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LEGISLATIVE DEVELOPMENTS AIM TO ADDRESS SCHOOL HIRING CONCERNS, INCLUDING REHIRING RETIREES

With students back in the classroom for the 2022-2023 school year, Michigan educators continue to look for ways to address staff shortages in schools. Soon, they may see reprieve. A statewide survey from the Michigan Education Association ("MEA"), released in September, showed that nearly 90 percent of K-12 respondents were "extremely concerned" or "very concerned" about the Michigan teacher and staff shortages. The survey, conducted from August 15 to August 25, 2022, polled 3,554 active and retired MEA members. MEA President Paula Herbart noted in a statement that the new education budget that passed this summer may help address this concern. Moreover, other developments from the Capitol regarding the Michigan Public School Employees Retirement ("MPSER") Act and proposed bills may bring the state closer to resolving the hiring shortage.

EDUCATION BUDGET PRESENTS FINANCIAL INCENTIVES FOR FUTURE TEACHERS

The education budget included several new incentives to help bring more educators into classrooms, including $9,600 stipends for student teachers, $175 million in funding to assist in training support staff to become teachers, and a $10,000 renewable fellowship for future educators, among other investments.

First, the "MI Future Educator Stipend" is a $9,600 per-semester stipend awarded to Michigan student teachers. The stipend incentivizes student teachers to continue their journey toward teaching full-time. The stipend can be used for student teaching expenses including, but not limited to, tuition, living expenses, and childcare. To be eligible, students must:

The education budget included several new incentives to help bring more educators into classrooms, including $9,600 stipends for student teachers, $175 million in funding to assist in training support staff to become teachers, and a $10,000 renewable fellowship for future educators.

1) Be admitted in an eligible Educator Preparation Program;
2) Be working towards teacher certification;
3) Be participating in required student teacher coursework;
4) Maintain "Satisfactory Academic Progress";
5) Be in an unpaid student teaching position; and
6) Not have received the MI Future Educator Stipend before, unless the student's program specifically requires
7) more than one semester of student teaching.

The stipend application opened on October 31. More information is available on the Michigan Department of Education's ("MDE") website

at Michigan.gov. Second, the education budget includes $175 million in funding for Grow-Your-Own programs. According to the MDE, the Grow Your Own program provides grant funds to "support non-certificated employees working toward initial teacher certification or currently certified teachers looking to add an additional endorsement to a Michigan teaching certificate." Eligible expenses include tuition and program fees, licensure testing fees, and substitute permit costs.

Applications must be submitted by school districts, public school academies, or intermediate school districts on behalf of interested staff members. The application requires information such as which employees will be supported, the need for support, and the education preparation provider with which the district will partner. The grant program applications are expected to open in December 2022.

Third, a new program called the "MI Future Educator Fellowship" will offer $10,000 to 2,500 future educators every year and help commit a new generation of students to teaching for at least three years. To be eligible, students must:

1) File the FAFSA and be a Michigan resident;
2) Have begun their first semester or term in the education program in the Fall 2022 semester or after;
3) Be a high school graduate;
4) Be admitted in an eligible Educator Preparation Program;
5) Be working on their first teacher certification;
6) Must have earned at least 56 semester credits or 84 term credits; and
7) Have a GPA of at least a 3.0.

According to the state's website on the program, fellowships are renewable for up to three years. Students receiving the fellowship must commit to teaching in a public, nonpublic, or public preschool program in Michigan for three to five years, depending on how many years of funding the student receives. Moreover, "[i]f a student does not meet this service obligation requirement and/or does not finish the teacher certification program, the fellowship converts to a 0% interest rate loan with a repayment term of 10 years." The application opened on October 31 and more information is available online at Michigan.gov.

RETIREMENT ACT AMENDMENT AIMS TO BRING RETIRED TEACHERS BACK TO CLASSROOMS

Recently, the legislature passed Public Act 184 of 2022, which significantly amended the MPSER Act and rules that regulate retirees who return to work for a public school. The amendment permits a retiree to return to work for a reporting unit, following both a bona fide termination and a nine-month waiting period, without having an effect on the retiree's pension and insurance premium subsidy. While the amendment may permit a retiree to return to a school without great concern regarding changes to his or her pension and insurance, questions regarding tenure, collective bargaining agreements, and volunteering have arisen in light of this amendment. Since the recent changes to the MPSER Act, common questions have arisen regarding what effect the changes may have on school districts and returning retirees. These questions are included below.

Question: Will a returning retiree regain tenure?

Answer: It depends upon where the teacher gained tenure and whether the assignment is for a full year. A retired tenured teacher will

immediately regain tenure upon being rehired in a school district in which the teacher had previously obtained tenure if the assignment is for a full school year. However, a school board may require a teacher who obtained tenure *in a different school district* to serve up to a 2-year probationary period before acquiring tenure in the hiring district.

Question: Will a collective bargaining agreement cover returning retirees?

Answer: Retirees who return to work for a reporting unit may be subject to a collective bargaining agreement ("CBA") if the position is covered by a CBA's recognition clause. It would be prudent for school districts to review the recognition clauses of applicable CBAs to determine whether a retiree's position would be included in the bargaining unit. If the position would be covered by a CBA, it would be prudent for the district to discuss with the union entering into a Memorandum of Understanding ("MOU") excluding the returning retiree from the bargaining unit and specifying any provisions of the CBA that will apply to the retiree. Absent written acknowledgement from the union such as a MOU acknowledging that a returning retiree is excluded from the bargaining unit, a school district may expose itself to a charge of direct dealing if the district engages directly with the retiree regarding the terms and conditions of the retiree's employment.

Two proposed Senate Bills, if passed and signed into law, would amend the Revised School Code to help Michigan schools address teacher and counselor shortages.

Question: Can a retiree volunteer?

Answer: Yes, a retiree may work as a volunteer for a reporting unit, such as in an athletic coaching position, following a bona fide termination even if nine consecutive months have not passed. The Office of Retirement Services recognized that "you can continue to receive your pension and insurance premium subsidy while volunteering as long as you are not compensated now or in the future for the time you volunteered." ORS, *PA 184 of 2022 FAQs*, Q 20.

PROPOSED BILLS AIM TO ADDRESS TEACHER SHORTAGES

Two proposed Senate Bills, if passed and signed into law, would amend the Revised School Code to help Michigan schools address teacher and counselor shortages. Both bills are currently in the Senate Committee on Education and Career Readiness.

According to the text of proposed Senate Bill 861 regarding teachers, a teaching certificate shall be issued to an out of state teacher without requiring passage of the appropriate examinations or completion of the reading credit requirement if the individual provides satisfactory evidence that he or she "has taught successfully for at least 3 years in a position for which the individual's teaching certification from the other state, country, or federally recognized Indian tribe was valid."

Pursuant to the text of proposed Senate Bill 942 regarding counselors, the superintendent of public instruction shall issue a valid school counselor credential to an individual who:

Is an individual who holds a school counselor license from another state, country, or federally recognized Indian tribe and meets either of the following:

a. Has at least 3 years of successful experience serving in a school counseling role in another state or country or with a federally recognized Indian tribe.

b. Has successfully completed the department's guidance counselor examination.

Additionally, "the superintendent of public instruction may issue a preliminary school counselor license to an individual enrolled in an approved school counselor preparation program if the individual meets both of the following":

a. The individual has completed at least 30 semester hours in an approved school counselor preparation program.

b. The individual has successfully completed the department's guidance counselor examination.

MDE recently issued a press release expressing support for the bills. First, it noted that Senate Bill 861 would "streamline the process for local school districts in Michigan to accept teacher licenses from other states." Second, Senate Bill 942 would "provide similar flexibility for local school districts to hire school counselors from other states."

If you or your district has any questions regarding new or pending legislation and how it may be useful in solving your staffing problems, contact us at Collins & Blaha, P.C.

SEXUAL ORIENTATION PROTECTED UNDER ELCRA

The Michigan Supreme Court recently held that the Michigan's Elliot-Larsen Civil Right Act ("ELCRA") prohibits discrimination based on sexual orientation because it constitutes discrimination "because of . . . sex" in violation of the statute. See *Rouch World, LLC v Department of Civil Rights*.[1]

In *Rouch World*, the Michigan Department of Civil Rights ("MDCR") investigated a complaint that alleged that Rouch World, a wedding venue, discriminated on the basis of sex when it declined to host a same-sex wedding at its facility. The investigation was paused when Rouch World sued the MDCR and sought a declaratory judgment that ELCRA does not prohibit sexual orientation and gender identity discrimination. The Court of Claims held that, while ELCRA prohibits discrimination based on gender identity, it does not protect against discrimination based on sexual orientation. MDCR appealed the Court of Claims decision with respect

As schools are subject to both Title VII and Title IX, which prohibit discrimination based on sex (including sexual orientation and gender identity), schools should already have adopted non-discrimination policies that prohibit such discrimination

[1] --- NW2d ---- (2022).

to sexual orientation, but not with respect to gender identity. Relying on the landmark 2020 case of *Bostock v Clayton County*,[2] in which the U.S. Supreme Court held that discrimination based on sexual orientation is prohibited under Title VII of the Civil Rights Act of 1964, the Michigan Supreme Court held that "[d]iscrimination on the basis of sexual orientation necessarily involves discrimination because of sex." Therefore, a public entity's denial of "the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations" on the basis of sexual orientation constitutes an ELCRA violation.

[2] 140 S Ct 1731 (2020).

As schools are subject to both Title VII and Title IX, which prohibit discrimination based on sex (including sexual orientation and gender identity), schools should already have adopted non-discrimination policies that prohibit such discrimination. The decision in *Rouch World* is a good reminder to ensure your district's relevant anti-discrimination policies are up to date. Further, because sexual orientation is a protected status under ELCRA, school officials must be especially careful to treat employees and students similarly, no matter their sexual orientation, to avoid claims of discrimination.

If your district has any questions about this decision or needs guidance updating discrimination policies, contact us at Collins & Blaha, P.C. for help.

TENURE COMMISSION UPHOLDS DISCHARGE OF INSUBORDINATE TEACHER

In *Sawicki v Bangor Township School District,*[3] the Teacher Tenure Commission upheld the discharge of an insubordinate tenured teacher where the teacher failed to appropriately update accommodation logs for special education students and provided poor quality instruction to students.

Over the course of 29 years of employment with Bangor Township School District, Sawicki was placed on several different individual development plans ("IDPs") for performance deficiencies. During remote instruction due to the COVID-19 pandemic in the 2020-21 school year, Sawicki failed to create and follow lesson plans based on district-adopted curriculum, did not provide adequate resources or instruction to students, and neglected his duty to accurately complete accommodation logs for special education students.

Thereafter, in August 2021, Sawicki was discharged on grounds that he (1) falsified student records, (2) engaged in unprofessional conduct, (3) violated board policies, administrative guidelines, and the employee handbook, (4) was derelict in his professional duties, and (5) was insubordinate.

On initial review by an administrative law judge ("ALJ"), the accommodation logs showed accommodations that were provided on days when class was not held, accommodations provided to absent students, and

[3] TTC 21-8 (2022).

accommodations for a student for months after the student withdrew from the district.

The ALJ also found that, "[d]espite repeated interventions, instructions, and directives, [Sawicki] never really improved his lesson plans," which were lacking and led to a poor quality in instruction.

The ALJ pointed to the fact that Sawicki did not administer a lab in his science class until the fifth month of teaching on a day when a formal evaluation was scheduled. The district submitted numerous recordings of Sawicki's remote teaching to demonstrate his limited engagement with students and poor-quality lessons. The Tenure Commission agreed with the ALJ that the district proved a majority of the charges by a preponderance of the evidence and that the reasons for discharge were neither arbitrary nor capricious.

If your district has any questions about this decision or bringing tenure charges, please contact us at Collins & Blaha, P.C.

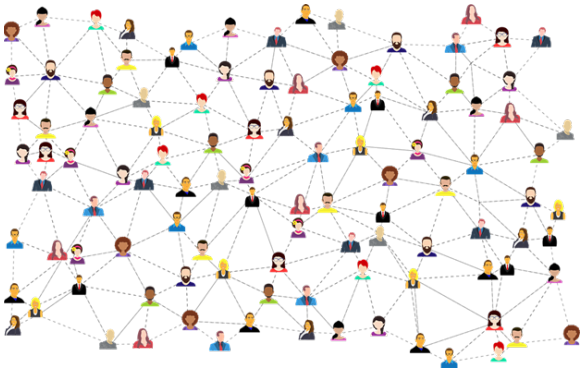
GUIDANCE ON REGULATING OFF-CAMPUS SOCIAL MEDIA POSTS

As employees and students increasingly turn to social media to express their viewpoints about political issues, social justice concerns, and other topics, and as one-time private postings often go viral and become public with increasing speed, the task of balancing First Amendment rights with district interests can require year-round attention. More school districts are facing the crossroad between taking action against students or employees and their off-campus speech while at the same time not violating their First Amendment rights. Recent guidance from the Tenure Commission and Michigan courts may help your district when addressing these kinds of problems.

TENURE COMMISSION REVERSES DISCHARGE OF TEACHER FOR FACEBOOK POSTS

In *Ziel v Romeo Community Schools,*[4] the Teacher Tenure Commission overturned the discharge of a tenured teacher for a social media post criticizing a community organization where the employee's communication was made in a private Facebook group, in her capacity as a private citizen, and fell under the protection of the First Amendment.

During the 2020-21 school year, Ziel was a tenured sixth grade teacher at Romeo Community Schools ("Romeo") and President of the Romeo Education Association ("REA"). In the course of that school year, COVID-19 safety protocols were a frequent and divisive topic. In April 2021, a Board of Education member at Chippewa Valley Schools ("CVS") informed Ziel that a group known as *Moms for Liberty* had recently disrupted a CVS Board meeting, and they also planned to attend a Romeo Board meeting.



[4] TTC 21-9 (2022).

On May 10, 2021, the Romeo Board held a public meeting, which Romeo staff attendees described as "more emotion[al]" and "aggressive" than normal. Some attendees refused to wear masks and follow social distancing guidelines. Ziel did not attend this meeting but was informed of the events at a small group negotiating session two days later. Based on Ziel's prior conversation with the CVS Board member, Ziel honestly—but incorrectly—believed that *Moms for Liberty* members attended the meeting on May 10 and were the disruptive force.

Romeo's justifications for discharging Ziel were found to be weak compared to the "significant societal and individual value of [Ziel's] political speech." Ziel's Facebook post was protected by the First Amendment and formed an unconstitutional basis for her termination.

On May 12, 2021, after normal working hours, Ziel made a Facebook post in a private group of fellow REA members regarding these events:

> This is how I picture the next board meeting between the Board & the idiots that turned the meeting into a 💩 show. A group called 'Moms of Liberty' showed up to stir up trouble. Apparently they were rude and mistook the meeting for a Jerry Springer show. Anti mask & anti vaccine & anti testing for sports. The trifecta of stink'n think'n. They are a virus to themselves.[5]

Ziel previously created the private Facebook group and had control over which persons were invited to join the group. While members could not share posts from the private page with the public via Facebook, they could take a screenshot and disperse the information. After Ziel made the post, at least one member of the group shared the post outside the group. Subsequently, Romeo received sixteen written complaints from parents regarding the post. Ziel was placed on paid administrative leave on May 16, 2021, and Romeo pursued tenure charges citing policy violations of the Michigan Code of Education Ethics and several Romeo policies. However, Romeo could not prove any of the below charges brought by a preponderance of the evidence.

1. *Disrespectful Communication with Parents*
   Pursuant to a school board policy requiring employees to comply with a professional code of ethics, Romeo alleged Ziel was discharged because she was disrespectful in her communication with parents, in violation of the Michigan Code of Educational Ethics. But the record determined Ziel never posted her update with the intent of directly communicating with parents.

2. *Discourtesy to Customers and General Public*
   According to the Romeo Employee Handbook, a Disciplinary Action Policy states that "[d]iscourtesy to a customer, provider, or the general public resulting in a complaint or loss of good will" could result in termination. However, Ziel's post was found to not be an interaction with any customer, etc., because it was a private communication.

3. *Social Media Policies*
   Four District policies governing the use of social media made it clear that:

   (1) The policies apply to the use of social media on personal equipment outside of school hours;

[5] *Id.*

> (2) The policies apply to both direct communications and to communications that reasonably could be expected to be seen by the broader community;
>
> (3) The policies prohibit the use of social media in a manner that is unprofessional, embarrassing, or insulting to the extent that it would be reasonably expected to harm the good will of the district; and
>
> (4) The policies do not prohibit conduct that is otherwise protected by law, including the First Amendment.[6]

Ultimately, the Tenure Commission found Ziel's intentions were not malicious and did not violate Romeo policy. Further, Romeo's justifications for discharging Ziel were found to be weak compared to the "significant societal and individual value of [Ziel's] political speech." Ziel's Facebook post was protected by the First Amendment and formed an unconstitutional basis for her termination. Ziel has been reinstated following the Tenure Commission's decision.

GOVERNMENT OFFICIAL MAY CENSOR CONSTITUENT ON PUBLIC FACEBOOK PAGE

The Sixth Circuit recently held that a city manager did not violate the First Amendment rights of a citizen when the manager blocked the citizen from making posts on the city manager's Facebook page, because the city manager maintained the Facebook page in his personal capacity and was therefore not engaged in state action.

In *Lindke v Freed*,[7] a Michigan city manager maintained a "public" Facebook page that any Facebook user could follow and view. Freed included professional and personal information on his page such as his position as city manager for Port Huron, the Port Huron city website, the city's general email for administration and staff, the address of the city hall, his status as a husband and father, information and photos of personal family events, administrative directives that he issued, and policies he initiated during the COVID-19 pandemic. Lindke, a Port Huron citizen, posted critical comments on the Facebook page, so Freed removed the comments and blocked Lindke from the page. Lindke filed claims against Freed for a First Amendment violation.

The Court granted summary judgment to Freed, finding that he acted in a personal capacity on social media despite labeling himself as a public figure. Because Freed was not compelled to operate the Facebook page under law or as part of his duties of holding office, the page was not paid for with government resources, and the page did not belong to the office of city manager (e.g., Freed could take it with him when he left the position), the Court reasoned that he was not engaging in state action that could be challenged under a First Amendment claim.

Though the Sixth Circuit took this stance, it is worth noting that the Second, Fourth, Eighth and Ninth Circuits have rejected this approach.[8] These other circuits treat public officials as state actors on social media if they present themselves as government employees and post content primarily about their official activities. We will continue to monitor the

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[6] *Ziel v Romeo Community Schools*, PDO 21-9 (2022).
[7] 37 F 4th 1199 (CA 6, 2022).
[8] See *Knight First Amendment Institute at Columbia University v Trump*, 928 F 3d 226 (CA 2, 2019), cert granted, judgment vacated sub nom *Biden v Knight First Amendment Institute at Columbia University*, 141 S Ct 1220 (2021); *Davison v Randall*, 912 F 3d 666 (CA 4, 2019), as amended (Jan 9, 2019); *Campbell v Reisch*, 986 F 3d 822 (CA 8, 2021); and *Garnier v O'Connor-Ratcliff*, 41 F 4th 1158 (CA 9, 2022).

developing case law for rulings that may affect school districts.

SCHOOLS MAY DISCIPLINE STUDENT FOR IMPERSONATING TEACHER ONLINE

The United States District Court for the Eastern District of Michigan ruled that an Instagram account created off-campus by a student, that targeted, threatened, and harassed specific teachers and a student, was not protected speech. In *Kutchinski v Freeland Community School District*,[9] the plaintiff, a high school student, while at home on a Saturday, created an Instagram account that impersonated a teacher at the school. The plaintiff used real photos of the teacher, listed his full name and occupation, and identified his wife and children. The plaintiff granted access to the account to two of his friends. Over the course of the weekend, the two friends created a series of posts on the account which contained violent and sexually explicit content. Specifically, some of the posts made it seem as if the impersonated teacher was having an affair with another teacher at the school. Other posts made it seem as if the impersonated teacher was making threats to kill a different teacher at the school. The posts directly identified the teachers by name.

In upholding the school's decision to issue a ten-day suspension for the student's involvement in setting up the Instagram account to impersonate the teacher, the court found that the suspended student knew that the site functioned as a platform through which other students made harassing posts. The court also found that the recent Supreme Court case of *Mahanoy Area Sch Dist v Levy*[10] did not protect the student because, "the Mahanoy court listed several types of off-campus behavior that may call for school regulation, including serious or severe bullying or harassment targeting particular individuals and threats aimed at teachers or other students."

The Court reasoned the speech in this case was not protected because:

(1) School districts have a significant interest in regulating a student's off-campus speech, particularly where the speech cannot be considered religious, political, or merely an unpopular opinion, when such speech is of a "highly targeted nature" and constitutes threats and harassment towards the specifically targeted individuals.

(2) School districts can discipline a student for participating in online group bullying, even where the disciplined student may not have been the main offender, where there is a causal connection between the student's speech and the bullying that invaded the rights of others.

(3) School districts can reasonably forecast a substantial disruption where off-campus speech is highly targeted in nature, the speech is taken seriously by members of the school, and the speech impacts students' ability to do work and teachers ability to teach.

Balancing First Amendment rights with district interests is complicated. Remember that your decisions in this area may affect administration, staff, students, parents, Board members, and members of the community. **If your district has any questions or issues arising in this area, please contact us at Collins & Blaha, P.C. so we may help.**

[9] Case No 1:19-cv-13810 (ED Mich, 2022).

[10] 141 S Ct 2038 (2021).

Michigan Court of Appeals Overturned State Aid Deduction for Principal Without Administrator Certificate

In *Tecumseh Public Schools v Department of Education,*[11] the Michigan Court of Appeals held that the Michigan Department of Education ("MDE") was not authorized to deduct state aid for a school administrator who was "grandfathered in" and met the statutory requirements of the Revised School Code by completing professional development hours but had not obtained an administrator certificate.

In *Tecumseh*, the District hired Carl Lewandowski to serve as principal in 1997. In 2010, the Revised School Code ("RSC") was amended to require that school administrators – including principals – hired prior to 2010 must complete the continuing education requirements prescribed by the state superintendent to continue employment with a school district. The RSC provides that if a school district violates this requirement, the district's state aid will be reduced by the amount of money paid to the principal in violation.

The court reasoned that if an administrator has completed the statutorily-required continuing education requirements, then that administrator is in compliance with the RSC.

In 2011, MDE issued guidance stating, in relevant part, that "[i]f employed as a school administrator before January 4, 2010, and the person has completed the continuing education requirements, he or she is not required to hold administrator certification." However, in 2017, MDE amended the administrative rules to require that school administrators hold a school administrator certificate, including administrators employed prior to 2010. MDE further revised the administrative rules to provide that the state superintendent "shall issue" an administrator certificate to individuals employed prior to 2010 if they completed the continuing education requirements.

In 2019, Lewandowski applied to MDE for a school administrator certificate. His application included evidence that he had completed the necessary continuing education requirements. MDE issued Lewandowski the certificate. However, MDE notified the district that its employment of Lewandowski violated the RSC because he was employed as a principal for part of the 2018-19 school year without holding the certificate required by the Administrative Rules. MDE therefore reduced the district's state aid as a penalty.

The district appealed the state aid deduction, arguing that Lewandowski could not be required to hold an administrator certificate because he had been continuously employed as a principal since 1997 and therefore was only required to meet continuing education requirements. The district further argued that MDE exceeded its rulemaking authority in promulgating the revised administrative rules in 2017.

[11] Unpublished per curiam opinion of the Court of Appeals, issued August 25, 2022 (Docket No 356292).

The Michigan Court of Appeals held that, despite the fact that administrative rules have the force of law, the penalty assessed against the district was erroneous. The court found that during the portion of the 2018-19 school year that Lewandowski worked without a certificate, he had in fact met the RSC's continuing education requirements. The court reasoned that if an administrator has completed the statutorily-required continuing education requirements, then that administrator is in compliance with the RSC. Therefore, a school district would not be in violation for continuing to employ an administrator who has actually completed those continuing education requirements.

The court explained that this is irrespective of whether MDE has formally verified that an administrator has completed the statutory continuing education requirements through the certification process of the Administrative Rules. Thus, since Lewandowski did not violate the statute, penalizing the district by deducting a penalty from its state aid was inappropriate and not unauthorized by law since the district was in compliance with the RSC. The court noted that MDE exceeded its authority in using compliance with the certificate requirement as a substitute for compliance with the statutory requirements. The court declined to issue an opinion as to what penalty would be appropriate when an administrator violates the administrative rules' certification requirements.

In summary, the Michigan Court of Appeals held that an administrator hired prior to 2010 is in compliance with the RSC – despite not holding an administrator certificate – *if they have completed the necessary continuing education requirements.* Therefore, the MDE could not deduct from a district's state aid as a penalty for violating the administrative rules' certification requirements in this particular circumstance. However, the court declined to issue an opinion as to what penalty would be appropriate for such violation.

If your district has questions about the Administrative Rules or continuing education requirements and how they may apply to you, contact us at Collins & Blaha, P.C. for guidance.

New Rules from the 2022-2023 Pupil Accounting Manual and Pupil Membership Accounting Manual

Each year, the state legislature adopts new state laws that change, nominally or substantially, the state's pupil accounting rules. In early September, the Michigan Department of Education ("MDE") released the 2022-2023 edition of the Pupil Accounting Manual ("PAM"), and in late October 2022, MDE released the 2022-2023 edition of the Pupil Membership Auditing Manual ("PMAM"). The new PAM and PMAM include a number of important updates for districts. They, as well as MDE publications summarizing key updates therein, can be found on the MDE's website. Some of the more significant updates include:

PROOF OF PUPIL IDENTITY AND AGE

When a district enrolls students for the first time, section 1135 of the Revised School Code requires proof of the pupil's identity and age in the form of either (1) a birth certificate or (2)

"other reliable proof." See MCL 380.1135. Now, such "other reliable proof" must be accompanied by a sworn notarized statement from a parent or legal guardian attesting to the reason for the other proof. Thus, it would be prudent for districts to ensure that they receive such a statement from a parent or legal guardian when they receive submission of proof of the student's identity and age.

PUPIL MEMBERSHIP DEDUCTIONS ON THE BASIS OF GRADE-LEVEL PLACEMENTS

For purposes of counting a pupil for membership in the 2022-2023 school year, a "class" means a period of time in one day when pupils and a certificated teacher, a teacher engaged to teach under section 1233b of the Revised School Code, or an individual working under a valid substitute permit, authorization, or approval issued by MDE are together and instruction is taking place. Thus, for the current school year, pupil membership auditors will only be required to make membership deductions for inappropriate grade-level assignments.

For the 2023-2024 school year, however, teachers must be appropriately placed with respect to both the grade level and subject area before a student may be counted for membership purposes.

UPDATES TO VIRTUAL COURSES

Districts may now offer pupils virtual courses provided by third-party vendors. The district still needs to ensure that the supplied teacher satisfies the teacher certification requirements. Further, a permit is now unnecessary to use third-party supplied teachers for virtual learning. Additionally, an educational development plan is no longer required for students with more than two virtual courses.

RECORDING BUILDINGS USED TO PROVIDE EDUCATION

To be compliant with new auditing requirements, districts must verify that all buildings used to provide education to students are included and are listed in district/building course catalogs.

LABELING EXPERIENTIAL LEARNING COURSES

On student schedules, Experiential Learning courses must be identified by a course name rather than by a generic label such as "Experiential Learning." **If you or your district has any questions about these new rules in the 2022-23 Pupil Accounting Manual and Pupil Membership Auditing Manual, or any existing rules, please contact us at Collins & Blaha, P.C.**

Since 1981, when Collins & Blaha, P.C. was founded, our attorneys have represented educational institutions in the ever-changing area of educational law. We currently represent some of the largest school districts in the state, and some of the smallest. Whatever the size, the issue, or the challenge, our clients are confident that Collins & Blaha, P.C. will represent their interests competently and with the hands-on approach that a specialized firm can provide.