



# The School Law & Finance Annual Seminar

January 21, 2017

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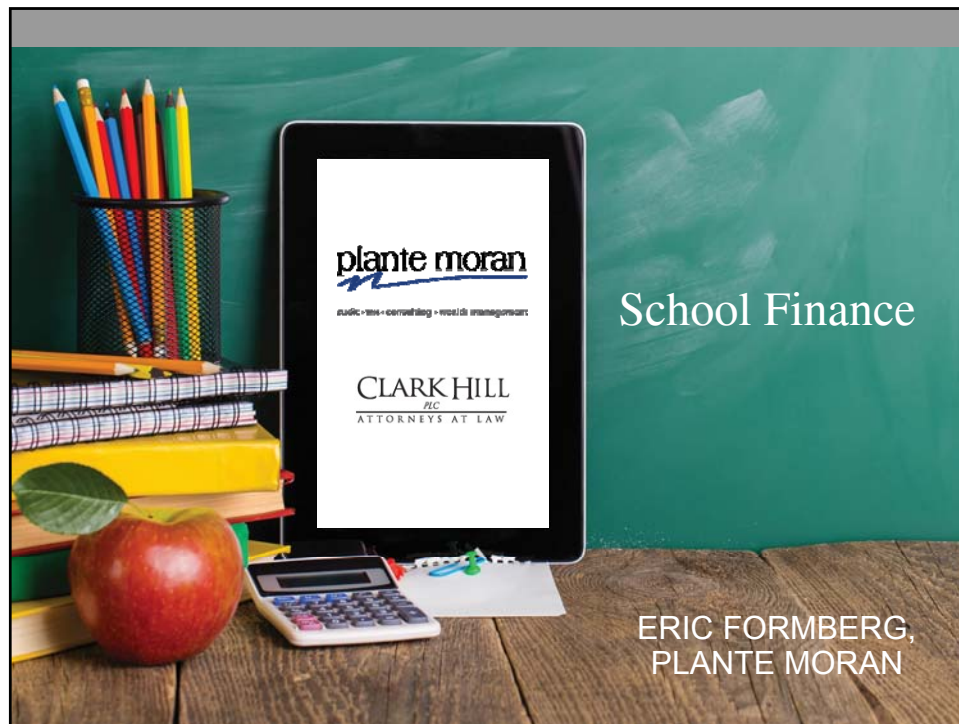
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**School Law and Finance Seminar - Agenda**  
**Sponsored by Plante Moran and Clark Hill**  
**January 21, 2017 – VistaTech Center - Schoolcraft College**

Early Bird Session – School Finance	Eric Formberg
Breakfast and Registration	
Opening Remarks and Welcome	Dana Abrahams Donna Hanson
Restorative Justice – Reshaping School Discipline	Joe Urban Nancy Schertzing
Governance - Posing the Right Questions	Eric Formberg
Break	
When OCR Comes Knocking On Your Door and Funding the Unfunded	Kara Rozin
Cybersecurity – K12 Industry Updates, Trends, and Forecasts	Alex Brown Judy Wright
Technology Trends - 2017 and Beyond	Kyle Macyda Melissa Miller
Lunch	
What to Expect in 2017 - Betsy DeVos Nomination/Secretary of Education and Anticipated State Legislation	Peter Spadafore Reginald Turner
PTO Groups – What is District's role?	Donna Hanson
The End of Union Release Time	John Gierak
Break	
Fast Five - Five Minutes with Your Financial Statements	Jennifer Chambers
Early Warning	Sam Irrer Michael Wrobel
Financial Housekeeping for 2017, Including New Sinking Fund Legislation	John Axe Peter Ecklund Joe Urban
Open Carry Update: Where do Things Stand, and Where Are They Going?	Mark McInerney




## School Finance and State Aid

- **State Aid**
  - Background
  - How it all works
  - Recent developments
  - Things to watch
- **Other Revenue**
  - Federal
  - Local
  - ISD
- School Finance Related Accounting Items
  - Retirement contributions
  - 3% withholding
  - UAAL
  - GASB 68/75
  - Deficits
- Key Takeaways



 

2




## School Funding - Foundation Allowance Concept

- **Proposal A computed a base funding level**
  - 2012 created a new base, which was \$470 lower than the year prior
  - Some growth since, with more focus on lower funded Districts
    - 2X formula used in last few years
- **Legislature annually determines increase or decrease**
- **Amounts are on a per pupil basis**
- **Number of pupils based on a weighted average February and October pupil count**
  - Count weighting 10/90, respectively – but based on October 2016 and February 2017 for 16/17 school year
  - “Back to the Future” - we are back to calendar year counts
  - Count adjustments due to “pupil adds” after count date– Section 25
- **Total foundation “promise” = number of pupils \* per pupil foundation**



3



## School Funding 2017 – Elements

### Funding Elements

- **Foundation Allowance concept (revalued in 2011/12)**
  - \$470/pupil proration from 2012 not fully reinstated for many Districts
  - Minimum Foundation “boost” up to \$120 to new floor of \$7,511
  - 2016/17 foundation allowances were between \$7,511 and \$8,229
  - For 2016/17 \$60-\$120/pupil increase
  - For Districts with 2016 foundations over \$8,169, \$60 increase for 2017
- **Confusing! Some observations**
  - Previously, legislature provided equity payment for low funded Districts, but not in last 2 years
  - Previous equity payments were rolled into base
  - Focus has been on low funded districts
  - Most of the “increases” have been used for retirement cost support and early education programs
  - District cannot “create” a larger foundation
  - Higher funded districts have had many years of less than 1% increases

4



## School Funding 2017 – Elements

### Funding Elements

- **Impact of property taxes (operational millage) on the foundation received**
  - Districts collect operating millage property tax as part of foundation formula
- **Categorical aid (state grants to fund specific services)**
  - More significant categorical funded programs: At Risk, Special Ed, Early Education
  - "Incentive" funding was eliminated in 15/16
  - Retirement System Contribution (Section 147a – MPSERS Cost offset), UAAL Contributions (Section 147c)
  - Equity Payments – previous payments rolled into foundation, none for 2015/16, 2016/17
- **Proration – concept still exists, includes higher education**
  - Has not been required in recent years
- **Factors impacting school funding**
  - State Economy
  - State tax policy
  - Legislative preferences
  - Governor priorities
  - DPS Resolution
  - Student enrollment

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## School Funding – Paying Out the Foundation

**Method**  
School districts receive most of their funding through the foundation allowance. It comes from two sources:

Total foundation allowance per pupil  
Less local property tax/pupil

State portion of foundation allowance/pupil

Generally, local operating millage property tax revenue does *not* change the foundation allowance, but it *does* impact the level of support provided by the State.

Lower revenue portion, higher dependence on school aid fund (which has been the case in many communities due to taxable value declines with slow increases)

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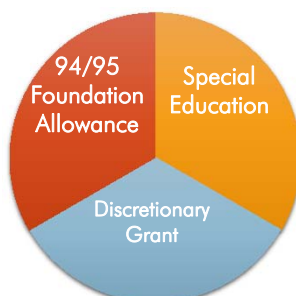
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## School Funding – Paying Out the Foundation

What does the foundation allowance actually fund?

*Good Question!*

Foundation Allowance Payment Elements



Bottom Line – only a portion of the foundation funds general operations

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## School Funding – Categorical Aid – The New Normal

- **Essentially state funded grant programs**
- **Updated annually through amendments to the State Aid Act**
- **Typical programs funded via categorical**
  - Special Education (funded primarily from the foundation allowance)
  - Best practice/performance funding – incentive funding ELIMINATED in 15/16!
  - Retirement Contribution (MPERS offset) – based on 15/16 covered payroll
  - Retirement Payment (UAAL Rate Stabilization) based on 15/16 covered payroll
    - UAAL payment received by District and sent directly to Office of Retirement
    - Grown to \$982.8 million appropriation
  - Data collection
  - At Risk
  - Adult education
  - Great Start Readiness - (state funded, funds run through ISD to district)
  - Vocational education
  - ISD general operations
- **Can be impacted by proration – none expected for 2016-2017**

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## School Funding 2017 and Beyond - Factors Impacting School Funding

### Significant Issues

- Administration has put a budget in place at beginning of year
- Focus no longer on one-time/results focused resources (ex best practice, performance funding eliminated and equity payment not used)
  - Creates significant difficulty in School District budget development
  - Funding changes create "Winners" and Losers"
    - \$25 increase guarantee from 15/16 offsetting some impact for "losers"
- Retirement system costs have increased at an alarming pace
  - Focus is on a restructuring plan, but currently using School Aid Fund to supplement current plan
  - Approximate total contribution rate in 2016/17 is 36% of compensation, up from 34% in 2015 and 29% in 2014
  - For 2016 and 2017 the school aid fund provides cost support for approximately 25% of the required contribution
- Charter cap removal increases competition and reduces the overall resources available for K12 operations
- EAA/DPS resolution – EAA ends 6/30/2017 and DPSCD began July 1, 2016

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## School Funding 2017 and Beyond - Factors Impacting School Funding


### Significant Issues

- On-line learning options now compete for pupil foundation allowance
- Charter School strategy and any changes impact revenue distribution
- Continuing focus on improving education outcomes, changes to testing
- Teacher evaluation and assessment
- Early Warning – intervention before deficit. List of Districts for potential action has been developed, prioritized
- Districts in deficit – Fund Balance trends are real issue for all districts – resource allocation issue
  - Will the State create a comprehensive plan to respond to District's with large deficits? (DPS)
  - "Trend" – while many districts are not in deficit, financial resources are declining rapidly.
- Resource Allocation – Roads, Higher Ed, Districts in Deficit, Retirement Costs, School Building Performance etc. How will the School Aid Fund be impacted? How will it be shared with Districts?

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## Revenue Estimating Conference – 1/12/2017

- **Determines revenue base to build executive recommendation**
- **Revenue continues to grow, based on closing of 2016 and projections for 2017, 18, 19**
  - Revenue estimates show growth, but appears are revised downward from May estimate
  - These growth numbers are approximate \$115/pupil annually
- **Previously, more revenue meant more available for K-12**
  - Inclusion of Higher Education in the School Aid Fund significantly changed K12 funding
  - Other statewide needs may impact revenue actually available for k12
- **Resources now spread over K-12, Charters, EAA, higher education, DPS**
- **What will happen with revenue growth projected?**
  - Tax cut?; Increased funding?; targeted funding?; diversion due to funding roads in 2018?; rainy day fund?; retirement?; offset impact of elimination of personal property tax?; OTHER?
- **Key K12 Qs:**
  - What will be available to K-12 and under what criteria?
  - What will the student count be?

11





## Revenue Planning for 2016/17 and 2017/18

**“Predictions”**

- Growth in Michigan
- Personal income and employment expected to grow at modest rates
- Private sector gains in employment partially offset by declines in public sector employment as budgetary problems exist in many local governments


**State Revenues show continued growth in the School Aid Fund**

- Annual growth estimated by Senate Fiscal Agency (SFA) at approximately \$500 million from 2016 to 2018 in School Aid Fund. However, the fund is estimated to remain flat between 2017 and 2018
- School Aid Fund projected by SFA to remain positive with fund balance at \$114 million at 9/30/17 and \$176 million by 9/30/18.
- State General Fund fund balance is projected remain positive through 2018

12







## Revenue Planning for 201/17 and 2017/18


**“Predictions”**

- **State Revenues show continued growth in the School Aid Fund**
  - Ongoing School Aid Revenue, adjusted for inflation has declined, but is making slight improvements – buying power is still lower than when proposal A was adopted
  - School Aid Fund predicted revenue increases are about 2.7% annually from 15/16 to 18/19, but gains are offset by reductions from expected support from other State sources
  - How much of the increase will be “consumed” by additional retirement system costs? Solving deficit issues?

**Quote from SFA report**



“Although the GF/GP and SAF budgets are estimated to end FY 2015-16, FY 2016-17, and FY 2017- 18 with relatively healthy year-end balances, there are several budgetary pressures looming in subsequent fiscal years that could mitigate the extension of these large positive balances.”




13



## Revenue Planning for 2016/17 and 2017/18

- **What will the Executive Recommendation include for K12?**
  - Will findings in the Michigan Education Finance Study (the adequacy study) impact funding recommendations?
  - Will one time payments return?
  - Will new resources be provided as unrestricted state aid?
  - How much will the retirement system cost in the future?
  - Will new unrestricted resources continue to go to lower funded Districts?
  - What resources will be diverted to higher education?
  - Will policy initiatives continue to become categorical?
  - How will “Roads” funding impact K12 in 2018?
  - What will happen with student count? – the foundation is only part of the story!
- **How will other funding needs impact future K12 resources?**
  - Will General Fund allocations be limited or diverted?



14




## Revenue Planning for 2016/17 and 2017/18

- Will communities support local initiatives, such as bonds, (new) sinking funds, enhancement millage, and/or millage renewals or new millages?
- Will districts realize planned cost savings from structural change?
- **Bottom Line** – The School Aid fund continues to grow. How will new resources be used? District's will not have a final answer on what (or if) resources will be provided until June 2017

Careful review and dialogue between  
Board and Administration is essential

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## Accounting and Financial Reporting

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## Accounting and Payroll Update

### MPSERS Related Accounting Challenges

- Retirement Contributions
- 3% withholding, FICA treatment
- Total retirement cost and state subsidy (\$147 Categoricals)
- MPSERS - Net Pension Liability (year 3 - June 30, 2017)
- MPSERS - Other Post Employment Benefits - OPEB (Year 1 - June 30, 2018)



17




## Accounting and Payroll Update

### Retirement Contributions

- Retirement reform created complexity for making and accounting for contributions to MPSERS
- Required employees to make a plan choice
- Required districts to compute correct contributions based on that choice
- Required the district to withhold correct amounts and submit correct employee and employer amounts
- Required districts to reconcile information with MPSERS
- Prior to Proposal A districts contributed a flat 5% of covered payroll to the system.
- Current system requires the district to account for, report on, and fund MPSERS using 7 different contribution combinations
- Total district "out of pocket" percentages range from 20.96% to 24.94% of covered payroll. State funding, 11.70% of covered payroll
- Bottom Line – this process is substantially more complex than even a few years ago



18




## Accounting and Payroll Update

### 3% Withholding on payroll – MPSERS contributions

- The District has been required to withhold 3% from employees wages since 2010
- Key question: Is this amount subject to Social Security and Medicare tax (FICA)?  
IRS “Unofficial” Determination released by ORS – FICA exempt
- The original 3% has been legally challenged as to its constitutionality and there is still no decision (and likely won’t be one for years)
- In February 2013, a “new” 3% withholding requirement became effective, with the same question (current conclusion - FICA exempt)
- The new 3% is now being used to fund MPSERS health care costs and not held separately
- Certain districts have taken a different approach
  - Request for refund if FICA was paid, concern – employee portion

19





## Accounting and Payroll Update

### 3% Withholding on payroll – MPSERS contributions


Point of all of this:

- Districts are working with their advisors to handle items appropriately and file protective refund claim where applicable until the matter is fully resolved and settled. The IRS ruling will determine if the claims will be approved
- Your payroll / business office is trying to manage this, along with the other MPSERS options employees have

In short, it appears noting is simple when it comes to participating in the retirement system!



20




## Accounting and Payroll Update

### Unfunded Actuarial Accrued Liability (UAAL)

- As part of “capping” the district required contribution to MPSERS for the unfunded liability, the State agreed to fund required contributions over the cap
- This amount, called UAAL or Section 147c, is provided to the district via State Aid (a categorical payment)
- This very same amount is then paid by the district to the retirement system
- Essentially the district is paying the total retirement cost and the State is providing a subsidy under 147c
- In short, the District's funds record the 147c payment as both a revenue and an expense



21



## Accounting and Payroll Update

### Unfunded Actuarial Accrued Liability (UAAL)

- Why handle it this way??
- While it seems convoluted, it does allow the district to recoup some grant dollars and transportation costs that might be missed if the State were to just pay the funds directly the retirement system
- By not adding to the Foundation the funds are directed toward a need
- This treatment creates additional accounting work for the business office and/or result in additional budget amendments to account for the total cost of the retirement system and the funds provided from the State
- The accounting for this is complex and the related retirement expenditures are substantial!
- Question – Will the legislature modify the plan?  
If yes, what costs will be created and where will the resources come from?

22



## GASB 68 – Pension Reporting

### Government Accounting Standards Board

- **GASB 68 – pension obligation**
  - Year 3 - **June 2017**
  - Impact is to record and disclose District portion of unfunded statewide net pension obligation (approximately \$24 Billion!)
  - Record obligation on **government-wide statements** – a big number!
    - Most districts reported a negative Net Position as a result of the adoption.
    - Balances should be “similar” in year 3
    - NO IMPACT on the General Fund
- **Currently ONLY applies to pension benefits NOT retiree health care (OPEB) component, this will occur in 2018!**
- **GASB 75 – OPEB**
  - Similar obligation accounted for similarly – slightly smaller than the Pension amount

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## Deficits

- **Basic Requirements**
  - Under state law a school district cannot maintain a deficit
  - The focus on the deficit question is on the General Fund and any activity the General Fund might be responsible for
  - If the District is in Deficit, it must create a plan of action to get out of deficit (a deficit reduction plan)
    - Prior to Early warning, the MDE approved the plan and still has some role
  - Once approved the District is actively monitored for compliance with the plan
  - At June 30, 2016, 27 districts were in deficit, with 13 under Treasury oversight
- **Implications**
  - Generally defined based on the audited June 30 fund balance. Total fund balance, including aggregation with other funds where the General Fund would be responsible, must be negative
  - Also defined as “in deficit” if a budget is adopted with a projected deficit fund balance
  - Key question – is the deficit the result of an operating deficit or an accounting/timing issue. The later is more easily resolved
- **Early Warning Legislation**
  - Enacted in 2015
  - Increases Treasury (and MDE) ability to police potential deficit districts and respond earlier
  - Creates a list of districts based on criteria and allows State to determine how to respond
  - Much more on this later!

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## Key Takeaways

### School Funding

- Ability for School Aid Fund to grow is highly dependent on:
  - Real Estate Transfer Taxes
  - Income Tax revenue
  - Sales Tax Revenue
  - Property Tax Revenue— growth capped at lower of inflation rate or 5%
- Legislative decisions to reduce taxes, etc. has a significant impact on the revenues to the School Aid Fund
- Use of additional revenues to offset growing retirement costs
- Use of categoricals – many removed in 2015, will they be used in the future?
- Quality of enrollment projections - they are the other part of the funding formula!
- While difficult, multiyear budget projections are essential, including both revenue estimates and the pricing of contracts throughout. Business Official involvement can be very helpful here.
- These items should be discussed with Business Officials as each budget amendment / actual results is discussed

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## Key Takeaways

### Accounting

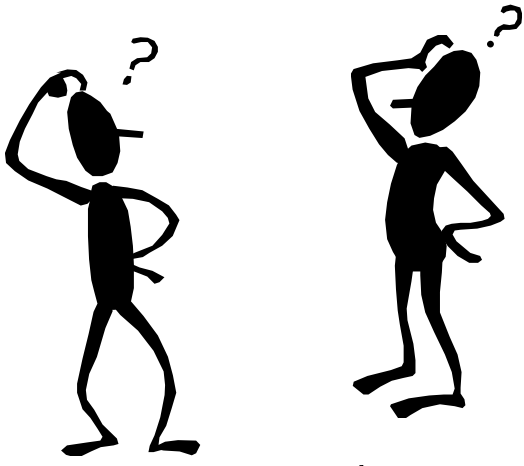
- Retirement contributions
  - Time consuming, complex, MPSERS and District not always on same page
  - Complex reporting, now being completed after each pay
  - Out of pocket costs are substantial even with changes
- 3% contribution
  - 3% contributions to MPSERS from 2010 are still being litigated (and likely will be for years)
  - Recent decision for FICA exempt treatment may require some districts to request refunds
- UAAL
  - District is receiving additional categorical funds for the excess required contributions above the legal cap
  - District then remits these funds to the retirement system
  - Watch for categorical to be re-appropriated
- GASB 68
  - Year 3 - June 30, 2017
  - Continue to educate your community, so they realize what the number means (and what it doesn't mean)
  - Begin to understand the impact of the OPEB obligation once added to the financial statements
- Deficits
  - Growth in SAF revenue has not translated to real growth in funds for operations
  - Many Districts faced with a negative sloping trend line
  - Early Warning will generate some form of intervention earlier

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Questions?



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## RESTORATIVE JUSTICE – Reshaping School Discipline




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## A New Approach to Student Discipline



- New legislation passed at the end of 2016 requires schools to develop restorative justice practices and incorporate them into the student disciplinary process
- The legislation creates opportunities for students to challenge the discipline they receive if certain procedural benchmarks are not met
- In the most important school discipline case to date, *Goss v. Lopez*, the United States Supreme Court recognized that students have a property interest in their education;
  - Any disciplinary process that separates a student from the learning environment, even for a brief time, is a taking, by the State, through the school, of a portion of that property interest;
  - As such, the Due Process Clause of the U.S. Constitution must be considered;
  - Thus, it is important that all of the legally prescribed procedures, including consideration of the mitigating factors discussed below, are observed, or the student may have grounds to successfully challenge the discipline;
  - Failure to observe Due Process Protection could also lead to joint and several individual liability under §1983.

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## Procedural Benchmarks

- Under the new bills, there is a rebuttable presumption that suspension over ten days or expulsion are not warranted unless the school can justify that it considered several mitigating factors:
  - pupil's age;
  - disciplinary history;
  - whether the pupil had a disability;
  - the seriousness of the violation;
  - whether the violation threatened the safety of any pupil or staff member;
  - whether Restorative Practices will be used to address the violation; and
  - whether a lesser intervention would properly address the behavior

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## Documentation

- Assuming that the school has documented consideration of the mitigating factors, it may proceed with the appropriate discipline
- Documenting the mitigating factors should begin with the initial disciplinary referral and carry through to the ultimate outcome
- Failure to document the consideration of the mitigating factors could result in a challenge to the discipline



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## Restorative Practices


- The new legislation requires that, prior to imposing a discipline, the school board or administrator charged with the disciplinary process must consider using restorative practices;
- The legislation states that resort to restorative practices should be the first consideration for offenses such as interpersonal conflicts, bullying, verbal and physical conflicts, thefts, damages to property, class disruption, harassment, and cyberbullying;
- Restorative practices are “practices that emphasize repairing the harm to the victim and the school community caused by a pupil’s misconduct;
  - Such practices include, but are not limited to, victim-offender conferences that are initiated by the victim (and approved by the victim’s parent or legal guardian), are attended by the victim, a victim advocate, the offender, members of the school community and supporters of the victim and offender. This is the “restorative justice team.”
  - The purpose of the conferences is for the offender to accept responsibility for the harm caused to those affected, and to participate in setting consequences to repair the harm.





- Outcomes of restorative justice team meetings:
  - an opportunity for the offender to accept responsibility for the harm caused to those affected, and to participate in setting consequences to repair the harm, such as any combination of:
    - apologizing;
    - participating in community service,
    - restoring emotional or material losses, or counseling;
    - paying restitution.
  - The selected consequences and time limits for their completion will be incorporated into an agreement to be signed by all participants.







## Restorative Practices

- It is one thing to understand what the law requires, but to ensure that discipline can be undertaken efficiently and with efficacy, it is important to understand the larger context of restorative justice and how faithful adherence to its practices encourages an environment where the need for disciplinary interventions may actually diminish.









## Restorative Justice (RJ) is . . .

- . . . an approach to addressing conflict and misconduct that focuses on healing rather than punishment and engages those directly affected in addressing the misconduct.
- RJ assumes that misconduct and conflict injure those directly involved (victims and offenders) as well as the broader community to which they belong.
- Rather than relying on punishment, RJ expects those who cause injuries to make things right with those they've harmed and with their community.

Howard Zehr, (2002) *The Little Book of Restorative Justice*;  
 Mark Umbreit and Marilyn Armour  
 (2011) *Restorative Justice Dialogue: An Essential Guide for Research and Practice*





## Different

TRADITIONAL DISCIPLINE ASKS:	RESTORATIVE JUSTICE ASKS:
<ul style="list-style-type: none"> <li>• What rules have been broken?</li> <li>• Who did it?</li> <li>• What do they deserve?</li> </ul>	<ul style="list-style-type: none"> <li>• Who has been hurt?</li> <li>• What are their needs?</li> <li>• Who has the responsibility to make things right to restore relationships?</li> </ul>

Howard Zehr, Keynote Address to the 12<sup>th</sup> World Conference of the International Institute for Restorative Practices, October 2009







## Natural

- Story-telling and Listening
- Engaging all those affected by the conflict or misconduct
- Respect for all participants
- Consensus-based process for determining appropriate consequences
- Accountability defined by healing harm rather than serving punishment or being excluded from community
- Community supports and values all affected parties throughout healing process

Kay Pranis ((2005) *The Little Book of Circles Processes: A New/Old Approach to Peacemaking*

Mark Umbreit and Marilyn Armour (2011) *Restorative Justice Dialogue: An Essential Guide for Research and Practice*





## Grounded

- “Restorative Justice is respect. Respect for all, even those who are different from us; even those who seem to be our enemies. Respect reminds us of our interconnectedness, but also of our differences. Respect insists we balance concerns for all parties. If we pursue justice as respect, we will do justice restoratively.”

Howard Zehr (2002) *The Little Book of Restorative Justice*

- RJ's foundational concepts of **healing, respect, accountability, and engagement**, build empathy and speak to fundamental human values, ethics and practices common in ancient cultures from First Nations in Canada to Maori of New Zealand.

Kay Pranis ((2005) *The Little Book of Circles Processes: A New/Old Approach to Peacemaking*

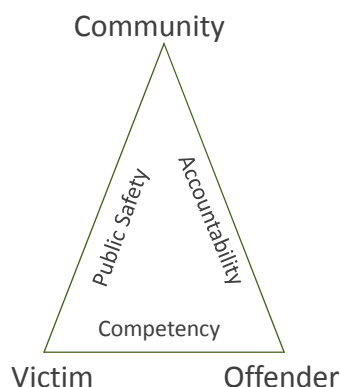
Mark Umbreit and Marilyn Armour (2011) *Restorative Justice Dialogue: An Essential Guide for Research and Practice*



## Balanced


- In an atmosphere of respect, restorative justice brings together the person who has been harmed (victim) with the person who caused the harm (offender) and others affected more broadly (community) by the situation of misconduct or crime.

- Together, those affected by the incident develop a solution which builds accountability and competency while enhancing public safety.



BARJ Triangle, based on design by US Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention Division (OJJPD)








## Insightful

Unlike traditional discipline where consequences are assigned, RJ engages all affected parties in a facilitated discussion that follows stages generally defined by these three questions.

<p><b>WHAT HAPPENED?</b></p> <p>All participants share their perspective so the group can come to a common understanding.</p>	<p><b>WHO HAS BEEN AFFECTED, AND HOW?</b></p> <p>Each participant identifies who s/he thinks has been affected, including him- or herself, and explains how.</p>	<p><b>HOW DO WE MAKE THINGS RIGHT?</b></p> <p>Each participant offers ideas of what should be done to heal the harm or address the issue so all can move forward.</p>
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## Endorsed

<p><b>US DEPT. OF EDUCATION</b></p> <p>"The widespread overuse of suspensions and expulsions has tremendous costs . . . suspended students are less likely to graduate on time and more likely to be suspended again, repeat a grade, drop out of school, and become involved in the juvenile justice system . . .</p> <p>These costs are too high. . . . I encourage america's educators to proactively redesign discipline policies and practices to more effectively foster supportive and safe school climates. [And] reexamine school discipline."</p> <p>--Arne Duncan, former United States Secretary of Education, <a href="#">Guiding Principles: a Resource Guide for Improving School Climate and Discipline</a>, US Department of Education</p>	<p><b>MI DEPT. OF EDUCATION</b></p> <p>"Administered well and appropriately, positive discipline can become a powerful tool for teaching students to succeed. The SBE strongly urges michigan school districts to review existing zero tolerance policies, reserving exclusion for only the most serious offenses, and to adopt practices . . . such as PBIS and restorative practices. It urges school districts to integrate these practices into their culture to support and sustain them as vital elements of school operations."</p> <p>Michigan State Board of Education (SBE) <a href="#">Policy on Reducing Student Suspensions and Expulsions</a>. (May, 2014)</p>	<p><b>RESULTS</b></p> <p>"In 2013, Colorado lawmakers passed the smart schools discipline law, restricting the use of suspensions and expulsions and requiring the use of other strategies, including restorative practices. Since then, the number of suspensions has fallen by 25 percent—from 108,000 in 2007 to 80,000 last year. Meanwhile, school attendance and punctuality have improved by 30% . . .</p> <p>"A restorative justice program reduced suspensions at one Oakland, Calif., middle school by 87 percent in its first year, according to a UC Berkeley School of Law evaluation. Now, nearly two dozen Oakland schools have similar programs."</p> <p>NEA Today, 2014, <a href="#">Sowing Empathy and Justice in Schools through Restorative Practices</a></p>
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## Personal

- What does restorative justice mean to you?
  - Please share your thoughts and/or questions
- What is one way you can put RJ to work in:
  - your classroom?
  - your school?
  - your life?
- There is a wealth of restorative justice information available from studies to videos to trainings! Learn more at <http://schertzingcommunications.com>, or e-mail Nancy at [schertzingcommunications@gmail.com](mailto:schertzingcommunications@gmail.com).




## Questions?



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Nancy Schertzing, MS

(517) 505-1828

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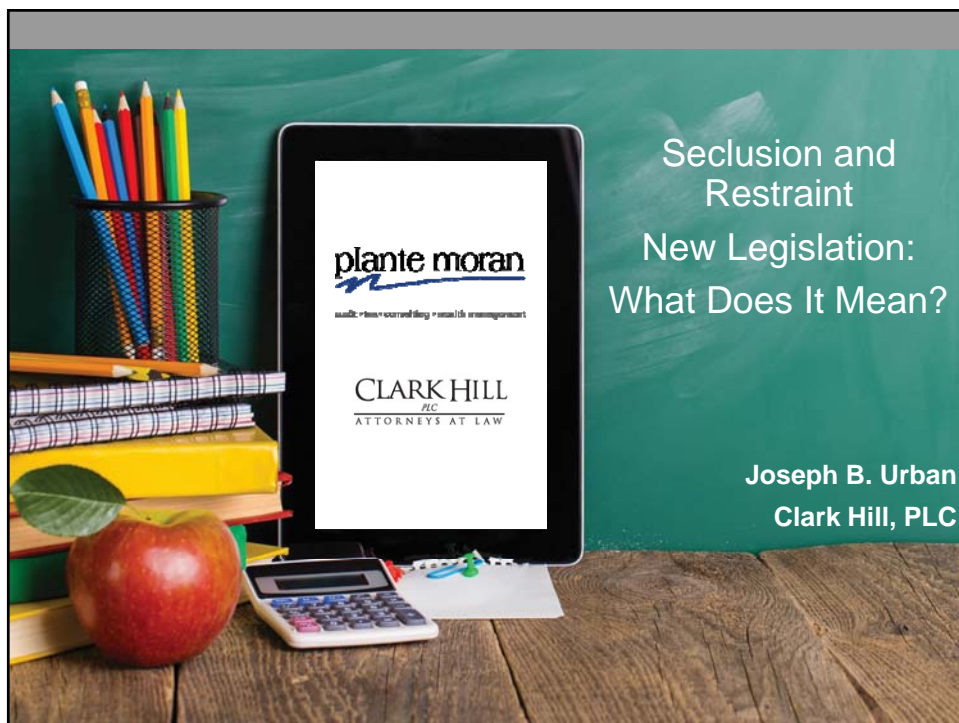


**Thank You.**

Legal Disclaimer: This document is not intended to give legal advice. It is comprised of general information. Employees facing specific issues should seek the assistance of an attorney.

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**Seclusion and Restraint**  
**New Legislation:**  
**What Does It Mean?**

**Joseph B. Urban**  
**Clark Hill, PLC**

## House Bills 5409-5417

- Lieutenant Governor Calley signed on 12/29/16
  - Special Education Reform Task Force: "Schools have misused S/R as a tool for modifying student behavior."
- Bills limit use of S/R to "Emergency Situations"
  - Defined: "Where a student's behavior poses an imminent risk to the safety of the student or another, such that immediate intervention is required."



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## Permissible Non-Emergency Situations

- Briefly holding a student to calm him/her or for his/her immediate safety
  - Ex: When a student is about to run into traffic
- Using "minimal contact" to escort a student or assist with a task, provided any resistance from the student is minimal and brief
  - What is "minimal"? Schools should define this with examples
  - Err on the side of caution to avoid challenges



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## “Key Identified Personnel”

- The Bills require schools to identify staff as “Key Identified Personnel” (KIP)
  - Comprehensive training in the use of S/R
  - Summoned at the onset of an emergency situation
  - Remain involved for the duration of emergency situation and use of S/R
    - Continually observe student/seek medical assistance/ document observations
  - “Generally available”
    - 1-2 KIP per building
- Other staff must undergo “awareness training” in S/R
  - Ensure PBI strategies are being used to avoid a S/R situation



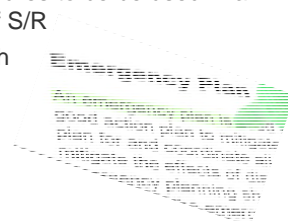
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## Preventative Practice Recommendations

- Students at risk for needing S/R:
  - (1) Conduct a FBA, develop a BIP and develop an assessment and planning process
  - (2) Written “Emergency Intervention Plan” which includes:
    - Explanation of examples of an “emergency situation” and examples that fall outside of that definition
    - Detailed explanation of the intervention procedures to be used in an emergency situation, including potential use of S/R
    - Detailed explanation of “legal limits” of S/R with examples; and
    - Description of possible discomforts or risks for student






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## Cautions!

- Following the recommendations is effective way to decrease vulnerability to legal claims 
  - However, Emergency Intervention Plans may require speculation  
Drafted in broad terms while still providing student and staff with meaningful guidance
- Corporal Punishment MCL 380.1312(4) 
  - (a) Physical force is permitted to “restrain or remove a pupil whose behavior is interfering with the orderly exercise and performance of school district or public school academy functions within a school or at a school related activity, if that pupil has refused to comply with a request to refrain from further disruptive acts.” 

Using physical force in this circumstance is now prohibited by the Bills  
Allow for physical restraint only when there is an “imminent threat to personal safety.”

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## Plan of Action


- MDE will adopt a statewide policy and guidelines on the use of S/R that incorporates the Bills
  - Be prepared to adopt and implement a new policy consistent with the MDE’s policy by the start of the 2017-2018 school year  
MDE’s 2006 Model Policy on Use of S/R – Bills codify
- Be prepared for extensive documentation and reporting requirements
  - Detailed documentation to Administration and Parents
- Identify KIPs and prepare for training
  - MDE guidelines will have training framework and allow for online training for KIPs and other school staff (awareness training).



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## Resources

- House Bills 5409-5417
  - <http://www.legislature.mi.gov>
- Office for Civil Rights Guidance 12/28/16
 


Dear Colleague Letter on R/S of Students with Disabilities (public schools and public school academies)


Q&A Document Attached


  - Discusses rights of students with disabilities regarding S/R; Examples
- Clark Hill, PLC's E-Alerts! Coming Soon!
 

Will discuss MDE's new state policy and guidelines

Provide Practical Advice for Implementation







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## Questions










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## Please Note

- The content of this presentation is copyrighted by Clark Hill PLC.
- As with all legal issues, this presentation provides general principles only, and your attorney should be consulted for specific questions related to any and all principles contained herein, as applied to your individual situation(s).
- School law issues are complex and fact specific; when in doubt, consult with legal counsel.





27



## Thank you!



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28



This presentation will explain the new restorative justice legislation, and introduce you to the concepts and philosophy of restorative justice in schools. Use this sheet to follow along with this presentation and take notes of the key points. Let it launch you into integrating RJ in your school community.

Visit us at [www.schertzingcommunications.com](http://www.schertzingcommunications.com) to access free information and explore learning opportunities we offer. While you're there, consider registering for our two-day [Restorative Circles training](#) January 31<sup>st</sup> -February 1<sup>st</sup> in Clark Hill's Lansing offices.

Restorative Justice is a peaceful conflict resolution process that favors \_\_\_\_\_ over \_\_\_\_\_.

Traditional discipline asks "What \_\_\_\_\_ was broken?" But RJ asks "What \_\_\_\_\_ has resulted from this incident?"

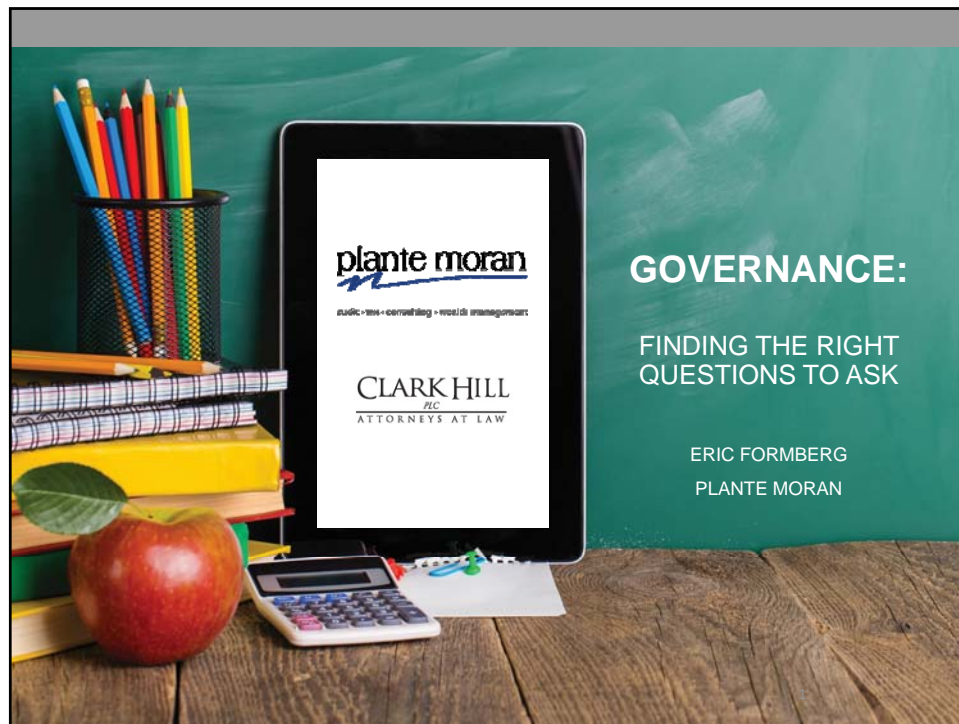
RJ is grounded in \_\_\_\_\_ for all . . . even those who seem to be our enemies.

Restorative Justice brings together the \_\_\_\_\_, the \_\_\_\_\_ and members of the \_\_\_\_\_ affected by the incident.

Restorative Justice process is built around three key questions that guide and help define each stage of the process:

1. What \_\_\_\_\_?
2. Who has been \_\_\_\_\_ and how?
3. How do we makes things \_\_\_\_\_ as much as possible?

E-mail us at [schertzingcommunications@gmail.com](mailto:schertzingcommunications@gmail.com) with questions about RJ!




## Roles in Focus

- **Board Role**
  - Policy
  - Strategic Direction
  - Approval
- **Administrative Role**
  - Lead
  - Implement
  - Develop
  - Execute
  - Manage
  - Oversight
  - Validate and Report
  - Educate
  - Advise

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## What is an effective question?

- **Board members have limited time and significant responsibility**
- **Defining where to focus efforts is key**
- **Evaluating an issue requires certain elements** (not an all inclusive list)
  - Why is the issue important (how significant is it)?
  - Does it fit in the role of the Board? (policy, strategic direction, approval)
  - How does the issue fit with the strategic direction?
  - Resources are limited, how does this issue impact use of resources?
    - Resources are more than just use of the budget
  - What information needs are essential to make a good decision?
  - In what way with the District be impacted by the issue?
- **Building questions around these elements will help frame Board action, requirements from Administration, and linkage to Board roles**






3




## Key Financial Focus Items

- **Audit Results/Annual Financial Statements**
  - What does the financial report say about fiscal condition and how does that link to Board goals?
  - What does the audit report tell us about our financial controls and financial operations? (Are there areas where the Board or Administration may need to focus?)
  - What does the actual results compared to expectation tell us about district operations?
  - What do the results suggest the District should focus on strategically?






4




## Key Financial Focus Items

- **Budget and Monitoring**
  - Board must adopt a budget before the start of the year
  - Board often amends the budget after staffing and student counts are known (fall, early winter)
  - Board often adopts final amendments near end of fiscal year to conform with state law.
  - Budgets developed by Administration, approved by the Board
  - Key Questions:
    - Balancing limited resources, how is budget plan aligned with strategic direction?
    - What meets a requirement (law) and what focuses on District need or objective? (Can they be leveraged?)
    - What are the key assumptions, and degree of certainty?
    - What steps are needed to ensure fiscal responsibility?
    - Can the budget plan and priorities be articulated to create alignment?






5



## Governance

- **The role of a Board Member is challenging, and rewarding**
- **The opportunity to positively impact students and families is tremendous**
- **Continuing to define and refine how each member can contribute to district success is important**
- **Understanding of the strategic direction, policy, and, approval responsibilities combined with focused inquiry can help maximize contribution.**





6




## Knock, Knock! It's the OCR!

- **OCR's Authority**
  - Title VI, Title IX, Section 504, Title II, ADEA
- **Complaint Investigations**
  - Low threshold to open Complaint against School District
  - Case Processing Manual – Section 108(c)
    - Requires dismissal if allegations are so speculative, conclusory or incoherent that it is not sufficiently grounded in fact for OCR to infer discrimination or retaliation has occurred or is occurring.
    - Complaint "must provide more than conclusions of alleged violations of the laws enforced by the OCR."



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## Analyzing an OCR Complaint: Best Practice

- **Consider taking steps to have Complaint closed at outset, or the issues/allegations significantly narrowed from the outset by challenging the underlying Complaint**
  - Gather basic background facts to determine if there is any basis in fact for the underlying Complaint.
  - Don't expect the OCR to do a preliminary review of evidence to determine if there is merit to open a Complaint.
- **If Complaint is not closed, it may help narrow investigation/data requests**
- **Consider ECR/Early Resolution of Complaint (especially with Section 504 Complaints)**
- **Resolve with Complainant in exchange for withdrawal of Complaint**

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## OCR Investigation: Data Requests

- **Often beyond the scope of the individual Complaint – “Audit” of District**
- **HUGE BURDEN**
  - Numerous requests
  - 1000s of pages
  - Multiple building requests
  - Multiple years
  - Multiple students/staff
- **ALL IN 15 CALENDAR DAYS?!**



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## Data Requests: Best Practice

- **Data production should be focused on Complaint allegations**
  - CPM states: "OCR will ensure that investigations are legally sufficient and that they are dispositive of the allegations raised in the Complaint."
- **Consider on-site visit vs. production of documents**
- **Object to requests that require District to create new data or requests data that does not exist**
- **Limit requests to scope of Complaint**
  - Example: Title IX (student/student allegations)
- **Don't forget the Attorney/Client privilege!**
  - FERPA does not apply to OCR



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## OCR Investigations: On-site Visits

- **Administration/Staff Interviews, Student Interviews, Viewing location of "Incident", Classrooms, Athletic Facilities, etc.**
- **ANOTHER HUGE BURDEN**
  - Multiple witnesses, multiple days, multiple OCR attorneys
  - Disruptive to educational environment



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## On-Site Visits: Best Practice

- **Interviews should only be conducted when necessary**
  - Suggest interviews of “key players” first; may eliminate duplicative/unnecessary interviews
  - Attempt to not disrupt educational environment – schedule interviews around staff availability and instructional calendar
    - Schedule viewings outside of school day
  - Parental consent for student interviews
  - Review documents with witnesses to refresh recollection
  - Disclosure of interview questions/topics to subsequent witnesses
  - Insist district legal counsel present during interviews



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## OCR Investigations: Resolution


- **Resolution Agreement – Frequently Used**
  - This is a NEGOTIABLE document – do not just “rubber stamp”
  - 30 days to negotiate terms and conditions – only signed by District, so make sure you are comfortable with terms/timeframes
  - If a Resolution will not be effective, or does not relate to original Complaint allegations, point it out for discussion
    - Ex: Training for certain staff when student no longer in building
  - Remedies may be duplicative
    - Ex: Task Force, Trainings, Policies
- **Resolution Agreements posted in OCR “Reading Room”**
  - Search by statute or state
  - <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/readingroom.html>

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## Website Accessibility 101

- **What is Website Accessibility?**
  - Simply put: “People with Disabilities can access the web.” Navigate, perceive, understand and interact with the website to the same extent as persons without disabilities can.
- **Who is impacted?**
  - Blind users, low vision users, deaf or hard of hearing.
- **Why does it matter?**
  - Section 504 and Title II of the ADA.
  - OCR!!!
    - As of July 2016, 227 investigations open.
    - “Special Education Wall of Shame!”









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## Website Accessibility 101

- **Standards for Website Compliance:**
  - Web Content Accessibility Guidelines 2.0 (WCAG), Level AA – most common
  - (1) **Understandable**
    - Text is readable and understandable (contrast issues)
    - PDF vs. RTF files
  - (2) **Robust**
    - Compatible with current and future user tools
  - (3) **Perceivability**
    - Captioning, Alternative Text
  - (4) **Operable**
    - Disabled users (screen readers, keyboard users)
    - Alternative Access



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## Website Accessibility 101 – 3 Step Quick Fix

### • Get ahead of the OCR!! “3 Step Quick-Fix”

#### (1) Non-Discrimination Policies and Administrative Guidelines – how do you find them?

- Title IX Coordinators/Section 504 Coordinator – readily accessible!



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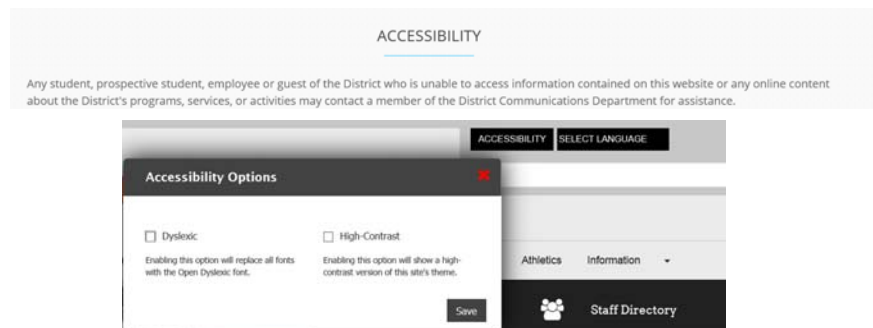
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## Website Accessibility 101 – 3 Step Quick Fix

#### (2) Website Accessibility Issues

- Website Accessibility Coordinator: Who is it? How can I contact them?



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## Website Accessibility 101 – 3 Step Quick Fix

### (3) Web Checker – Do it Yourself!

- WAVE: Identify the “Red Flags”
  - 3 most common: Alternate Text Images, Contrast Issues and Audio Only Content



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## Website Accessibility 101 – Resolution Agreements

### • Resolution Agreement vs. Investigation

- Most OCR Resolution Agreements contain the same general requirements:
  - Development of Policies (WAP) and Procedures
    - No model policy yet from NEOLA or MDE
  - Development of Corrective Action Plan (Audit)
  - Notice of Policies – Reporting of Issues
  - Training
    - At least annually; can specify terms
    - Website Accessibility Coordinator and all other employees responsible for creating or distributing Online Content
      - Applies to all! (School secretary? History teacher?)




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## Website Accessibility 101 - Resources

- **Resources**
  - Sample OCR Resolution Agreement (included in materials)  
<http://www2.ed.gov/about/offices/list/ocr/frontpage/faq/readingroom.html>  
 (OCR Reading Room – other sample resolution Agreements/Website Accessibility Materials)
  - <http://siteimprove.com> (Web Checker Service)
  - <http://wave.webaim.org> (Free webpage checker)
  - <https://www.w3.org/WAI/intro/wcag> (WCAG standards)
  - <http://webaim.org/standards/508/checklist> (Section 508 standards checklist)

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## Funding the Unfunded: Crowdfunding


- **Popularity Increasing – Stephen Colbert/Bill Gates**
- **Examples: GoFundMe.com, DonorsChoose.org, ClassWish.org**
- **Policy: To Have or Not to Have?**
  - Legal Liability? Unregulated use can lead to legal pitfalls
    - (1) FERPA
    - (2) IDEA
      - Examples
    - (3) Supplement not Supplant (FAPE!)



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## Funding the Unfunded: Crowdfunding


- **Template NEOLA Policies**
  - BOE/Superintendent designation of approved Crowdfunding sites
    - Education-specific is best; procedural safeguards in place
  - Administrative approval
    - Require sample posting for review
    - Other approval required? (ex: IT)
  - Funds raised are property of the District
    - Allow for requested items in lieu of direct funds
  - Provisions for protection re: FERPA, IDEA and Title IX
    - Photos of students, identifying information, disparaging comments, etc.
  - Student Crowdfunding?



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17





## Funding the Unfunded: Crowdfunding


- **All other BOE policies and administrative guidelines**
  - Non-discrimination, Anti-Harassment
- **Crowdfunding Policies extended to affiliated groups: Booster Clubs, PTO, etc.**
- **No use of District logo or images for personal benefit**
- **District retains control and can terminate if policy is violated**
- **Discipline for violations**



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18





## Funding the Unfunded: Crowdfunding

- **Resources**
  - <https://www.donorschoose.org/> (Commonly used education crowdfunding site)
  - <http://www.revtrak.com/> (Another site used by schools)
  - NEOLA Crowdfunding Policies – Tailored to District





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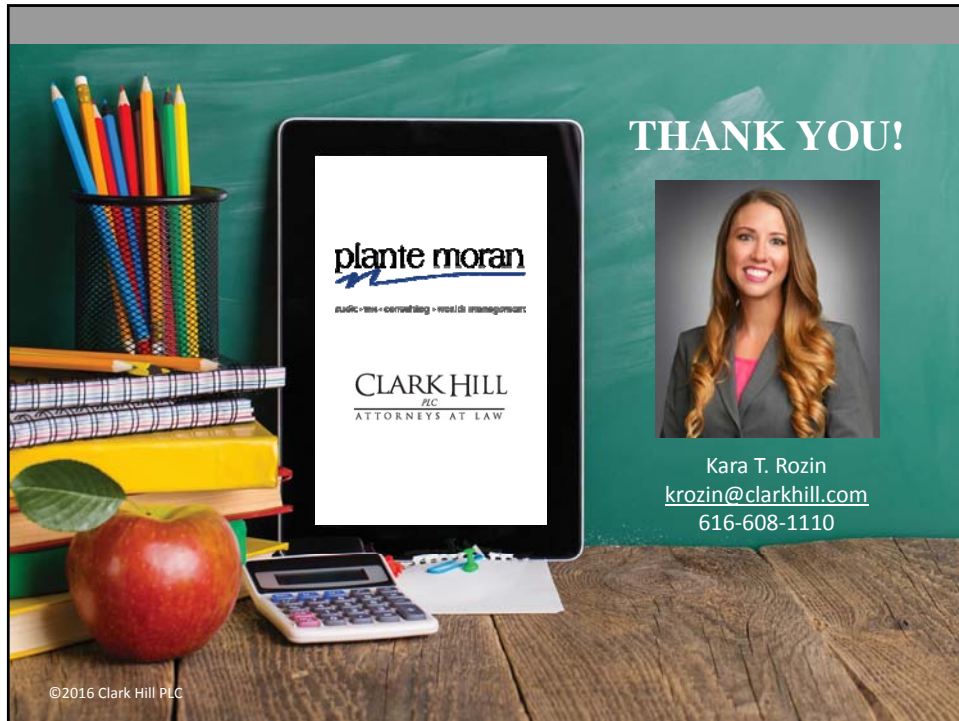


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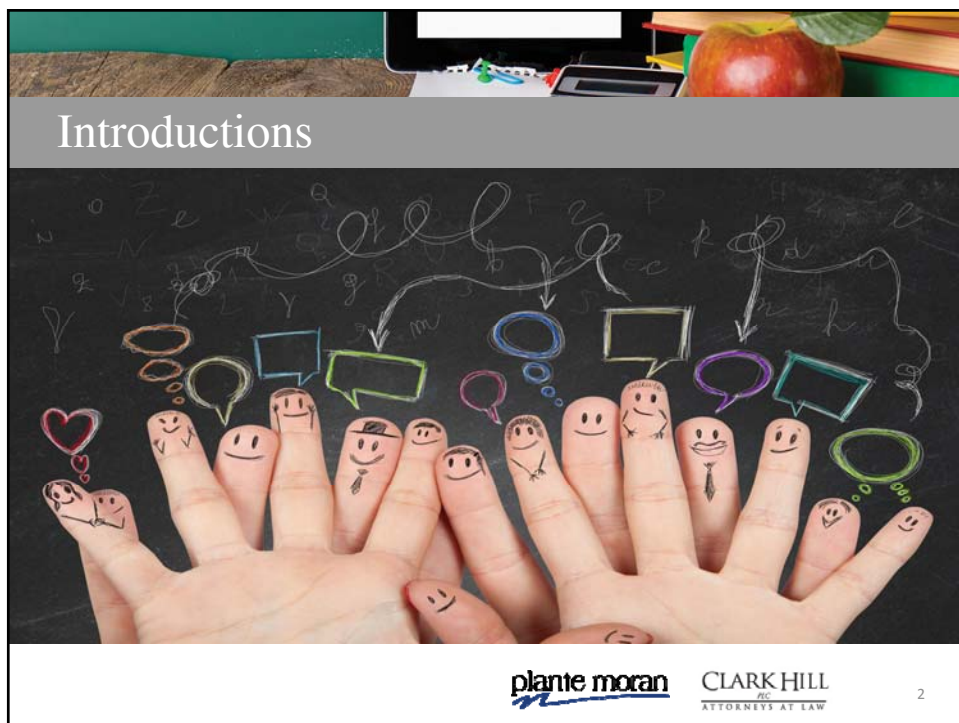




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## Presenters



### **JUDY WRIGHT, PARTNER – K12 Higher Education Practice**

Judy has over 25 years of experience in the education industry. Judy leads the Education Consulting Practice for Plante Moran and works with organizations to better leverage technology and improve operations.



### **Alex Brown, Senior Manager – Cybersecurity Practice**

Alex has over 18 years of information technology audit, technology regulatory control compliance, and system integration project experience. Alex has extensive experience with assessing and testing IT controls in support of technology audits and IT security regulatory compliance engagements.



3

## Objectives

- **Today's Cybersecurity Trends & Threats**
  - Overview of Cybersecurity Threats, Future Trends and Forecast
- **The Importance of Cybersecurity to K-12 Institutions**
  - Managing Risk and Security Threats
- **Best Practice Tips, Suggestions, and Recommendations**
  - Identify areas and approaches to help assess your security risks and remediation actions



4



## Today's Cybersecurity Risks and Threats

In the Headlines

**Student Data Breach in Chicago Public Schools Result of User Error**

**Big Data Research Effort Faces Student-Privacy Questions**



**California Enacts Student Data Protection Law**

**Schools May Put Student Data at Risk**



5

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## The Importance of Cybersecurity to K-12 Institutions

### “Managing Security is an Ongoing Balance Act”




- Student Data
- Laws and Regulations
- Reputation, Trust, and Reliance

- Budgetary Resources
- Technical Skills and Talent
- New Technology Advancement




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## The Importance of Cybersecurity to K-12 Institutions



**A child's Social Security number** can be used by identity thieves to apply for government benefits, open bank and credit card accounts, apply for a loan or utility service, or rent a place to live.

**Student Data is Valuable**

- District sites house a repository of private student data. Acquiring personally identifiable information (PII) is a key motivator for hackers
- Using a student's PII, hackers can use this information to successfully commit including identity theft-related crimes.

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## Today's Cybersecurity Risks and Threats

**Growth of Student Data Privacy Laws**

2016

Bills address many of the same themes as years past themes.

Bills are requiring greater transparency on how student data is managed

2015

States expand legislation and define custody requirements to govern the data use and privacy activities of online service providers.

2014

**Since 2014**

- 49 states and the District of Columbia have introduced 410 bills addressing student data privacy.
- 36 states have passed 73 student data privacy bills into law.

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## Today's Cybersecurity Risks and Threats



### Reputation is key

- Data breaches not only have a monetary impact to a district, but more importantly can have a lasting impact on a district's reputation.
- Privacy and security conscious parents look for schools that place an emphasis on technology and student privacy.




9

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## Best Practice Tips, Suggestions, and Recommendations



### All those devices create many entry points

What controls does your district have to protect data?

- Formal security policies
- Mobile Device Management (MDM) Policy
- Review of vendor service contract terms for security and data protection
- Periodic testing of network and infrastructure security
- User awareness training
- Strong passwords
- Review of security design for proposed new technology




10



## Best Practice Tips, Suggestions, and Recommendations

**THE FUTURE IS  
THE RESULT OF  
WHAT WE DO  
RIGHT NOW**




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## Questions



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## Today's Presenters



**KYLE MACYDA**  
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**MELISSA MILLER**  
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## Trend Themes

Intelligence

Digital

Mesh




Source: Gartner's Top 10 Strategic Technology Trends for 2017



## Augmented Reality

4

## Augmented Reality

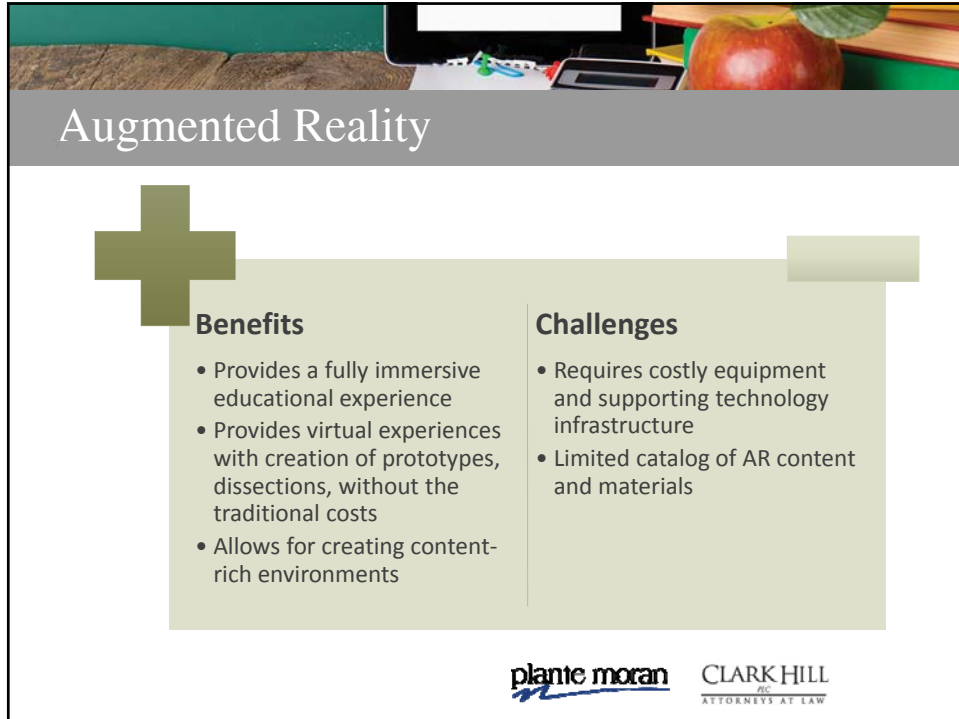
**Augmented reality (AR)** is a live direct or indirect view of a physical, real-world environment whose elements are *augmented* (or supplemented) by computer-generated sensory input such as sound, video, graphics or GPS data.

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## Augmented Reality

Supporting Technologies	Possible Use Cases
<ul style="list-style-type: none"> <li>• Head Mounted Display (HMD) technology</li> <li>• Currently available devices include: Google Cardboard, Samsung Gear VR Oculus Rift, Microsoft HoloLens</li> </ul>	<ul style="list-style-type: none"> <li>• An immersive educational experience (virtual field trips, nano-worlds)</li> <li>• Manufacturing, modeling and design scenarios</li> <li>• Surgical procedures and medical treatment</li> </ul>

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**Augmented Reality**

**Benefits**

- Provides a fully immersive educational experience
- Provides virtual experiences with creation of prototypes, dissections, without the traditional costs
- Allows for creating content-rich environments

**Challenges**

- Requires costly equipment and supporting technology infrastructure
- Limited catalog of AR content and materials

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**Intelligent Things**

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## Intelligent Things


**Intelligent things** are physical things that go leverage artificial intelligence (AI) and machine learning to behave in a manner the goes beyond rigid programming

*"Alexa, lock the front door"*  
*"Alexa, turn off the living room lights."*  
*"Alexa, turn on the TV"*  
*"Alexa, put the kids to bed"*  
*"Alexa, pour a glass of wine!"*



**amazon echo**


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## Intelligent Things

Supporting Technologies	Possible Use Cases
<ul style="list-style-type: none"> <li>• Embedded electronics, sensors and network connectivity</li> <li>• Smart grids, smart homes, smart cities</li> <li>• Internet of Things (IoT)</li> </ul>	<ul style="list-style-type: none"> <li>• Development of autonomous vehicles, robotics and drones</li> <li>• Special needs student accommodations</li> <li>• Student safety &amp; accountability</li> <li>• Increase building energy efficiency &amp; reduce costs</li> </ul>

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## Intelligent Things






### Benefits

- Can increase efficiency and productivity is leveraged properly
- Enables things to work together in nearly infinite ways
- Can be leveraged in curriculum to stimulate “out-of-the-box” thinking



### Challenges

- Generates significant amount of data and analytics
- Tangible concerns related to privacy, safety and security
- Requires significant supporting technology infrastructure



## Cognitive Computing




## Cognitive Computing

In general, the term **cognitive computing** has been used to refer to new hardware and/or software that mimics the functioning of the human brain. IBM describes the components used to develop, and behaviors resulting from, “systems that learn at scale, reason with purpose and interact with humans naturally.”

Not fair.

I'll take *any* category Alex, because I will win.



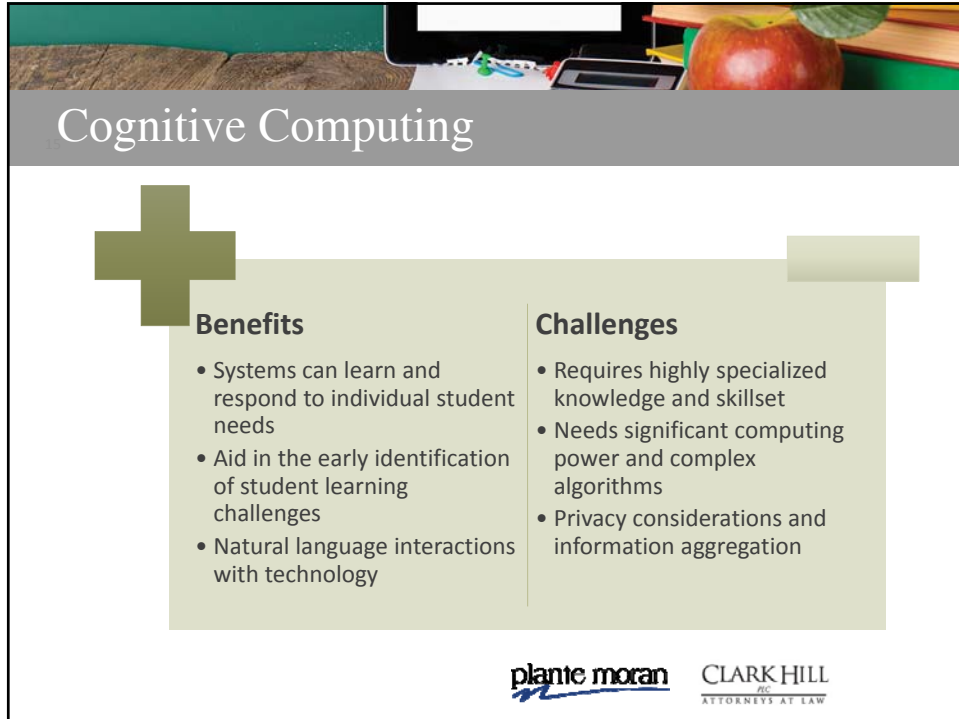
*Adaptive, Interactive, Iterative, Stateful & Contextual*

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## Cognitive Computing

Supporting Technologies	Possible Use Cases
<ul style="list-style-type: none"> <li>• Advanced Machine Learning</li> <li>• Artificial Intelligence</li> <li>• Deep Neural Networks</li> <li>• Information on Everything (IoE)</li> </ul>	<ul style="list-style-type: none"> <li>• Personalized and tailored instruction through adaptive educational systems</li> <li>• Conversational and natural language systems (Siri, Google Now)</li> </ul>

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**Cognitive Computing**

**Benefits**

- Systems can learn and respond to individual student needs
- Aid in the early identification of student learning challenges
- Natural language interactions with technology

**Challenges**

- Requires highly specialized knowledge and skillset
- Needs significant computing power and complex algorithms
- Privacy considerations and information aggregation

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**Data Analytics**

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## Data Analytics

**Data Analytics** is the science of examining raw data with the purpose of gaining actionable insights or drawing conclusions about that information.

What happened?	Why did it happen?	What will happen?	What should we do?
Descriptive Analytics	Diagnostic Analytics	Predictive Analytics	Prescriptive Analytics

← Past      Future →


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## Data Analytics

Supporting Technologies	Possible Use Cases
<ul style="list-style-type: none"> <li>• Big Data (Volume, Velocity, Variety, Variability, Veracity)</li> <li>• NoSQL Databases (MongoDB, MarkLogic)</li> <li>• Hosted Databases (Amazon, Microsoft)</li> </ul>	<ul style="list-style-type: none"> <li>• Building a comprehensive educational profile</li> <li>• Adapting curriculum based upon past and predicted future results</li> <li>• Deeper insights into learning outcomes</li> <li>• Business and financial applications as well</li> </ul>

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## Data Analytics





### Benefits

- These systems can effectively uncover trends and can be used in a predictive manner (What, When, Why?)

### Challenges

- Requires large data sets and inputs
- Needs clear objectives and formal governance process

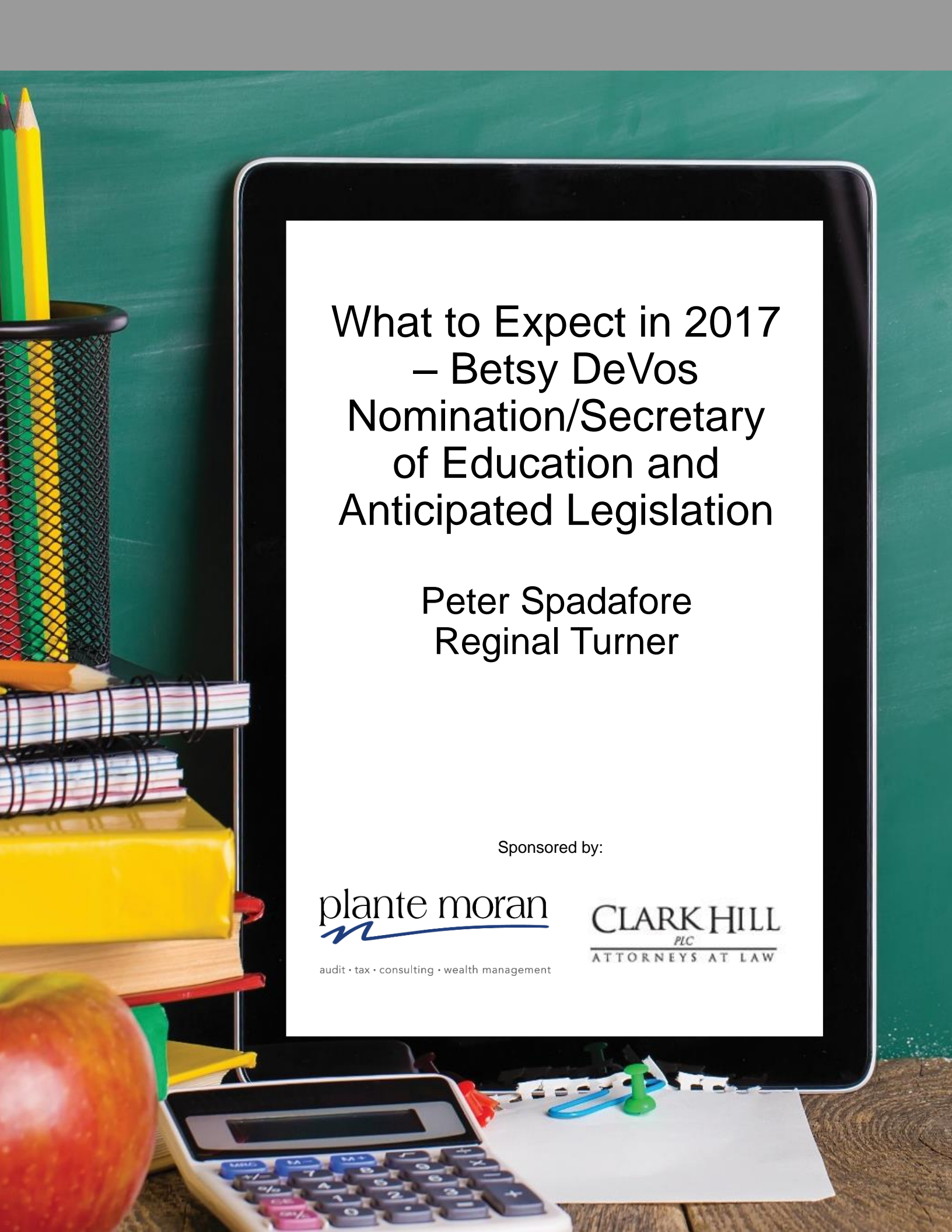


## Questions ??




20





# What to Expect in 2017 – Betsy DeVos Nomination/Secretary of Education and Anticipated Legislation

Peter Spadafore  
Reginal Turner

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# MASA

Michigan Association of  
School Administrators

## Legislative Update

January 21, 2017



Service · Leadership · Collaboration · Excellence

## Michigan Association of School Administrators



### Peter Spadafore

Associate Executive Director, Government Relations

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## Agenda

- Lame Duck – What Happened?
- What Didn't Happen
- Revenue Estimates – How much?
- Michigan's 99<sup>th</sup> Legislature
  - New Faces
  - Same Soup Different Day
- President Elect Trump's Education Priorities
- Questions

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## LAME DUCK – WHAT HAPPENED

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## Zero Tolerance – PA 360 of 2016

- HB 5618 - Considerations Before Certain Suspensions and Expulsions
  - The student's age,
  - The student's disciplinary history,
  - Whether the student has a disability, [Section 1311(1) does provide that if there is reasonable suspicion to believe the student has a disability and has not been evaluated, that evaluation will take place immediately]
  - The seriousness of the violation or behavior,
  - Whether the violation or behavior committed by the student threatened the safety of any student or staff member,
  - Whether restorative practices will be used to address the violation or behavior, and
  - Whether a lesser intervention would properly address the violation or behavior.
- More than 10 Days – Rebuttable Presumption - Compromise

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## Zero Tolerance – PA 360 of 2016

- HB 5619 – Restorative Practices – Considered before Suspension
- Restorative practices may include victim-offender conferences that:
  - Are initiated by the victim;
  - Are approved by the victim's parent or legal guardian or, if the victim is at least 15, by the victim;
  - Are attended voluntarily by the victim, a victim advocate, the offender, members of the school community, and supporters of the victim and the offender; and
  - Would provide an opportunity for the offender to accept responsibility for the harm caused to those affected, and to participate in setting consequences to repair the harm.

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## Seclusion and Restraint – PA 394 of 2016

- House Bill 5409 would describe the intent behind these policy changes.
- House Bill 5410 would require the establishment of state and local policies, with House Bills 5411 to 5416 outlining specific prohibitions, emergency provisions, reporting requirements, creation and implementation of an emergency intervention plan, data collection requirements, and training required for school personnel.
- House Bill 5417 would define key terms,
- House Bill 5418 would extend to nonpublic schools the requirements of creating a plan in accordance with the state policy and providing the requisite training to school personnel. These bills would take effect 90 days after they are enacted.
- The provisions added by these bills would not limit any right or remedy of an individual under state or federal law.

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## LAME DUCK – WHAT DIDN'T HAPPEN

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## What Didn't Happen

- MPSERS Reform
- Tax Shift
- 1280c Repeal
- Truancy Changes

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## REVENUE ESTIMATES

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## CREC – January 2017

FY 2017

FY 2018

\$274.7 m (GF/GP)

\$232.6 m (GF/GP)

\$338.3 m (SAF)

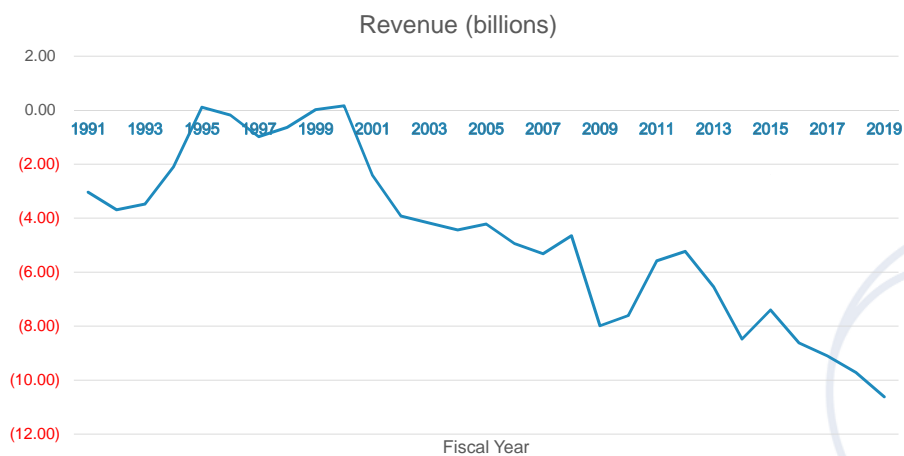
\$326.1 m (SAF)

\$613 million

\$558.7 million

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## Constitutional Revenue Limit



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## Pupil Counts

2016/17

Locals: 1,337,700  
PSAs: 153,000  
**1,490,700 FTE**

2017/18

Locals: 1,336,500  
PSAs: 150,000  
**1,486,500 FTE**

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## MICHIGAN'S 99<sup>TH</sup> LEGISLATURE

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## Speaker of the House



**Rep. Tom Leonard**

Republican – Dewitt

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## Education Reform Committee



**Chair, Rep. Tim Kelly**

Republican – Saginaw Township

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## House Appropriations



**Chair, Rep. Laura Cox**

Republican – Livonia

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## House Appropriations - K12 Sub



**Chair, Rep. Tim Kelly**

Republican – Saginaw Township

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## Issues for 2017-19

- MPSERS
- Income Tax Rollback
- Tax Shift
- 1280c Repeal
- 1280c Replacement
- Infrastructure
- Taxes

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## PRESIDENT-ELECT TRUMP EDUCATION AGENDA

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## Trump Education “Vision”

- Immediately add an additional federal investment of **\$20 billion towards school choice**. This will be done by reprioritizing existing federal dollars.
- Give states the option to allow these funds to **follow the student to the public or private school** they attend. **Distribution of this grant will favor states that have private school choice, magnet schools and charter laws, encouraging them to participate.**
- Establish the national goal of providing school choice to every one of the 11 million school aged children living in poverty.
- If the states collectively contribute another **\$110 billion of their own education budgets toward school choice**, on top of the \$20 billion in federal dollars, that could provide **\$12,000 in school choice funds to every K-12 student who today lives in poverty.**
- Work with Congress on reforms to ensure universities are making a good faith effort to reduce the cost of college and student debt in exchange for the federal tax breaks and tax dollars.
- Ensure that the opportunity to attend a two or four-year college, or to pursue a trade or a skill set through vocational and technical education, will be easier to access, pay for, and finish.

Source: <https://www.donaldjtrump.com/policies/education/>

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## Questions/Comments?



### Peter Spadafore

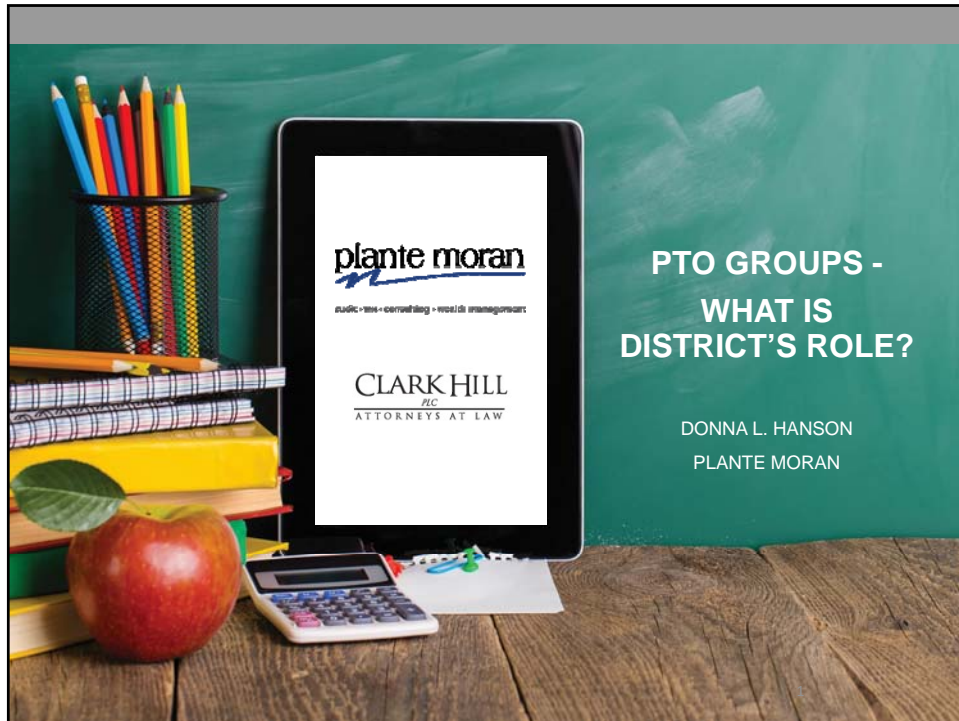
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## Parent / Booster Groups

- **Separate from District**
- **Organized as separate “Not for Profit” entities**
  - 501 (c)(3)
  - Required for donations to be tax deductible
- **Separate governance**
- **Revenue is typically cash based fundraising**

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2




## Challenges

- Groups use District school names
- Separate legal entities Is organization legally organized as NFP?
- District's ability to influence without right of oversight
- Financial expertise
- Continuous turnover in leadership
- Books and records maintenance and retention
- Required tax filings

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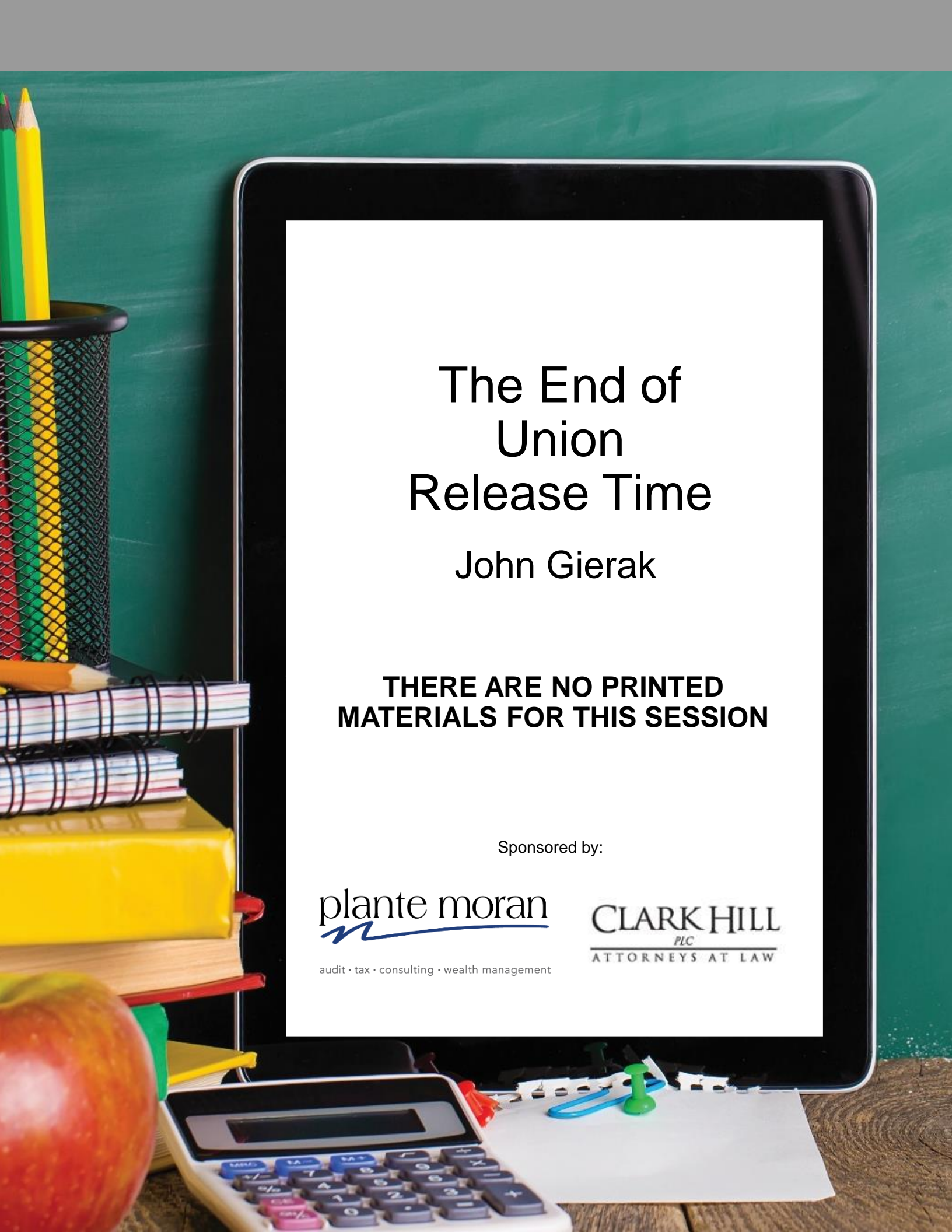


## District Best Practices

- Communication
- Periodic search of banks for District Tax ID usage
- Provide guidance on legal/fiscal responsibilities
- Offering of annual review of books and records
- Guidance on cash controls
  - Bank reconciliations
  - Check approvals
  - Cash receipt verification
  - Segregation of duties
  - Documentation
- Michigan Department of Treasury – online resources

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4



# The End of Union Release Time

John Gierak

**THERE ARE NO PRINTED  
MATERIALS FOR THIS SESSION**

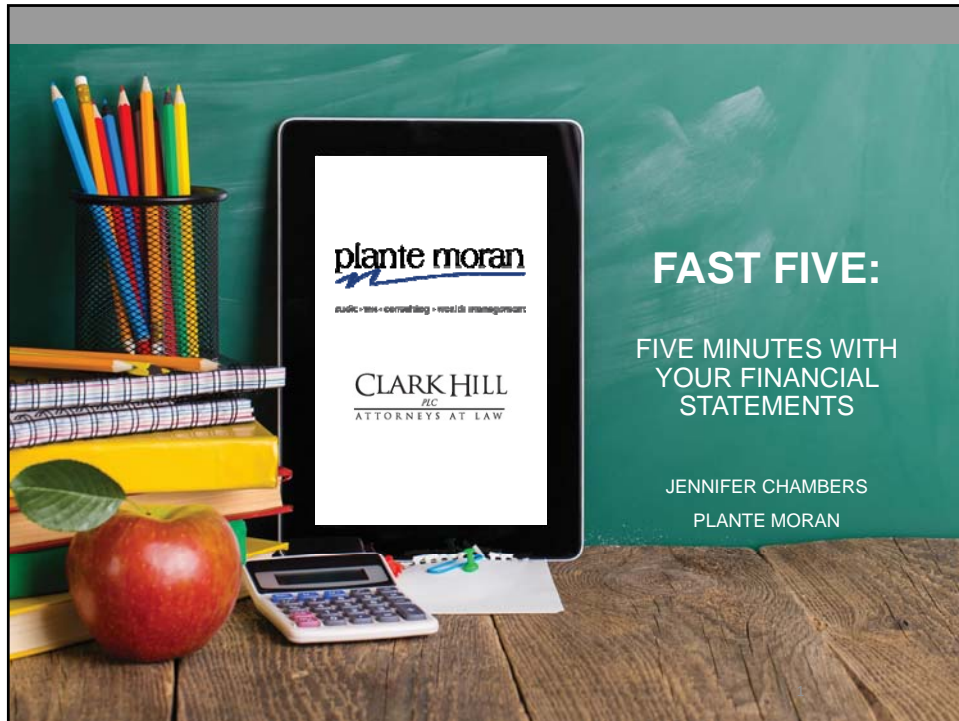

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## Five Minutes With Your Financial Statements

- **Financial Report**
  - Management's Discussion and Analysis (MD&A)
    - Provides high level summary of financial information from the viewpoint of Administration
  - Opinion Letter
    - Unmodified or modified?
    - Explains auditor's responsibility
  - Full Accrual and Fund Level Financial Statements
- **Federal Awards**
  - Schedule of Findings and Questioned Costs – Section I
  - Summary of the results of both audits and internal control deficiencies (if any)
- **Report to the Board of Education**
  - Contains required communications (AU260), suggestions/recommendations (if any) and informational



2

# Michigan Department of Treasury

[Michigan.gov/OSRFA](http://Michigan.gov/OSRFA)



## ***What is the intent of the legislation?***

### Public Acts 109 – 113 of 2015

Legislation was signed into law on July 7, 2015 giving Treasury additional financial responsibilities over distressed school districts.

The primary intent of the legislation is to:

- Identify school districts and public school academies that exhibit potential fiscal stress.
- Require Treasury to conduct preliminary reviews for districts that have submitted a deficit elimination plan (DEP) that extends longer than five years.
- Allow Treasury the flexibility to monitor and assist deficit districts administratively through enhanced deficit elimination plans (EDEP) in lieu of the P.A. 436 process for deficit schools.

## How is Treasury implementing the legislation?

Since July 7<sup>th</sup>, 2015...

### Early Warning

- Treasury established a process for identifying school districts and public school academies that have potential fiscal stress.

### Preliminary Reviews

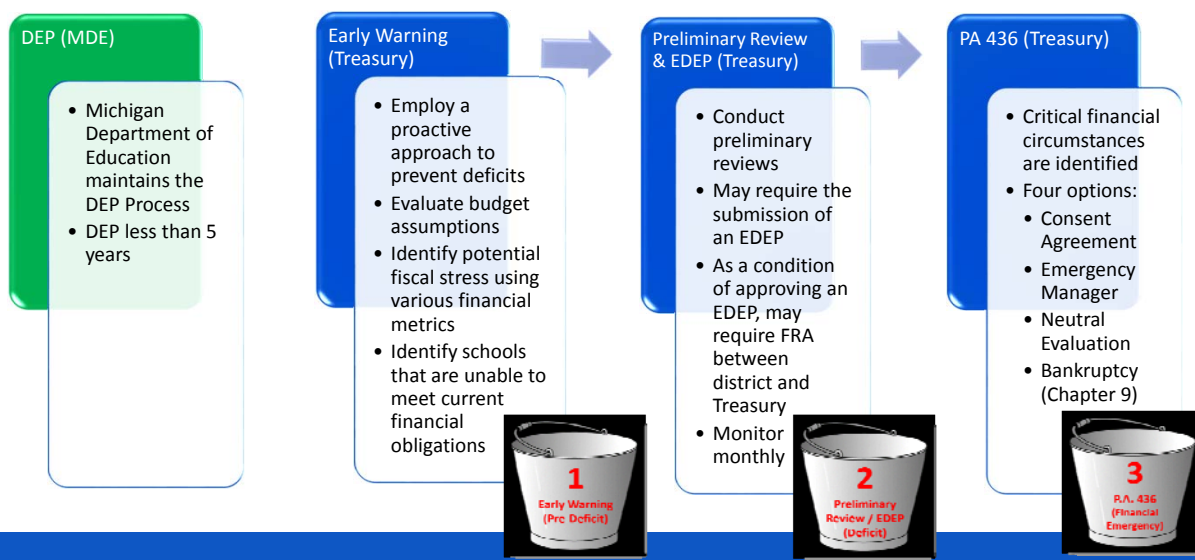
- The Emergency Loan Board (ELB) has reviewed eight school districts and found no probable fiscal stress.

### Enhanced Deficit Elimination Plan

- Eight school districts are under an EDEP.
- EDEPs include measures to improve the financial position of a school district or public school academy.

3

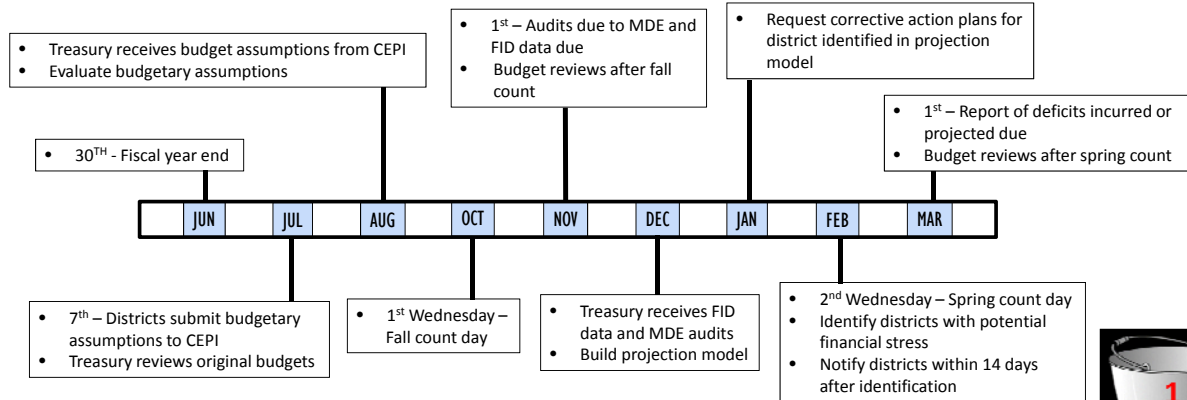
## MDE & Treasury's role regarding Financially Distressed Schools



4

### What does the timeline look like?

## Early Warning Timeline



\* Treasury will monitor enrollment, budgets, audits, or any other financial information for potential fiscal stress throughout the year



5

### Who is required to submit budget assumptions?

## Budget Assumptions

A school district or public school academy that had a positive total general fund balance less than 5% of total general fund unrestricted revenues for the 2014-2015 and/or 2015-2016 fiscal school year must submit the following budgetary assumptions to CEPI by July 7, 2017:

- The projected foundation allowance per pupil for the 2017-2018 school fiscal year.
- The projected enrollment for the 2017-2018 school fiscal year.
- The expenditures per pupil for the 2016-2017 school fiscal year
- The projected expenditures per pupil for the 2017-2018 school fiscal year

**Unrestricted General Fund Revenue will include Major Class:**

- 1xx, 2xx (excluding 212), 311, 316, 318, 411, 412, 416, 418, 419, 51x, and 52x

Visit our website for more information on budget assumptions [Michigan.gov/OSRFA](http://Michigan.gov/OSRFA)



6

### ***How are budget assumptions evaluated?***

## Budget Assumptions

---

### **After budget assumptions are received:**

- Treasury compares its projections to the district's budget assumptions
  - Looks for values that contradict the district's historical trend
  - The district is then contacted to confirm the accuracy of the data and how they created their projections
- Fiscal stress will not be declared on budget assumptions alone
  - Budget assumptions are only one factor of Early Warning
  - We review the projection model and recent budgets before making any determination of potential fiscal stress



7

### ***How is the “Early Warning” list of schools identified?***

## Early Warning – Projection Model

---

**Treasury developed a fiscal projection model using historical Financial Information Database (FID) data to identify districts trending toward a deficit**

- The projection model incorporates the following four key financial indicators:
  - Enrollment
  - Revenue
  - Expenditure
  - Fund Balance
- 3 year weighted average to identify trends
  - 75% most recently completed fiscal year, 20% previous year, 5% second previous year
  - 91% accuracy rate when applied to historical data from 2005 to 2015
- This model projects the fund balance for the current fiscal year and following 2 years
- Treasury continuously reviews current budgets to identify potential fiscal stress

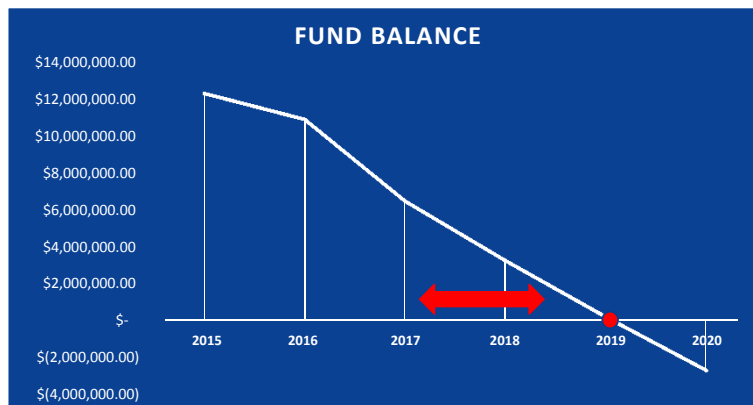


8

## How does the projection model work?

### Example

- Identifies a downward trend or potential fiscal stress before the district incurs a deficit
  - Treasury may declare potential fiscal stress if a deficit is projected to occur within the current or following two fiscal years



9

## How is the “Early Warning” list of schools identified?

### Early Warning – Budget Review

#### Another key factor of identifying schools is reviewing original budgets and amendments

- Review over 900 budgets including LEAs, PSAs, and ISDs three times a year
  - Original budgets after June 30
  - Amendments after both count days

#### Looking for large decline in fund balance

- Schools which intend to appropriate over 50% of their fund balance in their current budget

#### It is required by law to update transparency page and budgets!

- MCL 388.1618 Subsection (2):
  - Post budgets within 15 days after your district board adopts its annual operating budget or after a subsequent revision to that budget
  - Collaborate with MDE to ensure compliance



10



## ***What happens if Treasury projects a deficit or has concerns with a districts budget?***

### Early Warning – Next Steps

#### **If the projection model or budget review identifies your district:**

- The school district or public school academy will be asked to provide a corrective action plan or explanation for the decrease in general fund balance.
- Treasury reviews the corrective action plan along with any other financial information to determine whether potential fiscal stress exists.

#### **If fiscal stress is not declared after receiving a corrective action plan/explanation:**

- Treasury follows up to ensure the school district or public school academy is meeting all objectives of its corrective action plans.
- Treasury routinely monitors enrollment, budgets, audits, and other financial information for potential fiscal stress.



11

## ***What happens if Treasury declares fiscal stress?***

### Early Warning – Next Steps

#### **If fiscal stress is declared:**

Treasury is statutorily required to do the following, not less than 14 days after declaring the potential for fiscal stress exists:

- Notify the governing body of the district, ISD, or PSA that the potential for fiscal stress exists; and
- That it may establish a contract with an ISD to perform an administrative review of the financial status of the district or PSA (within 60 days of initial notification).

As part of a contract, an ISD or Authorizer would have to do all of the following:

- Complete the administrative review within 90 days of entering the contract and issue recommendations.
- Present the recommendations at the next scheduled public meeting of the school district or PSA.
- Send recommendations and submit quarterly reports to Treasury.

In lieu of the above-mentioned ISD or Authorizer option, the State Treasurer may require the school district to submit periodic financial status reports.



12

### ***How many districts have been identified?***

## **Early Warning – Results**

---

**In FY 2015-16 our projection model identified 75 districts based on current trends:**

- 18 Districts were declared to have potential fiscal stress.

**In FY 2015-16 our budget review identified 30 districts that reduced their fund balance by more than 50%**

- 2 Districts were declared to have potential fiscal stress.

**In FY 2016-17 our projection model identified 50 districts based on current trends:**

- We are currently reviewing corrective action plans to determine if there is potential fiscal stress

**In FY 2016-17 our budget review identified 26 districts that reduced their fund balance by more than 50%**

- We are currently reviewing corrective action plans and budget amendments to determine if there is potential fiscal stress

**Two districts have passed a deficit budget and oversight has been transferred to MDE  
Three districts have improved their financial position and are no longer fiscally stressed**

**There are currently 15 fiscally stressed districts at this time.**



13

### ***What is the current status of the 15 fiscally stressed districts?***

## **Early Warning – Results**

---

**Fiscally stressed districts have the option to contract with an ISD for an administrative review or submit periodic reporting to Treasury**

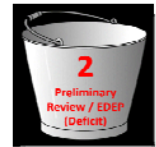
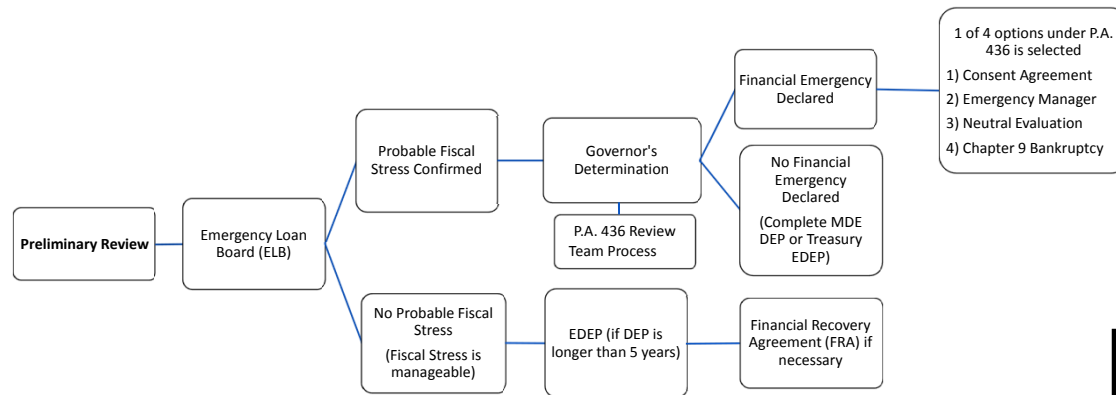
- Of the 15 potential fiscal stressed districts:
  - 7 chose to submit periodic reporting to Treasury
  - 8 chose to contract with an ISD or authorizer for an administrative review
- Administrative reviews have been completed
  - Treasury receives quarterly updates from the ISD or authorizer on the status of the implementation of the recommendations
- Treasury has designed periodic reporting templates that include:
  - Preliminary and quarterly budget status reports – including major assumptions used when creating the budget
  - Monthly projected and actual cash flows



14

## What is the preliminary review process?

### Preliminary Review Flowchart



15

## What happens if my district is subject to a preliminary review?

### Preliminary Review Process

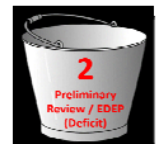
If your district is subject to a preliminary review per MCL 141.1544:

- Treasury will notify the district of the preliminary review and request additional data and documents to start the preliminary review process
- Within 20 days, Treasury will create a preliminary report of findings based on specific criteria
  - The district will be given the chance to provide comments within 5 days of the preliminary report
- Within 30 days from the beginning of this process, Treasury will complete the final report

#### Emergency Loan Board (ELB) Meeting

- The ELB consists of the State Treasurer, the Director of the Department of Technology, Management, and Budget, and the Director of the Department of Licensing and Regulatory Affairs (or their respective designees).

**ELB makes determination of probable financial stress or no probable financial stress based on Treasury's recommendation**



16

### ***What happens if the ELB determines probable financial stress?***

## Emergency Loan Board (ELB) Process

---

#### **If the ELB determines probable financial stress:**

- The Governor shall appoint a review team for that school district
  - Within 60 days the review team shall submit a written report of its findings to the Governor
  - Within 10 days of the report, the Governor shall determine whether a financial emergency exists or not

#### **If a financial emergency exists the district shall select one of the following options:**

- Consent Agreement
- Emergency Manager
- Neutral Evaluation
- Chapter 9 Bankruptcy

**If a financial emergency does not exist the district will complete a DEP with MDE or an EDEP with Treasury**



17

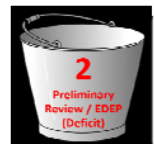
### ***What happens if the ELB determines NO probable financial stress?***

## Emergency Loan Board (ELB) Process

---

#### **If the ELB determines NO probable financial stress:**

- The district shall be required to submit an enhanced deficit eliminate plan (EDEP).
- EDEP process:
  - Treasury may request the school district to enter into a financial recovery agreement (FRA) with the State Treasurer
    - Treasury will visit this district to help identify issues and develop remedial measures to address the financial circumstances of the school district
  - The district shall submit monthly EDEP reporting that includes:
    - Deficit elimination plan overview
    - Monthly status report – budget to actual
    - Cash flows – projection and actual



18

## For more information:

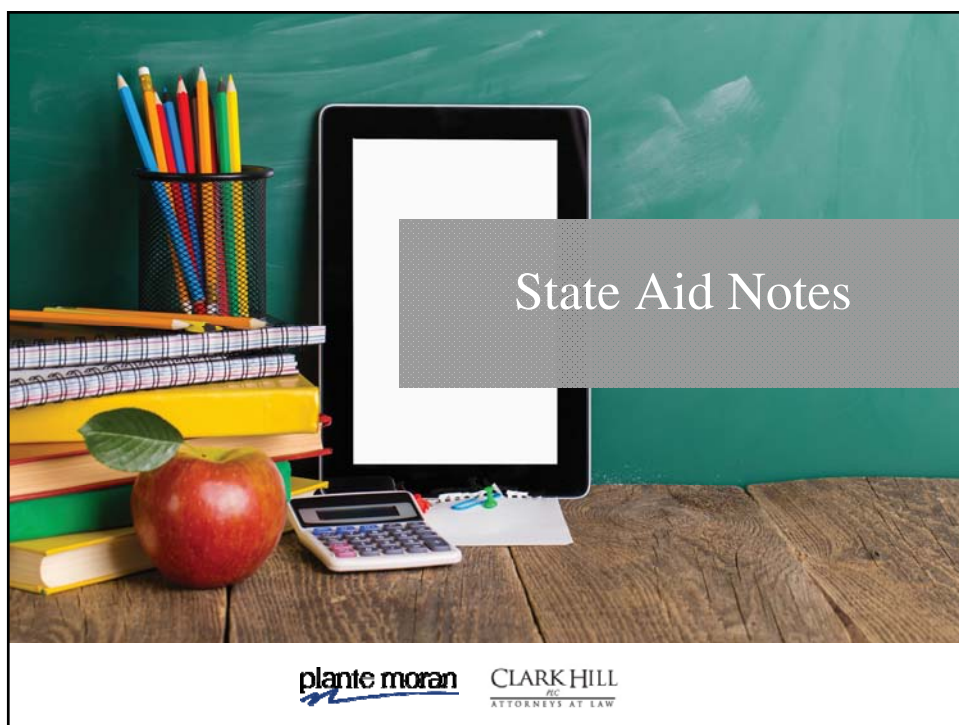
Visit our website: [Michigan.gov/OSRFA](http://Michigan.gov/OSRFA)

**OR Contact:**

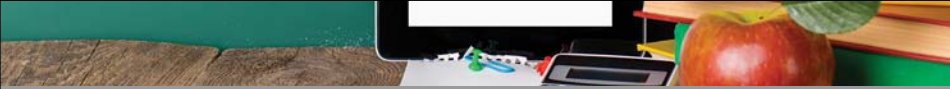
Office of School Review and Fiscal Accountability  
Michigan Department of Treasury  
[OSRFA@Michigan.gov](mailto:OSRFA@Michigan.gov)

**Paul G. Connors, Director**  
**Michael Wrobel, Assistant Director**  
**Ellen Kent, Departmental Specialist**  
**Sam Irrer, Financial Analyst**  
**Jake Brower, Financial Analyst**

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[WrobelM@Michigan.gov](mailto:WrobelM@Michigan.gov)  
[KentE1@Michigan.gov](mailto:KentE1@Michigan.gov)  
[IrrerS3@Michigan.gov](mailto:IrrerS3@Michigan.gov)  
[BrowerJ@Michigan.gov](mailto:BrowerJ@Michigan.gov)








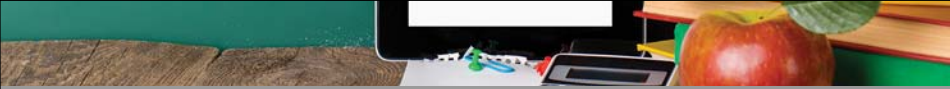
- Notes shall become due not later than 372 days after the date on which they are issued, except as provided in this section.

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- Notes issued within a fiscal year shall not exceed 70% of the difference between the total state aid funds apportioned to the school district or intermediate school district.

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- Note shall not exceed 50% of the state school aid apportioned to the school district or intermediate school district for the next succeeding fiscal year.


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## State Aid Notes Steps



1. School District provides information regarding the State Aid Notes to Clark Hill.
2. Clark Hill provides the Resolution Authorizing the Issuance of State Aid Notes.
3. Information meeting of the Board of Education to Discuss Approval of Resolution Authorizing Issuance of State Aid Notes.
4. Board of Education Approves Resolution Authorizing the Issuance of State Aid Notes.


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## State Aid Notes Steps (cont.)

5. Print and distribute Preliminary Official Statement and Mail Request.
6. Note Sale – Superintendent signs order awarding notes to the lowest proposer.
7. Print and distribute Final Official Statement.
8. Closing – School District receives note proceeds.



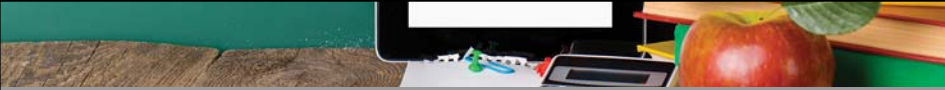
- Note shall not exceed 50% of the state school aid apportioned to the school district or intermediate school district for the next succeeding fiscal year.




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- The set aside is equal to 125% of the percentage the aggregate amount of the Notes are to the operating taxes.
- Therefore, if the Notes are in the aggregate amount of \$1,000,000 and the operating taxes are in the amount of \$10,000,000 the aggregate amount of the Notes are 10% of the operating taxes.


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- $\frac{\$1,000,000}{\$10,000,000} = 10\%$   
 $125\% \text{ of } 10\% = 12.5\%$   
 $12.5\% \text{ of } \$10,000,000 = \$1,250,000$



Therefore, the set aside must be no less than \$1,250,000 on a note issue in the aggregate amount of \$1,000,000

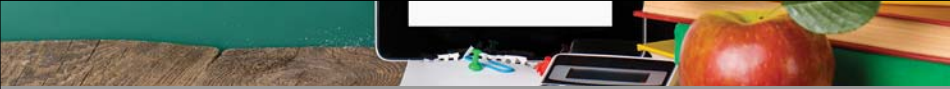
 



## Tax Anticipation Notes Steps

1. Board of Education considers resolution authorizing issuance of tax anticipation notes at a regular meeting.
2. Board of Education adopts resolution authorizing issuance of tax anticipation notes at a regular meeting.
3. Print and distribute Preliminary Official Statement and mail Request for Proposals.


 




## Tax Anticipation Notes Steps (cont.)

4. Note Sale – Superintendent signs order awarding notes to the lowest proposer.
5. Print and distribute Final Official Statement.
6. Closing – School District receives note proceeds.


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## Thank You!



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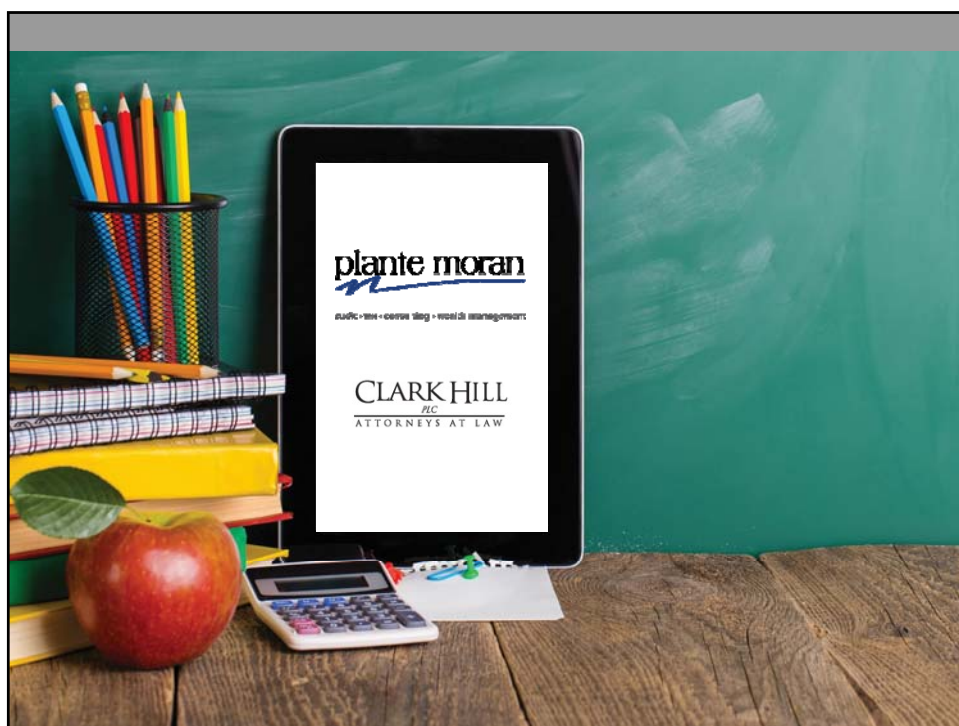
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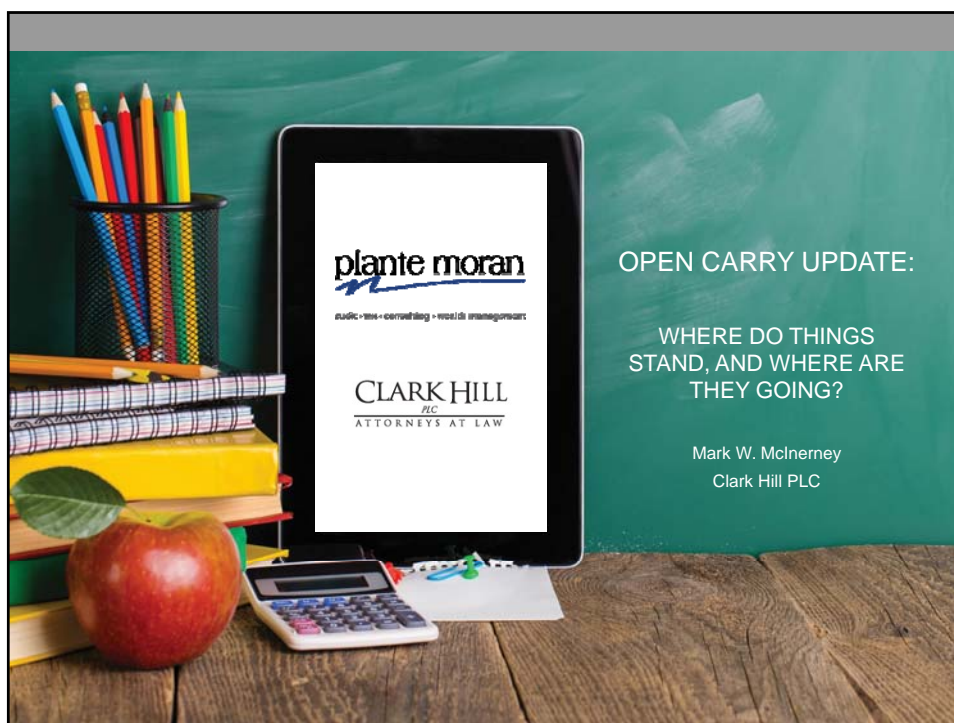


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## Where are we now?

**Things have changed**

- By decisions issued on December 16 in two similar cases, Michigan Court of Appeals held that school districts have the legal authority to ban weapons, including firearms, from school premises.
- Court did not ban weapons from school premises – only ruled that districts have the authority to do so.
- Decisions will undoubtedly be appealed to Supreme Court.
- So what do districts do now?






2




## Legal Background

- Cases arose from districts in Ann Arbor and Clio – both districts' boards enacted policies banning firearms from school property.
- Both policies were challenged by groups of gun enthusiasts – “Michigan Gun Owners, Inc.” and “Michigan Open Carry, Inc.”
- Both challenges were founded on Court of Appeals 2012 decision in *Capitol Area District Library v Michigan Open Carry, Inc.* (“CADL”).
- Lower courts reached different conclusions – in Clio, Genesee Circuit Court voided the ban; in Ann Arbor, Washtenaw Circuit Court upheld it.

3





## Legal Background

### The CADL Case


The case involved a district library – formed by multiple bodies of government under a statute – in CADL, founding bodies were City of Lansing and Ingham County.

In Michigan, there is no statute that bans the open carry of firearms by an adult without any criminal record.

There is, however, a statute that prohibits the concealed carry of firearms (even by someone with a concealed weapons permit) in a number of situations, including schools, churches, bars, sports stadiums – with a few limited exceptions [MCL §28.425o].






4




## Legal Background

- There is also a statute – MCL §123.1102 – that forbids a “local unit of government” from imposing firearms regulations, other than as imposed by state or federal law.
- “Local unit of government” defined as “a city, village, township, or county.”
  - Doesn’t include libraries – or schools.
- Library’s argument: we aren’t a city, village, township or county – we’re not covered by that ban.

5





## Legal Background


Court of Appeals in *CADL* found the statute did apply to the district library – since it was formed by a city and county, to which the statute expressly applied.

*CADL* Court went on to find an intention by the Legislature to pre-empt the field of firearms regulations, at least insofar as it applied to municipal, or quasi-municipal (such as libraries) entities.

“Field pre-emption:” theory the Legislature has determined that only it should legislate in a particular area – not local municipalities.






6




## Legal Background

- In the *Ann Arbor* and *Clio* cases, the Court found that *CADL* case was distinguishable from cases involving schools.
- Unlike in *CADL*, schools are not mentioned in or formed by entities mentioned in MCL §123.1102.
- Unlike with district libraries, schools are specifically authorized by statute to exercise powers appropriate to “provid[e] for the safety and welfare of pupils at school . . .” [MCL§380.11a(1)(b)]
- Regarding pre-emption, Court found that most statutes that address firearms at school actually ban them.
  - This fact “evinces the Legislature’s intent to *prohibit* weapons in school, rather than to rein in a district’s ability to control the possession of weapons on its campuses.”






7



## Legal Background

- Based on these considerations, the Court affirmed the decision upholding the Ann Arbor Public Schools’ ban on firearms, and reversed the Clio Area School District’s decision nullifying a similar ban.

8



## Going Forward

- It is likely that one or both gun organizations will appeal this decision to the Michigan Supreme Court.
  - Supreme Court may decline to hear cases – as in *CADL*.
- Dilemma for Court's Republican majority – generally pro-gun rights, but also very strongly in favor of "strict construction" – and there is no question that schools are not in the group of entities forbidden from regulating firearms.
- In *CADL*, Court avoided this dilemma by declining to hear the case – might do so here; but might take it and decide.
- In other words – it's a complete mystery.

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9



## What Can/Should Schools Do


- At this moment, the law of this state, as set forth in published Court of Appeals decisions, is that schools may regulate – ban – firearms on school premises.
- Schools are free to act on this law by banning firearms.
  - Again – this takes an affirmative action of establishing a policy; the cases do not themselves constitute a ban.

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10






## What Can/Should Schools Do



- THREE PRIMARY ALTERNATIVES:
- Under current law, absent a school policy, no law prevents an adult without a criminal record from open carrying a firearm at school.
  - Thus – districts can take no action, and open carry will be permissible; if this is what you and/or your community want, you need do nothing.
- Second – districts can decide to wait for the final word on this – when the appeal time expires (January 27); or if appeal is filed and Supreme Court declines to take the case (anywhere from 3 to 6 months, or possibly more); or, if the Court takes the case, and issues an opinion (probably no sooner than 6 months from now, and could be as much as 12 to 18 months).




11



## What Can/Should Schools Do



- Third alternative – take a proactive approach – if your district doesn't already have a policy banning firearms, enact one.
- Not difficult – we can provide some suggested language.
- If you enact such a policy – notify your local police agency.
  - Police would prefer advance notice in emotional issue like this
  - Post signs on entry doors – “As permitted by Michigan law, this district prohibits the possession of firearms of any kind, whether concealed or carried openly, on school premises.”
  - May help with those who aren't looking for confrontation; or with police if you have to call them.



12




## What Can/Should Schools Do

- Put internal procedures in place for dealing with someone who seeks to open carry at school.
  - Limit access points.
  - Call police if person can't be persuaded to take firearm home.
  - Place school on lockdown if any doubt about whether police will back you up or if you anticipate challenge.






13




## What Can/Should Schools Do

- As of today, by virtue of published opinions of the Michigan Court of Appeals, schools and districts have the legal authority to ban all firearms from school premises.
- May be a permanent situation; or may ultimately be changed by the Supreme Court, or even the Legislature.
- If you believe firearms have no place on school property, there is no reason to wait.

14





Questions?

Thank you.

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This presentation is not a substitute for legal advice in any specific situation. You should contact legal counsel for advice concerning any particular facts and circumstances.

15