WASB Legal and Legislative Video Update, July 21, 2021, 12 pm

WASB Staff Counsel will address the following topics:

I. Masks on School Buses.
II. Policy Implications of U.S. Supreme Court Decision Regarding Off-Campus Student Speech.
III. Wisconsin Immunization Registry and Covid-19 Vaccine Inquiries Regarding Students and Staff.
IV. Telework and other Accommodation requests under the ADA and the WFEA.
V. U.S. Department of Education Confirms Title IX Protects Students from Discrimination Based on Sexual Orientation and Gender Identity.

WASB LEGAL UPDATE

I. Masks on School Buses.

Guidance for COVID-19 Prevention in K-12 Schools | CDC

Updated as of July 9, 2021

> **During school transportation:** CDC's Order applies to all public transportation conveyances including school buses. Regardless of the mask policy at school, passengers and drivers must wear a mask on school buses, including on buses operated by public and private school systems, subject to the exclusions and exemptions in CDC's Order. Learn more here. For example, if a student attends a school where mask use is not required due to vaccination status (e.g., a high school with a high rate of vaccination), the student is still required to wear a mask on the school bus.
>
> Schools should provide masks to those students who need them (including on buses), such as students who forgot to bring their mask or whose families are unable to afford them. No disciplinary action should be taken against a student who does not have a mask as described in the U.S. Department of Education COVID-19 Handbook, Volume 1external icon.

Requirement for Face Masks on Public Transportation Conveyances and at Transportation Hubs | CDC

Updated as of June 10, 2021.

> **Are masks required on school buses?**
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> Yes, passengers and drivers must wear a mask on school buses, including on buses operated by public and private school systems, subject to the exclusions and exemptions in CDC's Order. Operators of school buses should refer to the Department of Education's COVID-19 Handbook pdf icon[PDF – 27 pages]external icon for additional guidance.
>
> A driver does not need to wear a mask if they are the only person on the bus.

Order: Wearing of face masks while on conveyances and at transportation hubs | Quarantine | CDC

> The Centers for Disease Control and Prevention (CDC) issued an Order pdf icon[PDF – 11 pages] on January 29, 2021 requiring the wearing of masks by people on public transportation conveyances or on the premises of transportation hubs to prevent spread of the virus that causes COVID-19. This Order was effective as of 11:59 p.m. February 1, 2021 and was published in the Federal Register on February 3, 2021. CDC will be amending this Order as soon as

practicable, to not require that people wear masks while outdoors on conveyances or while outdoors on the premises of transportation hubs.

Federal Register :: Requirement for Persons To Wear Masks While on Conveyances and at Transportation Hubs

EFFECTIVE DATE:

This Order shall enter into effect on February 1, 2021, at 11:59 p.m. and will remain in effect unless modified or rescinded based on specific public health or other considerations, or until the Secretary of Health and Human Services rescinds the determination under section 319 of the Public Health Service Act (42 U.S.C. 247d) that a public health emergency exists.

II. Policy Implications of U.S. Supreme Court Decision Regarding Off-Campus Student Speech.

20-255 Mahanoy Area School Dist. v. B. L. (06/23/2021) (supremecourt.gov)

Policy Perspectives 2021-07.pdf (wasb.org)

III. Wisconsin Immunization Registry and Covid-19 Vaccine Inquiries Regarding Students and Staff.

Wisconsin Immunization Registry (WIR) | Wisconsin Department of Health Services

School and Child Care Immunization Requirements | Wisconsin Department of Health Services

IV. Telework and other Accommodation requests under the ADA and the WFEA.

What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws | U.S. Equal Employment Opportunity Commission (eeoc.gov)

D. Reasonable Accommodation

Under the ADA, reasonable accommodations are adjustments or modifications provided by an employer to enable people with disabilities to enjoy equal employment opportunities. If a reasonable accommodation is needed and requested by an individual with a disability to apply for a job, perform a job, or enjoy benefits and privileges of employment, the employer must provide it unless it would pose an undue hardship, meaning significant difficulty or expense. An employer has the discretion to choose among effective accommodations. Where a requested accommodation would result in undue hardship, the employer must offer an alternative accommodation if one is available absent undue hardship. In discussing accommodation requests, employers and employees may find it helpful to consult the Job Accommodation Network (JAN) website for types of accommodations, www.askjan.org. JAN's materials specific to COVID-19 are at https://askjan.org/topics/COVID-19.cfm.

D.1. If a job may only be performed at the workplace, are there reasonable accommodations for individuals with disabilities, absent undue hardship, that could offer protection to an employee who, due to a preexisting disability, is at higher risk from COVID-19? *(4/9/20)*

There may be reasonable accommodations that could offer protection to an individual whose disability puts him at greater risk from COVID-19 and who therefore requests such actions to

eliminate possible exposure. Even with the constraints imposed by a pandemic, some accommodations may meet an employee's needs on a temporary basis without causing undue hardship on the employer.

Low-cost solutions achieved with materials already on hand or easily obtained may be effective. If not already implemented for all employees, accommodations for those who request reduced contact with others due to a disability may include changes to the work environment such as designating one-way aisles; using plexiglass, tables, or other barriers to ensure minimum distances between customers and coworkers whenever feasible per CDC guidance or other accommodations that reduce chances of exposure.

Flexibility by employers and employees is important in determining if some accommodation is possible in the circumstances. Temporary job restructuring of marginal job duties, temporary transfers to a different position, or modifying a work schedule or shift assignment may also permit an individual with a disability to perform safely the essential functions of the job while reducing exposure to others in the workplace or while commuting.

D.2. If an employee has a preexisting mental illness or disorder that has been exacerbated by the COVID-19 pandemic, may he now be entitled to a reasonable accommodation (absent undue hardship)? *(4/9/20)*

Although many people feel significant stress due to the COVID-19 pandemic, employees with certain preexisting mental health conditions, for example, anxiety disorder, obsessive-compulsive disorder, or post-traumatic stress disorder, may have more difficulty handling the disruption to daily life that has accompanied the COVID-19 pandemic.

As with any accommodation request, employers may: ask questions to determine whether the condition is a disability; discuss with the employee how the requested accommodation would assist him and enable him to keep working; explore alternative accommodations that may effectively meet his needs; and request medical documentation if needed.

D.3. In a workplace where all employees are required to telework during this time, should an employer postpone discussing a request from an employee with a disability for an accommodation that will not be needed until he returns to the workplace when mandatory telework ends? *(4/9/20)*

Not necessarily. An employer may give higher priority to discussing requests for reasonable accommodations that are needed while teleworking, but the employer may begin discussing this request now. The employer may be able to acquire all the information it needs to make a decision. If a reasonable accommodation is granted, the employer also may be able to make some arrangements for the accommodation in advance.

D.4. What if an employee was already receiving a reasonable accommodation prior to the COVID-19 pandemic and now requests an additional or altered accommodation? *(4/9/20)*

An employee who was already receiving a reasonable accommodation prior to the COVID-19 pandemic may be entitled to an additional or altered accommodation, absent undue hardship. For example, an employee who is teleworking because of the pandemic may need a different type of accommodation than what he uses in the workplace. The employer may discuss with the employee whether the same or a different disability is the basis for this new request and why an additional or altered accommodation is needed.

D.5. During the pandemic, if an employee requests an accommodation for a medical condition either at home or in the workplace, may an employer still request information to determine if the condition is a disability? *(4/17/20)*

Yes, if it is not obvious or already known, an employer may ask questions or request medical documentation to determine whether the employee has a "disability" as defined by the ADA (a physical or mental impairment that substantially limits a major life activity, or a history of a substantially limiting impairment).

D.6. During the pandemic, may an employer still engage in the interactive process and request information from an employee about why an accommodation is needed? *(4/17/20)*

Yes, if it is not obvious or already known, an employer may ask questions or request medical documentation to determine whether the employee's disability necessitates an accommodation, either the one he requested or any other. Possible questions for the employee may include: (1) how the disability creates a limitation, (2) how the requested accommodation will effectively address the limitation, (3) whether another form of accommodation could effectively address the issue, and (4) how a proposed accommodation will enable the employee to continue performing the "essential functions" of his position (that is, the fundamental job duties).

D.7. If there is some urgency to providing an accommodation, or the employer has limited time available to discuss the request during the pandemic, may an employer provide a temporary accommodation? *(4/17/20)*

Yes. Given the pandemic, some employers may choose to forgo or shorten the exchange of information between an employer and employee known as the "interactive process" (discussed in D.5 and D.6., above) and grant the request. In addition, when government restrictions change, or are partially or fully lifted, the need for accommodations may also change. This may result in more requests for short-term accommodations. Employers may wish to adapt the interactive process—and devise end dates for the accommodation—to suit changing circumstances based on public health directives.

Whatever the reason for shortening or adapting the interactive process, an employer may also choose to place an end date on the accommodation (for example, either a specific date such as May 30, or when the employee returns to the workplace part- or full-time due to changes in government restrictions limiting the number of people who may congregate). Employers may also opt to provide a requested accommodation on an interim or trial basis, with an end date, while awaiting receipt of medical documentation. Choosing one of these alternatives may be particularly helpful where the requested accommodation would provide protection that an employee may need because of a pre-existing disability that puts her at greater risk during this pandemic. This could also apply to employees who have disabilities exacerbated by the pandemic.

Employees may request an extension that an employer must consider, particularly if current government restrictions are extended or new ones adopted.

D.8. May an employer invite employees now to ask for reasonable accommodations they may need in the future when they are permitted to return to the workplace? *(4/17/20; updated 9/8/20 to address stakeholder questions)*

Yes. Employers may inform the workforce that employees with disabilities may request accommodations in advance that they believe they may need when the workplace re-opens. This is discussed in greater detail in Question G.6. If advance requests are received, employers may begin the "interactive process" – the discussion between the employer and employee focused on whether the impairment is a disability and the reasons that an accommodation is needed. If an employee chooses not to request accommodation in advance, and instead requests it at a later time, the employer must still consider the request at that time.

D.9. Are the circumstances of the pandemic relevant to whether a requested accommodation can be denied because it poses an undue hardship? *(4/17/20)*

Yes. An employer does not have to provide a particular reasonable accommodation if it poses an "undue hardship," which means "significant difficulty or expense." As described in the two questions that follow, in some instances, an accommodation that would not have posed an undue hardship prior to the pandemic may pose one now.

D.10. What types of undue hardship considerations may be relevant to determine if a requested accommodation poses "significant difficulty" during the COVID-19 pandemic? *(4/17/20)*

An employer may consider whether current circumstances create "significant difficulty" in acquiring or providing certain accommodations, considering the facts of the particular job and workplace. For example, it may be significantly more difficult in this pandemic to conduct a needs assessment or to acquire certain items, and delivery may be impacted, particularly for employees who may be teleworking. Or, it may be significantly more difficult to provide employees with temporary assignments, to remove marginal functions, or to readily hire temporary workers for specialized positions. If a particular accommodation poses an undue hardship, employers and employees should work together to determine if there may be an alternative that could be provided that does not pose such problems.

D.11. What types of undue hardship considerations may be relevant to determine if a requested accommodation poses "significant expense" during the COVID-19 pandemic? *(4/17/20)*

Prior to the COVID-19 pandemic, most accommodations did not pose a significant expense when considered against an employer's overall budget and resources (always considering the budget/resources of the entire entity and not just its components). But, the sudden loss of some or all of an employer's income stream because of this pandemic is a relevant consideration. Also relevant is the amount of discretionary funds available at this time—when considering other expenses—and whether there is an expected date that current restrictions on an employer's operations will be lifted (or new restrictions will be added or substituted). These considerations do not mean that an employer can reject any accommodation that costs money; an employer must weigh the cost of an accommodation against its current budget while taking into account constraints created by this pandemic. For example, even under current circumstances, there may be many no-cost or very low-cost accommodations.

D.12. Do the ADA and the Rehabilitation Act apply to applicants or employees who are classified as "critical infrastructure workers" or "essential critical workers" by the CDC? *(4/23/20)*

Yes. These CDC designations, or any other designations of certain employees, do not eliminate coverage under the ADA or the Rehabilitation Act, or any other equal employment opportunity law. Therefore, employers receiving requests for reasonable accommodation under the ADA or the Rehabilitation Act from employees falling in these categories of jobs must accept and process the requests as they would for any other employee. Whether the request is granted will depend on whether the worker is an individual with a disability, and whether there is a reasonable accommodation that can be provided absent undue hardship.

D.13. Is an employee entitled to an accommodation under the ADA in order to avoid exposing a family member who is at higher risk of severe illness from COVID-19 due to an underlying medical condition? *(6/11/20)*

No. Although the ADA prohibits discrimination based on association with an individual with a disability, that protection is limited to disparate treatment or harassment. The ADA does not require that an employer accommodate an employee without a disability based on the disability-related needs of a family member or other person with whom she is associated.

For example, an employee without a disability is not entitled under the ADA to telework as an accommodation in order to protect a family member with a disability from potential COVID-19 exposure.

Of course, an employer is free to provide such flexibilities if it chooses to do so. An employer choosing to offer additional flexibilities beyond what the law requires should be careful not to engage in disparate treatment on a protected EEO basis.

D.14. When an employer requires some or all of its employees to telework because of COVID-19 or government officials require employers to shut down their facilities and have workers telework, is the employer required to provide a teleworking employee with the same reasonable accommodations for disability under the ADA or the Rehabilitation Act that it provides to this individual in the workplace? *(9/8/20; adapted from 3/27/20 Webinar Question 20)*

If such a request is made, the employer and employee should discuss what the employee needs and why, and whether the same or a different accommodation could suffice in the home setting. For example, an employee may already have certain things in their home to enable them to do their job so that they do not need to have all of the accommodations that are provided in the workplace.

Also, the undue hardship considerations might be different when evaluating a request for accommodation when teleworking rather than working in the workplace. A reasonable accommodation that is feasible and does not pose an undue hardship in the workplace might pose one when considering circumstances, such as the place where it is needed and the reason for telework. For example, the fact that the period of telework may be of a temporary or unknown duration may render certain accommodations either not feasible or an undue hardship. There may also be constraints on the normal availability of items or on the ability of an employer to conduct a necessary assessment.

As a practical matter, and in light of the circumstances that led to the need for telework, employers and employees should both be creative and flexible about what can be done when an employee needs a reasonable accommodation for telework at home. If possible, providing interim

accommodations might be appropriate while an employer discusses a request with the employee or is waiting for additional information.

D.15. Assume that an employer grants telework to employees for the purpose of slowing or stopping the spread of COVID-19. When an employer reopens the workplace and recalls employees to the worksite, does the employer automatically have to grant telework as a reasonable accommodation to every employee with a disability who requests to continue this arrangement as an ADA/Rehabilitation Act accommodation? *(9/8/20; adapted from 3/27/20 Webinar Question 21)*

No. Any time an employee requests a reasonable accommodation, the employer is entitled to understand the disability-related limitation that necessitates an accommodation. If there is no disability-related limitation that requires teleworking, then the employer does not have to provide telework as an accommodation. Or, if there is a disability-related limitation but the employer can effectively address the need with another form of reasonable accommodation at the workplace, then the employer can choose that alternative to telework.

To the extent that an employer is permitting telework to employees because of COVID-19 and is choosing to excuse an employee from performing one or more essential functions, then a request—after the workplace reopens—to continue telework as a reasonable accommodation does not have to be granted if it requires continuing to excuse the employee from performing an essential function. The ADA never requires an employer to eliminate an essential function as an accommodation for an individual with a disability.

The fact that an employer temporarily excused performance of one or more essential functions when it closed the workplace and enabled employees to telework for the purpose of protecting their safety from COVID-19, or otherwise chose to permit telework, does not mean that the employer permanently changed a job's essential functions, that telework is always a feasible accommodation, or that it does not pose an undue hardship. These are fact-specific determinations. The employer has no obligation under the ADA to refrain from restoring all of an employee's essential duties at such time as it chooses to restore the prior work arrangement, and then evaluating any requests for continued or new accommodations under the usual ADA rules.

D.16. Assume that prior to the emergence of the COVID-19 pandemic, an employee with a disability had requested telework as a reasonable accommodation. The employee had shown a disability-related need for this accommodation, but the employer denied it because of concerns that the employee would not be able to perform the essential functions remotely. In the past, the employee therefore continued to come to the workplace. However, after the COVID-19 crisis has subsided and temporary telework ends, the employee renews her request for telework as a reasonable accommodation. Can the employer again refuse the request? *(9/8/20; adapted from 3/27/20 Webinar Question 22)*

Assuming all the requirements for such a reasonable accommodation are satisfied, the temporary telework experience could be relevant to considering the renewed request. In this situation, for example, the period of providing telework because of the COVID-19 pandemic could serve as a trial period that showed whether or not this employee with a disability could satisfactorily perform all essential functions while working remotely, and the employer should consider any new requests in light of this information. As with all accommodation requests, the employee and the employer should engage in a flexible, cooperative interactive process going forward if this issue does arise.

D.17. Might the pandemic result in excusable delays during the interactive process? *(9/8/20; adapted from 3/27/20 Webinar Question 19)*

Yes. The rapid spread of COVID-19 has disrupted normal work routines and may have resulted in unexpected or increased requests for reasonable accommodation. Although employers and employees should address these requests as soon as possible, the extraordinary circumstances of the COVID-19 pandemic may result in delay in discussing requests and in providing accommodation where warranted. Employers and employees are encouraged to use interim solutions to enable employees to keep working as much as possible.

D.18. Federal agencies are required to have timelines in their written reasonable accommodation procedures governing how quickly they will process requests and provide reasonable accommodations. What happens if circumstances created by the pandemic prevent an agency from meeting this timeline? *(9/8/20; adapted from 3/27/20 Webinar Question 19)*

Situations created by the current COVID-19 crisis may constitute an "extenuating circumstance"—something beyond a Federal agency's control—that may justify exceeding the normal timeline that an agency has adopted in its internal reasonable accommodation procedures.

G. Return to Work

G.2. An employer requires returning workers to wear personal protective gear and engage in infection control practices. Some employees ask for accommodations due to a need for modified protective gear. Must an employer grant these requests? *(4/17/20)*

An employer may require employees to wear protective gear (for example, masks and gloves) and observe infection control practices (for example, regular hand washing and social distancing protocols).

However, where an employee with a disability needs a related reasonable accommodation under the ADA (e.g., non-latex gloves, modified face masks for interpreters or others who communicate with an employee who uses lip reading, or gowns designed for individuals who use wheelchairs), or a religious accommodation under Title VII (such as modified equipment due to religious garb), the employer should discuss the request and provide the modification or an alternative if feasible and not an undue hardship on the operation of the employer's business under the ADA or Title VII.

G.3. What does an employee need to do in order to request reasonable accommodation from her employer because she has one of the medical conditions that CDC says may put her at higher risk for severe illness from COVID-19? *(5/5/20)*

An employee—or a third party, such as an employee's doctor—must let the employer know that she needs a change for a reason related to a medical condition (here, the underlying condition). Individuals may request accommodation in conversation or in writing. While the employee (or third party) does not need to use the term "reasonable accommodation" or reference the ADA, she may do so.

The employee or her representative should communicate that she has a medical condition that necessitates a change to meet a medical need. After receiving a request, the employer may ask

questions or seek medical documentation to help decide if the individual has a disability and if there is a reasonable accommodation, barring undue hardship, that can be provided.

G.4. The CDC identifies a number of medical conditions that might place individuals at "higher risk for severe illness" if they get COVID-19. An employer knows that an employee has one of these conditions and is concerned that his health will be jeopardized upon returning to the workplace, but the employee has not requested accommodation. How does the ADA apply to this situation? *(5/7/20)*

First, if the employee does not request a reasonable accommodation, the ADA does not mandate that the employer take action.

If the employer is concerned about the employee's health being jeopardized upon returning to the workplace, the ADA does not allow the employer to exclude the employee—or take any other adverse action—*solely* because the employee has a disability that the CDC identifies as potentially placing him at "higher risk for severe illness" if he gets COVID-19. Under the ADA, such action is not allowed unless the employee's disability poses a "direct threat" to his health that cannot be eliminated or reduced by reasonable accommodation.

The ADA direct threat requirement is a high standard. As an affirmative defense, direct threat requires an employer to show that the individual has a disability that poses a "significant risk of substantial harm" to his own health under 29 C.F.R. section 1630.2(r) (regulation addressing direct threat to health or safety of self or others). A direct threat assessment cannot be based solely on the condition being on the CDC's list; the determination must be an individualized assessment based on a reasonable medical judgment about this employee's disability—not the disability in general—using the most current medical knowledge and/or on the best available objective evidence. The ADA regulation requires an employer to consider the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the imminence of the potential harm. Analysis of these factors will likely include considerations based on the severity of the pandemic in a particular area and the employee's own health (for example, is the employee's disability well-controlled), and his particular job duties. A determination of direct threat also would include the likelihood that an individual will be exposed to the virus at the worksite. Measures that an employer may be taking in general to protect all workers, such as mandatory social distancing, also would be relevant.

Even if an employer determines that an employee's disability poses a direct threat to his own health, the employer still cannot exclude the employee from the workplace—or take any other adverse action—unless there is no way to provide a reasonable accommodation (absent undue hardship). The ADA regulations require an employer to consider whether there are reasonable accommodations that would eliminate or reduce the risk so that it would be safe for the employee to return to the workplace while still permitting performance of essential functions. This can involve an interactive process with the employee. If there are not accommodations that permit this, then an employer must consider accommodations such as telework, leave, or reassignment (perhaps to a different job in a place where it may be safer for the employee to work or that permits telework). An employer may only bar an employee from the workplace if, after going through all these steps, the facts support the conclusion that the employee poses a significant risk of substantial harm to himself that cannot be reduced or eliminated by reasonable accommodation.

G.5. What are examples of accommodation that, absent undue hardship, may eliminate (or reduce to an acceptable level) a direct threat to self? *(5/5/20)*

Accommodations may include additional or enhanced protective gowns, masks, gloves, or other gear beyond what the employer may generally provide to employees returning to its workplace. Accommodations also may include additional or enhanced protective measures, for example, erecting a barrier that provides separation between an employee with a disability and coworkers/the public or increasing the space between an employee with a disability and others. Another possible reasonable accommodation may be elimination or substitution of particular "marginal" functions (less critical or incidental job duties as distinguished from the "essential" functions of a particular position). In addition, accommodations may include temporary modification of work schedules (if that decreases contact with coworkers and/or the public when on duty or commuting) or moving the location of where one performs work (for example, moving a person to the end of a production line rather than in the middle of it if that provides more social distancing).

These are only a few ideas. Identifying an effective accommodation depends, among other things, on an employee's job duties and the design of the workspace. An employer and employee should discuss possible ideas; the Job Accommodation Network (www.askjan.org) also may be able to assist in helping identify possible accommodations. As with all discussions of reasonable accommodation during this pandemic, employers and employees are encouraged to be creative and flexible.

G.6. As a best practice, and in advance of having some or all employees return to the workplace, are there ways for an employer to invite employees to request flexibility in work arrangements? *(6/11/20)*

Yes. The ADA and the Rehabilitation Act permit employers to make information available in advance to **all** employees about who to contact—if they wish—to request accommodation for a disability that they may need upon return to the workplace, even if no date has been announced for their return. If requests are received in advance, the employer may begin the interactive process. An employer may choose to include in such a notice all the CDC-listed medical conditions that may place people at higher risk of serious illness if they contract COVID-19, provide instructions about who to contact, and explain that the employer is willing to consider on a case-by-case basis any requests from employees who have these or other medical conditions.

An employer also may send a general notice to all employees who are designated for returning to the workplace, noting that the employer is willing to consider requests for accommodation or flexibilities on an individualized basis. The employer should specify if the contacts differ depending on the reason for the request – for example, if the office or person to contact is different for employees with disabilities or pregnant workers than for employees whose request is based on age or child-care responsibilities.

Either approach is consistent with the ADEA, the ADA, and the May 29, 2020 CDC guidance that emphasizes the importance of employers providing accommodations or flexibilities to employees who, due to age or certain medical conditions, are at higher risk for severe illness.

Regardless of the approach, however, employers should ensure that whoever receives inquiries knows how to handle them consistent with the different federal employment nondiscrimination

laws that may apply, for instance, with respect to accommodations due to a medical condition, a religious belief, or pregnancy.

G.7. What should an employer do if an employee entering the worksite requests an alternative method of screening due to a medical condition? *(6/11/20)*

This is a request for reasonable accommodation, and an employer should proceed as it would for any other request for accommodation under the ADA or the Rehabilitation Act. If the requested change is easy to provide and inexpensive, the employer might voluntarily choose to make it available to anyone who asks, without going through an interactive process. Alternatively, if the disability is not obvious or already known, an employer may ask the employee for information to establish that the condition is a disability and what specific limitations require an accommodation. If necessary, an employer also may request medical documentation to support the employee's request, and then determine if that accommodation or an alternative effective accommodation can be provided, absent undue hardship.

Similarly, if an employee requested an alternative method of screening as a religious accommodation, the employer should determine if accommodation is available under Title VII.

COVID-19 Vaccinations: EEO Overview

K.2. What are some examples of reasonable accommodations or modifications that employers may have to provide to employees who do not get vaccinated due to disability; religious beliefs, practices, or observance; or pregnancy? *(5/28/21)*

An employee who does not get vaccinated due to a disability (covered by the ADA) or a sincerely held religious belief, practice, or observance (covered by Title VII) may be entitled to a reasonable accommodation that does not pose an undue hardship on the operation of the employer's business. For example, as a reasonable accommodation, an unvaccinated employee entering the workplace might wear a face mask, work at a social distance from coworkers or non-employees, work a modified shift, get periodic tests for COVID-19, be given the opportunity to telework, or finally, accept a reassignment.

Employees who are not vaccinated because of pregnancy may be entitled (under Title VII) to adjustments to keep working, if the employer makes modifications or exceptions for other employees. These modifications may be the same as the accommodations made for an employee based on disability or religion.

V. U.S. Department of Education Confirms Title IX Protects Students from Discrimination Based on Sexual Orientation and Gender Identity.

U.S. Department of Education Confirms Title IX Protects Students from Discrimination Based on Sexual Orientation and Gender Identity | U.S. Department of Education

The U.S. Department of Education's Office for Civil Rights today issued a Notice of Interpretation explaining that it will enforce Title IX's prohibition on discrimination on the basis of sex to include: (1) discrimination based on sexual orientation; and (2) discrimination based on gender identity. Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in any education program or activity offered by a recipient of federal financial assistance.

The Department's interpretation stems from the landmark U.S. Supreme Court decision in *Bostock v. Clayton County*, issued one year ago this week, in which the Supreme Court recognized that it is impossible to discriminate against a person based on their sexual orientation or gender identity without discriminating against that person based on sex.

"The Supreme Court has upheld the right for LGBTQ+ people to live and work without fear of harassment, exclusion, and discrimination – and our LGBTQ+ students have the same rights and deserve the same protections. I'm proud to have directed the Office for Civil Rights to enforce Title IX to protect all students from all forms of sex discrimination," said U.S. Secretary of Education Miguel Cardona. "Today, the Department makes clear that all students—including LGBTQ+ students—deserve the opportunity to learn and thrive in schools that are free from discrimination."

As OCR recently reported, LGBTQ+ students often face additional challenges in schools, including disproportionately experiencing persistent bullying, harassment, and victimization. The vulnerability of LGBTQ+ students has only increased during the COVID-19 pandemic, leaving them without access to school-based mental health services and other supports. One survey found that 78 percent of transgender and nonbinary youth reported that their mental health was "poor" either most of the time or always during COVID-19, compared with 61 percent of cisgender youth.

"The Department of Education strives to provide schools with the support they need to create learning environments that enable all students to succeed, regardless of their gender identity or sexual orientation. Equity in education means all students have access to schools that allow them to learn and thrive in all aspects of their educational experience," said Acting Assistant Secretary for Civil Rights Suzanne B. Goldberg. "As part of our mission to protect all students' civil rights, it is essential that OCR acts to eliminate discrimination that targets LGBTQ+ students."

Today's Notice of Interpretation continues OCR's sustained effort to promote safe and inclusive schools for all students, including LGBTQ+ students. This action is part of the Biden-Harris Administration's commitment to advance the rights of the LGBTQ+ community, set out in President Biden's *Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity* and the *Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation*.

The Department of Education's Notice of Interpretation is available here.

More information and resources for LGBTQ+ students are available here.

March 2021 Legal Comment “Recent Legal Developments Regarding Transgender Students and Employees”, WASB_2021-march.pdf

See also DOJ memo to federal agencies finding Bostock analysis applies to Title IX:

Application of Bostock v. Clayton County to Title IX of the Education Amendments of 1972 (justice.gov)

WASB Legal and Legislative Video Update, July 21, 2021, 12 pm

WASB Government Relations Team will address the following topics:

I. Updated CDC Guidance.
II. ESSER III Plans—District plan requirements
III. New Legislation—Major New Reading Initiative, Firearms Bills, Curriculum Transparency, etc.

WASB LEGISLATIVE UPDATE

I. Updated CDC Guidance

The Centers for Disease Control and Prevention (CDC) updated its guidance for COVID-19 prevention in schools on July 9.

(See: https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html)

Key Takeaways:

- **In-person Instruction**: Updated guidance emphasizes that students benefit from in-person learning, and safely returning to in-person instruction in the fall 2021 is a priority. Offering in-person learning is important, regardless of whether all of the prevention strategies can be implemented at the school.
- **Vaccination:** Vaccination is currently the leading public health prevention strategy to end the COVID-19 pandemic. Promoting vaccination can help schools safely return to in-person learning as well as extracurricular activities and sports.
    - Update includes information on offering and promoting COVID-19 vaccination in schools.
    - Many schools serve children under the age of 12 who are not eligible for vaccination at this time. Updated guidance also emphasizes the importance of implementing ***layered*** prevention strategies (e.g., using multiple prevention strategies together consistently) to protect those who are not fully vaccinated, including students, teachers, staff, and other members of their households.
- **Consistent and Correct Mask Use**: Masks should be worn indoors by all individuals (age 2 and older) who are not fully vaccinated. Consistent and correct mask use by people who are not fully vaccinated is especially important indoors and in crowded settings, when physical distancing cannot be maintained
    - **Indoors**: Mask use is recommended for people who are not fully vaccinated including students, teachers, and staff. Children under 2 years of age should not wear a mask.
    - **Outdoors**: In general, people do not need to wear masks when outdoors. However, particularly in areas of substantial to high transmission, CDC recommends that people who are not fully vaccinated wear a mask in crowded outdoor settings or during activities that involve sustained close contact with other people who are not fully vaccinated.

- **Physical Distancing:** Schools should maintain at least 3 feet of physical distance between students within classrooms, combined with indoor mask wearing by people who are not fully vaccinated, to reduce transmission risk. When it is not possible to maintain a physical distance of at least 3 feet, such as when schools cannot fully re-open while maintaining these distances, it is especially important to layer multiple other prevention strategies, such as indoor masking.
    - Schools where not everyone is fully vaccinated should implement physical distancing to the extent possible within their structures (in addition to masking and other prevention strategies), but should not exclude students from in-person learning to keep a minimum distance requirement.
    - Masking and physical distancing are key prevention strategies. However, if school leaders decide to remove any of the prevention strategies for their school based on local conditions, they should remove them one at a time and monitor closely (with adequate testing through the school and/or community) for any increases in COVID-19 cases.
    - Screening testing, ventilation, handwashing and respiratory etiquette, staying home when sick and getting tested, contact tracing in combination with quarantine and isolation, and cleaning and disinfection are also important layers of prevention to keep schools safe.
    - Students, teachers, and staff should stay home when they have signs of any infectious illness and be referred to their healthcare provider for testing and care.
- **Noteworthy change to quarantine guidance**: The updated guidance includes a new exception in the "close contact" definition in the K-12 classroom setting that ***excludes*** **students** who were within **3 to 6 feet of an infected student** here
    - both students **consistently and correct**ly **used well-fitting masks**;***and***
    - other K–12 school prevention strategies (such as universal and correct mask use, physical distancing, increased ventilation) were in place in the K–12 school setting**.**

  This exception does not apply to teachers, staff, or other adults in the indoor classroom setting.
- **Noteworthy change to food service recommendations:** Under the updated guidance it is no longer necessary to use individualized utensils or individualized portions.
- COVID-19 prevention strategies remain critical to protect people, including students, teachers, and staff, who are not fully vaccinated, especially in areas of moderate-to-high community transmission levels. School boards and other district leaders should monitor community transmission, vaccination coverage, screening testing, and occurrence of outbreaks to guide decisions on the level of layered prevention strategies (e.g., physical distancing, screening testing).

More Information related to the CDC Guidance is coming:
The Wisconsin Department of Health Services (DHS) has issued a statement endorsing the updated CDC guidance and is planning the following informational outreach efforts during the first week in August:

Webinar: The DHS in conjunction with the DPI will be hosting a webinar for schools and other stakeholders during the first week in August.

Outbreak Guidance: DHS will also release updated outbreak in schools guidance that week.

Ia. American Academy of Pediatrics Guidance

The American Academy of Pediatrics issued updated guidance on Monday (July 19).

(See https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/.)

Universal masking: The updated AAP guidance urges that all students older than 2 years and all school staff should wear face masks at school (unless medical or developmental conditions prohibit use). The recommendation for universal masking applies regardless of vaccination status.

In-person Instruction: The AAP guidance also urges that everything possible must be done to keep students in schools in-person.

In issuing the new guidance the AAP noted universal masking is important to maintain since a significant portion of the student population is not eligible for vaccination, new variants of the virus are more contagious, and schools may lack the resources to monitor vaccine status or enforce mask policies based on vaccination status. The guidance notes that universal masking is the best and most effective strategy to create consistent messages, expectations, enforcement, and compliance without the added burden of needing to monitor vaccination status. An added benefit of universal masking is protection of students and staff against other respiratory illnesses that would take time away from school.

The updated AAP guidance also urges that all eligible individuals should receive the COVID-19 vaccine, that adequate and timely COVID-19 testing resources must be available and accessible, and that

II. Requirements for Districts Receiving ESSER III Funds—a) District Plan for Use of Funds and b) Meaningful Consultation

The American Rescue Plan Act (ARPA) contains requirements on districts that school leaders should be aware of:

1) Twenty (20) Percent of ESSER III Funds received must be used to address learning loss

The ARPA requires is that a school district (LEA) that receives ESSER III funds … ***shall reserve not less than 20 percent of such funds to address learning loss*** through the implementation of evidence-based interventions, such as summer learning or summer enrichment, extended day, comprehensive afterschool programs, or extended school year programs, and ensure that such interventions respond to students' academic, social, and emotional needs and address the disproportionate impact of the coronavirus on the student subgroups described in section 1111(b)(2)(B)(xi) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(B)(xi)), students experiencing homelessness, and children and youth in foster care.

Districts are required to use any remaining funds for purposes authorized under the ARPA.

Note: The DPI has been holding stakeholder engagement sessions as it puts together its ESSER III State Plan. To help individual school districts and simplify the work of identifying which interventions are considered "evidence-based interventions" the WASB has asked the DPI to put together a bank of resources—identifying interventions that are deemed to be "evidence-based."

More Information on allowable uses of ESSER III Funds:

Section 2001(e) of the ARPA prescribes certain mandatory and permissive uses of ESSER III funds by school districts (LEAs).

Budget Paper #495 prepared by the non-partisan Legislative Fiscal Bureau provides a side-by-side comparison of the allowable uses of ESSER I, ESSR II and ESSR III funds.

2) District Plan for Safe Return To In-Person Instruction

A school district (LEA) receiving ESSER III funds must develop and make publicly available on its website, not later than 30 days after receiving the allocation of funds described in paragraph (d)(1), a plan for the safe return to in-person instruction and continuity of services.

Before making the plan publicly available, the local educational agency shall seek public comment on the plan and take such comments into account in the development of the plan.

If district had developed a plan for the safe return to in-person instruction before the date of enactment of this Act that meets the requirements described above, such a plan shall be deemed to satisfy the requirements under the ARPA.

Note: The U.S. Department of Education has released related resources to assist schools in safely reopening for in-person learning as part of the ED COVID-19 Handbook.

Volume 1 of the ED COVID-19 Handbook is available at *https://www2.ed.gov/documents/coronavirus/reopening.pdf*.

Volume 2 of the ED COVID-19 Handbook is intended to assist schools in addressing critical student needs and is available at *https://www2.ed.gov/documents/coronavirus/reopening-2.pdf*.

3) Maintenance of Equity for High-Poverty Schools

Section 2004(c) of the ARPA stipulates that a school district (LEA), as a condition of receiving ARP ESSER funds, may not, in Fiscal (School) Year 2022 or 2023:

- Reduce the combined State and local per-pupil funding for any high-poverty school served by the school district by an amount that exceeds the total reduction in district funding (from combined State and local funding), if any, for all schools served by the district in such fiscal year divided by the number of children enrolled in all schools served by the district in such fiscal year; or
- Reduce the number of full-time-equivalent (FTE) staff per-pupil in any high-poverty school by an amount that exceeds the total reduction in the number of FTEs per-pupil, if any, in all schools served by the district in such fiscal year divided by the number of children enrolled in all schools served by the district in such fiscal year.

A “high-poverty school” means a school in the highest quartile of schools served by a school district based on the percentage of economically disadvantaged students served. More information on maintenance of equity will be forthcoming.

The U.S. Department of Education recently published new guidance on Maintenance of Equity.

Additional Requirements— District Plans for Use of ESSER III Funds & U.S. Dept. Of Education Interim Final Rule on those plans

Recently, the U. S. Department of Education published a final interim rule establishing additional requirements on school districts receiving ESSER III funds under the ARPA.

(See: *https://www.federalregister.gov/public-inspection/2021-08359/american-rescue-plan-actelementary-and-secondary-school-emergency-relief-fund*.)

Under the interim final rule, ***each school district that receives ESSER III funds*** under the ARPA ***must develop a plan for its use of those ESSER III funds and submit it to the State education agency (SEA)*** within a reasonable timeline determined by the SEA.

The plan must contain, at a minimum:

- the extent to which and how the funds will be used to: implement prevention and mitigation strategies that are, to the extent practicable, consistent with CDC guidance;
- how the school district will use the funds it reserves under section 2001(e)(1) of the ARPA to address the academic impact of lost instructional time;
- how the district will use its remaining ARP ESSER funds;
- and how the district will ensure the interventions it implements will respond to the social, emotional, mental health, and academic needs of all students and particularly those students disproportionately impacted by the COVID-19 pandemic.

In developing its plan, a school district must engage in **meaningful consultation** with stakeholders including students; families; school and district administrators (including special education administrators); and teachers, principals, school leaders, other educators, school staff, ***and their unions.***

A school district must also engage in meaningful consultation with each of the following to the extent they are present in or served by the LEA: Tribes; civil rights organizations (including disability rights organizations); and stakeholders representing the interests of children with disabilities, English learners, children experiencing homelessness, children and youth in foster care, migratory students, children who are incarcerated, and other underserved students.

A school district should translate relevant materials and obtain the services of interpreters, as needed, to engage its English learners and families with limited English proficiency. A school district must provide the public the opportunity to provide input on the development of the plan, take such input into account, and post the ESSER III plan on its website.

The actual, specific language of the interim final rule provides that:

> "…each LEA that receives ARP ESSER funds must develop, submit to the SEA on a reasonable timeline determined by the SEA, and make publicly available on the LEA's website, a plan for the LEA's use of ARP ESSER funds. The plan, and any revisions to the plan submitted consistent with procedures established by the SEA, must include at a minimum a description of—

"(1) The extent to which and how the funds will be used to implement prevention and mitigation strategies that are, to the greatest extent practicable, consistent with the most recent CDC guidance on reopening schools, in order to continuously and safely open and operate schools for in-person learning;

"(2) How the LEA will use the funds it reserves under section 2001(e)(1) of the ARP Act to address the academic impact of lost instructional time through the implementation of evidence-based interventions, such as summer learning or summer enrichment, extended day, comprehensive afterschool programs, or extended school year;

"(3) How the LEA will spend its remaining ARP ESSER funds consistent with section 2001(e)(2) of the ARP Act; and

"(4) How the LEA will ensure that the interventions it implements, including but not limited to the interventions implemented under section 2001(e)(1) of the ARP Act to address the academic impact of lost instructional time, will respond to the academic, social, emotional, and mental health needs of all students, and particularly those students disproportionately impacted by the COVID-19 pandemic, including students from low-income families, students of color, English learners, children with disabilities, students experiencing homelessness, children in foster care, and migratory students.

"Under this requirement, an LEA must engage in meaningful consultation with stakeholders and give the public an opportunity to provide input in the development of its plan. Specifically, an LEA must engage in meaningful consultation with students; families; school and district administrators (including special education administrators); and teachers, principals, school leaders, other educators, school staff, and their unions. Additionally, an LEA must engage in meaningful consultation with each of the following, to the extent present in or served by the LEA: Tribes; civil rights organizations (including disability rights organizations); and stakeholders representing the interests of children with disabilities, English learners, children experiencing homelessness, children in foster care, migratory students, children who are incarcerated, and other underserved students.

"Finally, under the requirement, each LEA's ARP ESSER plan must be: In an understandable and uniform format; to the extent practicable, written in a language that parents can understand or, if not practicable, orally translated; and, upon request by a parent who is an individual with a disability, provided in an alternative format accessible to that parent."

More information about these requirements can be found in this U.S. Dept. of Education document, "*Frequently Asked Questions, Elementary and Secondary School Emergency Relief Programs Governor's Emergency Education Relief Programs*" (see: https://oese.ed.gov/files/2021/05/ESSER.GEER_.FAQs_5.26.21_745AM_FINALb0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf)

State ESSER III Plans

State education agencies (SEAs—such as the DPI) must also develop ESSR III plans and must make information publicly available about their ESSER III plans as soon as possible. (See: ARP-ESSER-State-Plan-Template-04-20-2021_130PM.pdf (ed.gov) .)

The DPI expects to complete and submit its ESSER III State Plan by mid-August. Watch the WASB Legislative Update Blog for more details as they become available.

The DPI also plans to provide guidance to school districts on developing local school district ESSER III plans. Based on conversations with the DPI, that is guidance likely to include:

- a Frequently Asked Questions (FAQ) sheet,
- a toolkit for districts on how to conduct listening/feedback sessions as well as
- sample questions to ask during those sessions to help generate useful feedback.

We plan to share links to whatever guidance documents the DPI provides on the WASB Legislative Update Blog as those documents become available.

III. State Legislation Update

Instructional Mandates

Assembly Bill 446 – Reading Readiness Program Overhaul
Rep. Kitchens (R-Sturgeon Bay); Sen. Bernier (R-Chippewa Falls)

Current Law:
School boards and independent charter schools must annually assess pupils enrolled in four-year-old kindergarten to second grade for reading readiness using an assessment of literacy fundamentals selected by the school board or independent charter school. The selected reading readiness assessment must evaluate whether a pupil possesses phonemic awareness and letter sound knowledge. Current law requires a school board or independent charter school to provide interventions or remedial reading services to a pupil if the reading readiness assessment indicates that the pupil is at risk of reading difficulty with interventions or remedial reading services. Current law does not define "at-risk."

Assembly Bill 446:
This bill requires school boards and independent charter schools to assess the early literacy skill of pupils in four-year-old-kindergarten to second grade using various screening assessments and to create a personal reading plan for each pupil in five-year-old kindergarten to second grade who is identified as at-risk based on a universal screening assessment or a level 1 screening assessment. Under the bill, "at-risk" means the pupil scored below the 25th percentile on an applicable screening assessment, as indicated by the screening assessment publisher.

Fundamental skills screening assessments; four-year-old kindergarten

Under the bill, school boards and independent charter schools must screen all pupils enrolled in four-year-old kindergarten *at least two times* each school year using a fundamental skills screening assessment. The bill specifies that the first screening must occur before the 46th day of the school term and that both screenings be completed by no later than 45 days before the last day of school. The bill defines a "fundamental skills screening assessment" as an assessment that evaluates a pupil's phonemic awareness and letter sound knowledge.

Tier 1 – Universal early learning screening assessments and interventions

Required universal screening assessments

Under the bill, school boards and independent charter schools must screen all pupils enrolled in five-year-old kindergarten to second grade *at least three* times each school year using a universal screening assessment. The bill specifies that the first universal screening must occur before the 46th day of the school term, the second universal screening must occur in the middle of the school term, and the third universal screening must occur no later than 45 days before the last day of school. The bill defines a "universal screening assessment" as an assessment that evaluates a pupil's skill in phonemic awareness, decoding skills, rapid naming skills, alphabet knowledge, and letter sound knowledge.

Personal reading plan; at-risk pupils

If a pupil is identified as at-risk based on a universal screening assessment, the bill requires the school board or independent charter school to create a personal reading plan for the pupil. Under the bill, a personal reading plan must include various components related to addressing the pupil's specific early literacy deficiencies, including interventions that will be provided to the pupil, how the pupil's progress will be monitored, and strategies the pupil's parent is encouraged to use to help the pupil achieve grade-level literacy skills. The bill further requires the school board or independent charter school to 1) provide the interventions included in the personal reading plan to the pupil, as soon as practicable; 2) monitor the pupil's progress at least weekly; 3) provide a copy of the personal reading plan to the pupil's parent; 4) obtain a copy of the reading plan signed by the pupil's parent; and 5) after 12 weeks of providing the interventions required in the personal reading plan, notify the pupil's parent of the pupil's progress.

Tier II – Level 1 screening assessments and interventions

Required level 1 screening assessments

Under the bill, school boards and independent charter schools must screen a pupil enrolled in five-year-old kindergarten to second grade using a level 1 screening assessment within 20 days of both of the following having occurred: 1) the pupil being identified as at risk on a universal

screening assessment and 2) the pupil demonstrating an inadequate rate of progress in the pupil's early literacy skills after 12 weeks of receiving interventions outlined in the pupil's personal reading plan. A school board or independent charter school must also screen a pupil using a level 1 screening assessment within 20 days of a request by a teacher or parent who suspects that the pupil has characteristics of dyslexia. The bill defines a "level 1 screening assessment" as a screening tool that evaluates a pupil's skill in the skills assessed in a universal screening assessment as well as phonological awareness and encoding, and provides the pupil's parent the opportunity to complete a family history survey about learning difficulties in the pupil's family.

Personal reading plan after a level 1 screening assessment

If a pupil is identified as at-risk based on a level 1 screening assessment, the bill requires the school board or independent charter school to modify the personal reading plan for the pupil.

Under the bill, the modified personal reading plan must include the same components as a personal reading plan based on a universal screening assessment, except the modified personal reading plan must be created to address the specific early literacy deficiencies identified by the level 1 screening assessment and must include intensive interventions to address those early literacy deficiencies. Under the bill, an "intensive intervention" is an intervention that includes instruction that: 1) is explicit, direct, systematic, sequential, and cumulative and follows a logical plan of presenting the alphabetic principle that targets the specific needs of the pupil without presuming prior skills or knowledge of the pupil; 2) is individualized to meet the specific needs of a pupil in a setting that uses intensive, highly concentrated instruction methods and materials that maximize pupil engagement; and 3) incorporates the simultaneous use of two or more sensory pathways during teacher presentations and pupil practice. A school board or independent charter school must provide the intensive interventions included in the personal reading plan to the pupil, as soon as practicable, and again monitor the pupil's progress at least weekly, provide a copy of the personal reading plan to the pupil's parent, obtain a copy of the reading plan signed by the pupil's parent, and notify the pupil's parent of the pupil's progress after 12 weeks of providing interventions under this personal reading plan.

Tier III – Level 2 screening assessments

Required level 2 screening assessments

Under the bill, school boards and independent charter schools must screen a pupil enrolled in five-year-old kindergarten to second grade using a level 2 screening assessment within 20 days of both of the following having occurred: 1) the pupil being identified as at risk on a level 1 screening assessment and 2) the pupil demonstrating an inadequate rate of progress in the pupil's early literacy skills after 12 weeks of receiving intensive interventions outlined in the pupil's personal reading plan, described above. A school board or independent charter school must also assess a pupil's early literacy skills using a level 2 screening assessment within 20 days of a request by a teacher or parent who suspects that the pupil has characteristics of dyslexia. The bill

defines a “level 2 screening assessment” as a screening tool that evaluates a pupil’s skill in the skills assessed in a universal screening assessment as well as phonological awareness, word recognition, fluency, spelling, reading comprehension, and listening comprehension, and provides the pupil’s parent the opportunity to complete a family history survey about learning difficulties in the pupil’s family. If a pupil is identified as at-risk based on a level 2 screening assessment, the bill requires the school board or independent charter school to provide information to the pupil’s parent about how to make a special education referral.

Approved reading readiness screening assessments

Under the bill, by July 15, 2022, the Department of Public Instruction must establish and maintain lists of approved fundamental skills screening assessments, universal screening assessments, level 1 screening assessments, and level 2 screening assessments (collectively, reading readiness screening assessments) on its Internet site. DPI must also submit these lists to the appropriate standing committees of the legislature. During the 2022-23 and 2023-24 school years, DPI must include specific assessments on its list of approved fundamental skills screening assessments and specific assessments on its list of approved universal screening assessments.

On the list of approved fundamental skills screening assessments, DPI must include the Phonological Awareness Literacy Screening (PALS), the Predictive Assessment of Reading (PAR), and Acadience’s Preschool Early Literacy Indicators (PELI). On the list of approved universal screening assessments, DPI must include the Dynamics Indicators of Basic Early Literacy Skills 8th edition, commonly known as DIBELS 8th edition; the Acadience reading assessment; FastBridge reading assessments; and the Renaissance Star Early Literacy assessment.

State funding for reading readiness screening assessments

Under the bill, DPI must pay each school board and independent charter school for the per pupil cost of each reading readiness screening assessment required to be administered under the bill. However, beginning in the 2023-24 school year, a school board or independent charter school is eligible for the state funding provided in the bill only if the school board or independent charter school submits an annual report to DPI and in that report indicates that the school board or charter school used only approved reading readiness screening assessments in the previous school year. Under current law, DPI pays school boards and independent charter schools for the per pupil cost of the reading readiness assessment selected by the school board or independent charter school.

PARENT NOTIFICATION REQUIREMENTS

Under the bill, a school board or independent charter school must provide a pupil’s results on a reading readiness screening assessment to the pupil’s parent by no later than 15 days after the applicable assessment is scored. The results provided to the parent must include the pupil’s

overall score, the pupil's score on each literacy skill category assessed by the assessment, the pupil's percentile rank score, if available, the score on the assessment that indicates a pupil is at-risk, and a plain language explanation of the literacy skills that were evaluated by the assessment.

In addition, if a school board or independent charter school is required to screen a pupil using a level 1 or level 2 screening assessment, the school board or independent charter school must provide the pupil's parent with information related to characteristics of dyslexia, including information about the common indicators of characteristics of dyslexia and appropriate interventions and accommodations for pupils with characteristics of dyslexia.

The bill also requires each school board and independent charter school to have an early literacy remediation plan. An early literacy remediation plan must include information about screening assessments used to identify at-risk pupils, the interventions used to address characteristics of dyslexia, and monitoring pupil progress related to early literacy skills. Under the bill, each school district and independent charter school must post its early literacy remediation plan on its Internet site.

Under current law, a school board or independent charter school must report the results of a reading readiness assessment to a pupil's parent. Current law does not provide a deadline by which the reading readiness results must be provided to parents.

REPORTING REQUIREMENTS

Under the bill, school boards and independent charter schools must annually, by July 15, report to DPI: 1) the number of pupils who were identified as at-risk based on a reading readiness screening assessment administered in the previous school year; 2) the number of five-year-old kindergarten to second grade pupils who began receiving literacy interventions or remedial reading services in the previous school year, by grade; and 3) the total number of five-year-old kindergarten to second grade pupils who received literacy interventions or remedial reading services in the previous school year. The school board or independent charter school must also report the names of the specific reading readiness screening assessments the school board or independent charter school used to screen pupils, as required under the bill, in the previous school year. Annually, by November 30, DPI must compile the information it receives from school boards and independent charter schools and submit a report to the legislature.

Assembly Bill 435/Senate Bill 431 – Cursive Writing Mandate
Rep. Thiesfeldt (R-Fond du Lac); Sen. Ballweg (R-Markesan)

This bill requires the state superintendent of public instruction to incorporate cursive writing into the model academic standards for English language arts. The bill also requires all school boards, independent charter schools, and private schools participating in a parental choice program to include cursive writing in its respective curriculum for the elementary grades. Specifically, each

elementary school curriculum must include the objective that pupils be able to write legibly in cursive by the end of fifth grade.

Transparency/Culture War Legislation

Senate Bill 448 – Bonding Referenda Interest Disclosure
Sen. Jacque (R-DePere); Rep. Cabral-Guevara (R-Appleton)

Under current law, whenever a municipality, county, or school district must hold a referendum seeking voter approval for issuing bonds, the referendum question must include a statement of the purpose for which bonds are to be issued and the maximum amount of the bonds to be issued.

Under this bill, the statement included with the referendum question must also provide the estimated amount of the interest accruing on the amount of the bonds, along with the interest rate. If the interest rate is a variable rate, the statement must also specify the amount of the interest accruing on the amount of the bonds calculated using the lowest rate during the term for which the rate is applicable and the amount of the interest accruing on the amount of the bonds calculated using the highest rate during the term for which the rate is applicable.

Assembly Bill 378/Senate Bill 373 – School Budget Transparency
Sen. Felzkowski (R-Irma); Rep. Magnafici (R-Dresser)

Beginning in the 2023-24 school year, this bill requires DPI to make detailed information related to financial data that DPI collects from school districts and county children with disabilities education boards available on a single web page, also referred to as the financial information portal, in a format that allows the public to download, sort, search, and access the information at no cost. The bill also requires DPI to include on the financial information portal similar financial information it collects from independent charter schools, to the extent doing so is feasible without collecting any additional information from independent charter schools solely for this purpose. Under the bill, DPI must annually update any information required to be included on the financial information portal and annually conduct a public information campaign about the availability of financial information on DPI's Internet site.

The bill also creates a school district and school financial information transparency advisory committee to advise DPI on the creation and design of the financial information portal. Under the bill, the 11 members of the advisory committee must be appointed by no later than 60 days after the bill becomes law. By no later than April 15, 2023, the advisory committee must submit its advisory report on the financial information portal to DPI. Under the bill, the advisory report must include recommendations on various topics, including 1) the categories of information that must be accessible on the financial information portal, 2) the financial data that must be accessible to the public for each required category of information, 3) whether DPI's existing hardware, software, data collection methods, training, maintenance, communications, data security, and installation specifications for reporting information are appropriate for the financial

information portal, and 4) the resources that are necessary to implement and maintain the financial information portal, as recommended by the advisory committee.

By no later than 45 days after receiving the advisory report, DPI must respond to the advisory committee on whether or not DPI will implement each recommendation in the advisory report and, if it will not implement a recommendation, why not. By the same deadline, DPI must also deliver the advisory report and its response to the advisory report to the Joint Committee on Finance, which triggers a 14-day JCF passive review process. Under the bill, if JCF does not schedule a meeting to review DPI's response to the advisory report, DPI may implement the recommendations in accordance with its response. If JCF does schedule a meeting to review DPI's response to the advisory report, DPI may not implement any recommendation in the report until JCF approves DPI's plan to implement or reject each recommendation in the advisory report. The bill requires DPI to implement the recommendations, as approved by JCF, by no later than one year after it is allowed to do so under the JCF review process. However, under the bill, DPI may delay implementing a recommendation to include financial information for schools in the portal until the 2024-25 school year.

Assembly Bill 411/Senate Bill 411 – Anti-Racism & Anti-Sexism Instruction & Training
Sen. Jacque (R-DePere); Rep. Wichgers (R-Muskego)

This bill prohibits race or sex stereotyping in 1) instruction provided to pupils in school districts and independent charter schools; and 2) training provided to employees of school boards and independent charter schools. Under the bill, a school board or the operator of an independent charter school is prohibited from allowing a teacher to teach pupils race or sex stereotyping in any course or as part of any curriculum and is prohibited from requiring an employee to attend a training that teaches, advocates, acts upon, or promotes race or sex stereotyping. Among the concepts that are prohibited from being taught under the bill are the following: that one race or sex is inherently superior to another race or sex and that an individual, by virtue of the individual's race or sex, bears responsibility for acts committed in the past by other individuals of the same race or sex.

The bill provides that the state superintendent of public instruction must withhold 10 percent of state aid distributions from a school board or operator that violates these prohibitions. The bill also provides that a parent or guardian of a student may bring a claim against a school district or operator of a charter school for violation of the prohibitions.

The bill also requires each school board to post all curricula used in schools in the school district on the school district's Internet site and, if a school board maintains an Internet site for an individual school, on the individual school's Internet site. If an Internet site is maintained for an independent charter school, the bill requires the authorizer of the independent charter school to ensure that all curricula used in the independent charter school are posted on the independent charter school's Internet site. Under the bill, upon request, a school board or independent charter

school operator must provide a printed copy of any curriculum that it is required to post on its Internet site, at no cost to the requester.

LRB-3687/1 – Posting Curriculum and Learning Materials Online
Sen. Stroebel (R-Saukville); Reps. Behnke (R-Oconto) and Thiesfeldt (R-Fond du Lac)

This bill requires each school board to post on the home page of its Internet site information related to learning materials and educational activities used in pupil instruction in the school district and any procedure or policy in effect that applies to the documentation, review, or approval of such learning materials or educational activities.

Under the bill, "used in pupil instruction" means that a learning material or educational activity is 1) assigned, distributed, or otherwise presented to pupils in a course for which pupils receive credit, 2) assigned, distributed, or otherwise presented to pupils if use of the learning material or participation in the educational activity is required by the school, 3) assigned, distributed, or otherwise presented to pupils and at least a majority of pupils in a grade level are expected to use the learning material or participate in the educational activity, 4) among learning materials from which pupils are required to select one or more materials, if the available selection of learning materials is restricted to specific titles, or 5) created by the school board or a teacher employed by the school board, including lesson plans, presentations, and videos.

The bill requires each school board to include in its list of learning materials and educational activities 1) bibliographic information necessary to identify each listed learning material and educational activity, 2) the full text or a copy of a learning material or educational activity created by the school board or a teacher employed by the school board, and 3) a link to curricula adopted by the school board to comply with state law.

Under the bill, a school board must update the list of learning materials and educational activities at least twice each school year and must notify parents and guardians each time the list is updated. The bill specifies that one update must occur before the start of the school term and one update must occur before January 15 of the applicable school year. The bill also requires the school board to ensure that the list remains available to the public on its Internet site for at least five years.

Finally, the bill allows a school district resident to bring an action in circuit court to compel a school board to comply with the requirements created in this bill. Under the bill, the court must award reasonable attorney's fees, up to $15,000, to the school district resident if he or she prevails in the action.

Concealed Carry Legislation

LRB-3818/1 – Firearms in a Vehicle on School Grounds
Sen. Jacque (R-DePere); Reps. Brooks (R-Saukville)

Under current law, a person is generally prohibited from possessing a firearm on the grounds of a school. A person who violates the prohibition is guilty of a Class I felony. Under this bill, a person who has a license to carry a concealed weapon may possess a firearm in a vehicle on the grounds of a school.

LRB-0211/1 – Lowering Age for Concealed Carry Permit to 18
Rep. Sortwell (R-Two Rivers)

Current law generally prohibits an individual from carrying a concealed weapon unless the individual has a license to carry a concealed weapon that is issued by the Department of Justice.

Under current law, DOJ may not issue a license to an individual who is under the age of 21. This bill lowers the minimum age requirement from 21 to 18.