COLLINS & BLAHA, P.C.
ATTORNEYS AT LAW

EDUCATION LAW UPDATE

SPRING 2023

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RECENT LEGISLATION SIGNED BY GOVERNOR WHITMER

Several bills have made it to Governor Gretchen Whitmer's desk during this current 2023-24 legislation season. Those that have received her signature and may impact school districts in the near future are summarized below.

ELCRA EXPANDED TO ADD SEXUAL ORIENTATION AND GENDER IDENTITY OR EXPRESSION

First, Public Act 6 of 2023 ("PA 6") expanded Michigan's Elliott-Larsen Civil Rights Act ("ELCRA") to bar discrimination based on sexual orientation and/or gender identity or expression. MCL 37.2102 *et seq*.

This follows the Michigan Supreme Court's July 28, 2022, decision in *Rouch World v Department of Civil Rights*, --- NW2d ---- (Mich 2022). In *Rouch World*, the Supreme Court held that ELCRA's prohibition on sex discrimination encompasses discrimination on the basis of an individual's sexual orientation. Prior to the Supreme Court's decision in *Rouch World*, the Michigan Court of Claims determined that ELCRA's prohibition against sex discrimination encompasses discrimination on the basis of gender identity. Since the portion of the decision relating to gender identity was not appealed to the Michigan Supreme Court, the Court did not make any determinations with regard to whether ELCRA prohibits discrimination on the basis of gender identity. Instead, the Supreme Court only decided whether ELCRA prohibited discrimination on the basis of sexual orientation.

ELCRA now prohibits discrimination in employment, public accommodations and public services, educational facilities, and housing, and real estate based on religion, race, color, national origin, age, sex, **sexual orientation, gender identity or expression**, height, weight, familial status, or marital status.

According to PA 6, "gender identity or expression" is defined as having, or being perceived as having, a gender-related self-identity or expression whether or not associated with an individual's assigned sex at birth. "Sexual orientation" is defined as having an orientation for heterosexuality, homosexuality, or bisexuality or having a history of such an orientation or being identified with such an orientation.

The bill will take effect 91 days after the adjournment of the 2023-24 legislative session, sometime in early 2024.

READ BY GRADE THREE RETENTION LAW REPEALED

Next, Public Act 7 of 2023 ("PA 7"), strikes down the existing law requiring third graders who fail a reading proficiency test to be held back. MCL 380.1280f.

MCL 380.1280f currently requires schools to identify learners who are struggling with reading and writing and to provide additional help. The law states that third graders may repeat third grade if they are more than one grade level behind beginning with the 2019-2020 school year. Educators can determine if students are behind based on their spring Michigan Student Test of Educational Progress ("M-STEP") testing score. However, the law was delayed

a year because the COVID-19 pandemic led to cancellation of the M-STEP in 2020. The law provides exceptions to retention, as administrators or parents can dispute the recommendation for retention if the student qualifies for an exemption.

The original law stated that a child *may* be held back if they are behind in reading at the end of third grade. Under PA 7, students will *not* be held back if they receive a low score. Instead of retention, a student's parent or guardian will be provided information about intervention options and the student will receive reading intervention until they no longer have a reading deficiency. Additionally, PA 7 retains other elements of the law such as staffing recommendations, reading intervention services, and the use of evidence-based curricula and instructional material.

"New legislation in this article will take effect 91 days after the adjournment of the 2023-24 legislative session, sometime in early 2024."

The bill will take effect 91 days after the adjournment of the 2023-24 legislative session, sometime in early 2024. Therefore, school districts may still choose to retain third graders under the law at the end of the 2022-23 school year based on low M-STEP testing scores in reading.

WORKERS' RIGHTS LAWS RELATED TO RIGHT-TO-WORK AND PREVAILING WAGE AMENDED

Finally, two recently signed bills may affect public employees' rights in school districts. Public Act 9 of 2023 ("PA 9") amends the Public Employment Relations Act ("PERA"), or MCL 423.209 *et seq*, to remove right-to-work provisions related to *public employees*.[1] Right-to-work laws generally provide that an employee cannot be legally compelled to pay dues to a union in order to be covered under their workplace's collective bargaining agreement. Currently, under PERA, most public employees cannot be required to pay dues, fees, or other charges to a labor organization in order to obtain or continue their employment. Employees also cannot be required to leave, enter, or stay in a union. Violations are punishable by a $500 fine. Public employees are also granted the explicit right to refrain from organizing or joining labor organizations and from participating in collective bargaining.

PA 9 removes the above provisions. Instead, a new provision would provide that Michigan or a local law (under PERA or otherwise) does not prevent a public employer from entering into an agreement with a designated union representative that requires all other employees represented by the union to pay a service fee equivalent to the amount that union members may be required to pay in dues as a condition of employment.

However, in *Janus v AFSCME*, 138 S Ct 2448 (2018), the United States Supreme Court ruled that non-union government workers **cannot be required to pay union fees as a condition of working** in public service as it violates the First Amendment right to free speech. Therefore, an agreement under PA 9 requiring *public sector employees* to pay bargaining representative dues or service fees would only become effective if the United States Supreme Court reverses or limits its decision in *Janus* or an amendment to the United States Constitution is ratified that restores the ability to require a public employee who is not a member of a bargaining representative to pay fees to the representative as a condition of employment.

PA 9 will take effect 91 days after the adjournment of the 2023-24 Legislative session, sometime in early 2024. However, because of the precedent established in *Janus v*

[1] Public Act 8 of 2023 amends the Employment Relations Commission Act or MCL 423.1 *et seq*, to remove right-to-work provisions related to private employees.

AFSCME, the provisions of PA 9 will not be enforceable until one of the aforementioned actions is taken.

Public Act 10 of 2023 ("PA 10") enacts a new law that requires a policy commonly known as "prevailing wage" for state construction projects receiving public funding. Under the new act, every contract for a project that requires the employment of construction mechanics would have to include a term stating that the rates of wages and fringe benefits to be paid to each class of construction mechanics must equal or exceed the wage and benefit rates that are standard in the locality where the work is to be performed. This applies to state-funded construction projects bid out by local school districts. A violation of the act would be a misdemeanor.

PA 10 provides the following definitions:

> ***State construction project*** would mean any new construction, alteration, repair, installation, painting, decorating, completion, demolition, conditioning, reconditioning, or improvement of public buildings, schools, works, bridges, highways, or roads authorized by a contracting agent. It would not include projects that are subject to the jurisdiction of the Michigan Civil Service Commission.
>
> ***Construction mechanic*** would mean a mechanic, laborer, worker, helper, assistant, or apprentice working on state projects. It would not include executive, administrative, professional, office, and custodial employees. [House Fiscal Agency, *Legislative Analysis*, p 1 (March 9, 2023) (emphasis in original).]

Pursuant to the Legislative Analysis, the Department of Labor and Economic Opportunity ("LEO") would be required to "establish wages and benefits at the rate that prevails on projects of a similar character in the relevant locality under collective bargaining agreements ("CBAs") or understandings between labor organizations of construction mechanics and their employers." *Id*. If no such CBAs exist, then the LEO would be tasked with determining the prevailing wage for that locality "by using the rates and benefits that prevail in the same or most similar employment in the nearest and most similar neighboring locality in which a CBA agreement or understanding exists." *Id*.

PA 10 will take effect 91 days after the adjournment of the 2023-24 legislative session, sometime in early 2024.

If you have questions about how these new laws may affect your school district, please contact us at Collins & Blaha, P.C.

PROBATIONARY TEACHER NONRENEWAL DEADLINE APPROACHING

Pursuant to the Teachers' Tenure Act ("Tenure Act"), school districts are required to give **notice** to probationary teachers if the district does not plan on renewing the probationary teacher's contract. A teacher is in a probationary period during his or her first five years of employment. MCL 38.81(1). Under the Tenure Act, a probationary teacher cannot successfully complete his or her probationary period unless the teacher has been rated as "effective" or "highly effective" on his or her three most recent annual year-end performance

evaluations. MCL 38.83b(1). Do not forget, annual year-end performance evaluations must be conducted for probationary teachers in accordance with the requirements laid out in the Revised School Code ("RSC"), even if their contract will not be renewed. These evaluations must be based on student growth and assessment data, measured in part by state assessments. Annual year-end evaluations must also be based on multiple classroom observations, with less frequent observations and evaluations required for teachers meeting specific performance rating requirements. Year-end evaluations also must assess a probationary teacher's Individualized Development Plan ("IDP") goals. IDP goals must be implemented during each year of the probationary period.

As provided by the Tenure Act, if a district fails to comply with the performance evaluation, midyear progress report, or IDP requirements, the probationary teacher's employment will be renewed for the following school year. However, under the RSC, a district must dismiss a probationary teacher if he or she receives "ineffective" ratings on three consecutive annual year-end evaluations. This dismissal requirement applies only to ratings of "ineffective," and not to ratings of "minimally effective."

The Tenure Act requires a school board, before the end of each school year, to provide a **"definite written statement" indicating whether or not a probationary teacher's performance has been effective**. Additionally, if a district does not want a probationary teacher to return for the next school year, it must notify the teacher in writing that his or her services will be discontinued. Pursuant to the Tenure Act, if a school board fails to provide notice as required, the probationary teacher's employment will automatically be renewed for the following school year.

Courts have interpreted this notice requirement to mandate a **simple, timely notice that the probationary teacher's performance has been less than effective**.[2] The Michigan Supreme Court has stated that this notice does not need to be accompanied by an explanation of the reasons why the teacher's performance was unsatisfactory. The Michigan Teacher Tenure Commission has explained that the required discharge notices for probationary teachers under the Tenure Act relate only to a probationary teacher's classroom competency, and not to cases of layoffs or unprofessional conduct.

"For probationary teachers who are hired at the beginning of the year, notice of nonrenewal is required 15 days before the end of the fiscal year (June 15). MCL 38.83(1). For probationary teachers who are hired mid-year, notice of nonrenewal is required 15 days before the anniversary date of hire."

The Michigan Supreme Court has determined that the end of the school year for Tenure Act purposes is June 30.[3] Therefore, when calculating deadlines for notice of nonrenewal for a teacher hired at the beginning of a school year, the **deadlines are calculated by counting back from June 30**. However, if a probationary teacher was hired at a time other than the beginning of a school year, the deadlines for notice of

[2] *Lipka v Brown City Schs*, 403 Mich 554 (1978); *Garcia v Eaton Rapids Pub Schs*, TTC 99-13; *Simmons v Marlette Bd of Ed*, 73 Mich App 1 (1976).

[3] *Ajluni v West Bloomfield Bd of Ed*, 397 Mich 4622 (1976).

nonrenewal must be calculated using the actual date of hire as the endpoint, not June 30.

For probationary teachers who are hired at the beginning of the year, **notice of nonrenewal is required 15 days before the end of the fiscal year** (June 15). MCL 38.83(1). For probationary teachers who are hired mid-year, notice of nonrenewal is required **15 days before the anniversary date of hire**. A newly hired teacher who was tenured in a different district should not be subject to a probationary period that lasts longer than two years. MCL 38.83(1). Only one probationary period may be served in a school district. Notice of nonrenewal must be provided to a teacher who earned tenure in another district **60 days before the completion of the probationary period**. MCL 38.92.

Though the Tenure Act states that probationary teachers may be dismissed at any time, the Tenure Commission has ruled that this provision only applies to dismissals that do not involve ineffective service, such as cases of unprofessional conduct or misconduct.

If your district has questions about probationary teacher nonrenewal, please contact us at Collins & Blaha, P.C.

OCR Issues Guidance on Title IX and Athletic Opportunities

The United States Department of Education ("DOE") Office for Civil Rights ("OCR") recently issued guidance regarding K-12 schools' legal obligations under Title IX of the Education Amendments Act of 1972 ("Title IX").[4] Specifically, the guidance is designed to assist schools in evaluating athletic programs to determine whether the legal duty to provide equal athletic opportunity based on sex is adequately being met. Title IX is a federal civil rights law that prohibits discrimination on the basis of sex in educational programs or activities for schools that receive federal funding. Since public schools receive federal funding, **they are required to comply with Title IX**, including within extracurricular athletic programs, clubs, intramural teams, and interscholastic teams.

According to OCR, providing equal opportunities based on sex in athletic programs is measured by:

1. Evaluating the benefits, opportunities, and treatment given to boys' and girls' teams, and
2. Evaluating how a school is meeting students' athletic interests and abilities.[5]

[4] *Available at* https://www2.ed.gov/about/offices/list/ocr/docs/ocr-k12-athletic-resource-202302.pdf. OCR also issued guidance to assist colleges and university communities in meeting their obligations pursuant to Title IX. While there are similarities between the K-12 guidance and the higher education guidance, there are several key differences between the guidance documents that should be noted. Differences include, but are not limited to, determining whether a school is providing equal opportunity in athletic scholarships and financial assistance. OCR's guidance for athletic opportunities in colleges and universities is available at https://www2.ed.gov/about/offices/list/ocr/docs/ocr-higher-ed-athletic-resource-202302.pdf.

[5] 34 CFR 106.41(c).

The following information and questions provided by OCR can be used to determine whether a school is providing equal opportunities based on sex as measured by the above two points.

MEASURING BENEFITS, OPPORTUNITIES, AND TREATMENT FOR BOYS' AND GIRLS' TEAMS

Title IX regulations require schools to offer the same benefits, opportunities, and treatment to both boys' and girls' teams. OCR provided the following topic areas and questions to assist schools in evaluating whether a school is acting in accordance with these requirements:

- Equipment and Supplies:
    - Does your school provide athletic gear of equivalent quality, quantity, suitability, condition, and availability for athletes on boys' and girls' teams?

- Scheduling Games and Practice Time:
    - Do boys' and girls' teams both have a reasonable opportunity to compete before an audience?
    - Do the boys' and girls' teams play an adequate number of regular season games or other competitions for the team's division level?
    - Are scheduled practice times equally convenient for both boys' and girls' teams?
    - Are the number and length of practice sessions equivalent for girls' and boys' teams in the same or similar sports?

- Travel and Daily Allowance:
    - Do athletes on girls' and boys' teams use equivalent modes of transportation when traveling to away games or competitions?
    - Do athletes on girls' and boys' teams have equivalent accommodations when traveling overnight?
    - When athletes on girls' and boys' teams travel to games, are they offered equivalent meals or meal allowances?

- Coaching:
    - Do boys' and girls' teams have coaches with equivalent qualifications?
    - Are coaches available to girl and boy athletes for equivalent amounts of time?
    - Do coaches of boys' and girls' teams receive equivalent compensation? If not, can differences in pay be justified by factors that could be nondiscriminatory?
    - Do coaches of girls' and boys' teams have equivalent "other duties" (for example, teaching versus full-time coaching)?

- Locker Rooms and Fields, Courts, or Other Facilities for Practice and Competition:

- Do athletes on boys' and girls' teams have locker rooms of equivalent quality and size?
- Are the conditions of playing fields, courts, pools, and other practice/game facilities for boys' and girls' teams equivalent?

- Medical and Training Facilities and Services:
  - Are the training and conditioning facilities for athletes on boys' and girls' teams of equivalent quality?
  - Do members of boys' and girls' teams have equivalent access to training facilities?

- Publicity:
  - Does your school provide equivalent coverage for boys' and girls' teams and athletes on its website, social media, or other publicity?
  - Are cheerleaders, pep bands, and drill teams provided equivalently for girls' and boys' teams?

MEETING STUDENTS' ATHLETIC INTERESTS AND ABILITIES

OCR provided that a school may choose one of three options – depending on the best fit for its community – to demonstrate it is fulfilling its legal obligation to meet the athletic interests and abilities of boys and girls in its student body. If a school cannot use *any* of the following options to show Title IX compliance, it may not be meeting its legal obligations.

Option 1: Substantial Proportionality

- Option 1 evaluates whether the percentages of girl and boy participants[6] on a school's athletic teams are about the same as the percentage of girls and boys attending the school. While team sizes vary, the "substantial proportionality" option evaluates the number of participants *on all teams* as compared to the number of students at a school.
- Substantial proportionality looks at the measure of school enrollment versus the measure of boy and girl participants on teams. If the percentages are about the same, then the school can use Option 1 to show that its athletic program provides equal opportunities.

Option 2: History and Continuing Practice

- Option 2 evaluates whether a school has a history of and present practice in expanding its athletic

[6] According to the OCR:

Here, "participants" means those athletes: a) who are receiving the school sponsored support normally provided to athletes competing at the school involved, e.g., coaching, equipment, medical and training room services, on a regular basis during a sport's season; and b) who are participating in organized practice sessions and other team meetings and activities on a regular basis during a sport's season: and c) who are listed on the eligibility or squad lists maintained for each sport, or d) who, because of injury, cannot meet a, b, or c above but continue to receive financial aid on the basis of athletic ability. [U.S. Department of Education, Office of Civil Rights, *Title IX and Athletic Opportunities in K-12 Schools*, February 2023, p 6 n 9, *available at* https://www2.ed.gov/about/offices/list/ocr/docs/ocr-k12-athletic-resource-202302.pdf].

programs to respond to the interests and abilities of girls, if girls have been underrepresented, or boys, if boys have been underrepresented.

- This option asks whether a school has or continues to expand or add a team to accommodate an expressed interest. For example, if girls have been or are underrepresented, will the school add or expand a team for girls? Or, if boys have been or are underrepresented, will the school add or expand a team for boys? If the answer is yes, then a school can use this option to show that it provides equal opportunities.

Option 3: Interest and Abilities of Students

- Option 3 evaluates whether, despite disproportionality, a school is still meeting the interests and abilities of an underrepresented sex. OCR provides that, "[f]or example, if girls are underrepresented in the athletic program, this option asks if there is enough demand, skill, and talent at your school among girls to sustain a viable team or sport, and likewise for boys if boys are underrepresented in the athletic program."

- The following questions can assist in an analysis for Option 3. If the answer is "no" to *any* of the following, the school can use this option to show that it provides equal opportunities. If the answer is "yes" to *all three questions*, a school cannot use this option.
    - Is there unmet interest in a particular sport that is not offered at your school?
    - Is there enough talent and skill among the girls in the student body to sustain a team in the sport?
    - Are there other schools in your area or region currently competing in the sport?

Districts should keep in mind that the DOE has indicated that it expects to release amended Title IX regulations and rules in May 2023. An exact release date has not been provided and it is not clear when the new regulations will take effect. The proposed rules **will not directly address athletics**. The DOE is engaging "in a separate rulemaking to address Title IX's application to athletics."[7] On April 6, 2023, the DOE announced proposed changes to Title IX's regulations on athletics, which are open for public comment until May 15, 2023. Thereafter, the DOE will issue a final rule. This rule-making process can take several months.

We recommend using the above guidance to evaluate whether your school is meeting its Title IX obligations with respect to athletic programs and activities. Should you have any questions or concerns about whether your school is meeting its Title IX obligations, do not hesitate to contact us at Collins & Blaha, P.C.

[7] *See* https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=1870-AA16; https://www.ed.gov/news/press-releases/us-department-education-releases-proposed-changes-title-ix-regulations-invites-public-comment.

IN CASE YOU MISSED IT: CURRENT MINIMUM WAGE AND PAID SICK LEAVE LAWS TO REMAIN IN EFFECT

On January 26, 2023, the Michigan Court of Appeals issued a decision holding that the minimum wage and paid sick leave laws that are currently in effect will remain in effect. See *Mothering Justice v Attorney General*, __ Mich App __, No. 362271 (Mich Ct App, 01/26/2023).

By way of background, in 2018, voter-initiated legislation establishing increases to the state minimum wage and requiring employers to provide paid sick leave was to be put on the ballot after organizers collected sufficient signatures. The first initiative—the Improved Workforce Opportunity Wage Act ("IWOWA")—required a minimum wage of $12 per hour. The second initiative—the Earned Sick Time Act ("ESTA")—required employers with 10 or more employees to provide one hour of paid sick leave for every 30 hours worked, up to 72 hours of paid sick leave per year.

On September 5, 2018, the Michigan Legislature adopted both voter initiatives. However, after adopting the legislation and prior to it going into effect, the Michigan Legislature amended both statutes. The amendments to the IWOWA reduced the required minimum wage increases. The ESTA was renamed the Paid Medical Leave Act ("PMLA"), and employers with less than 50 employees became exempt from the Act's requirements. In addition, employees earned one hour of paid sick leave per 35 hours of work, up to 40 hours of paid sick leave per year. Further, employees who are exempt from the minimum wage and overtime requirements of the Fair Labor Standards Act were also exempted from the PMLA's requirements for paid sick leave.

The plaintiffs in *Mothering Justice* challenged the amendments made to the minimum wage and paid sick leave laws. The Michigan Court of Claims analyzed whether the legislature's amendments to the statutory language were permissible under the Michigan Constitution and held that such amendments were not permissible. Thus, the Court of Claims ordered that the original requirements for minimum wage and paid sick leave contained in the unamended legislation be put into effect on February 19, 2023.

However, before that date, in January 2023, the Court of Appeals reversed the Court of Claims decision, and, accordingly, the changes to the minimum wage and paid sick leave requirements ordered by the Court of Claims are no longer going into effect. Therefore, **the following requirements for minimum wage and paid sick leave currently in effect will remain in effect**:

- As of January 1, 2023, a minimum wage of $10.10 per hour.
- Pursuant to the PMLA, employers must provide eligible employees with one hour of paid sick leave per 35 hours worked up to a maximum of 40 hours of paid sick leave.
- Employees who are exempt from the minimum wage and overtime provisions of the Fair Labor Standards Act are also exempt from the paid sick leave requirement of the PMLA.

However, it is likely that the decision of the Michigan Court of Appeals will be appealed to the Michigan Supreme Court. Therefore, districts should be aware that a change to the minimum wage and paid sick leave requirements may still occur in the future because of a Supreme Court ruling.

Please contact us at Collins & Blaha, P.C. if you have any questions regarding this ruling or legislation.

REVIEW OF CLOSED SESSIONS UNDER THE OPEN MEETINGS ACT

The Open Meetings Act (the "OMA") MCL 15.261 *et seq*, requires certain public body meetings to be open to the public. The Revised School Code ("RSC") reinforces this mandate by requiring school board business to be conducted at a public board meeting held in compliance with the OMA.

However, the OMA provides a list of limited purposes for which a public body may meet in a closed session, allowing school boards to conduct business outside of the public eye. The RSC states that a school board may only meet in a closed session for one or more of the purposes listed in Section 8 of the OMA.

School boards are permitted to move to closed session for the following purposes:

(1) To consider discipline against a district employee, including suspension or dismissal. A school board may also move to closed session to hear charges or complaints against an employee. A board may only move into closed session at the request of the district employee who is the subject of the disciplinary action or complaint.

(2) To conduct periodic personnel evaluations of an employee, such as periodic evaluations of a superintendent. The closed session must be requested by the individual who is being evaluated.

(3) To consider the discipline of a student, including suspension or expulsion, when, for example, a student violates a school policy. The board may only move to closed **session at the request of the student, or the student's parent or guardian.**

(4) To engage in negotiation sessions with a union regarding a collective bargaining agreement. A board may move to closed session to discuss its negotiation strategy. The negotiation sessions themselves may also be held in closed session. Closed sessions under this provision allow school boards to maintain confidentiality in their negotiation strategies and protect the effectiveness of the negotiation process. A board may move to closed session at the request of either the board or the bargaining unit.

(5) To consider the purchase or lease of real property, up until the district obtains an option to purchase or lease the property. This situation may arise when the district is seeking to acquire an additional building. This provision preserves the board's negotiating power in real property transactions by avoiding public disclosure of information such as negotiating limits. A closed session for this purpose may be held upon a two-thirds vote of the board members.

(6) To consult with its attorney regarding a pending litigation. This type of closed session may only be held to discuss trial or settlement strategy in connection with specific pending litigation, **not the anticipation of potential litigation**. In addition, a closed meeting of this type may only be held if an open meeting would have a detrimental financial effect on the litigation or settlement position of the school district. This would include discussions that, if open to the public, would jeopardize the district's ability to engage in settlement negotiations. A closed session of this type may be held upon a **two-thirds vote of the board members.**

(7) To review personal matters on an employment application or application for appointment. Closed meetings for the review of an application, such as the application of a candidate for superintendent, may be held at the request of the applicant. However, the actual interview of the candidate must be held in an open meeting pursuant to the OMA. This type of closed session may be held upon a two-thirds vote of the Board.

(8) To address an existing threat or prevent a potential threat to the safety of students and staff. Moving to closed session may protect the district's interest in the confidentiality of its security planning strategies, and it may be held upon a two-thirds vote of the board.

(9) To discuss materials that state or federal law exempt from disclosure. A board may decide to meet in closed session for this purpose upon a two-thirds vote.

Examples of matters that qualify for closed-session discussion are:

(a) Family Educational Rights and Privacy Act ("FERPA"): FERPA protects the confidentiality of student records. Therefore, a board may move to closed session to discuss student education records that are protected under FERPA.

(b) Freedom of Information Act ("FOIA"): A board may move to closed session to discuss records that are protected from disclosure under FOIA. For example, FOIA exempts from public disclosure matters pertaining to attorney-client privilege. MCL 15.243(g). This enables school boards to confide in their attorney with the knowledge that any communication regarding legal consultation will not be disclosed to the public.

Additionally, a public body is required to establish procedures to accommodate the absence of any member of the board due to military duty (MCL 15.263(2)) or qualifications under the Americans with Disabilities Act Title I or II (OAG, 2022, No 7318 (February 4, 2022)). This allows for a public body to hold a virtual meeting for those eligible members and enter closed session virtually when needed.

If you have questions about whether your school board may move to closed session to discuss a matter, 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.