



# SCHOOL LAW NOTES

APRIL 30, 2026

## Finance & Elections

*Truth-in-Taxation & Budget Hearing*

*Reminder*..... 1

*Is This Seat Taken? Handling School Board Vacancies* ..... 2

## Labor & Employment

*2027 Hard Cap Limits for Medical Benefit Plans*..... 3

## Special Education

*Don't Run Afoul of the IDEA: Five Tips for Procedural Compliance*..... 4

## Student Issues

*Graduation Guidelines: Diplomas, Dress Codes, and Due Process*..... 5

## Transactional

*Blueprint for Construction Delivery Methods*..... 6

## Miscellaneous

*Responding to Public Comment: Unlawful Retaliation or Safety Concern?*..... 8

*Upcoming Speaking Engagements*  
*Budget Hearing Notice Form*

---

MICHAEL D. GRESENS	CRISTINA T. PATZELT
CHRISTOPHER J. IAMARINO	PHILIP G. CLARK
RAYMOND M. DAVIS	PIOTR M. MATUSIAK
MICHELE R. EADDY	JESSICA E. MCNAMARA
KIRK C. HERALD	ERIN H. WALZ
ROBERT A. DIETZEL	RYAN J. MURRAY
KATHERINE WOLF BROADDUS	MACKENZIE D. FLYNN
DANIEL R. MARTIN	KATHRYN R. CHURCH
JENNIFER K. STARLIN	MARYJO D. BANASIK
TIMOTHY T. GARDNER, JR.	CATHLEEN M. DOOLEY
IAN F. KOFFLER	KELLY S. BOWMAN
FREDRIC G. HEIDEMANN	AUSTIN W. MUNROE
RYAN J. NICHOLSON	

GORDON W. VAN WIEREN, JR. (OF COUNSEL)  
 ROY H. HENLEY (OF COUNSEL)  
 BRADFORD W. SPRINGER (OF COUNSEL)

## THRUNLAW.COM

EAST LANSING  
 NOVI  
 WEST MICHIGAN

## Truth-in-Taxation & Budget Hearing Reminder

Michigan law requires public schools to adopt their annual budgets by June 30 each year. A taxing entity, including a school district or ISD, must satisfy the truth-in-taxation process if its anticipated operating tax revenue will exceed what it collected in the previous fiscal year (with exceptions for certain taxable additions). Elements of this process include: (1) publishing a newspaper notice, (2) holding a truth-in-taxation public hearing, and (3) adopting resolutions proposing and approving additional millage rate(s).

A school or ISD may avoid the burdensome truth-in-taxation process and still levy its full authorized operating millage rate if it takes the following three steps when adopting its budget:

- **Step 1:** The proposed budget must comply with Uniform Budgeting and Accounting Act Section 16. That section requires that a taxing unit's "general appropriations act" (e.g., the adopted budget) state the total number of mills of *ad valorem* property taxes to be levied and the purpose(s) for which that millage will be levied.

The budget must also include a description of the tax base upon which the operating millage will be levied. Examples of those descriptions include: (1) non-principal residence, non-qualified agricultural property, non-qualified forest property, non-supportive housing property, and non-industrial personal property; (2) all property; and (3) principal residence, qualified agricultural property, qualified forest property, supportive housing property, property occupied by a public school academy, and industrial personal property.

- **Step 2:** The school district or ISD must publish a notice for the budget hearing in a newspaper of general circulation within the school district or ISD at least six calendar days before the hearing. That notice must include the following statement printed in 11-point boldfaced type: **The property tax millage rate proposed to be levied to support the proposed budget will be a subject of this hearing.**

The budget hearing notice also must include the following information:

- the time, date, and place of the hearing; and
- the location where the proposed budget is available for public inspection.
- **Step 3:** After the budget hearing concludes, the school board must adopt a budget that includes the information described above (i.e., a statement of the total number of mills of *ad valorem* property taxes to be levied; the purpose(s) for which the millage will be levied; and a

description of the tax base on which the millage will be levied).

A school district or ISD seeking to levy an operating millage that was approved by voters *after* the board adopted its budget may still avoid the truth-in-taxation process by either: (1) publishing the appropriate budget hearing notice, conducting a second budget hearing, and amending the budget to include the additional millage; *or* (2) including the proposed millage rate(s) to be voted on, if known, in the original budget, along with completing the proper hearing procedures.

If your school district or ISD plans to put an operating millage proposal on the ballot in August or November, including information regarding that millage in the original adopted budget would avoid the need to conduct a second budget hearing procedure after the election.

An ISD that obtains voter approval for a regional enhancement millage should consult with legal counsel about incorporating that millage into the truth-in-taxation process.

Because public school academies, schools of excellence, urban high school academies, and strict discipline academies have no authority to levy a school operating millage, their annual budget hearing notice need not include the 11-point boldface type statement or any reference to a proposed property tax millage rate.

A sample budget hearing notice form is attached to this edition of *School Law Notes*. Please note that no specific form of resolution for budget adoption is required. Schools desiring to reuse budget adoption resolutions from previous years must ensure that they are up to date.



## Is This Seat Taken? Handling School Board Vacancies

A school board vacancy can take a school board by surprise and may occur for various reasons. When a vacancy occurs, school boards should be prepared to promptly fill the vacancy within 30 days.

School board vacancies are governed by the Michigan Election Law (Election Law) and the Revised School Code (RSC); however, neither statute provides guidance on how a school board may identify and select candidates for appointment to a vacant office. School boards should consult their bylaws and board policies to determine any previously adopted procedures to notify the public of the vacancy and select a qualified individual to fill the vacancy.

### *When Does a Vacancy Occur?*

A school board vacancy occurs *immediately* when a school board member:

- dies;
- is adjudicated insane or found to be legally incapacitated by a court of competent jurisdiction;
- resigns;
- is removed from office;
- is convicted of a felony;
- has an election or appointment that is declared void by a competent tribunal;
- fails to file the acceptance of office, take the oath of office, or give or renew an official bond required by law;
- ceases to possess the legal qualifications for holding office; or
- moves his or her residence from the school district.

Board members are also subject to recall through an election and, although rare, removal from office by the Governor pursuant to RSC Section 1107 for general powers school districts or Section 619 for intermediate school districts.

### *Filling a Vacancy*

Except for an office vacated by recall that is subject to a special recall election, if less than a majority of school district board member seats become vacant at the same time, the remaining school board members have 30 days to fill a vacancy by appointing a qualified individual through board action. Within three days after the appointment, the Board Secretary must notify the school district's election coordinator (typically the county clerk), in writing, of the name, address, and office of the person who vacated the seat as well as the person appointed to fill the office. If a majority of board member seats are vacant at the same time, or if 30 days have passed without filling the vacancy, the intermediate school board for that school district must fill each vacancy by appointment.

For an intermediate school district (ISD), RSC Section 614(4) requires the vacancy to be filled by the remaining ISD board members. An ISD must file notice of the vacancy with the state board of education within five days after the vacancy occurs. If the ISD board does not fill the vacancy within 30 days after the vacancy occurs, the state board of education must fill the vacancy.

### *Process for Filling a Vacancy*

Neither the Election Law nor the RSC prescribe a process to fill a school board vacancy. School officials should refer to their bylaws to determine their process and requirements, if any, for filling a vacancy.

To fill a vacancy, a board may:

- publicize the vacancy through various sources, such as using word-of-mouth, news media, notices posted at school buildings, social media, and other methods used to communicate with the public;
- accept letters of interest and supporting documentation from interested candidates; and
- interview candidates during open session.

Open Meetings Act (OMA) Section 8(1)(f) permits a board of education to meet in closed session to review and consider the contents of an application for appointment to public office if the candidate requests the application to remain confidential. The OMA requires that all interviews be conducted in an open meeting.

#### *Taking Oath of Office and Filing Acceptance of Office*

Before taking the board seat, an appointee must: (1) take the oath of office as provided by the Michigan Constitution administered by a judge, justice, court clerk, or notary public; and (2) file an acceptance of office with the Board Secretary within 10 business days after the appointment date. Failure to file the acceptance of office within the required timeline will result in the board seat immediately becoming vacant.

#### *Length of Appointment*

An appointed school board member serves until a successor is elected and qualified. For general powers school districts, if the vacated seat was scheduled to be on the ballot for the next regular election (i.e., the even-year November election), then the appointee will continue to serve through the end of the normal term, until the newly elected board member assumes office for a new term beginning January 1 after the election.

If a vacancy occurs more than seven days before the nominating petition filing deadline for an even-year November election, and the vacated seat was not scheduled to be on the ballot for that election, then the appointee will hold office only until a successor is elected for a partial term at that even-year November election. Once the elected successor has taken the oath of office and filed the acceptance of office following the election, they will then take office for the remainder of the term. The elected successor does not wait until January 1 to take office.

To illustrate this for 2026, if a vacancy occurs before July 14, 2026, and the vacated seat was not scheduled to appear on the November 2026 ballot, then the board seat will need to appear on the November 2026 ballot as a “partial term” seat. The appointed board member will only serve until a successor is elected in November 2026 and qualifies for office.

For Thrun Policy Service subscribers, board vacancies are addressed in Policy 2404 (Board Member Vacancies and Appointments). If you have questions about board vacancies or the appointment process, please contact your Thrun election attorney.

• • •

## 2027 Hard Cap Limits for Medical Benefit Plans

On March 27, 2026, the Michigan Department of Treasury notified all public employers of the “hard cap” contribution limits under the Publicly Funded Health Insurance Contribution Act (PA 152) for medical benefit plans renewing on or after January 1, 2027. The 2026 cap amounts were increased by 3.0%. The adjustment is based on the change in the medical care component of the Consumer Price Index for the previous 12-month period.

For medical benefit plan coverage years **beginning on or after January 1, 2027**, a public employer may contribute up to the following amounts toward a medical benefit plan:

- \$8,108.35 multiplied by the number of employees with single-person coverage;
- \$17,107.66 multiplied by the number of employees with individual-and-spouse coverage or individual-plus-1-nonspouse-dependent coverage; and
- \$22,310.11 multiplied by the number of employees with family coverage.

As school officials return to the bargaining table, it is essential they understand the implications of these hard caps. When a school uses hard caps for PA 152 compliance, it should consider negotiating the specific hard-cap dollar amounts directly into the collective bargaining agreement (“CBA”). Doing so effectively “locks in” a school’s financial insurance obligation for the upcoming medical benefit plan year.

This strategy is particularly prudent given uncertainty concerning House Bill 6058 (HB 6058), which would increase PA 152 hard caps if it becomes law. If HB 6058 becomes law, schools that incorporated specific hard-cap amounts into their CBAs would potentially remain subject to those hard-cap amounts rather than the higher HB 6058 hard caps.

Alternatively, school officials may consider negotiating a “local cap” on any subsequent hard-cap increases. Under this approach, a school would continue to pay the legislatively established hard caps, but employer contributions under future statutory amendments would be limited to a negotiated percentage – usually not to exceed 3% in any given year. This option is more employee friendly as it attempts to address annual inflationary pressure;

however, it still provides a school with some cost predictability.

If you have any questions regarding the hard caps or need further guidance on incorporating PA 152 language into your CBAs, please contact your Thrun labor attorney.



### **Don't Run Afoul of the IDEA: Five Tips for Procedural Compliance**

The Individuals with Disabilities Education Act (IDEA) includes a series of procedural requirements to help Individualized Education Program (IEP) Teams and special educators develop and implement legally compliant IEPs. These procedural requirements can seem unnecessary or tedious, but when faced with a state complaint or due process hearing, full compliance helps protect against liability. The following tips will help school officials navigate some of the IDEA's important procedural requirements.

*Tip 1: Schedule annual IEP meetings with sufficient time to meet and issue a prior written notice before the current IEP expires.*

An IEP must be in effect at the beginning of each school year and reviewed at least annually. Parents must receive prior written notice of the proposed IEP within a "reasonable time" before the IEP is implemented. "Reasonable time" is not defined by the IDEA, but the U.S. Department of Education's Office of Special Education Programs (OSEP) has indicated that parents need time to fully assess the proposed IEP and respond.

For example, if a student's IEP went into effect on May 15, 2025, the IEP Team must implement a new annual IEP no later than May 15, 2026. This sounds easy enough, but if the annual IEP meeting is scheduled for May 14, 2026, the school may find itself out of compliance for one or more of the following reasons:

- if a mandatory member of the IEP Team is suddenly unable to attend the IEP meeting on May 14, the meeting may not proceed (unless the parent and school meet the requirements for that Team member's excusal) and an IEP cannot be drafted;
- all the IEP Team's mandatory members attend, but the IEP Team is unable to complete the IEP in a single meeting and thus, a timely annual IEP cannot be completed; or
- the annual IEP is drafted on May 14, but the IEP cannot be implemented on May 15 because parents will not have a "reasonable time" to fully assess the IEP after the written notice is provided and before implementation.

*Tip 2: Ensure all mandatory IEP Team members are present.*

MDE recently released an updated guidance document, [Individualized Education Program \(IEP\) Team Roles and Responsibilities](#). Though this document exceeds certain state and federal requirements, it provides a useful reminder for school officials about who must attend a student's IEP meeting.

Mandatory IEP Team members are:

- parent/guardian(s);
- at least one of the student's general education teachers;
- at least one of the student's special education teachers;
- a district representative;
- a person who can interpret the instructional implications of evaluation results;
- at the discretion of the parents or the school, other individuals who have knowledge or special expertise regarding the child (related service providers often fall into this category); and
- when appropriate, the student.

The same individual may satisfy more than one role. However, it is best practice to avoid having a person serve in too many roles because IEP Teams should have varying input to enable a thorough discussion of the student's needs.

A district representative is a person who is: 1) qualified to provide or supervise the provision of specially designed instruction, 2) knowledgeable about the general education curriculum, and 3) knowledgeable about the availability of the school's resources. The district representative should have authority to commit school resources and be able to ensure timely implementation.

Students must be invited to IEP meetings if the IEP Team will discuss postsecondary goals and transition services. Until a student is 18, parents may deny the student the opportunity to attend, but regardless, school personnel must obtain the student's input and interests regarding postsecondary plans.

An IEP Team mandatory member may be excused from the IEP meeting only if the parents and school agree in writing that 1) the member's attendance is not necessary because that member's area of the curriculum or related service is not being discussed or modified, or 2) the member's area of curriculum or related service is being discussed but the mandatory IEP Team member submits written input before the IEP Team meeting. Excusal should be used sparingly, and the school *must* obtain the parent's signature on a written excusal document.

*Tip 3: Do not include service minutes, placement, or a pre-filled prior written notice in the draft IEP.*

Schools may not predetermine services or placement. Only an IEP Team may make those decisions after considering a student's areas of need and present levels of academic achievement and functional performance. Nothing indicates predetermination more than going into an IEP meeting with a draft IEP that states how many minutes of special education and related services a student will receive and in what setting. Though relevant members of the IEP Team may have an idea of what services, including duration, frequency, and location, will be appropriate, the final decision must not be made until after the IEP Team has discussed the areas of need.

Prior written notice is "prior" in that it must be provided to the parents before an IEP is implemented, but the notice may not be drafted until after the IEP Team meets and develops an IEP. Unless the school has predetermined the student's special education programming, it cannot have prepared a prior written notice before the IEP Team meeting.

*Tip 4: Provide prior written notice in the parent's native language or other mode of communication.*

A parent must be able to understand the school's offer of a free appropriate public education (FAPE) to their child and therefore, if the parent is not literate in English or does not use written language, the school is obligated to translate the prior written notice into the parent's native language or otherwise to ensure that the parent understands the offer.

If a parent seems to understand English but is a non-native speaker, ask whether they need the document translated. Do not assume that someone proficient in spoken English is also sufficiently literate in English to read and understand the IEP document's complexities. The money and effort required to translate prior written notices will likely be well worth it if a "lack of parent participation" allegation is made during a due process or state complaint.

*Tip 5: Consider whether the student is eligible for extended school year (ESY) services and document why or why not.*

An IEP must include a statement of eligibility for ESY. Many IEP Teams fail to document the ESY consideration beyond checking a box that a student is or is not eligible. Often, it is difficult to ascertain from the IEP whether the Team even considered ESY or simply left the box checked from the previous IEP. MDE issued [guidance](#) on ESY in April 2023 that explains ESY and offers a checklist for determining whether a student is eligible.

If a student is determined not eligible for ESY, include a statement in the prior written notice that ESY

programming was considered and rejected and explain why the student was determined not eligible.

Developing an IEP that is procedurally compliant with the IDEA is critical to developing a substantively compliant offer of FAPE. All special education staff should be trained in these procedural requirements so that schools are well positioned to defend their students' IEPs.

• ● •

## **Graduation Guidelines: Diplomas, Dress Codes, and Due Process**

With graduation approaching, school officials should consider common graduation-related legal issues and recommendations below for addressing those issues.

### *Withholding Diplomas and "Walking" at Graduation*

The end of the school year is occasionally accompanied by senior pranks and other student misconduct, which may cause school officials to consider withholding a student's diploma as discipline. Withholding an earned diploma deprives a student of a constitutionally protected property interest and creates potential liability. Some courts have ruled that a student who is awaiting an expulsion hearing but has completed graduation requirements is still entitled to a diploma.

While students generally have a right to a diploma after satisfying graduation requirements, they do not have the right to receive the diploma at a graduation ceremony. Like participating in prom and other extracurricular activities, walking across the graduation stage is a privilege that may be revoked. If student misconduct results in discipline at the end of the school year, rather than withholding a diploma, school officials may revoke a student's privilege to walk at graduation.

To avoid backlash from students and parents, school officials should include graduation participation expectations in the student handbook and notify students and their parents of those expectations as early as possible. That notice also should address whether a student who has not timely completed graduation requirements may participate in the graduation ceremony in anticipation of earning a diploma.

### *Cap and Gown Dress Code*

A school can enforce a nondiscriminatory dress code for graduation. However, a dress code may *not* discriminate based on any legally-protected classification, including sexual orientation, gender identity or expression, or hair textures or styles commonly associated with race. The dress code should

be communicated to students and parents as early as possible.

Courts have upheld published cap and gown requirements and, in one case, a “no jeans” policy. Another court upheld a dress code that prohibited decorated graduation caps. In that case, because *all* decoration was prohibited, the students’ First Amendment rights were not violated. A student’s refusal to comply with a published nondiscriminatory dress code can justify excluding that student from the graduation ceremony.

Some schools provide different gown colors for male and female students. To avoid potential conflict, consider allowing students to wear gown colors consistent with their gender identity or allowing all students to choose between two colors. Arbitrary dress code distinctions based on sex are frequently targeted in sex discrimination lawsuits and can be easily avoided by single-color or student-choice color policies.

School officials must also comply with Revised School Code Section 1300, which requires schools to allow Native American individuals to wear traditional regalia and to bring traditional objects to ceremonies of honor, including a graduation ceremony. Traditional regalia are “any cultural, religious, or ceremonial clothing or wearable items representing a Native American’s tribal or ancestral traditions.” Traditional objects are “any cultural, religious, or ceremonial items or objects that hold tribal or ancestral meaning, significance, or importance for a Native American.” Both terms exclude certain clothing and items, such as prohibited dangerous weapons and certain tobacco products.

#### *Avoid Religious Holidays*

According to the Elliott-Larsen Civil Rights Act, public schools cannot deny a “privilege” based on religion. The Act does not define “privilege,” but walking across the graduation stage is arguably a “privilege” under the Act, so schools should avoid scheduling graduation ceremonies on religious holidays. Failing to do so may result in lawsuits alleging religious discrimination.

#### *Prayer at Graduation*

School-organized or mandated prayer at graduation ceremonies violates the First Amendment’s Establishment Clause. The U.S. Supreme Court has held that a clergy-led graduation invocation is unconstitutional. Additionally, a school-led process of having students elect a classmate to lead an organized prayer at graduation has also been held unconstitutional.

However, note that individual students may voluntarily incorporate religious content in valedictory or other graduation speeches. While student speech that is part of a school-sponsored event may bear the

school’s imprimatur, censoring religious content from a student’s graduation speech may violate the student’s First Amendment free speech rights. Courts have held that a graduation prayer *voluntarily initiated* by a student without school encouragement is permissible.

School officials should provide students with appropriate guidelines for graduation speeches. We also recommend including a disclaimer statement in the graduation ceremony program stating that the views expressed by students and other speakers do not necessarily represent the school’s views.



## **Blueprint for Construction Delivery Methods**

Every successful school construction project begins with a strong conceptual foundation. Understanding the nuts and bolts of architect requirements, independent supervision, competitive bidding, and construction delivery methods will help school officials build that foundation and navigate their project with confidence.

### ***Use of Architect/Engineer***

Regardless of the selected delivery method, under both the School Building Construction Act (SBCA) and Section 2011 of the Occupational Code, a public school must retain an architect or engineer (A/E) for any school building construction project with a cost exceeding \$15,000. The A/E is primarily responsible for developing the plans and specifications, which describe project requirements in detail and are used to select the contractor(s) performing the work. The A/E must also provide cost estimates and review the materials used and supervise completed phases of construction.

### ***Independent Supervisor***

Section 2 of the SBCA requires the person supervising construction to be responsible for construction of the school building in conformance with the approved plans and specifications. The Michigan Attorney General has opined that an entity cannot both construct and supervise a project because it would create an inevitable conflict of interest (i.e., the entity is evaluating its own performance).

### ***Bidding Requirements***

Michigan law generally requires public schools to competitively bid all labor and materials for construction projects pursuant to Revised School Code Section 1267, where the labor and materials exceed an annually adjusted statutory threshold (currently \$31,321). The services of professional consultants, like an A/E, are generally not subject to competitive bidding

requirements, absent any board policies or federal grant terms and conditions to the contrary.

### **Construction Delivery Methods**

One of the first foundational decisions school officials must make related to a school construction project is determining which construction delivery method to use. The four most common construction delivery methods are: (1) General Contractor, (2) Construction Manager as Adviser (CMA), (3) Construction Manager as Constructor (CMc), and (4) Design-Build.

#### *1. General Contractor*

Under a General Contractor method, a school separately contracts with an A/E for design and a general contractor for construction. This delivery method is often used for smaller projects and does not utilize a construction manager.

Under the General Contractor approach, after the A/E prepares the plans and specifications, the school will award a single bid to a general contractor for the full scope of the project. The general contractor may perform the work itself or subcontract some or all of the work to individual trade contractors. In either case, aside from the A/E contract, the school's contractual relationship is solely with the general contractor, who is ultimately responsible for all project construction.

#### *2. Construction Manager as Adviser*

CMA is the most common delivery method used by Michigan public schools for large, complex construction projects. Under the CMA method, a school enters into separate contracts with the A/E, construction manager, and each individual trade contractor.

The CMA's role is to provide advice and counsel to school officials regarding trade contractor performance. During the preconstruction phase, a CMA provides cost estimation, sequencing, and scheduling services. A CMA also compiles bid documentation and works in conjunction with the A/E to assemble and release bid packages.

During the construction phase, the CMA will generally have one or more representatives located onsite to oversee and supervise construction. Because the CMA is not directly affiliated with the trade contractors performing construction, they can be (and often are) designated to serve as the independent supervisor under the SBCA. The CMA also bears responsibility for handling the administration of change orders and pay applications from trade contractors, as well as coordinating and "closing out" the work.

#### *3. Construction Manager as Constructor*

Under a CMc delivery method (also referred to as a "CM At-Risk"), a school enters into separate contracts with the A/E and construction manager. A CMc's preconstruction phase services largely mimic those provided under a CMA arrangement. However, after the school competitively bids and awards contracts to individual trade contractors, the contracts are assigned to the CMc, who effectively becomes a general contractor and assumes responsibility for their performance.

The CMc method provides a single point of responsibility and may offer cost efficiencies related to insurance and bonding; however, because the CMc is directly responsible for construction, it cannot serve as the project's independent supervisor under the SBCA. Instead, the school must either designate its A/E as the independent supervisor, or it must engage a third party (i.e., owner's representative) to serve in that role.

#### *4. Design-Build*

Public Act 67 of 2024 codified Design-Build as a permissible construction delivery method for *all* public school construction projects. Previously, this delivery method had only been permitted for certain energy improvement projects.

In a Design-Build project, a school enters into a single contract with a design-builder who is responsible for both design and construction, either individually or as part of a design-build team.

Before entering into a contract with a design-builder, a school must engage the services of a design-criteria developer or an A/E who is licensed in the State of Michigan and not employed by the design-builder to assist the school with the selection, compensation, and scope of services of the design-builder or design-build team. A design-criteria developer is responsible for preparing a design-criteria package – a set of documents sufficient to enable a design-builder to prepare a proposal in response to a school's request for proposals – and may also provide construction supervision services. Because a design-builder is responsible to perform construction, it cannot also supervise that performance without creating an impermissible conflict of interest.

### **Construction Contracts**

Regardless of which project delivery method is selected, school officials should ensure that all contract documents are modified to align with Michigan public school construction requirements and are consistent with the selected delivery method.

The most commonly used construction contract forms are created by the American Institute of Architects (commonly referred to as "AIA" contracts).

The standardized AIA forms are organized into series that must be used consistently. For example, when using a CMA delivery method, the school will need an A132 (Contractor Agreement), A232 (General Conditions), B132 (Architect Agreement), and C132 (Construction Manager Agreement). Mixing forms from different AIA series can create confusion, result in inconsistent allocation of responsibilities among project participants, and produce contract documents riddled with inaccurate or incompatible cross-references.

By selecting an appropriate project delivery method and ensuring clear, consistent construction contracts, school officials lay the groundwork for a successful project.

• ● •

### **Responding to Public Comment: Unlawful Retaliation or Safety Concern?**

A recent federal case reflects the growing tension surrounding school board meetings and the use of public comment opportunities for highly charged political and cultural disputes. *Hernden v Chippewa Valley Sch Dist*, No. 24-1842 (CA 6, 2025).

Plaintiff Sandra Hernden was a police officer for the City of Harper Woods Police Department who had children enrolled in Chippewa Valley School District. Ms. Hernden was also a member of Moms for Liberty, an advocacy group that often appeared at school board meetings during the COVID pandemic, opposing masking and supporting issues like in-person learning.

Ms. Hernden attended school board meetings and engaged in “heated interactions” with board members regarding the district’s handling of the pandemic. In addition, she allegedly sent “aggressive and politically charged emails” to the board and the community, and she allegedly engaged in related behavior, such as revealing a board member’s home address in online forums, resulting in cars appearing at that board member’s home.

In response, one board member emailed Ms. Hernden’s supervisor, the Chief of Police, expressing the board member’s concerns. In addition, the board president emailed the U.S. Department of Justice (DOJ), communicating his concerns and requesting “anything that could be done to curb this behavior” by Ms. Hernden and her supporters, which the board president alleged was intimidating, threatening, and harassing behavior at school board meetings. The board president’s email to the DOJ was in response to a memorandum issued by U.S. Attorney General in October 2021 addressing threats to school officials.

The board member’s email to Ms. Hernden’s supervisor did not request or result in any discipline for

Ms. Hernden, and the board president’s email to the DOJ did not result in any investigation. Nevertheless, when Ms. Hernden learned of these emails, she sued the board member, board president, and the school district, claiming she was the victim of retaliation for exercising her First Amendment rights.

The federal appeals court disagreed. Regarding the email from the board member to Ms. Hernden’s supervisor, which was sent from the board member’s personal email address, the court ruled that the board member was speaking for herself and was not authorized to speak on behalf of the entire board under the district’s policies. As a result, the board member’s email could not be considered “state action” necessary to support Ms. Hernden’s First Amendment retaliation claim.

As for the email from the board president to the DOJ, the court explained that while the question of “state action” was a closer one (because the board president was authorized to speak for the board under the district’s policies), there was insufficient evidence that Ms. Hernden suffered any adverse consequence or that her speech was chilled in any way.

Emotions often run high during public comment at board meetings, and board members who feel they are being personally attacked often want to take responsive action. It is important to remind board members (and all school officials) that the board has no obligation under the Open Meetings Act to respond to public comment. For Thrun Policy Service subscribers, public participation at board meetings is addressed in Policy 2504.

While it may be prudent and effective to respond to certain issues raised during public comment, discretion should be used in determining any response.

Additionally, board members and school officials should be mindful to not take any official action against any individual engaging in public comment that is based on the content of their comments, unless there is a lawful reason to do so, such as addressing a breach of the peace. Exercising caution regarding public comment can help avoid liability.

• ● •

## Schedule of Upcoming Speaking Engagements

Thrun Law Firm attorneys are scheduled to speak on the legal topics listed below.

For additional information, please contact the sponsoring organization.

[www.thrunlaw.com/calendar/list](http://www.thrunlaw.com/calendar/list)

Date	Organization	Attorney(s)	Topic
May 6, 2026	Thrun Law Firm, P.C.	Thrun Attorneys	Thrun Labor Webinar Series – Employee Disability & Religious Accommodations
May 12, 2026	Thrun Law Firm, P.C.	Thrun Attorneys	<i>Tuesdays with Thrun</i> Webinars  Managing your District’s Personnel Files (8:30 a.m. – 9:35 a.m.)  1st Amendment Tightrope – Student Activism, Threats, and Social Media (9:45 a.m. – 10:50 a.m.)  School Contracting 101 (11:00 a.m. – 12:00 p.m.)
May 20, 2026	Thrun Law Firm, P.C.	Philip G. Clark Jessica E. McNamara	School Resource Officers (SROs) Webinar
June 11 & 12, 2026	Thrun Law Firm, P.C.	Thrun Attorneys	Policy Implementation Webinars
August 19, 2026	Thrun Law Firm, P.C.	Thrun Attorneys	Thrun Labor Webinar Series – Employee Speech
September 10 & 11, 2026	Thrun Law Firm, P.C.	Thrun Attorneys	Policy Implementation Webinars
September 16, 2026	Thrun Law Firm, P.C.	Thrun Attorneys	Thrun Labor Webinar Series – Employee Absenteeism & Evaluations
November 18, 2026	Thrun Law Firm, P.C.	Thrun Attorneys	Thrun Labor Webinar Series – CBA Summary: Grievances & Collective Bargaining
December 10 & 11, 2026	Thrun Law Firm, P.C.	Thrun Attorneys	Policy Implementation Webinars

**\*\*\*SCHOOL DISTRICT LEGAL NAME\*\*\***

**NOTICE OF A PUBLIC HEARING**

**ON PROPOSED 2026-2027 BUDGET**

**PLEASE TAKE NOTICE** that on \_\_\_\_\_, 2026, at \_\_\_\_\_ o'clock \_\_.m., at \_\_\_\_\_, \_\_\_\_\_, Michigan, the Board of Education of \*\*\*School District Legal Name\*\*\* will hold a public hearing to consider the District's proposed 2026-2027 budget.

The Board may not adopt its proposed 2026-2027 budget until after a public hearing. A copy of the proposed 2026-2027 budget, including the proposed property tax millage rate, is available for public inspection during normal business hours at \_\_\_\_\_, \_\_\_\_\_, Michigan [and/or available online at: \_\_\_\_\_].

**The property tax millage rate proposed to be levied to support the proposed budget will be a subject of this hearing.<sup>1</sup>**

This notice is given by order of the Board of Education.

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
<sup>1</sup> This sentence must be printed in 11-point boldfaced type as shown.