SCHOOL LAW NOTES

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This client newsletter is intended to provide helpful information on topics relating to school law and is not intended to constitute legal advice or opinion relative to specific facts, matters, situations, or issues. Legal counsel should be consulted concerning the application of this information to specific circumstances or situations.

General Education

Snow Days and State Aid

Poor road conditions and brutal cold have caused many school administrators to cancel an inordinate number of school days, raising concerns about satisfying the State School Aid Act's minimum pupil instruction requirements. Section 101 of the Act requires at least 1,098 hours and 170 days of pupil instruction in the 2013-14 school year.

Some leeway is given for Michigan's inevitable winter storms and other unforeseeable contingencies. The first six days or equivalent hours of pupil instruction missed due to circumstances beyond the school's control are still counted toward the Act's minimum requirements. When more than six days are canceled before April 1, absent remedial action, a school forfeits a portion of the state aid allocation in proportion to the hours and days missed. Consequently, schools that exhaust the six "free" days must schedule additional pupil instruction time to receive the full state aid allotment.

Given this year's particularly difficult winter, a waiver of the required number of pupil instruction days is currently being considered by the Michigan Legislature. House Bill 5285, if enacted, would allow schools that are unable to provide the minimum number of required pupil instruction days to remain in compliance with the Act by offering only the minimum number of pupil instruction hours. Thus, schools could satisfy minimum instructional requirements by lengthening some or all of the remaining school days. Each extended day must be at least 30 minutes longer. HB 5285 remains in committee and is not law.

Absent such legislation, the Act's current requirements must still be satisfied, which may require that school officials add both additional days and hours of pupil instruction. For an additional day to be counted, pupil attendance must reach at least 75%. For the 2013-14 school year, up to 38 hours of qualifying professional development time may be counted toward minimal requirements. That feature is not available in 2014-15.

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MDE to Increase Monitoring of Noncertificated Teachers

On February 6, 2014, MDE issued a memo to local and intermediate school district superintendents and public school academy directors about the consequences of using noncertificated teachers to instruct students. The memo warns school officials that MDE, beginning in the 2014-15 school year, will increase monitoring of the use of noncertificated teachers.

Michigan law requires a person employed in an elementary or secondary school with instructional responsibilities to hold a valid Michigan teaching certificate. Section 163 of the State School Aid Act requires that schools ensure only qualified teachers who hold a valid Michigan teaching certificate provide pupil instruction. Under Section 163, the use of noncertificated teachers to provide pupil instruction results in a downward adjustment to the school's state aid equal to the salary paid to the noncertificated teacher during the time of noncertificated employment.

Historically, Section 163's salary-based adjustment was the only state aid penalty MDE applied to schools that used noncertificated teachers. However, MDE's memo clarifies its current position that additional penalties are required under Section 6 of the Act.

Section 6 conditions a district's foundation allowance on providing pupil instruction by a certificated teacher. Thus, if a noncertificated teacher is used to provide pupil instruction, that pupil instructional time may not be counted to calculate the foundation allowance for pupil membership FTEs.

MDE's memo reminds school officials that both Sections 163 and 6 of the Act attach serious financial penalties to schools using noncertificated teachers to provide pupil instruction. Not only will schools be subject to the school aid salary adjustment under Section 163, but schools also will be subject to the foundation allowance adjustment for any pupil membership FTE associated with the noncertificated teacher under Section 6. The "new" FTE adjustments may result in a much larger penalty than the salary adjustment.

In light of MDE's pledge to increase monitoring of noncertificated teachers to provide pupil instruction and the significant financial penalties associated with the practice, it is important for school officials to ensure that properly certificated teachers are responsible for students each instructional day.

Under Section 1535 of the Revised School Code, a teacher shall be considered certificated and the holder of a valid teacher's certificate on the completion date of the requirements of a teacher education college, until such time as the certification is confirmed or rejected by the state board of education. The State Tenure Commission has ruled that the Board must recognize the teacher's certification status when it receives that information from the teacher's college, not MDE. *Reyner v Waverly Cmty Schs*, STC 85-17. The responsibility for the acquisition and maintenance of teacher certification rests with the individual teacher, not the district. If a teacher loses their certification, then they forfeit tenure status and any rights under the Teachers' Tenure Act.

School officials should review how teacher certification expiration dates are being monitored. In light of the heightened scrutiny faced by school districts, school officials can use annual reminders to teachers with pending expiration dates and create a spreadsheet matching a teacher with a certification expiration date.

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Open Meetings Act Website Notice Requirement

School officials are reminded that, in December 2012, the Michigan Legislature amended the Open Meetings Act to add a website notice requirement for special and rescheduled regular board meetings.

The OMA's website notice requirement applies to public bodies (including boards of school districts, PSAs, and ISDs) that "directly or indirectly [maintain] an internet presence that includes monthly or more frequent updates of public meeting agendas or minutes." The website notice must appear on either: (1) the public body's homepage, or (2) a separate webpage dedicated to public notices for special and rescheduled regular meetings. If the latter, the separate webpage must be accessible from the public body's homepage via a "prominent and conspicuous link" that "clearly describes its purpose."

Importantly, the website notice must contain OMA-required information for meeting notices regardless of whether the website notice is posted on a public body's homepage or on a separate webpage. The following details must be included to satisfy OMA requirements:

- The public body's name, address, and phone number; and
- The date, time, and location of the meeting.

The OMA does not require that the meeting's purpose or the meeting agenda be included in the meeting notice. Local policies and bylaws, however, should be consulted to determine if such information must be included, as well as any other local requirements related to meeting notices.

The website notice is in addition to, and does not substitute for, the OMA's requirement to post a physical meeting notice "in a prominent and conspicuous place at

. . . the public body's principal office." Both the physical meeting notice and the website notice must be posted at least 18 hours before the special or rescheduled regular meeting.

To document that the website notice was posted in a timely fashion and with the information required by the OMA, we recommend printing a screenshot of the notice as it appears on the website immediately after it is posted. If the notice is posted on a dedicated webpage for meeting notices, screenshots of both that separate webpage, and the website's homepage (to show the "prominent and conspicuous link" to the notice webpage), should be printed.

A suggested meeting notice form is attached to this newsletter. We recommend using this form for both the website and physical meeting notice.

Labor Relations

Updated Job Descriptions Are Important For Disability Accommodation Requests

The Sixth Circuit Court of Appeals recently reinstated an employee's lawsuit under the Americans with Disabilities Act finding that the trial court inappropriately failed to consider job descriptions in evaluating an employee's essential job functions for analyzing accommodation requests. *Henschel v Clare Co Rd Comm'n*, Docket No. 13-1928 (CA 6, 2013).

Wayne Henschel was an Excavator Operator for the Clare County Road Commission when he lost his left leg in an off-duty motorcycle accident. His employment was covered by a collective bargaining agreement between the Road Commission and a local union. He was off work for a few months recovering from his injuries, during which time he was fitted with a prosthetic leg. While recovering, he notified the Road Commission that he wanted to return to work once he reached maximum medical improvement.

As an Excavator Operator, Henschel operated heavy equipment used for digging ditches and trenches. The equipment was delivered to work sites on a trailer pulled by a manual transmission semi-truck. Before his accident, Henschel hauled the equipment to the work site 70% of the time; other Road Commission staff hauled it to the site 30% of the time. But Henschel's Excavator Operator job description did not list equipment hauling as an essential function. Rather, equipment hauling was identified as an essential function within the Truck/Tractor Driver job description.

Following Henschel's recovery, the Michigan Traffic Safety Division granted him a medical waiver allowing him to retain his commercial driver's license, but limiting him to driving automatic transmission vehicles. Because hauling the excavation equipment to a job site required him to operate a manual transmission truck, he could no longer perform that duty. The Road Commission attempted to return Henschel to a position that did not require him to haul equipment to a job site, but no open positions existed. The Road Commission also concluded that it could not displace other union employees to give Henschel a new job without violating the collective bargaining agreement. Unable to "reasonably accommodate" Henschel's request to return to work, the Road Commission terminated him.

The trial court agreed with the Road Commission's reasoning and affirmed Henschel's termination. On appeal, the Sixth Circuit concluded that the trial court inappropriately failed to consider job descriptions in determining that hauling equipment to a job site was an essential function of the Excavator Operator position. The court recognized that the Truck/Tractor Driver position description identified this as an essential function – not the Excavator Operator description.

The regulations accompanying the ADA provide seven nonexclusive factors to determine whether a particular job function is essential:

(1) The employer's judgment as to whether the functions are essential;
(2) Written job descriptions prepared before advertising or interviewing the applicants for the job;
(3) The amount of time spent on the job performing the functions;
(4) The consequences of not requiring the incumbent to perform the functions;
(5) The terms of the collective bargaining agreement;
(6) The experience of past incumbents in the job; and
(7) The current work experience of the incumbents in similar jobs.

The trial court relied upon: (1) Road Commission testimony that hauling is an essential function of the Excavator Operator position; (2) its own conclusions that the position would fundamentally change if that responsibility was given to another employee; and (3) the lack of other Road Commission employees to undertake that responsibility. However, the Sixth Circuit concluded that the job descriptions should have been given more weight, particularly because the essential function that Henschel could not perform was the express responsibility of another position. The court concluded that, minimally, a jury must determine whether hauling the equipment was an essential function of Henschel's Excavator Operator position.

This decision highlights the importance of ensuring that position descriptions remain current and accurate. If "essential functions" in position descriptions do not reflect current employment practices, they must be revised or they may create difficult evidentiary burdens to

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overcome when analyzing employee accommodation requests under the ADA. Failing to maintain updated position descriptions may require an employer to restructure its workforce if an employee makes an accommodation request inconsistent with current practices but consistent with an outdated position description.

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Teacher Ineligible for Unemployment Benefits after Resignation in Lieu of Termination

Thrun Law Firm successfully defended a school district against a teacher's claim for unemployment benefits when she resigned in lieu of termination. *Skunda and Clinton Cmty Schs*, Unemployment Insurance Agency Docket No. 13-014796-UA (January 31, 2014).

The school district sought the teacher's discharge based on misconduct and performance issues. The district drafted tenure charges, but the charges were never filed with the board. The parties settled, and the teacher signed a resignation agreement. The teacher then submitted an application for, and was granted, unemployment compensation benefits. Later, the Unemployment Insurance Agency determined that the teacher's voluntary resignation disqualified her from receiving benefits. The teacher appealed.

At hearing, the teacher alleged that she quit her job because the school district threatened to terminate her employment. In other words, she argued that her resignation was not "voluntary." The term "voluntary" means a choice between alternatives that ordinary people would find reasonable. A voluntary resignation is one that is unrestrained, volitional, and freely chosen.

The Administrative Law Judge pointed to specific language in the resignation agreement that supported the teacher's voluntary resignation - in particular, that she consulted with legal counsel and acknowledged that her voluntary resignation disqualified her from unemployment compensation benefits. The ALJ further found that her resignation was not for "good cause attributable to the employer," which exists when the employer's actions cause a reasonable, average, and otherwise qualified worker to give up his or her employment. While the teacher had a difficult choice - resign or be terminated - the ALJ concluded that she did not have a good reason attributable to the school district which made her resignation involuntary.

The district took two important steps to place it in a favorable position at hearing. First, the district used a comprehensive resignation agreement to sever the employment relationship to disqualify the employee from a subsequent unemployment compensation claim. The ALJ repeatedly cited the parties' resignation agreement as evidence of the voluntariness of the teacher's actions, her waiver of rights and claims against the school district, and her legal representation through the union to assist her in understanding the resignation agreement. Without a well-drafted resignation agreement, the result in this case could have been different.

Second, the district immediately sought the assistance of legal counsel upon learning the teacher filed for unemployment compensation. Raising the voluntary nature of the teacher's resignation and submitting the resignation agreement as evidence early in the proceedings narrowed the issues and helped the district achieve a successful outcome.

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Sixth Circuit Denies Employee's FMLA Retaliation Claim

The Sixth Circuit Court of Appeals recently held that: (1) investigating possible abuse of leave under the Family and Medical Leave Act is not an "adverse employment action," and (2) working for another employer while on FMLA leave gives the employer a legitimate non-discriminatory reason to impose an unpaid suspension. *Murphy v The Ohio State Univ*, Docket No. 12-4391 (CA 6, 2013).

Pamela Murphy worked as a dispatcher for the Department of Public Safety at Ohio State University. Murphy arrived at work one day to find that the lot where she typically parked was closed for a football game. After being told that she needed to pay to enter the lot, Murphy drove around a barricade, over a curb, and through the grass to reach a parking spot. A police officer cited Murphy for disobeying his command and sent a copy of the citation to the OSU Department of Public Safety.

Three days later, Murphy began an unrelated FMLA leave. OSU later learned that Murphy worked as a part-time dispatcher for another employer during her leave. When Murphy returned to OSU from her leave, she was notified that both the parking lot incident and the potential misuse of FMLA leave were under investigation. After a hearing, Murphy received a three-day unpaid suspension. Murphy sued, alleging, among other things, that OSU retaliated against her for taking FMLA leave.

Murphy argued that OSU lacked a legitimate nondiscriminatory reason to suspend her for three days. While acknowledging that a three-day suspension is an adverse employment action, the court found that OSU had legitimate nondiscriminatory reasons for the suspension, as Murphy showed poor judgment at the parking lot and worked for another employer while on FMLA leave (even though her medical documentation said that she could not work during the leave period). The court held that the three-day unpaid suspension was reasonable because it

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was based on facts obtained through an investigation and hearing.

School officials should exercise caution before taking adverse action against an employee related to FMLA leave. An employee's legitimate use of FMLA leave cannot be considered a negative factor in employment decisions. It is also unlawful for an employer to retaliate against an employee for opposing an employment practice that violates the FMLA or for the employee's involvement in an investigatory proceeding related to the FMLA.

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Court Dismisses Employee's First Amendment Facebook "Venting" Claim

A Mississippi federal court ruled that a public employee's online "venting" about her employer on Facebook was not protected by the First Amendment. *Graziosi v City of Greenville*, Case No. 4:12CV68-DA5 (ND MS, 2013).

Susan Graziosi was a police officer in Greenville, Mississippi. While off duty, Graziosi used her personal Facebook account to publish a "status report" criticizing the mayor and police chief for failing to send a representative to a police officer's funeral. She later posted the same criticism on the mayor's Facebook page. Graziosi complained that the police department no longer had "leaders" and that she was "amazed every time [she] walk[ed] into the door." She posted, "If you don't want to lead, can you just get the hell out of the way."

Shortly after posting those comments, Graziosi was discharged for violating the police department's policy manual, including: (1) maliciously criticizing the work manner of another and circulating malicious gossip; (2) chronic complaining about operations to the extent that supervisors spent excessive time addressing issues caused by the complaints; and (3) insubordination. In response, Graziosi sued, alleging that the City of Greenville and the police chief violated her First Amendment rights by discharging her for posting comments on Facebook.

Whether a public employee's speech is entitled to protection is determined by a test articulated by the U.S. Supreme Court in *Pickering v Bd of Educ*. Under the *Pickering* test, a public employee's speech is protected if: (1) it addresses matters of public concern made primarily in the public employee's role as a citizen and not as an employee, and (2) the public employee's interest in commenting on matters of public concern outweighs "the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees."

A public employee's right to freedom of expression, therefore, has limitations. The U.S. Supreme Court has ruled that if a public employee makes statements pursuant to his or her official duties, the employee is not speaking as a "citizen" for First Amendment purposes and may be disciplined by the public employer.

Graziosi claimed that her Facebook posts were constitutionally-protected speech because she addressed a matter of public concern as a citizen, not an employee. She argued that whether Greenville's municipal funds should have been spent on an officially-sanctioned police representative to attend the officer's funeral was a "concern about the community," and that her statements did not involve any internal police department policy or practice.

The court disagreed, ruling that Graziosi's statements questioned the police chief's leadership due to her frustration with his recent decisions that she made "from her perspective as a disgruntled police officer, not a concerned citizen." The court found that Graziosi did not speak on an issue that related to the public safety or trust the public had in the police department, "but rather an internal decision of the department." Graziosi's statements were not entitled to First Amendment protection because they were made as a police department employee and did not address a matter of public concern.

The court also noted that, even if Graziosi had spoken as a citizen on a matter of public concern, the police chief had adequate justification to discharge her. The court reasoned that Graziosi's Facebook comments created a "buzz" around the police department and it was only logical that the police chief knew the comments were disrupting his leadership in the office and should be addressed. Based on those disruptions, the court found that the police chief had reason to fire Graziosi to "promote the efficiency of the services of the police department," which "outweigh[ed] Graziosi's interests as a citizen in commenting on a matter of public concern."

Importantly, the court distinguished Graziosi's Facebook venting from other forms of public employee speech that are constitutionally protected, such as accusations of police misconduct through illegal wiretapping and maintaining files about noncriminal matters. The court stated that, although speech about such misconduct affects the working relationship of those within the department, "this exigency pales before the need of the public to know of the malfeasance involved" and the "right of the (plaintiff officer) to make it known both for his own protection and as his duty as a servant to the people."

Although not binding on Michigan school districts, this decision provides guidance about the evolving relationship among social media, public employers, and public employees. As reported in the January 2013 edition of *School Law Notes*, the Michigan Legislature enacted the Internet Privacy Protection Act, which generally prohibits (with limited exceptions) employers and educational institutions from requiring employees,

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applicants, or students to grant access to, allow observation of, or disclose information used to access "personal internet accounts," including social media websites such as Facebook and Twitter. While employees' online social media accounts are entitled to some protection under Michigan and federal law, the *Graziosi* decision supports a position that online comments made by public employees that do not address a public concern are not entitled to First Amendment protection.

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Special Education

Virtual Students Have FAPE Rights, Too

The Office for Civil Rights investigated an Ohio online charter school and determined that the school was in violation of Section 504 of the Rehabilitation Act. *Virtual Cmty Sch of Ohio*, 62 IDELR 124 (Nov 6, 2013).

The Virtual Community School of Ohio is not affiliated with any "traditional" school or intermediate school district. It has statewide participation and currently serves 1,200 students. More than half of its students are students with disabilities.

Following its investigation, OCR determined that the school performed no testing before placing students on Section 504 plans and, instead, referred parents to outside providers, requiring them to bear the evaluation costs. The school, which had been in operation since 2001, never established policies and procedures under Section 504. OCR found that the school failed to comply with evaluation and placement requirements, did not evaluate students before developing 504 plans for them, did not re-evaluate students, and permitted a single person to determine eligibility.

The school entered into an extensive voluntary resolution agreement with OCR, which required the proper evaluation of students currently on Section 504 plans to determine eligibility and the necessity of compensatory education.

OCR's investigation serves as a reminder that all public schools (whether virtual, traditional, or a hybrid) have obligations under Section 504, such as providing a free appropriate public education to eligible students, child find, and conducting evaluations and reevaluations.

School officials also should consider their obligations under Section 51a(14) of the State School Aid Act, which makes a student's resident school district or ISD responsible for the special education for a student enrolled in a public school academy outside the student's ISD of residence, unless there is a written agreement between the PSA and the resident district or ISD. Under Section 51a(14), a student could enroll in a PSA operating as a cyber-school hundreds of miles away and the resident district would be responsible for providing and paying for the student's special education.

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Student Issues

Sixth Circuit Upholds School's Procedural Safeguards for Student Suspension and Expulsion

The Sixth Circuit Court of Appeals recently held that a Michigan school district provided sufficient procedural safeguards before suspending, and ultimately expelling, a student. *C.Y. v Lakeview Pub Sch Dist*, Case No. 13-1791 (CA 6, 2014).

C.Y., a high school freshman, brought a steak knife to school and showed the knife to a friend, saying she planned to stab another student. When other students informed Assistant Vice-Principal Heather Huber about those threats, Huber sought out C.Y. but learned she had already left school. Huber then questioned other students about those incidents and obtained their written statements. Finally, Huber telephoned C.Y.'s mother to explain the allegations and schedule a meeting.

The next morning, Huber met with C.Y. and her mother. Huber explained that several students told her that C.Y. had brought a knife to school. C.Y. admitted telling other students she had brought a knife to school, but denied actually bringing it to school. Huber sent C.Y.'s mother a letter the next day explaining that C.Y. was suspended for possessing a weapon on school property and that C.Y. might be expelled.

One week later, the superintendent held a pre-expulsion hearing, in which he explained the allegations against C.Y., her potential punishment, and the hearing procedures. Ultimately, the board expelled C.Y.

C.Y. sued the school district, claiming school officials violated her "procedural due process rights." The Sixth Circuit disagreed, holding that the procedural safeguards provided to C.Y., including Huber's phone call to C.Y.'s mother, the initial meeting, and the pre-expulsion and expulsion hearings, were sufficient to satisfy the school district's procedural due process obligations.

Procedural due process claims are based on the Fourteenth Amendment to the U.S. Constitution, which prohibits states and their political subdivisions (*e.g.*, public schools) from depriving any person of "life, liberty, or property (*i.e.*, the right to a free public elementary and secondary education) without due process of law." Courts have interpreted this language to mean that governmental entities may not deprive any person of

property (*i.e.*, the right to a free public elementary and secondary education) without providing that person with both notice and an opportunity to be heard. The extent of procedural due process that school officials must provide students facing discipline depends on the severity of the discipline involved.

C.Y.'s 10-Day Suspension. The U.S. Supreme Court has set forth the minimum due process requirements for students facing a suspension of 10 days or less:

(1) An oral or written notice of the allegations;

(2) An explanation of the evidence school authorities have against the student (if the student denies the charges); and

(3) An opportunity for the student to present his or her side of the story.

C.Y. claimed that Huber violated her procedural due process rights when Huber suspended her over a telephone call with C.Y.'s mother, arguing that Huber neither informed her about the allegations against her nor gave her an opportunity to respond.

The Sixth Circuit disagreed. The court noted that if C.Y. been at school when Huber learned about the threats, it would have been reasonable for Huber to ask C.Y. not to come to school until Huber had an opportunity to meet with her. Huber instead scheduled a meeting with C.Y. for the next morning and, during the meeting, informed C.Y. of the allegations against her and gave her a chance to respond. The court held that this meeting satisfied the procedural due process requirements to impose the ten-day suspension.

C.Y.'s Expulsion. The Sixth Circuit has established minimal requirements that Michigan school officials must meet before expelling a student:

(1) A hearing before an impartial trier of fact (but not necessarily a "full-blown" administrative appellate process);

(2) An explanation of the evidence school authorities have against the student; and

(3) An opportunity for the student to explain evidence and present his or her side of the story.

A student facing expulsion does not, however, have the right to cross-examine witnesses.

When it came to her expulsion, C.Y. argued that school officials violated her procedural due process rights when they did not allow her to read the other students' written statements. However, the court held that, although the school officials were required to disclose to C.Y. the substance of the evidence against her, they were not obligated to grant her access to the students' written statements.

The court noted that Huber had informed C.Y. about the substance of the students' statements and did not withhold any essential facts. Therefore, the court held that school officials provided C.Y. with sufficient procedural due process before her expulsion.

As demonstrated by this decision, the extent of procedural due process required depends on the severity of the discipline involved. School officials should ensure that students receive sufficient notice of the charges to grant that student an opportunity to be heard before imposing a suspension or expulsion.

To assist our clients with the student discipline process, Thrun Law Firm has compiled a "Student Discipline Packet," which provides guidance to school officials and includes, among other things: student discipline policy recommendations, a draft board policy, board resolutions, letters to parents, and a "Student Discipline Checklist". A "Thrun Law Firm Student Discipline Packet" order form is attached. For questions about the Student Discipline Packet, contact attorney Robert A. Dietzel at: (517) 374-8858.

Reporting Child Abuse

The U.S. Government Accountability Office issued a report on January 27, 2014, reiterating a finding a decade ago that nearly 10% of all students have been sexually abused by school employees. The report reminds school administrators, counselors, and teachers of their obligation to report sexual abuse and other forms of child abuse and neglect. The failure to report and cooperate with law enforcement may subject certain staff members to criminal sanctions. The two cases described below provide examples of how school officials can be held responsible for obstructing justice or failing to report child abuse.

Steubenville, Ohio

In a case drawing national attention, two high school football players were found guilty of sexually assaulting an intoxicated 16-year-old girl. The assault was documented by the assailants and other students through video, photographs, and social media. When rape accusations were made, one football player allegedly texted another student to brag that his football coach had handled the situation. School officials allegedly tampered with evidence, obstructed the investigation, falsified information, and obstructed official law enforcement business. The prosecutor indicted the superintendent and three administrators on obstruction of justice charges.

Michigan school administrators also may face obstruction charges if they interfere "with the orderly administration of justice." Obstruction may occur if an administrator destroys evidence or otherwise acts to

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impede or obstruct an individual seeking justice in a court or from another tasked with administering that justice. Administrators may also face felony charges for obstructing an officer in the performance of his or her duties. Depending upon the circumstances surrounding such an assault, school officials also may be required to promptly and thoroughly investigate the alleged incident under the school's code of student conduct and anti-bullying and anti-harassment policies.

School administrators should avoid even the impression of interfering with an investigation. Care should be taken to avoid and prevent destruction of potential evidence, whether intentional or inadvertent.

Houston, Texas

In a less publicized case, school administrators were charged in connection with a teacher-student assault when video of a teacher kicking and beating a child in the school hallway was captured and spread over the Internet. Although the teacher was discharged, administrators failed to report the abuse within the time limits mandated by law and were later indicted.

Michigan's Child Protection Law imposes a duty on certain individuals to report child abuse or neglect. Mandatory reporters include, but are not limited to nurses, psychologists, social workers, school administrators, school counselors, school teachers, and regulated child care providers.

Mandatory reporters must immediately make a verbal report of suspected abuse or neglect and then file a written report within 72 hours of the verbal report. Incidents must be reported when there is "reasonable cause" to suspect child abuse or neglect. Failure to comply with Child Protection Law reporting requirements may result in a fine, civil liability, or up to 93 days in jail.

Recent Legislation

In last month's *School Law Notes*, Thrun Law Firm alerted our clients to the passage of the OK-2-Say anonymous student safety reporting system. The OK-2-Say system is intended to increase student safety by providing an avenue for students, parents, and others to anonymously report incidents that threaten the safety of students. With the advent of OK-2-Say, schools may experience an upswing in abuse and neglect allegations. School administrators should review their district's reporting and investigative procedures and should further consider school-wide Child Protection Law refresher training to ensure that school employees do not inadvertently run afoul of the law.

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MDE Policy Recommendations: Head Lice & Bed Bugs

Pediculosis humanus capitis ("head lice") and cimex lectularius ("bed bugs") can cause anxiety and even panic among parents, students, and teachers. To address those concerns, the Michigan Department of Education has published guidance on how to respond to head lice and bed bugs. MDE also has provided school policy recommendations, although policies addressing head lice and bed bugs remain within the discretion of local schools.

Head Lice

MDE's "*Michigan Head Lice Manual*", updated August 2013, advised against historically-used "no nit" policies banning students from school who have head lice, eggs, or nits on their hair. MDE instead recommends policies that focus on the exclusion of "active infestations," defined as "the presence of live lice or nits found within one quarter inch of the scalp."

MDE also advises against "mass screenings" and instead recommends examining a student suspected of having an active case of head lice privately and confidentially. If a student has an active case of head lice, MDE suggests the following procedure:

- *Return the Student to Class*: The student may return to class but should be restricted from activities involving close head-to-head contact or sharing personal items with other students. The student may return home at the end of the school day and should be allowed to ride the bus.
- *Notify the Parent*: Directly notify the student's parent of the head lice and send home a copy of MDE's Head Lice Manual.
- *Reexamine the Student*: A parent must accompany the student to the school office the following day with confirmation of treatment. Designated personnel should re-examine the student's hair. If live lice are found, the student may not be readmitted to class and school administrators should review lice removal techniques with the parent and send the student home. If live lice are not found, the student may return to class.
- *Continue Discrete Inspections*: Over the next few weeks, designated personnel should periodically check the student to ensure the head lice have been successfully treated.

Bed Bugs

In May 2010, MDE published guidance addressing bed bugs in schools entitled "*Bed Bugs: What Schools Need to Know*." This manual explains that, unlike head lice, bed bugs do not live on a person. Bed bugs can,

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however, “hitchhike” between persons through clothing and backpacks.

If a suspected bed bug is found on a student, MDE suggests the following procedure:

- *Examine the Student*: Discretely remove the student from the classroom that designated personnel can examine the student and the student’s belongings. MDE advises against removing the student from school “unless repeated efforts have been made to remedy the situation.”
- *Notify the Parent*: Contact the student’s parents to notify them of the bed bugs. The school may also send home a bed bug inspection documentation form. If the student continues to come to school with bed bugs on the student’s clothing or belongings, school administrators should contact the appropriate agencies to assist the parent in treating the home for a possible bed bug infestation.

Because bed bugs live on clothing, MDE suggests requiring that the student bring a recently-washed change of clothing to school in a plastic bag for the student to change into. MDE also suggests placing clothing infested with bed bugs into a dryer, as running a dryer cycle kills any bed bugs attached to the clothing.

If a suspected bed bug is found in the classroom, MDE recommends sending a notice to parents of all students in the affected classroom. Before a pesticide application occurs in a school building, school officials must provide parents or guardians at least 48 hours advance notice. If there is a confirmed infestation of bed bugs in the classroom, school administrators should contact a licensed pest management professional for assistance.

The “*Michigan Head Lice Manual*” and “*Bed Bugs: What Schools Need to Know*,” including sample notifications and letters to parents, can be accessed via links at www.ThrunLaw.com

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Client Seminars

UPCOMING CLIENT SEMINARS

As part of its service to its retainer clients, Thrun Law Firm, P.C., will host its annual client seminar at five locations this spring. Attached to this edition of School Law Notes you will find the registration materials, as well as other details about the events. You may register online at www.ThrunLaw.com/Spring2014.

Thrun Law Firm will again be offering State Continuing Education Clock Hours (SCECH) for attending one of our spring seminars. SCECH credit has been authorized by the Michigan Institute for Educational Management (MIEM). To earn the 3 SCECH credit hours, it will be necessary to attend the general session, as well as one of the early sessions ("Protecting the District From Liability - Nuts and Bolts in Business Contracting" or "Hot Topics in Negotiations"). MIEM charges a $15.00 fee to each person seeking SCECH credit. Fees will be collected at each seminar site. Any checks should be made payable to "MIEM."

As always, we look forward to seeing you at these upcoming events.

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THRUN LAW FIRM, P.C.

NOTICE OF [SPECIAL/RESCHEDULED REGULAR] SCHOOL BOARD MEETING

PLEASE TAKE NOTICE THAT THERE WILL BE A [SPECIAL/RESCHEDULED REGULAR] MEETING OF THE BOARD OF EDUCATION OF ________________________, MICHIGAN;

DATE OF MEETING: ______________________________, 20_____

PLACE OF MEETING: ____
(place and address)

HOUR OF MEETING: ______________________ o'clock, ______.m.

TELEPHONE NUMBER OF PRINCIPAL OFFICE OF BOARD OF EDUCATION: ____

BOARD MINUTES ARE LOCATED AT THE PRINCIPAL OFFICE OF THE BOARD OF EDUCATION: ____
(address)

____
Secretary, Board of Education

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

Date	Organization	Attorney(s)	Topic
March 5, 2014	Michigan Council for Exceptional Children 74th Annual Conference	Daniel R. Martin	Laying Down the Law
March 7, 2014	Shiawassee RESD	Michele R. Eaddy	Special Education Discipline
March 13, 2014	MNA	Lisa L. Swem	Teacher Evaluation
March 13, 2014	Michigan School Public Relations Association MSPRA Annual Conference 2014	Ryan J, Nicholson Fredric G. Heidemann	Copyright Issues in School Media
March 13, 2014	Wayne County School Business Officials	Beverly J. Bonning	Cash Flow Borrowing/Millage Renewal Options
March 18, 2014	MASSP	Lisa L. Swem	Student Handbooks
March 19, 2014	MIEM	Mike Farrell Roy H. Henley Robert G. Huber Ryan J. Nicholson Brandon C. Walker	Labor and Employment Law Update
March 27, 2014	MSHA Annual Conference	Michele R. Eaddy	Hot Topics in Special Education Law: IDEA, Section 504 and Beyond
April 16, 2014	Thrun Law Firm – Marquette Seminar	Thrun Law Firm Attorneys	Thrun Law Firm Spring Seminar 2014
April 18, 2014	Mecosta-Osceola ISD (County School Board Meeting)	Kevin S. Harty	School Law Update
April 23, 2014	Thrun Law Firm – Mt. Pleasant Seminar	Thrun Law Firm Attorneys	Thrun Law Firm Spring Seminar 2014
April 24, 2014	Thrun Law Firm – Gaylord Seminar	Thrun Law Firm Attorneys	Thrun Law Firm Spring Seminar 2014
April 24, 2014	Kent ISD	Lisa L. Swem	Title IX Coordinator Training
April 25, 2014	MCAASE	Michele R. Eaddy	Special Education Legal Update
April 29, 2014	MASSP Law Conference	Lisa L. Swem	School Law Update
April 30, 2014	Thrun Law Firm – Grand Rapids Seminar	Thrun Law Firm Attorneys	Thrun Law Firm Spring Seminar 2014
May 1, 2014	Thrun Law Firm – Livonia Seminar	Thrun Law Firm Attorneys	Thrun Law Firm Spring Seminar 2014

Date	Organization	Attorney(s)	Topic
May 5, 2014	MPAAA Spring Conference 2014	Lisa L. Swem	School Law Update
May 6, 2014	MSBO Human Resources Pre-Conference	Eric D. Delaporte	Conducting an Investigation
May 7, 2014	MSBO Annual Conference	Beverly J. Bonning	Property Tax, Headlee, Truth-in-Taxation
		Margaret M. Hackett/Kari S. Costanza	Shared Services and Privatization Agreements
		Matthew F. Hiser and Daniel R. Martin	Ethics and Fiduciary Responsibilities of Business Professionals
		Christopher J. Iamarino	School Law Update
		Jeffrey J. Soles	New School Loan Revolving Fund Rules
		Lisa L. Swem	Fact Finding: How to Be Prepared
May 8, 2014	MSBO Annual Conference	Robert A. Dietzel	ABC’s of Student Activity Funds, Fees and Pay-to-Play
		Michael D. Gresens	Post-Issuance Debt Compliance
		Fredric G. Heideman	Financing for Short Useful Life Purchases
		Jeffrey J. Soles	Bonding Under the “Cap”
		Gordon W. VanWieren	Protecting Your School District’s Property Tax Base
August 5, 2014	West Shore ESD	Lisa L. Swem	School Law Update

2014 CLIENT SEMINARS

Thrun Law Firm will present its annual seminar for school administrators and school board members on current developments in school law. The alternative dates and locations are:

Wednesday, April 16, 2014	Landmark Inn 230 North Front Street, **Marquette**
Wednesday, April 23, 2014	Mt. Pleasant Comfort Inn & Suites 2424 South Mission, **Mt. Pleasant**
Thursday, April 24, 2014	Otsego Club 696 M-32 East, **Gaylord**
Wednesday, April 30, 2014	Kent ISD Conference Center 1633 E. Beltline Avenue NE, **Grand Rapids**
Thursday, May 1, 2014	VisTaTech Center, Schoolcraft College 18600 Haggerty Road, **Livonia**

The following subject areas will be addressed during the general session:

- *Labor and Employment*
- *Finance and Elections*
- *Tax Tribunal Issues*
- *Special Education*
- *Legislative Review*
- *First Amendment: Off-Campus Student and Employee Speech*
- *Student Issues*

This year we will also offer two separate and simultaneous early session programs featuring **(1)** *Protecting the District From Liability - Nuts and Bolts in Business Contracting* and **(2)** *Hot Topics in Negotiations*. Program times are as follows:

MARQUETTE		**GAYLORD and MT. PLEASANT**	
Early sessions:	1:30-2:05 p.m.	Early sessions:	12:30-1:05 p.m.
Main session:	2:10-5:10 p.m.	Main session:	1:10-4:10 p.m.
Reception:	5:10-6:10 p.m.	Reception:	4:10-5:10 p.m.
GRAND RAPIDS		**LIVONIA**	
Early sessions:	12:30-1:05 p.m.	Early sessions:	8:45-9:20 a.m.
Main session:	1:10-4:10 p.m.	Main session:	9:25 a.m.-12:25 p.m.
Reception/Open House :	at Thrun's West Michigan office	Luncheon:	12:25-1:25 p.m.

You may register online at www.ThrunLaw.com/Spring2014 or you may complete the attached registration form and return it to us. You may also register by sending an e-mail to Barb Feldkamp at BFeldkamp@ThrunLaw.com with the requested registration information. There is no registration fee for our retainer clients. SCECH credit is available for those attending an early session, as well as the main session.

Thank you.

THRUN LAW FIRM, P.C.

2014 CLIENT SEMINAR REGISTRATION FORM

I/We will attend the seminar on:

_____ **Wednesday, April 16, 2014**
Landmark Inn, 230 North Front Street, **Marquette**
Early sessions: 1:30-2:05 p.m. / Main session: 2:10-5:10 p.m. / Reception: 5:10-6:10 p.m.

_____ **Wednesday, April 23, 2014**
Mt. Pleasant Comfort Inn & Suites, 2424 South Mission, **Mt. Pleasant**
Early sessions: 12:30-1:05 p.m. / Main session: 1:10-4:10 p.m. / Reception: 4:10-5:10 p.m.

_____ **Thursday, April 24, 2014**
Otsego Club, 696 M-32 East, **Gaylord**
Early sessions: 12:30-1:05 p.m. / Main session: 1:10-4:10 p.m. / Reception: 4:10-5:10 p.m.

_____ **Wednesday, April 30, 2014**
Kent ISD Conference Center, 1633 E. Beltline Avenue NE, **Grand Rapids**
Early sessions: 12:30-1:05 p.m. / Main session: 1:10-4:10 p.m. / Reception-Open House to follow at our West Michigan office less than a mile away. Take E. Beltline south .3 mile. Make a U-turn onto E. Beltline heading north. Go .2 mile to Eaglecrest Drive on your right. Take the first right onto Eagle Park Drive. Our office is located at 3260 Eagle Park Drive NE, Suite 121.

_____ **Thursday, May 1, 2014**
VisTaTech Center, Schoolcraft College, 18600 Haggerty Road, **Livonia**
Early sessions: 8:45-9:20 a.m. / Main session: 9:25 a.m.-12:25 p.m. / Luncheon: 12:25-1:25 p.m.

Please identify the name of your School District/Community College:_______________________________________

		I ALSO PLAN TO ATTEND THE EARLY PROGRAM ON:			**INTERESTED IN CEUs:**	
NAME	**POSITION**	*Protecting the District From Liability - Nuts and Bolts in Business Contracting*		*Hot Topics in Negotiations*	Yes **(You must attend an early program for eligibility.)**	No
____________	____________	_______	**-- or --**	_______	_______	_______
____________	____________	_______	**-- or --**	_______	_______	_______
____________	____________	_______	**-- or --**	_______	_______	_______
____________	____________	_______	**-- or --**	_______	_______	_______
____________	____________	_______	**-- or --**	_______	_______	_______
____________	____________	_______	**-- or --**	_______	_______	_______

YOU MAY REGISTER ONLINE AT www.ThrunLaw.com/Spring2014 OR RETURN THE COMPLETED REGISTRATION FORM BY:

MAIL: Thrun Law Firm, P.C.
Attention: Barb Feldkamp
P.O. Box 2575
East Lansing, MI 48826-2575

FAX: (517) 484-0041
PHONE: (517) 374-8859
E-MAIL: BFeldkamp@ThrunLaw.com

Thank you.

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Order Form

Student Discipline Package

School officials struggle to apply the many different laws and requirements for student discipline. To discipline a student, school officials must understand the interplay between constitutional due process requirements; federal law, including the Gun-Free Schools Act, the Individuals with Disabilities Education Act, and Section 504 of the Rehabilitation Act; and state law, including the Revised School Code's mandatory suspension and expulsion requirements.

Many schools have outdated, confusing, and internally inconsistent student discipline policies. Most schools do not have preprinted letters, resolutions, or forms to help officials meet their legal obligations.

Thrun Law Firm has developed a model policy and related documents that address student discipline for both general education and special education students. The policy packet includes the following documents:

- Draft Board Policy
- Letter to Parent: Superintendent Hearing Referral
- Letter to Parent: Board Hearing Referral
- Board Resolution: Possession of a Weapon in a Weapon-Free School Zone
- Board Resolution: Physical Assault Against Employee/Volunteer/ Contractor
- Board Resolution: Physical Assault Against Student
- Board Resolution: Bomb Threat/ Similar Threat
- Board Resolution: Arson or Criminal Sexual Conduct on School Property
- Board Resolution: Other Offenses
- Letter to Parent Following Superintendent Hearing
- Letter to Parent Following Board Hearing
- Letter to County Department of Human Services/Community Mental Health
- Board Resolution Appointing Reinstatement Committee
- Letter to Parent: Receipt of Reinstatement Petition
- Board Resolution: Reinstatement of an Expelled Student
- Letter to Parent: Reinstatement Decision
- Hearing Rights and Procedures
- Student Discipline Checklist

The policy and related documents are intended only for those schools that have, or intend to adopt, a discipline model where building administrators have authority to short-term suspend (*e.g.,* up to 10 days), superintendents or chief executive officers have authority to suspend for a longer term, and the board retains authority to issue long-term suspensions and expulsions. If your school does not use or intend to adopt such a model, you should *not* order this package.

The policy packet will be personalized with your school's name. All of the documents will be sent electronically so that school officials may personalize and print them by filing in a few blanks. The policy and related documents are available for immediate delivery.

The cost of the Student Discipline Policy package is $395.00.

✂- -

I would like ______ copies of the Student Discipline Package.

Name: ______________________________ Title: ______________________________

Email: ______________________________ District/ISD/PSA: ______________________

Shipping Address: ______________________ Billing Address: ______________________

______________________ ______________________

______________________ ______________________

Billing Options (Please check one)

☐ Check Enclosed ☐ Send invoice to billing address** ☐ Include on Thrun Law Firm monthly bill**

____
Signature*

Please return to:

Jill Walker
P.O. Box 2575
East Lansing, MI 48826

Phone: (517) 374-8822
Fax: (517) 484-0041
jwalker@thrunlaw.com

* By my signature, I understand that the Student Discipline Package includes copyrighted documents and that I am purchasing the package for use only in my District/ISD/PSA. I agree that I will not share the documents with others or make copies of the documents for use other than within my District/ISD/PSA unless authorized to do so in writing by Thrun Law Firm, P.C.
** If you request that your District/ISD/PSA be billed for this package, you acknowledge that you are authorized to make purchases on behalf of your District/ISD/PSA.