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ATTORNEYS AT LAW

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HOMELESS EDUCATION REQUIREMENTS & REMINDERS

On January 9, 2025, the Michigan Department of Education ("MDE") issued a memorandum reminding districts, which include both traditional public school districts and public school academies, of the specific requirements and guidelines they must follow for supporting students experiencing homelessness. Under the federal McKinney-Vento Homeless Assistance Act ("McKinney-Vento"), the term "homeless children and youth" refers to students who lack a fixed, regular, and adequate night-time residence. To comply with McKinney-Vento and other laws, school districts must:

- **Designate a Homeless Liaison**. Every school district must designate a homeless liaison who is well-equipped with the knowledge, time, and capacity to fulfill the responsibilities required by McKinney-Vento. These homeless liaisons must complete state-sponsored training, available online through McKinney-Vento.org.

- **Protect Student Rights**. Students experiencing homelessness are entitled to certain rights and protections that must be safeguarded by school districts. These include immediate enrollment and attendance, transportation to the student's school of origin, and the removal of barriers to full school participation and access. Additionally, school districts should maintain confidentiality regarding the housing status of students experiencing homelessness.

- **Have a Dispute Resolution Process.** School districts must have a locally adopted dispute resolution process based on MDE's Dispute Resolution Process.

- **Consider Data when Determining the Title I, Part A Funding**. School districts will use data from the Michigan Student Data System and MI School Data to review the identification, attendance, and achievement outcomes for students experiencing homelessness. This school district will then use this data to determine if they are accurately identifying all eligible students.

- **Support Unaccompanied Homeless Youth ("UHY").** McKinney-Vento grants UHY — defined to include a homeless child or youth not in the physical custody of a parent or guardian — the status of independent students for the purpose of federal financial aid. School district homeless liaisons must ensure that UHY are aware of their eligibility for federal student aid and assist them in obtaining verification of such status.

- **Provide Professional Learning and Resources**. School district homeless liaisons are required to provide professional development on the rights and services for students experiencing homelessness within their districts. MDE also awards grant projects at the regional and local level aimed at improving identification of these students, as well as fostering collaboration between the different agencies serving these students.

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If you have any questions regarding MDE's memorandum or a school district's obligations under McKinney-Vento, please do not hesitate to contact our office.

Special Education: Manifestation Determination Review Considerations

When a student with a disability is facing disciplinary removal, it is important for the school district to comply with its legal obligations related to Manifestation Determination Reviews ("MDRs"). See 34 CFR 300.530; 300.536.

The district must hold an MDR **within ten school days** of a disciplinary change in placement of a student with a disability. Although an MDR is most obviously triggered by a removal of more than ten consecutive school days, the district also has an obligation to hold an MDR where the removal will result in a **pattern of removals exceeding ten cumulative school days** of removal for the school year. In determining whether a series of removals constitutes a pattern, it is important for the district to consider whether the student's behavior is substantially similar to the behavior that led to the prior removals.

If the MDR team determines that the behavior was not a manifestation of the student's disability, the student is subject to the same disciplinary procedures applied to general education students.

The purpose of an MDR is to determine whether the student's misconduct was a manifestation of the student's disability. In making this determination, the Individuals with Disabilities Education Act ("IDEA") requires the MDR team to review all relevant information in the student's file. IDEA requires that the student's parent be a part of the MDR team, and that the team consider any relevant information provided by the parent. It is prudent for the MDR team to document all of the information it considered in making its determination.

In determining whether the student's behavior was a manifestation of the student's disability, IDEA requires the MDR team to evaluate whether the behavior "**was caused by, or had a direct and substantial relationship to, the child's disability**." 34 CFR 300.530(e)(1)(i). Additionally, IDEA requires the MDR team to consider whether the student's behavior was the result of the district's failure to implement the student's Individualized Education Program ("IEP"). In determining whether the misconduct was a manifestation of the student's disability, it is important for the MDR team to consider not only the student's primary disability category, but **all of the student's documented or suspected disabilities**.

If the MDR team determines that the student's conduct *was* a manifestation of the student's disability, IDEA requires the student's IEP team to conduct a functional behavior assessment ("FBA"), if necessary, and either develop or review a behavioral intervention plan ("BIP") to address the student's behavior. Further, **IDEA requires the district to return the student to his or her original placement and provides that the student may *not* be disciplined for the misconduct.** However, the student's IEP team may consider whether a different placement would be most appropriate to afford the student a Free Appropriate Public Education ("FAPE") in his or her Least Restrictive Environment ("LRE").

If the MDR team determines that the behavior was *not* a manifestation of the student's disability, the student is subject to the same disciplinary procedures applied to general education students. However, it is important to note that even if a student is suspended or expelled according to the district's discipline procedures, **IDEA requires the district to**

continue providing the student with special education services in an alternative setting.

IDEA provides for three special circumstances where a district may remove a student to an interim alternative educational setting ("IAES") for up to 45 school days, despite a finding that the misconduct was related to the student's disability – possession of a weapon at school, possession of drugs at school, or infliction of serious bodily injury. However, as these acts are specifically defined by statute, it is prudent for the district to ensure the conduct meets one of the statutory definitions before categorizing it as such.

A school district's obligation to hold an MDR applies to all students with disabilities, including students with a Section 504 Plan. Although the MDR process for a student with a Section 504 Plan is similar to that for a student with an IEP, there are a few notable differences. For example, Section 504 does not require the district to provide educational services to the student during a removal beyond ten school days, unless the district provides services to general education students during removal. Additionally, Section 504 does not outline special circumstances for misconduct involving the possession of a weapon at school, possession of drugs at school, or infliction of serious bodily injury. However, under Section 504 if a student's misconduct was engaging in the illegal use of drugs or in the use of alcohol, the district is permitted to discipline the student under its standard disciplinary procedures, subject to enumerated exceptions, despite a determination that the conduct was a manifestation of the student's disability.

If you have any questions regarding Manifestation Determination Reviews or other special education matters, please do not hesitate to contact our office.

Michigan Court Of Appeals: Parental Indemnification Agreements for Child Injuries Are Unenforceable

The Michigan Court of Appeals recently held that parental indemnification agreements requiring parents to indemnify a third party for liability arising from injuries sustained by their child(ren) are unenforceable. MK by Next Friend Knaack v Auburnfly, LLC, opinion of the Michigan Court of Appeals, issued December 17, 2024 (Case No. 364577).

In June 2020, Karen Knaack and her minor child, MK, attended an event at TreeRunner Rochester Adventure Park ("TreeRunner"), owned by Auburnfly, LLC. Knaack was required to sign a participant agreement before MK was permitted to participate. The agreement provided that Knaack would not sue Auburnfly for any injuries suffered by herself of her child and that Knaack agreed to indemnify Auburnfly for any claims arising from injuries incurred. MK participated in the event and was injured. Knaack filed a lawsuit against Auburnfly on behalf of MK. Auburnfly filed a lawsuit against Knaack, seeking to enforce the participant agreement and compel Knaack to indemnify Auburnfly. Knaack moved to dismiss the case, arguing that parental indemnification agreements violate public policy, or in the alternative that the agreement in this case was unenforceable because it violated the parental-immunity doctrine. The trial court dismissed the case and Auburnfly appealed.

The Court of Appeals agreed that the agreement violated public policy, rendering it

unenforceable. The Court cited a previous Michigan Supreme Court decision, Woodman v Kera, LLC, 486 Mich 228 (2010), which held that a parent could not waive their minor child's right to sue by signing a preinjury liability waiver because a parent does not have authority to contractually bind his or her minor child. Auburnfly argued that the language in the agreement did not bind the minor child, MK, but rather bound her guardian, Knaack. The Court found that although, on its face, the language in the agreement did not bind MK, the parental indemnification clause was an attempt to limit MK's ability to sue for injuries caused by Auburnfly's negligence. The Court reasoned that because a minor child is required to have a representative sue on their behalf – most commonly a parent – it is illogical for the representative parent to be required to indemnify the negligent party because of a positive outcome in their representee minor's case. The Court further explained that this financial burden likely would result in the lawsuit not being brought at all, which effectively limits the child's right to sue.

Further, the Court of Appeals found that even if the parental indemnification clause did not limit the child's right to sue, it would still violate the precedent set in Woodman. The Woodman Court held that public policy in Michigan "is to protect children by imposing greater liability on adults for conduct involving potential harm to children." Woodman, 486 Mich at 257 (emphasis original). Therefore, Auburnfly's attempt to limit liability resulting from its own negligence in connection with harm to a minor child directly violates public policy as it would shield Auburnfly from the greater liability standard, rather than hold it to it. The Court concluded that it is bound by the precedent set in Woodman regarding Michigan common law and public policy and found that Auburnfly has provided no compelling argument to change such precedent.

The Court of Appeals also cited to a statute enacted after Woodman, MCL 700.5109, which allows a parent to release a party from liability regarding a minor's injury stemming from a recreational activity. However, the Court stated that the statute only permits such a release if the injury is due to an inherent risk of the recreational activity, not due to an entity's negligence, and only applies to nongovernmental, nonprofit organizations.

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As a result of the unenforceability of waivers signed by parents on behalf of their minor children previously established in Woodman, some insurance carriers began recommending the inclusion of parental indemnification requirements in waiver samples provided to school districts. In light of the holding in Auburnfly, school districts should recognize that any parental indemnification clauses included in the district's current waivers are now unenforceable. The decision does not require that parental indemnification provisions be removed from waivers; however, school districts are no longer able to seek enforcement of such provisions.

Please contact our office if you have any questions regarding the impact of this recent case on your school district's liability waivers, or if you would like your current waiver forms reviewed.

School Districts' Legal Obligations During Custody Disputes

A parent's right to their child's education is governed by both state and federal law.[1]

Michigan's Legislature has recognized the rights of parents to be involved in the education of their child, subject to a school district's broad authority to provide for the safety and welfare of its students while at school. Michigan's Revised School Code (the "RSC") gives additional rights to parents who retain custody of their children. Specifically, Section 1137 of the RSC gives a parent who has custody of a student enrolled in the school district the ability to "review the curriculum, textbooks, and teaching materials" of his or her child's school, at reasonable times and subject to reasonable restrictions of the school board. Additionally, this provision allows a parent to "be present, to a reasonable degree . . . to observe instructional activity in a class or course in which the pupil is enrolled and present.'" [2] "Instructional activity" does not include testing.

The rights of the sole parent who retains custody has been upheld by both the United States Supreme Court and Michigan courts. This right includes the ability to make decisions regarding the child's upbringing without the input of the non-custodial parent.[3]

The federal Family Educational Privacy Rights Act ("FERPA") regulations provide that a school district "**shall give full rights under the Act to either parent**, unless the [school district] has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights."[4] FERPA also provides limited instances in which a third party can access such information without consent of either parent, such as judicial order or subpoena.[5] However, FERPA also requires the school to make a "reasonable effort to notify the parent" of the student before complying with the order or subpoena to give the parent a chance to oppose or limit the subpoena.[6]

It would be prudent for school districts to note that "records or information" under the Child Custody Act includes medical, dental, and school records, day care provider's records, and notification of meetings concerning the child's education.

State law in Michigan echoes FERPA in allowing the right of a non-custodial parent to access his or her child's school records, unless a court order specifies otherwise. Specifically, Section 10 of Michigan's Child Custody Act provides that "**a parent shall not be denied access to records** or information concerning his or her child **because the parent is not the child's custodial parent**" unless there is a protective order that specifically provides only one parent access to records.[7] It would be prudent for school districts to note that "records or information" under the Child Custody Act

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[1] See Laura Katers Reilly, *Family Law Goes to School*, Michigan Bar Journal (February 2005 Edition), https://www.michbar.org/file/barjournal/article/documents/pdf4article840.pdf.
[2] See MCL 380.1137.
[3] See *Troxel v Granville*, 530 US 57 (2000); *Dailey v Kloenhamer*, 291 Mich App 660, 662 (2011); *Siesel v Pountney*, unpublished per curiam opinion of the Court of Appeals, issued June 18, 2019 (Docket No. 346930).
[4] See 34 CFR 99.4 (emphasis added).
[5] 34 CFR 99.31(a)(9)(i).
[6] 34 CFR 99.31(a)(9)(ii).
[7] See MCL 722.30.

includes medical, dental, and school records, day care provider's records, and notification of meetings concerning the child's education.

The Code provides a specific exception to a parent's right to access school records when the parent of the student has obtained a personal protection order ("PPO") regarding the student's other, noncustodial parent. If the PPO prohibits such access, and where the school district holding the student's records also has a copy of the PPO, the school **cannot release information about the student** that will inform the parent subject to the PPO of the student or other parent's home address and telephone number, or work address and telephone number.[8]

Accordingly, if one parent seeks to restrict the other parent's access to information in the child's school records, the access restriction must be specifically stated in the divorce decree, PPO, or other court order. The parent who obtains the restrictive order must provide a copy to school officials to implement the restriction. Otherwise, the school is required by law to provide both parents access to their child's school records, regardless of which parent has custody of the child.

Based on the foregoing, school districts should examine the exact language of any court order or PPO that affects a parent's right to their child's education.

Please do not hesitate to contact our office if you have any questions regarding a school district's obligation in a child custody dispute.

New Legislation Aims To Bolster School Safety And Promote Student Mental Health

On January 22, 2025, Governor Gretchen Whitmer signed several bills into law promoting school and community safety. Many of these bills were introduced in direct response to events that threatened the safety and security of Michigan Public Schools. Lieutenant Governor Garlin Gilchrist II stated that these newly enrolled bills will "save lives and help us build a safer Michigan for everyone." The newly signed bills are summarized below.

Public Acts 270 and 271 of 2024 [MCL 380.1308(d) and MCL 380.1308(c)]: These bills implement new standardized response terminology for school personnel to use in the context of school emergencies. The Michigan Department of State Police and the School Safety and Mental Health Commission will establish the new language no later than July 1, 2026. The House Fiscal Agency's Legislative Analysis of House Bill 4096 states that each district's standardized response terminology plan must include at least the following terms: "lockdown," "secure mode," "shelter in place," "reverse evacuation," and "room clear." See House Legislative Analysis, HB 4096 (November 3, 2024). This new legislation requires school districts to adopt and implement the standardized response terminology beginning with the 2026-2027 school year.

Public Acts 257 and 258 of 2024 [MCL 380.1313(a) and MCL 380.1313(b)]: These bills will require the Department of Health and

[8] See MCL 380.1137a.

Human Services (the "Department") to develop gun safety and storage information to be distributed to the parents of every public school student in Michigan. HB 5450 requires the Department of Health and Human Services to publish its best practices for storing firearms information by July 1, 2025. The bill requires that the Department update this document on at least an annual basis. By October 1, 2025, and annually thereafter, HB 5451 requires each public school district to post the Department's guide to their website, as well as send it to each parent or guardian, either by mail or electronically.

Public Act 272 of 2024 [MCL 380.1308(e)]: This bill requires that each school district implement a behavior threat assessment and management team (the "team") by no later than October 1, 2026. Each district's team will monitor any distressing behavior within the school community and implement supportive plans to mitigate potential threats to school safety. Each team will define prohibited and concerning behavior and educate the school community on identifying signs that may show someone is at risk to harm themselves or others. Districts should ensure that each team consists of at least a school administrator, a mental health professional, and a school resource officer or local law enforcement official.

This new legislation requires school districts to adopt and implement the standardized response terminology beginning with the 2026-2027 school year.

Public Acts 263 and 264 of 2024 (MCL 28.803, MCL 28.805, and MCL 380.6): These bills will implement a new School Safety and Mental Health Commission (the "Commission") within the Department of State Police. HB 5659 requires the Commission to collaborate with education and mental health professionals to create an online community through which best practices and resources can be shared. The Commission will prioritize mental health outcomes for students and aid in reducing youth suicide rates. HB 5660 requires each public school district to designate a liaison to work with the Commission and the Office of School Safety. Further, each school board will be required to post to its website an annual report detailing the crimes that occurred at school within the school district throughout the school year. The legislature anticipates that the provisions in this bill will help "obtain an accurate local picture of school crime and develop the partnerships necessary to plan and implement school safety programs."

By prioritizing new school safety measures and procedures, the Michigan Legislature believes that school districts statewide will be able to gain a deeper understanding of specific areas within their school communities that require the most improvement.

If you have any questions regarding the requirements under this newly passed legislation, please do not hesitate to contact our office.

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.