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Official publication of the Wisconsin Association of School Boards

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In the Game

Adapted sports league gives students with disabilities an opportunity to compete and represent their schools.



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Extended Learning Time Most Likely in Schools with Low-Income and Minority Students

According to a report from the U.S. Government Accountability Office, charter schools that serve mostly low-income, black, and Hispanic students tend to have the longest school days. Up to an extra month's worth of instruction is added to the school year in some of these schools.

The report examined the characteristics of schools with extended learning time and how it is funded. The study found that a small percentage of funding for extended learning time came from the federal government in the form of a School Improvement Grant (SIG). About 1,800 schools were

required to extend learning time under SIG grants between 2009 and 2015.

For all schools nationwide, the report also provided some interesting national statistics. For example, the average length of the school day is just under seven hours and the average length of the school year is about 180 days. The average school year is about 1,200 hours but the schools with the most instructional time have about 1,340 hours in a school year. There was little difference among elementary, middle and high schools in the number of hours per school year. ■

STAT OF THE MONTH

13%

Percent by which Wisconsin cut state general funding support for investment in schools between fiscal year 2008 and 2016 after taking inflation into account. Only three states — Oklahoma, Arizona and Alabama — made deeper cuts during the same time period.

Source: Wisconsin Budget Project

Teachers Report Less Classroom Freedom

Educators reported in the federal Schools and Staffing Survey that they had less independence in their classrooms in 2012 than in 2003. Researchers attribute the downturn in teacher autonomy to more than a decade of federal and state accountability systems.

When it comes to curriculum and materials, teachers reported that they had a “minor” amount of control. They reported a moderate degree of control over day-to-day decisions like teaching techniques. The area that educators felt the least amount of control was in the area of classroom discipline.

According to the survey results, music teachers ranked as the most independent. A total of 34 percent of music educators reported being “highly autonomous,” compared to only 16 percent of special education teachers who reported they felt autonomous. ■

Zuckerburg Announcement Puts Spotlight on Personalized Learning

Mark Zuckerberg, founder and CEO of Facebook, and his wife, Dr. Priscilla Chan, announced they will be donating an estimated \$45 billion to charitable ventures, including education. While it's unknown how the funding will be applied to education, Zuckerberg and Chan made it clear they are focused on supporting personalized learning. They made the announcement in the form of a letter to their newborn daughter Max (reprinted in part below).

Our generation grew up in classrooms where we all learned the same things at the same pace regardless of our interests or needs.

Your generation will set goals for what you want to become — like an engineer, health worker, writer or community leader. You'll have technology that understands how you learn best and where you need to focus. You'll advance quickly in subjects that interest you most, and get as much help as you need in your most challenging areas. You'll explore topics that aren't even offered in schools today. Your teachers will also have better tools and data to help you achieve your goals.

Even better, students around the world will be able to use personalized learning tools over the internet, even if they don't live near good schools. Of course it will take more than technology to give everyone a fair start in life, but personalized learning can be one scalable way to give all children a better education and more equal opportunity.

We're starting to build this technology now, and the results are already promising. Not only do students perform better on tests, but they gain the skills and confidence to learn anything they want. And this journey is just beginning. The technology and teaching will rapidly improve every year you're in school. ■



Join Us in Milwaukee!

Later this month, school board members, administrators, business officials, educators and other stakeholders will be meeting in Milwaukee for the 95th Wisconsin State Education Convention. You don't want to miss it! This annual event provides a valuable opportunity to get ideas and information to take back to your district.

In addition to special events, a packed Exhibit Hall, nationally renowned and thought-provoking keynote speakers, including *Brain Rules* author Dr. John Medina, the convention features more than 100 sessions led by local public school leaders and industry experts. The sessions will cover a wide range of issues from managing construction projects to leading for high student achievement.

Each session provides school leaders an opportunity to learn something new. For example, Brown Deer School District leaders will discuss how to build a positive culture in all schools, the New Glarus School District will share its process of implementing a flexible schedule with a focus on teacher collaboration, and Plunkett Raysich Architects in conjunction with the Sauk Prairie School District will present a session on "Managing Multiple Construction Projects." We are also excited to announce that the new documentary film, *REJECT*, will be shown at the convention and followed by a discussion with Purdue University's Dr. Kip Williams.

If you are able to join us early,

four pre-convention workshops will get you started with in-depth discussions. They'll feature Dr. Cile Chavez of the University of Northern Colorado on transformational leadership and Dr. Demond Means of the Mequon-Thiensville School District on addressing achievement gaps as well as workshops on the state's school funding system and legal issues related to extracurricular activities.

In addition to Dr. Medina, a fascinating molecular biologist who will share information about how the brain works, the other keynote speakers — all nationally recognized school principals — will challenge and inspire you. Dr. Luis Cruz gives a humorous and thought-provoking keynote on improving school culture. Chris Lehmann, a pioneer of the School 2.0 movement, will challenge you to think about how to engage all students. Milwaukee Public Schools' Dr. Janie Hatton, our WASB Breakfast speaker, will kick off the day on Thursday at convention with a passionate and enthusiastic discussion about shifting demographics and the role of school policy makers.

The State Education Convention also provides an unparalleled opportunity for school leaders to learn about innovative products and services available for your schools with an Exhibit Hall that features nearly 300 businesses and organizations. While you're in the Hall, stop by the Sustainable Schools Pavilion for a unique opportunity to learn about green and

healthy practices in our schools. The Pavilion will feature hands-on demonstrations, knowledgeable experts and exclusive presentations. Don't forget to drop off your card from the Regional Meetings in the Pavilion for a chance to win a 2017 State Education Convention registration.

Again this year, a mobile app is available for the convention. It includes all the convention information and updates at your fingertips on your phone or tablet. Download the app by visiting the Apple App or Google Play stores and search "2016 WI Education Convention." Or click on the link at wasb.org/convention. Use the app to customize your convention experience. If you don't have a smartphone or tablet, you can use the "Complete Schedule" page on the convention website. Log in and you'll have the ability to select events and print your own agenda.

With the number of challenges facing public education, it is important for us to collaborate and share ideas. Who knows what solutions or ideas will be waiting for you at the convention? If you haven't already registered, I urge you to take advantage of this opportunity and join us in Milwaukee Jan. 20-22.

I also want to remind everyone that the WASB 2016 Member Survey is available on wasb.org starting Jan. 4. Please take this short survey and let us know how we can improve our services, programs and publications. The survey closes Feb. 1. We want to hear from you! ■

With the number of challenges facing public education, it is important for us to collaborate and share ideas.



In the Game

Adapted sports league gives students with disabilities an opportunity to compete and represent their schools

Shelby Anderson

They are like any other high school sporting event in Wisconsin. Students enthusiastically compete against neighboring high schools while parents, students and community members fill the stands and cheer their athletes on.

But the Mississippi Valley Conference Adapted Sports league is unique — it features student athletes with disabilities.

The league includes teams from La Crosse Central, La Crosse Logan, Onalaska and Holmen high schools. The teams compete in indoor soccer in the fall, indoor floor hockey in the winter and indoor whiffle ball in the spring.

The league started in 2012 when

Jim Cappuccio formed an indoor floor hockey team at Onalaska High School. La Crosse Central and La Crosse Logan established their teams the following year, followed by Holmen High School. Students in 9th through 12th grade who meet established league eligibility criteria compete on the area teams. The adapted sports league is an option for student athletes who, with or without modifications, cannot successfully or safely participate in the schools' existing extra-curricular sports.

The league is for physically disabled or cognitively delayed students as defined by local special education administration. The student athletes do not possess

the physical and/or cognitive ability that would allow them to compete fairly on a traditional school sports team.

According to Cappuccio, in the past, many of these students were falling through the cracks. They didn't have the opportunity to participate in high school team sports. Cappuccio wanted to give his students a chance to compete and be part of a team. When he started the league in 2012, he based it off of the adaptive sports program in Minnesota, which is one of the oldest and most recognized programs in the nation.

While the league in western Wisconsin hasn't reached that level yet, Cappuccio said other districts

The student athletes may have a disability, but they compete with the **same enthusiasm** as other high school athletes.





Like other high school sports, athletes have to abide by a **code of conduct**, maintain a certain grade level, get physicals before the season, and participate in practice and games.

have expressed interest in joining and at least one more area high school may be added for the next school year.

■ Getting started

To establish the adapted sports team at Onalaska High School, Cappuccio carefully worked on a detailed proposal and presented it to administrators and, eventually, the school board.

“The school board was very supportive,” he said. “At the time, this was kind of out-of-the-box thinking and they are very supportive of innovative thinking.”

Cappuccio approached other area high schools and encouraged them to form teams. La Crosse Central and La Crosse Logan followed suit in 2013 and then Holmen joined in as well. When approving the teams, the school boards didn’t need to adopt any

new policy or administrative rules. It simply required the school boards to approve the teams.

Each of the seasons last about eight to nine weeks. During that time, teams practice as often as four nights a week after school. Cappuccio said when he drafted the proposal for his team in Onalaska, he wanted to make it as close to a regular varsity sport as possible. Like other high school sports, athletes have to abide by a code of conduct, maintain a certain grade level, get physicals before the season, and participate in practice and

games. Athletes have the opportunity to letter in their sport just as other high school athletes. They are also recognized as student athletes at their high school’s seasonal sports award programs.

“My mission is to have it like a legitimate sport,” Cappuccio said.

Like any other sports team, the teams are funded through their



respective high school's extracurricular budget. The coaches said that the budget for their adapted sports teams is a relatively small percentage of the total extracurricular budget. The teams have also raised some of the funding on their own. When Nick Slusser approached the Holmen school board, he and his athletes had raised \$4,100 to help cover the initial costs. In addition, like any other high school sports team, the athletes participate in regular fundraising activities.

In La Crosse, the teams at Central and Logan high schools were approved after an in-depth proposal was submitted and reviewed by the administration and school board. Martha Tymeson, who, along with Matthew Meyers, coaches the team at La Crosse Central, said the administration was initially hesitant about establishing an adapted sports team, but after the first season, she says, they were 100

percent on board.

La Crosse School District Superintendent Randy Nelson says the time and resources devoted to the team are absolutely worth it.

"Our adapted sports league provides our students with commensurate supports in their journey to success," Nelson said. "To be recognized by fellow students, parents and the community brings a degree of equity to a program and group of our students who otherwise may navigate our schools unnoticed."

■ Teamwork and other benefits

The coaches at all four schools agree that students benefit from participating in the league.

"I've been in the La Crosse School District for more than 20 years and it's absolutely one of the best programs we have developed for kids with disabilities," Tymeson said.



MAKING THE GRADE

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Laura Myrah
Superintendent



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The students gain self-confidence, self-esteem, and friends while participating in a healthy activity. In addition, many students take on leadership roles on their teams.

"I'm watching these kids in special education assume roles as

leaders that they've never had an opportunity to do before," Cappuccio said. "This gives them a chance to practice those skills."

Jessa Pfennig, who coaches the La Crosse Logan team, along with Lisa Boyer, said that many of the

students come to the team without any experience participating on a team.

"At the beginning of the season, sometimes just getting along was a struggle, but by the end of the season they were a whole different group," Pfennig said. "They're working together as a team."

The students are also representing their schools. Coaches say their athletes feel pride in wearing their school's colors and competing on behalf of their schools. Tymeson said that his students feel included not only on the team but also in the school.

"As they're walking down the hall to practice or getting ready for a game, they see other student athletes from various school sports teams and there's camaraderie. They're telling each other to have a good practice or good luck on your game," Tymeson said. "That is just huge for them."

Cappuccio and other coaches added that student support for their teams has been another positive aspect of the league. At Onalaska, the pep band often plays at their games.

"Extracurricular activities are really important to all students," Cappuccio said. "Statistics show that students who participate in extracurricular activities have higher grades, higher attendance, and better parent involvement."

Slusser, who coaches the team at Holmen, said that parents continually comment on the improvement in the health and well-being of their children. "Across the board, this helps these students."

■ One of a kind

It is believed that the adapted sports league in the La Crosse area is the only one of its kind in the state. Tom Shafranski, assistant director of the Wisconsin Interscholastic Athletic Association (WIAA), said there are many organizations that provide guidance, rules, regulations and competitive adaptive sports events for schools. There are also other school districts that provide adaptive sports

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without oversight from a governing body. However, the fact that neighboring high schools in the La Crosse area have established teams and built a league around those teams makes it unique.

While the WIAA isn't directly involved in the league in La Crosse,

the WIAA does support adaptive sports. Since 2011, the WIAA has included several wheelchair events at the state track and field meet. In addition, for many years, the WIAA has provided waivers for students with disabilities on a case by case basis to participate in WIAA sports.

"I can tell you that we are proud to say that we do find ways to involve students with disabilities in WIAA sport offerings," Shafranski said. "The WIAA has been including students with disabilities for decades in high school athletic programs."

The WIAA has worked with the Department of Public Instruction to develop pupil nondiscrimination guidelines for athletics. The document provides clear guidance to high school athletics regarding equity issues related to gender, race, religion, disability and sexual orientation with the goal of creating

welcoming and equitable athletic programs.

Cappuccio encourages interested schools to pursue an adapted sports team, "I think this would be successful in any school." He stressed the importance of having an organized plan and the support of parents.

"My advice to anyone wanting to start a program like this is to talk with your parents and come up with a positive plan," he added. "Start simple and build support."

The coaches in La Crosse, Holmen and Onalaska agree that the investment is well worth the benefits for the students.

"It's just amazing the level of skill that these students build up," Tymeson said. "They have the ability, it's just that they hadn't previously been given the opportunity to compete." ■

Shelby Anderson is editor of Wisconsin School News.



Convention at your fingertips.

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Search "2016 WI Education Convention" in the iTunes or Google Play store.



WI State Education Convention | Jan. 20-22, 2016 | Milwaukee | Visit wasb.org/convention

Focused

CULTURE and CLIMATE

School District of South Milwaukee
by Colin Jacobs

There is a phrase that serves as the guiding principle for the School District of South Milwaukee's character education efforts. It states that character education is not an extra on the plate but rather it IS the plate.

The School District of South Milwaukee's character journey began in 2010. As Dr. Rita Olson took the helm as superintendent, the district model, goals, mission, and vision statements were updated through a missioning and visioning process.

This process was completed by a committee of students, parents, families, school board members, business leaders, community members, and staff. Character education was woven into the school district's beliefs and foundational documents. The district model was born featuring the 4 CE's (Curriculum Expectations, Character Education, Community Engagement, and Capital Effectiveness). There continues to be language in the mission statement that brings to prominence a character focus by educating the whole child.

South Milwaukee's work in character is not solely focused on student behavior. Rather, character education serves as a framework that helps clarify and define culture and climate. The five character traits (Respect, Responsibility, Kindness, Honesty, and Perseverance) serve as touch points guiding the personal growth of adults and students.

There is also a parallel,



on Character

Two school district leaders share what character education means in their schools

concentric growth in and across school buildings. The five traits serve as components of a common vision helping to bring a high school, middle school, and four elementary schools into a school district as opposed to a district of schools.

Finally, our district's character education efforts allow for a transferable model from which to partner with community members and local businesses. The sum total of a focus on character from adults to students across buildings throughout the district and out to the community define South Milwaukee's culture.

■ Data, Data, Data

The district's culture is validated not only in the observable information but also in the existing data. The district and community are pleased with the following data points that affirm our collaborative efforts.

With percentage ranks of

90 percent or above on numerous surveys from 2011 to the present, students, staff, and families indicated they feel safe at school. Beyond this feeling of safety, which is integral to building community, 96 percent of parents indicated they are satisfied with the progress of the schools' students being respectful, responsible, honest, kind, and showing perseverance.

Additionally, suspension rates and the number of late students have decreased each year and attendance rates continue to rise. Each of the six schools reported attendance rates higher than 95 percent.

Finally, since 2011, the students, families, staff, and community members have raised and donated over \$100,000 to various local, national, and worldwide causes, including Justice for a Cure, Walk for a Cure, and the Make a Wish Foundation.

■ School District Reputation

Over these last few years, it has been pleasing to hear from candidates interested in working in the School District of South Milwaukee that a focus on character development was important to them. Oftentimes there are comments pertaining to how he or she has heard of what a positive environment the district is in which to work.

Similarly, positive feedback is given from new students and families. As an administrator of an elementary school, it is not taken for granted the impact of a school tour with a new family and student where you can feel the warmth of a positive classroom and school community. There is no better welcome. When site visitors come to evaluate an aspect of our school systems, it is clear to them that the School District of South Milwaukee seeks to educate the whole child in a safe and caring environment.



Character

A third-party district accreditor stated, “Evidence from interviews from varied stakeholders, school visits, and documents provided a clear message that this focus on character education had become part of the fabric of the district. One of the district’s ‘4 CEs’ states that the School District of South Milwaukee will create a deliberately excellent teaching and learning environment by knowing, believing, and doing our best for self and others. The district’s steadfast commitment to character education is helpful as districts face changing demographics, funding uncertainties, and staffing changes.”

Amidst public education’s monumental changes in these last five years, we in South Milwaukee have learned of the importance of keeping it all together on one plate. □

Colin Jacobs is principal of Rawson Elementary in the School District of South Milwaukee.

SMART and GOOD

School District of River Falls
by Jamie Benson

Since 2010, character education has been making a positive impact in the School District of River Falls. By embedding character education in our school culture and by providing opportunities for moral action, our students demonstrate their understanding of true character in our schools and in the community. As the result of the dedicated character work of our staff, administration, students, parents, and community, our district has been recognized with numerous state and national Promising Practices Awards.

Certainly every school district in Wisconsin knows the importance of helping our students to not only be “smart” but also “good.” We all do it in many different ways — and by no means is River Falls on an island. Yet, in this article we want to share with you how we managed to lead

and sustain a culture of character throughout our school community despite the pace, intensity and volume of change in education today.

■ Four Keys to Implementing and Sustaining Character Education

1: Make Character a Priority. What is your district vision and mission? — As a result of our strategic plan, the School District of River Falls had established a new mission statement that included, in part, a commitment to “be an innovative leader ... to develop responsible, productive citizens ... in a collaborative environment.” Without a district-level and community-developed mission that supports character education, our success with character development would be limited.

2: Have a Framework and Build Shared Leadership. In 2010, we obtained a grant through our area hospital foundation. With this money, we sent our newly formed district character education steering committee to the Wisconsin Character Education Conference and the 11 Principles training put on by facilitators from Character.org. The 11 Principles has served as our guide and framework for implementing character education throughout our district. Each building in our district then formed its own character education committee. Members from each building committee were trained on the 11 Principles of Effective Character Education and continue to meet monthly.

3: Define Character and Speak the Same Language. Next, with the feedback from more than

Special Screening:

REJECT Documentary AT CONVENTION

Thursday, Jan. 21, 8:45 am, Wisconsin Center



As part of the Wisconsin State Education Convention, there will be a special screening of the documentary film *REJECT*.

REJECT examines the impact of social rejection. Weaving together expert findings from neuroscientists, social psychologists, early educators, law enforcement experts and personal testimony, the film sheds new light on the universal human experience of rejection. From racial bias to parental neglect to school bullying, *REJECT* reveals the multidimensional link between interpersonal rejection and the neurological experience of physical pain. In so doing, it uncovers a path towards violence prevention and emotional recovery.

The screening will be followed by discussion led by Dr. Kip Williams, a professor of psychological sciences at Purdue University. He is a pioneer and world-leading expert on social and psychological dynamics of exclusion and is author of the book *Ostracism: The Power of Silence*.

“My goal in making *REJECT* is to provoke an informed discussion about the serious—sometimes lethal—consequences of interpersonal rejection, which comes in the guise of bullying, parental neglect and abuse, racial bias, and other forms, across all age groups.”

— Ruth Thomas Suh, Director, *REJECT*

40 community members we identified the positive character traits we wished to grow throughout our school community: courage, citizenship, compassion, cooperation, perseverance, positive attitude, respect, responsibility, and honesty.

In order to promote character, we created posters with our nine positive character traits and displayed these posters in every classroom. We proudly provided our parents with our “Wildcat Way” character magnet to display at home. We embedded our nine positive character traits throughout our school culture. Banners, assembly themes, homeroom activities, discipline procedures, classroom expectations, parent nights, newsletter articles, daily announcements, and much more — all have the nine traits emphasized everywhere, whenever possible.

4: Reflect, Keep Moving Forward and Stay Accountable. One of the greatest keys to our success is our monthly character education steering committee meetings. Our district level committee has met nearly every month since 2010. We have representation from each school within our district. In essence, these monthly meetings provide a level of accountability. We share the character highlights from each of our buildings, generate ideas and identify areas for improvement based on the Framework for Effective Character Education (character.org).



As we continue to seek ways to grow character throughout our community, we recently hosted a character education breakfast and forum for business leaders, community members and civic organizations. The ideas shared at this forum will be brought forward to our character education community committee.

Please take a few minutes to visit the River Falls School District Character Education website and see for yourself the positive impact

character education is making in our schools and community: bit.ly/riverfallscharacter.

In closing, we are happy to assist any school district considering beginning their own character journey. Please feel free to contact me at jamie.benson@rfsd.k12.wi.us or 715-425-1800.

Remember, heart work is hard work. ■

Jamie Benson is superintendent of the School District of River Falls.



Learn More about

Character Education AT CONVENTION

School leaders from the **River Falls** and **South Milwaukee** School Districts will be presenting sessions on character education at the upcoming Wisconsin State Education Convention.

Why Character Education?
Presented by the School District of South Milwaukee

Thursday, Jan. 21
10:45-11:45 am
Wisconsin Center, 203C

A District Approach to Implementing Character Education
Presented by the School District of River Falls

Friday, Jan. 22
8-9 am
Wisconsin Center, 103C

A Perfect Storm

Declining enrollment, increasing student poverty and rising operational costs are putting pressures on rural schools

Sarah Kemp

In Wisconsin, aging population and declining births have meant a decrease in rural school district enrollment.

In addition to declining enrollment, poverty increased during the recession of the late 2000s, especially among children. This increase is evident by the increasing number of students qualifying for free or reduced-price lunch.

Meanwhile, fixed costs like transportation and food services have increased. Many rural school districts responded by cutting variable costs including instruction and

support staff and by delaying facility improvements.

Faced with these challenges, rural school districts have been placed in a perilous situation. As a researcher at the University of Wisconsin-Madison's Applied Population Laboratory, I have been exploring these trends including enrollment decline, increasing costs and rising poverty, and their effects on rural schools.

Enrollment, Costs, and Poverty





Of the trends mentioned above, rural schools have been hit especially hard.

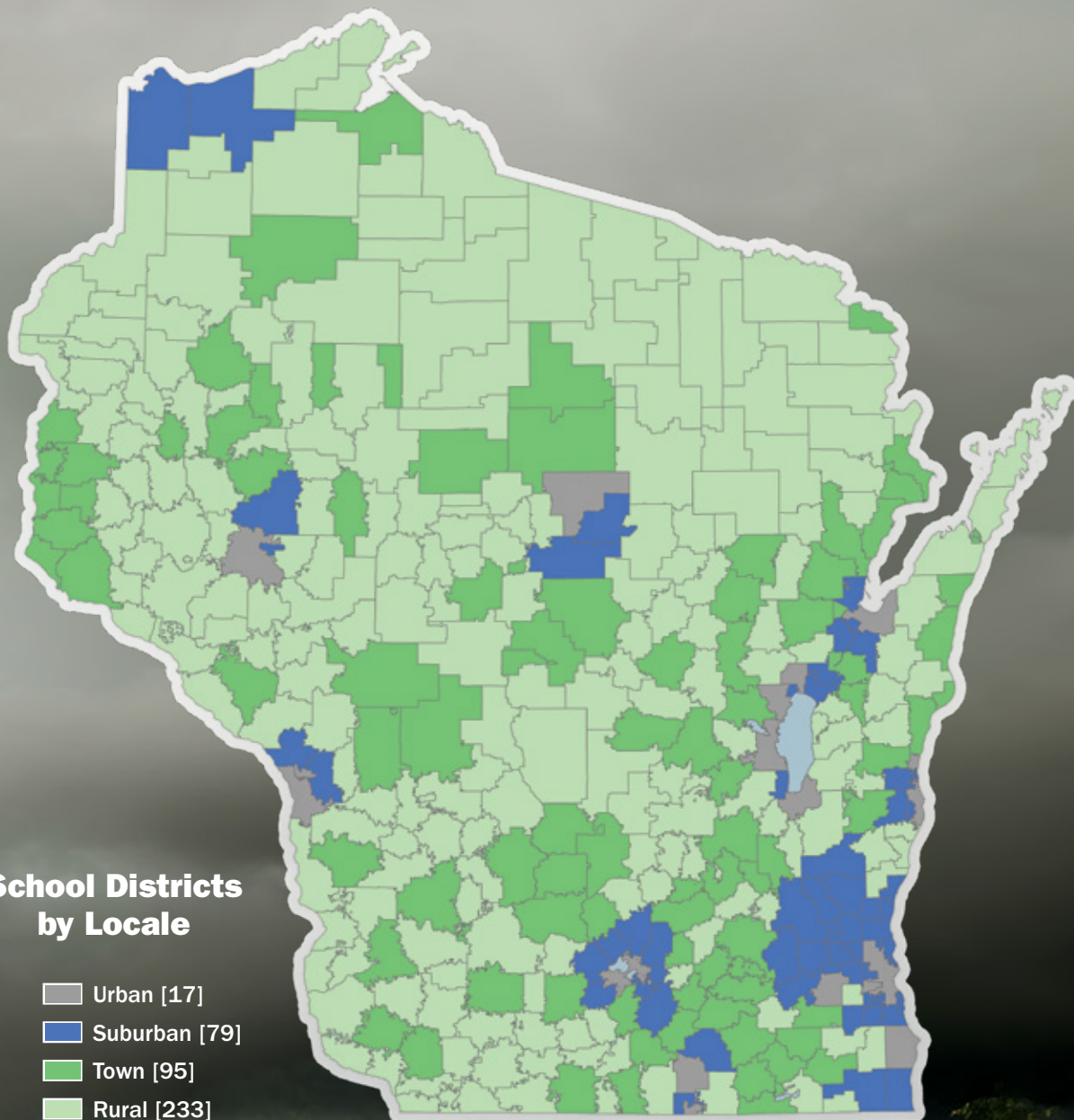
The study analyzed data from the Department of Public Instruction (DPI) for the 2008-09 and the 2013-14 school years and focused on three data sources of fundamental concern: change in enrollment, change in costs per pupil, and change in free and reduced-price lunch eligibility.

Over this five-year period, total statewide student enrollment declined by 0.43 percent. However, enrollment change has affected rural, town, urban and suburban districts differently. Enrollment increased for 65 percent of urban districts,

**Faced with multiple challenges,
rural school districts have been placed
in a perilous situation.**

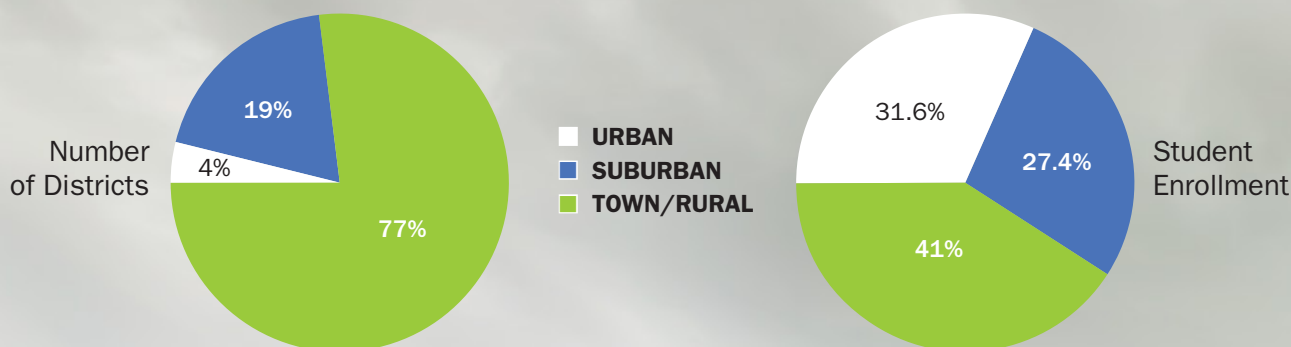
School Districts by Locale

-  Urban [17]
-  Suburban [79]
-  Town [95]
-  Rural [233]



Source: National Center for Education Statistics

A Perfect Storm



53 percent of suburban districts, and 45 percent of town school districts. However, only 26.5 percent of rural school districts saw an increase in enrollment (73.5 percent declined).

Change in costs per pupil also affected rural school districts more dramatically. During this five-year period (2008-09 to 2013-14), rural school districts saw the greatest percentage of districts with increasing costs per pupil than any other locale.

According to data from the DPI, increases in the student eligibility for the free and reduced-price lunch program grew considerably since

2008-09 for all categories of school districts. However, one slightly positive observation showed that rural schools experienced the smallest percent of districts with an increase in the number of students' eligible for the program. Conversely, nearly all suburban school districts experienced an increase in student eligibility.

Change in Enrollment and its Affects

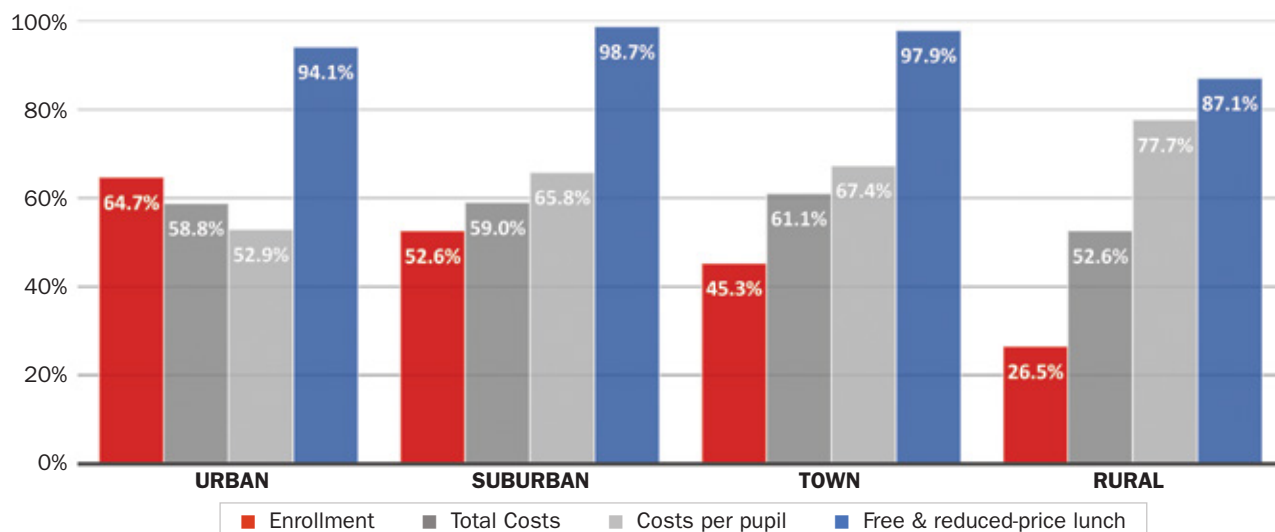
Focusing specifically on rural schools, this study revealed that declining enrollment has the greatest impact on town and rural school districts.

Change in enrollment had the strongest correlation to cost per pupil, free and reduced-price lunches, and staff FTEs (full-time equivalency). As student enrollment decreased, the number of students in the lunch program and the number of staff FTEs decreased.

Another finding revealed that as town and rural student enrollment decreased, the costs per pupil increased. Rural school leaders know this equation all too well. If a district has less students, the cost of services such as transportation and food service doesn't necessarily decrease at the same rate.

Percent of Districts with Increases in Enrollment, Costs, and Poverty

By Locale, 2008-09 to 2013-14



Other factors are working against rural school districts. Generally speaking, there are fewer children per household in rural areas. The population in rural areas also tends to be older than in other parts of the state.

■ Looking Ahead

Two years ago, the Applied Population Laboratory completed statewide enrollment projections that indicated that rural school district enrollment would decline. In evaluating these projections, rural student enrollment did decrease, but not as dramatically as the projections indicated. However, when updating the projections for rural schools, the continued drop in the number of births will mean rural school districts will continue to decline, especially in the elementary grades.

In rural school districts, we project a 3-5 percent decline in the next five years. However, the decrease could be more dramatic in lower grades. Some rural districts likely could see an 8-10 percent decline in their elementary school enrollment.

Future research will continue to monitor these trends and assess whether these changes are affecting the quality of the education as indicated by test scores and graduation rates. Also, a more careful examination will be carried out to determine whether these correlations are stronger for school districts that are further from urban centers. Future research may also include analysis of the effects of private schools and voucher programs on rural public schools. ■

Sarah Kemp is a researcher for the University of Wisconsin-Madison's Applied Population Laboratory.

Learn More about Population Trends AT CONVENTION

Sarah Kemp, a researcher for the University of Wisconsin-Madison's Applied Population Laboratory, will present data on population trends and projections and how they affect public schools in Wisconsin.

A Perfect Storm: A Case Study of Wisconsin's Rural Schools

Thursday, Jan. 21
10:45-11:45 am
Wisconsin Center, 202AB

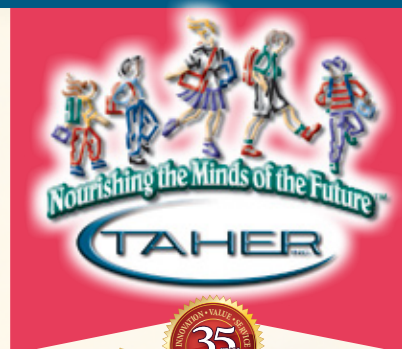
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What Do Your Teachers Think?

Survey helps school districts measure staff perceptions on important issues

Sue Peterson

Are workers happy? According to a 2014 report by the Conference Board, a New York-based nonprofit research group, 52 percent of U.S. employees are unhappy at work. Are teachers better? Not especially. A MetLife Survey published in 2013 found that teacher job satisfaction had plummeted from 62 percent in 2008 to 39 percent in 2012.

It's clear from the numbers that school districts need to engage with their staff. The WASB has teamed up with School Perceptions, a Wisconsin-based company, to help school districts engage with their employees. School Perceptions has developed a

web-based survey designed to gather feedback on staff members' feelings and perceptions on a range of issues from district communication to health and wellness.

The School District of Monroe utilized this survey to gather feedback from staff on district initiatives and culture.

"We are committed to ensuring every employee in the district has an opportunity to provide input and feedback," Superintendent Cory Hirsbrunner shared. "We value how staff feels we are doing as a district and the challenges they are experiencing that need to be addressed."

■ Positive for Staff and Students

"We know that there is a strong correlation between staff engagement and student engagement," said Bill Foster, founder and president of School Perceptions. "When students are engaged, achievement increases."

An engaged employee is one who is fully absorbed by and enthusiastic about their work and takes positive action to further their school's reputation and success.

Research shows that employee engagement is the result of employees feeling connected and valued as well as reporting a strong

“It was extremely valuable to have the numbers and documentation to support what may have been assumptions in some areas.”

— Corey Hirsbrunner, superintendent, School District of Monroe

sense of balance in their lives. As a result, engaged employees are producers. They work hard and give their best day in and day out. When teachers are engaged, kids learn.

The School Perceptions Staff Engagement Survey collects data on 12 indexes of employee engagement including: control over work environment, health and wellness, workload, affirmation, collaboration and teamwork, trust in building leadership, culture of educational excellence, tools and training, public and parental support, trust in district leadership, communications, and planning and improvement process. Reports allow a district to break out index results by various employee groups as well as compare themselves to similar schools across the state.

“Our goal is to create easily usable data that districts can use immediately,” states Foster.

The survey takes an employee 10-15 minutes to complete. The School Perceptions software tracks survey completion, sending

reminders to employees who have not yet taken the survey. As a result, districts experience high participation rates, often near 85 percent of all employees.

■ Using the Data

Once the survey is closed, a school district can receive index and similar school analysis reports from School Perceptions within a week. At no additional cost, the WASB will review the reports and promptly provide the school district with a written analysis and follow-up telephone contact. The written analysis will describe next steps that the school district might take in response to the written report. It will also recommend WASB services to assist the school district in its analysis, discussion and follow-up to the written report.

For the Lancaster Community Schools, data in the survey identified the need to change a school calendar policy and adjust staffing. In addition,

they were able to see what the staff thought about the district’s compensation structure.

“We were pleased to learn that despite the negative climate for public employees during the last couple of years, our staff believes the school board and district have done their best to maintain a compensation structure that is fair to both the staff and taxpayers,” said board president Bill Haskins.

In the School District of Monroe, the administrative team used the data to plan for the coming school year.

“It was extremely valuable to have the numbers and documentation to support what may have been assumptions in some areas,” Hirsbrunner explained. “The reports were extremely helpful and easy to read. The color-coded reports gave a clear indication of what needs attention and where we are doing well.” ■

Sue Peterson is a project manager with School Perceptions. For more information, visit schoolperceptions.com.

Staff Survey, Communication

District Average ←

Similar School Average ←

Respondents were asked to rate their level of agreement for each statement from Strongly Agree (5) and Agree (4) to Disagree (2) and Strongly Disagree (1).	I feel comfortable sharing my ideas.	3.53	3.30
	School / department information is communicated effectively to me.	3.18	3.07
	I am kept informed about matters important to my work.	4.29	3.84
	I have a good understanding of plans and goals of the district.	3.41	3.53
	Board policies and procedures affecting me and my work are available and clearly understood.	3.50	3.55
	I feel the district honestly communicates with me about important issues.	3.05	2.86

Sample data representative of a School Perceptions staff survey.

Working with Families



Families make real contributions in closing the achievement gap | *Tony Evers*

School board members and educators hear often about the need to involve families in education to help students succeed. At a time when Wisconsin is experiencing large student achievement gaps, more student diversity and growing family poverty, schools recognize that they cannot afford to overlook the real contributions that families make to student learning. But, what works and where to start?

I asked my 2014-15 Parent Advisory Council (PAC) to address these questions. This dedicated group of parents, grandparents, and com-

munity members, representative of the geographic and cultural diversity of Wisconsin's public school students, offered a "parent voice" to gap-closing family engagement strategies put forth by the Promoting Excellence for All Task Force of Wisconsin educators.

Council members met five times during the school year to identify family engagement practices and tips that recognize families as a source of strength and knowledge who deeply want their children to succeed in school. Families are best able to help their children succeed "when schools accept families as they are and make

frequent efforts to know, listen to, and learn from parents," the PAC Belief Statement affirms.

Families are truly educators' biggest allies in working to close achievement gaps and improve student learning. The work of the Parent Advisory Council complements national calls for schools to re-frame family engagement from "random acts" of singular parent events to a systemic strategy integrated into long-term education goals. Family engagement is a critical component of school efforts to ensure that all Wisconsin students graduate college and career ready.

Families are truly educators' biggest allies in working to close achievement gaps.

CONNECT WITH YOUR FAMILIES

School boards can strengthen how and when schools enlist the support of families by:

- Purposefully connecting meetings and communications with families to student learning;
- Structuring conferences and other meetings with families to allow time for families to share information about their children;
- Supporting professional development around culturally responsive family engagement;
- Developing district policies that support administrators' and teachers' efforts to welcome, inform, and get feedback from families; and
- Including family engagement goals in annual school and district improvement efforts.

Following, is a summary of seven practices Wisconsin schools can use to build on the family strengths and diverse cultures that students bring to the classroom. All of the strategies and more are published in the report, *Family and Community Engagement in Promoting Excellence for All*, available on the Department of Public Instruction website at dpi.wi.gov/pacreport. These practices, parent videos, and tips are also woven throughout the Promoting Excellence for All webpages: dpi.wi.gov/excforall.

Consider Families and Communities as Experts on their Children

Educators honor the family as an expert on their child to create a sense of partnership, starting with positive contact.

Putting It into Practice: Teachers at the Goodman Community Center 4-year-old kindergarten program in Madison meet individually with parents. Parents share their hopes and knowledge about their child's

strengths and learning styles. Then, parents and teachers identify goals they will work together on for the child to achieve.

Family Engagement

Schools build families' awareness of student progress and the importance of academic success in culturally responsive ways and foster positive engagement with educators.

Putting It into Practice: A fall literacy event at Mindoro Elementary



School offers the opportunity for children and families to learn together. Participants visit five classrooms, each themed to a different book. Teachers or family members read a book aloud, make a craft, and enjoy a snack together.

■ Welcoming Environment

Educators make sure everyone feels respected and welcomed at all times. Policies and practices reflect this.

Putting It into Practice: Roosevelt Elementary School in Kenosha personalizes a start-of-the-year event to welcome families. Families receive a written invitation and personal phone call from school staff, a personal greeting from the school principal or school staff upon arriving, and meet other families while sharing a meal. Parents rotate through various informational sessions while children enjoy activities with the physical education teacher. Children and parents re-unite to play ice-breaking games.

■ Community Partnerships

Educators collaborate with community members and leaders to support

future-focused activities and events for students and families.

Putting It into Practice: Black River Falls High School works with the Ho-Chunk Nation to offer a Ho-Chunk and Ethnic Studies course for any high school student. Students hear from and interview guest speakers from the Ho-Chunk community, trace the history of the Ho-Chunk people, and explore the role cultural identity plays in society.

■ Focused Events

Educators plan purposeful events targeting specific cultural and ethnic groups to strengthen partnerships in the school community.

Putting It into Practice: In Superior, Northern Lights Elementary School's Diversity Council brings together parents and caregivers from all walks of life to meet and to talk about their families, how they feel about school and education, and ways they can work together to help children learn. The council also sponsors school and community events to build awareness of their efforts.

■ Communication with Families

Schools establish two-way communication systems with families, develop strategies to involve families and community in learning, and allow families and community a voice in decision making. School staff inform families about the intervention process and meet with families of students referred for intervention.

Putting It into Practice: A survey of families in the Pecatonica Area School District showed many parents employed beyond district boundaries used resources in neighboring communities. As a result, the district re-structured before-and after-school programs and 4-year-old kindergarten to fit with parents' job schedules. In addition, the district offered child-care programs during school breaks and holidays.

■ Community Schools

The school hosts resources and systems to meet student needs, such as dental services, medical access, and fitness programs. Families can access school facilities beyond the school day.


Putting It into Practice: Northern Lights Elementary in Superior hosts the Northern Lights Family Resource Center, which partners with community organizations and businesses to offer parent education and early childhood programs, community events, and family support and information referral services.

■ Reach Out


I encourage school board members and educators to explore the Parent Advisory Council report, part of the *Promoting Excellence for All* website at dpi.wi.gov/excforall.

Ask parents, grandparents, and community members what they need to support children's learning, then act on their suggestions. Let's take advantage of the many gifts that families bring to children's learning by enlisting their help in closing achievement gaps. We can't do it without them. ■

Tony Evers is the State Superintendent of Public Instruction.



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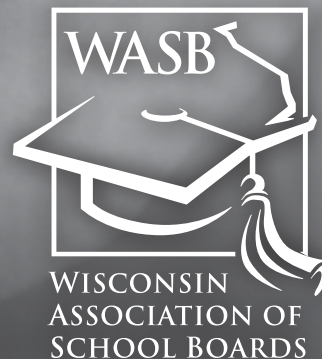
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2016 WASB Event Calendar

Here is a look at the conferences, seminars, workshops, and other events that make up the 2016 WASB Event Calendar. Event descriptions include WASB Member Recognition points. For more information on the WASB Member Recognition Program, visit wasb.org and select “Meetings and Events” and then “Member Recognition Program.”

Please note: Dates and locations may be subject to change. For the latest WASB event information, visit wasb.org.

JANUARY

20-22

95th State Education Convention
Wisconsin Center, Milwaukee
(30 points)

The 95th State Education Convention features dozens of sessions led by school leaders and stakeholders from around the state. Each day is headlined by renowned keynote speakers and features a selection of special events. The Exhibit Hall brings in hundreds of respected vendors focused on serving public education.



traditional contracts to contracts that meet districts' needs in the post-collective bargaining world.

FEBRUARY

25

Key Work of School Boards:
Community Leadership Workshop
CESA 11, Turtle Lake
(5 points)

This workshop will focus on the Community Leadership component of the Key Work of School Boards. Learn steps to building collaborative relationships—develop communication plans, engage your community, model collaboration and more.

25-26

Legal & Human Resources Conference
Chula Vista, Wisconsin Dells
(20 points)

This seminar, taking place over the course of two separate days, will cover a broad range of legal and human resources topics.

MARCH

9

Individual Contracts and the
Nonrenewal Process Webinar
(2 points)

This presentation will focus on the process of drafting new contractual provisions to transition from

APRIL

5

Spring Elections for
School Board Members

9-11

National School Boards Association
Annual Conference
Boston, MA
(30 points)

19-21

New Board Member Gatherings
Various Locations
(5 points)

Newly elected school board members are invited to these meetings where WASB staff will introduce important legal, policy, and board governance topics.

MAY

10-25

Spring Academy Workshops
CESAs 1, 2, 4, 6, 9 and 11
(5 points)

New this year, the WASB will offer Spring Academy Workshops in various regions around the state. The workshops will provide

attendees with a foundation in board governance and a board member's legal roles and responsibilities.

11

Hiring Teachers Webinar
(2 points)

This presentation includes information about the purpose of position descriptions, the posting of vacancy notices, application forms, the interview process, reference checks, and more.

JUNE

15

Annual and Special Meetings:
Notices, Procedures and
Powers Webinar
(2 points)

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

JULY

16

Summer Leadership Institute
Hyatt on Main, Green Bay
(10 points)

Designed for school board members interested in honing their leadership skills.

SEPTEMBER

Mid-September/October

Fall Regional Meetings
Various Locations
(5 points)

Connect with school leaders from around your WASB region, hear a special presentation from the WASB staff, and vote for your WASB Regional Director (where applicable).

Sept. 30 - Oct. 1

Policy and Resolutions Committee Meeting; *Crowne Plaza, Madison*
(10 points for committee members)

The Policy and Resolutions Committee evaluates the resolutions submitted by WASB member boards and determines which resolutions will advance to the 2017 WASB Delegate Assembly.

OCTOBER

13-14

WASB/WSAA School Law Seminar
Kalahari, Wisconsin Dells
(10 points)

Get up-to-date on the latest school law issues. Sessions presented by WASB staff and school attorneys.

NOVEMBER

11

Policy and Resolutions Committee Meeting, *Holiday Inn Hotel & Convention Center, Stevens Point*
(10 points)

The second Policy and Resolutions Committee meeting before the 2017 WASB Delegate Assembly.

12

Legislative Advocacy Conference
Holiday Inn Hotel & Convention Center, Stevens Point
(10 points for committee members)

The Legislative Advocacy Conference brings together state legislators, school funding experts, and school leaders as they discuss legislative topics that will affect public education. Also learn important advocacy strategies critical to advocating on behalf of your district.



UPCOMING EVENT:

Legal and Human Resources Conference

The WASB 2016 Legal and Human Resources Conference, taking place February 25-26 in Wisconsin Dells, is designed to give school board members and administrators the latest information to help them in governing their districts as effectively as possible.

The two-day conference features two tracks each day, offering a variety of sessions to attendees.

Session topics include:

- Reducing health insurance costs
- Risk management/liability issues
- The board member's role in human resource decision making
- Transgender student issues
- Superintendent evaluations
- Nonrenewal of teacher contracts

These sessions will be led by WASB staff and industry experts. Members may register for one day or two days at a discounted rate. For more information or to register, visit wasb.org.



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At Long Last, Congress Replaces No Child Left Behind



Almost 14 years after the much-criticized federal No Child Left Behind (NCLB) Act took effect and nearly eight years beyond its due date for reauthorization, NCLB has been replaced.

The No Child Left Behind Act was a 2001 reauthorization of the Elementary and Secondary Education Act (ESEA), originally enacted in 1965. The ESEA includes Title I, the federal government's flagship aid program for disadvantaged students. NCLB established the lofty goal that all students should be proficient on state tests by 2014 and mandated stiff sanctions on schools if their students failed to make "adequate yearly progress" toward that goal based on student achievement tests.

Numerous congressional attempts to replace NCLB were turned back ... until now. The bipartisan-backed replacement, known as the Every Student Succeeds Act (ESSA), gives states the right to decide what constitutes adequate performance and how to intervene in schools that don't measure up. It also sends back to states and local districts major policy-making authority on issues such as standards and teacher evaluation.

Under ESSA, schools must still test students in English and math every year from third to eighth grade, and once in high school, and states are still required to intervene in the lowest-performing schools. However, in addition to test scores, schools will be judged on measures like graduation rates, student and teacher engagement and student participation in advanced coursework.

For Wisconsin (and other states with waivers from many of the law's most burdensome mandates), NCLB has already been a thing of the past for a while, at least in some important ways. However, because ESSA renders

moot those waivers, Wisconsin will once again be bound by the statutory provisions of the new federal law.

■ Testing

What stays the same: States must continue to test students in reading and math in grades 3-8 and once in high school, and break out the data for whole schools, plus different "subgroups" of students (*e.g.*, English learners, students in special education, racial minorities, those in poverty). Science testing is required at least once during grade spans 3-5, 6-9 and 10-12.

What's different: The ESSA provides for an assessment pilot in which up to seven states (or consortia of states, each of no more than four states) can try out local tests. Separately, the ESSA gives local school districts an option to use a nationally recognized test at the high school level (*e.g.*, the SAT or ACT) in place of the state assessment, provided this is approved by the state's education agency (*e.g.*, the Wisconsin Department of Public Instruction). (This will not be much of a change for Wisconsin, which administers the ACT suite of tests to high school students in grades 9-11.) The ESSA also allows for the use of computer adaptive assessments.

The ESSA also encourages the development of richer, performance-based assessments through the use of multiple measures, and "may include" portfolios and projects. The ESSA authorizes a pilot program for states that want to demonstrate competency-based learning.

To address concerns about over-testing, the ESSA permits states to set targets for total time spent on testing. In addition, states and school districts may use federal funds to audit their testing systems and eliminate redundant or unnecessary tests.

■ Test Participation

What stays the same: Under the ESSA states will still have to test at least 95 percent of students each year.

What's different: States can craft their own opt-out laws. Test participation must be included in the accountability framework as a stand-alone factor, not an indicator. States have to figure out how they will include participation in their accountability plan, including how to respond to school districts that do not reach the threshold.

■ Standards

What stays the same: Under the ESSA, states must adopt challenging academic standards in mathematics, reading or language arts and science, and set proficiency levels.

What's different: Under ESSA, the U.S. Department of Education may not mandate or give states incentives to adopt or maintain any particular set of academic standards. However, each state must provide an assurance that its challenging academic content standards are aligned with entrance requirements for higher education in the state and with relevant state career and technical education standards.

■ Accountability

What stays the same: Under the ESSA, states must submit state-developed accountability plans to the U.S. Department of Education. These new ESSA plans will start in the 2017-18 school year.

What's different: Gone from NCLB is the unrealistic (and unmet) expectation that states get all students to proficiency by the 2013-14 school year and make adequate yearly progress (AYP) toward that goal. Under ESSA, existing state waivers from NCLB expire on Aug. 1, 2016, and AYP is replaced by state-defined,

long-term goals that are “ambitious” and include measures of interim progress. The goals and interim measures will continue to apply to all students and individual subgroups of students. At minimum, goals will be set for:

- improved academic achievement based on proficiency on assessments and may include measures of student growth;
- high school graduation based on the adjusted four-year cohort formula (states may also include goals for extended year adjusted cohort);
- another academic indicator for elementary and middle schools;
- increased English proficiency for English language learners; and
- at least one indicator that allows for “meaningful differentiation” among schools and is valid, reliable, and comparable across the state, such as student engagement, high-level course completion, school climate, etc.

Each state must also design an index for weighting the indicators it chooses for accountability purposes, in which academic indicators (in aggregate) must receive “significant” weight.

■ Data Reporting

What stays the same: The ESSA maintains annual reporting of achievement test data disaggregated by subgroups of children, including

low-income students, students of color, students with disabilities and English-language learners.

What’s different: Under ESSA, states must now also disaggregate data by migrant status, homeless status, and for children in foster care. States must also report on the performance of students from military-connected families; this is a reporting requirement only, and will not be part of the state’s accountability system.

■ Required Interventions

What stays the same: States have to identify and intervene in the bottom five percent of performers, an idea borrowed from NCLB waivers. These schools have to be identified at least once every three years.

What’s different: Gone are the NCLB-defined sanctions and prescribed interventions. Instead, states must identify schools in need of “comprehensive support and improvement.” These include performance in the bottom 5 percent of Title I schools; high schools that fail to graduate 67 percent of students; and schools with consistently underperforming subgroups. Once identified, a school improvement plan will be developed by the district in collaboration with community stakeholders. The plan will be approved by the school, the district, and the state education agency and will be monitored and reviewed. States and districts must use locally developed and locally approved

‘evidence-based’ interventions in identified schools.

■ Teachers

What’s different: ESSA eliminates the highly qualified teacher requirements of NCLB, and in a switch from the NCLB waivers under which Wisconsin is operating, there is no mandate tying teacher evaluations to student test results. This change will likely have little impact here as Wisconsin statutes allow 50 percent of a teacher or principal’s evaluation to be based upon measures of student performance, including but not limited to performance on state assessments.

Under the new ESSA, states and districts may use Title II funds to design and implement teacher and principal evaluation systems. States may also use funds for training and capacity-building for local districts as well as a range of other activities, including differential pay systems for high-need subjects, induction, and mentoring programs.

In addition, ESSA will fund matching grants to enable states and local districts to explore or implement performance-based compensation systems for teachers, principals, or other school leaders. ■

For a more detailed look at the ESSA, please check the WASB Legislative Update Blog (wasblegupdate.wordpress.com)

Follow the Legislative Update

Updated frequently, this webpage includes:

- **Timely and informative updates** on state and federal legislation.
- **Sample materials** (talking points, letters, board resolutions, etc.) for use in advocacy.
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The First Amendment and Regulation of Students' Social Media Use

It was 45 years ago that the United States Supreme Court pronounced in *Tinker* that students have a constitutional right under the free speech clause of the First Amendment to communicate and express their views, subject to specific, narrowly prescribed, circumstances in which school districts may regulate such speech.¹ Notably, the conduct which gave rise to the *Tinker* case occurred in school. With the advent of the Internet, the ability of students to express themselves through a variety of electronic means, including tweets, blogs, and online social networks, has proliferated. These electronic communications transcend geographic and time boundaries, and, as such, cannot be easily categorized as the type of speech which the *Tinker* court contemplated.

Because the Supreme Court has not to date addressed the *Tinker* standards in the context of student social media communications which do not occur at school or through the use of school property or networks, courts around the country have struggled to develop a legal framework to assess whether this type of communication can be regulated by districts, namely through disciplinary action against the students engaged in that communication. The case law is clear that districts can act upon speech if it constitutes a true threat to harm a person or property.² The analysis

becomes less clear when the social media “speech” is not in the form of a threat, but rather is of an inappropriate nature that has the potential to disrupt the school environment. This Legal Comment addresses the authority of school officials to regulate this latter form of student speech.

■ General First Amendment Standards

In *Tinker*, the Supreme Court pronounced that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” However, the Court recognized the needs of districts to control the conduct within the schools and, therefore, “student conduct, in class or out of it, which for any reason — whether it stems from time, place, or type of behavior — materially disrupts classwork or involves substantial disorder or invasion of the rights of others is ... not immunized by the constitutional guarantee of freedom of speech.” Districts can meet this standard if they reasonably believe the student speech will create a material and substantial disruption, even if a disruption has not yet occurred, provided that the school officials have a specific and significant fear that disruption is likely to occur in the future. Therefore, school officials need not wait until actual disruption occurs prior to taking action if they can point to

specific facts that support their conclusion that a disruption is likely. That showing cannot be made, however, through “a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.”

Since *Tinker*, the Supreme Court has carved out several circumstances in which districts can regulate student speech without a showing of substantial disruption to the school environment. The first is when the speech is “lewd, vulgar or indecent” and occurs on school premises.³ Similarly, speech which occurs in school-sponsored forums, such as a student newspaper, can be regulated provided the district’s regulation is reasonably related to legitimate pedagogical concerns.⁴ Finally, student speech which poses a “grave and ... unique threat to the physical safety of students,” such as advocating illegal drug use, is not protected speech.⁵

In the context of social media student speech, courts have struggled with the issue of whether the *Tinker* “substantial disruption” test applies if it occurs outside of the school and does not involve the use of school resources or property. Most of the case law from the federal appellate courts suggests that the regulation of such student speech is appropriate under *Tinker* if a district can show some nexus between the speech and the school, and/or some form of disruption

The proliferation of social media usage by students creates circumstances in which out-of-school communications have the potential to negatively impact the school environment.



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(or the reasonable likelihood of such disruption) to the district from such speech. However, there is disagreement on this point.

A prime example of this disagreement is found in a recent Fifth Circuit Court of Appeals decision.⁶ In this case, the court was sharply divided as to whether *Tinker* applied to a profane and threatening rap song recorded by a student directed at two high school coaches. The song was posted on YouTube and Facebook with the specific intent of communicating with the school community. The court's majority held that *Tinker* applies to such speech, that the district could discipline the student because that speech intentionally threatened, harassed, and intimidated the two teachers, and that such speech either caused a substantial disruption or might reasonably have led school officials to forecast substantial disruption.

The concurring and dissenting opinions, however, disagreed with the majority. One concurring opinion specifically pointed out that the conduct in question involved direct threats to the teachers and that the court's majority opinion should not be read to allow the regulation under *Tinker* of social media speech of a non-threatening nature that did not occur at school. Similarly, the dissent was of the view that the application of *Tinker* to any student social media speech outside of school was not warranted, and that speech could only be regulated if it fit within any of the three recognized exceptions mentioned above.

■ Representative Cases

It is within this context that courts are addressing districts' attempts to regulate student social media speech, through discipline, when they believe it is disruptive to the school environment. In addition to the Supreme Court, the Seventh Circuit Court of Appeals, the federal appellate court whose decisions are binding on Wisconsin school districts, has also not directly addressed the issue.

However, an Indiana federal

district court in the Seventh Circuit has issued a decision involving this issue which is instructive.⁷ In that case, two high school students took photos of themselves at a slumber party, including photos of them acting out with a sexual novelty lollypop, wearing lingerie, and engaging in other sexually suggestive poses. After the students posted these photos to their MySpace profiles, someone gave them to the high school principal, who suspended the students from extracurricular activities based upon application of the district's extracurricular code of conduct. That code provided that if a student acts "in a manner in school or out of school that brings discredit or dishonor upon yourself or your school, you may be removed from extracurricular activities for all or part of the year."

The students filed their federal court action contending that the district violated their First Amendment free speech rights when it suspended them based upon their social media conduct. The district court judge agreed. He first concluded that the conduct depicted on social media constituted sufficiently expressive speech as to be within the ambit of the First Amendment. He recognized that even though extracurricular activities are a privilege extended to students and not a right, those activities are still protected by the First Amendment. The judge also concluded that, while the photos could be characterized as "lewd, vulgar or plainly offensive," they did not lose their First Amendment protection since they were taken at their homes and were not posted on the internet using school property or networks.

Finally, noting the absence of Supreme Court guidance and recognizing the trend in federal appellate court decisions, the judge held that even if the *Tinker* test applied, the district had not made the required showing that the photos actually disrupted the school environment or that they had a reasonably foreseeable chance to cause a substantial disruption. As the court noted, "at

most, this case involved two complaints from parents and some petty sniping among a group of 15- and 16-year-olds. This can't be what the Supreme Court had in mind when it enunciated the 'substantial disruption' standard in *Tinker*."

In a similar vein, the Third Circuit Court of Appeals decided two related cases, on the same day, regarding student social media use that occurred outside of school. In one case, a senior created a fake MySpace profile of his principal by copying his photo from the district web site and filling in fake biographical information about the principal, including references to smoking, drinking, and the principal's genitalia.⁸ The student created the profile entirely outside of school hours, using his grandmother's computer.

As word of the website spread around the school, however, students began viewing the online profile from school computers, and the high school eventually was forced to limit student use of school computers for six days and devoted considerable resources dealing with the disruption. The student received a suspension, was placed in an alternative curriculum program at the high school for the remainder of the school year, and was banned from participating in extracurricular activities and graduation.

In the other case, an eighth-grade student created a fake profile of her principal on her home computer which was posted on MySpace.⁹ The profile did not identify the principal by name, school, or location, but it did include his official photograph which the student copied from the school's website. The profile used vulgar language to refer to the principal and members of his family. The profile was originally public, but was later restricted to a private profile accessed by 22 other students. The student was suspended for 10 days.

In both cases, the Third Circuit Court of Appeals concluded that the districts violated the students' First Amendment rights. In both cases, the court assumed, without deciding, that

Tinker applied. In the first case, the district did not contest on appeal the trial court finding that the fake profile did not cause a substantial disruption at school. Furthermore, the district did not argue that there was a sufficient nexus between the creation and distribution of the fake profile and a substantial disruption of the school environment. Rather, the district contended that the student created a nexus to the school to warrant the discipline when he “entered” the district’s website to “take” the district’s photo of the principal. The court rejected this nexus argument and refused to permit the district “stretching its authority into [the student’s] grandmother’s home and reaching [the student] while he is sitting at her computer after school.”

In the second case, the court noted that there was no dispute that the social media posting did not cause a substantial disruption at school. Because the profile was so outrageous that no one took it seriously, the district could not reasonably forecast that it would cause future disruption to the school environment. In addition, the court noted that the student did not intend for his speech to reach the school.

The following are other examples where courts have used the *Tinker* test to determine whether districts could discipline a student for social media communications occurring outside of school:

- A student was asked on a website whether he had “made out” with a teacher at the school. He tweeted in reply, while outside of school, “Actually, yeah.” He said he made the comment in jest. Nonetheless, the district suspended him. The court rejected the district’s request to dismiss the case, because a factual question existed whether the speech created such a disruption as to permit the district’s discipline. The court noted that just because off-school speech references student and teacher sexual

conduct does not necessarily make it likely that the speech would reach school and cause a significant disruption.¹⁰

- A student created a MySpace group which was dedicated to ridiculing one particular student and invited other students at the high school to join the group. The targeted student discovered the page and refused to attend classes the next day. The district suspended the student who created the MySpace group for five days. The court held that the school could discipline the student because the social media posting was “materially and substantially disruptive” to the school environment and that the student specifically knew and intended for the speech to reach the schools and its students.¹¹
- Twins created a website in which they posted racist comments about black students and sexually explicit remarks about named female classmates. Anyone who knew the website address could access it. The twins were suspended and allowed to transfer to another school. In ruling on whether to issue a preliminary injunction, the trial court noted that the twins’ conduct caused considerable disturbance and disruption at the school and, thus, a court would likely not conclude that their First Amendment rights were violated.¹²

Conclusion

The proliferation of social media usage by students creates circumstances in which out-of-school communications have the potential to negatively impact the school environment. *Tinker* expressly dealt with the ability of districts to discipline students for their speech in the context of communications taking place in the school setting. While we do not have definitive guidance from the

United States Supreme Court or the Seventh Circuit Court of Appeals addressing the extent to which districts can impose discipline in out-of-school social media settings, the case law from around the country suggests that districts proceed with caution. At a minimum, factors which need to be considered are whether there is a direct nexus between the communication and the school, whether the disruption is actual and substantial, and whether the student intended the communication to have a negative impact on the school setting. ■

Endnotes

For additional information on related topics, see Wisconsin School News, “Students Threats and the First Amendment” (April 2014); “Student Clothing, Social Causes and Free Speech” (December 2013); “Student Free Speech Rights” (May 2011); “Regulating Off-Campus Student Conduct” (July 2009); “Regulation of Off-Campus Student Publications” (January 2004); and “Disorderly Conduct and Students’ First Amendment Rights” (July 2001).

1. *Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503 (1969).
2. See Wisconsin School News, “Students Threats and the First Amendment” (April 2014).
3. *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986).
4. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988).
5. *Morse v. Frederick*, 551 U.S. 393 (2007).
6. *Bell v. Itawamba Cnty. Sch. Bd.*, 799 F.3d 379 (5th Cir. 2015).
7. *T.V. v. Smith-Green Cmty. Sch. Corp.*, 807 F. Supp. 2d 767 (N.D. Ind. 2011).
8. *Layshock v. Hermitage Sch. Dist.*, 650 F.3d 205 (3d Cir. 2011).
9. *J.S. v. Blue Mt. Sch. Dist.*, 650 F.3d 915 (3d Cir. 2011).
10. *Sagehorn v. Indep. Sch. Dist. No. 728*, 2015 U.S. Dist. LEXIS 105974 (D. Minn. Aug. 11, 2015).
11. *Kowalski v. Berkeley Cnty. Sch.*, 652 F.3d 565 (4th Cir. 2011).
12. *S.J.W. v. Lee’s Summit R-7 Sch. Dist.*, 696 F.3d 771 (8th Cir. 2012).

This Legal Comment was written by Michael J. Julka, and Steven C. Zach of Boardman & Clark LLP, WASB Legal Counsel.

Service Associate Q&A

School attorneys Shana Lewis and Tony Renning address “liquidated damages” provisions

Q. *What is an important issue that has come up for your school district clients in the last six months?*

A. We have been fielding many questions about the enforcement and interpretation of “liquidated damages” provisions contained in the individual teaching contracts utilized by many school districts. A liquidated damages provision typically requires the teacher to pay a pre-determined amount to the school district when the teacher resigns or requests that the school district release him/her from their individual teaching contract before the term of the contract has expired.

Q. *What do you advise, in general, as to the enforcement and interpretation of “liquidated damages” provisions?*

A. A liquidated damages provision must be in the individual teaching contract in order to be enforceable. Indeed, a court may refuse to enforce the provision if it is contained solely within a policy or handbook.

In order to be enforceable, the provision must not be a penalty, but rather, be reasonably designed to compensate the school district for the damages arising from early termination, such as the cost of replacing the teacher in the short term and long term. A liquidated damages provision where the amount owed increases as the first day of school nears is reasonable because it typically requires additional effort to replace a teacher when the school year begins.

Attorneys debate whether a school district may refuse to release a teacher from his/her contract when the teacher submits his/her resignation. While there is no Wisconsin court case explicitly addressing this

issue, we do not believe that a school district may refuse to accept a teacher’s resignation, thereby preventing the teacher from resigning and effectively requiring the teacher to continue to work for the school district after expressing a desire to terminate the contract.

However, a school district may collect reasonable liquidated damages and may pursue additional actual damages when the liquidated damages are not sufficient to compensate the school district for the harm caused by the teacher’s resignation. In order to preserve the school district’s right to pursue actual damages, the language of the provision should include explicit language explaining that the school district is permitted to pursue actual damages against the teacher in addition to, or instead of, the amount identified in the contract as liquidated damages.

When a teacher resigns to accept a position in another school district, the school district losing the teacher may seek to bring a claim against the school district hiring the teacher. Depending upon the facts and circumstances involved, one such claim may be for tortious interference with a contract and will likely rely upon Wis. Stat. § 118.22(2), which provides: “No such board may enter into a contract of employment with a teacher for any period of time as to which the teacher is then under a contract of employment with another board.”

School district officials must remember that they will inevitably be on both sides of this issue. Sometimes, the school district is dealing with a teacher resigning from employment, such that the school



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district is seeking to enforce the liquidated damages provision against the teacher. In other cases, the school district is seeking to hire a teacher who must resign from employment with another school district in order to commence work in the new school district. Therefore, it is important for school district officials to be consistent in their interpretation and application of these provisions.

Q. *What issue(s) do you think school boards should be paying attention to in the next six months?*

A. School boards should be paying attention to open enrollment policies, including but not limited to, the changes made to open enrollment for special education students; administrator contract renewal and non-renewal deadlines; and anticipated developments regarding the rights of transgender students in the school district environment. ■

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