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SCHOOL LAW NOTES

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New DOL Rule Increases FLSA Salary Level

The Fair Labor Standards Act (FLSA) regulates minimum wage, overtime pay, and other requirements, which may affect school employees. The Department of Labor (DOL) has issued numerous rules that interpret and administer the FLSA. The DOL recently issued a rule entitled *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees*, which revises FLSA regulations effective July 1, 2024.

Most notably, this rule updates the salary threshold for employees eligible for the professional, executive, or administrative exemptions. The FLSA's minimum salary level was $684 per week ($35,568 per year) but will now increase to $844 per week ($43,888 per year). Another planned increase takes effect on January 1, 2025, increasing the minimum salary level to $1,128 per week ($58,656 per year). The rule also creates a mechanism for salary level updates every three years to reflect earnings data. The first update is scheduled for July 1, 2027.

Despite the salary level increases, the FLSA's professional, executive, and administrative exemptions remain intact. The new rule is expected to have a limited impact on schools, as teachers and certified instructional administrators (whose salary basis is equal to or above the rate of the school's entrance salary for teachers) remain exempt from the FLSA. Accordingly, the new rule will likely affect a limited category of school employees, such as directors, supervisors, and other noninstructional employees who currently qualify for an FLSA exemption.

Schools will need to confirm whether current salaries for those employees are at or above the updated FLSA salary threshold. If not, the only way for such employees to qualify for an exemption is to increase exempt employee salaries to satisfy the new threshold. Employees who lose their exempt status are entitled to overtime compensation.

Please direct questions about the DOL's new FLSA rule and its potential impact on your school's staff to a Thrun labor attorney.

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No PERA Violation for CBA Interpretation Statements

The Michigan Employment Relations Commission (MERC) recently dismissed an unfair labor practice (ULP) charge alleging that the employer made false statements about a collective bargaining agreement (CBA). *Univ of Mich*, MERC Case No. 22-J-1981-CE (2024). This decision confirms that expressing differing interpretations of CBA language is not a ULP.

A university employer representative held a meeting that University of Michigan House Officers Association (Union) employees attended. The employees questioned whether the CBA

entitled them to receive overtime pay for certain work. The employer representative responded that employees were only entitled to extra pay when they performed work outside their typical position. The representative added that, although employees could bargain for additional pay, the employer was "essentially not permitted to provide overtime pay."

CBA Paragraph 18 stated that employees "may be granted discretionary supplemental payments, rewards or reimbursement by their department. Such payments may be used as recognition of a [Union member's] professional growth and development and/or contribution in supporting [the employer's] goals and interests." The Union alleged that the employer's representative's statements contradicted the CBA, and, therefore, violated the Public Employment Relations Act (PERA) because the representative was "falsely telling unit members that the [CBA] is an impediment to receiving higher pay or other, additional compensation." When the employer representative made the statements, a grievance was pending over the interpretation of CBA Paragraph 18.

PERA Section 10(1)(a) prohibits employers from interfering with, restraining, or coercing employees in the exercise of their PERA rights, including the right to bargain over wages, hours, and other employment conditions. Moreover, PERA Section 10(1)(c) prohibits employers from taking adverse employment action (e.g., discipline, discharge, or pay reduction) based on PERA-protected union activity. PERA, however, does not restrict an employer's freedom of speech, and employer statements violate PERA only if they are coercive, demeaning, or threaten retaliatory action.

Dismissing the ULP charge, the Administrative Law Judge (ALJ) determined that none of the employer representative's statements were coercive, demeaning, or threatening. The representative did not imply that union representatives were ineffective or negotiated a bad contract. Instead, the parties had a good faith disagreement over the CBA's interpretation, and it was not unlawful for an employer to publicly express the employer's interpretation or comment on a pending grievance. The ALJ added that no employees suffered an adverse employment action, further justifying dismissal of the ULP charge.

This decision affirms school officials' long-standing ability to express their opinion on CBA meaning, including during collective bargaining. Still, school officials should not make statements about the union that are coercive, demeaning, or threaten retaliatory action.

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Parent Access to Student Video Surveillance

Most public schools use surveillance cameras on campus and in vehicles. While surveillance cameras have become a key component of school safety, they also raise legal issues for school officials when a parent requests to review or receive a copy of video surveillance of their child.

Family Educational Rights and Privacy Act (FERPA)

Under FERPA, a parent has a right to review video surveillance that is an education record for their child. A video is an "education record" if it is "directly related to a student" and "maintained by the educational institution" (or an entity acting for the school). Whether a video is "directly related to a student" is determined on a case-by-case basis and may be determined by considering if the video:

- depicts an activity, such as a disciplinary incident; a student violating local, state, or federal law; or a student being injured, attacked, victimized, ill, or having a health emergency;
- is intended to focus on a specific student, such as a student presentation; or
- includes student personally identifiable information.

A video that merely captures students in the background as bystanders is usually not "directly related" to those students. Also, videos that are created and maintained by the school's law enforcement unit are not FERPA-protected education records. If those videos are provided to and then maintained by the school, however, they may become education records.

Surveillance Video with Multiple Students

When a parent requests to review surveillance video that depicts their student and also another student, school officials should determine if they can reasonably redact or segregate the video portions that relate directly to the other student without destroying the video's meaning. If redaction is feasible, then the school must do so before permitting the parent to review the video. If redacting or segregating the video is not financially feasible or reasonably possible, school officials must permit parents of students about whom the video relates to inspect or review the video on request, even if the video is also directly related to another student. FERPA generally does not require a school to release a copy of the video to the parent. However, under the Freedom of Information Act, a parent may be entitled to a video of their child provided the image of another student to whom the video relates can be redacted without destroying the video's meaning.

If you have questions about handling a parent request for a surveillance video, please contact a Thrun attorney for assistance.

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Federal Court: No First Amendment Right to Video Record IEP Team Meeting

The First Circuit Court of Appeals recently held that the parent of a special education student does not have a First Amendment right to video record his child's virtual IEP Team meetings. *Pitta v Medeiros*, 90 F4th 11 (CA 1, 2024). The parent, Scott Pitta, has since petitioned the U.S. Supreme Court to review the ruling. While the First Circuit's decision is not binding in Michigan, the analysis may influence Michigan federal court decisions in similar cases.

Pitta alleged that the official minutes of his child's IEP Team meeting omitted and mischaracterized statements. At the next IEP Team meeting, which was held virtually, Pitta requested that the meeting be video recorded using the virtual platform's recording function. Pitta alleged that a video recording was necessary because school officials had failed to produce accurate minutes of the prior IEP Team meeting and refused to correct those errors. Although school officials refused Pitta's request, they allowed a school employee to create an external audio recording. When Pitta said he would make his own video recording, school officials ended the meeting.

Shortly thereafter, Pitta filed a lawsuit alleging that the school district policy's prohibition on video recording IEP Team meetings violated his First Amendment right to gather information.

After Pitta sued, school officials attempted to accommodate Pitta's request to record the meeting by offering audio recording with cameras turned off. Pitta agreed to a virtual IEP Team meeting under those conditions.

The First Amendment protects a range of conduct related to gathering and disseminating information, including filming government officials engaged in their duties in a public place. The First Circuit, however, determined that IEP Team meetings are not held in "public spaces" subject to First Amendment protection, as only IEP Team members are involved, and the meetings discuss private and sensitive information. Furthermore, school employees involved in IEP Team meetings are not "public officials" contemplated by the First Amendment, nor do they perform their duties in public.

The court agreed with the school's position that video recording IEP Team meetings would hinder IEP Team members in the performance of their duties, which includes honest conversations necessary to develop a child's IEP.

Furthermore, the court reasoned that video recording a child's IEP Team meeting did not fall within the First Amendment right to record public information, which promotes the open discussion of governmental affairs. Video recording an IEP Team meeting did not further this interest because the recording was not intended to be disseminated to the public. Accordingly, Pitta did not have a First Amendment right to video record the meeting.

The court held that, even if Pitta had a First Amendment right to video record his child's IEP Team meeting, his claim would still fail. The school district's policy prohibiting video recordings of IEP Team meetings was content neutral, narrowly tailored to the significant governmental interest of promoting open conversations during IEP Team meetings, and left open alternative channels for collecting and recording IEP Team meeting information.

If a parent asks to video record their child's IEP Team meeting, first determine whether your school has a board policy that addresses the topic. Thrun Policy Service subscribers should refer to Policy 5806, which allows a school board to designate whether recordings may occur. Also, consider contacting your special education attorney for guidance. While it is not likely that a parent has a First Amendment right to video record their child's IEP Team meeting, there may still be compelling reasons to do so.

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Due Process: Do's and Don'ts of Special Education Litigation

Due process litigation under the Individuals with Disabilities Education Act (IDEA) has significantly increased in Michigan over the past three years. Though receiving a due process complaint is unpleasant, knowing the right steps to take will position your school for the best possible resolution. Summarized below are important steps school officials should take upon receiving a complaint.

- *Promptly notify your insurance carrier*. Coverage for litigation costs does not begin until the carrier is notified and accepts the claim. You may request that the carrier assign the case to a particular attorney or a law firm; assignment of your preferred counsel is not guaranteed.
- *Promptly notify your attorney*. Regardless of whether you have been consulting with an attorney on the specific case, contact the special education attorney with whom you

usually work and forward the complaint to that attorney as soon as possible.

- *Retain all documentation related to the student*. Called a "litigation hold," courts expect a school to preserve all information (including emails, texts, and electronic records) that could be relevant to the complaint. Send an email to employees who may possess records directing them to gather all documentation related to the student and to forward it to the appropriate special education administrator. Employees who may have relevant documentation include, but are not limited to, the student's teachers, related service providers, counselors, school nurses, and administrators for the previous two years.
- *Gather emails and other communications related to the student*. The school's attorney and/or the parent will likely request emails and other communications to use as evidence during the due process hearing. The best way to ensure that all relevant emails are identified is to have the school's technology department run a server search for all emails that contain the student's name so that an email is not missed.
- *Do not withhold any documentation from your attorney*. Allow your attorney to determine whether a document is relevant to the case. There are few worse moments in a due process hearing than when a parent testifies about a document that the school had but withheld from the school's attorney. The school's attorney will need the student's entire CA-60 file, the special education file, all discipline records (including referrals that did not result in discipline), any documents held by individual teachers or other employees, any emails requested, and any other documents relating to the student that may exist.
- *Calendar deadlines*. Soon after receiving the due process complaint, the school will receive a packet of documents from the Michigan Office of Administrative Hearings and Rules (MOAHR). That packet will include an order from the assigned judge scheduling a pre-hearing conference that the school and its attorney must attend. Additionally, school officials should note on their calendars the date by which a resolution session must be held or waived, which is within 15 days of receiving the due process complaint or within seven days for an expedited complaint.
- *Do not sign a resolution or mediation agreement if it does not obligate the parent to dismiss the due process complaint*. If the school has agreed to give the parent something in exchange for the parent dismissing the complaint, the written agreement must state that. If it does not, the school is obligated to provide what it offered, and the parent is not obligated to withdraw the complaint. Have the school's attorney review any settlement document before signing by a school official, even if the attorney has not participated in the settlement discussions.

Although due process litigation may be daunting, it can serve as a learning tool. School officials and staff may learn strategies to avoid a complaint in the future or how to dispense with a complaint as quickly as possible once they have experienced the process.

If your school receives a special education due process complaint or you would like more information or training on the IDEA's dispute resolution processes, contact a Thrun special education attorney.

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Recent Court Ruling Provides Important Warning on Reporting Child Abuse

A recent ruling of the U.S. District Court for the Eastern District of Michigan involving Ann Arbor Public Schools demonstrates the importance of properly handling suspected child abuse. In its opinion, the court partially denied the district's motion to dismiss claims against the district, its elementary principal, and the contracted bus transportation company, stemming from multiple incidents of alleged child abuse. See *Nelson-Molnar v Ann Arbor Pub Sch*, Docket No. 23-CV-11810 (ED Mich, 2024).

A parent of a special education student filed the lawsuit, claiming that the school had wrongfully discriminated against and violated her child's civil rights when it failed to prevent and report child abuse sustained by the student. Specifically, the parent alleged that the student's bus aide assaulted the student by attempting to carry the student to his assigned seat, restraining him in a harness, and repeatedly striking him, all of which was captured on surveillance camera.

Shortly after this incident, students reported to school officials another assault on the student by the same bus aide. Upon hearing both child abuse reports, school officials did not report the incidents to Michigan Child Protective Services or law enforcement. School officials also did not notify the student's parent of the alleged abuse until a month later. Initially, school officials refused to allow the parent to view the surveillance video of the incident. Interoffice communication demonstrated that school officials knew of the child abuse and chose not to report it. The lawsuit also cited supporting evidence indicating that other child abuse allegations were made against the contracted bus company and that bus aide.

The parent brought eight claims against the school and the bus company, including violations of the student's 14th Amendment Due Process rights, discrimination under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and Michigan's Persons with Disabilities Civil Rights Act, as well as failure to report child abuse under Michigan's Child Protection Law and intentional infliction of emotional distress.

In ruling on the school's motion to dismiss, the court concluded that sufficient information existed for several of the claims to proceed to trial, including claims of wrongful discrimination under state and federal law.

This case serves as a reminder of the importance of reporting any suspected child abuse or neglect. Critically, school employees designated as mandatory reporters under Michigan's Child Protection Law must immediately file a report with Michigan Child Protective Services when they have "reasonable cause to suspect child abuse or neglect." Importantly, school officials do not need direct evidence to file a report, but only a reasonable suspicion that abuse or neglect is occurring. Mandatory reporters include, but are not limited to: teachers, school administrators, school counselors, social workers, and child care providers.

If you have any questions on Michigan's Child Protection Law or how to handle reports of child abuse and neglect, please contact a Thrun attorney.

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Gender Identity and Sexual Orientation Under Title IX: Legal Status Update

As school officials begin digesting the new Title IX regulations, the usefulness of that effort is being called into question by court cases filed all over the country challenging the regulations, which are scheduled to go into effect on August 1, 2024. Attorneys General from at least 20 states have filed lawsuits asking various courts to issue preliminary injunctions that would halt the U.S. Department of Education's (DOE) ability to enforce the new rules.

The preliminary injunctions issued to date, however, are not binding in Michigan. For example, on June 17, 2024, a federal district court in Kentucky granted a preliminary injunction that halts implementation in Kentucky, Ohio, Indiana, Virginia, Tennessee, and West Virginia. Earlier in June, a Louisiana federal district court halted implementation in Louisiana, Montana, Idaho, and Mississippi. To date, 16 other states have similar lawsuits pending. However, Michigan is not one of those states and, absent a Sixth Circuit or nation-wide stay, the Title IX regulations, including express protections based on gender identity and sexual orientation, will go into effect in Michigan on August 1st.

Before these new Title IX regulations were published in 2024, 20 states had filed a lawsuit on August 30, 2021 challenging the DOE's 2021 Notice of Interpretation, Q & A document, and Fact Sheet. These documents announced the DOE's intent to enforce Title IX protections when sexual harassment is based on sexual orientation or gender identity. On June 14, 2024, the Sixth Circuit Court of Appeals, whose decisions are binding in Michigan, issued a decision upholding the lower court's ruling that the DOE could not enforce those guidance documents. Therefore, Michigan schools should not rely on the 2021 DOE documents to support protections based on gender identity or sexual orientation.

This Sixth Circuit ruling ***does not*** mean, however, that Michigan schools should stop offering protections to students and employees based on gender identity or sexual orientation. Michigan's Elliott-Larsen Civil Rights Act expressly prohibits discrimination based on those categories. Further, when the new Title IX regulations go into effect on August 1st, the regulations will replace the DOE guidance documents.

We will keep you updated on any developments that affect Title IX implementation. Training and policy updates are forthcoming.

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Budget and Financial Information Posting Reminder

School officials may think that they are in the clear concerning financial steps once the school board adopts its budget for the 2024-25 school year. But wait, there's more! School officials also must comply with State School Aid Act (SSAA) Section 18, which establishes the deadline for posting the school's annual budget and required financial information.

Budget Posting and Expenditure Displays

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

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

The first display is a chart that breaks down personnel expenses into the following categories: (1) salaries and wages; (2) employee benefit costs (including, but not limited to, medical, dental, vision,

life, disability, and long-term care benefits); (3) employee retirement benefit costs; and (4) all other personnel costs.

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

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

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

Other Required Documents

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

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

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

Other ISD Postings

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

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Important SRO Agreement Language

In the wake of heartbreaking school tragedies throughout the country, many schools have implemented additional security measures by bringing School Resource Officers (SROs) into their buildings. In most cases, a school will contract with the governmental entity's law enforcement unit, which assigns one or more trained officers to the school. As part of their services, SROs coordinate with teachers and school officials to promote school safety and help ensure physical security.

As with any contract, school officials should make sure that SRO agreements comply with applicable laws and are otherwise favorable to their schools. In addition to terms related to pay and benefits, below are important contract provisions to consider for any SRO agreement.

Independent Contractor Status

SRO agreements should state that the local law enforcement unit is the SRO's sole and exclusive employer and that the SRO is providing services to the school as an "independent contractor," not as a school employee. Whether an individual is an independent contractor or employee is a factually sensitive determination with significant consequences, including tax liability, retirement contributions, and eligibility for governmental immunity.

Tests to determine whether a person is working as an independent contractor, as opposed to an employee, focus on who has the ability to control the means and methods of the individual's performance. To avoid becoming an SRO's employer, agreements should reflect that the local law enforcement unit, not the school, is responsible for directing the SRO. Agreements should, however, state that the school has the right to request the replacement or reassignment of an SRO who fails to satisfy contractual obligations.

Background Checks & Listed Offenses

While SROs presumably have satisfied background checks with their local law enforcement unit, we recommend that SROs still undergo background checks as described in Revised School Code (RSC) Section 1230. Under the RSC, any individual "assigned to regularly and continuously work under contract" on school property or a school vehicle must undergo a criminal history check through both the Michigan State Police and the FBI. The RSC generally limits these requirements to contractors providing food, custodial, transportation, counseling, or administrative services. Nevertheless, because SROs will have regular contact with students, we recommend that the SRO agreement require the background checks described in the RSC. When negotiating an SRO agreement, school officials should reference these statutory requirements and specify who will initiate and pay for the background checks.

The agreement also should ensure that the local law enforcement unit does not assign any individual to the school premises who has been convicted of the following offenses:

- any "listed offense" as defined by the Sex Offenders Registration Act, MCL 28.722;
- any offense enumerated in RSC Sections 1535a and 1539b (including any felony, listed misdemeanor sex crimes, and listed misdemeanor violent crimes);
- any felony, unless the school board determines that the individual's presence will not pose a danger to the safety or security of students or personnel;
- any misdemeanor conviction involving sexual or physical abuse as those terms are defined in RSC Section 1230;
- any offense of a substantially similar enactment of the United States or another state; or
- any other offense that would, in the school's judgment, create a potential risk to students' safety and security.

Family Educational Rights and Privacy Act (FERPA)

The agreement should address the SRO's access to certain student information under FERPA and designate the SRO as a "school official with a legitimate educational interest in the records." FERPA generally prohibits schools from disclosing to third parties personally identifiable information from a student's education records, unless: the student's parent/guardian (or student 18 or older or an emancipated minor) provides written consent or a statutory exception allows disclosure without consent.

One statutory exception allows schools to disclose, without obtaining a parent's or eligible student's consent, education records to a "school official" who has a legitimate educational interest in the records. An SRO qualifies as a school official for FERPA purposes if the SRO:

- is performing an institutional function or service that the school has outsourced and which would otherwise be performed by school personnel;
- is under the school's direct control as to the use and maintenance of education records;
- complies with FERPA's redisclosure limitation, requiring parent consent before redisclosure of education records to third parties, including back to the local law enforcement unit or to other law enforcement officials; and
- meets the criteria in the school's annual FERPA notice to be a school official with a legitimate educational interest.

We recommend, provided the SRO meets the criteria in the school's annual FERPA notice, specifically designating the SRO as a school official for FERPA purposes and including in the agreement the list of the bulleted items above. The agreement also should contain an acknowledgement that the SRO is familiar with and will comply with the FERPA redisclosure limitations.

Compliance with Board Policies

SRO agreements should specify that the SRO will comply with the school's board policies. Generally, schools should provide a copy of applicable board policies to the SRO in advance of beginning the services. Applicable board policies include:

- non-discrimination;
- child abuse and neglect reporting;
- sexual harassment;
- confidentiality of student records and student record information;
- administration of medication to pupils;
- communicable diseases;
- seclusion and restraint;
- search and seizure;
- alcohol/controlled substance possession and use; and
- emergency procedures.

The listed provisions are not exhaustive, and legal considerations may vary depending on the SRO arrangement. School officials should meet with applicable local law enforcement units to review goals and expectations which will help guide the agreement's provisions and process. Please contact a Thrun attorney to discuss more specific provisions in your SRO agreements.

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Board Member Communications: Practical Guidance

With public interest in school board affairs on the rise, board members should consider the following guidance to ensure appropriate communications with the public and between each other.

The Open Meetings Act (OMA) requires the board of education to conduct school business in meetings open to the public. Under the OMA, a "meeting" is "the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on public policy." A quorum of the board typically consists of four members for a seven-member school board.

Email exchanges among a quorum of board members may constitute a "meeting" and violate the OMA, even if four board members do not actively participate in the communications. Thus, emails between two board members generally do not violate the OMA's public meeting requirement. But if other board members are courtesy copied on the email or the email is forwarded to other board members, a violation may occur. For this reason, we recommend that board members include a "do not copy/forward" alert when emailing another board member.

Emails between two board members only implicate the OMA when exchanges involve decisions or deliberations. Accordingly, the OMA does not prohibit board members from lobbying or canvassing each other on issues that may come before the board.

Nonetheless, remember that the OMA is interpreted broadly, as its purpose is to promote openness and accountability in government. Board members should err on the side of caution if unsure whether a communication constitutes deliberation or decision making.

In some situations, board members may feel compelled to "investigate" complaints or concerns that they receive from the public. We recommend that board members not act independently in this manner. Rather, board members should generally forward any concerns sent by the public to the board president, to be addressed in consultation with the superintendent, unless the complaint is about the superintendent. Channeling communications in this manner enables the board president to exercise responsibility as the board's official spokesperson and ensures consistency in this process.

Individual statements to the public may be misconstrued as the board's opinion or may cause public confusion and the appearance of division among the board. For these reasons, and out of respect for their colleagues, we recommend that individual board members provide notice to other members before making a public statement, to allow for their input or any possible concerns.

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New Michigan Legislation: Filter First

On October 24, 2023, Michigan Filter First legislation went into effect to protect children from lead exposure in school drinking water.

The Michigan Filter First legislation includes Michigan's new Clean Drinking Water Access Act (PA 154 of 2023) and amendments to the Child Care Organizations Act. Filter First requires Michigan schools to develop a Drinking Water Management Plan (DWMP), install lead reducing filters, and test filtered water. The program is administered by the Michigan Department of Environment, Great Lakes, and Energy (EGLE).

Filter First provides two important deadlines for Michigan schools. By January 24, 2025, schools must develop a DWMP, and by the end of the 2025-26 school year, schools must: (1) install new filtered bottle filling stations and faucets indicated in the plan; (2) shut off or render permanently inoperable any unfiltered water outlets for consumption; (3) post signage near each water outlet indicating whether the outlet is intended for human consumption; and (4) submit compliance certification to EGLE.

EGLE has developed recommended steps and released guidance to assist schools with Filter First compliance.

Step 1: Initial Inventory

Schools should inventory all existing water outlets in their facilities. EGLE created an initial inventory worksheet to assist schools with this step.

To complete the initial inventory worksheet, schools must identify the fixture's location, the type of fixture — such as a drinking fountain, bottle fill unit, or faucet — and the fixture's designated use. Each fixture must be designated as "consumption, nonconsumption, inoperable, or never to be used." A fixture must be designated for "consumption" if the school will maintain a filtered bottle-filling station or faucet-mounted filter. A fixture must be designated as "nonconsumption" if the outlet will be used for purposes other than human consumption, such as handwashing or cleaning. All other fixtures must be designated as inoperable or never to be used. Schools should communicate the fixture designations to their DWMP.

Step 2: Select Fixtures and Filters

After inventorying all current fixtures, schools should select new fixtures and filters required by the Clean Drinking Water Access Act.

Schools must provide a minimum of one filtered bottle-filling station for every 100 occupants, not including visitors or individuals attending special events. A filtered bottle-filling station must: (1) be certified to reduce lead; (2) connect to the building's cold water and drainage systems; (3) indicate filter cartridge replacement status; (4) fill water bottles or other containers for personal water consumption; (5) pair the flow rate through the filter to the flow rate of the filter cartridge; (6) and include a drinking fountain. A "drinking fountain" means a connected plumbing fixture that allows a user to drink directly from a stream of flowing water without the use of an accessory.

Schools may only use a filtered faucet if a consumption-designated water outlet is necessary but the installation of a filtered bottle-filling station is not feasible. This exception applies to, but is not limited to, kitchens, nurses' stations, preschool classrooms, and teachers' lounges.

All filtered fixtures and faucets must be certified to meet NSF/ANSI standard 53 for lead reduction and standard 42 for particulate removal.

Step 3: Develop a Drinking Water Management Plan

EGLE created a DWMP Template for school use, which is available on the Filter First webpage. Schools may choose to create their own form provided it includes the required components. A DWMP must:

- specify water outlet locations;
- include a filter maintenance schedule;
- establish an annual water sampling and testing schedule;
- establish a protocol for lead detection; and
- require a review every five years.

Although a school is not required to submit its DWMP to EGLE, it must be available upon request.

Step 4: Installation

Schools should install new fixtures and filters required by Filter First. Before installation, schools should obtain proper permits and remove leaded plumbing materials and surplus fixtures. After a new fixture is installed, EGLE recommends that the school administer a preliminary test for lead and bacteria. Schools must also post signage by each water outlet indicating whether the outlet is intended for human consumption.

Funding

The Clean Drinking Water Access Act created a fund for distribution to Michigan schools. Fund money will be allocated to the following costs: a one-time acquisition and installation of filtered bottle-filling stations and filtered faucets, maintenance and cartridge replacements, and water sampling and testing, including shipping and delivery fees. EGLE is currently working with MDE to determine how to distribute these funds.

Stay tuned for more funding information from EGLE. Meanwhile, begin completing an initial inventory worksheet to ensure the school's DWMP is developed before the January 24, 2025 deadline.

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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
July 10, 2024	Thrun Law Firm, P.C.	Thrun Attorneys	Comprehensive Title IX Training Webinar
July 25, 2024	Thrun Law Firm, P.C.	Thrun Attorneys	Comprehensive Title IX Training Webinar
August 5, 2024	St. Joseph County ISD	Robert A. Dietzel	Special Education Legal Update
August 5, 2024	Charlevoix-Emmet ISD	Lisa L. Swem	School Law Update
August 6, 2024	UP Administrators Academy	Robert A. Dietzel	Special Education Legal Update; FBAs & BIPs
August 6, 2024	MSBO	MaryJo D. Banasik	Employee Leave and Compensation to Start the Year Right
August 6, 2024	MSBO	Philip G. Clark	New Trends in the Law
August 7, 2024	UP Administrators Academy	Lisa L. Swem	School Law Update
August 7, 2024	Gratiot Isabella RESD	Michele R. Eaddy Erin H. Walz	Title IX Training
August 8, 2024	St. Joseph County ISD	Michele R. Eaddy	School Law Update
August 8, 2024	Thrun Law Firm, P.C.	Thrun Attorneys	Comprehensive Title IX Training Webinar
August 12, 2024	MAASE	Michele R. Eaddy	You've Learned the Rules and Regulations, Now What? Legal Guidance and Practical Strategies
August 12, 2024	MAASE	Michele R. Eaddy Erin H. Walz	Stranger Things: Special Ed Edition
August 13, 2024	MAASE	Robert A. Dietzel Jennifer K. Starlin	LRE: It's NOT as Easy as 1-2-3
August 14, 2024	MAASE	Michele R. Eaddy Robert A. Dietzel	Attorney Panel
August 15, 2024	Kent ISD	Michele R. Eaddy Jessica E. McNamara	Legal Issues for SSOs
August 19, 2024	Calhoun ISD	Robert A. Dietzel	Special Education Legal Update

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Date	Organization	Attorney(s)	Topic
August 20, 2024	Thrun Law Firm, P.C.	Thrun Attorneys	Comprehensive Title IX Training Webinar
August 25, 2024	Northwest Education Services	Robert A. Dietzel	Section 504
September 4, 2024	Huron ISD	Robert A. Dietzel	Title IX
September 5 & 6, 2024	Thrun Law Firm, P.C.	Thrun Attorneys	Policy Implementation Meetings Webinar
September 10, 2024	MASPA	Lisa L. Swem	Employee Investigations
October 3, 2024	Michigan Negotiators Association	Lisa L. Swem	The Bargaining Landscape, Recap of Recent Settled Language
October 4, 2024	Michigan Negotiators Association	Robert A. Dietzel	Legal Update
October 11, 2024	Branch ISD	Robert A. Dietzel	Special Education Discipline
October 25, 2024	MASB	Jennifer K. Starlin Cristina T. Patzelt	Public Participation and the OMA
December 5 & 6, 2024	Thrun Law Firm, P.C.	Thrun Attorneys	Policy Implementation Meetings Webinar