

# School Law Update

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May 5, 2025




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## Caution

These slides reflect general legal standards and are not intended as legal advice.

Future legal developments may affect these topics.

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## School Law Update Topics

**Michigan**

- Legislation
- Administrative Actions
- Court Decisions

**Federal**

- Legislation
- Administrative Actions
- Court Decisions

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**Lame Duck:** *noun*  
Short, infamous period after the general election when the legislature does a load of its business before new office holders take office.

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## Michigan's Earned Sick Time Act (ESTA)

- 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"*

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## Earned Sick Time (EST)

- 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
- EEs covered by CBA *not* subject to ESTA until expiration if CBA *"conflicts with"* ESTA

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### School Safety and Mental Health Commission

- PA 263 of 2024 amended School Safety Plan Act, eff. 04/02/25
- Former School Safety Commission now School Safety and Mental Health Commission (under MSP)
- Provides resources to reduce youth suicide and strengthen mental health of school-aged children
- Recommends student safety designs to Bureau of Construction Codes
- Issues annual report

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### Designated School Liaison

- PA 264 of 2024 amends RSC §§1241 and 1310a, eff. 04/02/25
- Requires board to designate liaison to work with Commission to identify model safety practices

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### Behavioral Threat Assessment and Management Team

- 2024 PA 272 adds RSC § 1308e, eff. 04/02/25
- By Oct. 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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### Mi-BTAM Team Duties

- *Define* prohibited/concerning behavior
- *Monitor*, assess, inquire into concerning behavior
- *Educate* school community on warning signs
- *Educate* students, parents, school personnel on how to report concerning behavior
- *Distinguish* credible/noncredible threats

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### More Mi-BTAM Team Duties

- *Develop* central reporting mechanism
- *Outline* relationship between school personnel and law enforcement
- *Determine* threshold for law enforcement intervention
- *Develop* written plan to assist students engaging in concerning behavior

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### Training Materials

- RSC §1308e requires MSP and Commission to develop and annually provide school safety training materials, including:
- Operational guide to develop violence prevention plan
  - Model threat assessment forms

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## Standardized Response Terms

- PA 270 and 271 of 2024 adds RSC §§ 1308c and 1308d, eff. 04/02/25
- 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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## Traditional Native American Regalia and Objects for School Ceremonies of Honor

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## Native American Regalia/Objects

- 2024 PA 209 adds RSC §1300, eff. 04/02/25
- Requires schools to permit Native Americans to wear traditional regalia and bring traditional objects to “*ceremonies of honor*”, which are “any formal or informal public occasion celebrating academic, athletic, and other student achievement”, i.e., graduation, commencement, convocation, and honor society events

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## Definitions

- *Traditional regalia*: “cultural, religious, or ceremonial clothing or wearable items representing a Native American’s tribal or ancestral traditions”
- *Traditional objects*: “cultural, religious, or ceremonial items or objects that hold tribal or ancestral meaning, significance, or importance for a Native American”

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## Exclusions

Traditional regalia and objects do *not* include clothing or an item prohibited under

- RSC § 1313 (dangerous weapon)
- Penal Code § 473 (tobacco product)

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## Computer Science Course

- PA 206 adds RSC §1166c, eff. 04/02/25
- Starting with 2027-28 school year, high school must offer at least 1 computer science course meeting SBE standards
- Except for virtual high school, must make good-faith effort to offer course in-person (unless not feasible)
- Elective, not graduation requirement
- Course must be listed in course catalog

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## Computer Science Defined

*“The study of computers and algorithmic processes, including but not limited to, their principles, hardware and software designs, implementation, and impact on society, and is a study that **focuses on teaching students how to create new technologies and not solely the use of technology.**”*

MCL 380.1166c

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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 sp. ed. eligibility

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## Safe Firearm Storage Information

- 2024 PA 257 and 258 adds RSC §§ 1313a and 1313b, eff. 04/02/25
- Requires DHHS to develop informational notice (and distribute to MDE and schools) and best practices for firearm storage by July 1, 2025
- Beginning Oct. 1, 2025, and every Oct. 1 thereafter, schools must distribute DHHS notice to parent/guardian of each student enrolled

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## Youth Work Permits

- 2024 PA 196 amends Youth Employment Standards Act, eff. 04/02/25
- Beginning Oct. 2, 2026, work permit responsibility transfers from schools to Michigan Department of Labor and Economic Opportunity (LEO)
- Minor, and minor’s employer, must register with LEO

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## Public School Academies

- 2024 PA 210-213, amends multiple Revised School Code Sections, eff. 04/02/25; PA 214 eff. 04/17/25
- Applies to PSAs, schools of excellence, strict discipline academies, and urban high school academies

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## New Transparency

Names of authorizing body and primary EMO must *appear* and be *verbally provided* on or after April 2, 2025, for:

- Signage
- Promotional material, i.e., billboards, internet, tv, and radio ads
- Website footers
- Enrollment applications

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## More Transparency

- By November 1 each year, PSA must post following in accessible website location:
  - Average salary for new teachers (certificate < 5 years)
  - Average salary for veteran teachers (5+ years)
  - If fewer than 5 new or veteran teachers, average salary for all teachers
  - Average salary for support staff (bus drivers, paras, food service)
- Includes EMO employees assigned to PSAs

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## Unemployment Benefits

- 2024 PA 173, amends Michigan Employment Security Act, eff. 04/02/25
- Max benefit weeks upped from 20 to 26
- Max benefit rate increased from \$362 to \$614 over 3 years
- Dependent benefit rate increased from \$6 to \$26 incrementally over 3 years
- Beginning Dec. 31, 2027, increase based on CPI

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## Benefits Disqualification

- 2024 PA 239 amends Michigan Employment Security Act, eff. 04/02/25
- EE who reduces their work status to less than full-time or is absent from work for 3 or more consecutive days is **rebuttably presumed** to have voluntarily left work without good cause

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## No Benefits Disqualification

Person who left work voluntarily without good cause is *not* disqualified from receiving benefits if:

- Victim of domestic violence, *and*
- Demonstrates that action was necessary to recover from or avoid domestic violence

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**“Little Assholes”**

**“Culprits”**

**“Someone should shut her shit down”**

**“Fucking little kid”**

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### ***Kosch v TCAPS and Berck Mich App (2024)***

- Court upheld dismissal of teacher’s claims for due process violation and constructive discharge
- Due process meeting options:
  - Resignation with insurance, or
  - Recommendation for tenure charges
- Teacher resigned, then sued
- Federal court litigation also dismissed and affirmed by 6<sup>th</sup> Circuit

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### **Court Ruling**

- Teacher’s resignation was voluntary as *“a difficult choice regarding whether to resign does not render her choice involuntary.”*
- No coercion by denying assistance of counsel at meeting
- No “eavesdropping” violation by using student’s recording posted on social media
- HR Director had qualified immunity

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### ***Triple Dippers v Lyon Charter Twp Mich App (unpublished, 2024)***

- Plaintiff argued that Township should have denied FOIA request because records did not exist
- Court: Township did not violate FOIA because it produced records it found responsive to request

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### ***Forbes v Swartz Creek (STC 24-2)***

- 9-day hearing; 100-page decision
- Tenure Commission upheld teacher’s discharge for
  - Falsifying information for jury duty
  - Submitting false and misleading information for transfer request
  - Poor classroom management
  - Failure to follow IEP

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### **US DOE Dear Colleague Letter (Feb. 14, 2025)**

- Reaffirms nondiscrimination obligations for schools
- *“Educational institutions have toxically indoctrinated students with the false premise that the United States is built upon ‘systemic and structural racism’ and advanced discriminatory policies and practices.”*
- Threatens funding for race-based preferences/DEI programs

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### MDE Feb. 27, 2025 Memo: DEI

- Addresses US DOE Feb. 14<sup>th</sup> “Dear Colleague” Letter
- Notes DCL acknowledges that “guidance does not have the force and effect of law and does not bind the public or create new legal standards”
- References non-discrimination standards: Title VI, Elliott-Larsen, Michigan Constitution
- Federal law prohibits feds from control in curriculum, instruction, personnel

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### US DOE FAQ (Feb. 28, 2025)

- Acknowledges federal law bars USDOE from “exercising control over the content of school curricula”
- Permits cultural celebrations if open to all races
- Department’s enforcement policies will not infringe on teachers’ First Amendment speech rights
- Race-neutral policies permitted if no discriminatory intent

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### US DOE “Walk Back” (Feb. 28, 2025)

*“I see it as a significant retrenchment back towards more established case law. It reads as if written by someone different. A lot of the most unsupported claims made [in the original letter] have been walked back.”*

Ray Li, Former OCR Attorney  
*Washington Post* (March 1, 2025)

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### MDE March 6, 2025 Memo: DEI

- Addresses US DOE Feb. 28th FAQ
- Notes FAQ admits it is nonbinding
- MDCR may investigate complaints of unlawful discrimination in education under Elliott-Larsen Civil Rights Act
- *“Pre-K-12 programs that promote diversity representing all children, regardless of race ... do not inherently harm particular groups of children and are not de facto violations of Title VI....”*

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### US DOE Certification

- Sent to SEAs April 5, 2025; 10 days to respond
- Extended to April 24, 2025
- Certification that SEAs and LEAs are complying with anti-discrimination laws, including Title VI of the Civil Rights Act of 1964
- Requires State Education Agencies (SEAs) to collect certification responses from LEAs, then report to US DOE

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### Michigan Response

- April 10, 2025 Letter from Dr. Rice
- Michigan has always complied with Title VI of the Civil Rights Act and will continue to do so
- Federal agencies have process for their rules to have force of law
- Requested *recertification unnecessary*

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## 4/24/25 Court Action

- 4/24/25 – New Hampshire District Court issued injunction prohibiting USDOE from enforcement action re: 2/14/25 DCL, companion FAQ, and 4/3/25 certification requirement
- Applies to “anyone who employs, contracts with, or works with” one of the plaintiffs or plaintiffs’ members.
- Plaintiffs are the National Education Association, its New Hampshire affiliate, and the Center for Black Development
- NH injunction applies to any school that contracts with or works with an MEA/NEA member

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## 4/24/25 Court Action

- 4/24/25 – Maryland District Court issued a stay prohibiting USDOE from enforcement action re: 2/14/25 DCL
- Schools may reasonably rely on MDE 4/10/25 letter to satisfy any Title VI certification requirements
- No current enforcement action against schools that did not submit a certification

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## 4/24/25 Court Action

4/24/25 – District Court of Washington D.C. issued order prohibiting USDOE from taking adverse action against a party that signed or submitted a Title VI certification

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## Title IX Timeline

- **1972** Title IX enacted
- **1974** Dep’t of Health, Education, & Welfare issues regulations
- **1997** OCR: Schools must respond to sexual harassment allegations
- **1998** *Gebser v Lago Vista* (employee-to-student harassment liability)
- **1999** *Davis v Monroe Cnty Bd of Ed* (student-to-student harassment liability)
- **2020** OCR (Trump) issues updated regs
- **2024** OCR (Biden) issues updated regs
- **2025** Federal court vacates 2024 regs

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## Federal Court Vacates 2024 Title IX Regulations

- January 9, 2025, federal court found “unlawful” 2024 Title IX regulations
- 2024 regs. *not* effective in any jurisdiction
- Revert to using 2020 regs

*Tennessee v Cardona*  
No. 2: 24-072-DCR (ED Ky, 2025)

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## What’s Old Is New Again

*“The binding regulatory framework for Title IX enforcement includes the principles and provisions of the 2020 Title IX Rule and the longstanding Title IX regulations..., but excludes the vacated 2024 Title IX Rule. Accordingly, open Title IX investigations initiated under the 2024 Title IX Rule should be immediately reevaluated to ensure consistency with the requirements of the 2020 Title IX Rule....”*

Craig Trainor, Acting Ass’t Secretary for Civil Rights  
(February 4, 2025)

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## Jan. 20, 2025 Executive Order

- **Sex:** “An individual’s immutable biological classification as either male or female. ‘Sex’ is not a synonym for and does not include the concept of ‘gender identity’.”
- **Male:** “A person belonging, at conception, to the sex that produces the small reproductive cell.”
- **Female:** “A person belonging, at conception, to the sex that produces the large reproductive cell.”

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## Thrun Title IX Training on 2020 Regulations

May 28, 2025



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## Parents Defending Educ v Olentangy Bd of Ed (CA 6, 2024)

- July 29, 2024: Sixth Circuit (2-1) refused to block policy banning misgendering of transgender students
- Nov. 1, 2024: En banc petition granted and decision vacated; lower court ruling (no injunction against policy) remains in place
- March 19, 2025: En banc rehearing

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## Foote v Ludlow Sch Comm (CA 1, Feb. 18, 2025)

- School policy required EEs to use student’s preferred name/pronouns without notifying parents
- First Circuit ruled that policy did not interfere with parent right to control child’s upbringing, custody, education, and medical treatment
- Court: “*The protocol of nondisclosure as to a student’s at-school gender expression without the student’s consent does not restrict parental rights in a way courts have recognized as a violation...of substantive due process.*”

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## SCOTUS Case Watch

- *Mahmoud v Taylor*: whether parents have First Am. free exercise right to exempt child from LGBTQ-themed storybooks instruction
- *Oklahoma Charter Sch v Drummond*: whether state law violates First Am. free exercise clause by excluding private religious charters from state program
- *A.J.T. v Osseo Area Schs*: whether disability discrimination claim must show “bad faith or gross mismanagement”

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## Tuesdays with Thrun Webinars

May 6, 2025

- Hiring and Onboarding Practices
- Schools of Choice
- Construction Delivery Methods

May 20, 2025

- Health Insurance Best Practices
- SRO FAQs
- Navigating Everyday Expenditures



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## School Code § 1135(1): Notice and Birth Certificate

“Upon enrollment of a student for the first time in a [school], the [school] **shall notify in writing** the person enrolling the student that **within 30 days** he or she shall provide to the [school] either of the following:

- (a) A **copy of the student's birth certificate.**
- (b) **Other reliable proof**, as determined by the school district, of the student's identity and age, **and an affidavit explaining the inability to produce a copy of the birth certificate.**”

MCL 380.1135(1)

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The screenshot shows the VitalChek website interface. At the top, there's a navigation bar with 'VitalChek' logo and 'A Complete Solution'. Below that, a banner reads 'Order Official Michigan (MI) Vital Records Online From Michigan Vital Records.' There are three main columns of text: 'Fast Turnaround' (Once your Michigan (MI) vital records order is complete, it is electronically sent to the business; you pay to the government agency for processing.), 'Government Endorsed' (Hundreds of government agencies nationwide exclusively trust VitalChek for accepting their vital record orders.), and 'Quick and Convenient' (Most people place their Michigan vital certificate order in less than 10 minutes!). To the right, there's a 'Start Your Vital Record Order' section with radio buttons for 'Birth Certificate', 'Death Certificate', 'Marriage Record', and 'Divorce Record'. Below this is a 'Start Your Order' button. At the bottom, there's a 'Michigan Vital Records Agency Information' section with a disclaimer: 'NOTE: Although VitalChek attempts to include accurate and up-to-date information on this site, state and agency information is subject to change without notice. VitalChek makes no representations or warranties as to the accuracy, completeness or timeliness of the information herein and assumes no liability with respect to such information.'

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## Enrollment Reports

- Noncompliance: notify enroller that law enforcement will be contacted in **30 days**
- Suspicious affidavit: **immediately** report to law enforcement
- **14 days** after enrollment: written request to previous school for student's record
- School receiving record request must comply within **30 days**, unless the record has been tagged

MCL 380.1135

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## Report Suspicious Affidavit

“The [school] **shall immediately report to the local law enforcement agency any affidavit received pursuant to this section that appears inaccurate or suspicious in form or content.**”

MCL 380.1135(3)

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## Record Request

“Any school that compiles records for each student in the school and that is requested to forward a copy of a transferring student's record to the new school **shall comply within 30 days** after receipt of the request unless the record has been tagged pursuant to section 1134.”

MCL 380.1135(4)

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## Tagged Records

“If a student record has been **tagged** under section 1134, a copy of the student record **shall not be forwarded**, and the requested school **shall notify the law enforcement agency that notified the school district of the missing student....**”

MCL 380.1135(4)

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## Discipline Records

- RSC § 1135 requires transfer in 30 days
- MDE: “school record” includes “disciplinary record”
- FERPA exception

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## FERPA Consent Exception

Parent consent not required if “*the disclosure is... to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is for purposes related to the student’s enrollment or transfer.*”

34 CFR § 99.31(a)(2)

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## Special Education Records Transfer

- IDEA 2004 requires transferee school district to take “**reasonable steps to promptly obtain the child’s records**”
  - Includes IEP
  - Supporting documents
- Parent consent *not* required
- Previous school district must “take **reasonable steps to promptly respond** to such request from the new school”

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## McKinney-Vento Homeless Assistance Act

Mandates *immediate* enrollment of student who meets statutory definition of “homeless” regardless of

- Records
- Immunization

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## Speaking of McKinney-Vento...

Homeless children are students who lack fixed, regular, adequate nighttime residence, including those who are:

- Sharing housing of others due to loss of housing, economic hardship, or similar reason;
- Living in motels, hotels, trailer parks, or campgrounds due to lack of alternative adequate accommodations;
- Living in primary nighttime residence that is a public or private place not designed for or ordinarily used as regular sleeping accommodations;
- Living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar; or
- Living in migratory situation and who qualifies as homeless because of living circumstances listed above

Also, includes unaccompanied youth, i.e., homeless child or youth not in the physical custody of a parent or guardian

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## Enrollment Requirements

- Allow immediate enrollment (attendance, full participation in activities)
- Permit student to continue enrollment in school of origin if preferred and is feasible
- May not require documents typically required for enrollment (e.g. proof of residency)
- May not require proof of guardianship for unaccompanied youth
- Must provide transportation to/from school of origin upon request at no cost to parent
- PAM: Student is a resident of enrolling district

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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)

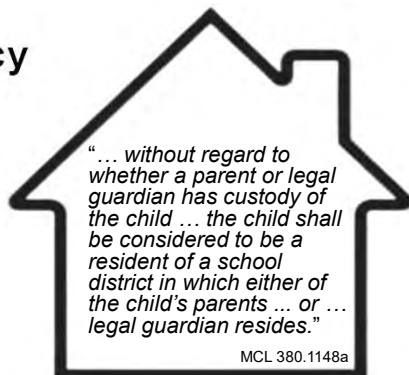
## Residency Verification

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## Who Else is a "Resident"?

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## Residency



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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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## 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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## 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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## 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, after consulting with legal counsel

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## Enrolling Nonresident Students

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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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## "Release"

- Resident district approval is required to count student in membership
- Enrolling district is not required to accept "released" student
- Enrolling district may establish non-discriminatory enrollment criteria
- Release must be obtained from resident district annually; no right of continued enrollment

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## Other Common Nonresident Enrollment Options

- Schools of choice student
- Parent/guardian works for district
- Student's residency changed after count day (October) and is enrolled as nonresident before supplemental count day (February) in former 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 2<sup>nd</sup> 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 spots until 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 2<sup>nd</sup> 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 if student otherwise meets eligibility criteria

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## Test Time!

A student within our ISD submits a choice application. There is an open spot for the student's grade level. The student has an IEP and requires specialized programming. Our district does not have a program that meets the student's needs. Can we deny the application?

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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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## Test Time!

Student attends District A as a resident student. He is suspended from District A. He moves to District B the following school year and applied to District A as a schools of choice student. Can District A deny the application?

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## Test Time!

A student submits a choice application. There is a spot available for the student. The student used to attend our district and had many truancy issues. Can we deny the application?

99

## "Sibling" 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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## 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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## §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)

103

## §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.

105

- 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

## PAM & §105c

106

## Failure to Agree?

- Student may not be enrolled
- But caution...OCR previously opined that failure to reach 105c agreement may violate Section 504 so district should make a good faith attempt to reach agreement
- Be aware of parents who revoke consent for special education to end run this enrollment requirement

107

## Transportation

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

108

## 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

109

## Parent Works for District

110

## 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

111

## Potential Policy Considerations

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

112

## Student Moves Out of District

*"A pupil whose district of residence changed after the pupil membership count day and before the supplemental count day and who continues to be enrolled on the supplemental count day as a nonresident in the district in which he or she was enrolled as a resident on the pupil membership count day of the same school year may be counted in membership by the educating district."*

PAM: must report student as a nonresident

113

## Cooperative Education Program

- Program involves written, voluntary agreement between and among districts to provide educational programs to students (e.g., CTE, virtual, alternative ed)
- Agreement must be signed and approved by all involved districts
- Student must be counted by educating district unless cooperative agreement provides otherwise

114

A district may enroll a nonresident student without a release or residency exception and charge tuition.

- Tuition limits contained in RSC Section 1401
- No discrimination!

## Tuition Students

115

## Pupil Accounting Updates

116

## 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)*

117

## 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)*

118

## 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)*

119

## 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)*

120

## “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)

121

## “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)

122

## “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)

123

## 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)

124

## State Law Compliance

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

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

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126

## *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

127

## 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)

128

## 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.”

130

## Documentation

- Pupil’s legal name AND preferred name, if applicable
- Shared-time list of approved courses, extended learning opportunities, description, and content
- Certified attendance records – signed in ink!
- Expanded course-level and documentation requirements

131

## 24-25 PAM § 2 Update: Virtual Programs

New in PAM § 2:

- “Districts should anticipate the need to provide their auditor with a calendar that designates the use of these days where possible, which would include those used for student testing and professional development.”
- Section includes a link to 7/17/24 MDE FAQs on the 15 virtual instruction days

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## MDE FAQs: 15 Virtual Instruction Days

- Emergency closure: “something beyond the school administration’s control interrupts instruction”
- “Student testing days may include state assessments, as well as any other assessments administered locally by a district”
- “Professional development days may be for more than just teaching staff; they may also include training for administrators, for instance”

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## MDE FAQs: 15 Virtual Instruction Days (cont.)

- District 15-virtual day plan should include:
- “How students will be guaranteed access to participate virtually, including access to technology and internet service”
  - “Details on how teachers will be available to students (e.g., email, phone, video, chat), including specific hours they will be accessible for support and instruction”
  - “Support for all learners,” including those on IEPs and English learners
- “Documented two-way interactions are not required for the 15 virtual days”

134

## 24-25 PAM § 1 Update: Shared-Time Programs

- Old: board “shall adopt a list of courses. ...The list shall...be used when determining which courses may be included in membership for state aid purposes.”
- New: “The list of approved courses for shared time programs shall include all extended learning opportunities associated with each course and a description of each such opportunity. In addition, the district must maintain a document describing the content of each approved course....”

135

## 24-25 PAM § 3 Update: Shared-Time Programs

- “At the conclusion of the school year, a district that has counted any pupil or pupils in membership under Section 166b [i.e., shared-time] shall report through the Teacher Student Data Link (TSDL):”
- Complete listing of all courses provided to all pupils in membership (not just those enrolled under Section 166b),
  - Each pupil’s course enrollment information
  - Teacher of record and mentor names for each course

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## 24-25 PAM § 1 Update: Attendance Records

- Old: “Attendance records are necessary to determine and validate pupil eligibility during the membership count period....Source documents for attendance records [e.g., teacher attendance book or the District’s student information system] must definitively and clearly substantiate attendance on specific dates and at specific times.”
- New: “The teacher must certify the source attendance document by signing it in ink regardless of the format.”

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## 24-25 PAM § 1 Update: Records for Auditor Review

- Schools may need to provide the following docs for auditor review:
- Program of study records: for early/middle college pupils accelerating through their program
  - Sequential learning timeline: virtual students (§ 5-O-D) must have timeline documenting projected attempt dates for each virtual course on the student schedule

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## 24-25 PAM § 1 Update: Records for Auditor Review (cont.)

- Activity logs: two-way interactions for virtual learning experiences under § 5-O-D must be documented in an activity log that documents all two-way interactions throughout the year
- Learning plans: dropout recovery program students (§ 5-Q-A) must have learning plan prior to being claimed in membership
- Worksheet A and B – used to document special education pupil FTE
- Training agreements and plans: for work-based learning experiences under § 5-P

139

## 24-25 PAM § 3-4 Update: Residency

Old: District of residence is generally the “district in which the custodial parent or legal guardian resides”

New: “A foreign pupil residing in the district is considered a resident and is entitled to enroll in the district. . . . If the pupil is unaccompanied, the pupil is to be provided with the same services provided to other pupils who are experiencing homelessness”

New: A District may count a pupil as a resident pupil if the District has evidence that the pupil “has been assigned to a district through a court order, where the assigned district does not contest the enrollment”

140

## 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)
- If not a class, does not count for membership

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## 24-25 PAM § 3 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”
- 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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## Schools of Choice

“A pupil enrolled under either section (105 /105c) remains a pupil of the district through graduation, or enrollment in another educational entity or expulsion. If a pupil enrolls under this section, but subsequently becomes a resident, the district shall maintain a record of the schools of choice enrollment to provide continuity of enrollment should the residency then change.”

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