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Law & Finance Seminar!

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# Your Presenters...

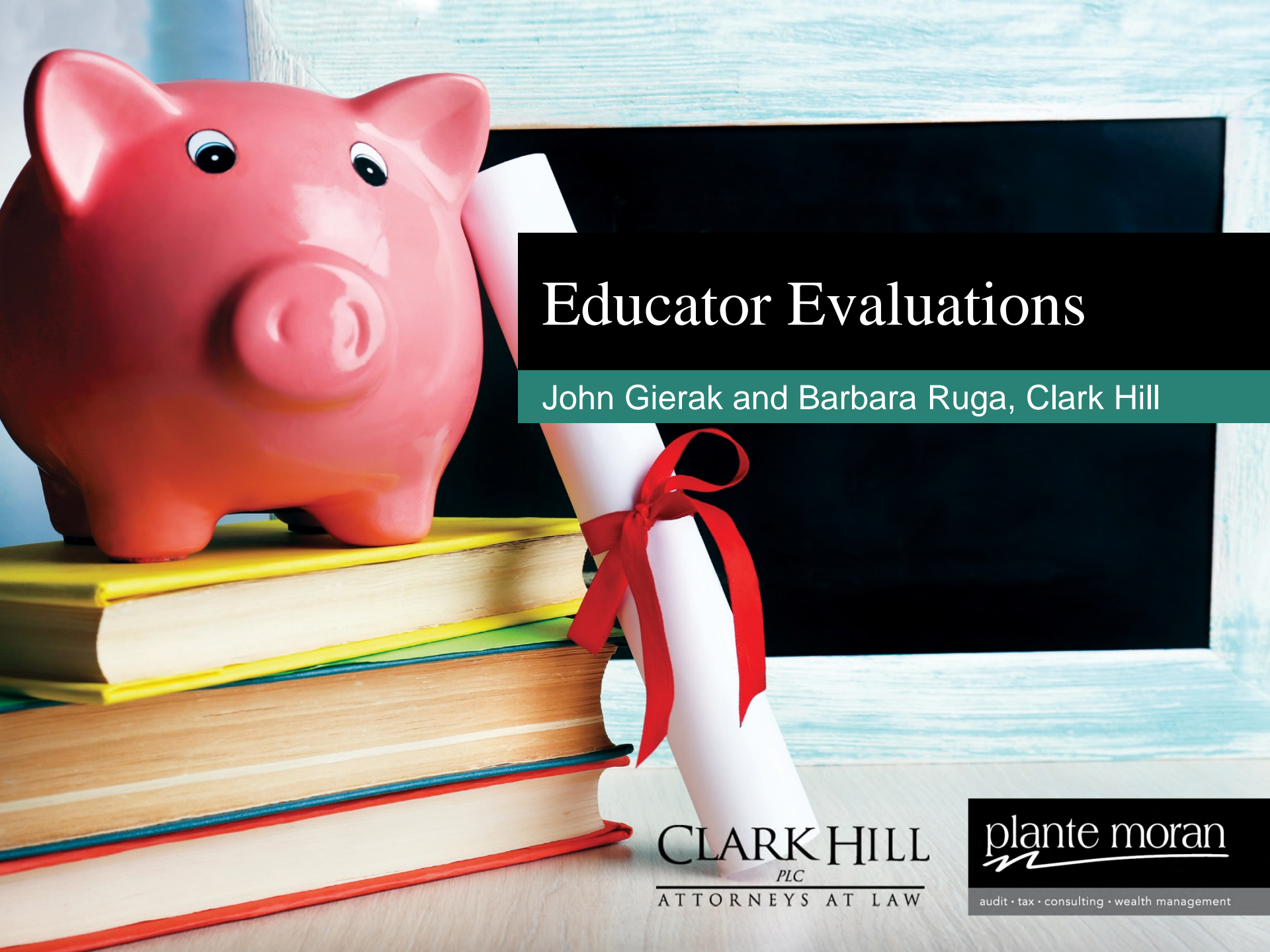


## **Plante Moran**

- Laura Claeys
- Eric Formberg

## **Clark Hill**

- Dana Abrahams
- John Gierak
- Kurt Graham
- Marshall Grate
- Mark McInerney
- Jeremy Motz
- Barbara Ruga
- Joe Urban



# Educator Evaluations

John Gierak and Barbara Ruga, Clark Hill

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# History/Context



- **As if July 19, 2011**
- **New PERA Section 15(3)(I) – prohibited subject of teacher evaluations**
- **PERA Section 15(4) – prohibited subjects are “within the sole authority of the public school employer to decide.”**
- **New Section 1248 – layoff and recall**
- **New Section 1249 – skeletal evaluation law**

# History/Context



- **Reforms eliminated option to grant tenure in administrative positions**
- **“Teachers” within administrator bargaining units are also impacted by prohibited subjects**
- **New “not arbitrary or capricious standard” within Section 101 of Tenure Act, governs teachers and administrators who are “teachers”**

# November 2015: Passage of SB 103



- **2015 Public Act 173 signed November 5, immediately effective November 10, 2015**
- **Guidance from Michigan Court of Appeals in *Summer v. Southfield Public Schools* and *Baumgartner et al v. Perry Public Schools*, which reinforces the need to assure compliant performance evaluation systems**
- **Tenure Commission decisions give some additional clues**

# How School Districts Maintain High Quality Teaching Staff



- **Comply with the Teachers' Tenure Act Requirements, MCL §38.71 *et seq* and Section 1249 of the Michigan Revised School Code, MCL §380.1249**
- **Select a teacher evaluation tool that is rigorous, transparent, and fair, as well as feasible to administer**
- **Supplement your tool to measure §1248 criteria (Slide 33)**
- **Do your best measuring “student growth.”**
  - Updated guidance exists
- **Review and revise teacher evaluation and layoff/recall regulations/guidelines, as needed**
- **Train, train, train your staff!**
- **Get ready for 2016-2017 compliance deadlines**



# How School Boards Maintain Quality School Administrators



- **Comply with new §1249b of the Michigan Revised School Code**
- **Select one of [3] approved tools [to date]**
- **Train board members and Superintendent/central office who conduct the evaluations on the selected tool**
- **Add the §1249 criteria to the tool you select – see slide 34**
- **Where there is an administrator union, develop administrative regulations for evaluation, etc., just as with teacher units**
- **Use § 1229 when needed for contract non-renewal**
- **Applies to “building level school administrators” and “central office...who are regularly involved in instructional matters...”**



# Why §1249 Compliance Is Essential



- **The Michigan Teachers' Tenure Act & Section 1249 of the Michigan Revised School Code are inextricably linked. In order to comply with the Tenure Act, must satisfy Section 1249**
- **Section 1249 system must be rigorous, transparent and fair, and give ample opportunities for improvement (through relevant coaching, instruction support, or professional development)**

# What the Tenure Act Says



- § 38.83a. Teacher in probationary period; individualized development plan; performance evaluation; basis.
- Sec. 3a. The controlling board of a probationary teacher's employing school district shall ensure that the teacher is provided with an **individualized development plan** developed by appropriate administrative personnel in consultation with the individual teacher and that the teacher is provided with at least an **annual year-end performance evaluation** each year during the teacher's probationary period. The annual year-end performance evaluation shall be based on classroom observations and shall include at least an **assessment of the teacher's progress in meeting the goals of his or her individualized development plan**. The controlling board shall determine the format and number of the classroom observations in consultation with teachers and school administrators. A **performance evaluation shall be conducted in accordance with section 1249** of the revised school code, 1976 PA 451, MCL 380.1249.

# Also Important In Layoff/Recall Decisions



- **§ 38.82a. Probationary teacher rated as effective or highly effective; displacement**
- Sec. 2a. A probationary teacher who is rated as effective or highly effective on his or her most recent annual year-end performance evaluation under section 1249 of the revised school code, *1976 PA 451, MCL 380.1249*, is not subject to being displaced by a teacher on continuing tenure **solely because the other teacher has continuing tenure**

# Tenured Teachers



- **§ 38.93. Teacher on continuing tenure; annual year-end performance evaluation; individualized development plan.**
- Sec. 3. The controlling board of the school district employing a teacher on continuing tenure shall ensure that the teacher is provided with an **annual year-end performance evaluation in accordance with section 1249** of the revised school code, *1976 PA 451, MCL 380.1249*. If the teacher has received a rating of **ineffective or minimally effective** on an annual year-end performance evaluation, the school district shall provide the teacher with an **individualized development plan** developed by appropriate administrative personnel in consultation with the individual teacher. The individualized development plan shall require the teacher to **make progress toward individual development goals within a specified time period, not to exceed 180 days**. The annual year-end performance evaluation shall be based on multiple classroom observations conducted during the period covered by the evaluation and shall include, **in addition to the factors required under section 1249** of the revised school code, *1976 PA 451, MCL 380.1249*, at least an assessment of the teacher's **progress in meeting the goals of his or her individualized development plan**. The controlling board shall determine the format and number of the classroom observations in consultation with teachers and school administrators.

# Impact on School Administrators



- **Administrators with teaching certificates who acquired teacher tenure in your District before becoming an administrator maintain teacher tenure in your District, albeit serving as an administrator**
- **Administrators who come to your District having acquired classroom teacher tenure in another Michigan public school district serve a two year probationary period before they acquire classroom teacher tenure in your District**
- **Administrators who had not acquired tenure as a teacher elsewhere or in your District, do not acquire classroom teacher tenure in your District**
- **Administrators do not acquire tenure as administrators**

# Tenure Act and Section 1249: *Summer v. Southfield Bd of Education*



- **Michigan Court of Appeals June 2, 2015; Case No. 320680; 2015 Mich. App. LEXIS 1145**
  - Held that “...school districts are required to adopt a “performance evaluation system” that meets the following pertinent requirements:...[cites section 1249]...”



# No Private Right of Action Unless...



## **“THE FAILURE TO FOLLOW THE PROCEDURES ESTABLISHED IN *MCL 380.1249* MAY STATE A CLAIM UNDER *MCL 380.1248*.”**

- The layoff and recall statute mandates teacher effectiveness be the criteria for those actions and that statute incorporates section 1249 by reference
- “Therefore, we must interpret both *MCL 380.1248* and *MCL 380.1249* to determine whether plaintiff stated a cause of action under *MCL 380.1248* that may survive summary disposition pursuant to *MCR 2.116(C)(8)*.”
- Is it reasonable to conclude that the Tenure Commission, in deciding teacher dismissal cases for alleged incompetency, *i.e.*, less than effective performance, will reach a similar conclusion, given that the Tenure Act, like section 1248, also incorporates section 1249?

# School Code Provisions Mandating Compliance With §1249



**“The court noted that the general enforcement provisions provide for criminal punishments for school officials who fail to perform under the code, *MCL 380.1804*, and for termination of school officials who violate a provision of the code, *MCL 380.1806*.” citing *Garden City Ed Ass'n, 975 F Supp 2d at 785***

- **Court also noted receipt of funding tied to compliance with Section 1249**



# Summer Court's Rationale



- **The Legislature confirmed its emphasis by unambiguous language that “...[e]ffectiveness *shall be measured* by the performance evaluation system under *section 1249.*” *MCL 380.1248(1)(b)***
- **Accordingly, we find that the Legislature specifically intended to allow teachers to challenge layoff decisions that were based on performance evaluations that did not comply with the requirements under §1249**

# Legislative Intent Evident



**“Moreover, we recognize that a cause of action under § 1248 based on a layoff that occurred following an evaluation that did not comply with § 1249 may appear to encompass subjective considerations or invite frivolous or illusory claims.**

**However, it is evident that in adopting § 1249, the Legislature intended that there be significant emphasis on the utilization of objective criteria in the evaluation of a teacher (i.e., student growth and assessment data, § 1249(1)(c), (2)(a), the results of classroom observations, § 1249(2)(c), [\*27] and the results of a state or local evaluation tool, § 1249(2)(d)).”**

# Section 1249's Mandates



- **Annual Evaluations of teachers and school administrators**
- **Use Four Ratings: HI, E, ME, IE**
- **Individualized Development Plan for all probationary teachers and tenured teachers rated Minimally Effective or Ineffective**
- **Development of Teacher IDP is prescribed as follows:**
  - “...**the school administrator shall develop** in consultation with the teacher. § 1249(2)(a)(iii)
  - specified time period **not to exceed 180 calendar days**, §38.93, to **demonstrate progress** towards goals
  - appears the IDP is to be developed in conjunction with the year-end evaluation, see §380.1249(2)(a)(iii)
- **NOTE: for each teacher...[specific performance] goals and any recommended training that would assist the teacher in meeting these goals. § 1249(2)(a)(iii)**

# Improvement Plan For School Administrators



- **For school administrator rated ME or IE on most recent evaluation**
- **Evaluator shall develop and require administrator to implement an improvement plan to correct the deficiencies**
- **Recommend PD and other actions designed to improve the rating on the next annual evaluation**

# 2015 MidYear Progress Report (MYPR)



- **First year probationary teachers and any teacher on an IDP because T rated ME or IE the prior school year**
- **Based at least in part on student achievement**
- **Aligned with the teacher's IDP**
- **Spells out specific performance goals for the remainder of the year, developed by school administrator, along with training to assist teacher in meeting goals**
- **Results in a written improvement plan for rest of year**
- **Does not replace the year end annual evaluation**
- **Not required for school administrators**



# 2015 Multiple Classroom Observations



- **“Multiple” defined as two (2)**
- **“Shall include”:**
  - 1) review of lesson plan
  - 2) state curriculum standard being used
  - 3) pupil engagement in the lesson
- **Does not have to be for an entire class period**
- **Exception if teacher rated E or HE on 2 most recent year-end evaluations, can be one observation**



# 2015 Annual Year-End Evaluation



- **Exception for teachers or school administrators rated HE on 3 consecutive year-end evaluations, provided remain HE, may limit to every other year**
  - This should be a district decision, not building by building
- **If regress to E, then annual evaluation required again**
- **Year-end evaluation must assess progress towards IDP goals**



# 2015-16 Student Growth Mandates



- **Applies to teachers and school administrators**
- **Must provide clear approaches to measuring student growth**
- **Provide relevant data on student growth; 3 years of data, if available**
- **May exempt a particular student upon approval of evaluator and superintendent**





# PA 173 of 2015 – Student Growth



**Beginning 2015-2016, for teachers and school administrators:**

- **25% student growth**
- **Requires “multiple measures” that may include student learning objectives, achievement of IEP goals, nationally normed or locally developed assessments aligned to state standards, other research-based growth measures or alternative assessments that are rigorous and comparable**
- **Increases to 40% in 2018-2019**



# PA 173 of 2015 – State Assessments



- **No State assessment mandated until 18-19**
- **Beginning in 2018-2019, 50% of 40% student growth must be the state assessment for teachers of core content areas tested on state assessment**
- **If do not teach subjects tested by the state assessment, then the requisite multiple measures may include the same types of measures permitted beginning in 2015-2016**

# 2015 School Administrators



- **Identical to teachers, except:**

- The student growth and assessment data “...are **the aggregate student growth and assessment data** that are used in teacher annual year-end evaluations in each school in which the school administrators works as an administrator, or, for a central-office level school administrator, for the entire school district or intermediate school district.”



# Training On Measures



- **Must provide training on the student growth measures in 2015-2016, and how each measure is used**
- **Part of existing mandate on providing “clear” measures to student growth**
- **May share training with other districts or ISDs**
- **For SLO, note the MDE website information**

# PA 173 of 2015 – The Tool – By 2016-2017



- **For teachers and school administrators, the portion of year-end evaluation that is not measured by student growth shall “primarily be” measured by an approved evaluation tool**
- **For teachers, the remainder shall be the section 1248 criteria not already measured by the evaluation tool**
- **For school administrators, the remainder shall be the section 1249 criteria not already measured by the evaluation tool**
- **Same tool must be used throughout district for similarly situated teachers and school administrators**

# MDE Approved Tools

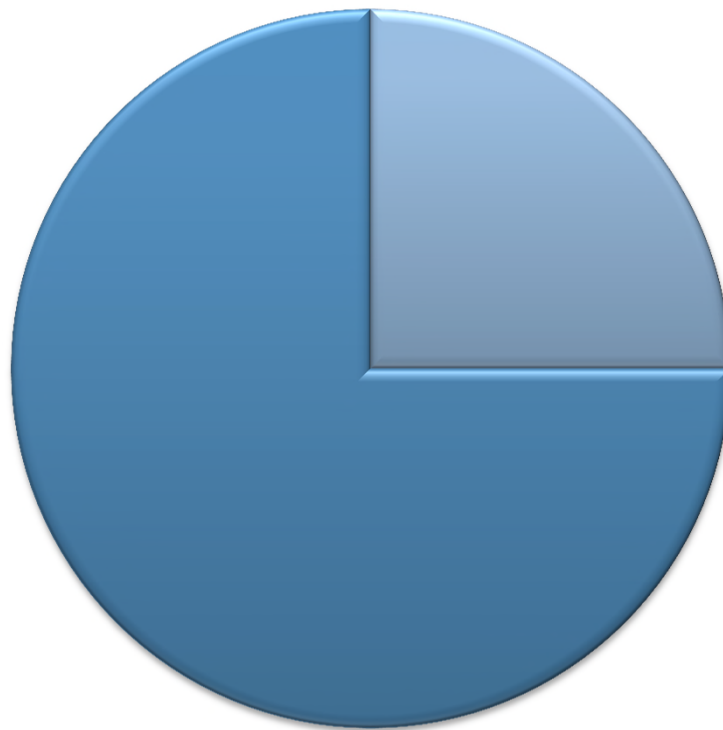


- **Approved tools shall be identified on a list compiled and maintained by MDE and shall include the 4 MCEE approved tools for teachers and the approved tools for administrators**
  - Teachers: Danielson; Marzano, Thoughtful Classroom, 5D+
  - School Administrators: Marzano, MASA School Advance, Reeves Leadership Rubric
- **MDE will identify more tools and develop regulations to allow approval of local tools**
- **Tool may be different for teachers than for school administrators, as long as similarly situated teachers and similarly situated administrators are evaluated using the same measures and tools**

# Student Growth and Assessment Data



## 2015-2016, 2016-2017 and 2017-2018 Teachers



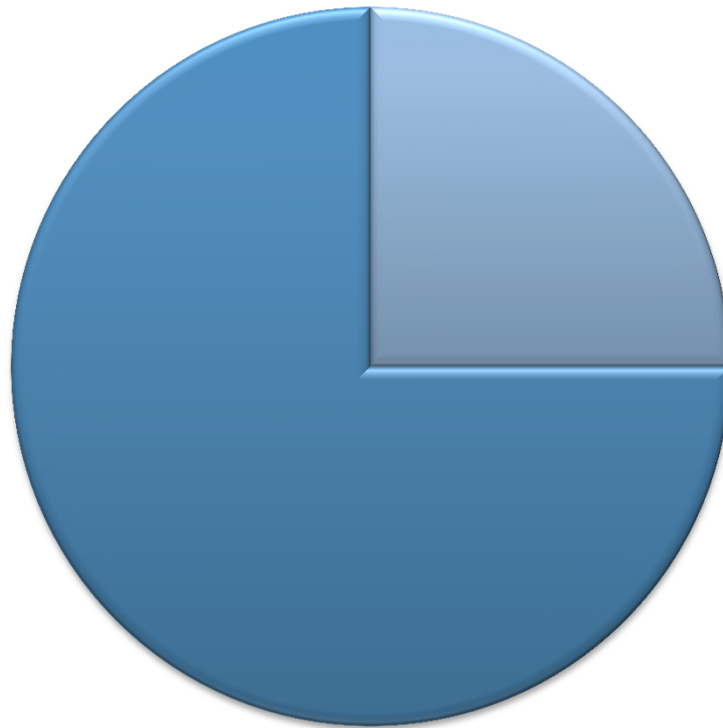
■ Student Growth 25%

■ Evaluation Tool + Section 1248 Criteria 75%

# Student Growth and Assessment Data



## 2015-2016, 2016-2017 and 2017-2018 Administrators



■ Student Growth 25%

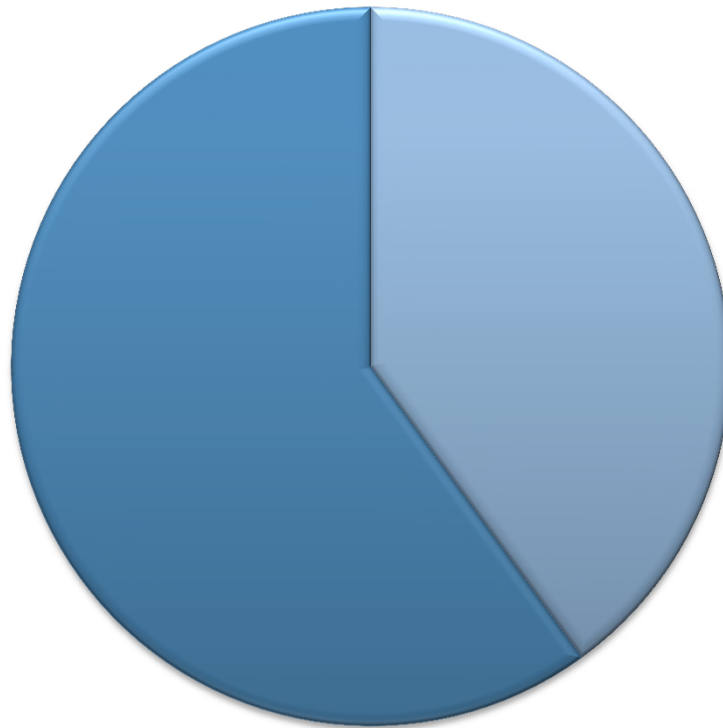
■ Evaluation Tool + Section 1249 Criteria 75%



# Student Growth and Assessment Data



## 2018-2019 Teachers

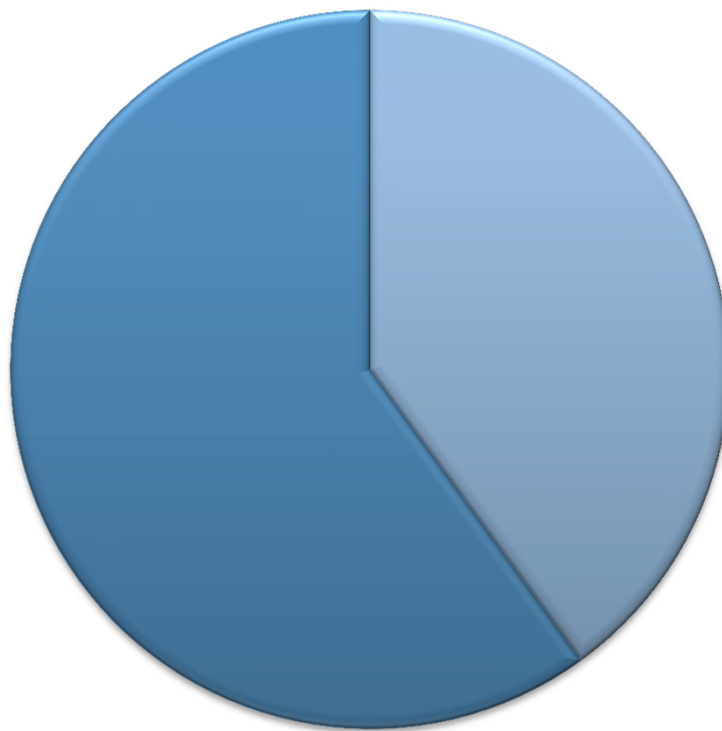


- Student Growth 40% (20% based on State Assessment, where applicable)
- Evaluation Tool + Section 1248 Criteria 60%

# Student Growth and Assessment Data



## 2018-2019 School Administrators



- Student Growth 40% (20% based on State Assessment, where applicable)
- Evaluation Tool + Section 1249 Criteria 60%

# Section 1248 Criteria



- **Individual performance which includes factors not measured by approved tools such as teacher attendance and discipline**
- **Relevant accomplishments and contributions – above the teacher’s peer group**
- **Special training – not mandated by District or State**

# School Administrator 1249 Criteria



- **Training and proficiency in using the evaluation tool for teachers, including a random sampling of his or her teacher performance evaluations to assess the quality of the school administrator's input in the teacher performance evaluation system**
- **The progress made by the school or school district in meeting the goals set forth in the school's school improvement plan or the school district's school improvement plans**
- **Pupil attendance in the school or school district**
- **Student, parent, and teacher feedback**
- **Other information considered pertinent by the superintendent or other school administrator conducting the performance evaluation or the board or board of directors**

# Getting Ready for 2016-2017



2016

**YEAR OF THE MONKEY**

DESIGNED BY **vector open stock**

# Observations of Teachers By 2016-17



- **Multiple observations defined as “2” - now**
- **By 2016-2017:**
  - at least one observation by assigned evaluator
  - at least one unscheduled observation
  - feedback from observations must be given to teacher within 30 **calendar** days
- **Observations are not required for school administrators, but may be included as part of District’s system for school administrators**



# PA 173 of 2015 – 2016-2017 Posting Requirement



- **For tools used for teachers and school administrators, must post on website:**
  - Research basis for tool
  - If modified tool, assurance modifications do not impair research basis
  - Authors of tool and their qualifications
  - If modified, identity and qualifications of person who reviewed modifications
  - Evidence of tool's validity and reliability or a plan for developing same



# PA 173 of 2015 – More Posting 2016-2017



- **The rubrics with detailed descriptors for each performance level on key summative indicators**
- **Description of processes for conducting classroom observations, collecting evidence, developing performance ratings, and developing IDPs**
- **Plan for providing requisite training.**





# Requisite Assurances



- **If use a tool on or not on the list, or if you adapt or modify the tool, must make specific assurances that adaptations or modifications are research-based and do not impair the validity and reliability of the tool**
- **If use modified, adapted or local tool, you must use same tool for similarly situated teachers**
- **MDE will publish standards for getting a tool on the list**

# Unmandated Mandate to Use Listed Tool?



- **In our opinion, the upshot is that most districts will elect, if not already doing so, to use one of the listed tools, and then not modify or adapt it**
- ***Irony: listed tools generally do not measure supplemental section 1248 or 1249 criteria. Will most likely have to supplement the tool***
- **If modify or adapt, vendors are a likely source to assure that any adaptations or modifications do not impair research basis**

# 2016-17 Training About Tool



- **Mandated Training – 2016-2017**
- **All evaluators and observers must be trained in the System *and* Tool**
- **By someone with expertise in teacher evaluation tool**
- **Could be a consultant or someone trained to train in use of that tool**
- **§95a funds are provided**



# 2015-16 Ineffective Ratings



- **3 years of Ineffective ratings, shall be dismissed; nothing precludes earlier dismissal of teacher or school administrator**
- **May appeal Ineffective ratings to Superintendent within 20 days of receipt of rating, twice in a 3 school year period**

# Dismissal of Teachers



- **Amends former 1249(2)(h), now 1249(2)(J)**
- **Clarifies that while must dismiss a tenured teacher rated Ineffective for 3 consecutive school years, may dismiss earlier if less than Effective, whether Minimally Effective or Ineffective**

# 2018-2019 Notice Provisions



- **By 2018-2019:**
- **Shall not assign student to be taught in the same subject area for two consecutive years, by a teacher who has been rated Ineffective for two consecutive years**
- **If you do, at the beginning of the second year, you must explain why to their parents/guardians**

# New Certification Rules



- **Section 1531j.**
- **Begins July 1, 2018**
- **MDE shall not issue a professional teaching certificate unless:**
  - successful completion 3 years teaching
  - Either rated E or HE for most recent 3 consecutive years, or 3 nonconsecutive 3 yrs and submits a recommendation from current school employers chief school administrator



# New Section 1531k



- **Immediately Effective**
- **Advanced professional teaching certificate:**
  - Rated HE on 3 of 5 most recent years
  - Not rated as IE in any of 5 most recent years
  - Additional criteria established by MDE





# On Balance, Where Are We?



- **Is the statutory 1249 standard better or worse than the prior *Beebee* factors?**
- **Does the stated “not arbitrary or capricious” standard compensate for the additional procedural hurdles that are no different and actually in some cases exceed prior collective bargaining requirements?**
- **Does any other industry have a mandated requirement of posting research-based or valid and reliable tools?**
- **Do the MCEE approved tools meet the standard of valid and reliable?**
  - See December 2013 ISR Report



# Are We Making Progress?



- **Now certain about 1249 requirements**
- **Uncertain about how to measure student growth, although more guidance now provided**
- **Unanswered questions about what PA 173 of 2015 requires, that will be fodder for lawyers**
- **Will specificity of process and statutory requirements akin to former contract rules ease employee anxiety about perceived unfairness?**
- **Is perception of unfairness founded in fact? See slides 50-51**



# On the other hand...



- **Many districts report greater attention to student data, instructional practice, relevant accomplishments & contributions, etc.**
- **As a practical matter, more districts have exited teachers and school administrators, via relatively less expensive resignation agreements than in prior years**



# MI Effectiveness Ratings\*



- **Ineffective Teachers & Administrators**
  - 2011-2012: 0.8% (0.7%)
  - 2012-2013: 0.6% (0.5%)
  - 2013-2014: 0.5% (0.3%)
- **Minimally Effective Teachers & Administrators**
  - 2011-2012: 2.04% (1.76%)
  - 2012-2013: 2.41% (2.24%)
  - 2013-2014: 2.26% (2.37%)
- **Effective Teachers & Administrators**
  - 2011-2012: 74.6% (74%)
  - 2012-2013: 64.4% (68%)
  - 2013-2014: 59.3% (66%)

\*Source: MDE/CEPI Website Staffing Reports

# Increase in Highly Effective Educators



- **Highly Effective Teachers**

- 2011-2012: 23%
- 2012-2013: 33%
- 2013-2014: 38%



- **Highly Effective Administrators**

- 2011-2012: 23%
- 2012-2013: 29%
- 2013-2014: 32%



- **97% of Teachers = Effective or Highly Effective**

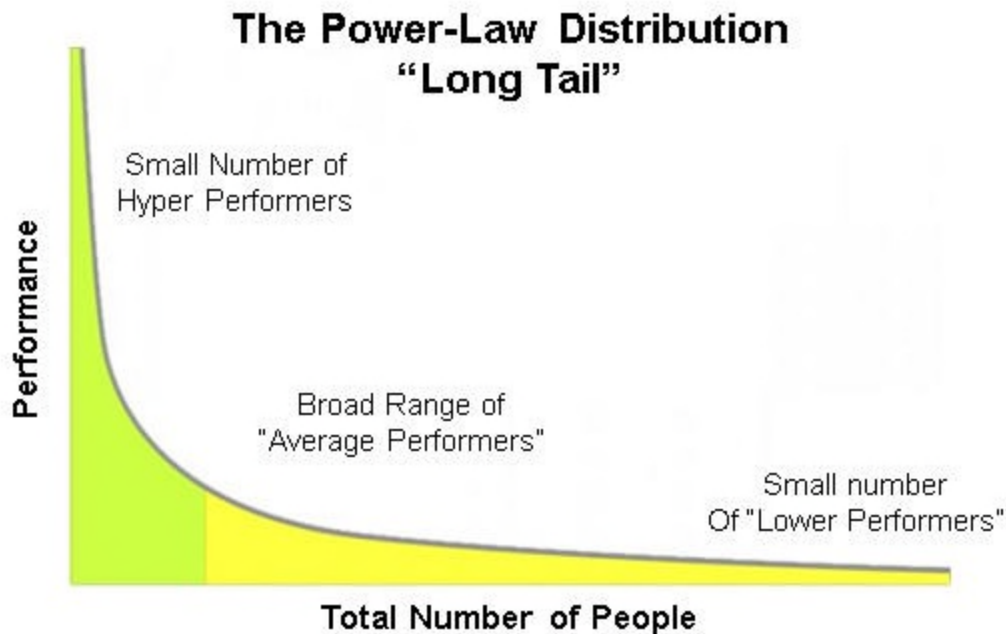
- **98% of Administrators = Effective or Highly Effective**



# “The Myth of the Bell Curve”



- **Power-Law or Long Tail Distribution**
- [https://medium.com/@josh\\_bersin/the-myth-of-the-bell-curve-b7432edf1960](https://medium.com/@josh_bersin/the-myth-of-the-bell-curve-b7432edf1960)



# The Quest For Teacher Development – TNTP.ORG



# QUESTIONS







- **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**
- **School law issues are complex and fact specific; when in doubt, consult with legal counsel**

# Thank you!



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# News that is “Too New to Tell!”

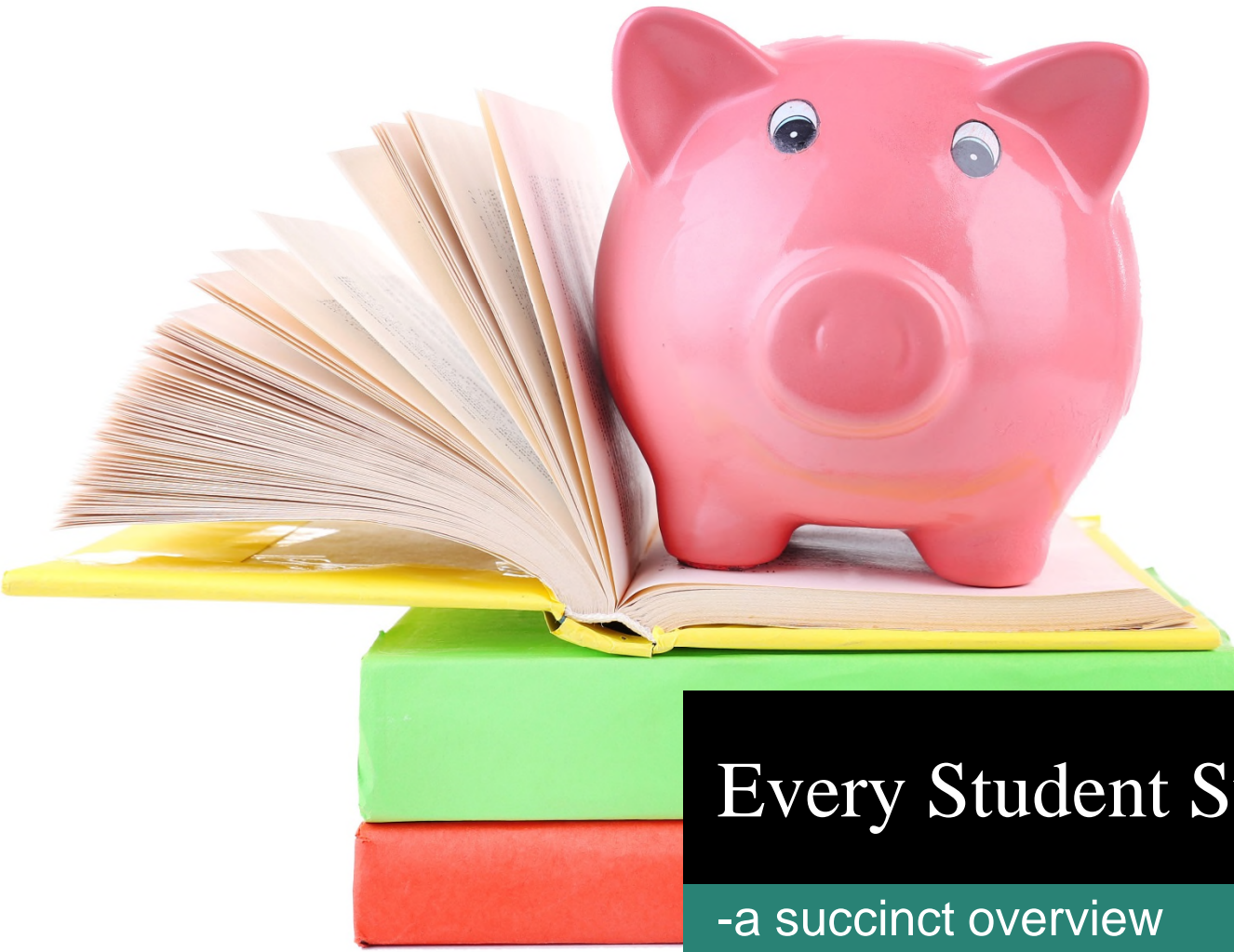
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Summaries of Every  
Student Succeeds Act of  
2015 and Senate Bill 571

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# Every Student Succeeds Act

-a succinct overview

# Meet the New Boss – Same as the Old Boss!



- **ESSA is the long-anticipated reauthorization of the Elementary and Secondary Education Act of 1965.**
- **While it omits or deviates from many of the requirements of NCLB, there may be little practical impact in Michigan due to codification of Race to the Top standards in many areas and the specifics of Michigan’s NCLB Flexibility Waiver.**
- **There are some differences, which we will discuss.**



“We’re looking for someone  
for the fast-paced and  
exciting job of blamee.”

# Highlights



- **Devolution of Federal imperative in State education policy:**
  - ESSA states that “The Secretary shall not attempt to influence, incentivize, or coerce State adoption of the Common Core State Standards developed under the Common Core State Standards Initiative or any other academic standards common to a significant number of States, or assessments tied to such standard.”
    - Common Core is permitted, but not required;
    - Accountability goals are mostly left up to the State, with limited oversight to DoE;
    - States set testing schedule;
    - SAT or ACT may be used without a state level component.
- **Mandated Focus on underperforming schools:**
  - Focus remains on bottom 5% schools;
  - Identification to take place at least every 3 years;
  - Mandated intervention in High Schools with graduation rates at or below 67%;
  - States must identify performance of at least the following subgroups: economically disadvantaged, ELL, special education, and minorities.



- **Accountability remains paramount**
  - Proficiency in reading and math will be used for accountability;
  - Social studies and science scores are not required;
  - Growth may be used as part of the accountability system – but it is not prescribed as an element or in its implementation;
  - Elementary and Middle Schools must include:
    - test proficiency and participation rate;
    - English language proficiency;
    - at least one additional academic indicator (for example, student growth);
    - at least one additional nonacademic indicator (for example, student/teacher engagement, school safety, school climate).
  - High Schools must include:
    - test proficiency and participation rate;
    - English language proficiency;
    - graduation rate;
    - at least one indicator that assesses post-secondary education opportunities or college and career readiness.





- **Interventions for Struggling Subgroups**

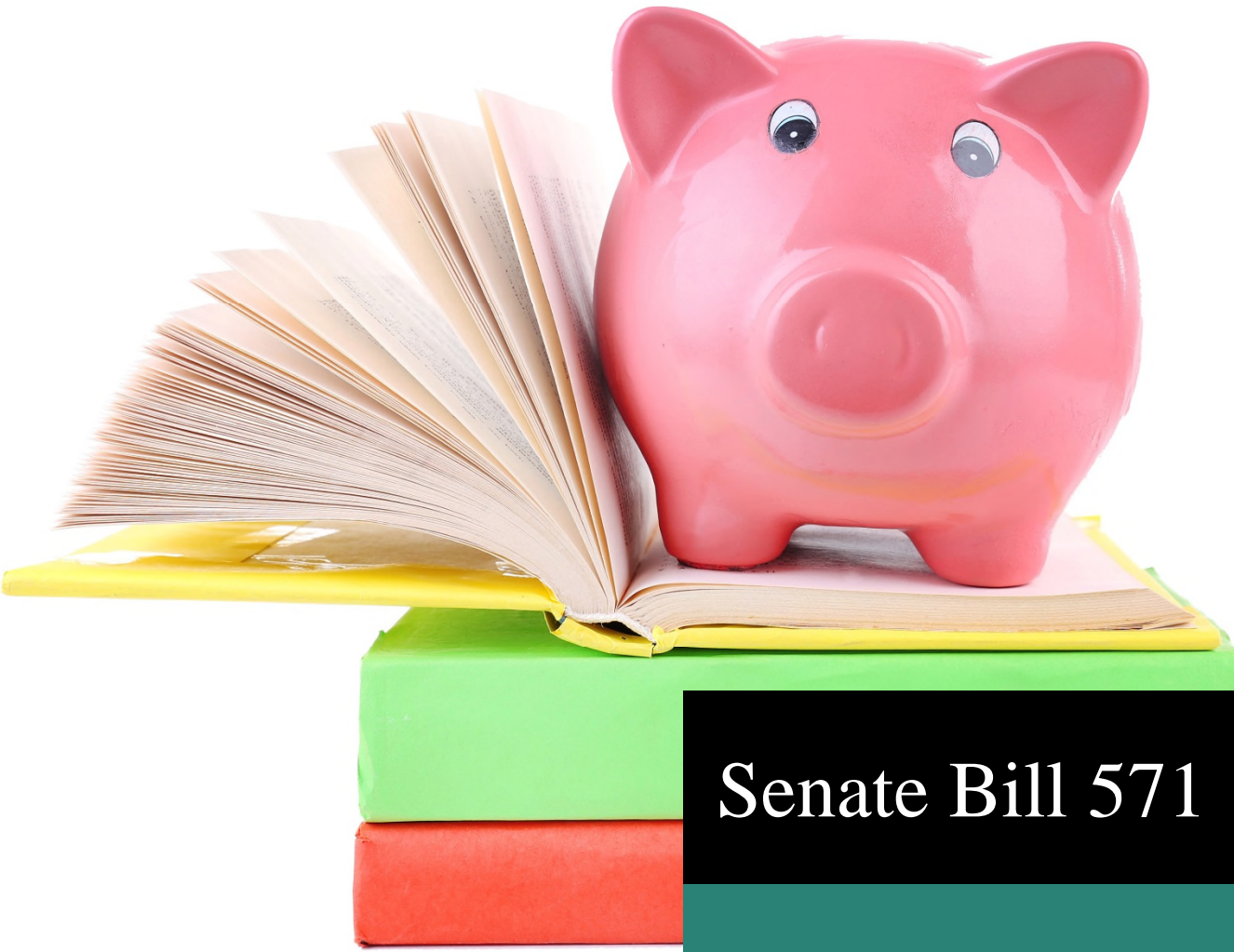
- senior leadership, in conjunction with teachers and staff, must develop an evidence-based plan to enable that subgroup to close the achievement gap.



# ESSA – Some of the More Interesting Provisions



- **Removal of “highly qualified” requirement;**
- **Permits states to create “opt-out” laws while maintaining a 95% participation requirement;**
- **“Social Impact Bonds.”**



# Senate Bill 571

# The Language That is Causing All the Trouble



- **Except for an election official in the performance of his or her duties under the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, a public body, or a person acting for a public body, shall not, during the period 60 days before an election in which a local ballot question appears on a ballot, use public funds or resources for a communication by means of radio, television, mass mailing, or prerecorded telephone message if that communication references a local ballot question and is targeted to the relevant electorate where the local ballot question appears on the ballot.**



- **Bans communications by “radio, television, mass mailing or pre-recorded telephone message.”**
- **Does not ban such things as e-blasts or comments on district websites.**
- **As with any “last minute” legislation, it is not a model of clarity and the haste in which the section was added seems, to some, to be ominous.**



# Thank you!



## Questions?

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# Break



**Please enjoy a 15 minute break**





# TITLE IX: WHAT YOU NEED TO KNOW

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# What Is Title IX of the Education Amendments of 1972?



- **No person in the United States shall, on the basis of sex, be excluded from participation, or denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. 20 U.S.C. § 1681, *et seq.***

# Title IX's Student Protections



- **Protects ALL students from sex discrimination**
  - No age limit; elementary to high school students are protected
  - Includes male, female, straight, gay, lesbian, bisexual, and transgender students
  - Claims may be based upon gender identity or failure to conform to stereotypical notions of masculinity or femininity
  - “Same sex” discrimination claims should be handled with same procedures as opposite sex complaints

# Common Title IX Scenarios



- **Athletic parity and equivalent opportunities**
- **Sexual Misconduct in *or out of school***
- **Sex Discrimination or Harassment**
- **Retaliation**

# Title IX Climate



- **LGBT student issues**
- **Title IX Litigation, especially in Western Michigan**
- **Sexual violence by teachers**
- **Transgender student accommodations**
- **Increased filing of OCR complaints alleging bullying and non-compliant Title IX policies and procedures**



# Title IX Remedies



- **Victims**
- **Title IX allows a private right of recovery for monetary damages; attorney's fees.**  
***Franklin v. Gwinnett Cty Pub Schs; 42 USC 1988(b)***
- **Enforced by U.S. DOE, Office of Civil Rights**
- **Government remedy: termination of federal funding; or voluntary resolution agreement**



# How May I Sue Thee?



- **Agency review**

- OCR under Title IX
- MDCR under ELCRA



- **Court action**

- State under ELCRA
- Federal under Title IX against PSD only
- Federal under Section 1983 against individuals
- May seek injunctive relief and attorney's fees

# Recent Local Title IX Lawsuits



- **Grand Rapids Public Schools**
  - Federal lawsuit filed in November 2014 alleges Teacher-to-Student sexual misconduct (multiple students)
  - Alleges district undertook no investigation and implemented no remedial measures to address the teacher's conduct
  - Claims GRPS retaliated against the students.
  - Seeks financial damages
  - Pending



# Recent Local Title IX Lawsuits



- **Forest Hills School District**

- Involved Student-to-Student sexual misconduct
- OCR complaint 2011; Title IX lawsuit 2013
- \$600,000 settlement May 2015

- **Byron Center Public Schools**

- Involves Teacher-to-Student sexual misconduct
- Federal court lawsuit filed on July 23, 2015
- Seeking damages in excess of \$1 million





# Statewide Title IX Lawsuits



- **Other school districts sued under Title IX in the past year include:**
  - Traverse City Area Public Schools
  - Van Buren Public Schools
  - Dearborn Heights Public Schools
  - Wyandotte Public Schools
  - Summit Academy North Public Schools



# Enforcement Themes



- **Failing to have an adequate Anti-Discrimination Policy**
- **Not sufficiently notifying students of the Policies or Grievance Procedure, or appointing a sufficiently qualified Title IX Coordinator**
- **Failing to adequately train staff on identifying and investigating potential discrimination/harassment of students**
- **Not following up promptly after being on notice of potential discrimination/harassment**
- **Not taking effective INTERIM remedial action to avoid continued discrimination/harassment in the school setting**

# *Fitzgerald v Barnstable School Committee,* 555 U.S. 246 (2009)



- **U.S. Supreme Court held that Title IX is not an exclusive remedy for addressing sex discrimination in school**
- **Title IX provides for remedy against the school board **HOWEVER...****
- **Plaintiff could also pursue Section 1983 claim against school officials (teachers, administrators) acting in their individual capacity**
  - Remedies include financial damages, injunctive relief, attorney's fees



# Title IX Sexual Discrimination



- **Includes:**
  - Sexual violence
  - Sexual harassment
  - Hostile sexual environment

# Sexual Violence



- **Sexual violence defined as “physical sexual acts perpetrated against a person’s will or where a student is unable to give consent” because of the student’s age, intellectual disability, or due to the use of drugs or alcohol**
- **Sexual violence can be carried out by school employees, other students, or third parties**
- **OCR Dear Colleague Letter April 29, 2014**
- **There is no consent when employee is involved with student**

# Sexual Harassment



- **Unwelcome conduct of a sexual nature**
- **Examples:**
  - unwelcome sexual advances
  - requests for sexual favors
  - other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence

**(OCR Dear Colleague Letter – April 4, 2011)**

# Hostile Sexual Environment



- **“Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school. When such harassment is based on race, color, national origin, sex, or disability, it violates the civil rights laws that OCR enforces.”**

**(OCR Dear Colleague Letter, Oct. 26, 2010)**

- **“The conduct ...evaluated from the perspective of a reasonable person in the alleged victim’s position, considering all of the circumstances.”**

**(OCR, 4/29/14 Q&A on Sexual Violence)**

# Hostile Sexual Environment



- **Examine all relevant circumstances to determine if a hostile environment exists:**
  - type of harassment (e.g., whether it was verbal or physical)
  - frequency and severity of conduct
  - the age, sex, and relationship of the individuals involved (e.g., teacher-student or student-student)
  - the setting and context in which the harassment occurred; whether other incidents have occurred on or off school property; and other relevant factors



# Hostile Sexual Environment



- **Can be a single incident or repetitive series of incidents**
  - “The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. Indeed, a single or isolated incident of sexual harassment may create a hostile environment.”
  - OCR, 4/29/14 Q&A on Sexual Violence

# Deliberate Indifference



- **To establish “deliberate indifference” plaintiff must show the District either completely ignored reported harassment, or had a “clearly unreasonable” response to a harassment complaint**
- **Recent cases show plaintiffs are focusing on second prong since most districts do not ignore these situations**
- ***Davis v Monroe Cty Bd of Ed, 526 U.S. 629, 649 (1999); Williams v Port Huron School Dist, (6<sup>th</sup> Cir 2012)***

# Deliberate Indifference



- **“The deliberate indifference standard does not mean:**
  - that recipients can avoid liability only by purging their schools of actionable peer harassment or that administrators must engage in particular disciplinary action.”
  - that recipients must expel every student accused of misconduct. Victims do not have a right to particular remedial demands.”

*Vance v. Spencer County Pub. Sch. Dist.*, 231 F.3d 253 (6<sup>th</sup> Cir. 2000)

# Deliberate Indifference



- **But....**

- “Where a school district has knowledge that its remedial action is inadequate and ineffective, it is required to take reasonable action in light of those circumstances to eliminate the behavior. *Where a school district has actual knowledge that its efforts to remediate are ineffective, and it continues to use those same methods to no avail, such district has failed to act reasonably in light of the known circumstances.*”

***Patterson v Hudson Area Schools, (6<sup>th</sup> Cir. 2012)***

# Evolving Liability Standards



- **OCR and plaintiffs' bar argue that liability exists where District knew or should have known**
  - Need to act based on “red flags.”
- **OCR and plaintiffs' bar argue that District must act to eliminate or minimize risk of recurrence**
  - “If at first you don't succeed, try, try again!”
- **OCR and plaintiffs' bar complain that schools do not properly safeguard the complainant during the investigation**

# Interim Measures



- **A school may need to take interim remedial measures during the course of its investigation to:**
  - Ensure that the victim continues to have equal access to the school's educational programs and activities, and
  - Protect the student from the alleged perpetrator and from illegal retaliation

# Practical Pointers



- **The need for interim measures will vary depending on the facts of the case.**
- **The District is expected to CONSIDER the following with respect to any student victim of sexual discrimination:**
  - Whether an escort should be provided so that the student can move safely between classes and activities
  - Ensuring that the victim and perpetrator do not share classes or extracurricular activities (or transportation)

# More things to consider...



- **Moving the perpetrator to another school**
- **Providing comprehensive, holistic victim services including medical, counseling and academic support services, such as tutoring (cannot charge complainant for this service)**
- **Arranging for the victim to have extra time to complete or re-take a class or withdraw from a class without academic penalty if any failing or poor grades were related to the incidents of sexual discrimination**



# Interim Measures



- **Document any interim measures to be taken through e-mail, or letter**
- **Be mindful of taking measures that may be viewed as adversely affecting only the complainant – possible retaliation allegation. OCR requires schools to minimize the burden upon the alleged victim**

# OCR Guidance



- **Good judgment and common sense of teachers and school administrators are important elements of a response that meets the requirements of Title IX**
- **Doing nothing upon being put on notice is always the wrong response**
- **Depending on the circumstances, there may be more than one right way to respond**
- **Title IX OCR Guidance can be found online at: <http://www2.ed.gov/about/offices/list/ocr/publications.html#TitleIX-Pubs>**

# When Is A District On Notice?



- **District is on notice if a “responsible employee” knew or in the exercise of reasonable care should have known about sexual discrimination**
  - A responsible employee includes “any employee who has the authority to take action to redress sexual violence; who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX Coordinator or other appropriate school designee, **or whom a student could reasonably believe has this authority or duty.**”

# Responsible Employee



- **Responsible employees must be told:**
  - Of their reporting obligations
  - To whom they should report
  - Their obligation to inform complainants of the employee's obligation to report allegations of sexual discrimination
  - Their obligation to inform complainants of their option to request confidentiality, and about the availability of confidential advocacy, counseling, or other support services and the right to file a Title IX complaint with the school and to report a crime to law enforcement.



# How Does A District Receive Notice?



- **Formal complaint/grievance by parent or student**
- **Employee witnesses or overhears discussions of potential misconduct**
  - Do not honor requests to “keep things quiet” or “not tell anyone” if a student discloses possible discrimination/harassment
- **Indirectly through third parties**
  - General public, police, media, social networking sites
- **A District cannot “bury its head in the sand” to avoid notice**
  - OCR: If the school would have found out about the sexual discrimination had it made a proper inquiry, knowledge of the sexual discrimination will be imputed to the school even if the school failed to make an inquiry

# “Red Flags” To Look Out For



- **Widespread rumors of a coach or teacher having a sexual relationship or spending “a lot of time together.”**
- **Observed jokes, name calling, teasing, or leering towards a student**
- **Multiple student/parent complaints being received about the same person alleging similar misconduct**
- **A possible lack of a response by school officials or “responsible employees” after learning they may have been put on notice of a possible discrimination issue**

# What About Conduct Off School Property?



- **School sponsored activities are akin to on-campus conduct (field trips, athletic events, band camps, etc.)**
- **If not during a school activity or on school premises, you must investigate to assess whether the conduct outside of school property has caused a hostile learning environment for the complainant**
- **Take remedial action to protect complainant from further possible discrimination/harassment during the investigation of the off school conduct**

# Conduct Off School Property



- **Review your Student Code of Conduct to determine whether it defines “at school” conduct as including conduct off school property that interferes with a student’s educational environment**
- **Revise your policies, if necessary, to include this definition**



# The OCR 60 Day Rule



- **OCR states “a typical investigation takes approximately 60 calendar days”**
  - **this is your benchmark!**
- **However, OCR understands timing “will vary depending on the complexity of the investigation and the severity and extent of the harassment.”**
  - Timeline may be extended if needed due to law enforcement interlude; document basis for extending timeline
- **Timeline is applicable during school year**



# Remedial Action



- **Must take remedial action designed to eliminate or prevent recurrence**
- **In the event a complainant does not take advantage of an offered interim measure (*i.e.*, counseling), the prior refusal does not mean it should not be offered as a final remedial measure**

**(OCR 4/29/14 Guidance)**

# Transgender Students – Common Issues



- **Name of student**
- **Bathroom, locker rooms, and other facility uses**
- **Develop a plan to address these issues**
- **OCR prohibits demand for medical verification of gender identity adjustment**
- **Alert for bullying, harassment**

# Michigan Schools



- **In February 2015, the DOJ affirmed its position that transgender students may use the restroom reflecting their gender identity by filing a brief in federal court for a Michigan Title IX case involving a 14-year-old transgender student who'd been banned from the boys' restrooms**

# Department of Justice



- **“Plaintiff may state valid Title IX and sex-based Equal Protection claims for discrimination based on his gender identity and transgender status.”**

***(Tooley v Wyandotte Public Schools, ED Mich, filed 2/24/15)***



# Transgender Developments



- **Courts are in the process of assessing the scope of legal rights of transgender students. Recent decision in Maine involved:**
  - Male transgender student who identified as female that used unisex bathrooms in 3<sup>rd</sup> and 4<sup>th</sup> grade
  - At start of 5<sup>th</sup> grade and as part of Section 504 plan, the school counselor and Special Ed Director agreed that it was best for the student to use the communal girls' bathroom
  - Male student followed her in bathroom one day and, as a result, the District started requiring use of unisex bathroom
  - At the start of middle school, the student was denied permission to use the girls' restroom and told to use a unisex restroom

# *Doe v. Regional School Unit 26,* 86 A.3d 600 (Maine 2014)



- **Parents filed suit under the Maine Human Rights Act (which prohibits sexual orientation discrimination) seeking the right to use the girls' restroom**
- **The Maine Supreme Court noted that the “decision to ban Susan from the girls' bathroom based not on a determination that there had been a change in Susan's status but on others' complaints about the school's well-considered decision, constituted sexual discrimination based on Susan's sexual orientation.”**
- **District ordered to pay \$75,000 in damages**

# Transgender Students



**Contrast the *Doe* decision with this more recent court decision in Virginia...**



# *G.G. v Gloucester Cty School Bd* (ED Va Sept. 17, 2015)



- **District passed a policy restricting single sex restroom facilities to those with matching genders. District provided three unisex bathrooms for student use. Transgender student who identifies as male challenged policy requiring him to use a unisex restroom due to “embarrassment.”**
- **ACLU filed lawsuit in a Virginia U.S. District Court alleging that the transgender student has a constitutional right to use the boys’ restroom under Title IX and the Equal Protection Clause of the 14th Amendment**
- **The lawsuit requested a federal judge to grant an injunction requiring the school board to grant the student access to the boys’ restroom when he returns to classes in September**

# ACLU Strategy



- “We want to establish as clearly as possible that these rights exist and these protections exist, and the gold standard for that is federal court decisions.”

Joshua Block, the ACLU attorney who filed the lawsuit



# Court's Decision



- **Judge issued a bench ruling on school district's motion to dismiss:**
  - Denied request for injunction
  - Dismissed Title IX claim stating “Your case in Title IX is gone, by the way. I have chosen to dismiss Title IX. I decided that before we started.”
  - “My biggest problem is with the remainder of the population and other children. I am concerned about the rights of privacy.”
  - “I worry about precedence. If we cut out the policy, does it mean anyone who genuinely believes they are of the opposite sex can use any restroom?”

# November 2, 2015 OCR Illinois



- **District obligated to provide access to transgender girl to girls' locker rooms**
- **Obligated to provide reasonable number of privacy curtains and private changing areas in athletic locker rooms in sufficient number so that any student could be protected from exposure of private bodies in a state of undress**

# OCR Decision



- **Rationale for Title IX violation finding:**
- **“The evidence shows that, as a result of the District’s denial of access to the girls’ locker rooms, Student A has not only received an unequal opportunity to benefit from the District’s educational program, but has also experienced an ongoing sense of isolation and ostracism through her high school enrollment . . .”**
  - **proposed alternative facilities were “not comparable” to those provided for other girls and the alternative options further subjected Student A to stigma and different treatment**

# OCR Decision



- **Rejected District's contentions that:**
  - (1) permitting Student A to be present in the locker room would expose female students to being observed in a state of undress by a biologically male individual; and**
  - (2) it would be inappropriate for young female students to view a naked male in the locker room in a state of undress**

# OCR and Privacy



- **“The District could satisfy its Title IX obligations as well as protect potential or actual student privacy interests by . . . installation and maintenance of privacy curtains . . .” for ALL students to use**



# Basic Tool Kit to Avoid Liability



- **Policy Statement of non-discrimination**
  - well publicized; age appropriate; Title IX Coordinator and contact information identified
- **Grievance or complaint procedures**
  - well publicized; age appropriate
- **Training staff**
- **Prompt thorough investigations**
- **Interim measures**
- **Notices of outcome with corrective action designed to eliminate recurrence and remediate past violations**





# What Should You Do After Today?



- **Make sure your Grievance Procedures are up to date and posted/disseminated**
- **Identify a Title IX Coordinator and know who your “responsible employees” are**
- **Train all employees to be your “eyes and ears” and conduct in-depth training with your investigatory staff**
- **Follow up on any “red flags”**



# What Should You Do After Today?



- **If you get a complaint – consider implementing appropriate interim measures**
- **Utilize mixed gender teams, if possible, to conduct your investigation**
- **Complete your investigation in a timely manner – 60 days is the goal**
- **Take appropriate remedial action if a violation of your policies is found**
- **Appropriately communicate your findings**
- **Document your findings and remedial action**



# What You Should Do After Today?



- **Proactively develop a public communications strategy, including designating a principal spokesperson, to handle anticipated media inquiries**
  - What message do you want shared with the public (potential jurors) through the media?
  - Make sure you maintain a consistent message
  - Consider utilizing the services of a communications or public relations consultant



# PLEASE NOTE



**This presentation does not constitute legal advice nor create an attorney client relationship. It contains general recommendations and information and should not be relied upon for any specific purpose without consultation with legal counsel and in the context of specific facts and circumstances.**

# QUESTIONS?



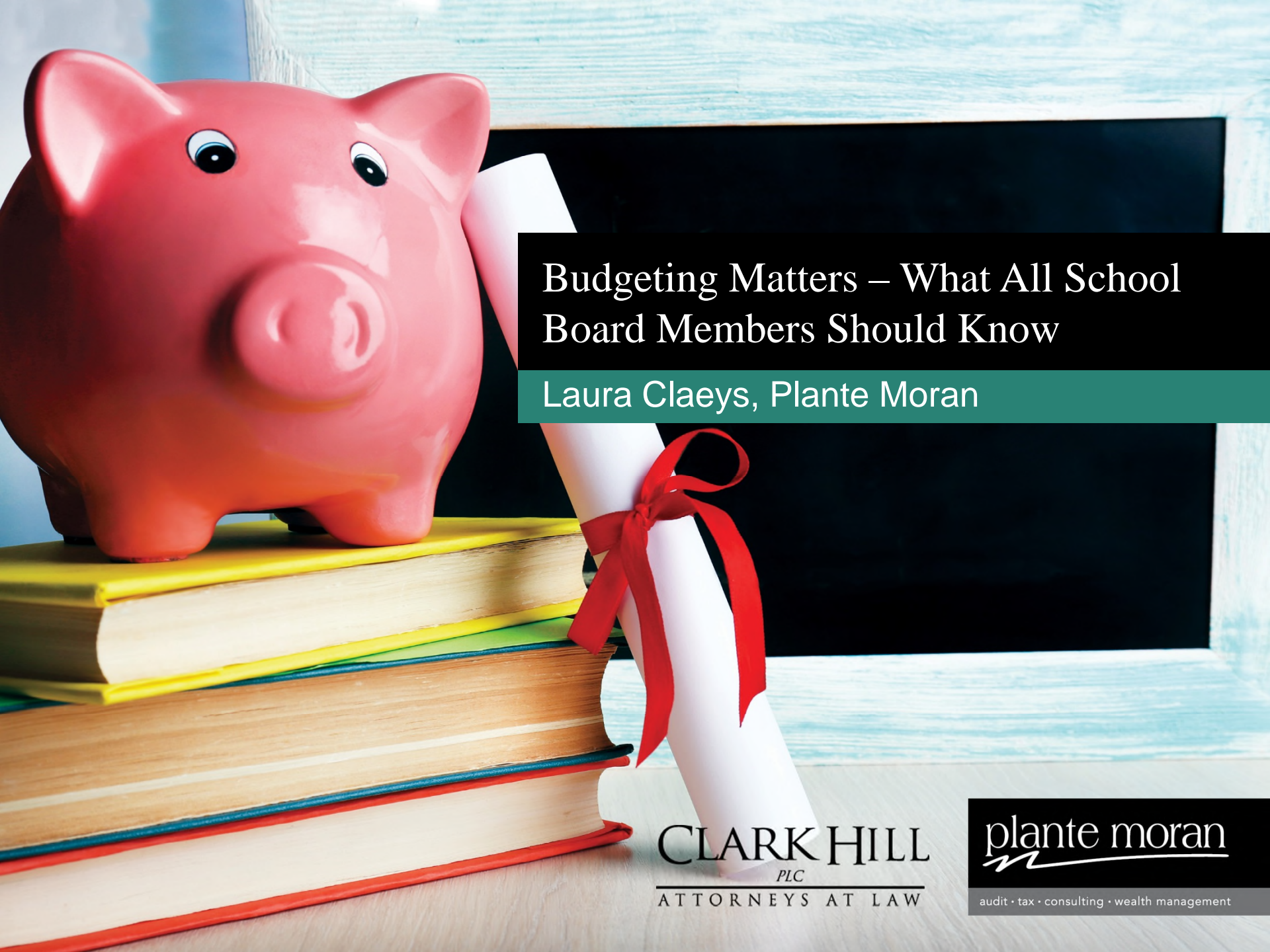
# Thank you!



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# Budgeting Matters – What All School Board Members Should Know

Laura Claeys, Plante Moran

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audit • tax • consulting • wealth management

# Board Member Involvement in the Budget Process



- **Board members are the policy making body of a school district**
- **The role of the Board of Education is not to run the district, but to see that the district is run well**
- **The approves and adopts the budget but is generally not involved in developing the budget**
- **The balancing act is to understand key components of the budget in order to approve it**



# Key Timing Items



- **Budget for Fiscal 2017 will be adopted in Spring 2016 (prior to the start of the 2016-2017 year)**
- **Each January and May – State Revenue Estimating Conference is held**
  - This generally will coincide with your district amendment process as the administration learns of any changes in revenue or expenditure amounts that need to be considered
- **Monthly tracking of actual activity and budgeted activity also impacts budget amendments – things happen!**



# Revenue Drivers

# Understanding the Basics



- **Revenue Drivers**

- Understanding the state landscape (funding up, down, at risk, etc.) and the history
- Understanding what the revenue can be used for
- Understand the assumptions being used for the budget
  - Enrollment projections (and comparison to prior year and prior projections)
  - State Aid (Foundation) per pupil
  - Categorical funding
    - Restricted in use
    - Comparison to prior year
  - Grant dollars
    - Federal (used to supplement NOT supplant state and local support)
    - State dollars (categoricals, funds through ISD, etc.)
- Compare total funding per pupil to prior year

# Sources of Revenue



- **Revenue Drivers**

- Understand your district composition and where the money comes from
  - Property taxes
  - State Aid
  - Federal Grants
  - Other
- Big changes in any one area can make a big difference!
- Your goal is to understand the key inputs – not every single line item

# Key Items to Watch/Understand



- **Millage Renewals**

- Nonhomestead millage renewals are key (18 mills on nonhomestead property). The Foundation allowance assumes you are levy the maximum amount – if you don't, the State does NOT make up the difference
  - Informing the community and making sure the millage is renewed is critical for each district

- **One Time Only Money**

- Understand if there is one time money in the budget and don't rely on it for the future

# Key Items to Watch/Understand



- **State Aid Revenue Predictions**

- Nonhomestead millage renewals are key (18 mills on nonhomestead property). The Foundation allowance assumes you are levy the maximum amount – if you don't, the State does NOT make up the difference
  - Informing the community and making sure the millage is renewed is critical for each district

- **One Time Only Money**

- Understand if there is one time money in the budget and don't rely on it for the future



# Expenditure Drivers

# Understanding the Basics



- **Expenditure Drivers**
  - Contract Changes
    - Steps, Raises, Reductions – high level
  - Average salary cost - maybe
  - Retirement rate – gross rate and amount paid for by the district
  - Insurance benefits
    - Are you hard cap or 80/20 district? What is the change in the cap (2.5% increase for this year)
    - Are you at the cap?
  - Capital project activity
    - Bonds to cover or general fund expenditure?



# Understanding the Basics



- **Expenditure Drivers**
  - Understand high level composition of the expenditures:
    - Percent on salaries
    - Percent on benefits
    - Purchased services (can change depending on contracted work)
    - Supplies
    - Capital outlay
    - Other

# Understanding the Basics



- **Expenditure Drivers**
  - Understand what level the budget is adopted
    - Typically, by area
      - Instruction
      - Non instruction
        - » Pupil Services
        - » Instructional Services
        - » General Administration
        - » School Administration
        - » Business Services
        - » Transportation
        - » Operations/Maintenance
        - » Athletics
        - » Central Services

# Understanding the Basics



- **Expenditure Drivers**

- Discuss / understand how earlier decisions impact the expenditure budget
  - Retirements / Headcount reductions
  - Additions to teaching staff
  - Change in medical insurance costs

# Understanding the Basics



- **Expenditure Drivers**

- Discuss / understand how earlier decisions impact the expenditure budget
  - Retirements / Headcount reductions
  - Additions to teaching staff
  - Change in medical insurance costs

- **Deficit budgets**

- Districts cannot adopt a deficit budget – this means an OVERALL deficit, not when expenditures exceed revenue for a year (and there is fund balance to close the gap)

# Key Items to Watch/Understand



- **Ask What is NOT in the budget**
  - Often, when the budget is adopted, decisions are not yet made on items – so they may or may not be in the budget
    - Adding classrooms
    - Changes in Foundation allowance (i.e. state says they have more money, but should the budget assume an increase or leave it flat?)
    - Restructuring activities
      - Change in cost structure for new programs
- **Utilization of Fund Balance**
  - Remember when fund balance gets used, it can be hard to rebuild the balance in a short time horizon



# Common Questions

# Board Member Involvement in the Budget Process



- **Questions we often hear:**
  - How am I supposed to know what all of the components of the budget are?
  - How do I know when things are off track and what questions do I ask?
  - What is a good way for me to know whether the budget makes sense and whether something seems “off”?
  - Why doesn’t the business office seem to know what is in every line item of the budget?
  - I am not a financial person, so how would I know if something is not right?
- **What other questions do you often have?**



# Key Takeaways



# Things to Consider for the Future



- **Goal is not for you to be budget ‘experts’**
- **Base understanding is needed, especially as district funding continues to be pinched**
- **Understanding key components also allows you to have the conversation with legislators about the state of school funding and what is needed**

# Things to Consider for the Future



- **A possible checklist to use:**

	Current Year	Prior Year
Enrollment		
Foundation Allowance		
Categorical funding		
Federal Grants		
Overall employee headcount		
Salary cost changes		
Health care cost changes		
Retirement rate		
Capital projects (General Fund need)		

# Thank you!

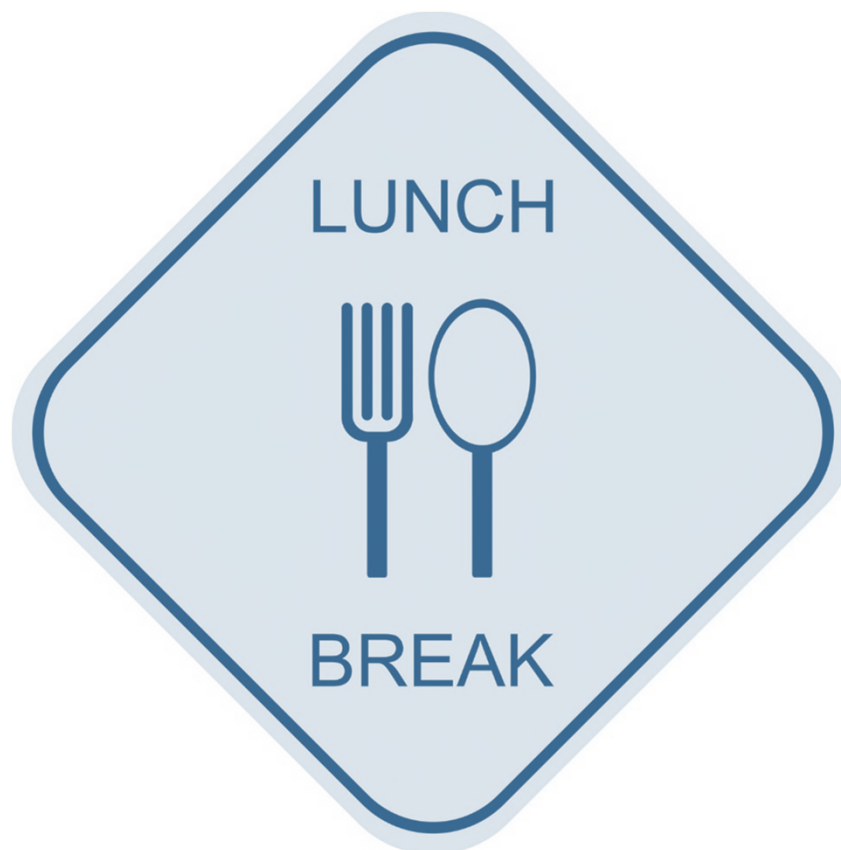


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# Lunch Time!



**45 Minutes**



# Open Carry Update

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# Open Carry and Schools



## **May public schools in Michigan prohibit the open carry of firearms on school premises?**

I addressed this question two years ago in this event; at time, there was no definitive answer

Today – still no definitive answer, but we are moving toward a resolution

Still – no state statute answers the question

Still – no case law answers the question

# Two Statutes That Help a Little



**Federal Gun-Free School Zones Act (GFSZA): Bans possession or use of firearms around schools.**

**But specifically exempts a firearm that is properly licensed under state law – i.e., subject to a concealed weapons permit.**

**MCL §750.237a(4) prohibits firearms in a “weapons free school zone.”**

**But exempts “an individual licensed by this state or another state to carry a concealed weapon.”**

# MCL §28.425o



## **Prohibits possession of a concealed firearm in a number of sensitive settings**

- Schools
- Churches
- Day care centers
- Bars
- Stadiums

**But: This says nothing about “open carry” of firearms.**



# Open Carry and Schools



## Thus: State law

- 1) bans all concealed weapons on school property;
- 2) bans any possession of a firearm unless person has a concealed weapons permit;
- 3) but does not ban open carry of firearm at school by person with concealed weapons permit.

**So the question: may schools or districts take their own action to ban open carry on school premises?**

# CADL v MOC



***Capital Area District Library v Michigan Open Carry, Inc.* [298 Mich. App. 220 (2012)]**

**CADL was formed by a city and a county under the provisions of the District Library Act**

**CADL banned firearms from its premises; MOC member challenged the ban**

**When Lansing Police refused to enforce the ban, CADL brought declaratory judgment action against MOC to validate ban**

# CADL v MOC



**MCL §123.1102 forbids a “*local unit of government*” from regulating, banning, etc. the ownership, transportation or possession of pistols or other firearms**

**“Local unit of government” defined as “a city, village, township or county.”**

**CADL contended MCL §123.1102 did not apply, since it is not a city, village, township or county**

**Circuit Court agreed with CADL that MCL §123.1102 did not apply by its terms to district libraries; upheld ban**

# *CADL v MOC* – Court of Appeals



**Court of Appeals reverses Circuit Court in 2-1 decision; rules in favor of MOC**

**Agrees District Library Act gives district libraries broad authority to set rules, regulate their property**

- Similar to MCL §380.11a(3) for schools

**Also agrees district library is not a “city, village, township or county” under MCL §123.1101 and .1102**

# *CADL v MOC* – Court of Appeals



**But – Court applies the doctrine of “field pre-emption,” determines that even though district libraries are not mentioned in statute, CADL may not regulate firearms on its premises:**

**“The pervasiveness of the Legislature’s regulation of firearms, and the need for exclusive, uniform state regulation of firearms possession as compared to a patchwork of inconsistent local regulations indicate that the Legislature has completely occupied the field [of firearms regulation].”**

**In dissent, Judge Gleicher says this is nothing but judicial legislation**

# *CADL v MOC* – Supreme Court



**Court of Appeals decision issued October 25, 2012**

**CADL asked the Supreme Court for leave to appeal**

**Supreme Court was torn over whether to support “gun rights” or to uphold its policy of construing statutes as written – couldn’t do both in *CADL***

**Supreme Court punted – leave to appeal denied**

# Post-*CADL* Developments



**In the 2 years since the Supreme Court punted in *CADL*, the issue of whether schools may ban open carry of firearms from their hasn't been fully determined**

**But it has been recently decided by three different trial-level courts considering cases brought by open-carry enthusiasts**

**Results are not uniform**

# *Michigan Open Carry, Inc. v Clio Area School District*



**In early 2015, Michigan Open Carry, Inc. brought suit against the Clio Area School District, challenging its ban on possession of weapons on school property**

**On September 7, the Genesee County Circuit Court granted summary disposition in favor of MOC**

**No written opinion, but Court concluded that under *CADL* the Legislature had pre-empted the field of firearms regulation, and that the school district's effort to impose its own regulation was invalid**



# *Michigan Gun Owners, Inc. v Ann Arbor Public Schools*



**In spring of 2015, while the *Clio* case was pending, another open carry advocate filed suit against AAPS challenging its ban on firearms on school property.**

**On September 24, 2 ½ weeks after the *Clio* decision, the Washtenaw County Circuit Court went the other way and granted summary disposition in favor of the district.**

**Again, no written opinion, but the Court concluded that *CADL* was distinguishable, that the Legislature had not pre-empted the field, and that AAPS could regulate its campus.**

# Clio and Ann Arbor Cases – Current Status



**Both cases appealed to the Michigan Court of Appeals**

**Briefing is nearly complete in the *Clio* case**

**The briefing clock is ticking in the *Ann Arbor* case, and should be complete in the first quarter of 2016**

**It is conceivable that the cases will be consolidated, but they have not been yet.**

**Once briefing complete, the matter will be set for oral argument; conceivable that the cases, will be decided late in 2016.**

# *Joshua Wade v University of Michigan*



**This case presents the same issue, with a different twist.**

**Mr. Wade insisted on a right to open carry on the U of M campus in Ann Arbor. U of M insisted otherwise began.**

**Because U of M is a state entity, it can only be sued in the Michigan Court of Claims.**

**Also – since U of M (like MSU, WSU), is established by the Michigan Constitution, it claims to be exempt from regulation by the Legislature. U of M says none of the laws cited in *CADL* apply even if *CADL* was rightly decided.**

# *Joshua Wade v University of Michigan*



**On November 13, 2015, Court of Appeals Judge Cynthia Stephens, sitting as judge of the Court of Claims, granted U of M's motion for summary disposition.**

**Court rejected a Second Amendment argument, holding that U of M's campus was a sufficiently "sensitive place" that its firearm ban was entitled to a presumption of validity under the Second Amendment.**

**Court also agreed that U of M was exempt from legislative regulation given its unique status under the Michigan Constitution.**

# *Joshua Wade v University of Michigan*



**Of most interest here: Judge Stephens also held that the University’s ban is not pre-empted by state law.**

**No direct pre-emption – since under MCL §123.1102, U of M is not a “city, village, township or county.”**

**She also rejected the *CADL* argument that the Legislature had pre-empted the field – said U of M case was distinguishable.**

- **Library there was the product of two “local units of government” – city and county – and said it would make no sense to permit a regulation by two units that neither could do individually**

# *Joshua Wade v University of Michigan*



**Judge Stephens' decision is probably an overly-narrow reading of *CADL*; but it is also far more sensible than *CADL*.**

***Wade v U of M* has also been appealed to the Court of Appeals, and is running behind the Ann Arbor and Clio cases.**

**Because of that, and because a university is involved, the cases are less likely to be consolidated.**

**But we know have two judges rejecting application of *CADL* to schools – hopefully, the Court of Appeals and ultimately the Supreme Court will agree.**

# Statutory Non-Developments



**In the last two legislatures, there have been bills introduced to ban open carry of firearms in sensitive places like schools, churches, bars, stadiums; but bills have gone nowhere.**

**There was a proposal by a member of the majority to “solve” the problem by banning open carry but permitting concealed carry with permit in schools.**

- **What you don’t know won’t hurt you**

**Governor said he would veto concealed weapons in schools; nothing happened.**

# What Can Schools Do?



**Eventually, appellate courts will determine whether *CADL* applies to schools, and whether schools can ban open carry of firearms.**

- **Just about every open carry advocate knows those cases are out there; likely to await decision rather than start new case in a different district.**

**Until then – I recommend that all districts adopt policies forbidding guns on school premises; it provides a basis for police involvement if someone open carries.**



# What Can Schools Do? (continued)



**If someone enters school carrying a gun, schools have every right to ensure he/she has concealed weapons permit; under MCL §750.237a(4), the exception to state law ban applies to person with concealed weapons permit; police likely to enforce if no permit.**

- **Perhaps a little dangerous.**

**Most schools severely limit entry to school buildings during the school day – have to be buzzed in.**

**If someone shows up open carrying, I would recommend not buzzing them in under any circumstances.**

# What Can Schools Do? (continued)



**If person does have concealed weapons permit and gets in your door or onto your playground: best practice might be to quietly, respectfully ask that guns not be carried to avoid frightening students and staff.**

**Some schools have had success with this approach; often if their position is respected or at least acknowledged, open carry proponents will respect schools' request.**

**With cases pending in Court of Appeals, it might be helpful to quietly remind person that issue will be decided soon.**

# What Can Schools Do? (continued)



**If person insists on open carrying – can call police to ask to have school’s policy banning firearms enforced.**

**After *CADL*, some police departments didn’t want to get involved; but with two well-publicized decisions rejecting *CADL* in the schools context, attitude may be different.**

**If you get wind of a potential open carry event, contact police beforehand to alert them, try to determine whether they will enforce your rules.**

# What Can Schools Do? (continued)



**Other than that: hope that the Court of Appeals and ultimately the Supreme Court are more sensible than in *CADL*.**



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.



# School Investigations

Acting on What You Know

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# First Scenario



- **Central Administration receives a report of a teacher using excessive force against an elementary student**
- **A security video depicted a large bodied male tenured teacher carrying an elementary student by the seat of the student's pants down a stairwell. The teacher wrestles the student to the floor in the vestibule of the elementary school building and at one point flings the student to the floor. Because the teacher was roughly carrying the student by the seat of the student's pants, the student's pants fell off**
- **The student is a 2<sup>nd</sup> grade special education male student**

# First Scenario



- **Several years previously, the teacher received a two-day disciplinary action for using excessive force against a student**
- **However, upon further investigation, the central administration discovered that a prior principal had documented six incidents of the teacher's use of excessive force against students. The principal dealt with these incidents through "verbal counseling" without issuing any formal disciplinary action, without involving central administration, or placing any documentation in the teacher's personnel file**
- **Teacher received "Effective" evaluations**



# Second Scenario



- **Allegedly, over the years, a school district received several reports from teachers, teaching assistants and others that a teacher was using excessive force against his special education students**
- **The school district took no action until the teacher took an elementary school special education student, grabbed him by the arm, dragged him through the classroom door and threw him on the floor and into a bookcase. The student suffered a concussion and sustained numerous large bruises. The school district moved promptly to file tenure charges and terminate the teacher**

# Second Scenario



- **The family retained legal counsel from out of state – California – who submitted a FOIA request for information about this teacher and discovered the previous reports about the teacher’s use of excessive force**
- **The attorneys filed a legal action in federal court claiming that the school district and defendants violated the student’s civil rights, the Americans with Disabilities Act and the Federal Rehabilitation Act, because that teacher should not have been teaching at the time that he physically assaulted the student**
- **The lawsuit named as individual defendants two principals, two assistant principals, the special education director, special education supervisor, human resources director and the superintendent**

# School Districts are Legal Targets



- **School districts exist in a hostile legal environment. The actions or inactions of the school district and/or administration are being monitored by several groups:**
  - Office of Civil Rights, especially in connection with Title IX investigations
  - Michigan Department of Civil Rights
  - Student advocacy groups, such as Michigan Protection & Advocacy Services
  - Court litigation – not just local Michigan attorneys but attorneys from outside the state

# Governmental Immunity



- **Expansive legal theories -- school districts and their agents and employees are protected by the statutory doctrine of governmental immunity. One important limitation is that governmental immunity protects against negligent actions**
- **Governmental immunity does not apply to violations of anti-discrimination laws or civil rights claims**
- **In civil rights cases, individuals may be protected under “qualified immunity,” but this doctrine offers less protection than governmental immunity**

# The Legal Principle of Agency



- **When hiring a principal or school administrator, be mindful of the legal principle of agency**
- **Under the legal principle of agency, or *respondeat superior*, the actions of the persons a school district entrusts with administrative responsibility are regarded as the actions of the institution**
- **Equally if not more importantly is the concept of knowledge attribution. Any knowledge that an administrator, principal or assistant principal possesses is attributed to the school district, the superintendent, and board of education regardless of whether persons in the chain of command may have possessed the same knowledge**

# The Legal Principle of Agency



- **When a principal receives information about a complaint of excessive force, a complaint that invokes Title IX sex discrimination or sexual harassment, and bullying, and takes no action, that decision not to take action is attributed to the school district, superintendent and board of education**
- **The actions, inactions and decisions of your frontline supervisors, assistant principals and principals are absolutely critical in protecting the district against potential liability exposure**

# Prevention Tips



- **Your administrative staff, especially principals and assistant principals, should be trained to document any complaint and to document their action, decision-making and investigation of that complaint. If the principal or assistant principal decides to take no action, their reasons for their decision should be adequately explained and documented**
- **Principals, assistant principals and administrators should be encouraged to involve the central office administrators or the superintendent if they have any questions or doubts about how to proceed in an investigation**
- **The school district should train administrative staff regarding investigations and documentation procedures and the school district's board policies and expectations. Any such training session should be well documented**

# Thank you!



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# Break



**Please enjoy a 15 minute break**





# Early Warning Legislation – More Attention to Financial Condition

Laura Claeys, Plante Moran

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# Early Warning Legislation



- **Package of bills aimed at identifying and intervening with districts deemed to be in distress before it is too late**
- **Signed in July 2015, the 6 Public Acts (PA 109-114) attempt to create a system of ‘triggers’ that will require reporting to the State and allow them to make assessments along the way as to whether a district needs intervention**
- **The first step occurred in August 2015 with the reporting of budgetary assumptions by those districts that met certain criteria**

# A Visual Look at Early Warning



- Here is what this whole thing looks like:

## Michigan's Early Warning System



**BUDGET ASSUMPTIONS**  
Fund balance less than 5% of general revenues for either of the two most recently completed school years?

Submit budgetary assumptions

7 July



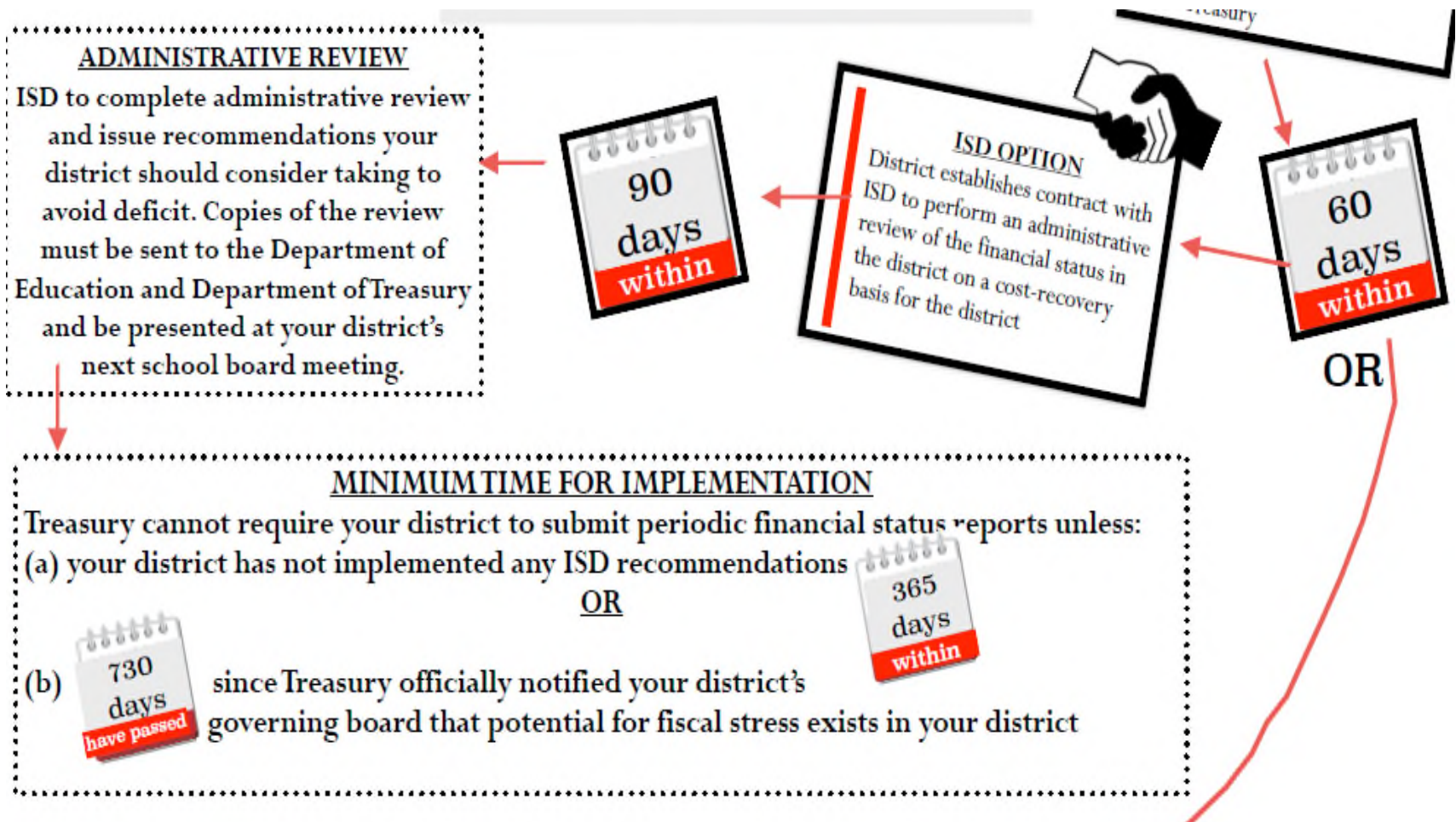
Department of Treasury may utilize any available information\*, including budgetary assumptions, to determine whether the potential for fiscal stress exists within your district

We declare potential fiscal stress exists in your district

no less than 14 days after declaration

**OFFICIAL NOTIFICATION**  
Dear District Governing Board:  
You may be fiscally stressed.  
Sincerely,  
Treasury


# A Visual Look at Early Warning





# A Visual Look at Early Warning




**STATE ASSISTANCE OPTION**

**?** Didn't enter into a contract with an ISD or the contract was rescinded? 

**?** Fund balance of less than 5% in total general fund revenues for each of the two most recently completed school fiscal years? 

**?** Declining general fund balance in one or both of the two most recently completed school fiscal years? 

**?** Do not have a Deficit Elimination Plan or Enhanced Deficit Elimination Plan?



\*Information that Treasury may use to determine whether the potential for fiscal stress exists includes: (1) for those districts required to submit them, budgetary assumptions; (2) information submitted to a state department or agency; (3) information included within a financial audit; (4) information provided to a state department, agency, or authority in connection with a request to issue bonds, notes, or other debt obligations, including, but not limited to, information related to a request for a loan under the Emergency Municipal Loan Act; (5) information included within a recommended budget, approved budget, or general appropriations act of the district; (6) information provided to a state department, agency, or authority by an officer, employee, contractor, or agent of the district or by the district's ISD; and (7) pupil enrollment data

# A Visual Look at Early Warning



*I have had less than a 5% general fund balance for either of the two most recently completed school years. What do I need to do?*

By July 7th of the fiscal school year after your general fund balance has been less than 5% for one of the two preceding, completed school fiscal years (e.g., by July 7, 2016 for the 2015-16 fiscal year if your general fund's fund balance was less than 5% of revenues in the 2013-14 or 2014-15 school years), four pieces of data must be submitted to CEPI's Financial Information Database:

- (1) Projected foundation allowance used for the current school fiscal year budget
- (2) Projected enrollment used for the current school fiscal year budget
- (3) Estimated expenditures per pupil for the immediately preceding school fiscal year, and
- (4) Projected budget expenditures per pupil for the current school fiscal year.

# A Visual Look at Early Warning



## What are the other elements of Michigan's early warning system?

- **HB 4326:** The state financial authority for all school districts other than school districts subject to an enhanced deficit elimination plan (EDEP) is now the State Treasurer. The state financial authority for districts subject to an EDEP remains the State Superintendent. A districts' state financial authority is allowed to conduct a preliminary review to determine the existence of probable financial distress if one of 19 circumstances exists (see MCL 141.1544). The existence of any of the 19 circumstances is prima facie evidence that probable financial stress exists for the district.
- **HB 4327:** Districts must notify the State Superintendent and State Treasurer immediately upon incurring a deficit or adopting a budget with a projected deficit fund balance. The State Treasurer may then require a district subject to rapidly deteriorating financial circumstances to submit an EDEP. Any district subject to a deficit elimination plan (DEP) or EDEP must receive approval of the plan by the Department of Education. If approval is not received, the State Superintendent can withhold funds in an amount necessary to incentivize the district to complete an approved plan. Finally, a district subject to a DEP or EDEP must submit monthly monitoring reports to the State Superintendent and State Treasurer



# A Visual Look at Early Warning



- HB 4328: The Department of Education or State Treasurer can withhold money payable to a district required to submit a DEP or EDEP and who failed to do so or if the plan wasn't approved
- HB 4329: The State Treasurer can declare that a financial emergency exists within a district and recommend the appointment of an emergency manager if the district was subject to an EDEP and failed to submit the plan or comply with it.
- HB 4330: Districts and ISDs, by November 1, 2015, must submit reports pertaining to per-pupil costs for online learning
- HB 4331: The cap on loans made to districts is increased from \$50 million to \$70 million until September 30, 2018. Additionally, a loan can be made to a district if the loan would assist the district in resolving a financial emergency or fiscal stress; however, the loan board can no longer authorize a loan to a district of the first class (i.e., district with pupil membership of at least 100,000). If a district doesn't make a scheduled repayment on a loan, Department of Treasury is required to require the direct assignment for repayment of a loan in an amount equal to the minimum of the interest due on the loan and up to 5% of the loan.
- HB 4332: Amends Public Act 105 of 1855, which regulates the disposition of surplus funds in State Treasury, to refer to loans to school districts in amounts authorized under the Emergency Municipal Loan Act.



Here We Go!

# First Identifying Criteria



- **For those districts with general fund balance (total) LESS than 5% of general fund revenue for either June 30, 2014 or June 30, 2015**
  - Reported by August 7, 2015 (future years will be July 7<sup>th</sup>)
    - Foundation allowance used in budget for FY 2016
    - Enrollment used in budget for FY 2016
    - Expenditures per pupil for immediately preceding fiscal year (June 2015)
    - Expenditures per pupil for FY 2016 (using budgeted expenditures divided by enrollment used in budget)
- **Do these items sound familiar from this morning??**

# Then What



- **Treasury takes this information and is comparing it to audits (comparing current and prior year audit results)**
- **This month, Treasury is applying “stress indicators” to the FID data received from all districts**
- **In February 2016, Treasury will identify districts in potential financial stress**
  - They have 14 days after declaring a district has potential stress to notify the school board
  - They will also notify the school board that they can contract with the ISD to perform a review of the district (rather than have the state do it)

# Key Concerns / Questions



- **Treasury can identify districts by using data:**
  - That **MAY** be facing the potential for fiscal stress
  - That **MAY** develop an operating deficit (in current fiscal year or the following 2 fiscal years)
  - That **MAY** be unable to meet its financial obligations while also providing services

Data comes from the district, other state agencies, looking at resident/nonresident enrollment statistics, etc. through various submissions

# What is Fiscal Stress?



- **Defined in PA 109**
  - Unable to meet short or long-term obligations
  - Meeting any of the “triggers” as listed in PA 436 of 2012 (the Local Financial Stability and Choice Act) – here are a few highlights:
    - Creditor indicates non payments > 6 months of amounts more than \$10,000 or 1% of revenue (greater of)
    - Late payments to retirement system
    - Default on bond payments
    - Late filed audit
    - Breach of DEP
    - Court ordered additional tax levy
    - Other

# What is Fiscal Stress?



- **Treasury is trying to identify other indicators, such as:**
  - Fund balance as a percent of revenue (5 year trend)
  - Revenues Over Expenditures (5 year trend)
  - Accounts payable over Revenue (5 year trend)
  - Days of cash on hand (5 year trend)
  - Enrollment trends (8-10 year trend)
  - Expenditures per pupil (5 year trend)
  - Retirement cost as a percent of revenue (5 year trend)
  - Tax burden per citizen (5 year trend)
  - Population trends (8-10 year trend)
  - Credit rating
  - Schools of Choice
- ***Note – these indicators have not yet been approved***

# What Happens if Potential Fiscal Distress is Identified?



- **If potential fiscal distress is identified**
  - Treasury must notify the board within 14 days of this declaration
  - Treasury must notify the board that it can contract with an ISD to do an administrative review
    - The contract with an ISD must be entered into within 60 days of receiving notification from Treasury (Treasury must be consulted on the content of the contract)



# ISD Administrative Review – What Does That Look Like?



- **The ISD Administrative Review**

- Must occur within 90 days of entering into the contract
- Must issue recommendations that should be taken to avoid a deficit
- Once issued, the report must also go to Treasury and then quarterly reports are required to report on the status of the recommendations

# ISD Administrative Review – What Does That Look Like?



- **The ISD Administrative Review**

- Under PA 109, the review shall include ALL of the following (but not limited to just these items):
  - Examine financial practices and compliance with budget act, including budget to actual monitoring
  - Examine
    - Staffing compared to other districts
    - Wages compared to other districts
    - Benefit costs as percentage of wages (and compared to other districts)
    - Student capacity utilization review (i.e. how full are the buildings)
    - Non-instructional costs by function (and compare to other districts)

# ISD Administrative Review – What Does That Look Like?



- **The ISD Administrative Review**

- Examine (continued):

- Enrollment projection history and methods
- Deferred maintenance and capital needs (including technology)
- Substitute costs, workers compensation costs, unemployment costs
- Pupil transportation costs and routing
- Current and future costs of existing bargaining agreements

# ISD Administrative Review – What Does That Look Like?



- **The ISD Administrative Review**

- Recommendations are required to be considered and some of them implemented
  - If NO recommendations are implemented within one year, then district would be subjected to “periodic financial reporting”
  - District has 2 years before any additional reporting could be required, if they are working with the ISD on the recommendation implementation

# Current State of Affairs



- **Preliminary reviews (under PA 110) for those districts currently subject to a DEP that shows the deficit taking LONGER than 5 years to eliminate**
  - The Emergency Loan Board (ELB) will initiate the review of these districts in January 2016
    - There are 11 of them
      - » Does not include Detroit Public Schools
    - If ELB determines fiscal stress, the Governor will appoint a review team to determine if a financial emergency exists
    - If financial emergency exists, then the options under PA 436 kick in
      - Consent agreement
      - Emergency manager
      - Neutral Evaluation
      - Chapter 9 bankruptcy

# Why Should you Care if You are Not Currently in “Distress”?



- **Even if your district is in good shape today:**
  - Monitor the fund balance metric (as it is the one that starts the ball rolling)
  - Consider if some of those ISD review items make sense to look at now (through conversation with administration)
  - With changes in school funding and the trend that most districts are using fund balance – it is possible you will be ‘on the radar’ at some point
  - Keeping the budget discussion in mind, the expectation from Treasury is the Board has some understanding of the finances - being prepared can only help
- **Main goal of all of this, as onerous as it seems, is to prevent districts from financial peril which impacts the kids**

# Thank you!



**Laura Claeys**

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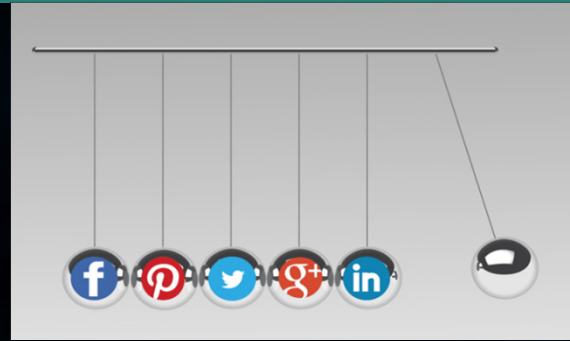
586-416-4910



# Tweets, Posts & Pins

*Navigating the Issues of Social Media Communications*

Jeremy Motz, Clark Hill



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# Social Media Adult Usage



**72%**  
70% daily



**31%**  
27% daily



**25%**  
22% daily



**28%**  
59% daily



**50%**  
31% daily



**28%**  
38% daily

# Recent Headlines....



**Social media comment sparks  
Columbia Heights school board  
special meeting**

**School board to urge member resign over post  
about Muslims**

**School Board Chair's Online  
Post Raises Concerns**

**Parents, officials upset with school board member's tweet**



**School Board Member Asked  
To Resign After Controversial  
Facebook Post**



# Legal Implications

# Transparency vs. Liability



**As a governmental entity, there are various laws which promote (require) transparency of a School District's operations.**

## **Three levels of *transparency*:**

- Between Board Members
- Between the Board and the Administration
- Between the Board/School District and the Public

**However, School Districts have access to vast amounts of confidential and personally identifying information that must be protected from improper disclosure.**

# Transparency Law - Open Meetings Act



## **Open Meetings Act – MCL 15.261 et seq.**

- All meetings shall be held at places available to the general public and conducted in the open, after proper notice
- All deliberations and decisions of the public body must occur at the meeting open to the public

## **Exceptions to OMA that Permit Closed Sessions**

- Limited to the “narrowly construed” purposes set forth in Section 8 of OMA. Some examples applicable to School District’s include:
  - Discipline/charges against personnel or periodic personnel evaluations.
  - Student discipline at request of student/parent/guardian
  - Collective Bargaining Strategy/Negotiation Sessions
  - Consideration of material exempt from disclosure (e.g. written legal opinion)
  - Consider purchase or lease of real property
- Must be initiated by a 2/3 majority roll call vote except in limited purposes.
- Minutes Required by exempt from disclosure

# Transparency Law - Open Meetings Act



## **Common Problems with OMA & Closed Sessions**

- Purposes are narrowly construed
- No broad exemption for personnel matters:
  - Limited to one of the stated purposes for personnel issues
  - Only at request of employee
  - Employee controls whether meeting reverts back to open
- Failure to maintain confidence of closed session discussion

## **Consequences of Violation of OMA**

- Possible legal action by media or taxpayer
- Civil (up to \$500 personal) and criminal fines and penalties (misdemeanor and up to \$2000) and payment of attorney's fees for plaintiffs
- Required to vote again
- Removal of Board Member
- Media circus and resulting embarrassment

# Transparency Law – Freedom of Information Act



## **Freedom of Information Act – MCL 15.231 et seq.**

- FOIA requires school districts to maintain those records which document the official business of the school district.
- A public record is document or writing, prepared in any medium, which documents the official business of the school district. A public record may exist in a wide variety of formats, including both hard copy and electronic mediums.
- A public record is not just those which the School District creates; it includes all documents the School District uses or possesses a part of performing its official business/public function.
- A public record includes correspondence with/from/between Board members, including e-mails or social media posts from School District account and personal accounts if the e-mails/posts involve School District business.
- Any person may request in writing to inspect, copy or receive copies of public records.



## Exemptions for Disclosure under FOIA

- Section 13 of FOIA includes multiple exemptions. Some examples include:
  - Personal Information - Michigan Fed. of Teachers v. Univ. of Michigan case
  - Disclosure exempt by statute
  - Attorney-Client Privilege and other privileges recognized by statute
  - Bid/Proposal prior to public opening
  - Test Questions and related documents
  - Frank communications prior to final determination by board
  - FERPA covered information



# Confidentiality Laws – FERPA & IDEA



**Generally, both the Family Educational Rights and Privacy Act (“FERPA”) and the Individuals with Disabilities Education Act (“IDEA”) are similar in terms of confidentiality of student information.**

- Apply to all “Education Records” – broadly defined and includes “health records”
- Prohibits disclosure of any Education Records to those without a legitimate educational purpose without parent/eligible student written consent
- Parent/student has right to inspect Education Records
- Requires student discipline hearings to be closed to public to protect against disclosure
- Must maintain “record of access”
- Must ensure communications do not inadvertently disclose information



# Confidentiality & Social Media in General



- Disclosure of Exempt Information
- Contractual or Settlement Obligations
- Erosion of positional leverage
- Potential Violation of Privacy Laws





# Social Media Usage Guidelines

# Social Media Usage Guidelines



## **#1 Avoid deliberating School District business on Social Media, and especially if a quorum of the Board is participating.**

### **What to Avoid**

- Deliberations via e-mail, IM, Facebook etc.
- Deliberations or decisions (or appearance thereof) via “round robin” messaging or social media forums
- Straw or informal polls in closed session
- Appearing to have reached a pre-determined conclusion during the open meeting
- Texting/e-mailing/or using social media toward a decision DURING a meeting

# Social Media Usage Guidelines



## **#2 Avoid posting content that indicates or creates perception that you have already formed final opinion or decision on pending matters.**

- Due Process Issues
- OMA and Open Deliberations Violations

## **#3 Only post content that has previously been released by the School District.**

- Fiduciary Duty to School District
- Avoid inadvertent disclosure of material (protected or otherwise)
- Avoids dissemination of conflicting material/information

# Social Media Usage Guidelines



- #4 Allow the community/public to provide input/comments through appropriate channels, but do not engage in extensive or substantive dialogue via social media or social forums/networks or allow such dialogue to direct your decisions as a Board member.**
- It is important for Board members to communicate with the school community and public, but need to ensure decisions are not dictated by one particular opinion
  - Prudent to base decisions on facts rather than supposition or public favor
  - Violation of OMA

# Social Media Usage Guidelines



**#5 *Direct complaints or concerns from the community or public that are presented/received via social media or online to the appropriate administrator.***

- A Board member is generally neither authorized nor in best position to respond
- Allows for any investigation to go through proper channels
- Minimizes any conflicts and/or violation of School District policies/practices

**#6 *Always be clear that you are posting/communicating as an individual board member and NOT as an official School District spokesperson.***

- The Board is a “body corporate” and one Board member may not act alone without proper authority
- Most School Districts have a process for communicating to public to avoid confusion
- Only discuss actions of previous open sessions and respect majority decision of Board

# Social Media Usage Guidelines



## **#7 Always adhere to your School District's Acceptable Use Policies and Procedures.**

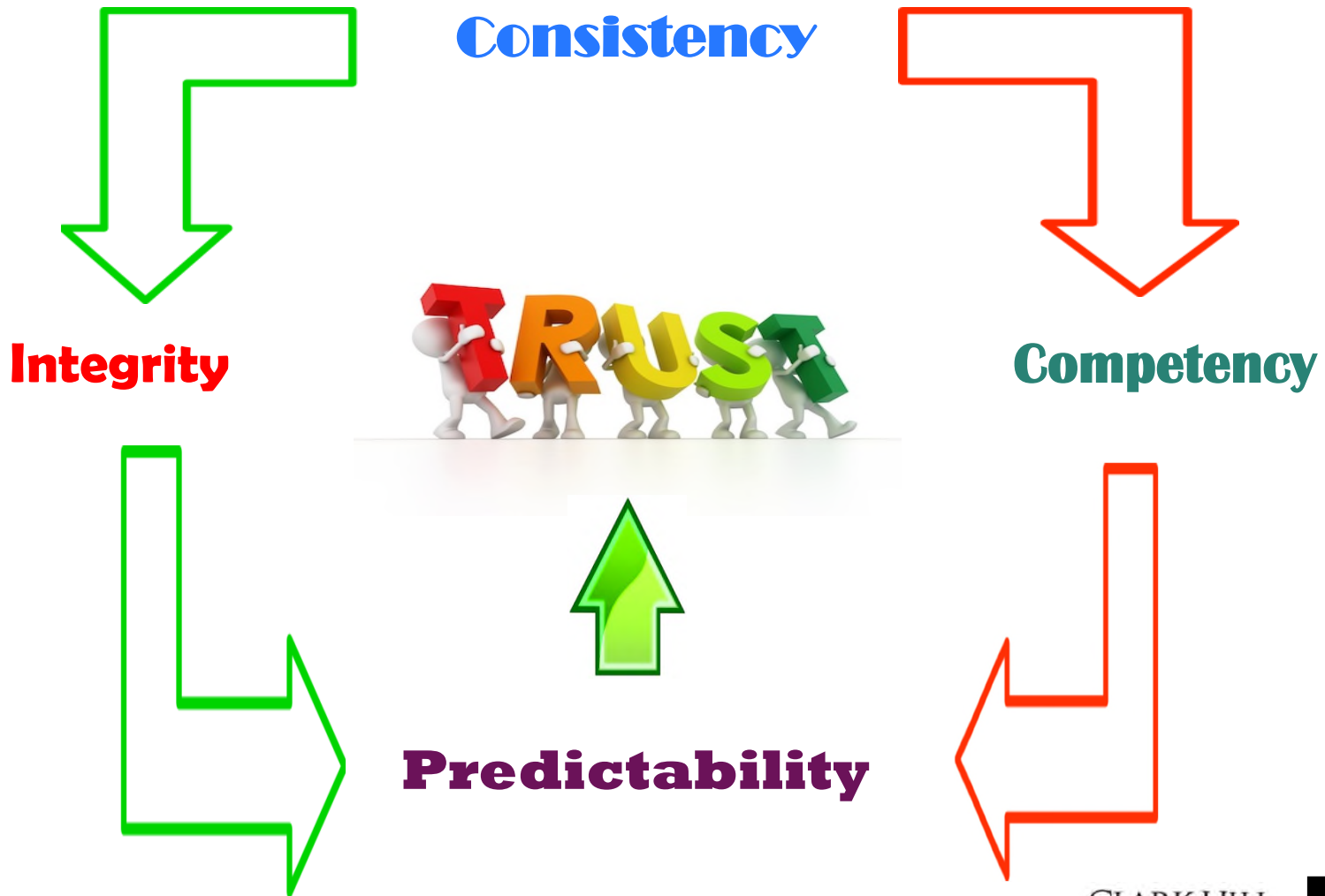
- Compliance starts “at the top”
- Communications are subject to retention & disclosure

## **#8 Conduct yourself online in a manner that reflects well on yourself, your family and the School District.**

- “Front Page” test
- Never send when “Hot under collar” (24 hour rule)
- Only distribute “verified” material/information



# Building Effective Communications



# Questions?



**REMEMBER....Think before you post & always post responsibly!**

# Thank You!



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***Disclaimer***

*This document is not intended to give legal advice and does not establish any attorney-client relationship. It is comprised of general information. School Districts facing specific issues should seek the assistance of a qualified attorney.*

# Panel Wrap Up – Open Discussion





Thank You for Attending!

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