

School Law Update

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May 6, 2024



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Caution

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Future legal developments may affect these topics.

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Elliott-Larsen Civil Rights Act Amended

- PA 6 of 2023, amends the ELCRA to include **sexual orientation and gender identity or expression** as protected classes
- Effective Feb 13, 2024

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ELCRA *Again* Amended

- PA 45 of 2023, amends the ELCRA's definition of "race" to clarify that it includes "traits historically associated with race," including hair texture and "protective hairstyles" such as braids, locks, and twists
- Effective June 20, 2023

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PA 54 of 2023
Eff. July 12, 2023

- Recognizes Juneteenth as official State holiday
- If June 19th is on Sunday, holiday will be on Monday
- Aligns with 2021 law recognizing Juneteenth as a federal holiday

MCL 435.101

5

2023 PA 7

Amends RSC § 1280f ("Read by Grade 3") to **repeal** mandatory retention provisions

Effective Feb 13, 2024

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Sinking Fund for Transportation Costs

- PA 26 of 2023, amends RSC § 1212 to permit sinking fund millage to be used for certain transportation costs
- Effective August 6, 2023, *but only* for funds approved on or after that date

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Financial Literacy Course

- Amends RSC § 1278a
 - Begins with 8th-graders in **2023-24** school year
 - Requires ½ credit in personal finance for HS graduation
 - MDE to develop course
 - SBE to approve course
 - RSC § 1278b(12) permits phase-in with MDE approval
- MCL 380.1166b

8

PA 57 of 2023
adds
RSC § 1508
RSC § 1526b

Eff. Oct. 12, 2023

- **RSC § 1508** requires:
 - MDE to *develop* age-appropriate material about sexual assault and harassment and make available by **June 1, 2024**
 - Schools must *provide* material to students grades 6-12 via handbook and website
 - Schools must also provide Title IX policies & Coordinator contact information
- **RSC § 1526b** *encourages* schools to provide staff training at least every 5 years

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New RSC Section 1310e (Effective Sept 27, 2023)

*“Notwithstanding any other provision of this act, except as otherwise provided in subsection (2), the board of a school ...**shall not** expel a pupil, or suspend a pupil for more than 10 school days, for an action that the pupil took **immediately preceding, immediately following, or that could be reasonably tied to an incident in which the pupil reports being sexually assaulted...**”*

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Section 1310e (cont'd)

“...or an incident in which a school official, staff member, or other individual witnesses and reports a sexual assault on the pupil or receives and reports credible evidence that the pupil has been sexually assaulted.”

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Exceptions

- Convicted or pleads to certain assault offenses, attempted murder, homicide, or manslaughter;
- Commits act described in 1311(2) (dangerous weapon possession, arson, CSC);
- Completed Title IX investigation determines by **clear and convincing** evidence that report of sexual assault is conclusively false; or

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Eighth 7th Factor?

“The board...or its designee, considered any reports of sexual assault under subsection (1) and the factors under section 1310d(1) and determined that the expulsion or suspension of more than 10 days is justified.”

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Address Confidentiality Program MCL 780.851

- Effective **June 27, 2021**, available **2023 Second Quarter**
- Statewide program administered by Michigan Attorney General
- Shields person's actual physical address by providing official designated address
- Participants are crime victims or fear disclosure of physical address will increase risk of harm

See MI.GOV/AGCP

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School Cannot Disclose Confidential Address

- Applies to MDE, CEPI, local school district, ISD, PSA, education management organization, authorizing body
- *Shall not* disclose student's address if parent has ACP card and provides notice
- *Presume* that ACP student has opted out of pupil directory information

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ACP: School Transportation

- Parent may provide confidential address or alternate address for student pick-up/drop-off location
- ACP Alternate Bus Form
- Alternate bus stop may be required; must be within transportation zone

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ALTERNATE BUS FORM
— ADDRESS CONFIDENTIALITY PROGRAM

THE INFORMATION ON THIS FORM IS CONFIDENTIAL AND SHOULD NOT BE DISTRIBUTED.

Please fill out this form completely. Submit to all participating, participating bus for school your address. Students may not change bus stops without notification and approval from the Transportation Department. The Transportation Department will notify the parent of the changes within the 10 days.

PLEASE PRINT

Date: School: Grade:

TO BE FILLED OUT BY PARENT

Identify student permission and accept responsibility for my child listed below to be granted the following transportation change for pick up and/or drop off:

Name of Student: _____

Name of Parent/Guardian: _____

Designated Address: _____

Home Phone: Cell Phone: Email: _____

Include the name and phone number of the caregiver, if applicable.

Caregiver's Name: Phone: _____

Alternate Address: _____

Pick Up & Drop Off: Pick Up & Drop Off Pick Up Only Drop Off Only

Days of Week Requested: M Tu W Th F Sa Su

Student can be left unattended at bus stop: Yes No

No transportation bus permission is given to hold this bus stop. Please include address.

Parent Signature: _____

The Transportation Department will use the following information to verify residence when an alternate address is provided:

- The alternate address must be within the same school attendance boundary.
- The stop is not for the 10 days, parents must be able to sign consent and assume responsibility for their address's status.
- The stop is not for the 10 days, parents must be able to sign consent and assume responsibility for their address's status.

CONTACT YOUR DISTRICT FOR TRANSPORTATION POLICIES

BUS OFFICE USE ONLY

Route: Bus: Driver: _____

Stop Location: _____

Approved By: Date: Effective: _____

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ACP: School Enrollment

- Designated address in Ingham County
- Upon request, school *must* use designated address for all purposes
- Participant *not* required to provide school with actual physical address to verify residency
- ACP identity card and school verification letter from AG provides residency proof for school enrollment

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Pre-Enrollment Oral Health Assessments

- Creates program for local childhood dental screenings
- Beginning with 24-25 school year, pre-enrollment (within 6 months) dental screening required for first-time kdg or first-grade enrollment
- Parents must provide an MDHHS form showing proof of screening or a written statement of religious exemption

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Oral Health Assessments

- By November 1 each year, school administrator must provide summary to MDHHS; forms to be provided by MDHHS
- MDHHS encourages schools to provide parents information about the local screening program
- **Students may not be excluded from school for noncompliance**

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Labor Law

- PERA amendments effective 2/13/24
 - Union dues, prohibited, CBA freeze
- RSC amendments effective 7/1/24
 - Placement, layoff/recall, evaluation, merit pay

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Repealed

- Disciplinary Policy for Abortion Referral penalty (Sec. 166)
- Sex Education Complaint Procedure penalty (Sec. 166a)
- Legal Action against the State (Sec. 164g)
- Extended COVID-19 Learning Plan and Reporting Req'ts (Secs. 98a and 98b)

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Amended Title IX Regulations

- Released April 19, 2024
- Effective August 1, 2024

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What's New?

- New "hostile environment" definition
- Procedural changes
- No formal complaint requirement
- Single investigator model options
- Pregnancy protections
- ***New policy and training requirements!***

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Scope

Addresses sex-based discrimination and sex-based harassment as subset of sex-based discrimination

Also addresses discrimination based on:

- Sex stereotypes
- Sex characteristics
- Pregnancy or related conditions
- Sexual orientation
- Gender identity

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Reports & Complaints

A recipient with "knowledge" of conduct that reasonably may constitute sex discrimination must respond promptly and effectively.

All employees who are not "confidential" must notify Title IX Coordinator when they have information about conduct that "reasonably may constitute sex discrimination."

106.44

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Grievance Procedure

- Must have grievance procedures for all sex discrimination complaints that provide for prompt and equitable resolution (including sexual harassment)
- Basic requirements
 - Treat parties equitably
 - T9C, Investigator, or Decisionmaker cannot have conflict of interest or bias
 - Single investigator model permissible
 - Presumption that Respondent is not responsible
 - Establish "reasonably prompt timeframes for major stages of grievance procedures" (evaluation, investigation, determination, and appeal)

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Grievance Procedure (Cont.)

- May adopt different grievance procedures, but must “articulate consistent principles” for when each applies
- For sex-based harassment complaints, grievance procedure must:
 - Describe the range of supportive measures available
 - List or describe the range of potential disciplinary sanctions and remedies

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Sex Separation

- Schools must not separate or treat any person differently based on sex in a manner that subjects them to more than “*de minimis* harm”
- Adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person’s gender identity subjects a person to more than *de minimis* harm on the basis of sex
- Does not address athletics


106.31

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Pre-Employment Inquiries



Cannot inquire as to marital status, including whether an applicant is “Miss or Mrs.”



May only ask about sex if do so for everyone and the response isn’t used as basis for discrimination

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Pregnancy Protections

- > Can't treat individuals differently based on parental, family, or marital status
- > Can't discriminate against individuals based on pregnancy or "related conditions"
- > Must ensure equal access, including:
 - > Reasonable modifications for students
 - > Reasonable break time for lactation for employees
 - > Lactation space for students and employee
- > Documentation requirements limited
- > Notice requirements to students about rights related to these protections

106.31, 106.21, 106.40, 106.57

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What Now?

- Take a deep breath
- Watch for training opportunities and updated policy language/forms
- Training/materials later this summer will include:
 - >All employee training
 - >2024 Comprehensive Training
 - >New Board Policy
 - >New Handbook Language

Contact LSavoie@ThrunLaw.com to be notified when information about these trainings is available

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FOIA and Personal Devices

- FOIA request for "all communications" including emails, texts, DMS, regardless of whether on government-provided or personal device, service, or account
- Court: use of personal devices, services, and accounts in conducting official business "*is inconsequential*" under FOIA.

Progress Michigan v Palmer
Mich App (COA, 2022)

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FOIA and Exempt Information

May exempt person's name/identity if:

- Disclosure would provide "intimate, embarrassing, private, or confidential" information; and
- Revealing the identity would fail to provide insight into government operations or activities

A person's name, by itself, is not personal/private information

Blackwell v U of M (COA, 2023)

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Groff v DeJoy (June 29, 2023)

Reasonable
Accommodation
for Religious
Observance

- Unanimous decision requiring "substantial" (not "*de minimis*") burden for ER's undue hardship under Title VII
- Higher standard for ER to deny religious accommodation request
- Consider "interactive" process to determine accommodation

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Public Officials and Free Speech

Lindke v Freed, 601
US __ (2024)

US Supreme Court crafted new test to determine when a public official's social media use is considered "government action" and subject to First Amendment Claims.

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Public v Private Speech

A public official's social media use (i.e., posts, pictures, comments, etc.) is considered government action if the public official:

1. possessed the actual authority to speak on the government's behalf; and
2. purported to exercise that authority when speaking on social media.

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Think Before Blocking!

Public officials could potentially be liable for constitutional claims if their social media use infringes on the First Amendment rights of others. Officials should:

- Exercise caution when maintaining a social media presence that contains school-related content;
- Communicate official school speech and media on school-sponsored social media accounts;
- Include disclaimer language on private accounts; and
- Maintain clear lines between private social media use and school functions

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Why Can't We Take Them All?

School must demonstrate that it is legally allowed to "count" the student for state aid purposes.

- Section 4, PAM
- Section 6, SSAA

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Most Students

Reside within the boundaries of your district with one or both parents and have not been expelled from your district.

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- School may require reasonable verification of residency
 - Affidavit
 - Utility bills
 - Voter registration
- Parent has burden to prove residency
AG Opinion 5925 (1981)

Residency Verification

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Residency

"... without regard to whether a parent or legal guardian has custody of the child ... the child shall be considered to be a resident of a school district in which either of the child's parents ... or ... legal guardian resides."

MCL 380.1148a

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Residency: Suitable Home

"[A] child whose parents or legal guardians are unable to provide a home for the child"
and who is placed in a

- Licensed home, or
- Relative's home in school district for *"purpose of securing a suitable home for the child and not an educational purpose"*

Shall be considered a resident for education purposes of the school district where the home in which the child is living is located.

MCL 380.1148

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MDE Defines "Relative"

- Parent
 - Grandparent
 - Brother
 - Sister
 - Uncle/Aunt
 - Stepparent
 - Stepgrandparent
 - Stepbrother
 - Stepsister
 - First cousin
- By marriage, blood, or adoption*

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Court or Agency Placement

Child considered resident of district where facility is located

- Juvenile detention facility
- Child caring institution
- Mental health institution
- Licensed home

MCL 380.1148
MCL 388.1606(4)

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Power of Attorney

- Temporarily delegates parent authority
- Can be conferred and revoked by parent
- Court order not required (unlike a guardianship)

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POA and Residency

- POA *alone* does *not* establish residency for school purposes
- AG Opinion 5574 (1979): Distinguishes placement with relative for suitable home from placement with non-relative with POA
- Note: “*in loco parentis*” standard for children of military families, MCL 3.1041

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***Feaster v Portage Public Schs*
451 Mich 351 (1996)**

- School *cannot* require relative to obtain guardianship for student’s enrollment
- School’s enrollment policy exceeded requirements of School Code Sec. 1148

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Counting Nonresident Student in Membership

Educating district must have approval (release) from the student's resident district to count a nonresident student in membership *unless* nonresident student is enrolled under one of the exceptions in the State School Aid Act.

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Common Nonresident Enrollment Options

- Schools of choice student
- Student's residency changed after count day (October) and is enrolled as nonresident before supplemental count day (February) in former district
- Parent/guardian works for district
- Cooperative education program
- Tuition student

MCL 388.1606

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Schools of Choice Law

- Allows enrolling district to count non-resident pupil in membership without resident district approval
- Provides for two types of school of choice:
 - Student resides within same ISD (§105)
 - Student resides in contiguous ISD (§105c)
- Is voluntary; schools must opt in
- Must comply with law to avoid SSAA penalty and count pupil in membership

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State Aid Penalty

Forfeiture of 5% of District's **total** state school aid allocation for failure to comply with §§105 and 105c procedures

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Board Considerations

- Does district want to enroll nonresident students through schools of choice?
- If so, 105, 105c, or both?
- Limited or unlimited openings?
- Openings for first semester or both first and second semester/trimester?

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Limited Openings?

- Publish grades, schools, special programs with available spots
- No later than 2nd Friday in August, district must:
 - notify public that it is accepting applications and when and how to apply
 - establish application period of not less than 15 calendar days but no more than 30

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Post-Application Procedures

- Determine who will be allowed to enroll within 15 calendar days of end of application period, using random draw if necessary
- Notify parent of acceptance, date by which student needs to enroll, and enrollment procedures
- Date of enrollment *shall* be **no later than end of first week of school**

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If Openings Remain

- Beginning on third Monday in August but no later than the end of the first week of school, district may enroll from waiting list, in the order names appear
- If spots remain after filling from waiting list, district may not fill positions under 2nd semester

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Unlimited Openings?

- Can accept applications until end of first week of school
- Provide notice to public of place and manner for submitting applications and whether there's an application period
- Application period must be at least 15 calendar days

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Second Semester/Trimester Choice

- Must publish openings, not later than two weeks before end of first semester or trimester
- May accept applications during last two weeks of first semester
- By beginning of second semester, determine who will be enrolled and notify applicant as required above
- Must enroll no later than the end of the first week of second semester/trimester
- May *not* accept after 2nd semester/trimester

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Non-Discriminatory Selection

May *not* base enrollment on student's:

- Intellectual, academic, artistic, or other ability, talent, or accomplishment, or lack thereof
- ***Mental or physical disabilities if student otherwise meets eligibility criteria***
- Age, if age appropriate for program
- Religion, race, color, national origin, sex, height, weight, marital status, athletic ability, or other state/federal protected status

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“Special Programs”

- Special education programs are not considered “special programs” for SOC purposes
- District must consider SOC application without regard to student's disability status or special education needs

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Past Discipline

- May deny enrollment if applicant:
 - Is, or has been in the previous two years, suspend from *another* school
 - Has ever been expelled from *another* school, or
 - Has been convicted of a felony
- Unless District has already counted student in membership

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“Districts can only use an expulsion, suspension, or felony as selection criteria prior to enrolling the pupil. If this information is not obtained by the choice district until after the pupil has been counted in membership, then the choice district must continue to enroll the pupil in the district.”

Pupil Accounting Manual, 5-I-4

Do Your Homework!

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Enrollment Preference

“A district shall give preference for enrollment under this section ...to other school-age children who reside in the same household as [the enrolled choice pupil].”

MCL 388.1705(12)
MCL 388.1705c(12)

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Right to Continued Enrollment

“A district shall continue to allow a pupil who was enrolled in and attend the district under this section in the school year or semester immediately preceding the school year or semester in question to enroll in the district until the pupil graduates from high school. This subsection does not prohibit a district from expelling a pupil described in this subsection for disciplinary reasons.”

MCL 388.1705(11), 388.1705c(11)

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§105 and Special Education

A student enrolled under §105 who is eligible for special education programs and services is considered a resident of the enrolling district for purposes of providing the student a free appropriate public education.

MCL 388.1705(19)

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§105c and Special Education

To enroll a non-resident special education student who resides in a contiguous ISD, enrolling district *shall* have a written agreement with the student’s resident district for the purpose of providing a free appropriate public education

MCL 388.1705c(19)

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§105c Written Agreement

- Cooperative agreement *shall* address:
 - Payment of the added costs of special ed programs and services for student
 - How the agreement will be amended in the of significant changes in the costs or level of special education the student requires
- Agreement *may* address other items, e.g., which party is responsible for student's transportation, due process hearing costs, etc.

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PAM & §105c

- If enrolling district and resident district fail to reach agreement *before* student's initial enrollment, student *shall not* be enrolled
- If student initially enrolled as general ed student and is subsequently determined special ed eligible, the enrolling district is the resident district for purposes of providing FAPE

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Failure to Agree?

- Nothing in the Act requires districts to reach agreement
- Student may not be enrolled without agreement
- But caution...OCR previously opined that failure to reach agreement may violate Section 504
- Tip: make a good faith attempt to reach agreement

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Transportation

- District is not required to provide non-resident student transportation to/from school unless student's IEP (or 105c agreement) requires
- Information about available transportation options must be provided upon parent request

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SOC Student Removal

- Districts may *not* “send back” students
- Once SOC student has enrolled, student has right to continued enrollment until graduation or student enrolls in another district
- Nothing prohibits expulsion for disciplinary reasons

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SOC Checklist

- Opt in? 105, 105c, both, or neither
- Unlimited or limited openings?
- Publish grades, schools, or special programs for which enrollment is available
- Follow applicable timelines for applications, selection, notification, and enrollment
- If 105c applicant is special ed eligible, must have written agreement with student's resident district before enrolling student

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Enrollment Requirements

- Schools may enroll children of persons who work for district or worked for district when child first enrolled but no longer works at district due to workforce reduction without resident district approval
- Not applicable for employees who live out-of-state
- “Child” includes adopted child, stepchild, or legal ward
- PAM: Schools should have a policy to ensure equitable and fair treatment for enrollment

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Policy Considerations

- Class size/space limitations
- Student’s attendance history
- Student’s disciplinary record
- Special education cost considerations
 - But, policy cannot be discriminatory

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Resident Students Disciplined by Other Districts

- Mandatory Permanent: May not enroll until reinstated; must first seek reinstatement from expelling district
- Grade 6 and above and peer assault, verbal assault, bomb threat: May seek to enroll; potential enrolling district has discretion
- Gross Misdemeanor/Persistent Disobedience/CSC (no conviction, not at school): right to enroll; may consider pre-enrollment hearing

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MDE Responsibilities

"[I]t is the Department's responsibility to administer the distribution of state school aid funds in full compliance with all applicable statutes and administrative rules and to ensure that they are applied uniformly to all school districts...."

Niles Cmty Schs, MA 19-2 (2022)

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Noncompliance

"In addition, the Legislature has expressly mandated that districts comply with the requirements established in the pupil accounting manual approved by the Department and that, if a district fails to do so, the Department must withhold state school aid."

Niles Cmty Schs, MA 19-2 (2022)

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Substantiating Memberships

"[I]t is a district's responsibility to demonstrate that it has satisfied all legal requirements to establish eligibility for state aid; the Department has both the right and the responsibility to require supporting data for claimed memberships."

Madison Dist Pub Schs, MA 14-3 (2015)

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Misinformation

*“Even where a school district **relies on misinformation provided by the Department**, I cannot ignore a clear statutory requirement.”*

Charyl Stockwell Academy, MA 07-1 (2007)

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“Power to Deviate”

“I acknowledge Port Huron’s concern with the seeming unfairness of being denied a membership under the circumstances in this case and I commend its policy of giving priority to the best interests of the students....[but] my authority in audit cases does not include the power to deviate from [statutory requirements]....”

Port Huron Area Sch Dist, MA 10-1 (2011)

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“Semblance of Fairness”

State Superintendent has long recognized that while the rules do not “always produce a result which corresponds completely with the actual numbers at year’s end, *there is a semblance of fairness* provided by” the rules in the PAM

Parchment Sch Dist, MA 08-1 (2009)

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“Clear Guidance”

State Superintendent recognized *“the importance of giving clear guidance to individuals, school districts, and intermediate school districts regarding compliance with the statutory school administrator certification mandate.”*

Bangor Pub Schs, CP 17-4 (2017)

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Legal Basis

“While the Department can interpret the statute and the administrative rules regarding state aid, it cannot impose an interpretation which has no basis in either the rules or the statute.”

L’Anse Creuse Schs, MA 00-1 (2001)

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- PAM updated at least annually by 3/31
- Any noncompliance with the pupil accounting manual could result in FTE deduction
- “Specific” vs “General” findings

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State Law Compliance

- All claimed FTEs must comply with the PAM *and* with State law
 - State School Aid Act
 - Revised School Code
 - MMSEA

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Galien Twp Sch District v MDE, 310 Mich App 238 (2015)

Upheld MDE state aid deduction, but . . .
Schools have a “*property interest*” and “*procedural due process*” rights for receiving apportioned state aid each year

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Spreading Deductions

*“At the request of the district and upon the district presenting evidence satisfactory to the department of the hardship, the department may grant **up to an additional 4 years** for the adjustment and may advance payments to the district otherwise authorized under this article if the district would otherwise experience a significant hardship in satisfying its financial obligations.”*

MCL 388.1615(2)

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Start with the PAM!

Innovative programs subject to scrutiny
Carefully review PAM and ensure all requirements met:

- Is ISD auditor approval required?
- Are the documentation requirements different?
- How is the school tracking necessary documentation?
- Does more than one section of the PAM apply?
- Are assurances from auditor or MDE *in writing*?

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Annual PAM Updates



Confirm all programs comply with PAM requirements *on an annual basis*.



Review "notable changes" document.



Exceptions and special rules may "sunset."

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Virtual Programs

- SSAA Section 21f and PAM Section 5-O-D contain virtual program requirements (e.g., parent consent and course publication in board or MVU catalog)
- PAM Section 2 requires schools to provide at least 1,098 hours of pupil instruction

90

23-24 PAM Update: Virtual Programs

New in PAM Section 2: *“a district may provide up to 15 days of virtual instruction without the need for consent from the pupil’s parent . . . where the district has created a plan for providing virtual instruction to pupils during these days, the plan has been approved by the district’s board of education, and notice has been provided to the impacted pupils and their parents or legal guardians prior to implementation.”*

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23-24 PAM Update: Virtual Programs (cont.)

15 days of virtual instruction without parental consent must only be used for:

- Emergency closures,
- Student testing days, or
- Professional development purposes, not to exceed 30 hours during a school year.

PAM Section 2

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23-24 PAM Update: Virtual Programs (cont.)

New in PAM Section 2:
Districts should “anticipate the need to provide their auditor with”:

- “Calendar that designates the use of these days where possible,” and
- “Proof of the amount of instructional time being claimed.”

Implementation plan should identify how:

- “Pupils will be provided access to technology to allow every pupil to participate in virtual instruction during these days,” and
- “Teachers are going to be made available to pupils during this instructional time.”

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Endorsement

- To be counted in membership, SSAA Section 6(8) requires student to be in “attendance and receiving instruction in all **classes** for which the [student is] enrolled on the pupil membership count day or the supplemental count day.”
- Starting with the 2024-25 school year, a “class” is: “A period of time . . . when pupils and an individual who is appropriately placed under a valid certificate [or other MDE approval] are together and instruction is taking place.” MCL 388.1606(8)(b)(i)

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23-24 PAM Update: Endorsement

- Appropriately placed: “means holding a valid Michigan educator credential with the required grade range and discipline or subject area for the assignment, as defined by the superintendent of public instruction.” PAM Section 3
- Bottom line: need both grade level and discipline/subject area endorsement on certificate (or other approval) to count students in the class on count day

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The “Stick”

School that employs a teacher who is not “appropriately placed” may be subject to two state aid penalties:

- SSAA Section 163, equal to 50% of the teacher’s salary during the non-compliance period, and
- SSAA Section 6, equal to the basic foundation allowance attributable to the number of FTE students taught by that teacher on count day

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The “Saving Grace”?

For violations on or after 7/1/21:

- SSAA Section 163(5) requires MDE – *at the school’s request* – to count the pupil membership deduction toward the salary deduction (to avoid double-penalty)
- SSAA Section 163(4) allows State Superintendent to waive salary penalty in whole or in part in certain circumstances

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State Superintendent Waiver Authority

The State Superintendent must find the school “was hindered in its ability to obtain a substitute credential to enable the [school] to employ the individual in compliance with this section due to unusual and extenuating circumstances resulting from conditions not within the control of school authorities, including, but not limited to, a natural disaster, death or serious illness of the individual or another employee, an emergency school closure, fraud or other intentional wrongdoing of the individual or another employee, or an emergency health condition as defined by city, county, or state health authorities.” MCL 388.1763(4)

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23-24 PAM Update: Count Days

- SSAA Section 6 and 6a, and PAM Section 3, specify pupil membership count days are on the 1st Wednesday in October (90%) and 2nd Wednesday in February (10%)
- New in PAM Section 3: “If either count day falls on a day of religious or cultural significance, as determined by the district, the immediately following day on which school is in session is count day.”

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23-24 PAM Update: Residency

- PAM Section 3 states school can require reasonable verification student is a district resident (e.g., rent receipt, utility bill, driver's license)
- New in PAM Section 3: *"If the pupil is a participant in the Michigan Address Confidentiality Program (ACP), the pupil will be provided with a program participation card and a letter from the State of Michigan which will serve as documentation of residency for the pupil" (card contains mailing address).*

100

23-24 PAM Update: Homebound or Hospitalized Students

- PAM Section 5-D addresses when a homebound or hospitalized student may be counted in membership
- 2022-23 PAM: MD, DO, or licensed physician assistant must certify the medical condition that requires student to be confined to home or hospitalized during regular school hours for longer than 5 consecutive days
- New: nurse practitioner can provide certification

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23-24 PAM Update: Homebound or Hospitalized Students (cont.)

- PAM Section 5-D specifies minimum instructional services to student
 - General ed: Two 45-minute periods per week
 - Special ed: Two nonconsecutive hours per week
- New: *"A district may modify the length of the individualized sessions per week to allow for shorter sessions to be delivered where doing so is beneficial to the pupil. For example, a general education pupil might be offered three 30-minute sessions during a week, or for a pupil with an IEP, the district might offer four 30-minute sessions during a week."*

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23-24 PAM Update: Home-Based Students

- PAM Section 5-C: suspended or expelled student may be educated at home and counted in membership in certain circumstances
- New: before placing student w/ IEP in home ed, IEP Team should consider whether the:
 - Student can work on goals in home setting
 - Home setting is detrimental to progress
 - Student can benefit from home instruction

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Home-Schooled Students

- Programs must be:
 - Seated (5-E)
 - Distance/Independent Study(5-O-A)
 - Virtual Learning Options (5-O-D)
 - **More than one section may apply!**
- Course must be:
 - Non-core (careful!)
 - Available to full-time pupils in the minor's grade level or age group
 - Credit-generating
 - Taught by certified (and endorsed) teacher

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Additional Requirements

- Curricular offering may include optional experiences
- Enhance pupil's course learning
- Must be **offered and available** to full-time students

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TCAPS (MA 18-6)

- State Superintendent: TCAPS failed to provide persuasive evidence that courses in a virtual program were available to its full-time students
- TCAPS website stated courses were “offered to all students,” but MDE opined statement could be “reasonably interpreted to refer only to home school pupils described in the immediately preceding paragraph”

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TCAPS (MA 18-6)(cont.)

- State Superintendent: TCAPS did not
 - Prominently showcase the availability of courses in an online location that was readily seen by all students
 - Present a course catalog that was readily available to all students
 - Establish courses were published in the district’s catalog of board-approved courses or in the statewide catalog of virtual courses maintained by MVA
- No full-time pupil enrolled in virtual course

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TCAPS (MA 18-6)(cont.)

*“My identification of deficiencies in TCAPS’ submission **is not intended to serve as a litmus test for resolution of the availability issue.** In my judgement, the issue of availability must be determined on a **case-by-case basis** and I point out the deficiencies in this case only to highlight the lack of persuasive documentation submitted by TCAPS and to point out some ways in which an assertion of availability could possibly have been more persuasively supported.”*

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