

# WISCONSIN SchoolNews

Official publication of the Wisconsin Association of School Boards

April 2022 | [wasb.org](http://wasb.org)

How one Wisconsin  
school reimagined  
student discipline and  
behavioral intervention

## THE Bridge PROGRAM

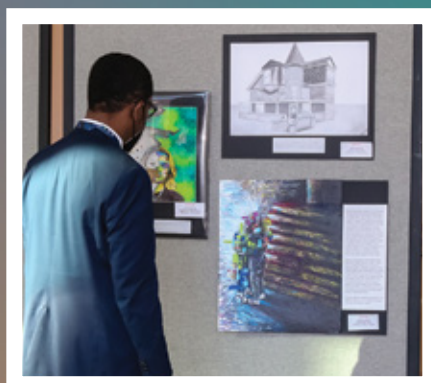


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# WISCONSIN SchoolNews

April 2022 | Volume 76 Number 8

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OF THE WISCONSIN ASSOCIATION  
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## Federal School Security Guide Released

A new school safety guide has been released to aid K-12 schools in their security planning.

The K-12 School Security Guide and School Security Assessment Tool, published by the Cybersecurity and Infrastructure Security Agency, provides schools with a “comprehensive doctrine and methodology to assess vulnerabilities, plan for emergencies, and implement layered elements of security.”

“The updated CISA K-12 School Security Guide and School Security Assessment Tool provide schools with critical new information, practical tools, and concrete steps they can implement immediately — and with minimal financial investment — to improve their physical security and better protect students, teachers and staff,” CISA Executive Assistant Director for Infrastructure Security David Mussington said in a press release.

The guide is intended to be used with a web-based assessment that helps users understand their schools’ vulnerability and provides recommendations.

To access the K-12 School Security Guide and the web-based assessment, visit [www.cisa.gov/k-12-school-security-guide](http://www.cisa.gov/k-12-school-security-guide). □

## Wisconsin Holds First All-Female State Wrestling Tournament

More than 260 girls competed this January in Wisconsin’s first all-female state wrestling tournament.

Mel Dow, associate director of the Wisconsin Interscholastic Athletic Association, told WAOW-TV, “We can spotlight the sport and show these young ladies that there are opportunities to strive and accomplish some of the great accomplishments that the boys have been afforded for so many years.”

The competitors told the TV station that they were proud to be part of the tournament, with Wausau West’s Chloe Weisenberger saying, “That’s just not something I thought I’d ever be able to say to friends and family and I’m just very proud and really excited.” □

## Test Disruptions Cloud Assessment of Pandemic’s Impact

The real decline in student proficiency inflicted by the pandemic may be higher than declining test scores show, according to a December report from the Wisconsin Policy Forum.

Statewide tests taken last spring showed proficiency among public school students was down 2.6% in English and 5.2% in math.

“These decreases are likely understated, however, given the longstanding achievement gaps in Wisconsin affecting the groups most likely to have not tested,” the report states.

From 2018-19 to 2020-21, test non-participation rates increased by 5.9% for white students, by 20.4% for

Hispanic students and 38.2% for Black students.

In other words, non-participation rates among all students dropped, but they fell furthest among the students with the biggest achievement gaps.

“In the meantime, despite their limitations, the current test data still reinforce concerns that the pandemic has harmed student learning, especially for those who were already underserved,” the report states. “The results underscore the need for education leaders to act with clarity and urgency to target their federal K-12 pandemic aid toward short-term recovery and long-term gains for students.” □

### STAT OF THE MONTH

38.2%

**Percent increase** in test non-participation rates among Black students in state testing from 2018-19 to 2020-21. *Source: Wisconsin Policy Forum*

## NEENAH TO REPRESENT WISCONSIN at Special Olympics

Two Neenah High School students and a teacher will travel to Orlando this June to represent Wisconsin in a Special Olympics program that brings together students with disabilities and those without.

The trio — students Alicia Langlois and Anabelle Hodges and teacher Jenni Oeftger — are part of the Special Olympics Unified Champion Schools program.

They will talk with participants from around the nation about how Neenah uses sports to help students with disabilities feel welcome. And they’ll learn ideas they can take home.

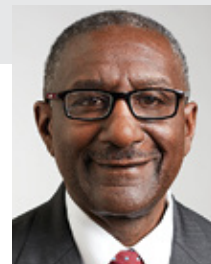
In addition, Neenah special education teacher Chad Oeftger will be the

head softball coach for Team Wisconsin at the Special Olympics USA Games.

Neenah has long been recognized for its work with the Special Olympics. In 2020, the district was one of 36 in the country to be placed on the ESPN honor roll for Special Olympics Unified Champion Schools.

An example of Neenah’s programming is having Special Olympics athletes at the school play a game of basketball against a team of staff members.

“It’s really cool because I get to go against the teachers and have fun with the different athletes,” Langlois told the Appleton Post-Crescent newspaper. □



## Forward, New Board Members

School board members start their journey with the drive to make a difference — even if they can't foresee every step along the path.

For many school board leaders, that journey ends this month — or, at least, takes a different form. Thank you, departing school board members, for your service to your communities.

Your efforts as public school advocates are still needed, and I hope you can remain ambassadors for educators and children. If you've served at least six years and want to stay informed, visit [WASB.org](http://WASB.org) to see if the WASB Alumni Program is a good fit.

For many others, the journey is beginning. Helping them succeed is a critical opportunity for Wisconsin's veteran board members and school leaders.

You may want to start by teaching your new member the basics, such as how to get an item on the agenda. Just as importantly, it's about making them feel welcome. Behind every cohesive school board is a series of strong relationships.

Now is a great time to review how your board welcomes new members, as so many Wisconsin school boards will do in the coming weeks. That means that nearly half of all school boards will see this spring's election as an opportunity to build the foundation for better schools.

There's no need to go it alone. The WASB is here to help.

Later this month, from April 19-21, we will hold a series of 14 evening meetings across Wisconsin. These informal gatherings (no registration or payment is required) are a

chance to meet the WASB director for your region and learn the basics of being a school board member before the first meeting.

For those unable to attend one of the in-person meetings, we will provide a live virtual session on April 28. It will be recorded and available to view at your convenience.

Attendees will also learn about what the WASB does for them and have the chance to meet other new board members in their region. If possible, attend this gathering alongside your new board member. They likely won't forget your generosity.

Turn to page 26 to see a list of meetings and locations.

Even if your board isn't being joined by a new member, you can still commit to learning and building relationships among your leadership team. Consider an in-person spring workshop (more on that in a moment) or learn on your schedule with the WASB Online Learning Platform.

In May, the WASB will hold another series of workshops that go more in-depth on the governance practices that make you effective — and help students succeed.

Even an experienced board member will learn something at these workshops, but we're careful to keep them understandable to new board members, too.

In this issue, new board members can benefit from learning about social media guidelines for school board members (page 20).

Our website, [WASB.org](http://WASB.org), is filled with resources for new board members. Under the "Basic Legal and Governance Resources" section,

find the New School Board Member Handbook. It's organized by theme and filled with questions that a typical new member might ask.

I understand this is not a typical year or election.

Whether they were spurred to run by pandemic-related issues or some other reason, school board members will learn that service is broader than a handful of issues. Taking advantage of WASB resources and events can be a way to help new members understand the scope of their work.

Familiarizing your board members with your district's culture is a critical aspect of onboarding.

As a veteran, you can begin to introduce your new colleague to your board's norms and practices, written and unwritten. I would also ask you to introduce them to the WASB's services, including all of the resources on our website, Facebook and Twitter.

If you're an experienced board member, you probably remember what it was like to walk into the board room for your first meeting. Maybe you were nervous; maybe you were confident. How you felt probably had a lot to do with how you were welcomed.

Whether or not you had a mentor, seeing the experience from your new board member's perspective can add clarity to your decision-making. The golden rule — treating others the way you want to be treated — works in the board room and the classroom.

Integrating your new members into a unified, cohesive board is another way that school boards live out the Wisconsin motto. Forward! ■

Even if your board isn't being joined by a new member, you can still commit to learning and building relationships among your leadership team.





**How one Wisconsin middle school rethought  
how to respond to student behavior**

# **THE Bridge PROGRAM**



**MATTHEW  
RADUECHEL**

Associate principal  
John Muir Middle School  
Wausau School District



**O**ur journey to reimagining behavioral intervention at John Muir Middle School started with a change in mindset. Our school, part of the Wausau School District, had begun to discuss student discipline and how adults should respond when things go wrong.

We read books. We attended trainings and completed social-emotional learning curriculum. We talked about responding to student behavior in new, flexible ways.

The preparation paid off as we became the first building in our district to adopt what we call the “BRIDGE” program, which stands for “breathe, reflect, internalize, de-escalate, grow and exit.”

Our mission is “to provide opportunities for students to process, evaluate, reflect and modify their actions, attitudes and behaviors to develop internal, and possibly external, motivators for academic success.”

We’ve been able to document tremendous growth and change. In the program’s first full year, we saw an 8% drop in behavioral tracking forms compared to the previous year. In year two, prior to the pandemic, we were on track to see a 19% decrease. Suspensions followed a similar trend: in year one, we saw a 38% decrease, and in year two, we were on track to see a 61% decrease.

We identified several conditions that have promoted the program’s success.

#### **Condition one: Change of mindset**

Discussions around our change in mindset were facilitated by two books, Ross Greene’s “Lost at School” and Heather Forbes’ “Help for Billy.” These books highlight the need to respond to students’ behavior in adaptive and flexible ways. In addition, our district was already engaged with the International Institute for Restorative Practices by having several individuals go through extensive training, with the goal of training others at their respective schools. This training focuses on building foundational relationships between staff and students so that when things go wrong, staff have the skills to help students learn from their mistakes and repair any damage. One



final element was the adoption of a social-emotional learning curriculum called the Leader in Me program from the Franklin Covey Company. Our students have been learning important leadership skills through the “7 Habits of Highly Effective People.”

It’s important to acknowledge that many districts face increasingly limited resources. Aside from the official adoption of Leader in Me, all the other experiences were optional opportunities for our staff. We recommend other districts or schools hold a book study to start engaging staff interested in changing how behavior is handled.

Then, your district or school can allow the process to build organically. For example, we offered restorative practice training for staff over the summer. By the start of the school year, our building had more than 20 trained staff members looking at student behaviors differently.

### ■ Condition two: Setting good policy

Building something from nothing is difficult. One of our first tasks was going to the building leadership team to discuss the mission, vision and objectives of the program. This gave us a foundation on which to build all other policies and procedures.

You may have noticed that our vision statement had no mention of punitive consequences for engaging with our BRIDGE program. This was a fundamental policy of our team. We felt strongly that punitive consequences would curtail students’ positive engagement. This understanding gave great insight to staff on the nature and direction of the program.

You also may have noticed the final word in our acronym: exit. We believe that BRIDGE should refocus students, allowing them to get back to



**We started with reading materials, coloring books, games, fidgets and Legos, but we weren’t quite sure how they would be used.**

the classroom in a timely manner. If students are not in the classroom, they cannot learn. However, we also acknowledge that events occurring in students’ lives may also hinder their

ability to focus on learning. From our leadership team’s perspective, the BRIDGE program is a place students can problem solve and build skills, but we also want to get them back in the classroom as soon as possible.

Engaging with all of your stakeholders is pivotal to setting good policy. Your teams may see different needs in your community and school. We’ll elaborate later, but our policy and procedure development are ongoing, and we review them yearly and modify things when needed. Having a good foundation will set your program up for success as it gets off the ground.

### ■ Condition three: Assessing our resources

We had to be creative in our first year. Initially, we did not have a dedicated space or supervisor for the BRIDGE program. Therefore, we reallocated various duties from around the building and made a staff member

available during each period of the day. During its initial phase, the BRIDGE program was run by several different staff members, and each period was housed in a different room. This was not ideal, and we knew it could limit the success of the program. However, we knew we needed to get the program off the ground with the resources we had available.

So, we went to the store and purchased anything we thought could help our supervisors. We started with reading materials, coloring books, games, fidgets and Legos, but we weren’t quite sure how they would be used. We also brought a cart up from the basement so supervisors could move the materials from room to room.

Getting started, even with limited resources, is half of the battle.



## Condition four: Moving forward


After our first year, we reassembled our leadership team to discuss our successes and challenges. We quickly realized that having a dedicated space and a dedicated coordinator for the BRIDGE program would be vital. This realization took another commitment from our building: We needed to re-allocate one of our rooms, which taxed an already overcrowded building. We were first able to reallocate a staff lounge and later convert an old computer lab into our current BRIDGE room. Limited resources required creativity, and because our staff saw the benefits, they accepted some inconvenience to support the program.

The second commitment came from our district, which allowed us to search for a coordinator of the program. We recommend looking for someone who has experience in dealing with disruptive students and has a genuine passion for helping them. Tailoring your interview questions and hiring process to fill that role may make or break your program.

## Condition five: Reflecting and refining

Engaging with our entire staff was vital. As we said before, our leadership team was involved early. However, once we got the program off the ground, we needed to update staff on the status of the program. Every January during professional development, we presented staff with data. This data included the number of BRIDGE room entries, patterns of behavior with specific students or times of day, behavioral tracking form trends and detention/suspension rates. We also collected feedback from staff and students.

This allowed the entire building to help refine the program. During these sessions, our supervisors identified gaps in the system and suggested improvements. In addition, our staff asked questions to better understand what was happening in the BRIDGE room. Furthermore, it was tremendously helpful to have staff see the hard data and solve problems



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— *Tosha Womack, Former Principal, Brown Deer High School*


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**Our parents have expressed gratitude that we have an adult-facilitated space for students to go to work out their differences.**



together. The improvements, such as dedicating a singular space and hiring a coordinator, arose from these professional growth sessions.

### **Conclusion**

One stakeholder group that is glaringly missing from this article is parents. While the students' parents were not a part of starting this program, we share information about our BRIDGE program with them frequently. This is especially true when we develop behavior plans to curb disruptive behaviors in the classroom. Our BRIDGE program has become a key element when developing these plans for students. In addition, especially when there has been conflict, our parents have expressed gratitude that we have an adult-facilitated space for students to go to work out their differences. We believe that this has strengthened our

relationship with parents, while acknowledging that there is still room for growth in this area.

By no means have we solved the issue of student behavior; however, we have added a valuable layer to our pupil services. We saw trends, identified a growing need and took action. We certainly use conventional discipline as well. However, we also take considerable time to process, guide and counsel students before, during and after consequences have been issued. Detentions and suspensions are still tools in our disciplinary model, but we also use the BRIDGE program to process with students when they return to school. It is very rare that a student is permanently removed from school; therefore, it is important to rebuild relationships with students after difficult events, so that we can continue to guide and counsel them through new situations

and circumstances.

We know that we have been able to provide an important service to our students by creating the BRIDGE program. We are very proud that this idea has expanded from our school to others within our district. We have been able to take our successes and failures to these new buildings and offer as much advice as possible. It is important to acknowledge that communities, and even buildings, differ greatly when addressing student behavior, and any school district looking to change the way behavior is handled should consider its unique attitudes and beliefs. If you have any questions or are interested in learning more about our BRIDGE program, please feel free to reach out and we will be more than happy to help. ■

*Matthew Raduechel is associate principal at John Muir Middle School in the Wausau School District. In 2021, he was named the Wisconsin Associate Principal of the Year.*



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working with you in 2022.  
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# A Commitment to All Children

## A FOCUS ON EXCELLENCE AND EQUITY

BY DAN NERAD

**W**hen public education undergoes conflict and crisis, it is difficult to keep perspective on what is occurring and what to do about it. While the quotes on the next page are more than two decades old, there is little question they remain relevant in Wisconsin public schools today.

Our board members and educa-

tional leaders continue to face challenges to their educational vision and to their purpose as elected and appointed leaders.

Among these challenges is mounting resistance to school districts' focus on equity. Sadly, the dialogue, or lack thereof, has become zero-sum in places. If we are helping "those children," the thinking can sometimes

go, you are not helping mine.

As a result, some education leaders are being faced with the public rejection of equity principles.

This is disheartening, but it is not inevitable. I believe there are ways to frame this need we all agree on — to be successful with all kids — in a way that keeps more people open to discussion and support of equity principles.





“**By many accounts, public schools are in trouble today.** Grim stories appear daily in the media about violence, high dropout rates and low test scores. Beyond such immediate concerns lies an uneasiness about purpose, a sense that we have lost our way. As the larger purposes that once gave resonance to public education have become muted, constituencies that at one time supported public education have become splintered and confused about what to do.”

“**As they sought to decentralize and standardize education,** they rejected the old idea that democracy demanded a common curriculum for all students. The intelligence and future destiny of pupils clearly differed, and thus the curriculum should be differentiated to match their abilities and needs. Democratic schools provided opportunities to all students to find niches suited to their various talents. Equality meant differences, not sameness of treatment.”

— **David Tyack** *“School: The Story of American Public Education”*

### ■ A history of meeting kids’ needs

The second passage from Tyack at the top of this page helps reinforce that public schools have long been about focusing on all kids and meeting the unique needs of learners. In the current wrangling on this issue, some assert that a focus on meeting unique needs, the equity journey, is a new thing. Far from it.

Why is it that we have for many years ensured a common curriculum and at the same time created unique learning programs like career and technical offerings? Why is it that we generally have a theater arts or drama program in our schools knowing that not all children avail themselves of this wonderful pro-

gramming? Why is it that we have athletic programs that help so many young people in their development, but not all children participate? And why is it that special education and unique literacy programs are so

Our framing of this issue must be with a dual commitment to **excellence for all children** while we address the unique needs of some learners through a focus on equity practices.

needed and have been provided for years to many of our learners?

As governing board members, educational leaders and community members, we have consistently sought to meet the unique needs of some children while maintaining a focus on all children. As a result:

Our framing of this issue must be with a dual commitment to excellence for all children while we address the unique needs of some learners through a focus on equity practices.

American public schools have a moral imperative to advance the learning and development of all children. Today, much is known about research-based, effective cur-

riculum, instruction and assessment practices that, when implemented with fidelity, will advance the learning and development of all children. With these practices, we must insist on nothing less.

And we cannot afford to let any child's learning be compromised and relegated to a "less than" status because of factors that are part of who each child is. The moral imperative is nothing less than every child being successful in school with their learning and development. This is what having a dual focus on excellence and equity is about. All means all.

Let's dig into the concept of excellence for all a little deeper.

### ■ Toward educational excellence

In their book "Excellence Through Equity," authors Alan Blankstein and Pedro Noguera write about our common interest to ensure that all young people receive an education that allows them to cultivate their talent and potential.

And we also now have strategies and interventions that make it possible to meet the needs of a wide variety of learners. The public school is truly about serving the learning needs of all children.

So, what do quality school systems do to focus on excellence for all children? In "The Path to Equity: Whole System Change," author Michael Fullan offers ideas, such as

As education leaders, we all share a deep commitment to meet the needs of every child. That commitment is, to me, the **definition of equity.**

the deep commitment to the moral imperative I described earlier.

He also suggests relentlessly pursuing a small number of goals, investing in capacity-building, building leaders at all levels, using transparent data to improve and monitoring for innovation and improvement.

And a focus on excellence for all children must also ensure a clear focus on what happens in classrooms. In 2021, writer Will Fastiggi summarized education researcher John Hattie's study on the qualities of teachers that impact student learning the most, which were:

- Being passionate about helping their students learn.
- Monitoring their impact on students' learning and adjusting their approaches accordingly.
- Forging strong relationships with their students.
- Adopting evidence-based teaching strategies.
- Actively seeking to improve their own learning.

We know what systems need to do and we know what classroom strategies make the biggest difference for all learners. We must lead with a commitment to practice accordingly.

So, if we are committed to excellence for all children, why is there also a need for a focus on equity? As asserted earlier, a focus on equity is far from a new thing.

### ■ Equity meets kids where they are

Beyond the historical commitments described earlier, we also have ongoing concerns with student attainment and the presence of significant opportunity gaps for some children. And let us not forget that we have a declining birth rate, which results in the need for more, if not all, children to be successful in the communities we serve. Finally, because children are inherently different, they need different things to be successful. According to Blankstein and Noguera, equity is premised on this understanding of differences.

As education leaders, we all share a deep commitment to meet the needs of every child. That commitment is, to me, the definition of equity.

It's providing an educational experience that meets each child at their own unique needs, interests and abilities.

Hanover Research has identified policy- and organizational-level





## BEST PRACTICES FOR EQUITY IN EDUCATION

- **Improving instructional strategies** and classroom practices by accommodating diverse learning styles; acknowledging students' cultural heritage; setting clear expectations for student learning and behavior; communicating high expectations for teacher and students; supporting teachers in their support of struggling learners; challenging underlying assumptions about student factors that play a role in student learning; and providing ongoing professional development to address the unique needs of learners.
- **Improving discipline policies** by ensuring discipline policies are clear and explicit, establishing appropriate alternatives to exclusionary discipline, providing behavioral supports, and focusing on restorative practices.
- **Improving grading policies** by ensuring grades reflect the skills and knowledge that students possess, making grades more objective, making grading practices and

common assessments consistent across courses, ensuring assessments are equitable and taken in equitable conditions, and examining standards-based assessment and grading.

- **Ensuring access to advanced courses** by using universal screening methods, using multiple criteria for identifying students for gifted/talented programs, and reviewing assessment instruments for cultural and linguistic bias.
- **Refining family engagement and outreach** by making participation easy, providing translators, ensuring written materials are in different languages, providing meaningful ways for families to be involved in student learning, and personalizing communications.
- **Reviewing other district policies** by examining what policies and practices might contribute to inequities and opportunity gaps.

Source: Hanover Research

practices to improve a system's focus on equity. These instructional, disciplinary, grading and outreach practices are explained in more detail in the sidebar above.

It is critical that these do not become embroiled in zero-sum conversations. It is not about either a focus on excellence or a focus on equity. It truly is about both, and our historical commitment to serve in this way. Let's work to ensure our conversations regarding our children and their learning are about both — especially when communicating with our public. And in the end, an argument can be made that focusing on excellence and equity ideas are good for all and will lift learning for all children.

### Your role as a governing board

What does this mean for the work of boards and superintendents? We encourage boards and superintendents to also consider the following from a district perspective:

- Formally define what is meant by excellence and equity through board statements.
- Ensure decision-making with an eye on its impact on all children.

- Use district demographics to define needs and make decisions.
- Review policies to ensure a focus on the improvement of learning for all students and the removal of barriers to a quality education.
- Review the curriculum development process to ensure it is responsive to meeting the needs of all children and has culturally relevant learning experiences.
- Ensure that instructional practices are evidence-based and commit to the improvement of teaching practices.
- Ensure all students can participate in co-curricular and extra-curricular programs.

- Remove unjustified restrictions to access to advanced coursework.
- Address disproportionality in student discipline.
- Ensure student voice in decision-making.

These ideas are offered to help governing board members and educational leaders work with their communities to understand our commitment to both excellence for all children and equity practices that allow children to have their unique learning and development needs met. Our enduring commitment to meeting the needs of all children must be a both/and commitment and not an either/or commitment. This historically has been the promise of our public schools, and may it remain so through the way we frame and do this work. ■

*Daniel Nerad is a search and governance consultant with the Wisconsin Association of School Boards. In his 45-year career as a public educator, Dan has served as superintendent in Green Bay, Madison and Birmingham, Michigan. He was Wisconsin's 2006 Superintendent of the Year.*

It is not about either a focus on excellence or a focus on equity. **It truly is about both** and our historical commitment to serve in this way.

# 2022 SCHOOL LAW CONFERENCE

DAN LINEHAN





**The 2022 Wisconsin School Attorneys Association/WASB School Law Conference**, which took place Feb. 24 in Wisconsin Dells, featured experienced school law attorneys presenting sessions on a variety of legal and related issues pertinent to school board members and school administrators.

## INVESTIGATING EMPLOYEE MISCONDUCT

**S**chool districts must weigh numerous factors when investigating potential misconduct by an employee, including the involvement of law enforcement, the employee's due process rights and public perception.

WASB Staff Counsel and Associate Executive Director Bob Butler walked conference attendees through the decisions required before, during and after an employee is accused of misconduct.

The first big-picture question to answer is often who is best suited to investigate. Who has the skills to explore the allegation while being impartial?

School board members, for example, are typically not the appropriate persons for this task. The school board may be called on to render judgment after an investigation, and a school board member with personal involvement may be required to recuse themselves from a decision.

"The board's role is that of a judge, not a beat cop or the prosecutor," Butler said.

Employee investigations tend to start with a complaint or allegation. Districts often have flexibility in how they respond, but there may be detailed and specific requirements for an investigation. For example, complaints about Title IX, the federal sex discrimination law, must be investigated in a particular way.

Pitfalls to avoid before the investigation begins include reacting at either extreme — either assuming the allegation is true or assuming it is false. Butler says not to believe a

complaint without an investigation or dismiss it out of hand, including if the allegation is anonymous, not in writing or both.

One of the first choices to make is whether to involve law enforcement. If the potential misconduct constitutes a violation of the law, law enforcement may ask that the district put its investigation on hold.

Interim actions — non-disciplinary steps taken before the investigation is complete — may be prudent. But care must be taken not to violate the employee's contractual or constitutional rights before the investigation is finished.

Administrative paid leave is often seen as a way to acknowledge the severity of an allegation without financially penalizing the employee. It can also preserve student and employee safety and communicate to the public that the district is taking action.

However, if this paid leave goes on too long, a court may see it as a form of discipline. An employee on paid leave for many months may experience dimmed job prospects after having to explain the gap in their work history.

Moving an employee to a different job is sometimes but not always a non-disciplinary move. Moving a classroom teacher to playground supervisor, for example, may be seen as a demotion, Butler said, even if their salary is unchanged.

When an investigation begins, an employee can typically be told that their cooperation is expected, and their failure to cooperate can by itself serve as the basis for further discipline.

In some cases, according to Butler, districts are prepared to lightly sanction an employee but choose more severe discipline when the employee is dishonest during the investigation.

Again, Title IX investigations are an exception to the expectation that employees must cooperate. An employee being investigated for a Title IX violation may choose not to participate in the complaint procedure. And the district cannot use that lack of participation as evidence that the employee is guilty.

The employee's job security provisions are also important to consider when discipline is at stake. The highest standard is called "just cause," meaning the employer must articulate a reason(s) when disciplining an employee. It is sometimes a part of teacher and administrator contracts.

As with any complex questions that relate to the details of your investigation, Butler recommends talking to a school district attorney to sort out how to respond.

When the conduct under investigation happens while the employee is off duty, the district must consider whether it is substantially related to their job requirements.

A potential case of driving while intoxicated while off duty is more related to the job of a bus driver, for example, than of a third-grade teacher, Butler said. □

**Who has the skills to explore the allegation while being impartial?**

NEW DEVELOPMENTS IN WISCONSIN PUBLIC RECORDS LAW

**S**chool districts are increasingly seeing requests for information about masks, COVID-19 protocols and other pandemic-related information, WASB Staff Counsel Ben Richter told conference attendees.

Knowing how to handle these and other requests can help districts save time, prevent legal liability and preserve transparency.

One common request has been for a district's pandemic-related records — a broad, large request — followed by a list of specific questions. It may be more efficient, Richter said, to ask the requester if answering the list of questions would be a sufficient response to the overall request. It is OK to follow up a request by asking the person if they'd be willing to narrow the request.

Other requestors are asking about whether school board members are bonded. In this context, a bond is basically insurance against misbehavior by a public official. The bond would cover the loss to taxpayers if the official misuses or embezzles public funds.

These requests may point to a state law that requires certain officials to be bonded. However, in nearly all cases, this is not a requirement for school board members, Richter said.

"The one situation in which you may have bonded school board members is if you have a clerk or treasurer who can't discharge their duties because of disability or absence," he said.

In these cases, the acting clerk or

treasurer is required to file a bond. In most cases, no bond exists, and the response to such a records request would be to reply that no such record exists.

The pandemic has also generated requests for medical information. Some of these requests are relatively simple, but others can be complex.

COVID-19 information can be shared in a public data dashboard or with local health officials. However, data about small numbers of students or employees could be identifiable if, say, cases are reported by a building with only a few employees.

In these cases, instead of reporting the number of cases, consider using a "less than" number to describe the case count.

Modern communication technology continues to provide new public data requests. In one case, city council members were seen texting during a meeting, and a successful public records request was filed for the texts.

"When you are at your school board meetings, please put these away," Richter said, holding up a cell phone. "If you get an important message, excuse yourself from that portion of the meeting."

Emails and social media posts about district matters continue to be subject to data requests, whether the account is district-related or private.

Richter recommends using a school district email account to conduct board business. If you use a personal email account, forward district-related material to your district account.

He also discussed the public records law in general, described common misconceptions and outlined recent cases.

Districts can charge per-page fees for printing public data, but they may want to reconsider their fee schedule after the state justice department changed its fees to about one cent per black and white page. Richter did not suggest districts must charge this amount.

Another potential error in handling these requests is rejecting those that did not use a specific word to refer to the data. Requesters should not have to use "magic words" if they can reasonably describe the information they want, Richter said.

It is prudent to talk to the school board's attorney before denying a public information request.

In one 2021 case, a requester asked for information about final candidates for a vacant school board position, including personal information about the seven applicants who were not chosen. The district denied the request, and the requester appealed.

The appeals court ruled most of this information should have been released. For example, the law forbids data release of "an individual who holds a local public office or a state public office," but none of the unsuccessful candidates held a public office, so the law doesn't apply to them.

In other words, these cases can get detailed and fact-specific, requiring the careful attention of an attorney. □

**Emails and social media posts about district matters continue to be subject to data requests, whether the account is district-related or private.**



DRAFTING EFFECTIVE BULLYING POLICIES

**M**any school district policies defining bullying and harassment are needlessly specific and restrictive, attorneys with the firm von Briesen & Roper, s.c. told conference attendees.

Narrowly defining bullying and harassment puts a lot of harmful behavior outside the scope of these policies, preventing accountability, incident reporting and corrective action.

Many policies require that the victim of harassment be a member of a protected class, attorney Lindsey Minser said. This means that many students cannot be subject to harassment.

Furthermore, this requirement can make it more difficult to prove harassment has occurred. It can be quite difficult to prove that a student in a protected class is being harassed because they are a member of that class, and not for some other reason. Intent is difficult to prove.

“This is not to say that being a member of a protected class should be removed, but it can be added as an aggravating factor,” Minser said, noting that could potentially result in a more severe response.

Poorly written policies may cause gaps that can make it more difficult to respond to behavior that everyone agrees is a problem — even if it doesn’t fit a narrow definition. One answer, the attorneys said, is to create a catch-all policy that covers a broad range of disruptive or harmful behavior. Bullying and harassment policies can remain to cover a more limited range of behavior.

Wisconsin school districts are required to have a policy defining bullying and outlining a response. Again, these definitions can often be quite restrictive.

There may be a requirement that the bully intends to cause fear, intimidation or harm.

“Motive is very difficult to prove, and it’s unnecessary,” Minser said. “It’s very hard to get in the head of someone else and know why they did something.”

These requirements to prove bullying are often higher than the standard seen in criminal cases. For example, to prove felony stalking, you don’t have to prove anything about the stalker’s intent.

This can make it more feasible for parents to seek relief from bullying through the courts than from the school district. But criminal court is rarely a more productive way to resolve bullying problems for either party.

A better standard to show bullying is to prove the behavior had “no legitimate purpose.” Just like it sounds, this standard means that a student (or, more rarely, staff member) has to show they had no good reason for the behavior.

But will this widening of behavior covered by a district “catch-all” policy lead to a large increase in claims of harm? Minser doesn’t think so.

“If you’re worried about casting too wide of a net, we didn’t see that as an issue in circuit court,” she said.

Another unnecessary requirement in these policies is that the victim be significantly harmed.

“It’s a frustrating standard

because students and parents want (the behavior) addressed before the conduct has a significant outcome,” Minser said.

Some policies say bullying can only happen with a power imbalance; that is, the bully must have more power than the victim. But power is a hard thing to define and may require telling, say, a larger or older student that they have no recourse against a smaller or younger one.

Finally, some policies may cite harsh punishments (like suspension and expulsion) as the only examples listed.

Staff may hesitate to enforce an anti-bullying policy if they believe an overly severe punishment is likely. And students may hesitate to come forward if they are worried that a harsh response will lead to reprisals.

“Overly punitive responses can deter reporting,” Minser said.

Instead, these policies should have a greater continuum of potential responses, such as having a conversation about the behavior.

“Have a range of responses to reflect the totality of the circumstances,” Minser says. “The best thing we can do is ask victims how they would like this handled.”

Policies should also not be limited to student-on-student behavior, attorney Sarah Hanneman said. It is also possible for employees (or third parties like vendors) to bully or harass students or each other.

“I’ve seen it happen too many times where a scenario doesn’t fit under existing policy,” she said. □

**There are gaps caused by a policy that can make it more difficult to respond to behavior that everyone agrees is a problem.**

SERVING THE NEEDS OF STUDENTS WITH DISABILITIES: CURRENT LEGAL TRENDS

**E**ducating students with behavioral and mental health struggles poses complex legal and practical challenges, Boardman & Clark attorneys Tess O'Brien-Heinzen and Matthew Bell told conference attendees.

The attorneys discussed the latest legal trends in the provision of special education services and offered advice to help schools meet their ethical and legal obligations.

One theme in their talk was to address student behaviors with positive behavioral supports and interventions early on and to document all efforts.

"Now, more than ever, it's important to focus on those beginning steps," she said, "starting out with a really robust IEP (Individualized Education Program) that addresses the behaviors and includes supports and interventions."

O'Brien-Heinzen said many districts across Wisconsin are educating children with challenging and disruptive behavior. Children may be aggressive or engage in violent behavior, posing a risk to students and staff, or they may be disruptive in class by raising their voice or engaging in distracting, off-task behaviors.

Districts have a legal obligation to educate children with disabilities in the least restrictive environment possible. This generally means educating them in a regular education classroom, when it is possible to do so. When that isn't possible, a district may move a child to a more restrictive setting, such as a special education classroom or an alternative placement outside of the school.

However, all too often, districts stumble in their efforts to document the services they provide to students in various settings. These omissions

may come to light if the district meets resistance from parents when it attempts to transfer the student to an alternative placement, such as a day treatment center or private educational facility.

In these situations, districts often lack documentation to show why the student needs an alternate placement.

"We get called in for the more egregious cases," O'Brien-Heinzen said, "then when we get the IEP, I have to ask, 'Has this behavior been going on for a long time?'" Often, districts say, "yes."

But despite the time that's passed, she may not see evidence in the IEP of positive behavioral supports and interventions or the IEP team's efforts to review and revise the IEP if those aren't working. An outside decision-maker will look for this and more in determining if the placement outside the district is appropriate.

And, without evidence of these efforts, "it's going to be really hard to make an argument based on cogent reasoning that you are not able to meet these students' needs" in the district, O'Brien-Heinzen said.

Furthermore, districts are often actually providing supports and interventions but not documenting them.

"If you're going to do things for students to address their behavior, get credit for it, put it in the IEP," Bell said.

When students are placed outside the district, the attorneys reminded districts to closely monitor them, as stakes can be high in alternative placements, both legally and financially. A district still has the responsibility to ensure that a child is being educated, even if that happens in the private placement.

But it can be difficult to track the academic progress of students in private placements.

Bell, referencing a recent memo by the Department of Public Instruction addressing private school placements, suggested getting monthly progress updates on these students' IEP progress, asking for copies of course syllabi, and dropping in at the facility to ensure the student is being educated.

Additionally, Bell said, "our goal should be to get kids back to their own school."

In one case, a Wisconsin parent brought a complaint against a district that decided to return a student to the classroom rather than continue with a private placement.

But because the district was diligent in documenting its efforts and updating the student's IEP, it successfully defended the case.

The attorneys closed with pandemic-related updates. Students with disabilities may be entitled to what are called "compensatory services" for school missed during the pandemic. This may require districts to look backward at what a given student might have missed because of a school closure or virtual instruction.

They also reminded attendees that parents' masking-related requests (such as a request for staff working with a child to wear a mask) must be considered like any other accommodation request.

"The response cannot be, 'No, we are mask-optional,'" O'Brien-Heinzen said. The student's IEP needs to answer the same question: Are these accommodations necessary for the student to attend school?

If not, she said to be sure to document the reasons for the rejection in writing. ■

*Dan Linehan is director of communications at the WASB.*





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# USING SOCIAL MEDIA

## 8 social media guidelines for school board members

**M**any school board members are active users of social media, including online platforms such as Facebook and Twitter. Social media can be a positive tool for fostering community engagement with the school district.

Board members, however, need to operate within appropriate guidelines when they are communicating online about school district business. The following guidelines are suggested for board members using social media in their role as public officials.

As to any form of electronic communication that pertains to their office or to district business, a board member should ask themselves a few basic questions.

First, should I be using this method of electronic communication at all?

For example, public records laws

require your communications to be retained for a given period of time, so it can be retrieved and produced if needed. School board members should make sure they can count on their access to this social media communication.

Second, should I be using this specific way to communicate on this subject?

As with other electronic communication, social media can be used as a one-way distribution of information, perhaps to share information about an upcoming board meeting. It can also be an effective place to share good news from your district's social media accounts.

But there are good reasons to reconsider using social media for many purposes, both due to board policies and state and federal laws. Here are some types of communication for which social media isn't a good fit:

- Discussion of substantive board business among multiple members. In addition to appearing secretive to the public, these communications can violate the Open Meetings Law.
- Communications about individual students. Discussing identifiable students could violate state or federal privacy and student information laws.
- Confidential or sensitive district topics. Anything you post on social media should be considered public, so it's not the place to talk about closed sessions, personnel or similar topics.

Board members do not lose their First Amendment rights by being a board member, including on social media. You may speak for or against an issue (with certain exceptions) or be part of groups that advocate a



particular viewpoint.

If you participate in social media with other board members, consider that laws regarding open meetings, campaign finance and electioneering may come into play.

If you use social media to discuss district business, you should keep these eight guidelines in mind:

**1: Clarify that you are communicating as an individual member of the board and not an official district spokesperson.**

Like all citizens, individual board members may voice their opinions about matters of public concern, whether that occurs in a formal letter to the editor or an informal social media post.

If you post on social media, you should expressly clarify that you are speaking only as individual board members and not on behalf of the entire board or the school district.

If you're writing or recording a video on social media, consider starting and ending by saying you're acting in your individual capacity, not as a representative of the board. Finally, before posting in a crisis or on a sensitive topic, consider that your board may choose a single spokesperson.



**2: Take extra care when interacting with other board members on social media.**

School board members may communicate with each other using social media, such as Facebook, LinkedIn or Twitter, as long as they are not talking about board business or upcoming votes.

Using social media to deliver information to all board members is generally safe, but replying to posts or “tagging” other board members can pose risks under the open meetings law. If you have to discuss an issue with board members, the safest route is to have the conversation at a properly posted school board meeting.

Be forewarned, even if your social media account is private, discussions about district business could be requested under the Public Records Law.

Please note that your social media

communications may also become public as well, even with privacy settings set to “friends only.” If you don’t want your conversations and comments to become front-page fodder, don’t have them online.

**3: Direct complaints or concerns presented online to the appropriate administrator.**

If you see a social media post about the district, the best step is to notify the person in your district’s chain of command — not immediately respond yourself.

It is a good idea to be familiar with your board policy on public complaints. Using social media to address a complaint publicly is particularly risky. Resist the temptation to respond to complaints or criticism on social media.

Your district staff are better-placed to choose whether and how to respond.

**4: Avoid posting content indicating you have already formed an opinion before a due process hearing.**

As previously stated, public officials have a free speech right to share opinions about matters of public concern.

When the school board is acting as a policymaking body, much of what the board considers are matters





## SOCIAL MEDIA ONLINE COMMUNICATIONS WEBINAR

May 5 | 12 p.m.

**Bob Butler will host a webinar about the use of social media**, online communications and email by school board members on May 5 at noon.

He will address the implications posed by the First Amendment, Wisconsin's open meetings, public records and pupil records laws, and board member roles and responsibilities, including who speaks for the board.

Register at WASB.org. Registrants can watch live and receive a copy of the webinar recording to watch on their schedule.

of public concern. In some instances, however, board members act in the role of a judge or tribunal by hearing appeals of contested cases.

Examples include grievances, termination proceedings, expulsions, nonrenewal hearings and private conferences, and other contested matters, many of which require due process of law.

The concept of “due process” calls for the board to serve as an impartial decision maker, which means board members should come to the hearing with an open mind.

Social media posts by a board member expressing an opinion on pending matters may be considered evidence of bias or prejudgment on the issue. This evidence of bias may be used to exclude the individual board member or call into question the validity of board action.

**5: When describing a previous board meeting, clarify that you are not posting an official record. Share information only from the open portions of the meeting.**

Refer the citizen to the approved board minutes if you get questions about what was acted upon at the meeting.

**6: Conduct yourself online in a manner that reflects well on the district; avoid posting anonymously or spreading rumors.**

Even a well-meaning board member who stumbles across and repeats false information about another person can be subject to a defamation claim.

Depending on the matter at hand, conducting school board matters on social media may breach confidentiality, violate individuals' privacy rights, or expose the board member to personal liability for defamation.

Some statutes or duties may limit what a member of the governmental body may say publicly. School board members do not have immunity or free speech protection for words that breach a duty of confidentiality or defame another person.

If a board member repeats a false rumor, or even a “half-truth” online, the board member's repetition of the unverified information can constitute defamation if the statement tends to harm another person, for instance, by damaging the person's reputation.

**7: Realize that by using a personal account to conduct official school district business, your account may become a public forum under the First Amendment.**

Board members have long used personal websites, blogs and social media platforms to promote their positions on policy, inform their electorate, and communicate accomplishments while in office.

Even though online tools are viable communication channels, legal risks remain high when allowing interactive features that invite public discourse. Active litigation is just beginning to unravel complex legal issues involving the First Amendment's application to interactions amongst governmental bodies and individual officials with members of the public. In addition, the open meeting law and public records law items cited above are also a factor to consider.

Why would it matter if your account were deemed a public forum? Essentially, viewpoints on a public forum cannot be silenced, so action taken on your account — such as by blocking a critical commenter — could violate the First Amendment.

Considering the flurry of litigation in this area, individual board members should work with their local school district's legal counsel to determine reasonable, viewpoint-neutral guidelines for creating official social media pages and communicating school business online.

**8: Retain electronic records — including your own posts and content others post to your account — when required to do so by the district's records retention schedule.**

**Even a well-meaning board member who stumbles across and repeats false information about another person can be subject to a defamation claim.**

Please also note the public records issues if a personal social media page is used to discuss governmental business.

State statute includes “electronically formatted documents” in its definition of public records.

If an authority makes use of social media, or if school board members or employees use mobile devices to conduct government business (whether the device is personal or provided by the authority), the authority should adopt procedures to retain and preserve all such records.

Please also note the public records issues if a personal social media page is used to discuss governmental business.

Such a social media account could be subject to the public records law, which could apply to your private messages on a social media platform. In addition, the open meetings law could be implicated if you are discussing governmental business with other board members on your personal social media page.

Electronic records include content posted by or on behalf of authorities to social media sites, such as Facebook and Twitter, to the extent that the content relates to government business.

If an authority or school board member uses social media for governmental business, the content must be produced if it is responsive to a public records request. This includes not only currently “live” content, but also past content. Individuals who choose to use a social networking site in their official capacities must understand the site's rules for retention and maintenance of site postings. ■

*Bob Butler has been a WASB staff counsel since 1990. He is an associate executive director of the WASB.*

**Disclaimer:** This article is intended to provide authoritative general information, with commentary, as a service to WASB members. The materials and information provided in this article should not be relied upon as legal advice. If needed, legal advice regarding any topic, issue, situation, or incident should be obtained from the school district's legal counsel.

Portions of this article are modified from an original document published online in Texas Association of School Boards School Law eSource, information contained in the WASB New Member Handbook and a WASB presentation entitled “Social Media, Online Communications and Email Use: The Implications for Board Members.”

## Buelow Vetter Continues to Stand Out

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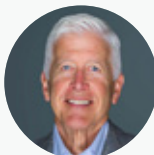
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Current student representatives Mary Grace Blake (left) and Arianna Barbosa attend a recent meeting. Student representatives have their own table, microphone and nameplate, just as the board members do.

# Student Engagement

## BRINGING STUDENT VOICE TO THE BOARD ROOM

School boards typically center their work on matters of policy, planning, budget, curriculum and instruction that serve and support students. The work is complex and, at times, can feel far removed from students in the classroom. Keeping a focus on students can be a challenge and is easily deprioritized when agenda planning for the next board meeting.

Since it first crafted a student engagement policy in 1972, Elm-

brook Schools has prioritized not just student learning but student voices at its monthly school board meetings.

The district facilitated a 2022 State Education Convention breakout session, “What Can Your Students Offer at School Board Meetings,” where School Board President Scott Wheeler, Superintendent Dr. Mark Hansen and Amelia Fernandes, one of last year’s student representatives, shared how their model enhances school board decisions while intro-

ducing students to the democratic process of representation.

At its monthly meeting, the Elm-brook School Board’s first agenda item is “High School Student Representatives Reports and Discussion.” Both of the district’s high schools, Brookfield Central and Brookfield East, send one or two student council representatives to share highlights and accomplishments of the past month, as well as upcoming special events.

## KEEPING A FOCUS ON STUDENTS can be a challenge and is easily deprioritized when agenda planning for the next board meeting.

Celebrations range from student participation at the Homecoming Dance and conference championships won, to money raised for a local charity through a school-wide fundraising event. Placing the student representative(s) first helps to remind all in attendance, regardless of other agenda items to be discussed, that, even during challenging times and through differences of opinion, students are front and center.

More recently, the school board president and superintendent sought to deepen these presentations with discussions on timely topics generated by both students and the Board of Education. Each fall, the two district leaders visit a student council meeting at each high school and engage in a listening session with students who respond to three prompts:

- Teachers who have made a significant impact on them.
- What they would change if they were the school board president or superintendent.
- Two topics the student body would like more thoroughly discussed by the school board.

Topics generated by the student groups in the fall are strategically agendaized throughout the year; a discussion on mental health during exams, school lunch prices and parking fees during consideration of the budget, or assessment practices during a policy discussion on standards-based grading.

Before the board meeting, discussion topics and questions are shared in advance with the student representatives, who often survey their peers to gain a larger sampling of feedback and responses. The representatives then present a summary of that feedback to the Board of Educa-

tion on behalf of their student body.

“I found great value in our presentations and discussions with the Board of Education,” said Fernandes. “Not only did we have a voice in the creation of the topics, I felt that each board member listened to what we had to say and tried to understand our perspective.”

During the presentation, Elmbrook shared several parts of the process in detail.

Student representatives are selected partially based on interest and principal recommendation. In Elmbrook’s experience, it has been good to designate two representatives from each high school to assure that at least one student is always available for each month’s meeting. Sometimes, virtual presentations are made to accommodate the busy lives of their teenagers.

One example of the impact of this exchange of ideas occurred a

few years ago when a student representative presented a release time incentive program for seniors based on grades, attendance and good behavior. Developed collaboratively by student leaders from both high schools, this program was launched in 2013 and continues to provide a full period of release time to students that meet or exceed expectations.

Logistically, student representatives have their own table, microphone and nameplate, just as the board members do.

“I believe the startup details of this are quite simple,” added Dr. Hansen, “identify a few willing students, create a consistent format for engagement, treat them with respect and listen intently, and you will be amazed at their insights and feedback.” ■

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## New School Board Member Gatherings

■ **APRIL 19-21** | 14 Locations | Complimentary  
Online Statewide Meeting: **APRIL 28**

If you have a newly elected or appointed school board member, encourage them to attend a WASB New School Board Member Gathering, which will provide an informal orientation to:

- Discuss essential information for their first board meeting.
- Meet their WASB regional director.
- Network with new and experienced school board members in their WASB region.
- Learn about WASB services that can help them in their new role.

Experienced board members and district administrators are encouraged to attend as well and offer input and guidance.

**All gatherings are 7-9 p.m.** There is no cost or need to register. Visit [WASB.org](http://WASB.org) for more information.

**There will be a statewide online meeting** for new school board members at 7 p.m. on Thursday, April 28. This meeting will be recorded and available for viewing at your convenience.

### ■ Tuesday, APRIL 19

- Region 3: CESA 7, Green Bay
- Region 6: CESA 4, West Salem
- Region 9: CESA 3, Fennimore
- Region 15: Pewaukee High School Learning Commons

### ■ Wednesday, APRIL 20

- Region 1: CESA 11, Turtle Lake
- Region 5: Marathon High School Library
- Region 10: Lodi High School Large Group Instruction (LGI) Room
- Region 11: Muskego-Norway District Office
- Region 13: Elkhorn School District Administrative Building

### ■ Thursday, APRIL 21

- Region 2: Three Lakes Junior and Senior High School Library
- Region 4: Menomonie Middle School
- Region 7: CESA 6, Oshkosh
- Region 8: Reedsville High School Library
- Region 12: DeForest District Office

## Spring Workshop Governing for Excellence

■ **MAY 10-12 and 17-19** | 6 Locations | \$105 per person  
Online Statewide Meeting: **MAY 24**

**Dinner:** 6 p.m.

**Program:** 6:30-8:30 p.m.  
(All locations)

How well boards carry out their governance responsibilities in many ways determines the quality of the education for the children they serve. Local school boards can stand out as an example of highly effective decision-making, leadership and action. This workshop will address:

- Major themes of good governance
- Importance of trust to good governance
- Communication challenges that can sidetrack boards

Participants will gain a greater understanding of what it takes to be a highly effective board that uses communication tools for success.



### ■ Tuesday, MAY 10

- CESA 1, Pewaukee

### ■ Wednesday, MAY 11

- CESA 2, Whitewater

### ■ Thursday, MAY 12

- CESA 3, Fennimore

### ■ Tuesday, MAY 17

- CESA 7, Green Bay

### ■ Wednesday, MAY 18

- CESA 11, Turtle Lake

### ■ Thursday, MAY 19

- CESA 5, Portage

**Visit [WASB.org](http://WASB.org)** for more information and to register. Members are welcome to attend a workshop in any location.

The **ONLINE SPRING WORKSHOP** will be held on Tuesday, May 24 at 7 p.m.

**SAVE THE DATE...**  
**Summer Leadership Institute**  
**JULY 8 – 9**

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## WASB Connection Podcast

A recent episode of the WASB Connection Podcast hits the highlights of the **2022 State Education Convention**.

Listen to snippets of student music performances, general sessions and keynote speakers.

We also asked attendees — presenters, students, education leaders and exhibitors — why they come to the convention.

“One of the things I really love about the individual sessions is the people who’re on stage presenting, you get to go up to them afterward and ask them personal questions and get their wisdom but then also the people in the audience ... It’s just a phenomenal way to learn new stuff from all kinds of people.”

— Adam Steinberg, Lodi School Board president

Find the episode at [WASB.org](https://www.wasb.org) or wherever you listen to podcasts.



## UPCOMING WEBINARS

### ■ SCHOOL BOARD REORGANIZATION MEETING

**APRIL 12** | 12-1 p.m.

#### **Presenter:**

Bob Butler, Associate Executive Director and Staff Counsel

**School boards are required to hold** their organizational meeting on or within 30 days of the 4th Monday in April. This presentation reviews requirements for the organizational meeting and the orientation of new school board members.

### ■ HIRING TEACHERS

**JUNE 7** | 12-1 p.m.

#### **Presenter:**

Bob Butler, Associate Executive Director and Staff Counsel

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

### ■ WASB LEGAL AND LEGISLATIVE VIDEO UPDATE

**APRIL 13, MAY 18, JUNE 15** | 12 p.m.

WASB attorneys and government relations staff provide a complimentary monthly update on recent legal and legislative issues to answer members’ most pressing questions. *No registration required. Visit [WASB.org](https://www.wasb.org) for the link.*



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

# WASB Government Relations: How We Work for You

*Our advocacy is more effective with your support*



Whether you are a newly elected member of your school board or a grizzled veteran, you've likely seen how your schools are influenced by the decisions made in Madison and Washington, D.C.

Often, that influence is positive, but there can be times when that influence is not necessarily positive or helpful. For that reason, it is important for school leaders to help state and federal policymakers appreciate the effect of their decisions at the local level.

Understanding what WASB Government Relations does and what services we provide for member boards will help you be a more effective advocate for students.

It is important to help policymakers appreciate the effect of their decisions at the local level.

The WASB GR team represents Wisconsin school boards at the state Capitol and with state agencies and federal officials. The GR staff develops effective relationships with lawmakers and with agency officials to advance the WASB Legislative Agenda and communicate our positions on bills before the state Legislature and Congress.

The WASB is a nonpartisan entity. We do not endorse candidates for office nor make political contributions. We also recognize that our membership is politically diverse and a reflection of our somewhat "purple" — a mix of red and blue — state.

The increase in partisanship in general, and regarding K-12 education issues in particular, can make navigating issues in a nonpartisan manner a challenge. Ultimately, we

operate on the directive that our members expect us to be able to work effectively with elected officials from both sides of the aisle.

How do we decide what position to take on a given bill? The simple answer is that we are guided by our member-adopted resolutions. The GR staff must advocate for the positions given to us by our membership in the form of resolutions passed by the WASB Delegate Assembly. If we have taken positions you disagree with, your board has the opportunity to change that position by bringing forward a resolution reflecting your board's preferred viewpoint.

Member school boards may adopt board resolutions on various K-12 education-related topics and submit them to the WASB by Sept. 15 each year.

Once these resolutions are submitted, they head to the Policy and Resolutions Committee, comprised of about 25 school board members appointed each year from across the state. The committee reviews and evaluates them to determine which ones will advance to the annual WASB Delegate Assembly.

The Delegate Assembly is comprised of one representative from each member school board and CESA board of control and meets annually at the time of the WASB-WASDA-WASBO State Education Convention in January. The resolutions adopted at the Delegate Assembly become official positions of the WASB and are what the GR staff look to when deciding positions on legislation. For more information on this process, visit the Delegate

Assembly page at [WASB.org](http://WASB.org).

You and your board can play a key role in advancing the WASB's positions. Naturally, our advocacy messaging has more impact and effectiveness with lawmakers when we are backed up by you with your own local arguments and examples. Nobody else is better positioned to tell your district's story — whether it is articulating your needs or explaining how proposed state and federal legislation is going to impact your district or how enacted legislation is affecting your district.

As locally elected officials, school board members are uniquely able to have influence. You have constituents that you share with your elected lawmakers. And, in trying to influence your lawmakers, you are not in this alone. The WASB is here to help you to be effective advocates.

The WASB GR staff offers a variety of resources to keep you informed and assist you in advocating for the needs of your district:

- Follow the Legislative Update blog ([wasb.org/legislative-update/](http://wasb.org/legislative-update/)) to get information about the latest developments in Madison and Washington, D.C.
- When your advocacy is needed on timely issues, we will notify you with a WASB Action Alert email. These emails utilize an advocacy software system that makes it quick and easy to contact your lawmakers with sample messages that you can customize to highlight the impact on your district.

Naturally, our advocacy messaging has more impact and effectiveness with lawmakers when we are backed up by you with your own local arguments and examples.

School board members are ideally positioned to foster understanding of their district's needs and build support of public education in general with their state and federal lawmakers.

- If you use social media, follow the WASB Facebook and Twitter accounts.
- Advocacy information can also be accessed via the weekly eConnection emails. These likely go to your school district email addresses.
- Day at the Capitol occurs in March of the odd-numbered years. This important event provides school board members and administrators with an opportunity to hear directly from legislative leaders and meet with their legislators in the Capitol as the state budget is being considered.

- The Fall Legislative Conference is held in the fall of odd-numbered years and features key state legislators and experts on important education issues.
- Advocacy Workshops in the fall of even-numbered years provide a deep dive on advocacy tips and post-election analysis from the GR staff.
- The annual State Education Convention invites the governor and features sessions on important legislative topics.
- Fall Regional Meetings also feature a legislative update.

School board members are ideally positioned to foster understanding of

their district's needs and build support of public education in general with their state and federal lawmakers. You know best what is happening in your district and how a given legislative action is likely to affect it. To know and do what is best for your district, your legislators need to hear from you.

If you and your board don't tell your district's story, who will?

The WASB GR team will strive to provide you with any assistance we can in advocating for your students and your district and communicating with your lawmakers.

In next month's column, we plan to tie a bow on the 2021-22 legislative session, which is wrapping up as of this writing. ■



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# Legal Issues Involved in Student Suicide Prevention

In response to the ongoing pandemic and resulting turmoil caused in the lives of many students, mental health has been a frequent topic at school board meetings across the country. Even before the pandemic, data from Wisconsin school districts revealed that during the 2018-2019 school year, approximately 16% of high school students seriously considered suicide, and that number is likely going up.<sup>1</sup> School boards continually face the difficult task of balancing the academic needs of students while addressing their emotional well-being. In doing so, suicide prevention remains a top priority for school boards, Wisconsin lawmakers, and the U.S. Congress,<sup>2</sup> especially now as mental health issues escalate. This Legal Comment will discuss requirements under state law associated with a board's suicide prevention efforts, the standards for board liability in state and federal cases involving suicide, and obligations (as well as best practices) to identify and respond to students struggling with mental health via the special education and general education environments.

## **Mandatory school-based suicide prevention efforts**

All school boards are required to inform professional staff on an annual basis of resources regarding suicide prevention.<sup>3</sup> To assist boards with this obligation, the Department of Public Instruction has developed a model notice that provides information about factors contributing to youth suicide, a list of common warning signs, suicide prevention resources and actions and words to avoid when seeing warning signs of suicide.<sup>4</sup> DPI also provides training

for professional staff, which includes information on how to assist minors in the positive emotional development which will help prevent suicidal tendencies; the detection, by minors, school staff, and parents, of conditions which indicate suicidal tendencies; the proper action to take when there is reason to believe that a minor has suicidal tendencies or is contemplating suicide; and the coordination of school suicide prevention programs and activities with the suicide prevention and intervention programs and activities of other state and local agencies.

In addition to providing staff with information to prevent suicide, school boards are also required to incorporate topics associated with suicide into the district's health curriculum.<sup>5</sup> Specifically, the curriculum must include instruction on "conditions which may cause and the signs of suicidal tendencies, knowledge of the relationship between youth suicide and the use of alcohol and controlled substances ... and knowledge of the available community youth suicide prevention and intervention services." Further, school boards that issue identification cards to students must include specific information on the card about suicide prevention, including a number for a suicide prevention hotline.<sup>6</sup>

## **District liability for student suicide**

Wisconsin law provides immunity for acts taken to prevent suicide. Specifically, school boards, officials, employees, and volunteers "who in good faith attempt to prevent suicide" are immune from civil liability related to that "attempt."<sup>7</sup> However, the more pressing question

is often whether school boards or school officials can be liable for *failing to act to prevent suicide*. State and federal law analyze the issue differently.

The seminal case under Wisconsin law addressing a district's liability for a student's suicide is *McMahon v. St. Croix Falls School District*.<sup>8</sup> In *McMahon*, the parents of a high school student filed a wrongful death action against the school district after the student skipped school and died by suicide at home. The parents alleged that the district's negligence in failing to notify them of the student's absence on that day, that the student had been despondent over his failing grades and his removal from the basketball team for those grades, and that the student had been seen upset and crying in school, resulted in the student's suicide.

The court of appeals held that public policy supported a holding in favor of the district. In doing so, the court identified the criteria for a negligence claim under state law: 1) the defendant owes a duty of care to the plaintiff; 2) the defendant breached that duty; 3) a causal connection exists between the defendant's conduct and the injury; and 4) damage resulted from the injury. A defendant is liable when they commit an act in which harm to someone is foreseeable. The parents alleged that the district had a duty of care to the student and breached that duty by failing to notify the parents that the student was despondent and absent from school. The parents further asserted that it was foreseeable that an unexplained absence of a minor child would lead to harm and that a causal connection existed between the lack of

notice and the student's suicide.

The court of appeals rejected the parents' argument, citing Wisconsin's general rule that "suicide constitutes an intervening force which breaks the line of causation from the wrongful act to the death and therefore the wrongful act does not render the defendant civilly liable," which is another way of saying the injury is too remote from the negligence, and public policy supports not holding the district liable. Based on this reasoning, the court did not determine whether the district had a duty of care or whether the student's suicide was foreseeable. The court further noted that the only exception to this "general rule" is the rare circumstance where an act or failure to act creates an uncontrollable impulse or rage resulting in an individual taking their own life without a conscious decision to do so.

The Seventh Circuit Court of Appeals decision in *Martin v. Shawano-Gresham School District*<sup>9</sup> provides the pivotal analysis under federal law wherein liability under substantive due process under the U.S. Constitution is based on whether the school created or increased the risk of harm to the student. In *Martin*, a 13-year-old student died by suicide after being suspended for possessing cigarettes on school grounds. The student received her suspension at the end of the day following a locker search, cried hard in response to the suspension, and left for home on the school bus. The assistant principal called the student's parents after she left but didn't reach them, so the assistant principal left a message on the parents' answering machine. After the student's death, the parents sued the assistant principal, the principal, the superintendent, the assistant superintendent, the middle school, and the school district under Section 1983 for violations of substantive and procedural due process and equal protection under the U.S. Constitution.

As to their substantive due

process claim, the parents alleged that the defendants violated the student's rights by suspending her, which in turn caused her severe emotional distress, and then the defendants failed to affirmatively protect her from that distress. According to the parents, this caused her to kill herself. In response to this argument, the court explained that the Due Process Clause of the U.S. Constitution generally does not require a state to act affirmatively to protect people from harm from each other. The court also acknowledged, however, that individuals may state a claim if they allege "state action that created, or substantially contributes to the creation of, a danger or renders citizens more vulnerable to danger [than] they otherwise would have been."<sup>10</sup> The parents alleged that the defendants either created the risk that the student would die by suicide or rendered the student more vulnerable to suicide by suspending her, and that by creating or increasing the danger, the defendants should have taken affirmative steps to protect her, such as counseling her or holding her hand at school until her parents could pick her up. The court rejected this claim finding it critical that the school did not create or increase a risk to the student by suspending her from school, even if that action caused severe emotional distress. The fact that the defendants sent the student home after the school day ended, as they normally would, further bolstered the court's rejection of the parents' claim:

Thus, the plaintiffs can only succeed if they establish that the school had a duty to protect Timijane from suicide *after* the school day ended. But ... "the primary responsibility for safeguarding children from this danger, as from most others, is that of their parents; and even they, with direct control and intimate knowledge, are often helpless."... Because the defendants did not create or increase a

risk that Timijane would commit suicide by suspending her and then allowing her to return home at the end of the school day, the Martins' substantive due process claim must fail.<sup>11</sup>

Finally, according to the court, even in cases with facts much more egregious (*e.g.*, where defendants are grossly negligent), such claims still fail unless the defendant's conduct "shocks the conscience."<sup>12</sup> Therefore, both state and federal courts have established principles of very limited liability in cases wherein the allegations are that the district failed to act to prevent suicide.<sup>13</sup>

### **District obligations to address self harm under disability laws**

Not all students thinking about suicide are students with disabilities. However, students who exhibit signs of depression or a mood disorder, struggle with significant behavioral issues, or engage in or express an intent to engage in self-harm (*i.e.*, express suicidal ideations), may be eligible under the Individuals with Disabilities Education Act for special education and related services to address these often significant issues. Such students may also be eligible under Section 504 of the Rehabilitation Act of 1973 for accommodations which can ease the pressures of school in response to escalating concerns around mental health.

For students to receive these services and accommodations, it is not only imperative that district staff be able to identify students with disabilities and refer them for evaluation; it is required under the law. Wisconsin Statutes Section 115.777 imposes on certain district employees a "child find" obligation and requires such employees who "reasonably believe" a child has a disability to initiate a referral for an evaluation under the IDEA or Section 504. Students found eligible under the IDEA or Section 504 may be entitled to specialized instruction targeting mental health

and behavior, related services such as counseling, and accommodations such as extra time for completing assignments, breaks during the day, a crisis plan, and identification of available safe spaces and people.

Reinforcing that this child-find function, as it relates to mental health, is critical in the wake of COVID-19, the United States Department of Justice and the United States Department of Education issued a joint statement on emerging and escalating mental health disabilities in students and acknowledged that these disabilities may result in students engaging in self-harm or considering suicide.<sup>14</sup> The agencies also used the opportunity to remind districts that when responding to threats of self-harm, including expressions of suicidal ideation, they must “make decisions about how to respond ... based on an assessment of each student’s circumstances” and not on fears, stereotypes or generalizations. Finally, the agencies cautioned that a district’s failure to comply with legal obligations could result in agency investigations and enforcement with respect to scenarios such as this one:

A public school student has developed severe depression for the first time during the pandemic. Their parent tells the school principal. Despite the school’s Section 504 FAPE [Free Appropriate Public Education] obligation to evaluate any student who needs or is believed to need special education or related services because of a disability, the principal does not refer the student for evaluation. Instead, the principal says that all students are struggling because of the pandemic and suggests that the parent should hire a private tutor and find a psychologist for the student.

## Conclusion

As the pandemic dragged on, its effects on mental health became more and more apparent, especially with respect to students. Self-harm and suicidal ideations have increased among young people in the school environment. School boards might consider committing resources to self-harm and suicide prevention. At a minimum, school boards must comply with their legal obligations. Additionally, school boards should consider addressing escalating needs of students through education of staff and students, taking widespread measures across all school environments, and finding effective ways to reach their most vulnerable students. Such measures might include: board review of policies and procedures associated with students in crisis to ensure a prompt response to the student and notification to parents; development of a peer-to-peer suicide prevention program via grants through DPI;<sup>15</sup> staff training on identifying signs of suicide; protocols for responding in the special education and general education environment and child find under the IDEA and/or Section 504; and exploration of partnerships with programs and organizations to provide easier access to mental health supports and services. ■

## Endnotes

1. Wis. Dep’t. of Pub. Instruction, Summary Report Wisconsin 2019 Youth Risk Behavior Survey, [https://dpi.wi.gov/sites/default/files/imce/sspw/pdf/YRBS\\_2019\\_Summary\\_Report\\_DPI\\_Web\\_Version.pdf](https://dpi.wi.gov/sites/default/files/imce/sspw/pdf/YRBS_2019_Summary_Report_DPI_Web_Version.pdf).
2. The U.S. House of Representatives and the U.S. Senate passed the STANDUP Act of 2021 on a bipartisan vote. As of the time of the drafting of this Legal Comment, the Act is awaiting President Biden’s signature. This Act, if it becomes law, would direct the Secretary of Health and Human Services to give priority to Public Health Service Act funding to applications from school districts and states that have implemented, or plan to implement, a student suicide awareness and prevention training policy for students in grades 6 through 12 that complies with the requirements of this bill.
3. Wis. Stat. s 115.365.
4. Wis. Dep’t. of Pub. Instruction, 2021 Required Notice of Youth Suicide Prevention Resources, [https://dpi.wi.gov/sites/default/files/imce/sspw/pdf/2021\\_Suicide\\_Prevention\\_Model\\_Notice.pdf](https://dpi.wi.gov/sites/default/files/imce/sspw/pdf/2021_Suicide_Prevention_Model_Notice.pdf).
5. Wis. Stat. s 118.01(2)(d)7; Wis. Admin. Code PI s. 8.01(2)(j)1.
6. Wis. Stat. s. 118.169(2).
7. Wis. Stat. s. 118.295.
8. 228 Wis. 2d 215, 596 N.W.2d 875 (Ct. App. 1999).
9. 295 F.3d 701 (7th Cir. 2002).
10. Id. at 708.
11. Id. at 712 (quoting *Hasenfus v. LaJeunesse*, 175 F.3d 68 (1st Cir. 1999)).
12. *King ex rel. King v. E. St. Louis Sch. Dist.* 189, 496 F.3d 812, 818 (7th Cir. 2007).
13. While not discussed in these cases, school districts also have a variety of statutory and common law immunities that might be applicable if districts face claims involving student suicide. Such immunities are outside the scope of this Legal Comment.
14. U.S. Dep’t. of Justice Civil Rights Div. and U.S. Dep’t of Educ. Office for Civil Rights, Supporting and Protecting the Rights of Students at Risk of Self-Harm in the Era of COVID-19 (Oct. 2021), [https://www.ada.gov/students\\_self-harm\\_fact\\_sheet.pdf](https://www.ada.gov/students_self-harm_fact_sheet.pdf).
15. Wis. Stat. s. 115.366.

This Legal Comment was written by Michael J. Julka, Matthew W. Bell, and Tess O’Brien-Heinzen of Boardman Clark, WASB Legal Counsel. For related articles, see Wisconsin School News: “*The Manifestation Determination Process*” (Oct. 2021); “*Compensatory Education Services for Students with Disabilities*” (May 2020); “*Legal Update: Liability for Student Suicide and Searches*” (Feb. 2000); and “*Good Laws Save Student from Suicide*” (Feb. 1993).





# Educational Services and Products

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Our School Practice Group has more than 25 years of educational institution experience and a dedicated resource center designed with school district's risk and claims management needs in mind.

#### ► TRICOR Insurance

855-904-1618  
jgibson@tricorinsurance.com  
tricorinsurance.com

We now insure over 150 public schools. Our School Practice Team is made up of a diverse group of experienced individuals who are extensively trained and specialized in school insurance products, risk management, support services, loss control, human resources and claims advocacy.

#### ► UnitedHealthcare

414-443-4735  
jessica\_a\_daun@uhc.com  
uhc.com

UnitedHealthcare is dedicated to helping people live healthier lives and making the health system work better for everyone. We are committed to improving the healthcare experience of K-12 teachers, staff, retirees and their families in the state of Wisconsin.

#### ► USI Insurance Services

608-259-3666  
al.jaeger@usi.com, usi.com  
Our focus is financial security options that protect and assist growth. We go beyond simply protecting against the loss of assets and property.

### Leadership Consulting

#### ► Studer Education

850-898-3949  
info@studereducation.com  
studereducation.com

We support the critical work of school district leaders through coaching around an Evidence-Based Leadership framework to increase student achievement, employee engagement, parent satisfaction, district support services, and financial efficiency.

### Legal Services

#### ► Buelow Vetter Bulkema Olson & Vliet LLC

262-364-0300  
jaziere@buelowvetter.com  
buelowvetter.com

We have decades of experience in representing school boards across Wisconsin. We advise school boards and administrators on a variety of issues from labor and employment to student discipline and expulsion.

#### ► Renning, Lewis & Lacy, s.c.

844-626-0901  
info@law-rl.com  
law-rl.com

Renning, Lewis & Lacy, S.C. provides legal counsel on a full range of issues that school and higher education institution clients confront on a regular basis.

#### ► von Briesen & Roper, s.c.

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

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

#### ► Weld Riley, s.c.

715-839-7786, weldriley.com  
sweld@weldriley.com  
We provide a wide variety of legal advice and counseling to help Wisconsin school districts, colleges and CESAs address corporate-related, body politic and unique legal issues.

### School/Community Research

#### ► School Perceptions, LLC

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

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

### Transportation

#### ► Dairyland Buses, Inc.

262-544-8181, ridesta.com  
mjordan@ridesta.com  
School bus contracting provider, managed contracts, training, maintenance.



**SUPPORTING, PROMOTING AND ADVANCING PUBLIC EDUCATION**



# SPRING WORKSHOPS



## GOVERNING FOR EXCELLENCE

**May 10-19, 2022 Various Locations**

**DINNER: 6 P.M. | PROGRAM: 6:30-8:30 P.M.**

**How well boards carry out their governance responsibilities** in many ways determines the quality of the education for the children they serve. This workshop will address:

- The major themes of good governance
- The importance of trust to good governance
- How to navigate the kinds of communication challenges that can sidetrack boards

Participants will gain a greater understanding of what it takes to be a highly effective board that uses communication tools for success.

**\$105 per person. Visit [WASB.org](https://www.wasb.org) to register.**

*Registration deadline: One week prior to each workshop.*

*No refunds can be given for late cancellations.*

*Members are welcome to attend a workshop in any location.*

**Tuesday, MAY 10 CESA 1**

N25W23131 Paul Rd., Ste. 100, Pewaukee

**Wednesday, MAY 11 CESA 2**

1221 Innovation Dr., Ste. 205, Whitewater

**Thursday, MAY 12 CESA 3**

1300 Industrial Dr., Fennimore

**Tuesday, MAY 17 CESA 7**

595 Baeten Rd., Green Bay

**Wednesday, MAY 18 CESA 11**

225 Ostermann Dr., Turtle Lake

**Thursday, MAY 19 CESA 5**

626 E. Slifer St., Portage

**Visit [WASB.org](https://www.wasb.org) for complete information and to register. | 608-257-2622 | [info@WASB.org](mailto:info@wasb.org)**