school officials should assist with the teacher's development by identifying relevant coaching, instructional support, and professional development.
- *Failing to do observation "homework."* Section 1249 requires observers and evaluators to review the teacher's lesson plan, the state curriculum standard used in the lesson, and student engagement in the lesson during an observation. All classroom observations must be discussed during a post-observation meeting between the evaluator and the teacher.
- *Failing to conduct and complete mid-year progress reports*. A mid-year progress report is required for *all* first-year probationary teachers and *any teacher* rated "minimally effective," "ineffective," "needing support, or "developing" on their most recent year-end evaluation. The mid-year progress report must: (1) gauge the teacher's improvement from the preceding year or set a benchmark for first-year teachers; (2) assist the teacher with improving; (3) align with the teacher's IDP; (4) include specific performance goals for the remainder of the year; and (5) recommend training designed to assist the teacher with meeting goals. At the mid-year progress report, a school administrator must develop, in consultation with the teacher, a written improvement plan that includes these goals and training designed to help the teacher improve their rating.

Importantly, since teacher evaluation is no longer a prohibited bargaining subject, school officials must also comply with relevant provisions in the applicable collective bargaining agreement.

Failing to follow Section 1249's requirements may undermine a school's subsequent layoff, nonrenewal, or termination decision. School officials should (1) review their performance evaluation system and applicable collective bargaining agreement to ensure they comply with the RSC and the Teachers' Tenure Act, and (2) prepare a list of all teacher IDPs at the beginning of the school year to ensure observations and mid-year progress reports are calendared and completed, and that nonrenewal timelines will be followed.

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Frontloaded ESTA Leave: Is Clawing Back Unearned Leave Legal?

As detailed in our February 24, 2025 E-Blast, and updated in the March 2025 *School Law Notes*, the Michigan Earned Sick Time Act (ESTA) took effect on February 21, 2025. For a school that frontloads ESTA leave time at the beginning of the school's ESTA benefit year, the school may encounter a situation where an employee uses all frontloaded ESTA leave and separates from employment before the school's ESTA benefit year concludes. An FAQ issued by the Michigan Department of Labor and Economic Opportunity on March 7, 2025 indicates that, in certain circumstances, school officials may claw back the value of the used leave if the employee used more ESTA leave than the employee would have accrued as of the employee's separation date.

Michigan law generally prohibits a school from clawing back frontloaded ESTA leave by charging such leave against an employee's last paycheck *unless* such a deduction is authorized in a collective bargaining agreement (CBA) or if the employee has provided full, free, and written consent for that paycheck.

Except for deductions expressly permitted by law or by a CBA, the Michigan Payment of Wages and Fringe Benefits Act generally prohibits an employer from making a deduction from an employee's wages without the "full, free, and written consent of the employee, obtained without intimidation or fear of discharge for refusal to permit the deduction." Further, the Michigan Court of Appeals has held that for deductions not authorized by law or a CBA, a separate written consent is required for each paycheck subject to a deduction and the deduction cannot reduce gross wages to less than

minimum wage. Thus, written consent only provides authorization for payroll deduction during one payroll period. Every subsequent deduction requires new written consent.

For an employee exempt under the Fair Labor Standards Act (FLSA), the FLSA generally prohibits deductions from pay. However, the FLSA's regulations permit employers to make a deduction from pay when an exempt employee is absent from work for one or more full days for personal reasons other than sickness or disability.

ESTA Section 12 provides that if employees are covered by a CBA in effect on February 21, 2025, and the CBA conflicts with ESTA, then ESTA will apply beginning on the CBA's stated expiration date. Accordingly, school employees who are currently covered by a CBA that includes personal time off with uses for sick time or a similar benefit are subject to the terms of the CBA and *not* to ESTA until the CBA expires.

Whether a school may claw back frontloaded ESTA leave concerns wages and other terms and conditions of employment and is consequently a mandatory bargaining subject. Therefore, school officials should be prepared to address language in future CBA negotiations that will permit the school to charge the value of used ESTA leave against an employee's pay if the employee uses more ESTA leave than the employee would have earned as of the employee's separation date.

Employees Not Covered by a CBA

For non-union employees, school officials may choose to include language in an individual employment contract that authorizes the school to deduct any overpayment from the employee's last paycheck due to use of ESTA leave. For non-union employees working without an individual employment contract, school officials should consider requesting that such employees sign an acknowledgement that, if the school will frontload ESTA leave, the employee consents to the deduction of overpayment of leave from the employee's final paycheck. Schools may not make deductions that reduce an employee's regularly scheduled gross wages to less than the state minimum wage.

Schools also may choose to provide frontloaded ESTA leave to employees without obtaining consent to claw back used leave time. In this circumstance, school officials should be aware that if an employee uses more frontloaded leave than the employee would have accrued as of the employee's separation date, it may be harder to charge the employee for the used time. If you have questions or would like assistance with employment contracts or drafting an employee acknowledgement form for ESTA purposes, please contact your Thrun labor and employment attorney.

Graduation Guidelines: Diplomas, Dress Codes, and Due Process

With graduation approaching, school officials should consider common graduation-related legal issues and our recommendations for addressing those issues.

Withholding Diplomas and "Walking" at Graduation

The end of the school year is sometimes accompanied by senior pranks and other student misconduct, which may cause school officials to consider withholding a student's diploma as a disciplinary action. Withholding an earned diploma deprives a student of a constitutionally protected property interest and subjects the school to potential liability. Some courts have ruled that a student who is awaiting an expulsion hearing but has completed graduation requirements is still entitled to a diploma.

While students generally have a right to a diploma after satisfying graduation requirements, they do not have the right to receive the diploma at a graduation ceremony. Like participating in prom and other extracurricular activities, walking across the graduation stage is a privilege that may be revoked. If student misconduct results in discipline at the end of the school year, rather than withholding a diploma, school officials may revoke a student's privilege to walk at graduation. To avoid backlash from students and parents, school officials should include graduation participation expectations in the student handbook and notify students and their parents of those expectations as early as possible. That notice also should address whether a student who has not timely completed graduation requirements may participate in the graduation ceremony in anticipation of earning a diploma.

Cap and Gown Dress Code

A school can enforce a nondiscriminatory dress code for graduation. However, a dress code may *not* discriminate based on any legally-protected classification, including sexual orientation, gender identity or expression, or hair textures or styles commonly associated with race. The dress code should be communicated to students and parents as early as possible. Courts have upheld published cap and gown requirements and, in one case, a "no jeans" policy. Another court upheld a dress code that prohibited decorated graduation caps. In that case, because *all* decoration was prohibited, the students' First Amendment rights were not violated. A student's refusal to comply with a published nondiscriminatory dress code can justify excluding that student from the graduation ceremony.

Some schools provide different gown colors for male and female students. We recommend allowing

students to wear gown colors consistent with their gender identity or allowing all students to choose between two colors. Arbitrary dress code distinctions based on sex are frequently targeted in sex discrimination lawsuits and can be easily avoided by single-color or student-choice color policies.

School officials must also comply with Revised School Code Section 1300, effective April 2, 2025, which requires schools to allow Native American individuals to wear traditional regalia and to bring traditional objects to ceremonies of honor, including a graduation ceremony. Traditional regalia are "any cultural, religious, or ceremonial clothing or wearable items representing a Native American's tribal of ancestral traditions." Traditional objects are "any cultural, religious, or ceremonial items or objects that hold tribal or ancestral meaning, significance, or importance for a Native American." Both terms exclude certain clothing and items such as dangerous weapons prohibited by RSC Section 1313 and tobacco products prohibited on school property by Michigan Penal Code Section 473.

Avoid Religious Holidays

According to the Elliott-Larsen Civil Rights Act, public schools cannot deny a "privilege" based on religion. Because walking across the graduation stage is considered a "privilege," schools should avoid scheduling graduation ceremonies on religious holidays. Failing to do so may result in lawsuits alleging religious discrimination.

Prayer at Graduation

School-organized or mandated prayer at graduation ceremonies violates the First Amendment's Establishment Clause. The U.S. Supreme Court has held that a clergy-led graduation invocation is unconstitutional. Similarly unconstitutional is a school-led process of having students elect a classmate to lead an organized prayer at graduation.

However, note that individual students may voluntarily incorporate religious content in valedictory or other graduation speeches. While student speech that is part of a school-sponsored event may bear the school's imprimatur, censoring religious content from a student's graduation speech may violate the student's First Amendment free speech rights. Courts have held that graduation prayer *voluntarily initiated* by a student without school encouragement is permissible.

School officials should provide students with appropriate guidelines for graduation speeches. We also recommend including a disclaimer statement in the graduation ceremony program stating that the views expressed by students and other speakers do not necessarily represent the school's views.

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Secretary of Education Issues DCL on FERPA and Parental Rights

On March 28, 2025, U.S. Secretary of Education Linda McMahon issued a Dear Colleague Letter (DCL) pledging to enforce compliance with the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA). FERPA grants parents the right to review, inspect, and amend their child's education records and to restrict disclosure of those records with certain exceptions. The PPRA gives parents the right to opt their child out of certain surveys and physical examinations and to inspect instructional and curricular materials. Failure to comply with these statutes can result in federal funds being withheld.

The DCL says that some states and schools have adopted policies that "specifically instruct teachers and administrators to conceal critical information in student records from their parents." In the DCL, Secretary McMahon declared that "[g]oing forward, the Department of Education will insist that schools apply FERPA correctly to uphold, not thwart, parents' rights."

Attached to the DCL is a letter from the USDOE's Student Privacy Policy Office (SPPO), reminding states and schools of their legal obligations under FERPA and identifying the following concerns as priorities:

Parental Right to Inspect and Review Education Records

According to the SPPO letter, many schools may have policies and practices that conflict with a parent's right to inspect and review their child's education records under FERPA. As an example, the SPPO alleged that schools are creating "Gender Plans" for students but keeping them in separate files so that the school may assert that these plans are not "education records" that can be reviewed and inspected by parents. While FERPA does not provide an affirmative obligation for school officials to inform parents about information contained in an "education record," parents have a right to inspect and review information directly related to their child and maintained by the school, including any "Gender Plans" created by the school.

Student Safety

The SPPO letter claims that many parents have complained that they are concerned about the safety of their children because schools are asserting that FERPA requires them to withhold safety information from parents. According to SPPO, to ensure student health and safety, schools should not withhold from parents information that identifies other students who have made death threats against their children. For example, if Student A writes a note describing an intent to kill Student B, FERPA does not preclude school officials from communicating to Student B's parents that responsive action is being taken with respect to a threat

assessment or potential disciplinary action. Similarly, safety measures that a school might take that directly affect both Student A and Student B, such as a no contact order or additional supervision in hallways or on transportation, may be disclosed to both students' parents. However, disciplinary action imposed on Student A usually cannot be shared with Student B's parents, unless the discipline directly relates to both students.

Annual Notification of Rights

The SPPO letter alleges that many schools are not properly notifying parents of their FERPA rights. It reminds school officials that they must annually notify parents of these rights. This notice may be sent to parents *en masse* and can be transmitted by any means that are "reasonably likely to inform" parents of their rights, such as by publication in the school calendar, newsletter, student handbook, or school website.

Military Recruiters

The SPPO letter reminds school officials that the Elementary and Secondary Education Act gives military recruiters the same access to secondary students as provided to college recruiters or to prospective employers and requires that schools provide student information when requested, unless a parent has opted out.

If you have questions regarding FERPA, the PPRA, or the information in the DCL and SPPO letter, please contact a Thrun student matters attorney.

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Special Education Transportation: Staying on the Right Side of the Road

Under the Individuals with Disabilities Education Act (IDEA), the definition of "related services" includes transportation. As a result, transportation must be included in a student's Individualized Education Program (IEP) if it is necessary to provide the student a free appropriate public education (FAPE).

Transportation should not be added as a related service to a student's IEP without the IEP Team thoroughly discussing whether transportation is necessary for that student to receive a FAPE. Unless IEP Teams are trained to give transportation thoughtful consideration, school officials may find that students have it included in their IEPs despite no disability-related need for that service.

What Constitutes Transportation under the IDEA?

The IDEA defines transportation to include travel to and from home and school and between schools, travel in and around school buildings, and specialized equipment (such as lifts or ramps) necessary to transport a child. Transportation as a related service also includes travel to and from extracurricular activities *if* the extracurricular activity has been identified in the IEP as necessary for FAPE. Even if participation in the extracurricular activity has not been identified in the IEP, school officials must consider whether failing to provide extracurricular transportation would violate Section 504 of the Rehabilitation Act.

In September 2023, MDE published guidance on Determining the Need for Special Education Transportation. In the guidance, MDE defines special education transportation as that which is provided in a vehicle used to transport only students with disabilities. Therefore, if a student with an IEP is transported in a vehicle that transports students with and without disabilities, the student is not receiving special education transportation, and transportation would not be identified as a related service in the student's IEP. However, a student with an IEP who does not need transportation as a related service may still need supplementary aids and support, such as preferential seating or a bus aide, to successfully access general education transportation vehicles. These supplemental aids and services must be listed in the student's IEP.

Determining the Need for Special Education Transportation

Whether a student needs special education transportation is an IEP Team decision and cannot be made unilaterally by school staff. The IEP Team must consider the unique circumstances of each student without regard to the student's special education eligibility category. Factors to consider include:

- the nature and extent of the student's disability;
- whether the student has behavior issues that pose a safety risk to the student or others;
- medical issues that require special accommodations (e.g., need for air conditioning or one-on-one assistance);
- the need for specialized equipment to be able to travel safely; and
- potential harmful effects, such as how long the student will be on the vehicle.

Because transportation is subject to the same least restrictive environment requirements as other placement decisions, most students with disabilities should be transported via general education vehicles with their non-disabled peers (using supplemental aids and services as needed).

Types of Special Education Transportation

Special education transportation may utilize a variety of vehicles, including vans, school buses, and

cars. Schools that utilize a vehicle that seats fewer than 10 people should consult MDE's Pupil Transportation Advisory Committee's Advisory Practice and Guideline, which provides important information.

The parameters of transportation are an individualized decision made by the IEP Team. Options include door-to-door, curb-to-curb, and corner-to-corner.

Door-to-door transportation means that the IEP Team has determined that the student must be met by transportation staff at his or her door and delivered to the door of the school or classroom. This is a heightened level of intervention with the student never being without direct supervision and support by a school staff member.

Curb-to-curb transportation means that the special education vehicle pulls up directly adjacent to the student's driveway. If the student needs an escort into the school building, that should be documented in the IEP and provided.

Corner-to-corner transportation means that the student can independently get to a designated pick-up and drop-off location that is near the student's home.

Many students who require special education transportation may be transported with other students with disabilities. However, there may be instances when a student must be transported alone for safety reasons.

Transportation Issues that Do Not Require an IEP Team Decision

Except in rare circumstances, there are several transportation decisions that school officials may make outside the IEP process. For example, decisions about staffing transportation vehicles are administrative decisions so long as the assigned staff is qualified. The vehicle used to transport must comply with the Pupil Transportation Act, but the type of compliant vehicle used is generally a school, not an IEP Team, decision. It may become an IEP Team decision if a specific type of vehicle is necessary to provide a FAPE due to the student's disability.

Similarly, parents of students with disabilities typically do not have any greater input on decisions about the route and length of time to get to and from school than the parents of students who do not require special education transportation. However, these considerations may be factors in determining whether special education transportation is required.

Miscellaneous Considerations

If a student's IEP includes special education transportation as a related service, the school is obligated to provide it. Staff shortages, driver strikes, vehicle issues, and administrative delays are not defenses for failure to transport a student. The country-wide bus-driver shortage has created a significant hardship for many schools and, like other types of staff shortages, may necessitate creative solutions or compensatory services. One option may be to reimburse a parent or other family member who voluntarily transports a student due to staff or vehicle shortages.

Schools have a general duty to ensure that all transportation equipment is in safe working condition. That obligation includes any specialized equipment necessary to transport a student with a disability. In addition to complying with the annual bus inspection requirement in the Pupil Transportation Act, bus personnel should monitor lifts, harnesses, clamps, and other specialized equipment regularly to ensure good working order.

Finally, transportation directors and bus drivers should be knowledgeable about students' behavior plans and special education discipline protections. If a student's IEP does not include transportation as a related service, the student can be suspended from bus services in the same way that a student without a disability is suspended. Behavior that triggers discipline in the transportation setting should be monitored and discussed by the IEP Team to consider whether additional supports, or even transportation as a related service, needs to be included in the IEP. If the IEP includes transportation, the student is entitled to the IDEA's discipline protections for bus removals, which may include a manifestation determination meeting to decide whether the conduct was a manifestation of the student's disability.

School officials should remind staff that transportation must be carefully considered when drafting an IEP to avoid either incurring the expense and administrative burden of an unnecessary obligation or liability for failing to provide a FAPE.

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Grade-to-Grade Progression Does Not Override Progress on IEP Goals

If a special education student is not making progress on a goal, masking the problem with accommodations and moving that student on with his grade cohort could be a violation the student's right to a free appropriate public education.

The Sixth Circuit Court of Appeals, whose decisions are binding in Michigan, recently held that a student who graduated from high school without learning to read – and who was capable of learning to read – was denied a FAPE and was owed 888 hours of compensatory education. *William A v Clarksville-*

Montgomery School System, Docket No. 24-5591 (CA 6, 2025).

The student, William, enrolled in the school as a 5th grader and had reading, writing, and math learning disabilities. To address those disabilities, the school developed an IEP for William. Each year, the school and William's parents reviewed and revised his IEP, but throughout middle school, the IEP remained largely the same. William's inability to read also remained the same, and he repeatedly failed to make progress on his IEP reading fluency goals.

When William entered high school, a special education teacher expressed concern that his IEP was not helping him make progress and informed school administrators that he could not read. Although William sometimes performed well in school, he made no progress toward his IEP reading fluency goals. His IEP Team added accommodations, including technology programs that read printed text aloud and helped him write.

When he was in the 11th grade, one of William's teachers suggested to his mother that he may have dyslexia. At his mother's request, the school psychologist tested him and agreed that his reading struggles seemed consistent with dyslexia.

William's parents arranged for private tutoring with a dyslexia specialist who focused on basic reading skills. With the private tutor, William made progress in learning to read. His parents asked that the tutor's reading program be included in his next IEP, but the school refused, instead proposing to continue with the same fluency goal.

William's parents filed a due process complaint. The administrative law judge focused on two key questions: first, whether William could learn to read; and, second, whether doing so required something different from what the school had offered in his IEPs. Finding that the answer to both questions was "yes," the ALJ ordered the school to provide William with 888 hours of dyslexia tutoring from a trained reading interventionist.

On appeal to the Sixth Circuit Court of Appeals, the school argued that because William was educated in the general education classroom, advanced from grade to grade, and maintained a 3.0 GPA or better, he received the FAPE to which he was entitled.

The Sixth Circuit disagreed. Citing the *Endrew F.* standard that a school must offer an IEP "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances," the court found that William's IEPs were not tailored to his circumstances because they failed to address the foundational skills necessary for him to read. The court explained that, apart from William's dyslexia itself, his most "salient circumstance" in this case was that, with proper instruction, he could learn to read.

The court chastised the school for advancing William from grade to grade without being able to read and explained that, instead of addressing the reading skills William needed, the IEP Team added accommodations that "masked his inability to read." For example, in addition to the technology accommodations, the school gave William 24 extra hours to complete all assignments, which allowed him to complete his assignments at home with any technical assistance he could find. Those accommodations led to William's school success, despite his inability to read.

This case serves as a reminder for IEP Teams that when a student is not making progress on a goal, the IEP Team must consider if the student lacks one or more foundational skills underlying the goal. If the IEP Team cannot determine why a student struggles to achieve the goal, additional data must be gathered and the IEP revised. IEP Teams should not just roll the goal into the next year's IEP.

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Truth-in-Taxation & Budget Hearing Reminder

Michigan law requires public schools to adopt their annual budgets by June 30th each year. A taxing entity, including a school district or ISD, must satisfy the truth-in-taxation process if its anticipated operating tax revenue will exceed what it collected in the previous fiscal year (with exceptions for certain taxable additions). Elements of this process include: (1) publishing a newspaper notice, (2) holding a truth-in-taxation public hearing, and (3) approving resolutions proposing and adopting additional millage rate(s).

A school or ISD may avoid the burdensome truth-in-taxation process and still levy its full authorized operating millage rate if it takes the following three steps when adopting its budget:

Step 1: The proposed budget must comply with Uniform Budgeting and Accounting Act Section 16. That section requires that a taxing unit's "general appropriations act" (e.g., the adopted budget) state the total number of mills of *ad valorem* property taxes to be levied and the purpose(s) for which that millage will be levied.

The budget must also include a description of the tax base upon which the operating millage will be levied. Examples of those descriptions include: (1) non-principal residence, non-qualified agricultural property, non-qualified forest property, non-supportive housing property, and non-industrial personal property; (2) all property; or (3) principal residence, qualified agricultural property, qualified

forest property, supportive housing property, property occupied by a public school academy, and industrial personal property.

Step 2: The school or ISD must publish a notice for the budget hearing in a newspaper of general circulation within the school district or ISD at least six calendar days before the hearing. That notice must include the following statement printed in 11-point boldfaced type: **The property tax millage rate proposed to be levied to support the proposed budget will be a subject of this hearing.**

The budget hearing notice also must include the following information:

- the time, date, and place of the hearing; and
- the location where the proposed budget is available for public inspection.

Step 3: After the budget hearing concludes, the school board must adopt a budget that includes the information described above (i.e., a statement of the total number of mills of ad valorem property taxes to be levied; the purpose(s) for which the millage will be levied; and a description of the tax base on which the millage will be levied).

A school or ISD seeking to levy an operating millage that was approved by voters *after* the board adopted its budget may still avoid the truth-in-taxation process by either: (1) publishing the appropriate budget hearing notice, holding a second public budget hearing, and amending the budget to include the additional millage; *or* (2) including the proposed millage rate(s) to be voted on, if known, in the original budget, along with completing the proper hearing procedures.

If your school or ISD plans to put an operating millage proposal on the ballot in August or November, including information regarding that millage in the original adopted budget would avoid the need to conduct a second budget hearing procedure after the election.

An ISD that obtains voter approval for a regional enhancement millage should consult with legal counsel about incorporating that millage into the truth-in-taxation process.

Because public school academies, schools of excellence, urban high school academies, and strict discipline academies have no authority to levy a school operating millage, their annual budget hearing notice need not include the 11-point boldface type statement or any reference to a proposed property tax millage rate.

A sample form that a school or ISD may use for the budget hearing notice is attached to this edition of *School Law Notes*. Please note that no specific form of resolution for budget adoption is required. Schools desiring to reuse budget adoption resolutions from previous years should ensure that they are up to date.

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Interest Rate Swap Class Action Settlement

Certain Michigan schools may be eligible for settlement proceeds from a class action lawsuit alleging unlawful conspiring activity by certain financial institutions in U.S. interest rate swap transactions. *In Re: Interest Rate Swaps Antitrust Litigation*, Docket No. 16 MD 2704 (SDNY, 2025). A proposed $71 million settlement is pending in that lawsuit.

To be eligible for settlement proceeds, a school must have entered into an interest rate swap transaction with one of the settlement defendants: Credit Suisse Group AG and other Credit Suisse entities; Bank of America, N.A.; Barclays Bank PLC; Citigroup Inc.; and UBS AG. A school must also have entered into such a transaction during a specified period: January 1, 2008 through January 21, 2022 with a Credit Suisse defendant, or January 1, 2008 through June 10, 2024 with the other settling defendants. A claim form must be submitted by June 16, 2025.

Schools that receive a settlement packet should review their files for any eligible interest rate swap transactions. Upon request, our Firm can also review our finance files for potentially eligible transactions. For questions about the litigation or for assistance with completing a claim form, please contact Thrun attorney Brian Baaki at 517-374-8869 or bbaaki@thrunlaw.com.

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Tariffs and Construction Contracts

Recent trade tariffs implemented by the Trump administration have sparked concerns about U.S. markets, including uncertainty about price increases and potential supply shortages in the construction industry. Given the volatile tariff climate, school officials should understand how tariffs could affect their ongoing and future construction projects to ensure their school's interests are protected.

Tariffs likely would increase the cost of numerous construction materials, including steel, aluminum, lumber, and other specialized components that are sourced internationally. Construction materials produced in the United States also may see price increases from the decrease in competition due to reduced imports from international suppliers and manufacturers. Tariffs also could negatively affect supply chains, causing project delays and disruptions to already strained markets.

These current economic conditions likely will cause construction contractors to off-load increased material costs onto their consumers by proposing price and fee increases to current construction contracts. Most school construction contracts, however, are competitively bid, enabling schools to select the lowest responsible bidder at a fixed price point.

A contractor's subsequent claim for additional compensation simply because of supply issues or increased costs runs counter to Michigan's competitive bidding framework. Instead, that process obligates contractors to perform services consistent with the amounts specified in the competitive bidding documents. Moreover, contractors often "lock-in" their costs for materials from suppliers, which may have already been solidified before the recent implementation of trade tariffs.

Construction contracts usually prohibit or limit a contractor from claiming additional compensation for supply cost increases. Absent language to the contrary, a previously executed construction contract remains intact and continues to bind a contractor regardless of material cost increases from tariffs or otherwise. Construction contracts may include language to address unforeseen cost increases and, if so, schools may have a contractual obligation to provide additional payment.

A contractor's demand for additional compensation should be met with scrutiny. Any demand or claim from a contractor for increased payment should be accompanied by documentation specifically identifying their increased material costs and its application towards completing an ongoing construction project. Schools are discouraged from providing additional payment as a contractor is unlikely to return surplus funds to schools in the event supply costs decrease, especially considering the unforeseen trade landscape.

Contractors also may attempt to raise claims outside the contract, such as "frustration of purpose" or "impossibility" claims. Those types of claims are based on an underlying theory that an unforeseen event, beyond the control of the parties, makes the performance of the contract impossible or fundamentally different from what was originally intended. Such claims, however, are generally difficult to prove and often require a contractor to demonstrate that at the time of the contract's execution, it had no feasible way to know that supply costs would significantly increase, and that the increase now makes it impossible to perform the contract. Accordingly, schools generally are not legally required to pay a contractor more than the previously agreed-upon costs and fees in the parties' construction contract and bid documents.

There is also a preference in Michigan law for the use of American and Michigan-based goods and services. Further, when bidding under federal competitive bidding requirements, a preference for the purchase of domestic products likewise applies, so long as those goods and services are competitively priced and of comparable quality. School officials should review relevant board policy and state and federal bidding requirements to ensure that they correctly utilize preference-based goods and services.

Schools also should review their construction contracts to determine whether they have any legal obligation to provide additional payment outside the contract's fee amount because of economic changes, such as trade tariffs. Consult legal counsel if your school is presented with a contractor's claim or demand for additional payment for a construction project.

If you have any questions about how recent tariffs may affect your school's construction contracts or competitive bidding processes, please contact a Thrun transactional attorney.

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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
April 29, 2025	MSBO	Daniel R. Martin Jennifer K. Starlin	Legal Update (8:35 a.m. – 9:20 a.m.)
April 29, 2025	MSBO	Ryan J. Nicholson	A Year in the Life of a School Business Official: From Budget Hearings to Election Deadlines (8:45 a.m. – 9:45 a.m.)
April 29, 2025	MSBO	Christopher J. Iamarino	Bonding/Borrowing/Investing (1:15 p.m. – 4:30 p.m.)
April 29, 2025	MSBO	MaryJo D. Banasik Austin M. DeLano	Current Trends from the Bargaining Table (2:15 p.m. – 3:00 p.m.)
April 29, 2025	MSBO	Ryan J. Nicholson Kelly S. Bowman	Legal Aspects of AI in Technology (2:30 p.m. – 3:15 p.m.)
April 29, 2025	MSBO	Fredric G. Heidemann	Investing and Arbitrage (2:35 p.m. – 3:05 p.m.)
April 30, 2025	MSBO	Ryan J. Nicholson	Dealing with Boosters and Activity Funds in Your District (9:20 a.m. – 10:20 a.m.)
April 30, 2025	MSBO	Daniel R. Martin Erin H. Walz	Legal Update (9:20 a.m. – 10:20 a.m.)
April 30, 2025	MSBO	MaryJo D. Banasik	Employee Evaluations: The Who and the What! (9:20 a.m. – 10:20 a.m.)
April 30, 2025	MSBO	Katherine Broaddus	Breaking Up Is Hard to Do (9:20 a.m. – 10:20 a.m.)
April 30, 2025	MSBO	Kirk C. Herald Mackenzie D. Flynn	Competitive Bidding 101 (9:20 a.m. – 10:20 a.m.)
April 30, 2025	MSBO	Ryan J. Nicholson	Technology Policies (10:20 a.m. – 12:20 p.m.)
April 30, 2025	MSBO	Ian F. Koffler Mackenzie D. Flynn	Bond Issuance 101 (10:40 a.m. – 11:40 a.m.)
May 1, 2025	MSBO	Philip G. Clark	Clarifying Widespread Misunderstandings in School Construction (8:20 a.m. – 9:20 a.m.)

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May 1, 2025	MSBO	Michael D. Gresens	Getting to Know the L-4029: Setting Millage and Renewing Millage (8:20 a.m. – 9:20 a.m.)
May 1, 2025	MSBO	Ian F. Koffler	Bond Financing: Best Practices for Districts (8:20 a.m. – 9:20 a.m.)
May 1, 2025	MSBO	Raymond M. Davis	Collective Bargaining: Innovations and Advanced Strategies (8:20 a.m. – 9:20 a.m.)
May 1, 2025	MSBO	Robert A. Dietzel Piotr M. Matusiak	Pupil Accounting Update on Rules and Regulations (8:20 a.m. – 9:20 a.m.)
May 1, 2025	MSBO	Ryan J. Murray	What Is the "Employment File" Anyway? (9:40 a.m. – 10:40 a.m.)
May 1, 2025	MSBO	Cathleen M. Dooley	FMLA and ADA Overlap (1:15 p.m. – 1:45 p.m.)
May 1, 2025	MSBO	Piotr M. Matusiak	ESTA Basics for Payroll (1:15 p.m. – 1:45 p.m.)
May 1, 2025	MSBO	Daniel R. Martin	Human Resources Investigations (2:00 p.m. – 2:30 p.m.)
May 5, 2025	MPAAA	Jennifer K. Starlin	Legal Update
May 6, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	*Tuesdays with Thrun Webinars* Hiring and Onboarding Practices (8:30 a.m. – 9:35 a.m.) Schools of Choice (9:45 a.m. – 10:50 a.m.) Construction Delivery Methods: A Guide to Structuring Your Next Project (11:00 a.m. – 12:00 p.m.)
May 8, 2025	MASA Region 6	Lisa L. Swem	School Law Update

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Date	Organization	Attorney(s)	Topic
May 15, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	Thrun Labor Webinar Series – Vital Labor Issues Review: Employee Speech, Wage & Hour, Personnel Files, Background Checks, Incompatibility of Public Offices, and More!
May 20, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	*Tuesdays with Thrun Webinars* Health Insurance Best Practices (8:30 a.m. – 9:35 a.m.) SRO FAQs (9:45 a.m. – 10:50 a.m.) Navigating Everyday Expenditures from the Business Office (11:00 a.m. – 12:00 p.m.)
May 28, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	2020 Title IX Regulations Comprehensive Training Webinar
June 12, 2025	St. Joseph ISD Superintendent's Academy	Lisa L. Swem	School Law Update
June 12 & 13, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	Policy Implementation Meetings
June 23, 2025	MASSP	Jennifer K. Starlin	Navigating Parent Requests without Rocking the Boat
June 23, 2025	MASSP	Robert A. Dietzel	Special Ed 101
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 14, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	Thrun Labor Webinar Series – Employee Leave Rundown: FMLA, ADA, & Contractual Leaves
September 11 & 12, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	Policy Implementation Meetings

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Date	Organization	Attorney(s)	Topic
September 18, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	Thrun Labor Webinar Series – Employee Evaluations: What You Need to Know
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