THRUN
LAW FIRM, P.C.

SCHOOL LAW NOTES

MAY 29, 2025

Back to Basics: Special Education Reevaluations

The Individuals with Disabilities Act (IDEA) and Michigan's Administrative Rules for Special Education (MARSE) require a public school to reevaluate a special education student in specific situations: (1) every three years; (2) before a school exits a student from special education services (except when the student graduates with a regular high school diploma or ages out); and (3) any other time a reevaluation is warranted because of changes in the student's needs. Failing to reevaluate in any of these instances will result in an IDEA procedural violation and, in some circumstances, a substantive violation. Unless there has been an educational reevaluation in the last year, school officials should also strongly consider initiating a reevaluation upon request from a parent.

In January 2023, the MDE Office of Special Education issued a reevaluation guidance for school officials that identifies the steps for a compliant reevaluation as some or all the following:

- Review of existing evaluation data;
- Notice to the parent indicating if additional data will not be collected and why;
- If additional data will be collected, obtaining the parent's informed written consent for assessments;
- Administering technically sound and nondiscriminatory assessment tools and strategies, by qualified personnel, that will provide functional, developmental, and academic information; and
- Completing the reevaluation no later than 30 school days from the date the school received informed written consent (extension available if the parent and school agree in writing and indicate the length of the extension in school days).

An evaluation begins with the review of existing evaluation data. The IDEA regulations require that the IEP Team and "other qualified professionals" review existing data such as evaluations, parent input, current assessments, and observations by teachers and related service providers. This review typically occurs during a meeting but may also be completed without a meeting by providing input to the case manager or school psychologist.

If the team decides that no additional information is needed to determine eligibility or develop programming for the student, the reevaluation is complete. School staff must notify the parent or guardian that no additional assessment data will be collected, explain why, and inform the parent or guardian that additional assessments may be requested. Under these circumstances, the school will have satisfied its obligation to conduct a triennial

reevaluation despite having conducted no additional assessments. This practice, however, should be the exception, not the rule.

It may be enticing to review existing evaluation data and decide that a student who is already eligible does not need additional assessments. Be cautious, because if a parent sues for failure to provide a free appropriate public education, the school will likely wish it had more comprehensive data to defend its programming and placement decision. With few exceptions, a student's disability-related needs change as the student matures and the evaluation data used to determine programming should reflect those changes.

Before collecting additional assessment data, school special education personnel must attempt to obtain informed written consent from the parent or guardian. Reevaluation may proceed in the absence of consent if reasonable efforts to obtain consent are made and documented. All reevaluations must conclude with written notice to the parent explaining the outcome.

Struggling with a reevaluation situation? Please contact a Thrun special education attorney.

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At the Bargaining Table: Just Cause in Sheep's Clothing

The Teachers' Tenure Act (TTA) provides that a tenured teacher may only be discharged or demoted for a reason that is not arbitrary or capricious. Best practice at the bargaining table is to incorporate this not arbitrary or capricious disciplinary standard into collective bargaining agreements (CBA). Union representatives, instead, often attempt to incorporate a just cause disciplinary standard into CBAs, which would limit school officials' discretion to impose discipline.

The phrase "just cause" is generally easy to identify in a CBA or bargaining proposal, but school officials may overlook equivalent terms that would incorporate a just cause disciplinary standard into a CBA. A clear understanding of the "not arbitrary or capricious" and "just cause" disciplinary standards should help school officials identify whether the union's next bargaining proposal is an attempt to sneak a just cause disciplinary standard into a CBA.

Not Arbitrary or Capricious

The Merriam-Webster Dictionary defines "*arbitrary*" as "coming about seemingly at random or by chance," and "*capricious*" as "impulsive, unpredictable." The State Tenure Commission recognized in *Cona v Avondale School District*, which was affirmed by the Michigan Court of Appeals, that a disciplinary decision that is supported by a reasoned explanation, based on the evidence, is not arbitrary or capricious.

The not arbitrary or capricious disciplinary standard aligns with the TTA, and, when incorporated into a CBA, requires that school officials use the same disciplinary standard for both discipline and discharge or demotion. If a CBA includes a just cause disciplinary standard for discipline, while the TTA requires a not arbitrary or capricious disciplinary standard for termination, it would be easier for a school official to justify termination charges against a teacher than to justify imposing discipline less than termination. Arguably, including a just cause disciplinary standard in a CBA could incentivize a school official to bring tenure charges against a teacher rather than impose a lesser form of discipline.

Just Cause

The arbitration decision in *Enterprise Wire Company* provides an often-cited test used to establish just cause by affirmative responses to all the following questions:

1. Did the employee have forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct?
2. Was the employer's rule or managerial order reasonably related to the orderly, efficient, and safe operation of the employer's business, and performance the employer might properly expect of the employee?
3. Did the employer, before administering discipline to the employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?
4. Was the employer's investigation conducted fairly and objectively?
5. At the investigation, did the "judge" obtain substantial evidence or proof that the employee was guilty as charged?
6. Has the employer applied its rules, orders, and penalties evenhandedly and without discrimination to all employees?
7. Was the degree of discipline administered by the employer reasonably related to the seriousness of the employee's proven offense and the employee's record with the employer?

Affirmative responses to all seven questions generally establish that just cause exists to take disciplinary action. If the answer to any question is no, the just cause standard may not be met. Just cause is a high legal threshold and could potentially make a school's disciplinary or termination action more

difficult to implement and subsequently defend in a grievance or other legal proceeding.

School officials are reminded to review bargaining language closely to identify whether a just cause disciplinary standard is being proposed. Just cause may be in a bargaining proposal hiding in sheep's clothing when unions attempt to include these seven factors into a CBA to establish a just cause standard without specifically referring to just cause. If you have questions about bargaining language or strategies, contact a Thrun labor attorney.

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July 15 Is the Notice Deadline for Teachers Rated as "Ineffective" or "Needing Support"

Does your school have any teachers rated overall "ineffective" or "needing support" on their most recent year-end performance evaluation? Have you hired a new teacher who this past school year was rated "ineffective" or "needing support" by another school? If your answer is "yes" to either question, be aware that Revised School Code Section 1249a prohibits a school district, intermediate school district, or public school academy from assigning a student to be taught in the same subject area for two consecutive years by a teacher who was rated "ineffective" or "needing support" on their two most recent annual year-end evaluations. A school is also prohibited from assigning a student for two consecutive years in the same subject area to *any* teacher rated "ineffective" or "needing support" on their two most recent annual year-end evaluations.

Although the "ineffective" rating is no longer used for teacher evaluations, Section 1249a's requirements remain in effect for teachers rated either "ineffective" or "needing support" during the 2023–2024 school year as well.

If a school cannot comply with this requirement, the school board must provide the student's parent or legal guardian with written notice of the assignment by July 15. The written notice must specifically advise the parent or legal guardian that: (1) the school cannot comply with Section 1249a; and (2) the student has been assigned to be taught in the same subject area for a second consecutive year by a teacher who has been rated as "ineffective" or "needing support" overall on their two most recent annual year-end evaluations. The notice need not identify the teacher by name, but it must explain why the school cannot comply.

If a teacher challenges their evaluation rating under Section 1249, the board is prohibited from issuing the notification until the Section 1249 review process is complete.

Further, the "two most recent annual year-end evaluations" could include evaluations from a teacher's previous school employer. According to MDE, there is no statewide database for teacher evaluations to enable a school to readily consider an evaluation rating assigned by a former school employer. To ensure compliance with Section 1249a, administrators should require prospective hires to provide copies of their two most recent annual year-end evaluations before offering employment.

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2026 Statutory Hard Cap Limits for Medical Insurance

On March 28, 2025, the Michigan Department of Treasury notified all public employers of the "hard cap" contribution limits under the Publicly Funded Health Insurance Contribution Act (PA 152) for medical benefit plans renewing on or after January 1, 2026. The 2026 contribution limit increased by 2.9% over the 2025 levels. The adjustment is based on the change in the consumer price index's medical care component for the previous 12-month period.

For medical benefit plan coverage years ***beginning on or after January 1, 2026***, a public employer may contribute up to the following amounts toward a medical benefit plan:

- $7,942.09 multiplied by the number of employees with single-person coverage;
- $16,609.38 multiplied by the number of employees with individual-and-spouse coverage or individual-plus-1-nonspouse-dependent coverage; and
- $21,660.30 multiplied by the number of employees with family coverage.

As the bargaining season starts to heat up, it is essential that school officials understand how PA 152 hard cap rates work and their relevance in the collective bargaining process. PA 152 requires public employers to limit their contributions to employee medical benefit plans by implementing either a hard cap or "80/20" cost-sharing formula.

When a school decides to use the hard cap formula, it should consider including the specific annual hard cap amounts in their applicable CBAs. This practice effectively "locks in" the school's obligation to pay those specific amounts for the duration of that benefit year, as specified in the CBA.

Including the hard cap amounts in a CBA is advantageous to schools in case PA 152 is amended or repealed. Rather than being subject to a new medical benefit contribution that the Legislature could

establish in the hard cap's absence, the school would only be obligated to contribute the sums specifically listed in its current CBA until the CBA expires. Employing this strategy could help shield the school from unpredictable, year-to-year adjustments and facilitate more accurate budget forecasting and planning for upcoming school years.

Alternatively, a school may negotiate the inclusion of a "local cap" on the hard cap increases within its CBAs. By using local cap language, the school would pay the hard cap amounts as adjusted by the Legislature; however, any subsequent legislative increase would be capped at a maximum percentage as negotiated at the table, typically no more than 3% year-over-year. This is a more employee-friendly approach as it accommodates changes influenced by inflation while ensuring financial predictability for the school's business office.

If you have any questions regarding the 2026 hard cap amounts or need further guidance on incorporating these amounts into your CBAs, please contact a Thrun labor attorney.

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Is That Extra? Ins and Outs of Student Fees

School officials are often confused about which types of fees may be charged to students. The Michigan Constitution mandates that the Legislature "maintain and support a system of free public elementary and secondary schools." In *Bond v Ann Arbor School District*, the Michigan Supreme Court clarified the scope of that constitutional provision and provided guidance about when charging students fees is legally permissible.

Generally, schools cannot charge fees for items that are associated with a school's required or elective curriculum, or that involve activities that may impact a student's grade or credit.

Security Deposits for Textbooks and Materials

According to caselaw, textbooks and school materials, such as laptops, are an essential part of a free public school education and must be provided to students without charge. A student may, however, be charged for damaging or losing textbooks and other school materials.

Some schools require students to provide security deposits to protect against damage to textbooks and laptops beyond ordinary wear and tear. Security deposits are permitted if reasonable and refundable and serve as a practical tool to help protect against damage to or loss of education materials. According to the Michigan Department of Education (MDE), a security deposit is not "reasonable" if the amount equals the total cost or replacement value of the item. Instead, the useful life of the book or materials must be taken into consideration. Further, when only normal wear and tear occurs, the security deposit must be refunded in full.

Fees for Extracurricular Activities

Schools may charge participation fees for extracurricular activities if: (1) students are not required to participate to receive a diploma; (2) academic credit is not given for participation; and (3) fees can be waived for those students who wish to participate but cannot afford the fees. Fees also may be charged for admission to extracurricular events, such as sporting events, concerts, plays, or assemblies if attendance is not required and student grades or credit are not affected.

Fees for Clothing and Towel Usage

Schools may charge students a reasonable fee for clothing usage, such as physical education uniforms or special band shoes, for required or elective courses. If, however, a school requires clothing or a uniform of a specific color, style, or manufacturer, the item must be provided free of charge. Towels should be provided for personal hygiene purposes if physical education or athletic activities are required for credit and must also be laundered at no cost. Schools are not responsible for providing special clothing or towels for extracurricular activities.

Purchasing Band Instruments

If band or orchestra is offered as an extracurricular activity, students may be charged a reasonable fee for instruments. If band or orchestra is part of the school's required or elective curriculum and credit is given, MDE requires the school to provide free instruments, on a reasonable basis, to qualified students. While "reasonableness" is not defined, MDE suggests that it means something less than providing instruments of choice to all students. Reasonable provision of instruments may include requiring students to share instruments or use a different available instrument. Schools also may require a reasonable security deposit for the use of instruments.

Cost of Materials for Wood Shop, Art, and Similar Courses

Schools must also provide materials and supplies for projects in wood shop class, art, and similar courses that are taken for credit. Any required classroom projects that are made from school-purchased materials become the school's property. Schools, however, may allow students to purchase these projects. Alternatively, students may purchase their own materials and keep the project at the end of the class. A school is not required to purchase materials used for projects that are not required for credit.

Tuition for Other Special Courses

Schools may charge for students voluntarily attending summer school. According to MDE, schools may also require payment of a reasonable fee for adult education courses if the adult is not earning credit toward a high school diploma and is not counted in membership for state aid purposes. Schools must pay for tuition and textbooks for college courses that are offered for high school credit.

Costs and Fees for Travel and Trips

Schools may charge students costs and fees for travel, not to exceed the cost of the trip, including transportation costs to and from nonmandatory events. A nonmandatory event is one that students voluntarily participate in and does not affect their promotion from grade to grade or high school graduation. If students do not receive academic credit for the extracurricular trip, schools may require students to pay entrance fees or ticket admissions. Schools must pay students' entrance fees or ticket admissions charged on a field trip that is required for grade or credit.

If you have any questions on the type of student fees your school can charge students, please contact a Thrun student issues attorney.

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Student Handbook Reminder

As the school year winds down, school officials should begin reviewing and revising student handbooks for the 2025-26 school year. A comprehensive and well-written student handbook is an important tool to ensure compliance with state and federal law, support student discipline decisions, and reduce the risk of litigation and other disputes. Generally, student handbooks should be reviewed and updated annually.

Thrun offers a model student handbook to both our Thrun Policy Service subscribers and to non-subscribers. The Thrun Policy Service subscriber version of the student handbook aligns with the Thrun Board Policy Manual and Administrative Guidelines and is intended to be easily implemented by Thrun Policy Service subscribers. This handbook is sold together with an employee handbook. Thrun updates the handbooks annually, and clients who purchase the handbook and subscribe to Policy Service updates will also receive handbook updates.

The student handbook for clients that are not Thrun Policy Service subscribers allows for client customization to ensure it aligns with your school's expectations and policies, as well as legal requirements.

Regardless of the source for your school's student handbook, school officials must ensure the handbook aligns with your school's board policies and any applicable administrative guidelines before implementation.

When updating existing handbook language, consider the following recommendations, including helpful pointers to avoid common missteps:

Disclaimer Language

Include language at the beginning of the student handbook advising that the handbook is not intended to be all-encompassing, that it does not create a contract between the school and parents or students, and that school officials may revise the handbook to implement the school's education program and ensure student wellbeing. The disclaimer language also should state that school officials are responsible for interpreting the handbook and, if the handbook does not address a specific situation, school officials will make decisions based on staff discretion, applicable board policies and administrative guidelines, and state and federal statutes and regulations, consistent with the school's best interests.

Board Policy

Board policy is typically more comprehensive than handbook language, and board policy ultimately controls. Any conflict, ambiguity, or inconsistency between the handbook and board policy and its application to student matters could undermine a school's decisions and create liability exposure.

Student Discipline

State law requires that every school develop and implement a student code of conduct. Schools often include the student code of conduct in student handbooks. All handbook provisions addressing student discipline, including the code of conduct, must comply with law and board policy.

Consistent Implementation

School officials must ensure consistent implementation of the handbook for all students. Adhering to established disciplinary procedures for every student offense will help schools ensure consistency and defend against allegations of discriminatory decisions.

Non-Discrimination Provisions

Handbooks should include: (1) a comprehensive statement prohibiting discrimination (including unlawful harassment); (2) a summary of the applicable investigation process; and (3) the identity of the person or position authorized to receive discrimination complaints. Failure to include these provisions could result in liability, even if the school takes appropriate action when responding to a discrimination complaint. We recommend reviewing board policy, administrative

guidelines, and student handbooks to ensure that appropriate non-discrimination provisions are included.

Other Considerations

School officials should post the student handbook to the school's website and include a copy of the student handbook in student agendas or planners (if provided), with a letter to parents. Wide dissemination of the student handbook helps ensure that students and parents have notice of expectations for student conduct and potential disciplinary consequences. School officials also should develop protocols to ensure that students who transfer into the school during the school year receive the student handbook.

A well-drafted student handbook is an important tool for school management and can be valuable in defending against legal claims and OCR and state civil rights complaints, but only when it is consistent with applicable law and board policy, up-to-date, consistently implemented, and widely disseminated.

If you are interested in Thrun's model handbook or becoming a Thrun Policy Service subscriber, please contact Lucas Savoie at lsavoie@thrunlaw.com. Alternatively, Thrun attorneys are available to review student handbooks to ensure compliance with law and board policy. Please contact a Thrun attorney if you are interested in a student handbook review.

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A School By Any Other Name…

When updating or adopting board policies, school boards may overlook one seemingly small but critically important detail – how the school district's legal name is listed in its bylaws. Though it may appear to be a minor issue, inaccuracies in how a district refers to itself in official documents risks significant legal consequences.

Name Changes Through Policies

When adopting most board policies, the school board must include within its bylaws the district's official legal name. For Thrun Policy Service subscribers, see Policy 2102 ("School District's Legal Name and Status"). Previously, the Revised School Code required boards to adopt resolutions changing their names and to formally notify MDE of the change for formal recognition. This provision has since been removed, and now, all that is legally necessary to change a district's name is a modification of its bylaws.

Though the name-change process is simplified, it can lead a school board to inadvertently change its district's legal name. For example, a district's proper name might be "XYZ Township School District No. 9" but be colloquially referred to as "XYZ Public Schools." If the informal name is used in the bylaws, the board has effectively changed the district's legal name.

Name Change Concerns

An unintentional name change can cause confusion and create inconsistencies between policies and other legal documents. Even worse, it can raise questions about the enforceability or validity of documents in which the varying names appear. For example, inconsistencies could cause problems related to board resolutions, ballot propositions, bond offering documents, state aid, Internal Revenue Service (IRS) filings, registrations for federal grants through SAM.Gov, and many more.

Due to the radical impact that such a small change can have on a district's governance, it is critically important that school officials, including board members, are aware of the district's actual legal name and ensure consistency in all records.

Next Steps

For Thrun Policy Service subscribers, the policy implementation checklist notes the importance of properly inserting your district's legal name. If your district's legal name has been inadvertently listed incorrectly, the board may modify Policy 2102 to correct the error. Please contact your Thrun finance attorney if you are unsure of your district's historical name. If your school uses board policies other than Thrun Policy Service, you also may need to contact your policy service provider for guidance.

If your district desires to intentionally change its legal name, it can do so by amending its bylaws. The school should then contact all necessary authorities, including the IRS, MDE, the Michigan Department of Treasury, your ISD, and relevant advisors, including your finance attorney and financial advisors, with updates.

What might seem like a minor naming error can have significant implications and consequences when it comes to legal compliance, financial integrity, and institutional credibility. By paying careful attention to the use of your school district's full legal name as part of your routine policy and document review process, you will protect the school's interests and ensure smoother operations in everything from borrowing to governance.

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MFA 2025 State Aid Note Program Documents Now Available!

The Michigan Finance Authority's (MFA) August 2025 state aid note (SAN) program materials, including the loan application, cash flow workbook, instructions, and financing schedule, are now available on the MFA's

website at www.michigan.gov/treasury/finance/mfa/note. The general powers school district and ISD deadline for filing application materials with the MFA is **Tuesday, July 1, 2025**.

PSAs can find applicable MFA SAN documents at https://www.michigan.gov/treasury/finance/mfa/finance/school/public-school-academy-state-aid-note-psa-san. The PSA deadline for filing application materials is **Monday, July 7, 2025**. PSAs should contact their note counsel for additional details.

As in the past, the MFA requires that schools adopt a resolution authorizing the state aid note, and the resolution must be prepared by nationally recognized note counsel. The form resolution for the August 2025 state aid note program is now available. School officials should complete their application and cash flow materials and provide them to their Thrun finance attorney for preparation of the state aid note authorizing resolution.

General powers school districts and ISDs may opt to participate in the "set-aside pool," the "no set-aside pool," or both. With the set-aside pool, a school district or ISD must make monthly payments on the note before the note matures, as set forth below:

3 set-asides - May 2026 through July 2026
or
5 set-asides - March 2026 through July 2026
or
7 set-asides - January 2026 through July 2026

In contrast, the no set-aside pool allows a school district or ISD to pay the principal and interest on the note as a lump-sum payment when the note matures in August 2026.

PSAs, on the other hand, are required to make 11 equal set-aside payments from October 2025 through August 2026.

The MFA's borrowing parameters are largely unchanged from last year. As always, to participate in the MFA's SAN program, schools must reasonably project a cash flow deficit. If your cash flow does not show a deficit, but you still want to borrow for operating purposes, please contact your Thrun finance attorney to discuss alternative options.

A school that has been denied qualified status by the Michigan Department of Treasury will need to file its "prior approval" application with Treasury at least 30 business days (i.e., 6 weeks) before approval is needed. For a school participating in the MFA state aid note program, the prior approval application should be filed with Treasury no later than **Thursday, June 5, 2025**. The authorizing resolution must also be adopted by that date so it can be filed with Treasury in conjunction with the prior approval application.

Regardless of whether your school plans to participate in the MFA program, if you expect to issue a state aid note or tax anticipation note this summer, please contact your Thrun finance attorney to begin the process.

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USDOE Title VI Certification Requirement Paused: What's Next?

As you probably saw in our flurry of recent E-Blasts, there were a number of recent "eleventh-hour" court rulings regarding the U.S. Department of Education's (USDOE) Title VI anti-discrimination certification. USDOE was requiring schools to certify their compliance with federal anti-discrimination laws and potentially face the loss of federal funding and other legal consequences for violating USDOE's current interpretation of discrimination under Title VI.

Background

On April 24, 2025, federal district courts in New Hampshire, Maryland, and Washington D.C. issued preliminary injunctions or stays prohibiting USDOE from enforcing its Title VI antidiscrimination certification. In New Hampshire, the National Education Association (NEA) sued USDOE to enjoin the certification efforts. That court issued an order prohibiting USDOE from enforcing several of its DEI-related compliance guidelines, including the certification requirement against any school that employs, contracts with, or works with NEA, including Michigan Education Association members.

A federal court in Maryland issued a stay prohibiting USDOE from enforcing its February 14, 2025 "Dear Colleague" Letter. A result of that stay is that USDOE was effectively prohibited from taking enforcement action against a school that did not sign the April 3, 2025 Title VI certification.

Finally, the federal court in Washington D.C. issued an order prohibiting USDOE from enforcing the Title VI certification and taking any adverse action against a school that had already signed or submitted a certification.

USDOE's Response

These district court decisions collectively pause, at least for the moment, USDOE enforcement of the "Dear Colleague" Letter and its related Title VI certification requirements nationwide. The injunctions and stay were the result of preliminary hearings, where courts generally determine whether to maintain the status quo before the matter can be fully resolved on its merits.

The federal government has several options on how to respond to the pause on its certification efforts. First,

USDOE could appeal the stay and injunctions for review by another judge to overturn the decisions and seek enforcement of its Title VI certification. Alternatively, USDOE may wait for an opportunity to argue its case on the merits and, if successful, subsequently enforce the certification requirement.

USDOE may also take action through the formal federal rule-making process to effectuate its broader anti-discrimination policies and require related compliance and certification. The federal government also could issue additional directives, executive orders, and other guidance to try to accomplish its anti-discrimination goals without relying on its April 3, 2025 certification form.

While USDOE cannot currently enforce its certification, school officials should not expect that this is the last we will hear from USDOE on this matter. For now, schools may reasonably rely on their previous Title VI compliance certifications (which are generally required to receive federal grants and funding), along with Dr. Rice's April 10, 2025 letter to satisfy any Title VI certification requirements.

As always, our Firm will continue to keep clients updated on this situation, including any attempts by USDOE to enforce its Title VI April 3, 2025 certification requirement.

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From Service to the Stand: Navigating Subpoenas for Testimony

A subpoena compelling a school employee to testify can trigger a flood of questions: What are the first steps? Is the subpoena valid? Can a school employee testify about student behavior or confidential student communications? This article answers the critical questions that school officials need to know to successfully navigate a subpoena for testimony.

Initial Steps

School employees receiving a subpoena should immediately notify their supervisor. Not all subpoenas are valid, but improperly evaluating a subpoena's validity can lead to legal problems. Administrators are encouraged to work with legal counsel to evaluate how to respond to a subpoena.

Many attorneys send a cover letter with the subpoena advising the witness to contact the requesting attorney immediately upon receipt to discuss the witness's testimony. Unless an exception applies, a school employee should not discuss student information until they obtain signed consent from a parent or guardian (or from the student if over 18 years old or emancipated) allowing disclosure of student record information. An attorney's bare assertion that they represent the student or family is insufficient. Before contacting the attorney who sent the subpoena, school administrators should consult with the school's legal counsel about whether the employee should contact that attorney and what, if anything, can be shared.

Proper Service

A subpoena must be properly served. A subpoena addressed to a school must be served on the school board president, secretary, treasurer, or "an officer having substantially the same duties" as those officers. Service on a superintendent satisfies this requirement. A subpoena addressed to an individual school employee must be served directly on that individual. Service can be accomplished by hand delivery (personal service) or by registered or certified mail. Email service is not valid.

Subpoena Contents & Timing

A subpoena's first page must identify: (1) the case name; (2) the court in which the lawsuit or matter is pending; and (3) the case number. A Michigan subpoena must be signed by an attorney of record in the lawsuit, the court clerk, or a judge.

A subpoena must also specify whether it is requiring document production, witness testimony, or both. A subpoena for witness testimony must state a date and time for the witness to testify and must provide at least two days' notice. A subpoena for the production of documents must provide at least 14 days' notice.

Witness Fees

If the subpoena compels in-person testimony, the witness usually must receive attendance and mileage fees at the time of service from the party issuing the subpoena. The attendance fee is generally $12 for each day or $6 for each half day, and the mileage fee is the established round-trip per-mile reimbursement rate estimated from the witness's residence to the place of attendance. For a virtual hearing, mileage is likely not necessary, but the witness fee is still required.

Information Sought

Michigan's Revised Judicature Act (RJA) requires parental or guardian consent (if the student is a minor) or student consent (if the student is 18 years or older or emancipated) before providing testimony or records regarding the student's behavior or confidential communications between the subpoenaed witness and the student. The Michigan Court of Appeals has called this law the "teacher-student privilege."

The RJA also applies to a "guidance officer, school executive or other professional person engaged in character building in the public schools . . . who maintains records of students' behavior or who has

records in his [or her] custody, or who receives in confidence communications from students."

Additionally, the Family Educational Rights and Privacy Act (FERPA) generally requires before a student's education records can be disclosed in response to a subpoena that the school make a reasonable effort to notify the parent or guardian (or the student if 18 years or older or emancipated) of the subpoena so that the parent, guardian, or student may seek a protective order preventing the release of the record.

Testimony

If the subpoena is valid – then what? Testifying in court can be intimidating, but the following practical steps should give school employees the confidence to take the stand.

1. Tell the truth.

The first rule is the most important and the easiest to remember: tell the truth! Lying under oath is perjury, which carries criminal penalties. It is fine not to know an answer to a question; however, as a witness, you are required to testify truthfully and to the best of your ability based on your personal knowledge.

2. Do not be afraid to say "I don't know."

If you do not know the answer to a question, say so. There is nothing wrong with truthful answers such as, "I don't recall" or "I don't know." If you do not know the answer or do not clearly remember a certain detail, do not guess or make something up.

Unless you are testifying as an expert witness, you are only expected to testify as to your personal knowledge. You are a fact witness; you are not being called to speculate. If you are asked a question that you do not feel qualified to answer, say so. For example, in a custody dispute, neither attorney should ask you to offer an opinion on the parent's fitness or which parent should have custody of a student. But, if you are asked such a question, it would likely be appropriate to respond that (1) you are not an expert in child welfare or child custody matters, (2) you have limited information about the parents and their respective home lives, and (3) you can only speak to what you have observed at school.

3. Be on time.

For in-person hearings, allow ample time to drive to the courthouse, park, and find the courtroom. You will likely need to pass through security screening as you enter the courthouse. Many courthouses also prohibit individuals who are not attorneys from bringing a cell phone into the building. Check the courthouse rules in advance to avoid having to make a trip back to your car.

For virtual hearings, ensure that you access the hearing from a quiet and confidential location with sufficient time and equipment to connect to the videoconference or telephonic link.

Failure to appear when subpoenaed is punishable as contempt of court and can have serious consequences. If an emergency arises that may delay or prevent your appearance at the appointed time, you should contact the court promptly to explain your situation. The phone number for the court appears on the subpoena.

4. Follow courtroom protocol.

Courtroom proceedings are formal. Whether subpoenaed to testify in person or virtually, you should wear, at a minimum, business casual (i.e., collared shirts, slacks, and closed toe shoes). Avoid t-shirts, shorts, and hats.

When the judge enters the courtroom, a court official will say, "All rise." When you hear this, you must stand up (to the extent that you are able) until the judge directs you to be seated. Similarly, everyone will stand when the judge leaves the courtroom.

When answering "yes" or "no" questions, especially during cross examination, be sure to answer with a verbal "yes" or a "no." If you nod your head or answer with an "mm-hmmm" in response to a question, at best the judge will likely ask you to clarify your response for the court record and at worst your testimony may be misunderstood or misconstrued.

5. Maintain composure.

Do not let attorneys put words in your mouth. If an attorney rephrases or summarizes what you have said, make sure it is accurate. Listen carefully to how your testimony is being rephrased and determine whether you agree with that rephrasing. Sometimes the testimony is being rephrased to clarify your statements. Other times the testimony is being rephrased to confuse or misconstrue your statements. If you do not agree with the rephrasing, speak up.

If an attorney asks whether you talked to any attorneys about your testimony, do not hesitate to say that you spoke with the school's attorney (if that is the case). These conversations are entirely permissible; however, while you may say that you spoke with the school's attorney in preparation for testifying, you should avoid discussing the specific details of your conversation because that information may be subject to the attorney-client privilege.

If you have questions about how to respond to a subpoena, or how to assist staff members subpoenaed to testify, please contact a Thrun attorney.

Austin Munroe Joins Thrun Law Firm

We are pleased to announce that Austin W. Munroe has joined Thrun Law Firm as an associate attorney in our East Lansing Office.

Austin graduated from Michigan State University in 2020 with an undergraduate degree in political science and, in 2024, he graduated from DePaul University College of Law in Chicago.

During law school, Austin interned with First Nation Group, a leading medical device supplier to the Department of Veteran Affairs. Austin also clerked for a summer with the Consumer Protection Division of the Indiana Attorney General's office.

After growing up in Saline, Austin and his wife currently reside in DeWitt. In his free time, Austin enjoys spending time on the golf course, trying new recipes, and spending time with family up north.

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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
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 Education Pitfalls – 2025 Edition
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 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
September 5, 2025	Shiawassee RESD	Michele R. Eaddy	Section 504 Training
September 9, 2025	MASPA	Lisa L. Swem	Employee First Amendment Speech Rights
September 11 & 12, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	Policy Implementation Meetings
September 18, 2025	Thrun Law Firm, P.C.	Thrun Attorneys	Thrun Labor Webinar Series – Employee Evaluations: What You Need to Know
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