

MSBO

"School Law Update"

School Law Update



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Caution:

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Topics

- Michigan
 - Legislation
 - Administrative Guidance
 - Court Decisions
- Federal
 - Legislation
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 - Court Decisions

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Michigan Legislative Update

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Section 164k Requirements

Schools must:

- Ensure food made available to students in breakfast or lunch program complies with federal rules for school meals
- Require each household complete child nutrition and education benefits application for free and reduced-price meals
- Not provide financial incentives to students for count day

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More Requirements

Schools must also:

- Ensure student survey questions and results are posted on district website and parents are notified of survey
- Notify parents of K-5 students if *not* using curriculum from MDE's evidence-based curriculum list under Section 1280f

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Section 164k Penalty

MDE will withhold

- 5% of SSAA § 22b per pupil payment to local schools (foundation discretionary per pupil payment) or
 - 5% of the SSAA § 81 payment to ISDs (ISD general operations support)
- for as long as the local school or ISD is out of compliance.

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31aa

- SSAA § 31aa allocated \$321 million to support school safety and student mental health for fiscal year 2025-2026
- Up to \$200 million to districts that **opt in**
 - Available to local districts, ISDs, PSAs, and Michigan Schools for the Deaf and Blind

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31aa Conditions

To receive funding under this section, a district ... must agree to be subject to a **comprehensive investigation**, must affirmatively agree to **waive any privilege** that may otherwise protect information from disclosure in the event of a **mass casualty event**, and must agree to comply with a comprehensive investigation.

MCL 388.1631aa(9)

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"Mass Casualty Event" Defined Broadly

Incidents occurring on school grounds or at school-sponsored events that result in:

1. Significant injuries to not fewer than three individuals,
2. Fatalities,
3. A demand that exceeds normal local emergency response capacity, or
4. A sudden and timely surge of emergency service needs.

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31aa Litigation Update

- Challenged in state and federal court
- *Macomb Intermediate v State of Michigan*
 - December 17, 2025 – COC dismissed case, holding privilege waiver broad and coercive but not unlawful
 - December 19, 2025 – appealed COC decision
 - April 10, 2026 – COA affirmed COC decision
- *Devault v Michigan (ED Mich)*
 - Case stayed pending final outcome in COA

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State School Aid Act § 271

- SSAA § 271 allocated \$203 million for schools to "increase compensation for educators"
- All school employees who are "educators" (defined broadly) are eligible
- Third-party contracted workers assigned to school as "educators" are likely eligible
- Schools must bargain with unions over distribution of 271 funds to bargaining unit members

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Cell Phone Legislation

- PA 2 of 2026 adds RSC § 1303a
- Beginning in 2026-27 school year, school boards must implement policy prohibiting students from using wireless communication devices on school grounds during instructional time
- Policy must specify enforcement mechanisms and be posted to school website

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Exemptions

- Wireless communications device policies must provide exemptions for:
- Medically necessary devices;
 - School-owned devices;
 - School-designated devices for instructional purposes;
 - Devices for special ed programming, Section 504 accommodations, or part of an IEP;
 - Devices for lesson-specific assignments; and
 - Emergency situations (cannot interfere with emergency protocols or first responders or endanger students/staff)

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Dyslexia Screening

- 2024 PA 146, amends RSC § 1280f, eff. 10/10/24
- Requires MDE to provide technical assistance and develop resources on dyslexia

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Dyslexia – Schools Must

- *Train* literacy coaches, consultants, and others on new requirements by 2027-28 school year
- *Update* reading screeners/assessments to identify students with dyslexia by Aug. 1, 2027
- *Screen* students in grades K-3 for dyslexia by 2027-28 school year

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Schools Must Also

- *Provide* tiered interventions for students exhibiting dyslexia characteristics
- *Deliver* accommodations and supports under Section 504 for functional difficulties due to dyslexia characteristics
- *Consider* outside evaluations to determine special education eligibility

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Behavioral Threat Assessment and Management Team

- 2024 PA 272 adds RSC § 1308e
- By October 1, 2026, schools must have Behavior Threat Assessment and Management Team (Mi-BTAM) that includes:
 - School administrator
 - Mental health professional
 - School resource or law enforcement officer

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Standardized Response Terms

- PA 270 and 271 of 2024 adds RSC §§ 1308c and 1308d
- Requires MSP and Commission to establish:
 - Rules for standardized response terminology
 - Color-coded use system
- Schools must implement for 2026-27 school year

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Michigan's Earned Sick Time Act

- PA 2 of 2025, amended ESTA eff. Feb. 21, 2025
- Distinguishes between employers with 10 or fewer employees
- Employee defined as "*individual engaged in service to an employer*"

See LEO ESTA FAQ (last revised 03/07/2025)

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Earned Sick Time

- ER must grant either
 - 1 hour for 30 hours worked (accrual) and carryover (72 hours), **or**
 - At least 72 hours at start of EST benefit year (front loading) and no carryover
- ER determines EST benefit year
- EST may be used in
 - 1-hour increments *or*
 - Smallest amount ER uses to account for other leave categories, e.g., vacation, personal time

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Frontloading

- Employer *not* required to
 - Permit unused EST carryover
 - Pay value of unused EST at year-end
 - Track EE earned sick time accrual
- Employer *may* pro-rate sick time for part-time EE *if*:
 - Written notice of expected hours at hire
 - Front-loaded time proportionate to accrued time
 - EE gets additional time for work beyond predicted hours

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Notice of EST Leave

- *Foreseeable*: ER may require up to 7 days' advanced notice
- *Unforeseeable*: ER may require notice as soon as practicable, or in accordance with policy if:
 - On hire date, Feb. 21, 2025, or effective policy date (whichever is later), ER provided written notice of procedures, *and*
 - EE provided notice after aware of need

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EST Documentation

- ER has right to require reasonable documentation for leave over 3 consecutive days
- EE must provide requested documents within 15 days after ER's request
- ER must pay EE's out-of-pocket expense incurred for documentation

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CBA and Contracts

- EEs covered by CBA *not* subject to ESTA until expiration if CBA "*conflicts with*" ESTA
- EE covered by contract *not* subject to ESTA until expiration if:
 - Contract signed before Dec. 31, 2024
 - Contract effective for 3 year max
 - Contract "*prevents compliance*" with ESTA, *and*
 - ER notifies LEO of contract

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PA 152: Current

- PA 152 (Publicly Funded Health Insurance Contribution Act) requires public employers limit contribution toward employee health insurance plans by implementing **either** a "hard cap" formula **or** an "80/20" cost-sharing formula arrangement
- Hard cap formula based on change in medical care component of U.S. Consumer Price Index for most recent 12-month period

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PA 152 Amendments

- HB 6058 would amend PA 152
 - Future increases based on medical care component of average Michigan health insurance rates, or 3%, whichever is greater
 - Employers required to pay **at least** 80% of total annual costs of medical benefit plans offered
 - Exception: conflicting CBA or contract signed before effective date of amendatory act

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80/20 Comparison

PA 152 Currently:

- public employer may contribute **no more** than 80% toward total medical insurance costs of employees who take medical insurance benefits

New PA 152 Amendments:

- HB 6058 requires all public employers to pay **at least** 80% of total medical benefit plan costs offered or contributed to for employees

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Hard Cap and 80/20 "Either/Or" or "Both/And?"

- Currently: **Either** PA 152 hard cap formula **or** 80/20 formula
- HB 6058 requires any collective bargaining agreement or other contract executed on or after January 1, 2025 to comply with **both** PA 152 hard cap formula **and** 80% minimum employer contribution formula

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Senate v House Mich Court of Claims (Feb 3, 2025)

- Senate sued to compel House to present to Governor 9 bills passed by Legislature in 2024 (including "hard caps" amendment)
- Court recognized Mich Const Art 4 § 33 obligation to present bills to Governor
- But, since Constitution does not specify *who* must do that, "neither will the Court"
- Both parties claimed "victory" and appealed to COA

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Senate v House Mich App (Oct 27, 2025)

- Court: Michigan House leadership violated constitutional duty to present the bill (along with eight others) that passed both chambers to Governor
- Remanded to COC to determine timing for presentation of HB 6058 to Governor
- *December 8, 2025* – House filed appeal with Michigan Supreme Court, oral argument scheduled for May 2026

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Michigan Administrative Guidance

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Revised Health Standards Guidelines

- November 13, 2025 – Michigan State Board of Education approved new health education guidance
- Changed from "grade level content expectations" to "grade span learning goals" (i.e., K-2, 3-5, 6-8, and 9-12)
- Schools have discretion on how to implement at local level within parameters of Michigan law
- Parents retain right to prior notification, review sex ed curriculum, and opt outs

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Personal Brand Activities

- *January 2026* – MHSAA approved policy permitting student-athletes to profit from Personal Brand Activities (i.e., Name-Image Likeness)

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PBA Limitations

No:

- School branding
- Use of school property
- "Pay-for-play" or recruiting inducements
- PBA during school or school-related events
- PBA with inappropriate industries

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PBA Policy Violations

- **Student violation** → student ineligible for interscholastic competition not less than 90 school days after violation
- **School personnel violation** → personnel may be suspended from interscholastic competitions
- **MHSAA-member school violation** → school may have membership status suspended

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Federal Legislative Update

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Web Content & Mobile Apps

- Rule: **web content** and **mobile apps** provided or made available must be readily accessible to and usable by individuals with disabilities (unless exempt)
- Web Content Accessibility Guidelines (2.1) defines accessibility criteria
- Compliance Dates
 - **April 24, 2026** → total population of 50,000 or more
 - **April 26, 2027** → total population of less than 50,000

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Exemptions

1. Archived web content
2. Preexisting conventional electronic documents
3. Third party content
4. Individualized, password-protected, or secured conventional electronic documents
5. Preexisting social media posts

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Michigan Caselaw

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ACLU v City of Grand Rapids Mich App (Dec 11, 2025)

- ACLU submitted FOIA request to City for records related to delays in fulfilling FOIA requests
- City estimated 2 hours and 15 minutes to process and 8 to 10 months to produce; City actually took 3 hours and 30 minutes to process and 13 months to produce
- ACLU claimed excessive delay and constructive denial
- Court: FOIA establishes response deadlines not fulfillment deadlines
- Court held City did not violate FOIA by taking over a year to fulfill ACLU's request

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Rosenberger v Mason Consol STC 25-3 (2025)

- Teacher did not maintain appropriate records and may have used rebates from district purchases for personal purchases
- Found that board should have conducted an evidentiary hearing at the presentation of charges board meeting
- Decision to terminate was arbitrary and capricious
- Ordered 10-day suspension without pay

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**William A v Clarksville
(CA 6, February 3, 2025)**

- Student with disability graduated high school without learning to read despite being capable
- Schools must offer IEPs "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances"
- Court held student denied FAPE because IEP did not address foundational reading skills
- Court awarded 888 hours of compensatory education

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**CS v McCrumb
(CA 6, May 2, 2025)**

- As part of "Hat Day," 3rd-grader wore "Come and Take It" hat to school
- After parent refused to bring replacement, student complied with directive to put the hat in her locker
- Parent sued, alleging violation of 1st and 14th Amendment rights
- Sixth Circuit upheld lower court's dismissal of claim

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Sixth Circuit Caution

*"As a word of caution, we nowhere suggest that the generalized potential for students' discomfort, offense, or other psychological distress, without more, is enough for schools to ban speech on topics such as the Second Amendment. The record **must show** the existence of facts allowing school officials to reasonably forecast a **'substantial disruption of or material interference with school activities.'**"*

CS v McCrumb, quoting Tinker

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Reasonable Forecast of Substantial Disruption

- Absorption of students from Oxford (3 months after tragedy)
- Young age of elementary students
- Hat's provocative message

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Parents Defending Ed v Olentangy Bd of Ed (CA 6, 2025)

- *En banc* panel (10-7) granted injunction barring Ohio school from disciplining students for using "biological pronouns" to refer to transgender and nonbinary individuals without any subjective "ill will" toward those individuals
- Court: school was *not* prohibited from disciplining students for unlawful harassment or bullying

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Halasz v Cass City Pub Schs (CA 6, Dec 18, 2025)

- Students reported 8th grader who made comments at school about possessing a gun
- School officials and MSP detained and questioned student for 30 minutes and conducted search of student's person, backpack, and locker
- No weapons found, but student expelled for 180 days
- Parents sued, alleging unlawful search and seizure and due process violations

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School Seizure Standard

- Seizure Standard: a seizure occurs in a school when officials significantly restrict a student's movement beyond ordinary limitations of the school day
- Court: lawful search and seizure
 - Student held no longer than necessary to investigate and confirm student did not have a gun
 - Requiring student to remove shoes and sweatshirt, raise t-shirt, and pull waistband of his pants was reasonably related to the circumstances

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Reedy v Huron Sch Dist (CA 6, Feb 20, 2026)

- 8 days after Oxford, student told classmate: "shut up or else I'm going to shoot up the school like Oxford"
- Board expelled student after investigation and hearing
- Parent sued, alleging constitutional due process and 1st amendment violations
- Court upheld board's decision to expel
- Court: it is "*reasonable to believe that a threat to shoot up the school caused or was likely to cause a substantial disruption of, or material interference with, school activities*"

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Porter v Jackson Twp Highway Dept (CA 6, Jun 24, 2025)

- EE took FMLA leave after surgery for injured shoulder
- Doctor's note claimed EE was "totally disabled" and upon return subject to strict physical limitations (i.e., no overhead lifting)
- EE was caught doing manual labor while on leave
- Twp fired EE for violating medical restrictions and lying about disability status
- EE claimed FMLA retaliation
- Court: EE did not prove that Twp's decision to fire him was pretext for unlawful discrimination

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SCOTUS

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A.J.T. v Osseo Area Schs 605 US 335 (Jun 12, 2025)

- School denied student with morning seizures request for evening instruction (same length school day as nondisabled peers)
- ALJ and courts affirmed student's IDEA claim for FAPE/compensatory education
- Lower courts dismissed student's separate 504/ADA discrimination claim
- SCOTUS: 9-0 decision to vacate and remand 8th Circuit's dismissal of student's 504/ADA discrimination claim
- Struck down heightened showing of "*bad faith or gross misjudgment*" (also used by 6th Circuit)

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Disability Discrimination Proofs

- *Injunction*: real or imminent threat of substantial or irreparable harm
- *Damages*: intentional discrimination (i.e., deliberate indifference to strong likelihood of violating protected right)

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Ames v Ohio Dep't Youth Srvs 605 US 303 (Jun 5, 2025)

- 9-0 decision vacating and remanding lower court dismissal of "reverse discrimination" Title VII claim under "background circumstances" rule
- Ames, a straight woman, alleged discrimination because she twice lost promotions to other candidates who were gay
- ER argued Ames was not promoted due to lack of leadership skills, not because she was straight

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Mahmoud v Taylor 606 US 522 (Jun 27, 2025)

- 6-3 decision holding parent has 1st Amendment Free Exercise right to exempt child from LGBTQ-themed storybooks instruction

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LGBTQ+-Inclusive Instruction

- Board integrated LGBTQ+-inclusive storybooks in elementary curriculum
- No notice and no opt-out ability
- Parents sought preliminary injunction, alleging curriculum and no opt-out impermissibly burdened their religious exercise
- School argued opt-outs disrupt classroom environment and expose students to social stigma/isolation

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Free Exercise Standard

"A government burdens the religious exercise of parents when it requires them to submit their children to instruction that poses 'a very real threat of undermining' the religious beliefs and practices that the parents wish to instill. And a government cannot condition the benefit of free public education on parents' acceptance of such instruction."

Justice Samuel Alito (June 27, 2025)

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Unconstitutional Burden

- Court: "Board's introduction of the 'LGBTQ+-inclusive' storybooks, along with its decision to withhold opt outs, places an unconstitutional burden on the parents' rights to the free exercise of their religion."
- Strict scrutiny applies (i.e., policy must be narrowly tailored to compelling interest)
- Reversed and remanded for further proceedings with preliminary injunction

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Policy Implications

- *Mahmoud* broadens circumstances by which parents can make Free Exercise claims
- School officials must show a "compelling interest" to not provide prior notice or permit opt-out
- Thrun Policy 5407 (Instructional Program and Curriculum Development)
- Thrun Opt-Out Form 5407-F

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Tuesdays with Thrun Webinars: April

April 28, 2026

- Hot Topics in Public Bargaining: Tenure Cases, MERC Update, & More
- Student Discipline 101 – Back to Basics for Administrators
- Election Planning and Strategies

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Tuesdays with Thrun Webinars: May

May 12, 2026

- Managing your District's Personnel Files
- 1st Amendment Tightrope – Student Activism, Threats, and Social Media
- School Contracting 101

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Questions?



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