

School Law Update

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May 4, 2026




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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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Topics

- Legal Update
 - State Law
 - Guidance
 - Case Law
 - Trends
- Student Enrollment
- Pupil Accounting Manual Changes

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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 student 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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\$321M

**MICHIGAN
2025-26
SECTION 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* – public schools appealed COC decision to COA, oral argument scheduled April 8th
 - *April 10, 2026* – COA upheld COC decision
- Devault v Michigan (ED Mich)*
 - Case stayed pending final outcome in COA

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State School Aid Act § 27I

- SSAA § 27I 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 27I 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 communications devices on school grounds during instructional time
- Policy must specify enforcement mechanisms and be posted to school website

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Exemptions

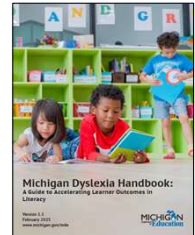
Wireless communications device policies must provide exemptions for:

- 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 sp. ed. 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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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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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 violations** → student ineligible for interscholastic competition not less than the next 90 scheduled school days after violation
- **School personnel violations** → personnel may be suspended from interscholastic competitions
- **MHSAA-member school violations** → school may have membership status suspended

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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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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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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 Svcs **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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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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Tips for Dealing

- Take it slow! Not every email requires a response immediately (or ever).
- What *must* receive a response? FOIA requests, FERPA requests, 504/IDEA evaluation requests, urgent medical issues, etc.
- Would a phone call or meeting be more productive?
- Is a communication protocol needed?

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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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25-26 PAM § 3 Update: Identity Verification

- Old: school "must verify the identity and birth date of every pupil enrolling in the district for the first time. [Parent] must provide to the district either a copy of the pupil's birth certificate **or** other reliable proof of identification and age **along with** a notarized affidavit explaining the inability to produce a copy of the pupil's birth certificate"
- Update: "An affidavit used for the purpose of verification of identity is only valid for **one** school year."

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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



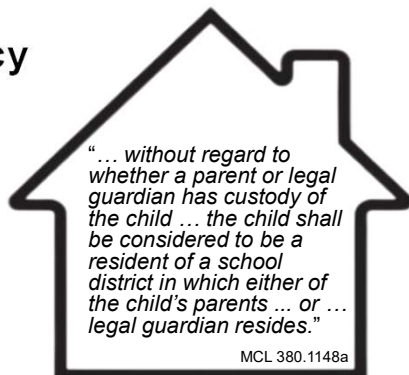
57

25-26 PAM § 3 Update: Residency

- Old: Under SSAA § 6, student must generally be a resident to be counted in membership
- Old: Under PAM § 3, District may require verification that a pupil is a resident (e.g., utility bill, rent receipt, driver's license)
- Update: "An affidavit used to support residency may remain valid for multiple school years, *provided there is no change in the pupil's residence.*"

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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

- 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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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 (105 /105c)
- 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 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 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 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 if student otherwise meets eligibility criteria

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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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"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)

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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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- 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

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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

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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 transportation
- Information about available transportation options must be provided upon parent request

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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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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

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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

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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

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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

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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)

102

“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)

103

“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)

104

“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)

105

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)

106

State Law Compliance

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

107

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

108

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)

109

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**?

110

Annual PAM Updates



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



Review "notable changes" document.



Exceptions and special rules may "sunset."

111

25-26 PAM § 1 Update: Attendance Records

- Attendance records are necessary to validate pupils on count day
- Update: "Teachers must take attendance **at least twice per day**, once in the morning (**AM**) and once in the afternoon (**PM**) after the lunch period....[F]ailure to maintain records for both periods reduces the district's ability to substantiate its membership claim."

112

25-26 PAM § 1 Update: Pupil Level Requirements

District must maintain the following for each pupil for membership purposes:

- "For a resident pupil, proof of residency. For a nonresident pupil, proof that the pupil is a nonresident who is eligible to enroll."
- "A copy of [the] student's most recent [Individualized Education Program], if applicable."

113

25-26 PAM § 1 Update

- "Districts must ensure that teachers are appropriately placed for the grade level and subject area"
- Caution: starting next year, SSAA § 6 authorizes MDE to issue FTE deduction for endorsement misplacement
- Currently, endorsement misplacement limited to salary deduction under SSAA § 163

114

SSAA § 6: Endorsement

- To be counted in membership, SSAA § 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.”
- If not a class, does not count for membership

115

Class

- “A period of time in 1 day when pupils and an individual who is **appropriately placed** under a valid certificate, substitute permit, authorization, or approval issued by the department, are together and instruction is taking place. **This subdivision does not apply for the 2024-2025 and 2025-2026 school years.**” MCL 388.1606(8)(b)(i)
- Appropriately placed: “holding a valid Michigan educator credential with the required **grade range and discipline or subject area** for the assignment.” MCL 388.1606(8)(a)
- Bottom line: ensure teachers properly endorsed to avoid potential SSAA § 6 FTE deduction

116

SSAA § 163

- School subject to salary state aid deduction for permitting an “individual who is not **appropriately placed** under a valid certificate, valid substitute permit, authorization, or approval...to teach.” MCL 388.1763(1)(a)
- Deduction: “equal to 50% of the amount paid to the individual for the period of employment that is in violation of this section.” MCL 388.1763(2)

117

Caveats

- SSAA § 163(5): no salary penalty if school is subject to an FTE penalty for the same employment
- SSAA § 163(4) allows State Superintendent to waive salary penalty in whole or in part in certain circumstances

118

Waiver Authority

The State Superintendent must find the school “was hindered in its ability to obtain a substitute credential...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)

119

Prorating Reductions

“If the department makes an adjustment under this based in whole or in part on a membership audit finding that a district or intermediate district employed an educator in violation of certification requirements under the revised school code and rules promulgated by the department, the department shall prorate the adjustment according to the period of noncompliance with the certification requirements.” MCL 388.1615(4)

120

Highland Park Public School Academy, MA 23-1 (2023)

- Teacher did not possess proper credential on fall count day
- School notified of 63 FTE deduction
- Pupils were not with a properly credentialed teacher from start of school year (180 days) until 12/27/21
- FTE deduction reduced to 24.5 FTEs
- (70 school days/180 school days) x 63 FTEs = 24.5 FTEs

121

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)

122

Reminder: Verify Administrator & Guidance Counselor Credentials

- SSAA § 163 salary state aid deduction also applies if a school permits:
- "An individual to serve in a counseling role...unless the individual holds a valid school counselor credential"
 - "An individual...to be employed as a superintendent, principal, or assistant principal, or as an individual whose primary responsibility is to administer instructional programs" without an administrator certification or permit

123

25-26 PAM § 2 Update: Travel Time

- Old: for student in grades 9-12, school could count up to 3 hours per week of travel time for cooperative ed program student (e.g., CTE) or special education student who traveled between instructional sites during the school day toward hours requirement (absent travel waiver from MDE)
- New: travel time counts. "**Districts are no longer required to obtain a waiver for travel time associated with cooperative education programs [or special education programs].**"
- Change stems from PA 15 of 2025 amendment

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25-26 PAM § 2 Update: State Assessments

- 3/23/22 MDE letter: only grades scheduled for instruction on a day count toward 75% pupil requirement
- PAM Update: "When instruction is not scheduled for a grade...on a given date due to participation in a mandatory state assessment, the day and hours are not countable for that grade or building" (e.g., middle/high school, no high school classes due to grade 8 M-STEP testing)
- "To mitigate...districts may schedule non-participating pupils for instruction after testing, provide instruction at an off-site location during the assessment period, utilization of...virtual learning...or by scheduling an additional instructional day...."

125

25-26 PAM § 2 Update: Special Education

"Pupils with an Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP) who receive only related services may not be counted for pupil membership purposes if those services do not constitute special education or instructional time as documented in the IEP or IFSP."

126

Non-Public School Students

- Shared-time: student enrolled in nonpublic school (or homeschool) part-time and in public school part-time
- K-12 minor “in a nonpublic school or who resides within a district and is being home-schooled” has a right to enroll “in any **nonessential** elective curricular offering being provided by the district. ...State school aid shall be provided under this act for a minor enrolled as described in this sub **only** if all of the following apply....” MCL 388.1766b(2).

127

Shared-Time Requirements

1. Generally, “nonpublic school site is located, or the nonpublic students are educated, within the geographic boundaries of the district”
2. If instruction will be provided at a nonpublic school site, the nonpublic school must be registered with MDE
3. “Instruction is provided directly by a certified teacher of the district....”
4. “The curricular offering is also available to full-time pupils in the minor’s grade level or age group...at a public school site”
5. “The curricular offering is restricted to nonessential elective courses....”

128

Shared-Time Requirements (cont.)

6. “The district ensures that all individuals that have contact with pupils...have not been convicted of sexual misconduct”
7. District ensures individual who provides curricular offerings or has unsupervised contact with pupils is subject to criminal check requirements
8. Any nonessential course optional experience “is available to the majority of full-time pupils...in the same grade level or age group”

129

Shared-Time Requirements (cont.)

9. District provides MDE with “information necessary to quantify all of the following....”
 - i. “Complete listing of all courses provided to pupils counted in membership in the district” (not just SSAA § 166b students)
 - ii. “Course enrollments by each participant using local coding and the school codes for the exchange of data (SCED)”
 - iii. “Identification of each course teacher or mentor”
10. Check additional requirements in PAM § 5-E (and SSAA § 21f and PAM § 5-O-D if it’s a virtual course)

130

25-26 PAM § 3 Update

“To substantiate membership claimed under 166b...[MDE] will verify, at the conclusion of the school year, that a district...has submitted the following information through the Teacher Student Data Link (TSDL)....[all the information listed in #9 on the previous slide].”

131

Nonessential MCL 388.1766b(3)

- Grades 1-8: “course other than a mathematics, science, social studies, and English language arts course required by the district for grade progression”
- Grades 9-12: course “other than algebra 1, algebra 2, English 9-12, geometry, biology, chemistry, physics, economics, geography, American history, world history, the Constitution, government, and civics, or courses that fulfill the same credit requirement as these courses”
- “College level courses taken by high school students for college credit are nonessential...”
- “Kindergarten is considered nonessential”

132

Applicable Authority

- SSAA § 21f and PAM § 5-O-D contain virtual program requirements (e.g., parent consent and course publication in board or MVU catalog)
- SSAA § 101(3) and PAM § 2 generally require schools to provide at least 1,098 hours and at least 180 days of pupil instruction (with at least 75% pupil attendance on each of the 180 days); otherwise, state aid prorated

133

15-Days of Virtual Instruction

“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.” PAM § 2

134

Permissible Uses

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.

135

25-26 PAM § 2 Update: 15-Day Virtual Instruction

- “This applies only to days used under this provision prior to October 7, 2025”
- Public Act 15 of 2025 deleted 15-day virtual instruction exception to parental consent

136

Reminder: Virtual Problems

For virtual programs, ensure proper two-way communications with the certified teacher or mentor

PAM, § 5-O-D

137

Two-Way Interactions

- Really 3-way interactions if mass communication via email
 1. Email from teacher
 2. Student response
 3. Teacher must respond to student
- Email, phone, face-to-face
- Must relate to virtual course on the student’s schedule and pertain to course content or progress

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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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