Student Speech 2021: Students (Still) Say the Darndest Things

The MSBA Interview – New Education Commissioner
Heather Mueller

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**CALENDAR**

**MAY 2021**

7 ............... Coffee & Conversation (Southern Minnesota)
7 ............... The Friday Chat Room
17 ............. Legislative session ends
18 ............. Minnesota School District Liquid Asset Fund Plus Meeting
20 ............. MSBA Webinar Series – Legislative Session Review
21 ............. Coffee & Conversation (Central and Northern Minnesota)
21 ............. The Friday Chat Room
31 ............. Memorial Day (No meetings)

**JUNE 2021**

4 ............. Coffee & Conversation (Metro)
17 ............. MSBA Webinar Series – New Superintendents and Board Chairs

**JULY 2021**

4 ............. Independence Day
15 ............. MSBA Webinar Series – Back to School Hiring

**AUGUST 2021**

5 ............. Summer Seminar (Virtual)
10 ........... Charter School Board Member Workshop, Part 1 (Virtual)
12 ........... Learning to Lead — School Board Basics: Phase I Workshop (Virtual)
17 ........... Charter School Board Member Workshop, Part 2 (Virtual)
19 ........... Leadership Foundations — School Finance and Management: Phase II Workshop, Part A (Virtual)
26 ........... Leadership Foundations — School Finance and Management: Phase II Workshop, Part B (Virtual)

MSBA thanks Robbinsdale Area District Arts Coordinator Sarah Prindiville and the following elementary school art teachers for sharing their students’ art in this issue – Moriah Thielges, Kimberly Carroll, Angela Beugen, Renee Desarmeaux, Nichelle Lasar-Otto, Katherine Akin, Calihan Yliniemi, and Emma Withers.

**COVER ART:**

Ivory S.

Contact MSBA’s Bruce Lombard at blombard@mnmsba.org if you’d like to see your students’ art displayed in a future MSBA Journal magazine.
We Stand Ready to Improve the Education Amendment to Help our Students

By Kirk Schneidawind, MSBA Executive Director

In our last MSBA Journal, we shared three different perspectives on the proposed constitutional amendment that has been circulating in the public arena for the last couple of years. We are hopeful that those perspectives helped build a better understanding of the issues that could come with a constitutional change.

The proposed constitutional amendment – known colloquially as the Page Amendment and introduced as a bill (HF874) in the Minnesota House of Representatives – is a statewide matter that will impact every public school student and school board. To what degree is the question that our school boards and administrators are trying to determine.

To learn more about our school board members’ beliefs, attitudes, and feelings regarding the proposed amendment, MSBA set on a path to gather this information in a focus group model. A key goal was to ensure that we heard the voice from each region the state. We were able to enroll two school board members from each of MSBA’s 13 Director Districts and three superintendents. Diversity, gender, and years of experience were also key considerations for our groups. The focus group feedback would also help the MSBA Board of Directors frame a position on the issue.

Participants expressed concern about the lack of clear language in the proposed amendment about the method of funding for our public schools. Many participants were skeptical about the amendment’s power to overcome what they expressed as a persistent, overarching problem: a lack of funding.

The current Minnesota constitution states “that the legislature shall make such provisions by taxation or otherwise.” The proposal’s language concerning a “paramount duty” of the state to support our public schools did not engender a great deal of confidence or assurance that the state of our schools would have the tools available to raise the funds needed to satisfy the amendment’s standards. Clearer, more explicit language on the state’s responsibility of funding our public schools would be a positive step.

Second, the lack of clarity around “uniform achievement standards as set forth by the state” caused confusion. Minnesota’s academic standards? A new set of measures developed and directed by the state? A new set of measures developed by independent school districts? It is not clear if the state or each independent school district would be potentially held accountable if the uniform achievement standards are not met. If the state or districts miss the mark with only one, or more students, does this result in a right of action by the parents and/or students? Similarly, our participants asked whether the state of Minnesota or each independent school district would be responsible for fulfilling the fundamental right to a quality education that the proposal would establish. Today, this is not clear.

School boards welcome accountability. Identifying and clarifying the meaning and consequences around uniform achievement standards would be helpful. Clarification also would ease the liability concerns that school boards are legally responsible to manage and govern their respective school districts.

MSBA and its members agree that our public schools play a critically important role in our communities, economy, and society. Action is needed to close the opportunity/achievement gap and support the overall success of all our students. Our focus group participants and membership would hate to see uncertainties and valid questions derail the discussion and good work that can be done to help our public schools and their students.

If any action on the proposed amendment is to occur, we anticipate that the 2022 legislative session will be the time and place. While it may not feel like it, we do have time for constructive advocacy.

The interest in the discussion around the proposed amendment and raising expectations was evident among each of our focus groups. We would urge the supporters of this proposal give strong consideration to the key items we have highlighted with the goal of improving the proposed amendment.

Your MSBA stands interested and ready to improve the lives and outcomes of our public school students.

Contact MSBA Executive Director Kirk Schneidawind at kscheidawind@mnmsba.org.
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What steps can a school district take to prevent students from protesting social or cultural issues at school? Does a school newspaper have to publish every article that students write or that the paper’s advisor approves? What can be done about students who use foul language or make inappropriate comments?

In 1969, the United States Supreme Court issued its first decision directly addressing the free speech rights of public school students, making its oft quoted statement that students do not “shed their constitutional rights at the schoolhouse gate.” Tinker v. Des Moines Indep. Cmty. Sch. Dist. In the five decades following the Tinker decision, the Supreme Court has issued only three additional decisions on student speech. For now, these four cases establish the limits of a school’s ability to prevent student speech on particular topics, or to discipline students who speak on those topics.

In addition to being the first Supreme Court case on the topic, Tinker is also the case that gives school districts the broadest authority to limit student speech or discipline students for the content of their speech. After examining the unique role that public schools play in our society, the Court ruled that schools can prohibit, or impose disciplinary consequences for, student speech if the speech is reasonably likely to cause, or actually caused, a “substantial disruption of or material interference with school activities” or an “invasion of rights of others.”

The Tinker case involved a challenge to a school rule prohibiting students from wearing
black armbands in silent protest of the Vietnam War. In that case, the school did not have sufficient evidence of a substantial disruption or material interference to its activities. Accordingly, the Court overturned the school's discipline of the students.

The Tinker standard applies not only to verbal student speech, but to expressive content — such as wearing particular clothing — if: (1) the conduct is “intended to convey a particularized message;” and (2) if so, it is reasonably likely that those who viewed the conduct would understand that message. For example, shirts bearing verbal messages are expressive conduct that amount to “speech” under the First Amendment and, therefore, are subject to the Tinker case. Likewise, school district rules prohibiting images that convey a specific meaning, such as the confederate flag, are subject to the Tinker standard. Even clothing of a specific color or pattern may constitute “speech” subject to the First Amendment and the Tinker standard if wearing the color or pattern is intended to convey a particularized message.

While the application of the Tinker standard to particular speech will necessarily involve an analysis of the specific facts, courts interpreting Tinker have repeatedly made two points clear over the last several decades. First, a fear of disruption is not sufficient justification for a school restriction on — or discipline for — student speech. A school must actually have evidence of an actual material disruption or at least sufficient evidence upon which to forecast that such disruption would occur. Second, discomfort and unease on their own do not amount to a substantial disruption or material interference with school activities. No matter how unpleasant or controversial the subject matter or words used, a school cannot rely on hurt feelings alone to impose discipline for student speech.

In 1986, the U.S. Supreme Court issued its second case addressing student speech. Bethel Sch. Dist. v. Fraser. Unlike the political speech at issue in Tinker, the Bethel case involved a school district’s suspension of a student for delivering a speech filled with sexually explicit metaphors — but no profanity — during a school assembly. Weighing students’ rights to free speech against society’s interest in teaching students the boundaries of socially appropriate behavior, the Court held that schools may regulate student speech, including imposing discipline for such speech, if the speech is vulgar, offensive, or obscene. This authority exists regardless of whether the speech causes (or is predicted to cause) any substantial disruption or material interference at school. The school’s actions, however, must be reasonably related to legitimate pedagogical concerns. Applying that test to the facts of the case, the Court upheld the school’s suspension.

While courts agree that Bethel applies to more than mere profanity, the Bethel case has led to litigation over what,
specifically, constitutes vulgar, offensive, or obscene speech. For example, in 2011, a federal court held that a breast cancer awareness bracelet bearing the message “I <heart> boobies” could not be prohibited under Bethel. As another example, at least two federal circuit courts have held that Bethel grants schools the authority to prohibit students from displaying the confederate flag.1

The third United States Supreme Court case involving student speech was 1988’s Hazelwood Sch. Dist. v. Kuhlmeier. In that case, the Court considered a challenge to a school district’s decision to remove two articles on sensitive topics — namely teenage pregnancy and the impact of divorce on students — from its high school newspaper. Ultimately, the Hazelwood Court held that “educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.” The Court also noted that schools are “entitled to exercise greater control” over student speech that is directly sponsored by the school district than other types of student speech. As specific examples of schools’ authority over school-sponsored speech, the Supreme Court stated that schools can regulate such speech to: (1) assure that participants learn whatever lessons the activity is designed to teach; (2) ensure that readers or listeners are not exposed to material that may be inappropriate for their level of maturity; and (3) make clear that the views of the individual speaker are not erroneously attributed to the school. Given the great breadth of school control over school-sponsored speech, the Supreme Court ruled that the school district could refuse to publish the articles in question.

Beyond school newspapers, courts have applied the Hazelwood case to other forms of school-sponsored speech, including one federal court’s basis for a dismissal of a First Amendment challenge to a school’s decision to change its mascot and logo. The Hazelwood decision also applies to school assignments and students’ adherence to curriculum. That being said, at least one federal court of appeals has held that Hazelwood does not give school districts license to discriminate against individual viewpoints and, instead, that all restrictions on student classwork must be related to legitimate pedagogical concerns.

In 2007, the Supreme Court issued its fourth opinion on student speech. The case, entitled Morse v. Frederick, involved a ten-day suspension issued to a student for unfurling a banner reading “BONG HITS 4 JESUS” while the Olympic Torch Relay passed through Juneau, Alaska, on its way to the Salt Lake City Olympic Games. The school argued that its suspension was justified because the student’s banner “advocates the use of substances that are illegal to minors.” After initially deciding that the banner
was protected speech because it was intended to convey a particularized message — advocating drug use — the Court noted that deterring drug use by schoolchildren is an important, perhaps compelling, governmental interest. Therefore, the Court concluded that schools may prohibit student speech — or discipline students for speech — that advocates illegal drug use.

Perhaps the most straightforward of the Supreme Court’s student speech cases, the Morse case has also been applied fewer times than the earlier Supreme Court decisions. Courts applying Morse look to see whether the speech in question can be construed as advocating illegal drug use. If so, schools have the authority to restrict, or impose discipline for, the speech.

There is currently a fifth student speech case pending before the United States Supreme Court. The case is called Mahanoy Area Sch. Dist. v. B.L. by and through Levy. The issue in that case is whether and to what extent the First Amendment prohibits school districts from disciplining students for off-campus speech, including speech on social media platforms. The Court heard arguments in that case on April 28, 2021, and a decision is expected before the Court adjourns for the current term. Once the Court issues its decision in the B.L. case, schools’ authority with regard to off-campus student speech will be fully addressed in Part 2 of this special two-part series.

For the time being, however, educators should be aware that the United States District Court for the District of Minnesota held in the Sagehorn v. Indep. Sch. Dist. No. 728 case that Bethel does not allow schools to discipline students for off-campus speech. The court also held that, “[o]ff-campus statements are protected under the First Amendment and not punishable by school authorities unless they are true threats or are reasonably calculated to reach the school environment and are so egregious as to pose a serious safety risk or other substantial disruption in that environment.” As stated in the Sagehorn decision, this “is an extremely high bar: courts have applied such an exception sparingly, applying it only to the most violent and threatening forms of speech and consistently declining to expand it to extremely offensive but nonviolent out-of-school speech.” While the Sagehorn case may become obsolete when the Supreme Court issues its B.L. decision, it is the current standard that a Minnesota court would examine if faced with a challenge to school-discipline for off-campus speech.

Christian Shafer is a shareholder of Ratwik, Roszak & Maloney. He advises both school district and municipal clients in employment matters, all areas of school law, special education law, municipal law, and labor law. Learn more about Christian at https://ratwiklaw.com/index.php/christian-shafer.
Governor Tim Walz appointed Dr. Heather Mueller as the new Commissioner of the Minnesota Department following the resignation of then-Commissioner Mary Cathryn Ricker in March 2021.

“It is an honor to step into the role of Commissioner of Education and to continue serving our students, families, educators, libraries and school communities,” Dr. Mueller said about her appointment. “Minnesota’s students and educators have shown resiliency and perseverance this past year, and I look forward to partnering with our school communities to meet their diverse needs as we recover from this pandemic and continue building the best education system in the nation for each and every student in Minnesota.”

Mueller has worked in the field of education for nearly 25 years. After graduation from Minnesota State University, Mankato, she started her career at Mankato Area Public Schools in August 1997, teaching social studies. During her time in Mankato, she also worked as a continuous improvement coach, professional development coordinator and the director of teaching and learning.

Prior to her appointment as commissioner, Mueller served as the Minnesota Department of Education’s senior director of teaching and learning, assistant commissioner and deputy commissioner. She earned her doctor of education in leadership degree with an emphasis in organizational analysis and change from St. Mary’s University. She earned
her specialist and K-12 administrative license, master’s degree in educational leadership, and a bachelor’s degree in social studies from Minnesota State University, Mankato.

Mueller’s husband teaches middle school math, and they have two children who are both in high school.

Mueller officially assumed her role as commissioner on April 1, 2021 — around the time MSBA conducted the following interview with her.

The new commissioner provided her vision for improving K-12 education, how she’d tackle the achievement gap, and ways to address inequities in schools.

**MSBA: What is your vision for improving K-12 education?**

**HEATHER MUELLER:** My vision for improving K-12 education starts with ensuring that each and every student in every single Minnesota school has access, participates, is represented, and is valued, seen, and heard. In order to achieve this, we need to work to address each students’ needs — not just their academic needs, but their mental health and social-emotional learning needs, too. A really important part of this vision is supporting our early learning programs, our adult learning programs, and our school and community libraries.

A key for me when I think about the future of education in Minnesota is the importance of partnerships. Our schools are community hubs for our students and families, and this is really bolstered by the support of our libraries, nonprofits, advocacy groups, businesses, state partners, and professional organizations such as MSBA.

**MSBA: What approach will you take to help close the achievement gap? How can school boards help close the achievement gap?**

**HEATHER MUELLER:** It’s important to recognize that the achievement gap is not just an achievement gap. We know that it is also an access gap, an opportunity gap, an economic gap, and a hope gap. With this in mind, one of the keys to closing these gaps is to create and strengthen partnerships that meet the needs of each and every student by “unsiloing” our work and serving the entirety of the student, not just parts of the student.

The COVID-19 pandemic has exacerbated the gaps that already existed in our society. We now have an opportunity to leverage school, community and state partnerships so that we can come together to not only make sure our students catch up on the learning that has been lost, but also really intentionally work together to close all gaps.

School board members are leaders in their communities, and as such, play a critical role in helping build and strengthen partnerships. Now is the time for these leaders to reach out to their networks and determine how businesses and other organizations in our communities can support the work our schools are doing to meet the needs of our students and families.

**MSBA: Your past job has been overseeing academic standards. What are the challenges of updating those standards so they reflect learning from ALL students? What are your thoughts of standardized testing during a pandemic?**

**HEATHER MUELLER:** This ties back to my belief that in order to provide the best education possible for each and every student in Minnesota, we need to ensure that all of our students know that they are seen, they are valued, and they are heard every single day. A really important part of this is making sure that our students see themselves reflected in what is being taught, and who is teaching them. Reviewing our academic standards gives us an opportunity to ensure that the standards maintain high academic rigor and that they represent and reflect the students who are sitting in the seats of our classrooms.

When thinking about standardized testing, it is important to put them into the context of the education system in general. The MCAs and MTAS serve as a “systems check” to ascertain what students know and are able to do based on our Minnesota Academic Standards. This systemic information helps us determine the types of programs we need to create, the support we need to provide, and to ensure that the systems and the structures are meeting the needs of each and every student. As we come out of the pandemic, we know that our students need mental health and social-emotional support after this disruptive year. The statewide tests provide a snapshot of where our students are academically, at this point in time, so that we know where to focus the academic aspects of support along with mental health and social-emotional learning.

**MSBA: How do you get rural school districts and urban school districts — which have very different needs — to follow the same “One Minnesota” path the governor envisions? How do you meet the needs of rural school districts while also helping urban and suburban districts?**

**HEATHER MUELLER:** One Minnesota and the Due North Education Plan put students at the center, which is what all of our school districts and charter schools do every single day, regardless of their ZIP code. Every student deserves a high-quality education, every student deserves caring and qualified teachers, and every student deserves to learn in a safe and welcoming environment.

When we get down to how to achieve these objectives, we might see that different strategies are needed in different areas across the state. For example, we can look at access to rigorous coursework opportunities and in one school community it might mean the addition or expansion of AP, IB, CTE and PSEO courses, but in another school community it might mean diversifying who is participating in AP, IB, CTE and PSEO courses. Summer programming is another example of meeting the diverse needs of our Minnesota.
schools. The governor’s summer package provides flexible options from field trips to neighborhood programs to ensure each school community can create a program that meets the needs of their students. Continuing to put our students at the center of our work means meeting the diverse needs of our schools just like we meet the diverse needs of our students.

**MSBA:** The population of students in Minnesota is diverse. How can the Minnesota Department of Education help school districts become more inclusive and fix inequities in schools?

**HEATHER MUELLER:** First, it is important to acknowledge that race, gender, ethnicity, sexuality, ability, religion and economics matter, and when it comes to supporting schools in being more inclusive, MDE must lead by example. I am really excited to launch the department’s new Equity, Diversity and Inclusion Center, which will help guide the work and decision-making in every area of our support for schools. Externally, the center will also support our school districts and charter schools in best practices and specialized strategies to address systemic bias and inequities. This work, both internally at MDE and within our schools, comes down to valuing each and every student and family and recognizing all of the strengths of our increasingly diverse state and student population.

It is also important to acknowledge all of the work that our schools have been doing to become more inclusive and address inequities. Part of supporting best practices in these areas will be to create spaces for educators, staff and school leaders to continue learning from each other.

**MSBA:** Taking over as commissioner mid-term for the governor, are there any new directions you want to take the department? How are you looking at the transition?

**HEATHER MUELLER:** Stepping into this role mid-term for the governor, and just as we’re seeing some light at the end of the COVID-19 pandemic tunnel, is both exciting and humbling. As an educator for 25 years, the past two of which have been at the Minnesota Department of Education, my focus has been centered on students and on working not only “in the system”, but also “on the system.” We will continue to prioritize the safety, health and well-being of our students, staff, and families first and foremost, and continue to prioritize safe, in-person learning throughout the rest of the school year.

As we begin to recover from the pandemic, we must help meet our students learning needs, support their mental health, and prepare for our next school year. The Minnesota Department of Education’s work moving forward is to ensure that all of the work that we do at MDE center on our students. The programs we create, the support we provide, the systems, the structures are all meant to ensure that our students, each and every one, has access, participates, is represented, is valued, seen and heard, and has options in their lives. As a department, we must ensure that nothing in a student’s pre-K-12 or adult education experience inhibits them or their dreams. We must also work to ensure that libraries are available and provide access to each and every community member with resources and services that create opportunities for learning, support literacy and education, and help shape the new ideas and perspectives of our communities.

Visit [https://education.mn.gov/MDE/about/cmsh](https://education.mn.gov/MDE/about/cmsh) to learn more about Commissioner Heather Mueller.
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Implementation of a New Transition Program

Mankato Area Public Schools develops opportunities for students with disabilities across all ages

By Paul Peterson, Superintendent; Scott Hare, Director of Student Support Services; Stacy Wells, Director of Communications; Samantha Steinman, Assistant Director of Special Education; and Jodi Sapp, School Board Chair; Mankato Area Public Schools

Mankato Area Public Schools is committed to exploring and developing opportunities for students with disabilities across all ages. The purpose of this article is to share our story of the development of a new transition program from the ground up. Included is an overview of the initial development of the program, alignment of the program to the school district’s mission and vision, staffing development, funding streams, and community partnerships that were utilized throughout this process. It should also be noted that the development of this program occurred during the COVID-19 pandemic. Challenges and opportunities for growth during this time are also discussed.
Implementation Phase I: Determining Need

Program Gap Analysis

In the initial stages of this process, a gap analysis was conducted to determine the need for a transition plus program. A gap analysis indicated results that supported the need for additional programming to support students with disabilities. Gap analysis results indicated the following: Mankato Area Public Schools student growth continues and a need to expand services/opportunities for students with disabilities was identified. Child count projections indicate a total growth of 29% of students with disabilities in a 5-year analysis attending Mankato Area Public Schools with a growth of 38% of students with severe/profound cognitive disabilities in a 3-year analysis. Community partnerships offer opportunities for many students but not all students qualify or are able to be served educationally by county services prior to the age of 21.

Implementation Phase II: Plan Development

Program Description

INSITE offers students ages 18-21 an environment that is a living and training center with 100% focus on transition skills for students with disabilities. INSITE is a post-high school special education transition program available to students in Mankato Area Public Schools and surrounding districts as determined by Individual Education Plan (IEP) teams. The goal of the INSITE program is to bring students to a level of proficiency and self-sufficiency in areas of transition skills and meet individual student needs.

Structural Design

When developing the program design, the development team sought out a centralized location within the city of Mankato, and a space large enough for us to grow and expand. These two features were really important to us throughout this process. Once a location was identified, we worked very closely with our district contracting team and had a part in all aspects of the design. We learned from previous projects throughout the district as far as how large spaces needed to be to maximize the opportunities for students. We also considered a long-range plan of expanding the program and so the square footage and flexibility within the design were critical. As part of our initial proposal, the core areas that we kept in the forefront of our planning for budgeting purposes were: Site/ location, staffing, materials, equipment, and transportation. It’s essential to know as we made decisions around these general programming details, we kept our student’s needs as our top priority. We designed the site, each space/ room served a purpose that sought to benefit our students’ development of their transition skills. If an idea or item was added to the proposal it remained on the proposal, if the connection to students was clear.

Equipment and Supplies

For an outline of projected equipment and supplies see Table 1. In addition, the district received several donations from the school community. Donations included furniture, kitchen, cooking, cleaning, clothing and bedding supplies. This amazing support from the school community allowed us to save hundreds of dollars because our community valued what we were building for students.

Staffing

Ensuring adequate staffing for the INSITE program was a critical process. This process began with the adjustment in current staffing allocations. As a result of an in-depth caseload review across the district, we were able to identify cost saving measures by shifting FTEs to provide coverage for the new program. We made these staffing changes by reassigning the site location of our district’s Work-Based Learning Coordinator, who was assigned to assist in the curriculum and training components of INSITE. In addition, we reassigned a licensed special education teacher to lead the program. Finally, paraprofessional supports were also reviewed and reallocated using a similar analysis of student needs, as the process used for caseload reviews. Through this reallocation in staffing, we were able to pursue programming coverage with veteran staff which was identified as a significant cost savings in our expense analysis.

Transportation

In order to ensure access to the community locations which was considered a critical component of the program, gaining full access to district-owned transportation was prioritized in the development of the program. Our district focused on purchasing for the first time, a district vehicle (with accessibility) to be shared across all off-site special education programming. Off-site special education programming includes the new INSITE Program, Students with Unique Needs (SUN) Program, and Futures (Level IV Program). All staff obtained training and required transportation licensure to utilize the activity bus. Access to this transportation was identified as a cost savings in our expense analysis.
Implementation Phase III: Plan Implementation

Funding and Budget

When developing a new program, we were aware of the potential added costs that would impact the district’s budget. Therefore, we developed a budget that required the support of several funding streams to ensure the vision of the new program could be successfully implemented. The following funding streams were used when developing the INSITE program: Third-Party Funding (MA Billing), Federal Funds, Lease Levy Funding, Revenue from Tuition Billing, and Work-Based Learning Grants (PERKINS).

Team Approach and Community Partnerships

From the beginning of this process, we continuously sought input from key stakeholders: Our gap analysis allowed us a platform to communicate with various groups such as our school board, school staff, and students/families. We held several meetings where we reviewed special education programming needs and how a transition program could meet the range of student needs we serve. Our community partners were also crucial throughout this process and highly supportive in aligning employment experiences and expanding opportunities for our students.

Communication

Communication is also a key component throughout the development and implementation phases of the INSITE program. Due to the COVID-19 pandemic, district leaders utilized multiple methods of communication to connect with families to provide education and information related to INSITE. These methods included the use of an electronic brochure, both virtual and live walkthroughs of the new program prior to its opening. Communicating with community partners and the MAPS Special Education Advisory Council (SEAC) was also an important process throughout the development.

Program Promotion

When the INSITE program opened its doors in September, the district was contacted by multiple media sources that were interested in helping us communicate the newly developed program. We valued this experience and found it to be a positive opportunity despite the challenges of the pandemic that many districts were experiencing. Mankato Free Press and Minnesota Public Radio (MPR) news visited the program to hear all about the great plans we had developed. Students were able to actively participate and

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<tr>
<td><strong>Site/Location</strong></td>
<td>Review current district sites or community sites with available space March-May 2020</td>
<td>*Cost dependent on owning or leasing options/Lease levy</td>
</tr>
<tr>
<td><strong>Description:</strong> A site that offers students an independent living environment in an ADA compliant apartment environment (kitchen, bathroom, living space, etc.), and classroom environment for functional academic skills (e.g., money management, etc.) as well as access to community work partnerships.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Stabling, Materials, and Equipment</strong></td>
<td>Staff hired and trained by July 2020</td>
<td>$50,000-$100,000</td>
</tr>
<tr>
<td><strong>Description:</strong> One licensed staff to lead programming. Trained two-four paraprofessionals/job coaches.</td>
<td>Curriculum purchased by May 2020</td>
<td>$900-$2000</td>
</tr>
<tr>
<td>Life-Skills Curriculum: Attainment Company Home &amp; Community Based Solution Plus OR LINKS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appliances (stove, fridge, microwave, dishwasher, sink, washer, dryer, etc.)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Transportation</strong></td>
<td>June- July 2020</td>
<td>$15,000-$30,000</td>
</tr>
<tr>
<td><strong>Description:</strong> Purchase district vehicle (with accessibility) to be shared across Transition Plus Program, SUN, and Futures</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staff will obtain transportation licensure requirements.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 1. General Program Details by Timeframe and Estimated Cost.
demonstrate the learning that was taking place. The MPR segment is linked below and captures the essence of the INSITE program in its early months of being opened.

https://www.mprnews.org/story/2020/10/08/mankato-program-helps-students-build-developmental-skills-transition-into-community

### Conclusion and Future Directions

Developing a transition plus program based on an identified need of our district allowed us to provide additional opportunities to students with disabilities.

Student-focused initiatives and forward-thinking are a primary focus of Mankato Area Public Schools. Because many students with disabilities may need continued education to assist in their development into adulthood, districts must continue to prioritize the expansion of learning opportunities. As the INSITE program continues to develop, some key future directions to enhance the services for students are considered. First, it is important to expand this program to other neighboring districts where non-resident students with disabilities have a chance to continue to expand their skills. Within the rural location of southern Minnesota, partnerships across districts are a highly valued practice. Second, we believe in the value of identifying new and innovative learning opportunities for our students. This may include the development of a transition-based project that leads to a potential revenue system that will allow for unique and individualized opportunities for students. In addition, we believe that it will be critical moving forward to evaluate current partnerships and explore new community partnerships that meet the needs and interests of students attending INSITE.

Visit https://www.isd77.org/discover-maps/departments/student-support-services/insite to learn more.
The MSBA Day at the Capitol event is something our Government Relations staff and school board members look forward to each year. Due to the ongoing pandemic, MSBA needed to pivot yet again this year. Instead of meeting at the Minnesota State Capitol building in St. Paul, MSBA’s Government Relations staff, Denise Dittrich and Kimberley Dunn Lewis, hosted “MSBA Advocacy in Action – At-Home Edition,” a series of three online sessions.

The kickoff session featured a presentation by Seth Turner, “Breaking Cynicism & Building Relationships that Influence Lawmakers.” Turner is the Director of Citizen Engagement for the Congressional Management Foundation (CMF). In his role, Turner oversees CMF’s efforts to improve engagement between citizens and Congress. Since 2014, CMF has trained more than 90,000 citizens through presentations, webinars, and videos. Citizen advocates are more powerful than they realize when it comes to influencing legislators, they play an integral role in educating legislators to make informed decisions and motivate them to act.

Turner shared research data from multiple surveys given to congressional staff (from “Citizen-Centric Advocacy: The Untapped Power of Constituent Engagement,” a public report that may be downloaded from the CMF website at https://www.congressfoundation.org/projects/communicating-with-congress/citizen-centric-advocacy-2017). Congress, as well as local legislators, places a high value on groups and citizens who have built relationships with the legislator and staff. The following lessons and tips provided by Turner can be transferred to all levels of government.

Strategies for Building Relationships

Washingtonian cliché: “If you’re not at the table, you’re on the menu.”

If you want to influence a decision, then you must be present at the table. If you are absent, an unfavorable decision may be made. Metaphorically, your interests will be “consumed” by other parties at the table. The worst thing you can do is
nothing and hope for the best. If you do that, you will find yourself as the main course on the menu.

You are off the menu when:

• Legislators know and understand your views on issues and legislation.
• Legislators get ideas from you at the genesis of drafting legislation.

A legislator may not agree with you on one issue, but it is important to continue to build the relationship. Advocates need to speak to opposing positions – it sends the message that you are thoughtful.

When legislators are trying to develop new ideas for issues and legislation, you can be “at the table” and climb the Advocacy Engagement Ladder as you engage with legislators:

• Write personalized emails and letters. Templates are available in the Advocacy in Action Toolkit (ask MSBA’s Bruce Lombard for a copy at blombard@mnmsba.org).
• Attend in-person town hall meetings.
• Be prepared.
• Arrive early.
• Go in groups if you feel more comfortable.
• Provide feedback to professional advocate (MSBA).

• Attend telephone or virtual town hall meetings.
• Sign up on legislators’ websites to ensure your invitation.
• Ask a question.
• Establish your credentials for the audience.
• Be concise – talk from a written question.
• Praise the legislator for listening.
• Schedule site visits to provide your legislators with insight into your issues, challenges and needs.
• Personal meetings with legislators are “the most effective tool in a citizen advocate’s arsenal,” according to Turner. If your legislator has not already arrived at a firm decision, a personal meeting influences decision-making.
• Be sure to do your homework, know the legislator’s history on issues/policies.

Turner introduced us to the “Advocacy Engagement Ladder.” The ladder has multiple rungs, with the lowest rung representing the lowest level of engagement. The highest rung represents a more active level of participation and engagement.
“Advocacy is leadership. Representing the voice of your students as a part of the Legislature is not always quick or simple — but meaningful. If you don’t take on that role — someone else will. This work is so particularly important to your role as a school board member.” — Denise Dittrich, MSBA Director of Government Relations

“Doing this work is a long ball game and it takes time and a lot of effort. Sometimes people lose patience and start to think, does this really make a difference?” — Seth Turner

Turner would say YES. As an example, he worked on reauthorizing the Workforce Investment Act beginning in 2003. The Act finally passed in 2014. In July 2020, there were 24 million people unemployed or jobless. Had the Workforce Investment Act not passed, those 24 million people would not have had opportunities to file for unemployment service, get training and find jobs.

“MSBA’s Government Relations staff is here to lead you in your advocacy efforts. Follow us in the Friday Chat Room, the Weekly Advocate and other social media. We try to make it easy for you.” — Denise Dittrich

Advocacy is a long-term investment. It takes time to build relationships and trust — which are two key attributes. The resources provided in the Advocacy in Action Toolkit can be a resource for you, as a constituent, to establish your voice with lawmakers at the Legislature. They are offered as a launch pad to ensure your voice is heard in such areas as local control, greater authority and flexibility, and adequate funding to meet the needs of students as we get back to “normal” in-person learning.

Colleen Sparke is a MSBA Government Relations Staff Member. You can contact Colleen about this article at csparke@mnmsba.org.
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We are now one year into the COVID-19 pandemic, and we are all well aware of the challenges this has created for educators, students, and families. Along with significant disruptions to students’ education, other challenges such as food and housing insecurity, child care, access to technology, and the mental well-being of educators, students and families have all been impacted.

In the past year, schools have been required to transition between in-person, hybrid, and full distance learning, many times. Many schools routinely screen students for important milestones in reading, math, and writing and participate in end of year accountability tests (MCAs) to quantify the degree to which schools are providing instruction that is sufficient to help most children attain proficiency. Due to timing of school closures, Spring 2020 data does not exist for the Minnesota Comprehensive Assessment (MCA), and it is unclear how many districts are collecting screening data during the 2020-21 school year.

The absence of data and disruptions to learning have created a “perfect storm” for our schools, and it has been hypothesized that the economic impacts and trauma of recent events will likely exacerbate long-standing opportunity gaps. These hypotheses are now taking root in the form of a multitude of market-based solutions to address “learning loss.” One principal reported receiving over 30 emails from vendors already. The term “learning loss” is “sticky,” meaning it seems to make immediate sense; however, we are growing increasingly concerned with its use. First, the hypothesis of “learning loss” described in the media is not based on actual assessment results (much more on that below). Second, the language itself situates the last year entirely in a deficit frame, not acknowledging or taking into account the many real skills students and educators have learned that may be leveraged to accelerate instruction, like the use of technology and asynchronous lessons.
Where did this idea of “learning loss” come from?
Research has identified some trends around summer learning loss (Alexander, Entwisle & Olson, 2007; Kuhfeld, 2019). It has been documented that achievement typically slows or declines over the summer months, declines in learning tend to be steeper for math than for reading, and the extent of loss increases in the upper grades. To compensate for the lack of data available during the pandemic, NWEA used research on seasonal learning and summer learning loss to offer insights around the potential impact of learning during the pandemic (Kuhfeld & Tarasawa, 2020). Their projections from COVID closures (Spring 2020) estimated that students would return in the Fall 2020 with 70% of the learning gains in reading and less than 50% of learning gains in math relative to a typical school year. In some grades, projections indicate students could be nearly a full year behind of what we would observe in normal conditions.

More than just “test” data
Before panic ensues, it is important to remember that data from the NWEA and other studies are projections and not based on actual data. Data from the 2021 MCA’s and local assessments will either confirm or disconfirm these projections. Given the wide array of experiences students have had during the pandemic, we need assessments that are designed to quickly identify learning needs and guide instruction. The current inequities and complexities faced by students require that we consider not only student performance but also the experiences that could impede their learning and development, and also those that have frankly potentially enhanced learning and development beyond just academic standards. We know that a students’ physical, social, and emotional well-being, including relationships with peers and adults, are foundational to learning. As a result, we need to know both what students know and how they feel to inform instruction, now more than ever. It is important for educators to identify the reasons students may have learning struggles, not just the struggles themselves.

Helpful principles of assessment
With the increased focus on assessment data, we encourage you to remember some basic principles of assessment to consider during the pandemic (Lake and Olson, 2020):

• Do no harm. Refrain from retaining students based on assessment data. If it is not clear how data will be used, do not administer assessments that put added time burden on students and teachers. Ensure that educators administering assessments know how to interpret results, what to do in response to the results, and have options for action.
• Prioritize measures closest to classroom instruction. In order to help teachers to know what to do next, provide professional development to help teachers translate assessment data into specific classroom instruction or find ways to integrate the review of unfinished learning into grade level content. Make use of existing data. If a high-quality curriculum that includes assessment is not available, don’t put the burden of developing pre-assessments on individual teachers.

• Use more formal interim assessments for school and district decision-making. Continue using interim assessments that are in place that predict performance on state learning standards (MAP, Fastbridge, I-Ready). However, be cautious about using interim assessments this year to compare with previous years. Testing will not help without a clear districtwide commitment and plan to address any needs revealed.

• Engage parents as partners. Create a district-level protocol to share assessment results with parents and to solicit their observations and feedback. Provide professional development to teachers on the protocol. Increase transparency and make sure parents have access to interim and other assessments with resources and support. Provide support to teachers, including data literacy, so they can have honest and simple conversations with families about student progress.

• Remember that universal screening is going to look different for the next few years. One purpose of universal screening is to rule out students who do not need academic intervention. There will likely be a higher prevalence of academic risk in nearly all schools that will make it difficult to sort out which students need more intensive intervention. Single point-in-time screenings are not going to be sufficient. Schools must use “Gated Screening” where teachers implement classwide interventions daily and then use data to determine which students need more intensive intervention.

Resources for districts
The Center for Applied Research and Educational Improvement (CAREI) is a partner in the Wisconsin Minnesota Comprehensive Center (WMCC) – one of 19 federally funded comprehensive centers across the United States that provides high quality and intensive capacity-building services to help state education agencies and school districts identify, implement, and sustain evidence-based practices to support educational outcomes. As part of our work, we are partnering with the Minnesota Department of Education on a variety of projects. One area of focus is around implementation of the Safe Learning Plan. A survey has been developed for families, educators, and students to gather information on their experiences with safe learning plan implementation. The survey will be deployed at three intervals – February, May, and October 2021. Information from the survey
will be provided to school districts to assist with identifying needs within a continuous improvement framework. In addition, WMCC will be developing guidance for districts on how to assess student learning across in-person, hybrid, and distance-learning models with action planning strategies to close achievement gaps. Rapid briefs summarizing assessment guidance will be issued every few weeks between March 2021 and June 2021. The first brief includes general assessment guidance for districts to consider.

In closing, we both applaud all of the work you have done this year to best meet the needs of students, families, and your staff. We know the work has not been easy. We will do our part to continue developing resources and tools to make your jobs easier.

Kim Gibbons, Ph.D., is the Director of the Center for Applied Research and Educational Improvement at the University of Minnesota. Katie Pekel, Ed.D., is the Director of the Minnesota Principals Academy; Coordinator for the Education Policy and Leadership Programs; and Co-Director of the Urban Leadership Academy of the University of Minnesota. You may contact Kim and Katie about this column at kgibbons@umn.edu and kpekell@umn.edu.

Additional reading on the topic:


The Minnesota Tax and Aid Anticipation Borrowing Program (MNTAAB) is available to any school district that expects to have a cash flow deficit in an operating fund.

Why should I participate in the MNTAAB program rather than borrow on my own?

Borrowing costs for participating school districts are reduced since expenses of issuance are shared. Due to the streamlined process, school boards need only take a single action. Nearly all the necessary documentation is available for signature at that time, eliminating the need to track down signatures during popular summer vacation months. MSBA and the Minnesota Service Cooperatives sponsor the MNTAAB program, which benefits your school district when participating in the program versus borrowing on your own.

Our audit showed an adequate fund balance. Why should I consider borrowing for cash flow needs?

Remember, cash flow and fund balance are two entirely different things. Your school district may have a large fund balance at the end of the school year but may encounter cash flow problems sometime during the school year.

How much cash will it cost me to borrow?

When compared to an individual borrowing issuance, costs are lower due to how the program is structured and the number of both large and small districts that are participating. Fees include legal fees, printing costs, trustee/paying agents fees, county auditor certificates, the transaction costs to issue the certificates, and the underwriter’s commissions to remarket the certificates.

How much can a school district borrow?

Districts are limited on the amount they can borrow based on the lesser of the two following formulas: (i) 75% of state aid the district will receive in the school year in which the certificates are issued, or (ii) the lowest projected cash balance (deficit) for the school year in which the certificates are issued plus 5% of the previous fiscal year’s cash expenditures for the General Fund 01 and the Operating Funds Food Service Fund 02 and/or Community Service Fund 04.

What can we do with the money if we do not need it right away?

The district can choose to invest the proceeds in the following ways:

• The MSDLAF Liquid Asset Fund, a variable rate investment.
• The district’s local financial institutions, typically banks, which offer both variable and fixed rate instruments.

When can we get in the pool?

The next MNTAAB pool will be offered in summer 2021. The deadline to apply for the pool is June 17, 2021. School districts will receive the proceeds from the pool in August. For more information, contact Joel Stencel, MSBA’s Director of Association Finance by email (jstencel@mnmsba.org) or phone (507-934-8122).
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What is pay equity?
Equal pay, which has been a federal law since the 1960s, applies to men and women holding jobs with similar duties. For example, teachers are paid per the applicable Master Agreement. The same pay schedule is used for a male science teacher and a female science teacher, with additional education and experience providing additional wages. That is equal pay.

Pay equity, which has also been referred to as “comparable worth,” is defined as “comparable pay for work of comparable skill, effort, responsibility, and working conditions” (LOESW, 2016).

Are the wages of the district’s teachers, principals, paraprofessionals, bus drivers, and food service workers equitable based on skill, effort, responsibility, and working conditions? That is a more complicated comparison and is the goal of pay equity.

How does a district report pay equity data?
Every three years, districts are required to submit pay equity data to Minnesota Management and Budget (MMB). Districts use an evaluation system to review job descriptions for all positions, and a point value is created for each position. The higher the job’s required skill, effort, responsibility, and working conditions, the higher the point value. As point values increase, so should compensation.

For pay equity reporting purposes, compensation includes base salary, longevity pay, performance pay or bonuses, and employer-paid health insurance contributions. Along with the point values and compensation, districts report how long it takes employees to reach the top of the wage scale and how many males and females work in each position. Based on these counts, each position is defined as a female-dominated class, a male-dominated class, or a balanced class. The district provides this information to MMB and the data is analyzed using four compliance tests. If the district’s data is not in compliance, meaning that inequities exist, action must be taken to achieve compliance by a deadline provided by MMB. Failure to establish compliance will result in penalties.

What role should pay equity play in negotiations?
Pay equity should be considered when negotiating changes to any of the components that are reported during the pay equity process. For example, any settlements that result in disproportionate wage increases to the compensation of male-dominated classes over female-dominated classes may result in pay equity challenges. Also, caution should be exercised when considering adding or removing steps from the wage scale. For example, if additional steps are added, and as a result, it takes employees in a female-dominated job class twelve (12) years to reach the top of scale, but it only takes a male-dominated job class eight (8) years to reach the top of the scale, that will work against the district’s compliance calculations.

Are there tools to help districts maintain compliance?
MMB’s online pay equity system provides the opportunity to conduct “what if” testing, allowing districts to see what impact proposed compensation changes will have on their pay equity results.

Maintaining an awareness of pay equity during negotiations will prevent surprises later.

For more information:

Tiffany Gustin is MSBA’s Associate Director of Management and Insurance Trust Services. You can contact Tiffany about this column at tgustin@mnmsba.org.
We see you, we appreciate you.
Thank you for all you’re doing to navigate the challenging demands, keeping our students healthy, safe and continuing to learn.

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<td>St. Louis Park, MN 55426</td>
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<tr>
<td>952-426-0699</td>
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<tr>
<td><a href="http://www.isginc.com">www.isginc.com</a></td>
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<tr>
<td><a href="mailto:paul.youngquist@ISGInc.com">paul.youngquist@ISGInc.com</a></td>
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<tr>
<th>FINANCIAL MANAGEMENT</th>
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<tbody>
<tr>
<td><strong>Ehlers</strong></td>
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<tr>
<td>(Greg Crowe)</td>
</tr>
<tr>
<td>3060 Centre Pointe Dr.</td>
</tr>
<tr>
<td>Roseville, MN 55113</td>
</tr>
<tr>
<td>651-697-8522, Fax 651-697-8555</td>
</tr>
<tr>
<td><a href="http://www.ehlers-inc.com">www.ehlers-inc.com</a></td>
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<tr>
<td><a href="mailto:gcrowe@ehlers-inc.com">gcrowe@ehlers-inc.com</a></td>
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<thead>
<tr>
<th>MSBA-Sponsored CP-DBS, LLC d/b/a Payschools</th>
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<tbody>
<tr>
<td>(Rick Killian)</td>
</tr>
<tr>
<td>40 Burton Hills Blvd., Ste. 415</td>
</tr>
<tr>
<td>Nashville, TN 37215</td>
</tr>
<tr>
<td>330-295-3140, Fax 330-295-3140</td>
</tr>
<tr>
<td><a href="http://www.payschools.com">www.payschools.com</a></td>
</tr>
<tr>
<td><a href="mailto:rick.killian@payschools.com">rick.killian@payschools.com</a></td>
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<tr>
<th>MSBA-Sponsored MNTAAB (Minnesota Tax and Aid Anticipation Borrowing Program)</th>
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<tr>
<td>(Kelly Smith, Baker Tilly)</td>
</tr>
<tr>
<td>651-223-3099, Fax 314-878-5333</td>
</tr>
<tr>
<td><a href="http://www.bakertilly.com">www.bakertilly.com</a></td>
</tr>
<tr>
<td><a href="mailto:kelly.smith@bakertilly.com">kelly.smith@bakertilly.com</a></td>
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<tr>
<th>MSBA-Sponsored P-Card (Procurement Card Program) 800-891-7910 or 314-878-5000</th>
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<tr>
<td>800-891-7910 or 314-878-5000</td>
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<tr>
<td>Fax 314-878-5333</td>
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<tr>
<td><a href="http://www.powercardpfm.com">www.powercardpfm.com</a></td>
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<th>FIRE &amp; SECURITY</th>
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<tr>
<td><strong>Arvig</strong></td>
</tr>
<tr>
<td>150 Second St. SW</td>
</tr>
<tr>
<td>Perham, MN 56573</td>
</tr>
<tr>
<td>888-992-7844</td>
</tr>
<tr>
<td>arvigbusiness.com</td>
</tr>
<tr>
<td><a href="mailto:answers@arvig.com">answers@arvig.com</a></td>
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<tr>
<th>FITNESS EQUIPMENT</th>
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<tbody>
<tr>
<td><strong>Johnson Commercial Fitness</strong></td>
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<tr>
<td>(Drew Wurst)</td>
</tr>
<tr>
<td>7585 Equitable Dr.</td>
</tr>
<tr>
<td>Eden Prairie, MN 55344</td>
</tr>
<tr>
<td>952-500-0508, Fax 952-906-6909</td>
</tr>
<tr>
<td>Commercial/Index</td>
</tr>
<tr>
<td><a href="mailto:drew.wurst@johnsonfit.com">drew.wurst@johnsonfit.com</a></td>
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<tr>
<th>FLOOR COVERINGS</th>
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<tr>
<td><strong>Hiller Commercial Floors</strong></td>
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<tr>
<td>(Dave Bahr)</td>
</tr>
<tr>
<td>2909 South Broadway</td>
</tr>
<tr>
<td>Rochester, MN 55904</td>
</tr>
<tr>
<td>507-254-6858 or 888-724-1766</td>
</tr>
<tr>
<td><a href="http://www.hillercarpet.com/commercial">www.hillercarpet.com/commercial</a> <a href="mailto:dbahr@hillercarpet.com">dbahr@hillercarpet.com</a></td>
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<tr>
<th>FOOD SERVICE PRODUCTS &amp; SERVICES</th>
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<tbody>
<tr>
<td><strong>Taher, Inc.</strong></td>
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<tr>
<td>(Erin Marissa)</td>
</tr>
<tr>
<td>5570 Smetana Dr.</td>
</tr>
<tr>
<td>Minnetonka, MN 55343</td>
</tr>
<tr>
<td>952-345-2891, Fax 952-945-0444</td>
</tr>
<tr>
<td><a href="http://www.taher.com">www.taher.com</a> <a href="mailto:e.marissa@taher.com">e.marissa@taher.com</a></td>
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<tr>
<th>HEALTH INSURANCE</th>
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<tbody>
<tr>
<td><strong>PreferredOne</strong></td>
</tr>
<tr>
<td>(Dan Stewart)</td>
</tr>
<tr>
<td>6105 Golden Hills Dr.</td>
</tr>
<tr>
<td>Golden Valley, MN 55416</td>
</tr>
<tr>
<td>763-847-3331, Fax 763-847-4010</td>
</tr>
<tr>
<td><a href="http://www.PreferredOne.com">www.PreferredOne.com</a> <a href="mailto:dan.stewart@PreferredOne.com">dan.stewart@PreferredOne.com</a></td>
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<tr>
<th>INDOOR AIR QUALITY</th>
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<tbody>
<tr>
<td><strong>ISG</strong></td>
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<tr>
<td>(Paul Youngquist)</td>
</tr>
<tr>
<td>6465 Wayzata Boulevard, Ste. 970</td>
</tr>
<tr>
<td>St. Louis Park, MN 55426</td>
</tr>
<tr>
<td>952-426-0699</td>
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<tr>
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<tr>
<td><strong>Designer Specialty Products</strong></td>
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<tr>
<td>(Jeff May)</td>
</tr>
<tr>
<td>5001 Drew Ave N</td>
</tr>
<tr>
<td>Brooklyn Center, MN 55429</td>
</tr>
<tr>
<td>763-557-5702</td>
</tr>
<tr>
<td>dsp-llc.com</td>
</tr>
<tr>
<td><a href="mailto:jtmay@solarmidwest.com">jtmay@solarmidwest.com</a></td>
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<th>INSURANCE</th>
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<tr>
<td><strong>EMC Insurance Companies</strong></td>
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<tr>
<td>(Marcus Traetow)</td>
</tr>
<tr>
<td>11095 Viking Dr., Ste. 230</td>
</tr>
<tr>
<td>Eden Prairie, MN 55344</td>
</tr>
<tr>
<td>612-643-4738</td>
</tr>
<tr>
<td><a href="http://www.emcins.com">www.emcins.com</a></td>
</tr>
<tr>
<td><a href="mailto:marcus.k.traeow@emcins.com">marcus.k.traeow@emcins.com</a></td>
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<th>INSURANCE Trust (MSBAIT)</th>
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<tbody>
<tr>
<td>(Gary Lee)</td>
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<tr>
<td>1900 West Jefferson Ave.</td>
</tr>
<tr>
<td>St. Peter, MN 56082-3015</td>
</tr>
<tr>
<td>800-324-4459, Fax 507-931-1515</td>
</tr>
<tr>
<td><a href="http://www.mnmsba.org/MSBAIT">www.mnmsba.org/MSBAIT</a> <a href="mailto:glee@mnmsba.org">glee@mnmsba.org</a></td>
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<tbody>
<tr>
<td><strong>Kennedy &amp; Graven, Chartered</strong></td>
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<tr>
<td>(Maggie R. Wallner)</td>
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<tr>
<td>Fifth Street Towers</td>
</tr>
<tr>
<td>150 South Fifth St., Ste. 700</td>
</tr>
<tr>
<td>Minneapolis, MN 55402</td>
</tr>
<tr>
<td>612-337-9300, Fax 612-337-9310</td>
</tr>
<tr>
<td><a href="http://www.kennedy-graven.com">www.kennedy-graven.com</a> <a href="mailto:contactus@kennedy-graven.com">contactus@kennedy-graven.com</a></td>
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<td>(Ann R. Goering)</td>
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<tr>
<td>730 2nd Ave S., Ste. 300</td>
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<tr>
<td>Minneapolis, MN 55402</td>
</tr>
<tr>
<td>612-339-0060, Fax 612-339-0038</td>
</tr>
<tr>
<td><a href="http://www.ratwiklaw.com">www.ratwiklaw.com</a> <a href="mailto:info@ratwiklaw.com">info@ratwiklaw.com</a></td>
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<tr>
<td><strong>National Insurance Services</strong> (Rob Keller)</td>
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<tr>
<td>14852 Scenic Heights Road, Ste. 210</td>
</tr>
<tr>
<td>Eden Prairie, MN 55344</td>
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<tr>
<td>800-627-3660, Fax 262-814-1360</td>
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<tr>
<td><a href="http://www.NISBenefits.com">www.NISBenefits.com</a> <a href="mailto:rkeller@NISBenefits.com">rkeller@NISBenefits.com</a></td>
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<td><strong>Inspec, Inc.</strong> (Jason Popovich)</td>
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<tr>
<td>5801 Duluth St.</td>
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<tr>
<td>Minneapolis, MN 55422</td>
</tr>
<tr>
<td>763-546-3434, Fax: 763-546-8669</td>
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<tr>
<td><a href="http://www.inspec.com">www.inspec.com</a> <a href="mailto:jpopovich@inspec.com">jpopovich@inspec.com</a></td>
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<td>380 Jackson St., Ste. 300</td>
</tr>
<tr>
<td>St. Paul, MN 55101</td>
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<tr>
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<td>612-977-8511, Fax: 612-977-8650</td>
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<td><a href="http://www.taftlaw.com">www.taftlaw.com</a> <a href="mailto:dburns@taftlaw.com">dburns@taftlaw.com</a></td>
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www.msboa.com
shelly@msboa.com

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(Todd Telin)
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ltelin@telingroup.com

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jpopovich@inspec.com

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An increasingly occurring area of concern for school board members centers upon speech that employees communicate, especially on social media. One trend focuses upon school employees who are terminated following social media posts that raise controversy.

Employees, including school district staff, have the right to engage in constitutionally protected speech. The extent of these rights depends in part upon whether the employee is speaking as a private citizen or as an employee.

An employee may speak as a private citizen on public issues. This type of speech may be limited or disciplined by a school district, however, if (1) it would interfere with the employee’s performance; (2) it would create disharmony among coworkers; (3) it would undercut an immediate supervisor’s authority over the employee; or (4) it would destroy the relationship of loyalty and trust required of confidential employees.

Employee speech about private matters does not receive the same level of First Amendment protection as speech on public issues. Employers have greater latitude to make personnel decisions regarding an employee’s speech on private matters, particularly when the speech substantially interferes with the employer’s operations.

Increasingly, school districts across the country have experienced controversy concerning employee speech on private matters on social media. Speech that disrupts the school district’s operations or prevents efficient school operations may give rise to disciplinary action. Examples of such speech include speech that constitutes hate speech against a protected person or group, speech that raises a safety or health threat, and speech that creates a hostile work environment.

The extent to which a school district may discipline an employee for private speech may depend upon the employee’s role in the district. The role often impacts the likelihood and the degree to which the employee’s private speech could disrupt the school district’s operations or the learning environment. For example, teachers may have greater restrictions placed upon them because of their direct instructional role with students because the speech may undermine the learning environment for students.

When an employee speaks on the school district’s behalf, the district has broader authority to regulate the employee’s speech. Because the employee is expressing the views of the district, the district may reasonably control the content of the speech.

Free speech controversies involve judgment calls on a school administration’s part. Determination of whether speech concerned a matter of public interest requires administrators to consider the content, form, and context of the speech in question. Similarly, administrators focus upon situation-specific facts and circumstances when considering whether an employee’s speech may be disruptive, raise a threat, create a hostile environment, or generate similar concerns.

Terence Morrow is MSBA’s Director of Policy and Legal Services. You may contact him about this column at tmorrow@mnmsba.org.
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