

WELCOME NEW BOARD MEMBERS! Words of wisdom from three education leaders *page 8*

WISCONSIN

SchoolNews

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The Art of Boardsmanship

Crafting leadership practices that enable success

“
I love
feeling
like I’m
actually
making a
difference.”

Yvonne, RN, oncology care manager
at Network Health



THE OFFICIAL PUBLICATION
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OF SCHOOL BOARDS, INC.

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\$36.2 million in Common School Fund library aid to be distributed in 2019

Districts are expected to receive \$36.2 million in Common School Fund library aid in 2019. The Common School Fund was established by Wisconsin's founders in Article 10 of the State Constitution as a permanent school trust fund.

"By investing in community projects

throughout the state through the State Trust Fund Loan Program, the Board of Commissioners of Public Lands generates earnings for the Common School Fund that are distributed annually to public school libraries. These monies are the sole source of state funding for public school libraries. For many

school districts this is the only money available to them for library materials including books, newspapers and periodicals, web-based resources, and computer hardware and software."

In 2018, the Common School Fund provided \$35.7 million to school libraries. □

STAT OF THE MONTH

75%

Percentage of school district referendums, totaling nearly \$770 million in additional funding, were approved at the April 2 general election. Specifically, revenue limit exceptions had an 85 percent approval rate while questions about construction had an approval rate of around 61 percent.

Overall, districts had asked voters for nearly \$1.2 billion in additional funding and borrowing authority for new school construction, renovations and general operating costs.

Report Outlines How to Widen the Pool for School District Leaders

"Women comprise the majority of the education workforce — except at the very top." Although women are three-quarters of teachers and a majority of principals and district-level administrators, they are less than one third of district superintendents. To widen the pipeline for school district leaders, an April 2019 report, "Breaking Through: Shattering the Glass Ceiling for Women Leaders" by Chiefs for Change, calls on school systems to intentionally prepare more women for leadership positions by providing them with mentors, networks of support and family friendly policies. *To download a copy, visit chiefsforchange.org.* □

THE OTHER REALM

Wisconsin Student Designs Game After Being Named Finalist in Google Competition

According to a story by the Wisconsin Department of Public Instruction, Lily Cain, a student from the Maple School District, created a game, "The Other Realm," that is now available as a demo on Google Play. Lily learned last spring that she had finished in the top five for Google's national Change the Game competition. Lily traveled to California and spent many hours designing with the international program, Girls Make Games, to turn her ideas, artwork and writing into a puzzle-experience game. □

Millions of Young Adults are Still Out of Work in the U.S.

A new report from the Brookings Metropolitan Policy Program says that, "despite a low national unemployment rate, millions of young Americans are struggling with the path to employment and the ability to obtain financial security in adulthood. The report, 'Meet the millions of young adults who are out of work,' shows that 2.3 million young adults are out of work in large cities and counties, totaling 17 percent of young adults ages 18 to 24 in these places." □

View the interactive data and report at brook.gs/2CZXkwO.



The Art of Boardsmanship

To our new school board members who recently took office — welcome! We met many of you at the recent New Board Member Gatherings and look forward to seeing more of you at upcoming events.

This issue of the *Wisconsin School News* focuses on the art of boardsmanship with articles that feature governance and leadership practices that enable success. I encourage you to visit the WASB website at WASB.org to become familiar with the services and resources available to you. The Basic Legal and Governance Resources page is a great place to start. You'll also want to avail yourself of the training and professional development opportunities provided by the WASB specifically for school board members.

This month, Spring Workshops focused on the legal roles and responsibilities of school boards will be held in all 12 CESAs. The evening workshops will provide school leaders with a closer look at the state's open meetings, public records and conflict of interest laws and a board's powers and duties. In addition to providing a foundational training for new members, the workshops will serve as a good refresher for experienced board members. For a complete listing of the dates and locations of the Spring Workshops, see page 24.

On July 12 and 13, the WASB will be hosting a special Equity Symposium in conjunction with the Summer Leadership Institute in Appleton. The first day, Friday, July 12, will focus on sessions specifically geared to school leaders on decision-making, strategic planning and educational practices as they relate to equity as well as resources from the state and others. The second day, Saturday, July 13, will be the traditional WASB Summer Leadership Institute with two tracks of programming for new and experienced members. The day will include presentations on school finance, governance through policymaking, superintendent evaluations, dealing with conflict, leadership coaching and more.

We hope you take advantage of these opportunities to grow and improve in your role as a school leader.

Currently, our primary advocacy focus is on the proposed 2019-21 state budget. Thank you to all the school board members and administrators from around the state who testified before the state Legislature's powerful Joint Finance Committee during its series of public hearings in April on Gov. Tony Evers' proposed budget. We also appreciate everyone who called, wrote letters and talked to their legislators on behalf of public schools in recent weeks. Your advocacy is crucial to convincing

lawmakers to fully support the critical investments proposed by the governor.

If you haven't reached out to your legislators recently, please take a few minutes to let them know of your support for the proposed state funding increases and the impact it will have on your schools. Our combined, continued advocacy is needed to ensure that the state budget ultimately signed into law is positive for K-12 schools.

In addition to our experienced lobbyists, the WASB Board of Directors has also been working at the state level to advocate for our schools. In April, the board met with Evers to discuss his budget proposal. The governor is the latest in a series of state officials the board has met with in recent years to advance our agenda. Others include Assembly Speaker Robin Vos (R-Burlington), Department of Children and Families Secretary Emilie Amundson, Senate Education Committee Chair Luther Olsen (R-Ripon), UW System President Ray Cross and Wisconsin Manufacturers & Commerce President/CEO Kurt Bauer.

As always, the WASB is here to serve you. Thank you again for your work on behalf of our public schools. We look forward to seeing you at an upcoming WASB event! ■

Your advocacy is crucial to convincing lawmakers to fully support the critical investments proposed by the governor.



Altoona School Board Members (left to right): Mike Hilger, former board member; Richard Risler, vice president; Robin Elvig, president; David Rowe, clerk; Dan Gluch, member; and Brad Poquette, treasurer

BREAKING DOWN Barriers

How Altoona's Award-Winning Program Benefits Underserved Students

Dr. Ronald J. Walsh



What is the role of your school board in leading positive change in your school district? Do all your school board members agree on their individual roles? These questions seem to pop up often in discussions among school boards, school board members and administrators. For students, staff, parents and community members, the role of the board and its members may only be of

interest when there is a personal concern that someone wants addressed. Yet, understanding the proper role of boards and board members is critical to student achievement.

In the National School Boards Association's *Key Work of School Boards*, the authors describe the charge of school boards as having "... the responsibility to create the conditions within their school dis-

tricts that enable students to meet rigorous knowledge and performance standards."

Creating conditions that enable others to achieve is a great way to describe board work in a positive way. In Altoona, we turned this charge into our vision statement: Engage. Equip. Empower.

Creating conditions that enable others to achieve is a great way to describe board work in a positive way.

However, stating your vision and seeing it fulfilled can be quite different.

In its commitment to making schools safe for everyone, the Altoona School District has worked hard at training all staff in dealing with disruptive students. This includes crisis intervention training for staff to understand how to use seclusion and restraint techniques as well as the implications for using them. The most important component of seclusion and restraint is that they are practices to be used as a last resort.

When the district began planning for a referendum around 2014, the board considered student academic concerns when determining the structural needs. We knew we were not allowing all our students the ability to meet their potential. Looking at the numbers from prior years caused a bit of alarm. There were numerous incidents of seclusion and restraint practices, and the state report card showed lagging student achievement. Thus, the topic of appropriately serving students with behavioral needs became an important part of the referendum discussion.

The board wanted to do a better job of creating optimal conditions for all students. Through the building design and staffing process, the board, with help from teachers, paraprofessionals and administrators, designed a new approach — the Think Tank.

The school board and administration came up with the idea of creating dedicated, relaxing spaces at the elementary and intermediate/middle schools. These spaces were planned as a place students could go to, or be sent to, prior to an escalation that may lead to being secluded or restrained.

A no-new-costs approach to staffing led the special education director to propose a new plan for staffing paraprofessionals.

What evolved was the elimination of several one-on-one paraprofessionals and a consolidation of paraprofessionals who

would staff these new spaces, now designated as Think Tanks.

Centralizing the paraprofessionals instead of having them assigned one-on-one with specific students was a major change in practice and philosophy. It took commitment from not only staff but also the school board, administration, parents and students in order to sell the new approach to dealing with behavior in a manner that would improve academic success.

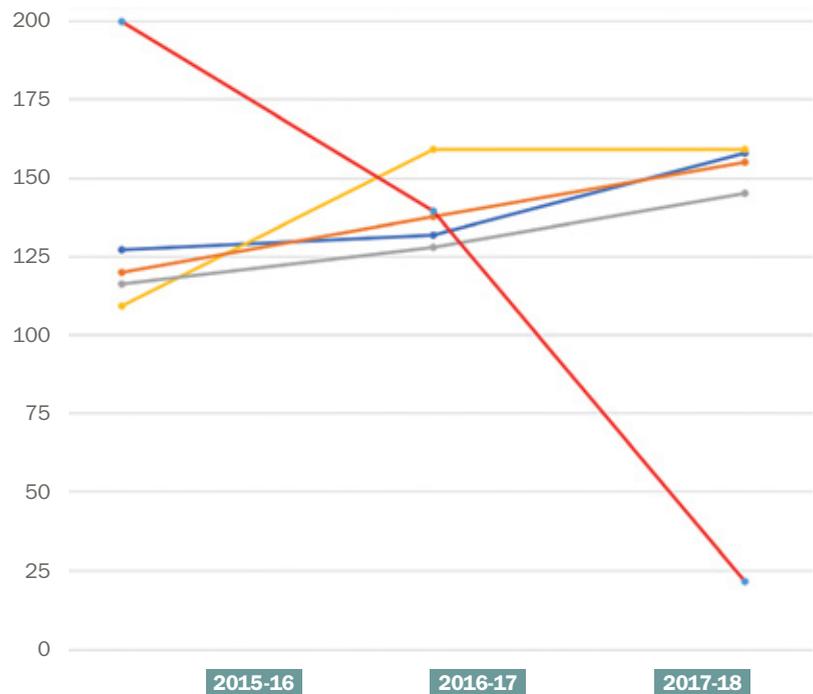
We envisioned that the Think Tanks would operate somewhat like fire departments. Cities don't put firefighters in every building that has the potential of burning down, they create firehouses and centrally locate personnel and equipment. It is much more efficient and practical. It meets

the needs of building owners and better engages, equips and empowers firefighting efforts. In the same way, centralizing our staff resources allows us to better meet the needs of all students.

When Altoona's new elementary school building was designed, Think Tank rooms were included — with an additional room provided for potential future use. The intermediate/middle school area was remodeled to include its own Think Tank. These rooms were designed to be a bit larger than a regular classroom and have separate areas for individual and small group work as well as safe areas to deal with disruptive behavior if it persisted.

Data from 2015-16 (*see graph*), the year prior to implementation,

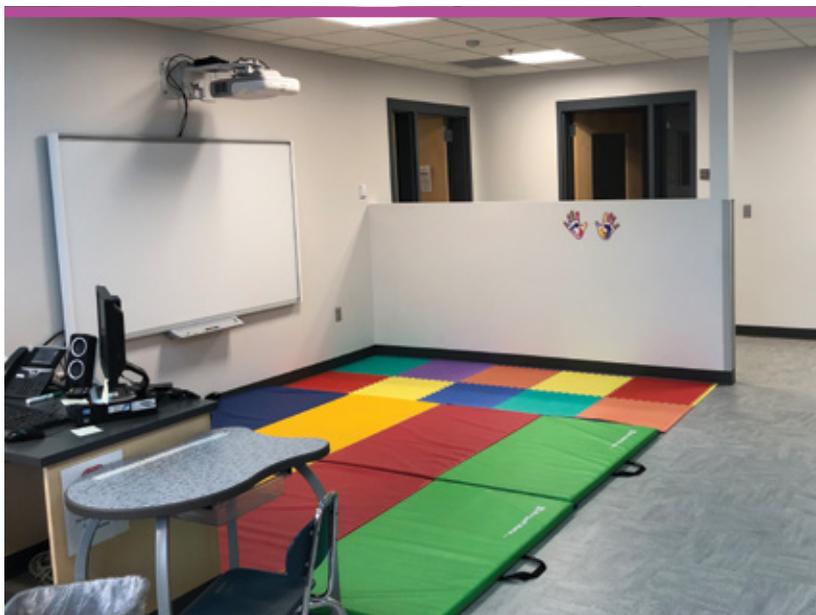
Think Tanks: Their Impact on Student Learning



	2015-16	2016-17	2017-18
Seclusion & Restraint	205.0	143.0	22.0
Closing Gaps	123.0	141.2	159.0
Closing Gaps - ELA	119.2	131.2	148.8
Closing Gaps - Math	112.0	163.2	163.2
Closing Gaps - Graduation	130.4	135.2	162.0

“The Think Tank has so changed the dynamics of the classroom.”

— Andrea Steffen, intermediate school principal



Think Tank spaces allow for individual and small group work.

showed that the elementary school had 205 seclusion and restraint situations and state report card scores showed a Closing Gaps score of 123, a Closing Gaps score for English/language arts of 119.2 and a Closing Gaps score for math of 112.

[Editor's note: Closing Gap scores use achievement and graduation rates to show "to what extent each school and district is succeeding in helping lagging groups catch up." Districts want to see an upward trend in their Closing Gap scores.]

Altoona's elementary school seclusion and restraint incidents decreased to 143 in 2016-17, the first year of implementation of the Think Tank. Scores on the state report card that year showed a Closing Gaps score of 141.2, a Closing Gaps score for English/language arts of 131.2 and a Closing Gaps score for math of 163.2. This shows significant gains in student achievement relative to the significant decrease in seclusion and restraint occurrences.

After 2017-18, which was the second year of elementary school implementation and the first year of implementation at the intermediate/middle school, seclusion and restraint incidents decreased to 22

at the elementary school — an amazing statistic. Scores on the state report card showed a Closing Gaps score of 159, a Closing Gaps score for English/language arts of 148.8 and a Closing Gaps score for math of 163.2. Again, there were dramatic and significant gains in student achievement relative to the significant decrease in seclusion and restraint occurrences.

“This was a wonderful program in concept,” said Robin Elvig, Altoona board president. “It has been great to see that what we believed would happen did happen. The results are more dramatic and occurred more quickly than we had expected.”

The intermediate school principal, Andrea Steffen, concurs. “The Think Tanks have been wonderful! And that is an understatement. The Think Tank has so changed the dynamics of the classroom. We now are able to keep our classrooms as areas to learn and provide an environment through the Think Tank for





“It takes commitment to start an equity program, and fortitude to sustain it.”

— Thomas Gentzel, NSBA executive director and CEO

struggling students to get back on task and able to learn as well.”

An intermediate school student who has used the Think Tank frequently was asked what he thought of it. He said, “It helps me. I can go in and relax for a few minutes and go back to class. It helps me to not need attention or stand out. It’s quiet and helps make me ready to learn.”

We work with a director of instruction to continually improve our overall curriculum and offerings to our students, and we have a strong and energetic administration and school staff that work hard every day to improve all aspects of instruction. Thus, the Think Tank is likely not the only reason that test scores improved in the buildings that

implemented it, but we believe it was the largest factor.

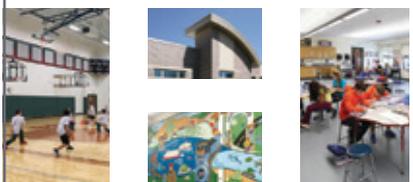
In March, the Altoona School District was awarded a 2019 First Place Magna Award by the NSBA’s *American School Board Journal*. This year’s focus for the award was Breaking Down Barriers for Under-served Students. Altoona was one of 18 schools to receive a Magna Award nationally, and the only school in Wisconsin.

“It takes commitment to start an equity program, and fortitude to sustain it,” said Thomas Gentzel, NSBA executive director and CEO. “I congratulate the 2019 Magna Award-winning districts for per-

forming the hard and sometimes unpopular work to ensure all of their students are supported and provided with the tools and opportunities needed to succeed.”

The Magna Award program is a wonderful way to recognize the hard work and dedication of school boards and its members. The Altoona School Board is a caring and involved school board that supports and encourages innovative practices. This school board believes in the school district’s vision and that they, too, can — Engage. Equip. Empower. ■

Dr. Ronald J. Walsh is the interim superintendent of the School District of Altoona.



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Welcome

NEW MEMBERS

Words of wisdom from the 2019 WASB President, WASBO Business Manager of the Year and WASDA Superintendent of the Year



opportunity to give back to your community. All of these are great reasons to become a member of your local school board and you want to get started by doing things right.

As a new board member, I am sure you have many questions. What exactly are my responsibilities? What authority do I have as a board member? How can I accomplish what I promised to my constituents? But mostly... now what?

traditional WASB summer leadership conference, which will provide two tracks of governance programming for new and experienced board members.

There will be more governance workshops later this summer as well as regional meetings and a legislative conference this fall in addition to webinars scheduled throughout the year. The largest professional development opportunity for board members and administrators is the annual Joint

I strongly encourage you to attend and take advantage of all the training your association provides.

I encourage you to seek advice from your fellow board members and your district superintendent. Don't hesitate to ask for help understanding the organizational structure, responding to constituent questions or interpreting background information. However, be mindful to keep district discussions in the board room where they belong. If there is any question that something could be construed as a quorum or "walking quorum," check with your president before proceeding. It can save you many headaches down the road.

The Wisconsin Association of School Boards is another great resource that can help you with your development as a board member. The WASB is a member-driven association that advocates for education on behalf of all 421 local boards of education and 12 Cooperative Educational Service Agency boards of control in the state of Wisconsin.

Hopefully, you were able to attend one of the New Board Member Gatherings hosted by the WASB regional directors in April. There are additional training opportunities to come. This month, there are evening workshops scheduled at all of the CESA offices to provide an in-depth look at the legal roles and responsibilities of board members. In July, the WASB will be hosting a two-day conference in Appleton. The first day will feature an equity symposium with sessions focused on how school boards can promote equity and excellence in their districts. The second day will be the

State Education Convention, which is held each January in Milwaukee. Next year's dates are Jan. 22-24, 2020.

I strongly encourage you to attend and take advantage of all the training your association provides to help move your district in the right direction. The WASB offers many events to help even the most experienced board members become better.

I also encourage you to get to know your state and federal elected officials. You now have the opportunity to interact with them as a fellow elected representative and your position as a local official has a lot of standing with them. This year, the state Legislature and governor will approve the next biennial state budget. Now is the time to encourage them to help develop a fair and timely budget. Learning about your district's struggles and successes puts a real face on the issues our districts contend with today. Acting as a united board also carries a lot of weight. Work with your board to develop a legislative agenda to share with your representatives.

Serving on your local school board will be one of the most rewarding things you do. Acknowledge your district's achievements — even the little ones. Make your students proud to belong to your district. But most of all, remember why you ran and who you serve. By working with your fellow board members, you can make an effective and lasting change in your district.

BRETT HYDE

Muskego-Norway School Board
WASB 2019 President



Congratulations on your election to a Wisconsin school board! Working to improve education in your district is a commendable

challenge that comes with a lot of work but also has many rewards.

Even the best school districts need to adapt to changes in society — jobs and skill sets are constantly changing and offering our students relevant coursework is an ongoing process. You ran for office because you know you can make a difference, you know you have the knowledge and experience to effect positive change, and you saw the

Welcome

MARTA KWIATKOWSKI

Rhineland School District

Wisconsin 2019 School Business
Manager of the Year



Congratulations to recently elected and appointed school board members! As a board member, you are responsible for educating all the school-

aged children within your school district and for ensuring a safe and effective school environment. Board members offer supportive leadership to the superintendent and school district staff while also establishing district policies that provide a clear differentiation between governance and management responsibilities.

Education is constantly changing and continually faces challenges, including significant financial obstacles. An effective school board is fiscally responsible to the taxpayers of the district while keeping a strong focus on providing students and staff with the resources and services necessary to maintain a high-quality, world-class education system. Due to budget deficits and constraints, school districts throughout the state are becoming increasingly reliant on the passage of referenda to provide for continued educational and operational needs.

The state's school funding system is complex, and the state government has a large impact on local education. After being elected, new board members should meet with their district's superintendent and business manager to become more

familiar with the district's finances and the state's funding formula.

Board members should review district policies, actively listen and ask questions regarding the board's financial responsibilities and the district's future. They should become familiar with how their performance of board duties advocates for public education and leads to the effective functioning of the board and success of the district.

Every child deserves an opportunity to succeed in our ever-changing, globally competitive environment. It is the responsibility of board members and the administration to challenge the status quo by finding new and innovative ways to provide cutting-edge resources that will clear a path to success for every student, regardless of background. The board needs to critically analyze each financial decision to ensure that it is made in the best interest of the students, staff and taxpayers. Careful, long-range financial planning is crucial to achieving the district's educational and operational goals and priorities.

New school board members should not hesitate to ask questions or share their ideas. Part of being a good board member is being a life-long learner – one who continues to grow as an individual and as an important member of the school board and school community. Board members should focus on the outcomes rather than on the everyday details of managing the district. Reviewing board meeting materials prior to attending a meeting allows for board members to ask questions of the administration or voice concerns prior to the scheduled meeting. This gives the administration an opportunity to respond before the board takes any action. It is crucial for a board member to fully understand what they are voting on.

The school board sets the vision and goals for the school district, holds the superintendent and administration accountable for the results, and makes financial decisions it believes will provide the school system with the resources to give all students the opportunity to achieve to the best of their ability. Effective school board members share their talents, devote time and energy to their duties on the board, and strive to earn the respect of their fellow board members, the administration, staff, parents and community members.

AARON SADOFF

North Fond du Lac School District

Wisconsin 2019 Superintendent
of the Year

"If you believe you can or can't, you are right."



I have embedded this truth in my life and used it as a cornerstone of my service as an educator. I began my education career in 1997 teaching at Man-

itowoc Lincoln High School and am currently entering my 10th year as superintendent of the School District of North Fond du Lac. Over the past 21 years, I have witnessed significant changes in how education is delivered, how we interact with staff and what it means to be an educator. Perspective has been critical in helping me navigate the past two decades, but a new truth has recently emerged that I believe has the power to take the potential of each of us, including our students, to levels never imagined — and it is fun!

Someone's perception and the lens through which they see the world can often be answered by the simple question: "Is your glass half full or half empty?" If you see the

To refill your glass, look for sources of inspiration, friendship and belonging.

glass as half full, then you are thought to be someone who looks for good, is optimistic and has a positive mindset. But if you see the glass as half empty, you view the world through negativity, loss and by focusing on what is wrong.

STOP LOOKING AT THE

GLASS! Get your eyes up and look for pitchers to fill your glass and the glasses of others. To lift the ceiling of potential, take the focus off yourself. With the advent of positive psychology in the 1990s, human behavior research has ventured in to the realm of what works — why some people are more successful and well-adjusted and why some cultures are more positively impactful. One of the most recent findings sets the groundwork for how we can improve everyone's potential by focusing on the importance of the social invest-

ment and improving others. That will, in turn, make us better.

In his most recent book, "Big Potential," Shawn Achor, a positive psychology researcher, shares research and examples of how to unlock potential and improve every aspect of our society and ourselves through investing in others. Helping someone shovel snow, volunteering, sharing your best ideas — all these actions not only help the happiness and well-being of others but also make your individual potential skyrocket.

To refill your glass, look for sources of inspiration, friendship and belonging. It does not matter how much is in your glass when you start, what matters is that you focus on a mindset of growth and serving others. When you invest in others and fill their needs, the return is

tenfold. This may seem difficult in our current society of comparative praise, competition and accountability, but by investing in others around you and working together, our schools, communities and, most importantly, children win.

Every police officer, doctor, farmer or shop owner who lives in North Fond du Lac are not graduates of our local high school. Therefore, the better every school district and community is in our state, nation and world, the better we will be in North Fond du Lac and the more opportunities will be available for all.

I have seen the power of supporting the success of others and investing in each other. It is the key to unlocking unlimited potential in ourselves. With the right mindset surrounding serving others in your family, school and communities, your glass will be refilled over and over again. ■



FLORENCE MIDDLE/HIGH SCHOOL
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Do you have an
Outlier on your board?

Are *you* one?



The Outlier Syndrome

To be a high-functioning board, recognize the Outlier Syndrome and address it

Tami A. Tanoue

Those who have been working with municipalities for an extended period have observed a phenomenon that occurs at the governing body level. Let's call this phenomenon the Outlier Syndrome.

The Outlier is the “lone wolf” who sits on a city council or board of trustees and steadfastly refuses to act like a member of the team. Even while isolating himself or herself as the only person on the losing side of just about every vote, the Outlier manages to create havoc with the rest of the body. The Outlier may be obstreperous and obstructionist. The Outlier may refuse to recognize and respect the norms that guide the rest of the body's conduct. The Outlier may position himself or herself as the only “ethical” or “transparent” member of the body. The Outlier's every statement and action may be aimed at preserving that self-assumed distinction rather than making any concrete achievements. Sometimes, a governing body is unfortunate enough to have more than one Outlier.

Have you ever experienced the Outlier Syndrome in action? It can

be called a syndrome because of the recognizable features or symptoms that seem to fester whenever an Outlier sits on a governing body. Do you have an Outlier on your governing body? Could you possibly be an Outlier? Should the Outlier Syndrome be viewed as an affliction or malady? And if so, what can be done? We'll explore these questions in more detail below.

Power, Goals and the Outlier

To understand the Outlier's impact on a governing body, let's start with the idea that elected officials can only act as part of a body — a collaborative decision-making body. You can search throughout the laws governing statutory municipalities, or just about any home rule charter, and you'll likely find no powers or duties that are to be exercised by a singular elected official — other than the mayor, who may have certain defined responsibilities. This means that, as elected officials, the only way you can get anything accomplished is to have a majority of the governing body on your side.

It's likely that each elected official has an individual list of goals that those who voted for you want you

to accomplish. But your goals can be accomplished only if they're part of the goals of the body as a whole. That means your success depends on creating a consensus of the majority! And where does the Outlier fit in on a collaborative decision-making body? Nowhere. Perpetually being on the losing side of a vote means that the Outlier gets nowhere on his or her goals... unless, of course, he or she feels that being an Outlier is its own reward.

Are you an Outlier?

Perhaps you have met your share of Outliers, who tend to share one or more of these characteristics:

- There is an element of the lone crusader in them. They feel they were elected to shake up the status quo in some way. Maybe they think their predecessors were too cozy with developers, not friendly enough with the business community, too close to the municipality's staff or not close enough to the municipality's staff.
- They view themselves as independent thinkers. They are often highly intelligent, but not

The Outlier is the “lone wolf” who sits on a city council or board of trustees and steadfastly refuses to act like a member of the team.

“people persons.” In kindergarten, their report cards might have reflected a poor score on “plays well with others.”



- They take a perverse glee in being the “outsider,” relish arguments for argument’s sake and place little value on matters like courtesy and regard for the feelings of others.
- They hate having to endure “soft” discussions, such as a council or board retreat, the establishment of a mission or vision statement, the development of consensus around rules of procedure or rules of conduct, a session to discuss goals and priorities, or an insurance liability training session.
- They feel they are always right, and everyone else is always wrong. They feel they are always ethical, and everyone else is not. They feel they are looking out for the citizens, and everyone else is not.
- Initially, they may just have been unfamiliar with the ways of local government and needed to build the skills to work effectively in a new environment. One or more gaffes may have caused them to be pegged as Outliers and treated accordingly, initiating an unhealthy Outlier dynamic.
- There may have been some explosive moments in private or public with the Outlier’s colleagues, or the colleagues may have made some attempt at an “intervention.”

These observations may not be totally on the mark, but one characteristic of the Outlier cannot be denied: he or she is seldom on the prevailing side of a vote, and is often at loggerheads with the rest of

the body.

Do you think you may be an Outlier? If so, you might examine what your goals as an elected official really are.

Do you want to have a list of concrete accomplishments at the end of your term? Or

will it be accomplishment enough to have been the “loyal opposition”? If it’s the former, then your behavior may be working at cross-purposes with your goals. If it’s the latter... really? Will the people who voted for you be satisfied with that accomplishment? Will you?

■ Is the Outlier a Problem for the Rest of the Body? For the Municipality?

Most people who’ve had to deal with an Outlier would say that yes, the Outlier is a problem. How? Here are some ways:

- Anger and frustration build when a council or board has to deal with an Outlier, siphoning away energy that could be spent on more positive endeavors. This is a particular problem if tensions have built to the point that confrontations have begun to occur. No reasonable person wants to attend or view a council meeting and have a hockey game break out. It may be entertaining, but it’s embarrassing to the governing body and to the community.
- Healthy teams seek to build a sense of camaraderie and cohesiveness. That’s not entirely possible when there’s an Outlier. It’s not healthy to build a team around a shared hatred of one of its own members, and most reasonable people would prefer not to have that happen.
- The Outlier’s perspective tends to be oppositional. From a liability

standpoint, such a perspective is risky. If you’re taking positions on an oppositional basis, are you really meeting your fiduciary duty to look out for the best interests of the entity?

- A disharmonious governing body is a dysfunctional governing body. It’s been the Colorado Intergovernmental Risk Sharing Agency’s experience that liability claims thrive in an environment of disharmony and dysfunction.
- Your staff members are affected by the Outlier Syndrome, too. From the staff’s perspective, seeing dysfunction on the governing body is a little like watching discord between one’s own parents. It’s unsettling, distressing and morale-crushing.
- Most importantly, it’s a shame for the governing body to lose a potentially valuable contributing member. In a worst case scenario, the Outlier becomes completely disempowered as he or she is ignored and marginalized. But this means that the body isn’t running on all cylinders and is deprived of the valuable perspectives that the Outlier might otherwise bring. Ultimately, the voters and the community are the losers.

■ Dealing with the Outlier Syndrome

You can’t cure an affliction until you recognize it. And you can’t recognize what you haven’t named and defined. If your municipality is afflicted with Outlier Syndrome, you’ve taken the first steps toward a cure by naming, defining and recognizing it. Here are some other steps you might consider:

- Confront the issue forthrightly and compassionately in a neutral environment. A council or board meeting is likely not a neutral environment. Perhaps the matter could be discussed as one item on a retreat agenda. Be prepared with specific examples of how

the Outlier has negatively impacted the body.

- Consider addressing the issue in the context of a larger discussion about governing body rules of procedure or rules of conduct. The “norms” that guide members’ interactions with one another may be obvious to some, but not to all, especially newer members. Those norms can be part of the discussion and the process of articulating them can facilitate a consensus to honor them.
- Consider bringing in an outside facilitator to assist you, as a governing body is a bit like a marriage that’s been arranged for you by the citizens. There’s nothing wrong with getting some outside help for perspective and to find solutions.

If you think you might have the Outlier label pinned on you, consider these suggestions:

- First, get a reality check. Find out how you’re being perceived by your peers. It may be very different from your own perception of yourself. Ask each of your colleagues to give you a frank assessment.
- Check your motivations. If you have concrete goals you want to accomplish as an elected official, you must accept that success in your position can’t happen without collaboration and consensus building. There is nothing that you can accomplish alone. So, set a goal to be on the “prevailing” side or to bring others over to establish a “prevailing” side.
- If you’ve already burned some bridges, understand that consensus building can’t happen without mutual trust, respect and a sense of cohesion. These will take time to build. Look for a retreat or other opportunities to clear the air and start fresh.
- Use staff as a resource! Your manager or administrator wants

nothing more than to assist newly elected officials in learning the ropes and understanding the best time, place and approach to raising issues. Don’t get off on the wrong foot with blunders that might peg you as an Outlier.

[Editor’s note: Be mindful that board meetings to discuss the conduct of board members are subject to the open meetings law.]

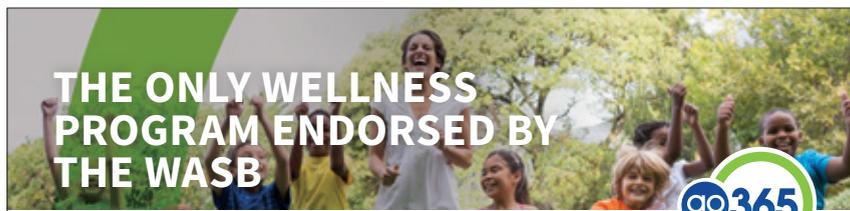
What if all efforts to deal with the Outlier Syndrome fail? Well, it might be time for the rest of the governing body to cut its losses and move on. Don’t continue to agonize over the Outlier and his or her impact on the body’s functioning. Continue to accord the Outlier the same opportunities to participate in discussion and decision-making as any other member, but don’t allow the Outlier to keep pushing your buttons. Remember, arguments and confrontations require more than one participant. You may need to simply say “thank you” or move on to the next point of discussion. Ultimately, the responsibility for putting an Outlier into office rests with the citizens, so there’s only so much you can do. Try to go about your

business without having the Outlier become the dysfunctional center around which the rest of you swirl.

Conclusion

Governing body members don’t all have to be in lockstep, thinking and behaving in the same way. On the contrary, diversity of thinking, styles, opinions, experiences and approaches are healthy and necessary for a collaborative decision-making body. There is truly a collective wisdom that comes forth when many diverse minds work together on common goals. But the Outlier Syndrome is detrimental to a high-functioning governing body and, therefore, to the community. If your governing body is afflicted with the Outlier Syndrome, it’s time to do something about it. ■

Tami Tanoue is the executive director for the Colorado Intergovernmental Risk Sharing Agency, a public entity self-insurance pool providing property, liability and workers’ compensation coverages to local governments in Colorado. Previously she was city/town attorney or special counsel for numerous Colorado municipalities. Prior to that, she was staff attorney for the Colorado Municipal League. Contact her at Tami@cirsa.org.



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Want respectful conduct at board meetings?

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A COLLABORATIVE INITIATIVE FROM
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In an ideal situation, all persons who attend or participate in a school board meeting will conduct themselves in a manner that makes a positive contribution to the reasons that the meetings are held, including conducting important public business, communicating important information, presenting different points of view and evaluating different approaches to significant decisions and issues.

Well-run meetings that occur in a professional and respectful atmosphere tend to be more productive while also enhancing the community's sense of confidence in its schools and serving to model the behaviors that district leaders set as expectations for staff and students.

However, whether due to individual personalities, personal histories, particularly sensitive issues or a combination of those things, conduct

that occurs at school board meetings sometimes falls short of what most school board members and community members would like to see. At a minimum, this can be a source of frustration or even embarrassment. At its worst, it can interfere with the business of the meeting and with achieving the board's goals for the school district. While the saying that civility cannot be legislated has some application to school board meetings,

it does not mean there is nothing that school boards can do to attempt to prevent breaches of decorum. Nor does it mean that boards are powerless to respond to disruptive or disorderly behavior. One approach that school boards may consider is to create, publicize and enforce a code of etiquette for school board meetings. A code of etiquette — sometimes referred to as a code of conduct — is a board-adopted policy statement that defines basic ground rules and norms for behavior at board meetings. Once established, the code serves as a reasonably neutral and objective point of reference when the board is addressing problematic conduct.

■ Codes of Etiquette Expressly Identify Desired Behaviors

After a particularly exacerbating meeting at which tempers flared and several attendees launched personal attacks on one another, the chairperson of a school board meeting may wonder, “Don’t people know how to act at a school board meeting?” The answer may be that many attendees actually do not know what behavior the board wants to see at its meetings, as boards often leave such expectations undefined and unstated. Instead, attendees may be taking cues from the wider culture in which public discourse is increasingly polarized, personalized and infused with hyperbole, sarcasm and divisive statements.

So, if your school board would like to see a greater degree of civility, respectful disagreement and restraint, try expressly identifying those behaviors as desired norms. Furthermore, consistently ask attendees to observe those points of meeting etiquette. If the board would like attendees to view school board meetings as an educational opportunity during which the community can model constructive problem-solving and respectful interactions for the district’s students, then say so repeatedly —

perhaps at the opening of every meeting. Identifying and communicating such standards sets a tone of professionalism for meetings in a manner that often does some good and rarely does any harm, except when approached with a lack of sincerity.

“Don’t people know how to act at a school board meeting?”

The answer may be that many attendees actually do not know what behavior the board wants to see at its meetings.

■ Getting Started

If your school board is interested in developing a code of etiquette for its meetings but does not know where to start, constructive first steps include identifying the target audience for the code and reviewing the protocols for meeting procedure and meeting decorum that can be found in existing board policies and in general works, such as *Robert’s Rules of Order*.

A code of etiquette can target several different audiences, and different expectations may apply to each relevant group. Consider at least the following audiences:

- School board members.
- Attendees who choose to actively participate in a public comment period or public hearing.
- Attendees who come to meetings primarily to observe so they can be better informed about the decisions of the board and the direction of the school district.
- School district employees who may participate in school board meetings as part of their job duties.

A code of etiquette should clearly and succinctly speak to each targeted group. To accomplish this, a code can be divided into different sections

or even into separate policy statements that each target a different audience. A code that lacks organization, such as one that haphazardly alternates between identifying expectations that apply to board members and expectations that apply to members of the general public, is less likely to effectively communicate the intended message to the intended recipients.

Next, review your school district’s existing policies. Many boards will find they have already established some important procedures and behavioral expectations that would be relevant to a

more purposeful code of etiquette. For example, some school boards already have policies that address how board members “obtain the floor” to speak during a board meeting. Those policies can provide a starting point for code provisions that are aimed at avoiding improper interruptions. Some boards have also worked with the district administrator to create specific expectations that target the etiquette goal of respect for everyone’s time. Thus, there may be a mutual agreement, expressed in policy, among the members of the leadership team under which the administration has committed to providing meeting materials to the board members prior to the meeting and the board members have committed to reviewing those materials prior to the meeting.

Many school boards already have policies that govern public comment periods at school board meetings. Those policies often identify a process for being recognized as a speaker, set a time limit for individual remarks and provide that the board president and/or board may take steps to prohibit comments that are obscene, threatening, harassing or disorderly.

The larger point is to be aware of the rules and practices that you have already established, and then start to build a broader and more purposeful code of etiquette with those established pieces in mind. Consider the following:

1. What are the universal rules and expectations that apply to all attendees? A simple example may be that everyone is expected to silence their cell phones during the meeting.
2. What are the rules that apply more uniquely to each of the code's specific target audience(s)?
3. Will particular guidelines be stated as rules that attempt to discourage negative behaviors? For example, "No speaker may use obscenities or threaten to harm any person or any person's property." Or will the guidelines identify expectations for positive behavior? For example, "The school board expects its own members and other attendees to engage in respectful disagreement, recognizing that reasonable minds can and will disagree on many important issues."
4. What reciprocal commitments to

communication and transparency will the school board make to facilitate attendees' willingness to adhere to the board's meeting guidelines? For example, if the board establishes a rule that attendees seated in the audience may not interrupt the board meeting to interject questions or comments, what steps will the district take to ensure that relevant meeting materials are available for public review prior to the meeting? And, instead of proceeding as though everyone in the room has the same level of background knowledge about the agenda items as the board and the administration, how can the presiding officer and the superintendent communicate during the meeting in a manner that will help all attendees to better follow particular agenda items and the related motions and discussion?

5. Based on applicable law and the

limits of the board's enforcement mechanisms, does the board have a sufficient understanding of the elements of its code that can be treated as firm rules and those elements that, while clearly identifying the board's preferred values and norms, ultimately are more in the nature of requests that rely on attendees' buy-in and good will?

■ **Communicate, Communicate, Communicate!**

Once a board's etiquette guidelines are established, they should be readily available, highly visible, and explicitly and repeatedly referenced by district officials. These communication steps will enhance overall awareness of the guidelines and help to show that the guidelines are an intentional and actively monitored aspect of the board's operating culture and meeting climate. Examples of such efforts include the following:

- Prominently posting the guide-

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lines on the district website (e.g., on the same page(s) on which other important meeting-related information is posted).

- Posting essential points at the public entrance(s) to the meeting room.
- Having a summary handout available that can be picked up with meeting agendas.
- Providing copies of the public comment procedures to each interested speaker.
- Having the board president recite the ground rules for public comments at the outset of every public comment period. (Many school boards already have such a practice.)
- Reviewing the board-focused guidelines, and the reasons for those guidelines, with new board members as part of their initial orientation.
- Evaluating whether some information should be translated and provided in multiple languages.

Another aspect of communicating expectations is to model them as consistently as possible. A board that freely ignores its own admonitions against inflammatory language and personal attacks is actually communicating either that those stated expectations are not really important or that the board's call for respectful interaction is really a disrespectful one-way street that is not deserving of the community's buy-in.

■ **Enforcement: Be Consistent, Even-Handed, and Aware of Legal Limits**

The bad news is that, in the end, a school board often cannot fully legislate or fully enforce its ideal version of civility at board meetings using a code of etiquette. Between giving sufficient attention to attendees' First Amendment rights and recognizing the limits of the board's enforcement authority, a person who is bent on speaking in a bombastic manner or on showing a lack of

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Often, districts discover that what they think is one issue is actually a combination of issues that requires a multi-faceted resolution. The experienced WASB consultants have the ability to tap into a vast array of services and experience, including the WASB legal, policy and advocacy services, putting them in a unique position to bring together a team of resources to address nearly any issue. □

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respect to others through their verbal and nonverbal communication is going to find ways to test limits and will be perfectly willing to thumb their nose at the notion of “etiquette.”

The good news is that, where strong norms and well-communicated procedures and guidelines fail to prevent a breach of meeting decorum, the board (often through the presiding officer of the meeting) has a

few enforcement tools to work with. Examples include the following:

- Enforce the firm rules that the board can strictly enforce, such as speaker time limits.
- When a violation of the board’s code of etiquette occurs, the presiding officer should be authorized to step in, calmly identify the problematic conduct, identify

the portion of the board’s code of etiquette that has been violated, and remind the person(s) of the board’s expectations. In doing so, it is important for the chair (and the rest of the board) to know whether the violation is such that the board ultimately has the legal authority to prevent the person from continuing to speak, or whether the board is respectfully requesting voluntary compliance with a guideline.

- When the authority or a ruling of the presiding officer has been overtly challenged, consider elevating the matter to the full board. Doing so can show that the chair’s efforts have the backing of a majority (or perhaps the entirety) of the board.
- It is useful for the board to have a solid understanding of how such violations are processed under *Robert’s Rules of Order* — including procedures for documenting certain details in the meeting minutes, requiring the board member to yield the floor, and taking steps that amount to a type of censure. This is particularly helpful when an individual board member has crossed a line that constitutes a

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serious violation of meeting decorum. Keep in mind that the school board generally does not have legal authority to prevent a board member from attending a school board meeting or remove a board member from office.

- When a meeting attendee is attempting to bring up and resolve an issue that is not on the posted agenda, that is inconsistent with the division of board and administrative responsibilities, or that subverts established complaint procedures, explain for the benefit of the attendee and all others who are present why there are barriers to pursuing the matter at the meeting. The barriers may include the open meetings law, the need for further fact-finding or additional input from individuals who are not present, concerns with the confidentiality of student records, etc. In some situations, the indi-

vidual can be successfully redirected to the correct procedure for resolving their issue. In other situations, providing a brief explanation and an alternative path may help other attendees understand that the board is not simply seeking to avoid public criticism or controversy.

- When a disruptive or combative attendee (or board member) has reached the point that his/her conduct is preventing the board from conducting its meeting or when he/she has threatened anyone's health or safety, it is likely time for the board to seek the active assistance of law enforcement.
- The board will usually have the option of adjourning the meeting, but it is often not a desirable option.

When enforcing a code of meeting

etiquette, it is important for the presiding officer and the board to do so even-handedly, regardless of a speaker's viewpoint and whether or not the individual has usually adhered to the rules in the past.

A board's inability to demand absolute compliance with a code of etiquette and the absence of expansive authority to remove non-compliant individuals from a school board meeting without the intervention of law enforcement may give rise to a sense that the pursuit of civility and decorum at school board meetings is not worth the effort. However, while a very small minority of individuals may persist in undesirable conduct, consider that the vast majority of the community will be grateful for the board's good-faith, consistent and visible efforts to promote respect and professionalism and to identify and label inappropriate meeting behavior for exactly what it is — unacceptable, counterproductive and contrary to community expectations. ■



Legislative Update

Stay up-to-date on the latest state and national legislative news by following the WASB Legislative Update website. The mobile-friendly site is regularly updated by WASB staff and includes a "Follow" tool that allows you to receive email updates when a new item is posted.

Visit the WASB Legislative Update website by visiting wasb.org. Select "Advocacy & Government Relations" and then "Legislative Update."





Stay Tuned...

With budget hearings completed, the process shifts

The Joint Finance Committee has completed its four scheduled hearings (in Janesville, Oak Creek, River Falls and Green Bay) on the proposed 2019-21 state budget. The concerns of public education were well represented at those hearings. Special thanks are due to the many school board members, administrators and concerned parents who spoke out in favor of public schools at those hearings.

Now that the hearings are completed, the budget process shifts from listening mode to decision-making mode. The JFC will shortly begin to hold executive sessions during which it will take votes on the governor's recommended budget and proposed changes to it.

One of the first decisions facing the committee will be whether to start from current law or Gov. Tony Evers' recommendations regarding the Department of Public Instruction (K-12 education) budget.

While sticking with current law is always an option available to the committee, the typical course is to proceed from a consideration of the governor's recommendations. The committee then decides to either approve, reject or modify those recommendations on an item-by-item basis. This time around that may not be so easy or straightforward.

State revenues over the course of

the 2019-21 biennium are projected to grow by about \$1.8 billion. In the previous 2017-19 state budget, state funding for K-12 schools was increased by \$636 million. A similar increase in the 2019-21 budget would mean about one-third of new state revenues would go toward schools.

The governor's proposed budget, however, would increase K-12 education funding in the 2019-21 biennium by more than double the increase in the last budget. The proposed \$1.4 billion K-12 increase would consume slightly more than three-quarters of expected state revenue growth. The biggest increases are about \$606 million in additional funding for state special education categorical aid and about \$600 million in additional funding for state general aid. Other significant increases include \$58 million in additional funding for school-based mental health services and nearly \$44 million in additional funding to support programming for English learner students.

As we noted in last month's column, this is a much higher price tag than the GOP-controlled Legislature seems inclined to support. Furthermore, because the proposed funding reforms wouldn't begin until the second year of the biennium, legislative leaders argue this masks the ongoing cost of the governor's

K-12 education proposals, which they peg at about \$1 billion per year. They claim that adopting the governor's K-12 education package "as is" could result in a \$2 billion deficit in the 2021-23 biennium.

While GOP leaders have pledged to prioritize education funding, they also say they want to provide schools with a degree of certainty that any increases they approve in the 2019-21 state budget can be sustained in future budget cycles.

They also note the many other competing priorities for funding. These include: corrections, where a shortage of prison guards is causing excessive use of overtime and creating potential safety concerns; human services, where nearly a dozen nursing home facilities have closed since the start of the year due to low Medicaid reimbursement rates and where shortages of home health care workers are making it hard to keep people in their homes; the court system, where more prosecutors are needed and where compensation for public defenders of indigent defendants ranks among the lowest in the nation; and, of course, there is the issue of how to pay for fixing Wisconsin's deteriorating road system.

As they tackle these issues, Republican legislative leaders are mindful that they need to get the votes to pass any budget compromise through both

Special thanks are due to the many school board members, administrators and concerned parents who spoke out in favor of public schools at those hearings.



Representatives from the Oak Creek-Franklin Joint School District testify at the JFC budget hearing in Oak Creek on April 10.

houses to get it to the governor's desk. At this point, they're not counting on any Democratic votes to pass the budget bill, so they will have to muster the needed votes from within their caucuses.

For that reason, it is likely all non-fiscal policy items will be removed from the budget bill. The issue of whether to accept federal Medicaid expansion funding, something on which the governor relied to balance his budget proposal, remains politically thorny.

Reaching a compromise, although challenging, will be important. Legislative leaders are quick to point out that they want to pass a budget the governor won't veto in its entirety, an option Evers says he would only use as a last resort, but which he has not taken completely off the table. Both sides recognize it would be in the best interest of the state to avoid this situation. The first step, however, is to get a budget through both houses of the Legislature, which will provide enough challenges by itself.

■ So, what is likely to pass?

The governor's recommendations with respect to K-12 education tend to fall into two basic categories: those that aim to provide school districts with additional resources and those that reallocate existing

state property tax relief dollars.

An example of providing schools with additional resources is the proposal to adjust per-pupil revenue limits by \$200 in the first year and \$204 in the second year. An example of reallocating existing dollars is the proposal to transfer the funding currently allocated to the school levy tax credit and the first dollar tax credit into the appropriation for general equalization aid and distribute that money to schools rather than to individual property owners as a credit on property tax bills.

It appears likely lawmakers will approve additional resources for schools, but not at a level the governor proposed. The \$200 and \$204 increases in per-pupil resources are frequently mentioned by lawmakers as reasonable and there is also support for additional funding to address mental health concerns.

Some increase in special education funding is also under discussion although likely much more modest than the increase proposed by the governor. Lawmakers frequently cite two reasons for this: federal maintenance of effort requirements that would permanently lock in any state increase in special education funding and a concern that providing additional special education aid would not necessarily result in an increase of special education services, as these are governed by the individualized

education plans of students with special needs.

Support for the governor's "Fair Funding" proposal that would reallocate funding currently used for state property tax credits into general equalization aid and make other changes appears far less likely.

■ Answers will come soon

The JFC will likely begin taking executive session votes on budget provisions during the first full week in May. While these executive sessions are open to the public, no testimony or commentary from the public or agency officials is taken.

The committee is aided in this decision-making process by the staff of the non-partisan Legislative Fiscal Bureau, an agency created by the Legislature. For the larger, more consequential budget items or issues, the LFB typically prepares budget papers that summarize the program under consideration and suggest a variety of options for the committee to consider. These budget papers are often very instructive. As the DPI-related budget issue papers become available, we will share links to them through our Legislative Update blog.

Stay tuned. ■

Dan Rossmiller is the WASB Director of Government Relations; Chris Kulow is the WASB Government Relations Specialist.

Spring Workshops

Legal Roles & Responsibilities of School Boards, May 7-16, 2019

DINNER 6pm | **PROGRAM** 6:30-8:30pm (12 LOCATIONS)

To be effective leaders, school board members must be cognizant of their legal roles and responsibilities. In this workshop, an experienced WASB school attorney will take a deeper dive into the key areas of Wisconsin law, including:

- Open meetings
- Public records
- Conflicts of interest
- A board’s power and duties

Participants will gain a greater confidence in understanding the state and federal laws that directly impact service on a school board and how the implementation of those laws influences effective board governance. The workshops will provide a foundation for new school board members to begin learning their role and serve as a helpful refresher for experienced board members.

Visit WASB.org for more information and to register. Members are welcome to attend a workshop in any location. ■

SPRING WORKSHOPS

Tuesday, May 7 – CESA 1, Pewaukee; CESA 12, Ashland

Wednesday, May 8 – CESA 3, Fennimore; CESA 11, Turtle Lake

Thursday, May 9 – CESA 6, Oshkosh; CESA 10, Chippewa Falls

Tuesday, May 14 – CESA 4, West Salem; CESA 7, Green Bay

Wednesday, May 15 – CESA 5, Portage; CESA 8, Gillett

Thursday, May 16 – CESA 2, Whitewater; CESA 9, Tomahawk



SAVE THE DATE: [Equity Symposium and Summer Leadership Institute](#) | July 12 and 13, Red Lion Hotel Paper Valley, Appleton

Social media webinar added to library. On May 1, a new webinar on social media, on-line communications and email use by board members was recorded. *Visit the [webinar catalog page](#) to purchase the recording.*

Upcoming WASB Webinars

The WASB hosts a series of webinars throughout the year on legal, policy and other important school leadership topics.

Hiring Teachers

May 8, 1:30-2:30 pm

This presentation will inform you about the general process of hiring teachers, including following state requirements. It includes information about the purpose of position descriptions, posting vacancy notices, application forms, the interview process and reference checks. You will also learn about state and federal laws as they relate to employment discrimination.

Presenter: Bob Butler, Associate Executive Director and Staff Counsel

Annual and Special Meetings:

Notices, Procedures and Powers

June 12, 12-1 pm

This presentation will review the notice requirements for annual and special meetings, cover meeting agendas and procedures and discuss the division of powers between the annual meeting and the school board in common school districts.

Presenter: Barry Forbes, Associate Executive Director and Staff Counsel

Please note: *These webinars, and all previous ones, are recorded and available on demand. WASB members can purchase any webinar and watch when their schedule allows. Upcoming live and pre-recorded webinars are listed on the [webinar catalog page](#) at WASB.org. In addition, links to past webinars are available in the [Policy Resources Guide](#).*



Grant School, Turtle Lake School District, 1932-33

Scott Mikesh Returns to the WASB as Legal and Policy Services Counsel

Scott Mikesh is again a member of the WASB legal services team. Scott initially worked for the WASB from 2004 to 2011 before becoming a human resources director for a school district in Iowa. He most recently served as the human resources and legal services director in the Kaukauna School District. Scott graduated from the University of Wisconsin Law School and received his undergraduate degree from Wartburg College. □

REMINDER: Help the WASB Prepare for Centennial

In 2020-21, the WASB will celebrate its centennial and the centennial of the Wisconsin State Education Convention. Share interesting images from your school district's history via email or send copies (not originals) via regular mail. Selected images will be used on the WASB website, the *Wisconsin School News* magazine and signage at the 100th annual convention in January 2021. Images will be selected based on quality and variety. **Deadline to submit photos is July 31, 2019.**



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Don't Sign That Contract!

Be sure to read the small print...

A contractor is building an addition onto your high school. One of the employees of the contractor starts a fire that damages the project and causes smoke damage throughout the building. Who pays for that loss?

For far too many districts today, the contracts they signed would require the district's insurance to respond first. But it should not be that way. Before signing a contract, school district administrators and board members need to be familiar with important risk management terms to ensure that third-parties, and general contractors in particular, are not unnecessarily transferring a significant portion of their risk to the school district.

Effective risk management should be an important goal in any contract negotiation. This is particularly true when the contract could expose the parties to potential third-party claims for bodily injury and property damage.

In the last few years, we've seen an increasing number of contracts between school districts and vendors — general contractors in particular — which are effectively mitigating the risk for the third party by transferring as much of the risk as possible to the school districts. Contractors are building beautiful school buildings, but they are putting terms within their contracts that school districts in Wisconsin should not agree to.

The important contractual terms that have major implications on risk management include broad-form indemnification clause, additional insured status, primary and noncontributory coverage requirements, and maximizing available limits of liability. It is essential to understand what these terms mean and how they impact who pays first on a claim. Always have your legal counsel review and help prepare a contract for you. Be wary if a contractor tells you, "This is a standard contract; this is what everyone uses." That is not necessarily accurate.

■ Broad Indemnification Clause

Broad indemnification is a commonly used contractual risk management tool requirement and is a part of the indemnification clause. Contractual indemnification provisions should be written as broadly as possible for the benefit of your school. They should explicitly obligate the contractor to:

1. Indemnify and hold the school harmless in the event of any loss or damage to a third party arising out of the performance of the contract.
2. Provide a complete defense to your school against any claims by third parties, including sub-contractors.

Insurance coverage does not replace the need for an indemnification clause. The contract should

clearly state that the indemnification requirement is a separate, distinct and independent legal obligation from the requirement to provide insurance coverage. Indemnification provisions shift financial responsibility for legal liability from your school to the contractor, regardless of whether insurance coverage is available for that liability. As a result, an indemnification provision is an essential risk management tool that provides protection in case the contractor fails to obtain the insurance required by the contract. In most contracts we see today, the opposite is happening. The contractor is shifting the legal liability responsibility to the district.

■ Additional Insured Status

Simply requiring the contractor to have liability insurance only provides insurance coverage to them; there is no insurance coverage under that policy for your district. However, if the school district is named as an "additional insured" under the contractor's liability policy, your district will now be able to access the insurance coverage available under that policy.

"Additional insured" requirements are common in construction contracts. However, it should be school districts that are named as an additional insured on the contractor's policy. The contractor should NOT be named as an additional insured on the district's policy,

Effective risk management should be an important goal in any contract negotiation.

READ YOUR CONTRACT for “completed operations” language and how that pertains to the contract.



which is what some contractors are requesting. When named, the contractor’s insurer has a duty to defend claims made against the district that are within the scope of coverage provided by the policy.

To obtain additional insured status:

- The contract must have a provision requiring the contractor to designate your district as an additional insured under its liability insurance policy.
- The contractor must have an endorsement to the policy that expressly extends coverage under that policy to your district as an additional insured.
- The contractor must have or obtain an endorsement to the relevant liability policy that either specifically identifies your district by name as an additional insured, provides additional insured status based upon the relationship of the parties, or provides additional insured status on a “broad form” basis.

Remember, the contractor is doing work on your behalf. You hired them and the terms should be in the district’s favor.

The Association of General Contractors has sample contracts to use as a framework, but keep in mind that these are designed to protect the contractor. It is important that the contract and policy include the corresponding language that will ensure your district’s ability to access the coverage under the contractor’s liability policy.

It is also important to understand that designation as an additional insured does not increase the limits of liability available for claims covered by the applicable policy. In the event of a claim against your district and the contractor that is covered under the

policy, both parties share the available limits. Be aware that the additional insured status terminates typically when the contractor completes the work required under the contract. Read your contract for “completed operations” language and how that pertains to the contract.

■ Primary and Noncontributory Coverage

In the event of a covered loss, the two insurance policies are required to provide primary coverage to your school district, and the insurers will separately negotiate the appropriate allocation of covered costs. The goal should be to shift all liability for a covered claim to the contractor’s insurer up to the required limits of its policy. Your district will need to specify that insurance coverage under the contractor’s policy is provided on a “primary and noncontributory” basis.

“Primary and noncontributory” does not mean your district’s liability policy will never respond to a potential claim. “Primary and noncontributory” in this definition means that your district’s liability policy will not need to contribute on a pro rata or equal-shares basis to a third-party claim when covered as an additional insured under the contractor’s policy. This provision establishes a priority of insurance coverage when two policies cover the same insured for the same loss, requires the contractor’s insurance policy to respond first up to its limits of liability, and preserves your district’s own liability policy as additional coverage in the event the limits of the first policy are exhausted.

Because this requires that the contractor’s insurance company agree to forgo any right of the contribution it may have against the district’s insurer, it is essential that the contractor’s insurance policy contain

appropriate provisions reflecting this waiver of contribution. The Insurance Services Office Inc., which develops standard policy forms and files information with state regulators on behalf of insurance companies, introduced an endorsement that provides coverage to an additional insured on a primary and noncontributory basis, subject to certain conditions, as follows:

“This insurance is primary to, and will not seek contribution from, any other insurance available to an additional insured under this endorsement provided that: a) the additional insured is a named insured under such other insurance; and b) you are required by a written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.”

Currently, contractors are often naming the school district’s insurance as primary. To protect your district and taxpayers, the reverse should be happening. The contractor’s insurance should be named as the primary insurance. With this in place, the contractor’s insurer has the initial obligation to defend and indemnify your district for a covered claim up to the available limits of liability of the policy, and your district’s insurance coverage becomes additional insurance in the event the liability imposed exceeds the limits.

■ Maximize Available Limits of Liability

When you have required the contractor to obtain insurance naming your district as an additional insured on a primary and noncontributory basis, the risk remains that your contractor’s policy limits could be too low

CONTRACT LANGUAGE that maximizes the limits of liability available to your district under the contractor’s insurance policy is another important risk transfer tool.

to absorb the potential liability exposure. Consequently, contract language that maximizes the limits of liability available to your district under the contractor’s insurance policy is another important risk transfer tool. This language specifies the dollar limits your contractor’s policy must have, including an appropriate amount of insurance as a minimum.

By specifying a minimum amount of insurance coverage rather than a stated dollar amount, the contract sets a floor for the limits of liability that the contractor must carry while also forecasting situations in which the contractor already has liability insurance with limits in excess of the required minimum.

By setting a floor and leaving the ceiling open, you may have increased your district’s coverage as an additional insured to the contractor’s full policy limit.

Additional Terms

There are other terms to be familiar with, such as waivers of subrogation and hold harmless language. These terms have specific meanings when requested by the contractor to be added to the district’s policy. They are not in the best interest of the school district. In addition, below are provisions that need to be included in every contract:

1. Ensure that the contract explicitly establishes the parties’ respective status under the law and that the contractor is an independent contractor and is not being “hired” by the district as an employee.
2. Ensure that the contract explicitly establishes that the contractor has worker’s compensation insurance and will comply with all state and federal insurance requirements (for example, the Affordable

Care Act or unemployment compensation).

3. Ensure that the contract explicitly establishes that the contractor will comply with the district’s requests for background checks of the contractor’s employees or subcontractors and that the district has the ability to remove anyone from the job site in accordance with state and federal law.
4. The contractor agrees not to discriminate against employees or vendors on any basis prohibited underneath state and federal law.

The other area of insurance to consider is the builder’s risk policy for that project. Some of the contractors will include the builder’s risk policy with the project, but is the structure risky and does language in that policy protect your district or the contractor? When possible, place the builder’s risk policy with the existing property insurance company so there are fewer

chances for a gap in coverage or two different carriers battling it out as to who is going to pay the claim. It is in your district’s best interest to keep a claim out of your loss experience when someone else’s negligence, like the contractor’s, causes a loss. ■

The WASB Legal Services provides contract review as a service provided to their members. Contact Bob Butler, WASB associate executive director and staff counsel, for further information related to this service.

If you would like additional information on this topic, please reach out to:

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Heightened Enforcement Emphasis on Seclusion and Physical Restraint

In January 2019, the U.S. Department of Education (DOE) announced an initiative to address the inappropriate use of seclusion and physical restraint in districts. The initiative involves the DOE's Office for Civil Rights (OCR) and Office of Special Education and Rehabilitative Services (OSERS). Wisconsin districts have focused on this issue since 2013 when Wis. Stat. s. 118.305 ("the statute") was enacted, which prohibits the use of seclusion or physical restraint in public schools, except when certain conditions apply. No federal law currently exists regulating the use of seclusion and physical restraint. However, the "All Students Safe Act" was introduced in November 2018 and sought to prohibit seclusion and limit the use of physical restraint. The bill is expected to be reintroduced in Congress in 2019.

While the state statute established criteria for the use of seclusion and physical restraint, its broad provisions have been interpreted and applied by districts inconsistently, especially in the context of students with disabilities. Because the appropriate application of Wisconsin's seclusion and physical restraint law is subject to a case-by-case analysis, it is important for districts to have a clear understanding of how the statute has been interpreted and enforced, particularly in light of the

OCR's recent focus on this issue. While the statute has not been addressed in any Wisconsin or federal court decisions, the Wisconsin Department of Public Instruction (DPI) regularly issues Individuals with Disabilities Education Act (IDEA) complaint decisions on seclusion and physical restraint which provide useful direction to districts. This *Legal Comment* will review DOE's enforcement initiative, the statute, and recent DPI decisions regarding students with disabilities.

■ The DOE Initiative

The DOE initiative includes three components: compliance reviews, data collection and support for districts. The OCR's 12 regional offices will conduct compliance reviews of districts' inappropriate use of seclusion and physical restraint, and the effect of such practices on districts' obligations to provide a free appropriate public education under IDEA to students with disabilities.

A compliance review is an OCR-initiated case that targets compliance problems that are particularly acute, national in scope or newly emerging. Compliance reviews may involve reviewing seclusion and physical restraint reports and interviewing district employees. Upon conducting reviews, the OCR will correct noncompliance through

resolution agreements with districts. The OCR has not provided any information about which districts will be reviewed. The OCR will also conduct data quality reviews and work with districts to review and improve seclusion and physical restraint data submitted as part of the Civil Rights Data Collection. The OCR will provide technical assistance to districts on data quality to ensure districts are collecting and reporting accurate data on seclusion and physical restraint.

Finally, the OCR and OSERS will partner to provide support to districts in a number of ways including: providing technical assistance on the legal requirements of Section 504 of the Rehabilitation Act relating to the use of seclusion and physical restraint; providing technical assistance in helping districts understand how Section 504, Title II of the Americans with Disabilities Act and the IDEA inform the development and implementation of policies governing the use of seclusion and physical restraint; ensuring districts have access to technical assistance and resources as they work to establish and enhance environments with increased interventions and supports, and less seclusion and physical restraint; and planning and conducting webinars related to the use of appropriate interventions for all students.

It is critical for districts to train staff, especially those working with students with disabilities, concerning the statutory requirements governing the use of seclusion and physical restraint and reporting requirements.

■ Wisconsin's Seclusion and Physical Restraint Law

The statute prohibits a “covered individual” from engaging in the seclusion or physical restraint of a student at school unless specific circumstances exist. The term “covered individual” includes those who are employed by a district, under contract with a district, employed by a person under contract with a district, or engaged in student teaching in a district. The term does not include school board members, volunteers or law enforcement officers (including school liaison officers) working in the district. The statute covers the day-to-day operations of a school and any school-related activities, including field trips, sporting events, after-school clubs and transportation.

“Seclusion” is defined as the “involuntary confinement of a pupil, apart from other pupils, in a room or area from which the pupil is physically prevented from leaving” and may only be used if all of the following apply: the pupil’s behavior presents a clear, present and imminent risk to the physical safety of the student or others and is the least restrictive intervention feasible; a covered individual maintains constant supervision of the pupil; the seclusion room is free of objects or fixtures that may injure the pupil; the pupil has access to bathroom facilities, drinking water, necessary medication and regularly scheduled meals; the seclusion lasts only as long as necessary to resolve the risk; and no door connecting the seclusion room or area is capable of being locked.

“Physical restraint” is defined as “a restriction that immobilizes or reduces the ability of a pupil to freely move the pupil’s torso, arms, legs or head” and may only be used if all of the following are present: the pupil’s behavior presents a clear, present and imminent risk to the physical safety of the pupil or others and is the least restrictive intervention feasible; there are no medical contraindications to its use; the degree of force used and its duration

do not exceed the duration reasonably necessary to resolve the risk; the restraint does not constitute “corporal punishment;” mechanical or chemical restraints are not used; and the restraining technique used gives adequate protection to the pupil’s head, does not cause compression on the pupil’s chest, lungs, sternum, diaphragm, back or abdomen and does not place pressure on the pupil’s neck or throat, an artery, or the back of a pupil’s head or neck, or otherwise obstruct the pupil’s circulation or breathing.

The statute also contains a specific training requirement for covered individuals and requires that at least one covered individual has received that training at each school. A covered individual who has not received this training may use physical restraint on a pupil at school only in an emergency and only if a covered individual who has received the training is not immediately available due to the unforeseen nature of the emergency.

Whenever seclusion or physical restraint is used on a pupil at school (by a covered individual or any other individual, including law enforcement), the school principal or designee must, as soon as practicable, but no later than one business day after the incident, notify the pupil’s parent of the incident and of the availability of the written report generated because of the incident. The written report must be prepared within two business days after the incident in consultation with the individuals present during the incident. It must contain the pupil’s name; the date, time and duration of the use of seclusion or physical restraint; a description of the incident, including a description of the actions of the pupil before, during and after the incident; and the names and titles of the covered individuals present during the incident. This report must be retained by the school and made available for review by the pupil’s parent within three business days of the incident. By Sept. 1 of each year, the principal of each school must submit a report to the school board

containing the number of incidents of seclusion and physical restraint and the number of students involved, including how many were students with disabilities.

While the statute governs the use of seclusion and physical restraint on all regular education and special education students, there are provisions in the statute specific to students with disabilities that direct a student’s Individualized Education Program (IEP) team to both anticipate the use of seclusion and/or physical restraint and respond to it. If a student’s IEP team reasonably anticipates that seclusion and/or physical restraint may be used, it must be explicitly stated in the student’s IEP, and the IEP must identify appropriate positive behavioral interventions, supports and strategies to address the behavior of concern based on a functional behavioral assessment. Further, the first time seclusion or physical restraint is used, the student’s IEP team must meet as soon as practicable after the incident to review and revise the IEP, if necessary, to ensure it contains appropriate positive behavioral interventions and supports.

It is critical for districts to train staff, especially those working with students with disabilities, concerning the statutory requirements governing the use of seclusion and physical restraint and reporting requirements. In particular, staff should understand what actions constitute seclusion and/or physical restraint, ensure that neither is used unless there is a clear, present, imminent risk of the student’s safety or the safety of others, and limit the duration of the seclusion and/or physical restraint to the time needed to resolve the risk. Further, staff should know that when seclusion and/or physical restraint is used, the IEP team must review the IEP and revise it if necessary to ensure that it includes the use of seclusion and/or physical restraint, as well as positive behavioral interventions and strategies based on a functional behavior assessment that works to limit the need for seclusion and physical restraint.

■ DPI's Decisions ...

► IDEA Complaint Decision 18-089.

A student attempted to jump over a railing and down a flight of stairs. A staff member, whose training in nonviolent crisis intervention techniques was not current, restrained the student. The student struck and kicked the staff member. An administrator intervened and was also struck. Shortly thereafter, additional staff members who were not trained in nonviolent crisis intervention techniques arrived and successfully restrained the student by holding the student's arms to his side and attempted to escort the student to a nearby empty classroom. The student attempted to strike the staff members again. Losing their balance, the staff members and student fell to the floor, resulting in visible injuries to the student.

Due to the nature and severity of the incident, the DPI determined that it was permissible under the emergency exception to the law for the untrained staff members to intervene due to the imminent threat of safety to the student and others. However, the DPI stated that they should have been more careful and used a proper restraint when transporting the student to the nearby classroom. The statute does not expressly prohibit holding a student's arms to his sides, but some nonviolent crisis intervention training methods use a transport restraint technique whereby the student's arms are not placed to the student's sides, but rather are held across the body of the staff member performing the restraint. This makes it less likely that a student will fall during transport and be injured, as occurred in this case.

While the district notified the parent of the incident and use of

restraint that same day, it failed to notify the parent that a written report would be available and that the parent had the right to review the report. The DPI ordered the district to track the expiration date of each staff member's nonviolent crisis intervention training and concluded that the district did not follow the student's IEP during the incident, which required the use of positive behavioral supports such as letting the student have space to cool down and bringing in a neutral staff member to redirect the student.¹

► IDEA Complaint Decision 18-056.

A student engaged in behavior that created an imminent risk to the physical safety of the student and others while in the cafeteria. The student was properly restrained and walked to an administrative conference room. The student laid down on the floor of the conference room and would not move. At that point, the administrator slid the student into the administrator's office and closed the door.

The DPI concluded that sliding the student into the office was an improper restraint technique. It also determined that placing the student in the office was an improper seclusion because it was not free of objects that could injure the student and the door was capable of being locked with a key. The DPI was also critical of the district because it did not notify the student's parent about the incident or draft a written report.²

► IDEA Complaint Decision 17-070.

A substitute aide was caught on camera using some form of neck restraint on a student in the hallway. At the time of the restraint, the student's behavior did not present an imminent risk to the physical safety of the student or others. The untrained substitute aide placed

pressure on the student's neck, which is expressly prohibited by the statute. The student's parent was notified of the restraint by the district at the end of the day, but was not notified of the right to review the written report within three business days. The parent requested the camera footage, which the district did not provide until the next school year, nearly four months later.

The DPI found numerous violations by the district. First, the restraint was improperly performed by an untrained substitute aide when the student posed no risk to physical safety of the student or others. In addition, the restraint was improperly documented, the parents were improperly informed, and the district did not properly respond to the parent's request for the camera footage since it did not provide the footage before the student's next IEP meeting. The DPI required the district to create a corrective action plan that included, among other things, proper training for staff, including a plan for training substitutes and new employees.³

► IDEA Complaint Decision 17-009.

A student with a disability came to school and refused to go to the classroom. When the student tried to run out of the building, two staff members used an appropriate technique to escort the student to a quiet room. The student was not secluded in the quiet room because the door was not blocked, and the student could leave at any time. However, the district did not convene an IEP team meeting to review the student's IEP to ensure it contained appropriate positive behavioral interventions and supports and to determine whether the use of restraint was reasonably anticipated in the future. Restraint

Because the appropriate application of Wisconsin's seclusion and physical restraint law is subject to a case-by-case analysis, it is important for districts to have a clear understanding of how the statute has been interpreted and enforced.

and/or seclusion was used on the student two additional times, but the student's IEP was never revised to reflect it.

The DPI held that the district violated the statute because, even though most incidents were properly documented and the parent properly informed, the IEP team did not meet as soon as possible after the first incident to review the IEP to develop strategies to address the behavior and revise the IEP as necessary.⁴

Conclusion

Districts should review their seclusion and physical restraint policies and their reporting procedures to ensure compliance with the statute, including data reporting requirements. Districts should also be aware that even if a district complies with the statute, the

repeated use of seclusion and restraint on a student with a disability can result in a violation of the district's obligation to provide the student a free and appropriate public education. Accordingly, districts should immediately review their practices and procedures in addressing students with behavioral challenges and ensure that such students are provided positive behavioral supports and interventions targeted at minimizing the need for seclusion and physical restraint. Finally, as part of the OCR's compliance process, districts may receive a letter of notification from the OCR initiating a compliance review of district practices. Upon receipt and prior to responding, districts should contact both their insurer and legal counsel. ■

End Notes

This Legal Comment was written by Michael J. Julka, Steven C. Zach, M. Tess O'Brien-Heinzen, and Brian P. Goodman.

For additional information on related topics, see Wisconsin School News "Update on Seclusion and Physical Restraint" (December 2015), "Seclusion and Restraint" (February 2013), and "Using Force to Maintain Student Discipline" (February 1996).

1. IDEA Complaint Decision 18-089 (1/29/19).
2. IDEA Complaint Decision 18-056 (8/21/18).
3. IDEA Complaint Decision 17-070 (12/15/17).
4. IDEA Complaint Decision 17-009 (4/7/16).

Legal Comment is designed to provide authoritative general information, with commentary, as a service to WASB members. It should not be relied upon as legal advice. If required, legal advice regarding this topic should be obtained from district legal counsel.



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We provide legal counsel on a full range of issues that school and higher education institution clients confront on a regular basis.

► von Briesen & Roper, s.c.

414-287-1122
aphillips@vonbriesen.com
vonbriesen.com

We're dedicated to ingenuity and creativity in helping schools solve their most complex legal and organizational problems. Challenge us to help you challenge the status quo.

School/Community Research

► School Perceptions, LLC

262-299-0329
info@schoolperceptions.com
schoolperceptions.com

An independent research firm specializing in conducting surveys for public and private schools, educational service agencies, communities and other state-level organizations.

Transportation

► Dairyland Buses, Inc.

262-544-8181
mjordan@ridesta.com
ridesta.com

School bus contracting provider, managed contracts, training, maintenance.



SUPPORTING, PROMOTING AND ADVANCING PUBLIC EDUCATION



UPCOMING PROGRAMS



SPRING WORKSHOPS

MAY 7-16, 2019

DATES & LOCATIONS VARY

6 pm - Dinner
6:30-8:30 pm - Workshop:
*Legal Roles & Responsibilities
of School Boards*



EQUITY SYMPOSIUM & SUMMER LEADERSHIP INSTITUTE

JULY 12 & 13, 2019

RED LION HOTEL PAPER VALLEY
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