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Official publication of the Wisconsin Association of School Boards, Inc.

COVID-19

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CHILD CARE

FROM

Challenge
to Crisis





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Educators' Support for Boards Rises in Pandemic

A July Education Week survey of 1,355 educators about the government response to the pandemic found declines in support for federal leaders and increases for state and local leaders.

School boards saw gains in support over the past few months, with 27% of educators viewing them more favorably, compared with 19% less favorably.

Still, this was a decline from a similar April survey, in which 33% of educators approved of their school board's handling of the pandemic, with 10% disapproving.

The biggest drops in support were for U.S. Secretary of Education Betsy DeVos. Two-thirds of educators had a less favorable view of her due to the pandemic, compared to 4% with a more favorable view. □

'Homework Gap' Affects 16.9M Students

One divide that educators often see is called the "homework gap," or the difference between students who have high-speed internet access and those who do not.

Education Dive reported on a study that found 16.9 million students lack this access. In Wisconsin, 22% of households — about 300,000 students — do not have broadband internet. That's slightly more than in Minnesota (19%) and less than Iowa and Michigan (24%).

As building closures require more children to learn at home, districts are taking steps to remedy this gap, including by bringing mobile Wi-Fi

to students. Laying fiber networks is expensive, though, and some states have formed consortia to lay them.

The report recommends Congress spend \$6.8 billion to close the homework gap.

In July, Wisconsin Gov. Tony Evers created the Governor's Task Force on Broadband Access with the goal of expanding high-speed internet access statewide.

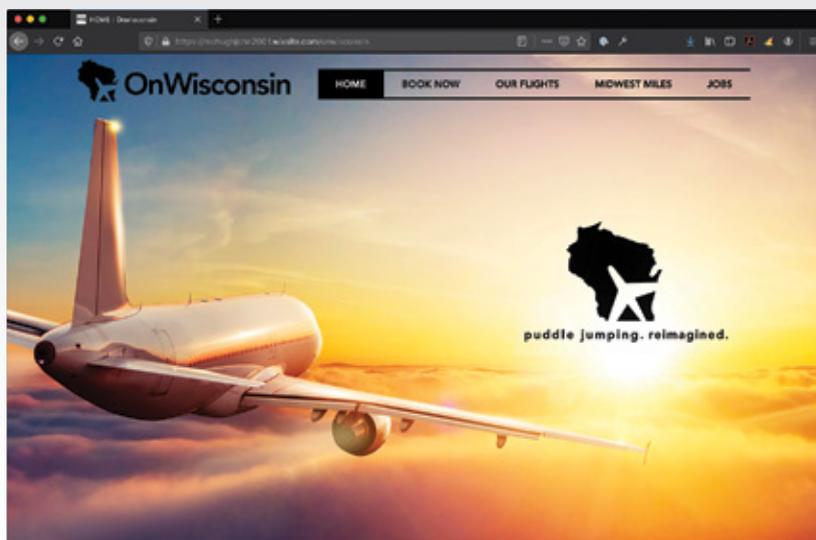
The lack of broadband access is similar to recent information released by the Wisconsin Educational Media & Technology Association, which was noted in the August 2020 *Wisconsin School News*. □

STAT OF THE MONTH

22%

Percentage of households in Wisconsin that do not have broadband internet. *Source: Alliance for Excellent Education*

Big Foot Students Rank 6th in Web Design Contest



Two graduating seniors from Big Foot High School in Walworth County took sixth place in a national Future Business Leaders of America competition for their mock airline website and seven-minute explanatory video.

John McHugh and Owen Ruhl spent months planning and designing their website, which ranked first in a regional competition. They learned about their finish in the national event during a July 15 virtual ceremony.

"It was just a huge accomplishment for me," Ruhl told the Lake Geneva Regional News. "We worked so hard on the website, so it was really awesome." □



Getting the Equity Conversation Moving

Although our routines and calendars have been upended, classes are back in session. You don't need me to tell you that it's going to be a school year like no other.

While there is much beyond our control, I'm proud of how you have risen to the challenge, creating reopening plans that fit your communities' circumstances and putting those plans into action, adapting as needed. I know you're going to keep doing what you've always done — educating our students and serving our communities.

Our challenging summer has laid bare the equity needs of our students. In addition to the demands of the pandemic, racial justice protests forced us to reconsider how some of our collective actions perpetuate racial disparities. As we outlined in last month's Viewpoint, our association needs to step up to ensure that equity is guiding our work for the sake of all students and that we're helping to foster conversations about equity among school board members.

We started by hosting an online forum in July with the Brown Deer and Sun Prairie Area school districts to learn more about their equity initiatives, particularly as they relate to disproportionality in student outcomes. In September, we're continuing the online discussion with the Middleton-Cross Plains Area

School District to talk about their equity initiatives. We hope you'll take some time to listen to the July recording and join us in September for these complimentary webinars.

Meanwhile, we're also closely following the conversations in districts about their interactions with law enforcement. Given how important this topic is for racial equity in our schools, we're setting up a complimentary online workshop in early September to focus on the intersection of equity and law enforcement in our buildings. It will be followed by a webinar later in the month on the relevant laws and legal considerations.

We're keeping equity at the forefront of our discussions as we add resources to the WASB webpage dedicated to the COVID-19 pandemic response, and we're implementing a Title IX training for school districts that is, at its heart, an equity issue for students and staff.

We're elevating these topics with the WASB Connection Podcast, which featured discussions with three board members of color in June and an overview of the Title IX changes in July. Visit our website or wherever you download podcasts to listen at your convenience.

As the fall gets into full swing, watch for more online legal and governance workshops and webinars

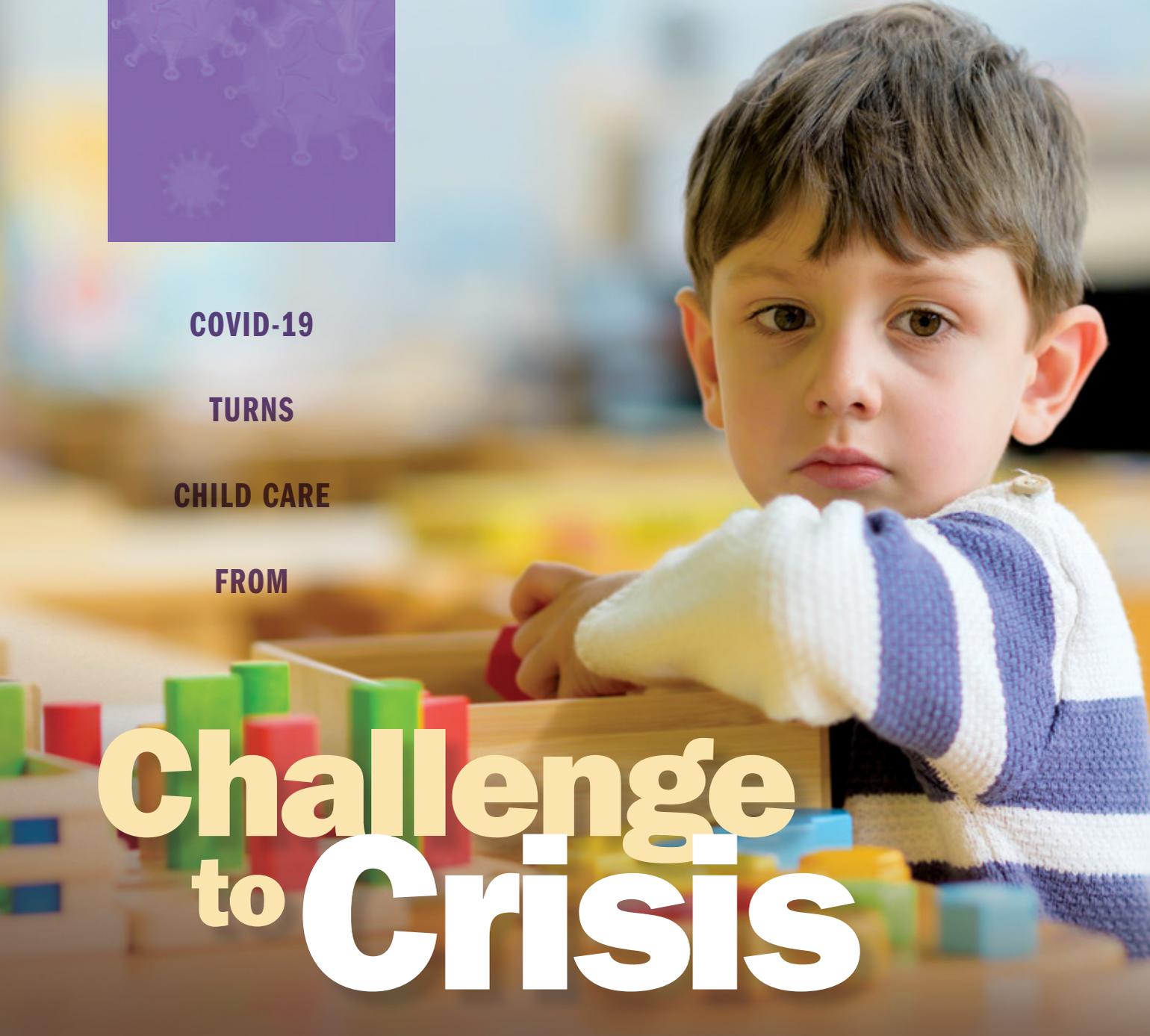
to be announced. In addition to those I've already mentioned, there will be more topics covered. We also started a monthly video update featuring WASB attorneys and government relations staff to keep you informed on the latest legal and advocacy news.

The Fall Regional Meetings will go virtual this year as well. A highlight of our year, we look forward to personally engaging with members and hearing the conversations as we elect directors and update you on our initiatives. Although the format is different this year, our focus remains the same and both our staff and directors look forward to connecting with you online. With the new format, we hope to engage with an even greater number of members and get more feedback than usual.

Finally, later this month, you'll start seeing information about School Board Week, held this year from Oct. 4-10. School Board Week is a chance to collect some well-deserved accolades while informing the public about the vital work you do. To help districts recognize their school boards, a planning kit is available on the WASB website (under Communication Services). It includes a sample press release, recognition activities and more.

Thank you for all that you do to serve the students of Wisconsin. ■

In addition to the demands of the pandemic, racial justice protests forced us to reconsider how some of our collective actions perpetuate racial disparities.



COVID-19

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CHILD CARE

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Challenge to Crisis

When the School District of Amery surveyed the demand for a district-run, child-care center in 2015, it wasn't surprised to find itself in a child-care desert. They opened a center that fall and, within a few months, a waitlist formed in this small district about 70 miles northwest of Eau Claire.

Even in a normal year, about half of Wisconsinites — 70% of those in rural areas — live in a child-care desert. This is not a normal year.

Many districts cannot open safely due to the pandemic and are protecting their students, families and staff by delaying their physical re-opening or opening part-time.

This is virtually certain to exacerbate the state's child-care shortage, says Ruth Schmidt, executive director of the Wisconsin Early Childhood Association.

Moreover, many child-care providers have closed or lost capacity. As of early August, Wisconsin's open

child-care programs are operating at 25% to 50% of capacity.

Even where child-care capacity exists, working families living in districts that aren't re-opening will face new costs.

"It is hard to imagine a more catastrophic situation," Schmidt says.

School districts did not cause the coming child-care crisis, but they can be part of the solution.

"The very first thing that I honestly believe every district should be

Even in normalcy, child-care availability is important to a district.

Now, with reopening in doubt in districts across Wisconsin, that connection will be front and center.

doing is sitting down and having conversations with the child-care programs in their community,” Schmidt says. “School districts need to know what’s available and how their decisions affect capacity of care in their communities.”

The loss of child-care capacity and increased demand would stress a healthy system. It may do worse to an ailing one.

■ A fragile industry

Especially in rural areas, the child-care industry’s razor-thin margins even before the pandemic had pushed many providers out of business, Schmidt says. This is a big part of why more than two in three rural Wisconsinites live in a child-care desert.

“In the last decade alone, Wisconsin lost 9% of our group child care and 70% of our family child-care programs,” she says. When COVID-19 hit Wisconsin, child-care providers were recognized as a vital link for children of essential workers.

But the pandemic also punished a fragile industry.

Parents now working from home

opted to keep their children safe there, Schmidt says, while parents furloughed or newly unemployed due to business closures opted to keep their children home as well.

“Operating at 25% or even 50% of capacity serving families of essential workers was just not sustainable,” she says.

The outlook is little improved.

A survey from the National Association for the Education of Young Children, released July 13 in “Holding on Until Help Comes,” suggests that 80% of the nation’s regulated child-care capacity could be gone within a year.

Low- and medium-income families, already worst-hit by the pandemic, will be most challenged at the prospect of spending more on child care.

“A typical family of four with two kids in care spends close to half its household income on child care,” Schmidt says, and adding costs for school-age children may be untenable for many families.

In mid-August, Wisconsin’s child-care subsidy program, Wisconsin Shares, received authorization to pay

for child care during the day for school-aged children receiving virtual instruction.

These payments can also be authorized when parents work from home. Schmidt says this flexibility, though important, could raise other questions. Will there be enough funding for infants and toddlers if classrooms are filled with school-age students during the day? Will there be enough capacity?

Even in normalcy, child-care availability is important to a district. Now, with reopening in doubt in districts across Wisconsin, that connection will be front and center. The challenges are complex.

For many districts, reopening schools this fall will be less like flicking a switch and more like adjusting a dimmer. Even schools that are open will be taking steps to mitigate spread of the virus.

“It is likely that schools will need to move between all virtual learning, in-person or a hybrid approach depending on emergent COVID-19 challenges,” Schmidt says.

In many communities, young





Wisconsin school districts operate more than 180 child-care centers. Most of them serve children at least three or four years old, though many also accept infants and toddlers.

students ages 5 through 12 will not be in classrooms. Meanwhile, child-care availability will be limited and, in many communities, it may simply not exist.

The long-standing lack of child care has led many districts to step in and fill this void in recent years.

■ Planting an oasis

Wisconsin school districts operate more than 180 child-care centers. Most of them serve children at least three or four years old, though many also accept infants and toddlers.

District officials in Amery and Wausaukee, a town of about 600 in northeast Wisconsin, had similar advice for districts considering opening their own child-care operations.

In both cases, they put a team together that visited other in-school child-care operations. Though neither district runs a profit, they both say it's been a worthwhile endeavor.

Wausaukee started its center in part because a lack of local child care had become an enrollment issue. Parents who had to drive to nearby towns for child care had found it more convenient to enroll their children there, district superintendent Jared Deschane says.

"My advice would be that it works and it's a viable option if you have space in a building," says Deschane.

Nina Hutton, director of the Clubhouse Childcare Center in Amery, recommends finding staff who understand child care, including licensing requirements.

"I do believe having child care in the school is a huge benefit to the

community as a whole," she says.

It also helps prepare children for life as a student, easing the transition from child care to school.

Like many rural districts, Amery and Wausaukee are planning on opening for in-person schooling this fall. Still, COVID-19 will present new challenges. Amery will be overcoming logistical hurdles amid the social distancing measures that accompany the pandemic.

"I'm struggling to find staff," says Hutton. They'll have to use more space, too.

Even though they operate child-care centers, both districts said child-care challenges factored into their decision-making process around re-opening.

Hutton says Amery couldn't have offered care to school-age children because they don't have space.

Deschane says Wausaukee parents would have truly struggled to find child care. Their own operation, likewise, couldn't fill that entire gap.

"We had that discussion in March, that 'Oh my, gosh, do we leave daycare open?'" he says. "There was a fear that we'd have an influx of kids in daycare."

Many districts pay for child care — either at their own centers or with a partner — using Fund 80, a community development fund exempt from revenue limits. To levy for this fund next year, though, districts would have to include it in a budget, hold a hearing and approve it — all by Nov. 1.

This option might work best in cases where there are few or no child-care alternatives nearby. Opening your own child-care center isn't the only solution. Even some of those districts that use Fund 80 contract with outside providers instead of having child care in their schools. Schmidt outlines five other models.

■ Collaborative solutions

As of early August, state and federal relief, while welcomed, isn't meeting the education and child-care needs of the state's children.

"But there are many big and small models for effective collaboration," Schmidt says, such as:

- **4K models:** In the world of 4K, we know of many districts using community approaches for the delivery of 4K services. There are districts who use community approaches in part because they know robust early education in their communities is vital to the stability of their district's enrollment.
- **Broad community partnerships:** In several areas of the state, community partners including schools, early-care providers, workforce and economic development leaders, county and municipal government, business and philanthropy have been coming together to work on solutions ranging from starting a new early-learning program with creative financing solutions to launching shared service supports for child care.
- **Child-care innovations:** There are multiple examples of child-care programs that have, or are planning to, bring school-age siblings of children already enrolled in their programs in for virtual learning support. The challenge of these models is that parents will need to pay out of pocket for the care, thus making this an option primarily for families with means. One program is hiring a state-licensed kindergarten teacher to run a K-2 classroom to support virtual learning, paid for by parents but with full support of the school district.

■ **Out-of-school-time care:** Community-based, out-of-school-time programs are exploring ways to provide safe spaces for virtual learning for students in need in partnership or in collaboration with school districts. A primary focus for this work is finding ways to cover the cost of this option for low-income families.

■ **School/child-care collaborative virtual learning:** This type of model could be a licensed child-care or school-age program providing full-day care, including virtual learning support, directly in a school building. In this type of



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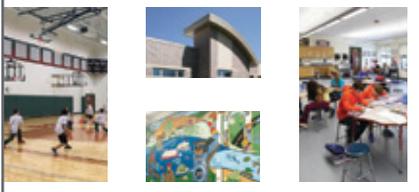
model, a school could provide space, food, cleaning, transportation and educational assistants while the child-care program would provide a full-time child-care teacher in the classroom for wraparound care.

One of the few certainties this fall is that parents will need more child-care options when they are least able to pay for them.

“In Wisconsin’s history, every time we’ve needed an increase in the Wisconsin Shares subsidy budget, our Legislature has done that,” Schmidt says, but the state will have its own extraordinary challenges.

When it comes to funding, it’s not clear whether more state subsidies or district tuition sharing will fill the gap. Schmidt is sure about one thing.

“There has to be a way to pay for this that is not just on the backs of parents.” ■



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Challenging ourselves to create deeper learning opportunities

Dr. Scott McLeod

Students come to school for a variety of reasons. They want to see their friends. They want to take advantage of electives, athletics, fine-arts programs and other curricular and extracurricular opportunities. They want to interact with caring teachers and feel part of a supportive community. They want to get a credential for college, their career or the military. Some of them come to school because it's the law,

or because their parents desperately need child care.

What about learning? Yes, that's a reason too... for some. But engagement data show that many of our students don't come to school because their learning is engaging. For most students, the reasons listed above tend to be much more compelling than the often-uninspiring learning tasks we put before them. However, many students are willing

to "play the game of school" and put up with the uninspiring learning in exchange for the other aspects of public education. In other words: "Most of my classes may be boring but I get to hang out with my friends, be in a club, participate in music and art, play a sport, see a couple of teachers that I like..."

One of the biggest challenges of this spring's remote learning was that most of the motivators were pared

away. There was little to no interaction with classmates; little to no interaction with caring educators; and no electives, extracurriculars or athletics. For many students, all that was left was uninspiring learning. Therefore, we shouldn't be surprised that our students — who generally had more control and autonomy over their learning decisions at home than they do at school — simply opted out. They decided that the exchange rate had shifted and they were no longer interested, regardless of our pleas (or punishments) to the contrary.

■ Shifting gears for the fall

Whether we're face-to-face, blended, hyflex (simultaneously combines face-to-face and online learning), fully online, or using a hybrid model this fall, we need to think deeply about what our students need from us. As much as we're worried about past or ongoing "learning loss," our students aren't going to learn if they're not first engaged. Accordingly, we need to pay keen attention to the motivators and demotivators that help foster student engagement. If all



The student who's sitting at home, trying to find a quiet place to concentrate and work, separated from his friends, juggling a variety of technologies and assignments, and struggling with internet access or parent support? He's going to be anxious, confused and disconnected.

■ What does this work look like?

Compared to traditional "teaching as transmission" instructional models, deeper learning opportunities tend to exhibit a wide variety of high-engagement characteristics. For instance, learning activities are often hands-on, active and applied. They may provide students with a lot of voice and choice while also creating instructional spaces in which students can be creative. These learning experiences often connect students in meaningful ways with outside experts, organizations and local communities — and foster their critical thinking and problem-solving skills as they work on authentic, real-world challenges. Students usually share, communicate and collaborate with others. They may even get a chance to dive deeper into curricular or outside interests and passions. And technology tools are invariably used in interesting ways to support the work.

If most of your educators are not already doing this kind of teaching,

As much as we're worried about past or ongoing "learning loss," our students aren't going to learn if they're not first engaged. Accordingly, we need to pay keen attention to the motivators and demotivators that help foster student engagement.

we're offering students is uninspiring learning, we're in a heap of trouble.

The student who's sitting in school at an isolated desk, wearing a mask, separated from her friends, facing forward with her feet on the floor, perhaps behind a plexiglass divider? She's going to be nervous, scared and disconnected. She's also probably disenchanted with her overall school experience compared to years past. Listening to teacher lectures and doing rote, low-level desk work isn't going to help her stay engaged.

He's also probably disenchanted with his overall school experience compared to years past. Sending home low-level factual recall and procedural regurgitation work isn't going to help him stay motivated.

We can do better than this. By designing high-engagement learning experiences for students, we will reap the motivational and learning benefits. We also should start with an equity lens for this work. All of our students — not just high-achieving learners — deserve deeper learning opportunities, even during a pandemic.

schools have access to a multitude of resources that can help them design higher-engagement activities for students. PBLWorks has a rich wealth of books, blog posts, templates, training opportunities and project exemplars to support inquiry- and project-based learning. Additionally, smaller-scale structures such as "genius hour" and passion projects can be lower-stakes entry points for teachers who may not be ready for the length and complexity of "gold standard" PBL projects.

The International Society for

Technology in Education Standards identifies a number of important roles that students can take, including empowered learner, innovative designer and global collaborator. The ISTE Standards also articulate ways that students can operate within those roles to accomplish essential competencies and learner outcomes.

Another resource that may be useful to your schools is the free 4 Shifts Protocol. We created this instructional redesign protocol to help educators shift existing lessons and units toward deeper learning, greater student agency, more authentic work and richer technology infusion. Each of the four sections of the protocol includes a number of concrete, specific “look fors” and “think abouts” for educators who wish to shift an instructional activity.

For instance, if teachers are redesigning around student agency, they might ask questions like, “Who selects how the content is learned?” or “Who is the primary user



of the technology?” Similarly, if they are redesigning around authentic, real-world work, they might ask questions like, “Does student work make a contribution to an audience beyond the classroom walls to the outside world?” or “Are students utilizing authentic, discipline-specific practices and processes?”

The protocol is being used by teachers, coaches and school systems around the world. Its rapid adoption has been driven by its flexible, non-judgmental approach for educators; its specificity; and its focus on student learning experiences rather than teacher behaviors.



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As school leaders, we need to keep thinking about the organizational investments that are necessary to foster deeper learning and higher student engagement — regardless of whether we are face-to-face, online or some blend of both.

about the organizational investments that are necessary to foster deeper learning and higher student engagement — regardless of whether we are face-to-face, online or some blend of both.

Students and families are going to pay the price if they are in school systems that haven't invested heavily in professional learning for educators to move toward higher engagement. They're also going to pay the price if they are in school systems that haven't figured out how to remedy device and internet bandwidth inequities, or if they're in school systems that prepared primarily for in-person learning and neglected online, blended and hybrid models.

Hopefully you were able to prepare for, and invest in, some of these directions. As you design for high-engagement student learning this fall, please stay in touch if I can be of support to you and your educators. ■

Dr. Scott McLeod is an associate professor of educational leadership at the University of Colorado Denver and was a keynote at the 2020 State Education Convention. He can be reached at dangerouslyirrelevant.org or @mcleod on Twitter. The free 4 Shifts Protocol is available at bit.ly/4shifts.

Looking back and looking forward

If teaching this fall looks like it did this past spring, no one should be surprised when we start to hear families pushing back on the kinds of learning tasks that we put in front of students. We had all summer to design something different and

better than textbooks, homework packets and electronic worksheets.

If day after day, week after week, we push out learning work that is low engagement and low on Bloom's taxonomy, our families are not going to give us the same grace they did this spring and we are going to start seeing kids opt out like they did before. As school leaders, we need to keep thinking

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Inclusion

Supporting gender minorities and non-binary students

Dr. Steve Baule

According to the Human Rights Campaign Foundation, 75% of transgender students said they feel unsafe at school¹ and more than half of transgender teachers face harassment in schools.² A recent USA Today poll identified that only 42% of those in the United States believe that non-binary options should exist

on forms or online profiles for gender identification.³

School districts need to ensure that all students are treated with courtesy and respect and school leaders should model courtesy and compassion as they deal with the children they are entrusted.

A key consideration when dealing

with non-binary and trans students is the issue of personal, often deeply held beliefs. Educators should not be forced to set their beliefs aside. However, within the scope of the school environment, educators need to be supportive of all children. Non-binary and trans students experience some of the highest levels of harassment and abuse.



SCHOOL DISTRICTS ACROSS THE STATE ARE TAKING ACTIVE MEASURES to help create and maintain positive and supportive learning environments for all students, including transgender students and students who do not conform to gender role stereotypes. This includes, but is not limited to, adopting and implementing district policies and procedures that specifically prohibit discrimination, harassment and bullying against students based on sexual orientation, gender identity, gender expression and nonconformity to gender role stereotypes and providing reasonable accommodations and support to such students as appropriate and deemed necessary.



Examples of related Wisconsin school district policies and procedures are available upon request from WASB Policy Services (tkimball@wasb.org).



It is important that we ensure all staff know how to support all students.

Whether or not they agree with a child's gender expression, it is important for educators to be kind, courteous and compassionate to every student.

One of the easiest things a school can do is provide students opportunities for a preferred name within the student information system. This would allow all students to provide their preferred name — whether as simple as Sam instead of Samuel or Christy instead of Mary Christine, or potentially more disparate like Sarah instead of John.

Many student information systems could also allow for more

than a binary choice for gender.⁴ That would provide teachers and coaches the ability to be more aware of non-binary or trans students prior to their arrival in the classroom. Although some reporting forms require gender reporting, those issues could be relatively easily addressed within the reporting process. Those same gender reporting and preferred name options can also be used for faculty and staff. We can all recall at least one teacher whose given name was something he or she never used except for professional items like

their district email.

Another way trans and non-binary students can be supported is by ensuring district and school policies allow students to access restrooms and locker rooms based upon their gender identity. Ensure everyone is allowed to wear clothing aligned with their gender identify. These two issues, beyond a person's choice of name and pronouns, have been identified by transgender and non-binary students as arising from a lack of perceived support from their schools.⁵

Another key issue is to ensure that staff members are provided with ade-

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LGBTQ+ students who plan to drop out of school most commonly report mental health and school safety concerns as their reasons for leaving.

quate professional development to ensure that they fully understand the issue of gender identity and how modern society has expanded beyond the binary approach. More than 10% of LGBTQ+ students heard negative remarks from teachers or other staff members about their gender expression. It is important that we ensure all staff know how to support all students. Unfortunately, nearly two-thirds of the time, students were simply told to ignore the issue — or nothing was done when they reported harassment.⁶

Having a clearly defined, comprehensive and enumerated anti-bullying and harassment policy will significantly reduce the chance that LGBTQ+ students will be harassed. Staff who have been trained on how to intervene based upon such a policy are more than five times more likely to assist with students. LGBTQ+ students are about a quarter less likely to experience victimization when a comprehensive policy is in place as opposed to a more generic policy. Currently, staff are less likely to intervene to support an LGBTQ+ student than another student when a trans or non-binary student is being harassed based upon gender expression.⁷

Adding student clubs, such as the Gay-Straight Alliance, allows for positive representation and support that can reduce harassment based upon gender expression by nearly 40%. Information on how to establish a GSA chapter can be found on the American Civil Liberties Union's website.⁸ Such a club can provide positive representations of LGBTQ+ individuals within the curriculum and the wider school environment. In many ways, this is no different than work done in past decades to ensure other minority and underrepresented groups are portrayed in a positive way within the school environment.

Positive representation of LGBTQ+ individuals within a school's curriculum can reduce negative remarks about transgender people and improve student safety.⁹ Ensure your school provides a safe and proactive method for LGBTQ+ students and staff to report harassment. Currently, the majority of harassed or bullied individuals don't report the issue. They worry nothing will be done, or that ineffective intervention might worsen the situation. About 20% of the LGBTQ+ students who did report an issue were advised to change their behavior — such as being told not to

act “so gay.”¹⁰ Schools must ensure that all students feel safe, and that reporting structures are effective and productive. School boards or senior leadership should receive regular updates on bullying and harassment issues — and how they have been investigated and resolved.

LGBTQ+ students who plan to drop out of school most commonly report mental health and school safety concerns as their reasons for leaving.¹¹ Schools need to ensure that such students are provided with the mental health resources and environment in which to flourish. Creating school information systems that allow a district to better identify LGBTQ+ students would create data flow to ensure that schools within the system do not have significant disparities among LGBTQ+ students in comparison with the student body as a whole.

While none of the aforementioned interventions are particularly burdensome for a school district, implementing these changes could significantly improve the school environment and mental health of LGBTQ+ students and, in fact, the educational experience for all students. ■

Dr. Steve Baule joined the Winona State University faculty in the summer of 2020 after 28 years in K-12 school systems in Illinois, Indiana and Iowa, and two years teaching in the University of Wisconsin System. He served as a public-school superintendent for 13 years prior to moving to the university level. Baule has written 10 books on a variety of educational and historical topics. He serves on the

editorial boards for two journals. He earned an advanced diversity and equity certificate while in the UW System. Dr. Baule teaches courses in leadership education. His scholarly interests focus on educational financial policies, educational technology, social-emotional learning, and the history of education. Baule led several efforts to improve student emotional health and reduce discipline issues.

The opinions set forth in this article are solely those of the author, are not legal advice and do not necessarily comport to represent the present status of state and federal law and court decisions in the 7th Circuit Court of Appeals regarding the items discussed herein. For additional legal information on this topic, visit the September 2020 Wisconsin School News webpage on the WASB website.



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EXCITED ABOUT Elementary SCIENCE

Students at **Bayfield Elementary School's** second-grade class look at the micro-environment on the forest floor.

Kids get excited about science. They are naturally curious about the world around them and appreciate opportunities to investigate it. I recently visited a kindergarten class at West Side Elementary School in Elkhorn that exemplified this inclination. They were tasked with making a cast that met certain requirements after reading a story about a girl who broke her arm. The students were immediately invested. When talking to them, it did not feel like they were working on a pretend situation. They wanted to help!

■ The problem

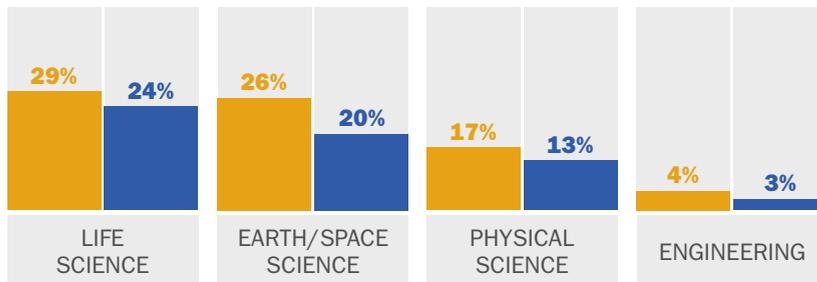
However, elementary science is not always a priority in Wisconsin districts. Many educators tell me their districts do not offer hands-on science for kindergarten through second grade, and there is no clear science scope and sequence in grades preK-5. Nationally, surveys suggest that time and support for elementary science continues to decrease.¹

For example, fewer elementary teachers feel well prepared to teach all science subjects and engineering (see chart on opposite page), which are part of the new Wisconsin Standards for Science. Almost half of elementary teachers report that they have received no professional learning in science the last three years, and most say their resources are not adequate. Research behind the new science standards suggests that these, as well as time for instruction, are essential components.

■ Why is elementary science important?

Elementary science is important because it engages students, but there are more reasons it needs greater emphasis. First, science learning supports children's literacy development. In order to improve in reading comprehension and general literacy skills, research shows that students need strong content area knowledge.² Some research specifically equates flat literacy scores with insufficient content-area learning.³

PERCENTAGE OF TEACHERS who feel well-prepared to teach elementary science



■ 2012 ■ 2018 Source: *The National Survey of Science & Mathematics Education*

In considering how students learn, a context for their learning that connects to their interests and identity supports long-term retention. Further, using scientific and social studies to help kids understand their world allows them to better comprehend text and apply learning in writing.

Second, access to scientific learning is an equity issue. Students with individualized education programs or who are living in less economically advantaged communities more often receive insufficient science instruction. If students do not receive solid science instruction at the elementary level, they are less likely to develop an identity as a science — or STEM — person. Research shows that most students like science in elementary school, but many — especially girls — eventually begin to see it as not for them⁴.

Third, science is a legal requirement. State statutes from Chapter PI 8 say, “In grades kindergarten through 4, regular instruction shall be provided in ... science ... In this subdivision, ‘regular instruction’ means instruction each week for the entire school term.” It goes on to say, “Each school district board shall develop, adopt and implement ... A kindergarten through grade 12 sequential curriculum plan in ... science ... Each sequential curriculum plan shall specify objectives, course sequence, course content, resources, an objective process of determining whether pupils attain

the specified objectives, and an allocation of instructional time by week, semester and school term.”

However, conversations with educators across the state show that having this instructional plan in place does not mean that it is implemented — or implemented well.

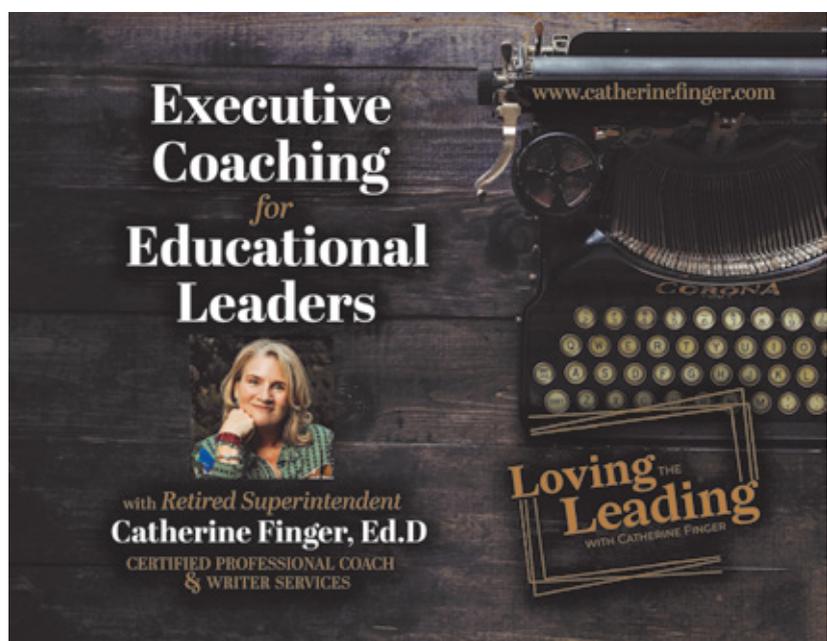
■ How are new science standards different?

In November 2017, Wisconsin adopted new science standards. These standards detail a different way of learning science. While they still emphasize “hands-on” learning,

doing lots of science activities does not mean effective learning. Students should be engaging in a series of lessons that build off each other to make sense of phenomena in the world around them and to help solve related engineering problems. They should see how learning connects and builds across lessons, using evidence gathered over time to create their own scientific explanations. As has always been the case, the students cannot meet standards by only reading about science. While it is great to integrate science with other subjects, that approach will not be sufficient on its own.

■ Instructional materials

Effective science instruction that builds on previous learning from preK through fifth grade is more likely with standards-based instructional materials and professional development linked to those materials. Some teachers find the time and have the expertise to develop effective science curriculum, but that is not a reasonable, individual expectation. Resources, such as those from NextGen TIME, EdReports and Instruction Partners, can help in the evaluation, adoption and implementation of materials.





Kindergarten students at **West Side Elementary** in Elkhorn design casts that meet particular criteria.

Instructional materials often emphasize fidelity — sticking to a particular daily timeframe and sequence, along with doing all the noted lessons and activities. Importantly, integrity to the standards and to engaging students in local, relevant contexts is a higher priority than strict fidelity, because no set of materials is perfect. Teachers also regularly need to move beyond the materials to implement culturally and linguistically sustaining instruction. If educators adapt materials, they should do so through a guided, systemic process — not a potentially inconsistent individual effort.

While some integration of science with other subjects makes sense, such as writing a science-based research report in a literacy class, most current instructional materials do not effectively integrate subjects. For example, some materials may include science and social studies connections, but they do not necessarily align to new standards.

■ What about STEM education?

A current international trend calls for the integration of science, technology, engineering and mathematics subjects for real-world learning. STEM education should engage elementary students and connect them to solving problems in their community. Some STEM and STEAM (STEM plus art) programs, however, involve doing fun activities without any actual connections to standards. These programs need careful review, so they do not only become a simplistic new art or tech education class but instead require application of learning from math and science.

Additionally, STEM should not take the place of another subject without careful consideration of how grade-level content standards can truly be met in that format. With engineering as part of the new science standards, a science class will have many of the same goals as STEM learning. The Wisconsin Department of Public Instruction has specific

guidance for self-evaluation of district and school STEM programs.

■ Science and learning from home

During the COVID-19 pandemic, please consider a few specific tips for at-home science and STEM learning. These ideas apply in any learning environment, as students always need active engagement outside of only reading or watching information. Students must “do it” in order to see themselves as scientists and build up that identity. A few main principles for teaching and learning science and STEM at home are:

- **Science is for everyone:** Wherever learning is taking place, all students should have access to meaningful science.
- **Make sense of phenomena and solve problems:** Students not only read or watch information about science, they actively make

sense of phenomena and solve problems in their communities.

- **Teamwork, sharing, feedback:** Science in practice is not a solo effort. Whether it is through technology or at home with family, students should investigate and share their findings with others. There should also be opportunities for feedback.
- **Standards-based:** Learning connects to specific standards.
- **Wonder and creative supply use:** Students ask questions and explore their world, doing hands-on exploration with universally available supplies (often requiring some educator creativity).

Conclusion — We need elementary science!

What does elementary science look

like in your district? Can students answer the question of why they are learning particular concepts? What are your areas of strength and opportunities for improvement?

Consider the work being done by the Bayfield School District. Their elementary educators work with Earth Partnership for Schools to consider science from Indigenous perspectives, connecting with students' cultures and communities. Several of Bayfield's elementary school staff members have taken the lead in designing and facilitating relevant, science professional learning for the rest of the staff. Students see the connections between school science concepts and their community. ■

Kevin Anderson is a Wisconsin Department of Public Instruction science education consultant and president of the Council of State Science Supervisors.

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Effective Security

Maintaining school security during the COVID-19 pandemic

As Wisconsin schools reopen, school districts are facing many unknowns, including how to maintain effective physical security controls.

It may be impossible to determine if the trauma and stress caused by the ongoing COVID-19 crisis will raise the risk of violence when classes begin. However, there are a number of steps your school district can take to maintain building security controls and reduce exposure to violence.

External doors and windows

The best and easiest control to minimize an armed intruder/active shooter from entering school buildings is to maintain secured doors and windows at all times. If more doors are used for student and staff entrances, ensure trained supervisors are maintained at these doors during morning entrance and afternoon departure times. These staff members should be equipped with a cell phone for instant emergency communication. Door supervisors should also be provided with reflective vests so that others are aware of their presence.

Whenever possible, minimize the height of open windows. Do not provide an easy opportunity for an intruder to enter the school. All windows need to be closed and secured when the room is not occu-

piated by a staff member.

Place visible signage on all doors directing visitors to the main entrance. If your school utilizes security cameras, erect signage stating that the facility is under video surveillance.

Crisis mass notification

Ensure your mass notification system can be effective both inside and outside of the building. More classroom activities may occur outside during nice weather, so staff members must understand what to do if they are outside the building during a crisis. Oftentimes, the answer is not to return to the building but to evacuate to another location. Ensure staff members who are outside are equipped with cell phones for instant emergency communication.

Room security controls

Develop specific security controls for each room and area of your school building. This is critical protocol for a normal school day, but it may be crucial if the pandemic causes your schools to maintain students in the same area and have the teachers come to the students. At a minimum, the room security control handout should address the following life safety controls:

- **What is my “action script” for this room/area?**

A mental rehearsal of what-if scenarios — “if this happens, I will do that.” Immediately know how to “act, not react” in an emergency lockdown or evacuation.

- **How do I secure the door?**

The best option is to keep the door locked at all times, especially when students are present in the room. Understand how to promptly lock a door during an emergency situation.

- **How do I barricade the door?**

If your plan is to barricade the door, identify the exact objects that will be used and position them closer to the door. Place pink stickers on the identified barricade objects, numbering them in the order they will be used for the barricade.

- **Where is the “fatal funnel” in each room/area of your school?**

A “fatal funnel” is an imaginary triangle created within the room based on the intruder’s location outside the room door. This imaginary triangle is the potential kill zone — if a shooter were to fire a weapon through the door, the chance of someone being hit is increased if they are located in the “fatal funnel.” Identify the safe zones by placing arrowed pink stickers on the walls.

The best and easiest control to minimize an armed intruder/active shooter from entering school buildings is to maintain secured doors and windows at all times.

There may be parents and family members who resent being “locked out” of their student’s school building. Communication through mail, phone calls and website postings may ease this resentment.

▪ **What is the immediate evacuation plan for each room/area?**

Many schools post evacuation maps within the classroom, but many do not. List the exact evacuation protocols on your room security controls handout. If staff members are moving from room to room, they will need to be familiar with a number of room evacuation protocols.

▪ **What window breaking tools are located in the room/area?**

If a staff member knows that lockdown protocols can’t be implemented or the intruder is on the other side of the building, it may be possible to evacuate out a window. Each room should include a “tool,” such as a fire extinguisher, that is somewhat heavy and easy to control.

Your school district may be considering using areas such as the library, cafeteria or gymnasium for classroom instruction to allow for proper social distancing. Therefore, “room security controls” must be developed for these areas.

■ **Changes in visitor controls**

During the COVID-19 pandemic, only essential visitors should be allowed within the school building. Not long ago, parents or others may have been allowed to enter the building to drop off an item, have lunch in the cafeteria or assist in the classroom. These practices should be discontinued due to the potential of COVID-19.

If someone is dropping off an item for a student, consider posting the office phone number on brightly colored signage outside of the locked front door. Visitors can call the office to inform staff that they have some-

thing to drop off for their student. Items can be placed in the vestibule area or placed in a secured container outside of the school. It will then be the responsibility of school personnel to deliver the items to the student. If the vestibule area becomes a drop off area, it will likely require increased cleaning and disinfecting protocols.

There may be parents and family members who resent being “locked out” of their student’s school building. Communication through mail, phone calls and website postings may ease this resentment. Communicate that you are attempting to ensure the safety of all students and staff.

Subcontractors and delivery personnel may fall in either the non-essential or essential category of visitors.

Non-essential visitors may include a variety of delivery personnel. Delivery personnel should contact the main office to notify the school district

prior to their arrival. Determine if they can unload at a pre-determined entrance of the school. School staff will be responsible for bringing the product in to the school building. Another option may be to determine if these deliveries can be made during after-school hours, when students are not present in the building.

Essential visitors, such as maintenance or construction contractors, should also contact the school to notify staff of their pending arrival. If any essential visitors are to be allowed in the school building, they should undergo a COVID-19 health symptom check. The school district nurse or insurance company may be able to assist in the development of these health check protocols.

Just like prior to the pandemic, strict visitor controls must be maintained, including a visual body screen before any visitor is allowed

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in the building. Some physical characteristics to look for during the visual body screen include:

- If the individual is wearing a face covering, ask them to remove the covering so you can clearly see their face.
- Look for a sag in the individual's jacket or coat. If there is a weapon, the pocket of the jacket where the weapon is stored may hang lower than the other side.
- The individual's clothing appears out of place — for example, they are wearing clothing that appears too warm for the weather. The clothing may provide a hiding space for a weapon.
- The individual uses just one hand to perform routine tasks. This could be an attempt to keep one hand free to handle a weapon.
- The individual wears just one glove when it is cold outside.

Again, one hand is left free to handle a weapon.

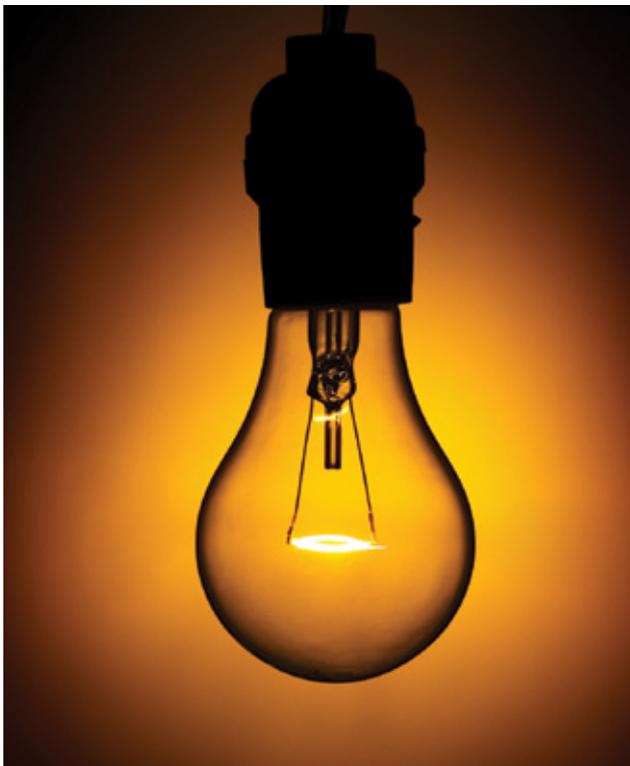
- A part of a weapon is visible. The barrel of a gun may be seen protruding from beneath a coat, or the tip of a knife can be seen sticking out of a sleeve.
- The individual walks with an unnatural gait — not swinging their arm on the side of the body where a weapon is located. They may be holding a weapon in place to prevent it from falling.
- The individual “palms” the weapon in the palm of their hand in preparation for use.
- The individual turns their body away from the security camera to hide or protect a concealed weapon. This is a practice commonly called “blading.”

All approved visitors in your school should wear a brightly colored visitor identification badge —

a 5-by-7-inch pink placard on a pink shoestring — this will allow your staff to identify an approved visitor from greater distances.

Additional physical security concerns

- If students are not allowed to use their lockers, the use of backpacks in the classroom may significantly increase. Backpacks and similar types of bags are great hiding places for weapons and other objects. Consider designating an area in each classroom where backpacks can be stored while class is in session.
- Meet virtually as much as possible. The use of virtual technology may be an approved method to conduct meetings such as parent/teacher conferences to minimize the number of non-essential visitors in your school.



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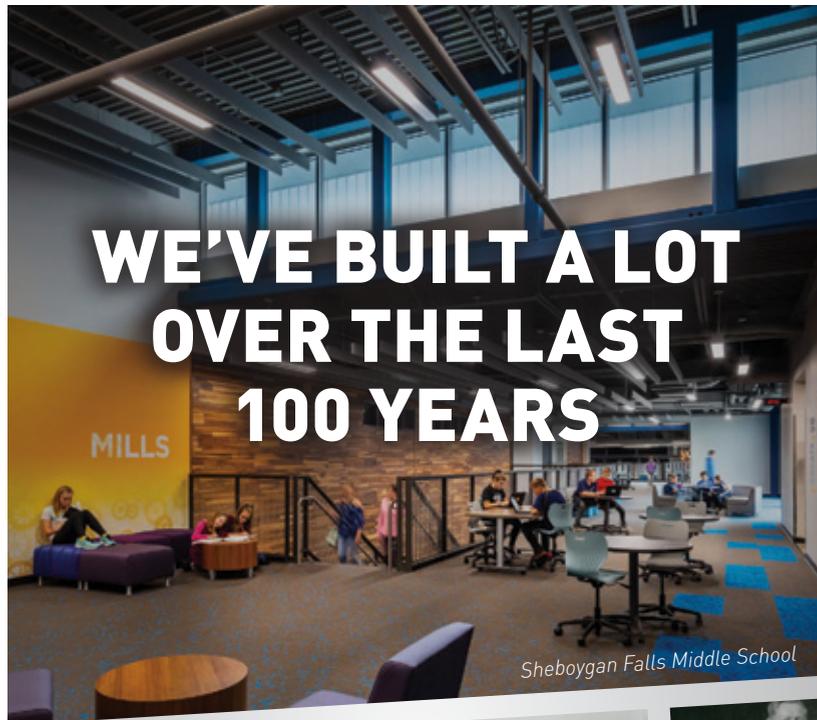
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- Multiple pick-up and drop-off areas around your school may be a very real possibility. As mentioned earlier, increased staff supervision will be required. Consult with your local police department for additional security controls, including increased police presence during pick-up and drop-off times.
- Review your protocols associated with outside groups using your buildings during non-school hours. Many outside groups in your community may rely on school buildings to conduct their meetings during the school year. Serious consideration should be given to canceling outside groups from using your facilities due to the exposure to non-essential visitors and the increased cleaning and disinfecting that may be required.
- Consider suspending your “open campus” policy where high school students are allowed to leave and re-enter the school during the school day.
- There is uncertainty if tornado, fire or active shooter evacuation drills should be performed due to social distancing concerns. The one control that your school can implement is to ensure all staff members are properly trained in evacuation protocols from a variety of building locations. Review all emergency drill and evacuation protocols prior to the beginning of the school year.

This list of physical security controls may be far from complete. All school districts are in uncharted territory as it relates to maintaining a somewhat normal school day for your students and staff. If you would like to discuss these or any other school security controls, please contact me at ted.hayes@m3ins.com. ■

Ted Hayes is a Senior Risk Manager in the Wausau office of M3 Insurance, which is an endorsed agency of the WASB Insurance Program.



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Celebrating 100

In recognition of the upcoming centennial anniversary, the WASB is featuring a decade of highlights from the association’s past in each issue of the *Wisconsin School News* through early 2021. In this issue, we go back to the 1970s ...

1970s As the war in Vietnam began to wane, the United States’ attention turned to the Middle East, where OPEC (Organization of the Petroleum Exporting Countries) became an acronym that riled up Americans. While gas lines formed in 1973, Congress dug deeper into Watergate — named to describe the June 1972 break in at the Democratic National Committee offices in the Watergate Hotel, which eventually led to President Richard Nixon’s resignation.

During the decade, the Patty Hearst kidnapping, the Kent State shooting, the publishing of the Pentagon Papers, the Three Mile Island meltdown, and the drug deaths of rock stars Jimi Hendrix and Janis Joplin shook the nation. Meanwhile, television viewers watched the Fonz immortalize Milwaukee, Monday Night Football make its debut, and George Carlin host the first “Saturday Night Live” while movie-goers visited a galaxy far, far away. Mark Spitz swam

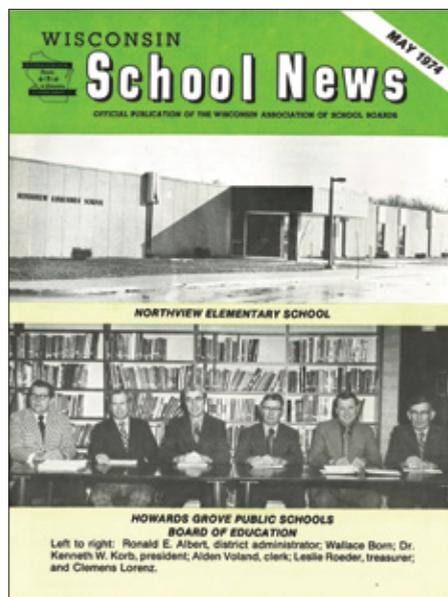
into history with a record seven Olympic gold medals, the first “test-tube baby” was born and Bruce Springsteen proved he was born to run. □



The electronics club at Wausau East High School in 1971.

For more than a decade, each issue of the *Wisconsin School News* magazine (right) featured a new or newly renovated school building and its proud school board until the magazine was redesigned in 1975.

The May 1975 cover (far right) featured one of the original “school rigs” and a modern school bus in the South Shore Community School District in Port Wing. South Shore is believed to have been the first school district in the state to provide free, tax-supported school transportation for its students beginning in 1903 following a consolidation of area log cabin schools into one school on the south shore of Lake Superior.





At the 50th State Education Convention in 1971, school board members complete a WASB poll. During the decade, the services, trainings and publications of the association rapidly expanded, particularly in the areas of legal and policy services.

■ THE WASB

- 1970.** The WASB offices expand and move to 122 W. Washington Ave. in Madison, the present location of the main office.
- 1970.** The WASB and the Wisconsin School Public Relations Association sponsor the first joint communications workshop for schools.
- 1971.** The WASB, in cooperation with a group of school attorneys, form the Wisconsin School Attorneys Association, whose members must be serving a school board in some legal capacity.
- 1972.** Delegates oppose subsidizing non-public schools through a voucher system.
- 1975.** The newly built Milwaukee Exposition and Convention Center and Arena hosts the State Education Convention with an all-time high of 121 exhibitors.
- 1979.** Wisconsin has 433 school districts (432 are WASB members).

■ OUR STATE

- 1970.** Wisconsin U.S. Sen. Gaylord Nelson organizes the first Earth Day on April 22.
- 1971.** With youngster Lew Alcindor — later known as Kareem Abdul-Jabbar — and veteran Oscar Robertson — the “Big O” — leading the way, the Milwaukee Bucks win the only National Basketball Association title in franchise history.
- 1972.** The Wisconsin Legislature passes a law requiring an environmental impact statement for all legislation affecting the environment.
- 1973.** Barbara Thompson becomes the first woman elected as State Superintendent.
- 1974.** The Hortonville School Board fires 86 striking teachers, a decision later upheld by the U.S. Supreme Court.

-
- 1975.** The Edmund Fitzgerald sinks during a November gale, killing all 29 crew members on “the big lake they called Gitche Gumee.”
 - 1976.** A federal district court orders Milwaukee Public Schools to integrate.
 - 1976.** Shirley Abrahamson begins her 43 years of service on the Wisconsin Supreme Court, the longest in court history. She was the first woman on the court and the first woman to serve as its chief justice.
 - 1977.** State employees strike for the first time in Wisconsin history and mediation-arbitration legislation passes, dramatically altering the contract bargaining process.
 - 1979.** Vel Phillips takes office as the Secretary of State, becoming Wisconsin’s first black constitutional office holder.
 - 1979.** The last one-room school district in Wisconsin closes.

■ OUR NATION

- 1970.** The Environmental Protection Agency begins operation.
- 1972.** President Nixon visits China and Russia and is reelected, trouncing Sen. George McGovern by over 18 million votes.
- 1973.** Three hundred members of the Oglala Lakota tribe and supporters of the American Indian Movement take over the community of Wounded Knee, S.D., for 71 days, with a list of grievances ranging from broken treaties to tribal governance.
- 1974.** Despite racist threats, Hank Aaron hits his 715th career home run to take the all-time record away from the “Great Bambino,” baseball legend Babe Ruth.
- 1975.** Congress enacts the Individuals with Disabilities Education Act, promising a 40% reimbursement to states.
- 1976.** Alex Haley’s “Roots” is published and TV viewers watch the following year as Kunta Kinte’s drama unfolds from Middle Passage to emancipation.
- 1977.** Volkswagen announces it will no longer make the iconic Beetle.
- 1978.** Groundbreaking anthropologist Margaret Mead dies of cancer at 76.
- 1979.** Students in Tehran, Iran storm the U.S. Embassy and take 66 hostages. The siege lasts 444 days, ending on the day of Ronald Reagan’s inauguration.



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Region 3 | **OCT. 20** (election)

Region 4 | **OCT. 8**

Region 5 | **OCT. 7**

Region 6 | **OCT. 6** (election)

Region 7 | **OCT. 22**

Region 8 | **OCT. 21** (election)

Region 9 | **OCT. 14**

Region 10 | **OCT. 13**

Region 11 | **SEPT. 30**

Region 12 | **OCT. 27** (election)

Region 13 | **OCT. 29**

Region 14 | **TBD**

Region 15 | **OCT. 15** (election)

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WASB online webinars and workshops focus on providing school board members and administrators with timely information and resources on legal, governance, policy and advocacy topics. Visit WASB.org for details.

WASB COVID-19 RESOURCE PAGE

Your central clearinghouse for information related to COVID-19 — including the reopening of schools — is our resource page at WASB.org. This wide-reaching resource is broken into 18 categories that touch on virtually every aspect of preK-12 education that's been affected by the pandemic.

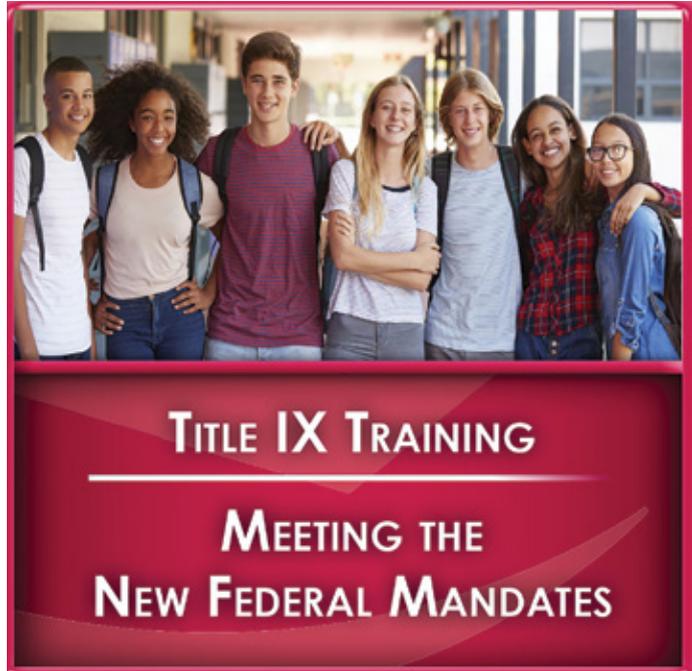
New WASB Training for TITLE IX Available

The U.S. Department of Education recently issued new Title IX regulations regarding sexual harassment in public schools.

The regulations became effective on August 14, 2020. The regulations require specific training for Title IX coordinators as well as for the individuals who are assigned designated roles in the process that the school adopts for resolving formal complaints of Title IX sexual harassment (i.e., investigators, decision-makers and facilitators of informal resolutions).

Based on the Title IX training mandates, WASB staff are working with the law firm of Boardman & Clark LLP to provide training packages, which include webinars and training materials that school districts can purchase to satisfy the requirements.

Visit WASB.org to learn more.



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WASB Advocates for Flexibility in Wake of COVID-19



Flexibility gives school districts the chance to make up for shortfalls in funding during the 2020-21 school year

As school resumes this month and students return — whether in-person, in a hybrid model or a fully virtual one — school leaders face a myriad of challenges.

One of the obvious is addressing the loss of learning that inevitably occurred when schools had to shift abruptly in the spring to online learning amidst the statewide school closure order.

Another challenge is the tremendous uncertainty hovering over school funding and the question of whether public schools will receive the resources they need to reopen safely and remain open. We know that no matter what instructional model your district is employing, it will likely have additional costs due to the pandemic.

With leaders in Washington, D.C. dithering over additional federal aid for schools and the revenue picture incomplete at the state level, there is tremendous uncertainty about whether the state will be able to meet its prior commitments to K-12 education absent an infusion of federal dollars. And, if the state cannot meet those prior commitments, how much might it have to cut from revenue limits and state aids?

Given the way things stand at present, many of you will be heading into your budget hearings and

annual meetings with many unanswered questions.

As we write this column in mid-August, there appears to be little hope this uncertainty will be clarified by early September when you receive this copy of the Wisconsin School News. It also appears unlikely that lawmakers will return to the state Capitol before the Nov. 3 election.

When money is tight, we pursue flexibility to make decisions at the local level that are in the best interest of the students and taxpayers of each school district.

That is why the WASB worked with the Department of Public Instruction to help develop an application that districts can use to request waivers from state mandates the DPI believes it has the power to waive.

It is also why the WASB supports providing school districts with additional flexibility with regard to certain mandates the DPI does not believe it can waive. The WASB is joining with school administrators and other K-12 advocacy groups in calling on lawmakers to return to Madison to provide flexibility tailored specifically to school district needs in the 2020-21 school year.

Here is what we are asking for (all of which are supported by WASB resolutions):

■ **Teacher and professional staff licensure flexibility**

With school districts facing unprecedented staffing challenges, the WASB supports flexibility to allow: licensed teachers to teach outside of their existing licenses when necessary; teachers to teach with substitute-only licenses; and licensed paraprofessional staff to deliver content instruction in collaboration with licensed teachers.

■ **Encourage retired teachers/staff to return to work**

The WASB supports making it easier for retired teachers and staff to fill critical full-time, part-time, virtual and substitute teaching positions. The WASB supports temporarily allowing annuitants (hired during the 2020-21 school year or any year in which a public health emergency is in effect) to return to Wisconsin Retirement System-covered school employment without having to forego their pension payments or limit their hours. The WASB also supports reducing the “break-in-service” requirement for returning teachers and staff to 15 days in line with similar provisions the Legislature enacted for essential care workers earlier this year through Act 185.

When money is tight, we pursue flexibility to make decisions at the local level that are in the best interest of the students and taxpayers of each school district.

THIS IS A TIME TO BUILD RELATIONSHIPS with students and move instruction forward based on individual student needs.

■ Pupil counts – September, January and summer school — flexibility

Student counts on the third Friday in September, the second Friday in January and in summer school can significantly impact a school district's revenue limit, per-pupil aid and general aid distribution. COVID-19 may cause student counts to fall, leaving school districts to face negative fiscal consequences in 2020-21 and beyond. School districts should not suffer financially because of the uncertainties of a public health crisis.

The WASB recommends allowing school districts to use their 2019-20 pupil counts or actual 2020-21 counts (whichever is larger) in determining general aid and revenue limits for 2020-21. Alternatively, we support legislation to change the revenue limit FTE membership calculation to allow a district to use either a five-year rolling average, a three-year rolling average or the current-year membership, whichever is greater.

■ Transportation aid flexibility

COVID-19 may cause student counts, upon which district transportation aid is based, to fall even as student health and safety concerns are fueling substantial increases in pupil transportation costs. The WASB recommends allowing districts to use their 2019-20 student counts for 2020-21 to prevent a significant loss of transportation aid for school districts.

■ Immunity from civil liability for schools

With state and federal policy makers clearly advocating for a return to

in-person learning, school districts making a good faith effort to open safely should not be subjected to costly litigation stemming from COVID-19 related claims. Schools that are exercising due care should not be subject to frivolous lawsuits or suits brought merely for their settlement value. Liability protections would serve as a deterrent to nuisance suits. The WASB recommends providing school districts and district employees with immunity from civil liability for COVID-19 related claims unless there is willful, wanton or reckless behavior on the part of a district or employee.

■ Revisiting open enrollment space determinations

When districts set open enrollment space allocations last January, few boards could have envisioned the need to socially distance students in classrooms during a pandemic. The WASB recommends allowing school boards to reset available space determinations for non-resident students seeking to open enroll into their districts in 2020-21.

■ Long-Term Capital Improvement Trust Fund (Fund 46) flexibility

Given the significant unanticipated expenditures that will likely be required for school districts to reopen safely this fall, the WASB recommends granting school districts temporary flexibility (in 2020-21) on how they may use funds deposited in Fund 46. We further recommend that the first use of these funds be for uses or projects to improve the health and safety of students during the COVID-19 pandemic.

■ Student assessment flexibility

The WASB encourages state policy-makers to consider suspending student assessment requirements for the 2020-21 school year if they cannot be uniformly or safely administered. Administering assessments may pose challenges to the health and safety of students and educators. And in the wake of last spring's disruptive school closures, teachers' time and focus would arguably be better focused on overcoming the learning loss and social and emotional needs spurred by those closures. This is a time to build relationships with students and move instruction forward based on individual student needs. In this environment, student-centered objectives are more important than taking time to prepare for standardized tests.

■ School and school district performance report flexibility

Given the potential for instructional disruption during the 2020-21 school year, these reports may be of questionable value to parents and the larger community. If assessments are suspended, we recommend the school report card for 2020-21 also be suspended.

Our ability to support these measures points to the importance of board involvement in developing and putting forward resolutions for the WASB Delegate Assembly. We encourage your board to offer resolutions this year by the Sept. 15 deadline.

As a final note, having flexibility does not require boards and districts to utilize it. Rather it gives boards and districts the option to use it if it makes sense to them. ■



Liability Waivers and the COVID-19 Pandemic

As districts prepare for the return of students and employees to school during the COVID-19 pandemic, one of the issues they must consider is the potential for district liability should an employee, student or third party contract COVID-19 and bring a claim against a district alleging that the individual contracted the virus while at school or at a school activity. Districts should, at a minimum, consult with their insurance carrier to ensure adequate district coverage for such potential liability during the pandemic.

Another option for districts to consider is whether to require employees, students and third parties to sign waivers of legal claims against the district prior to allowing them to engage in district activities.¹ These liability waivers — also called exculpatory agreements — are heavily scrutinized by Wisconsin courts and must meet various criteria to be enforceable. This Legal Comment will address the issues involved in utilizing liability waivers for employees, students and third parties during the pandemic, and will discuss some additional considerations surrounding the potential liability of districts whether or not waivers are used.²

■ Employees

If an employee is performing services arising out of and incidental to the employee's district employment, the employee may be eligible for worker's compensation benefits.³ One issue that has arisen related to an employee's eligibility for worker's compensation benefits during the pandemic is the difficulty an employee faces in proving that the employee contracted COVID-19 while performing services for the district rather than from non-work exposure outside of work hours. Given the continued community

spread of COVID-19 in certain areas, this will not always be easy for an employee to prove.

Under the worker's compensation system, an employee who is eligible for such benefits is barred from seeking damages against his or her employer in court through a civil action for damages. In addition, employees cannot waive their rights to receive worker's compensation benefits⁴ and, therefore, liability waivers will not be enforced in court or a worker's compensation proceeding. There have been lawsuits filed across the country seeking to circumvent the worker's compensation bar to civil lawsuits by claiming that intentional employer conduct increased the risk of or failed to protect an employee against COVID-19 exposure in the workplace. Such an attempt is not likely to prevail under Wisconsin law, but an enforceable liability waiver could have the effect of potentially precluding such an attempt.

The best liability protection districts have related to employee exposure to COVID-19 is worker's compensation insurance. Nevertheless, some districts may still be concerned about their potential liability if any of their employees contract COVID-19 while working. Self-insured districts obviously have a financial risk with respect to the amount they may have to directly pay in worker's compensation benefits and insured districts may face the prospect of increased worker's compensation premiums. While these are valid concerns, trying to make employees waive their right to worker's compensation benefits is not a viable option.

■ Students

A liability waiver is a contract. In order to be enforceable, an individual's liability waiver must be given in

exchange for something of value. With few exceptions, students are required to attend school between the ages of 6 and 18, unless they have graduated.⁵ As a result, a liability waiver as a precondition for a student to be able to attend school is unlikely to be enforceable because the consequence of failing to sign a waiver would be denial of the student's legal right to an education and the potential for penalties for truancy. In addition, there are limitations to the enforceability of liability waivers involving minors.

One way districts might be able to get around this problem is to offer students who refuse to sign a liability waiver the opportunity to attend a virtual education option. However, this could be subject to a potential challenge on the basis that the virtual option is not an adequate alternative for a student's education, particularly for a student with a disability with a Section 504 or Individual Education Plan that cannot be adequately implemented in a virtual setting. Additionally, this approach could lead to adverse community reaction and be viewed negatively by a court in a review of the liability waiver.

Extracurricular activities are different since students are not compelled to participate in such activities and districts are not required to provide them. Therefore, participation in such activities might be able to be conditioned on signing a liability waiver. However, districts should consider the effect that requiring a waiver might have on student participation in these activities. This is particularly a concern where districts have not required waivers in the past, even though some athletic activities, particularly contact sports, already pose a risk of injury to students.

■ Third parties

Visitors, volunteers and other third parties seeking access to district buildings or attendance at school activities generally can be required to sign a waiver as a condition of such access or attendance. However, there could be significant logistical problems in obtaining these waivers for all visitors, volunteers and others, particularly for large spectator events such as football games or concerts. Districts that have liability concerns with regard to spectators might better address these concerns by restricting the number of spectators in attendance and enforcing social distancing and other health precautions during these events.

■ Challenges in drafting a potentially enforceable waiver

If a district does choose to pursue liability waivers from certain individuals, it is important to understand that waivers must comply with strict requirements in order to be enforceable. Even then, a well-drafted waiver is not a guarantee of enforceability. The following are some of the primary challenges in drafting an enforceable waiver:

- Minors cannot waive their right to bring a lawsuit against a district when they become adults.
- Parents cannot waive the rights of their children to bring a lawsuit against a district. Additionally, one parent cannot waive the legal rights of another parent to sue, which means all of a child's legal guardians need to sign a liability waiver. In certain situations, this could force the district to get involved in difficult family situations in order to acquire the signature of all legal guardians. One way to

avoid this situation is to have one parent indemnify and hold harmless the district against claims raised by their child and any non-signing legal guardian. By indemnifying and holding the district harmless, parents are agreeing to pay to defend the district and pay any damages for the district should their child or non-signing guardian make a claim against the district in the future. From a practical perspective, parents might not have sufficient money or insurance to cover such indemnification and hold harmless agreements. In addition, this will require districts to keep waivers for years because students are not required to bring negligence claims until they are adults.

- An enforceable waiver must clearly, unambiguously and unmistakably inform the signer of what is being waived. For example, in order to waive claims based on the negligence of the district or its employees, an individual must explicitly agree that he or she is waiving negligence claims. This statement must be conspicuous, using bold font or other means of alerting the signer to the importance of the provision.⁶
- A person cannot waive all claims against a district and its employees. For example, claims of reckless or intentional harm by a district employee cannot be waived. Any attempt to include such potential claims in the scope of a release through the use of general, broadly phrased language will likely result in a court not enforcing the waiver in its entirety.⁷

- Waivers must provide individuals with the opportunity to negotiate the terms of the waiver. Most waivers are presented as a “take it or leave it” proposition. Districts using waivers must be open to negotiating with individuals who seek to modify a proposed liability waiver. This can be accomplished by identifying on the waiver the district personnel who can be contacted to discuss the terms of the liability waiver.⁸
- The waiver must include language identifying the nature of the activity that will be covered by the waiver, and the location where it will take place. A waiver must also spell out the risks associated with the activity for which a waiver is sought. The waiver will likely only be enforceable for claims related to those enumerated risks.⁹
- The waiver should be a stand-alone document, and not attempt to serve multiple purposes.¹⁰

Given the challenges associated with drafting an enforceable liability waiver, districts should consult with legal counsel to ensure that the liability waiver is tailored to the unique circumstances of any given activity. Additionally, the unique circumstances of the COVID-19 pandemic may lead to greater uncertainty regarding the enforceability of such waivers. Even carefully drafted waivers may not provide districts with the certainty of liability protection that they are seeking through their use. Therefore, districts may ultimately conclude that the burden of creating, disseminating, collecting and storing liability waivers, which may not be ultimately enforceable, is not worth the potential bene-

“A liability waiver as a precondition for a student to be able to attend school is unlikely to be enforceable.”

fits from their use — particularly when a district is comfortable with the scope and terms of its liability insurance coverage.

■ Other liability waiver considerations

Even if unenforceable, a liability waiver may provide some benefit to a district. For example, one of the potential defenses a district may have in a legal action against it for damages is the doctrine of express assumption of the risk. This doctrine provides that a plaintiff is not entitled to recover damages if, at the time of the injury, the plaintiff expressly consented to the known risks and dangers related to the activity the plaintiff was engaged in and, therefore, assumed all of the ordinary risks, hazards and dangers involved in such activities.¹¹ A liability waiver that outlines the potential of contracting COVID-19 in a school building or at a school activity likely meets the criteria to establish the express assumption of the risk defense, even where the liability waiver is not legally enforceable. However, the parameters of this doctrine have not been as regularly scrutinized by the courts to the same degree as liability waivers. Therefore, particularly during the COVID-19 pandemic, it is uncertain how a court might address that defense in relation to liability waivers.

In addition, a waiver, even if unenforceable, may actually deter some signers from deciding to bring a legal action against the district and does not expose a district to greater legal liability. On the other hand, a person presented with a liability waiver might perceive it as an indication that the district has concern about liability exposure and be inclined to consult with an attorney about the waiver and the viability of a potential suit against the district. Additionally, waivers might serve only to reinforce to the community the risks that everyone is

facing during the COVID-19 pandemic. In a time when many districts are striving to reassure individuals that it is safe to return to schools, waivers might serve instead to heighten apprehension in the community.

Finally, districts should be aware that, in order to prevail on a claim against a district based on someone contracting COVID-19, a plaintiff must prove that he or she contracted COVID-19 while at school or during a district activity. This is similar to the challenge that employees will face in bringing worker's compensation claims against a district. COVID-19 is widespread in many communities, making it extremely challenging to pinpoint the district as the source of the infection. While this might be easier to prove in the event of an outbreak within a school, individual infections will be much harder to trace back to the district. Public health agencies performing contact tracing might be one avenue by which a potential plaintiff could link his or her infection to the district. However, the wider the spread of the virus within a community, the less reliable and effective that contact tracing will be. Since plaintiffs will likely face challenges in proving they were infected at school and because districts are likely to have insurance coverage to provide a defense to such claims and cover damages (less the district's insurance deductible), districts might conclude that waivers will not significantly impact their overall potential liability during the pandemic.

■ Conclusion

The COVID-19 pandemic requires districts to review all options to eliminate or minimize the risk of the virus. With respect to district legal liability, one potential tool is to obtain liability waivers from those who will be in district buildings or at district activities. However, while they are an option to consider, liability waivers have limited applica-

bility with respect to a significant portion of people involved in district operations from whom potential liability could arise. The use of liability waivers also has potential for negative public relations impact. As a result, districts should start their liability analysis by ensuring that they have adequate insurance coverage in place to cover claims related to COVID-19, and then decide what, if any, specific activities might warrant the drafting of a waiver with the best possible chance of being enforced in court. Districts should avoid the use of template forms and instead consult with legal counsel to draft waivers that will meet the district's specific needs and unique circumstances. ■

■ End Notes

1. This Legal Comment will not review districts' potential immunity from such claims. A detailed review of district immunity from certain legal claims can be found in Wisconsin School News, "Governmental Immunity" (March 2019). Districts also are governed by Wis. Stat. s. 893.80, which creates a liability cap on negligence claims against districts. At the time of the drafting of this Legal Comment, various proposals are being considered at the federal and state level to address COVID-19 liabilities.
2. The Legal Comment was written by Michael J. Julka, Steven C. Zach, and Brian Goodman of Boardman & Clark LLP, WASB Legal Counsel. For related articles, see Wisconsin School News: "Participant Waivers and District Releases from Liability" (Apr. 2005) and "Waiver of Liability" (May 1997).
3. Wis. Stat. s. 102.03(1)(c).
4. Wis. Stat. s. 102.16(5).
5. Wis. Stat. s. 118.15(1)(a).
6. *Yauger v. Skiing Enterprises, Inc.*, 206 Wis. 2d 76, 557 N.W.2d 60 (1996).
7. *Atkins v. Swimwest Family Fitness Ctr.*, 2005 WI 4, 277 Wis. 2d 303, 691 N.W.2d 334.
8. *Id.*
9. *Id.*
10. *Id.*
11. See generally *Colson v. Rule*, 15 Wis. 2d 387, 389, 113 N.W.2d 21(1962).

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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