



WEEKLY UPDATE TO THE BOARD OF EDUCATION

July 8, 2021

A MESSAGE FROM SUPERINTENDENT CARLTON D. JENKINS

Dear Board Members,

This week marks the third week of our summer semester. During this week, our district has engaged in planning and advocacy to accelerate learning for all students, while addressing educational disparities. These efforts have continued while we prepare to open schools for Fall 2021 amid ongoing uncertainty around the state legislature's final 2021-2023 budget.

Throughout the 2021-2022 school year, MMSD will continue relying on our core values as we work to address the ongoing impacts of the twin pandemics of COVID-19 and racial/social injustice. Our efforts will center on meeting the instructional, social-emotional, and other needs of our school community. Unfortunately, the increased costs of meeting these needs will be inadequately supported by our state legislature's 2021-2023 budget. This may necessitate difficult choices despite the collaborative work the board and district leadership engaged in to make our preliminary 2021-2022 budget reflect our core values and the spirit of our Strategic Framework.

Despite the ongoing challenges with appropriately funding schools at the state and federal levels, our district still possesses an abundance of industrious and talented students, staff, family members, and community stakeholders. Therefore, as we plan for the 2021-2022 school year and beyond, we must redouble our efforts to ensure our investments are aligned to high-yielding instructional and social-emotional practices and policies. We can overcome many of the historical and contemporary challenges faced by diverse communities in the sphere of public education by leading with love, innovation, intentionality and with humility. As such, we look forward to continuing the work of refining our policies and practices as we gain insights from the voices of our students, staff, families, and community members.

During the month of July, many of our staff members will recharge their minds and bodies through well-deserved vacations. At the same time, they will engage in a combination of informal and formal introspection about what lessons can be learned from the successes and challenges of the previous year. Many innovative and transformative ideas will be nurtured and developed during this process, and our district will grow stronger as a result.

Thanks for your continued support and partnership. We look forward to providing you with more updates on our district's progress and planning later in July.
Sincerely,

OTHER INFORMATION



Summer Semester Update

Attached please find a summary of what is happening so far with our summer semester learning.



This Week's Recorded Meetings

Here are the agendas and recordings for this week:

Thursday, July 8 School/Central Office Admin. Operations Meeting

[Agenda & Recording](#)

*Meetings now moved to bi-weekly.



Community Events:

All dates for community announcements are posted on the [Board Community Activities Calendar](#)

- Madison's Central Business Improvement District is beginning to host **Lunchtime Live** from **June 1-August 31** recurring **weekly on Tuesdays** from noon-1 p.m. on the Capitol Square Lawn at N. Hamilton Street. Local bands and performers will perform live during this time for observers. More info. can be [found here](#).
- Rock Paper Scissors, etc. is hosting the 42nd Annual **Madison Art Fair Off the Square** on **July 10 and July 11** from 9 a.m.-5 p.m. both days. There will be dozens of vendors selling unique items and wearables. This event is free, and more information can be [found here](#).
- The Wisconsin Conservation Voters group is hosting **We Are Young. We Are the Future of Climate Action** on **Wednesday, July 14**, from 6-7 p.m. online. Panelists will include Stephanie Salgado from Youth Climate Action, Amanjot Kaur from Sunrise Movement Brookfield, Molly McGuire from UW Divestment, and Nada Elmikashfi, former candidate for WI Senate District 26. More info. can be [found here](#).
- **Free breakfast & lunch meal boxes for children 18 and younger: various days and times**
Cost: FREE
Where: various locations around Madison
What: MMSD is offering curbside meal service at 12 Madison sites for all children 18 years of age and younger. Each Meal Box contains 7 breakfasts and 7 lunches. Families may either refrigerate or freeze any portion of the meal components in the boxes to provide flexibility for households. Fresh

produce will be packaged separately from the Market Boxes and milk will continue to be optional. More information, including pick up sites and times, available at [MMSD.org/food](https://mmsd.org/food).



Madison School & Community Recreation (MSCR) Events:

- ✓ **MSCR Pontoon Boat Rides: Weekdays and Sundays • various times**
Cost: \$5 per person suggested donation
Where: Olbrich Park, Tenney Park, Warner Park
What: Drop in pontoon boat rides. All drop-ins are subject to cancellation due to high water levels, or weather. Please call the MSCR weather line for the most current program information: 608-204-3044 (ext. 4). The 2021 schedule and additional information is [available here](#).
- ✓ **MSCR Outdoor Yoga + Art: Friday, July 16, 2021 • Noon**
Cost: \$25 resident, \$37.50 non-resident
Where: Hoyt Park
What: Stretch your imagination and explore your creative side! Start with a gentle and reflective yoga class. Then translate your meditations into a colorful mandala painting. Leave class with a refreshed mind and a 12x12" painting. All levels welcome, ages 14+. Materials provided. BYOM. [More information and registration](#).
- ✓ **Friends of MSCR Golf Outing: Thursday, July 20, 2021 • Check-in opens at 9:30 a.m.**
Cost: \$150 single golfer; \$600 four golfers
Where: Cherokee Country Club
What: Calling all golfers! Friends of MSCR is excited to announce the Fore Friends Golf Outing. You don't have to be a pro to enjoy this event. Proceeds benefit MSCR programs and services. [More information and registration](#).



Other Events:

- ✓ **Kids Fishing Adventure: Recurring Weekly on Fridays • 1 to 3 p.m.**
Cost: \$5 per person
Where: Jenni & Kyle Preserve
What: Is your child interested in learning how to fish? This is the program for them. Learn how to cast, bait, and catch fish along the shore or on one of our fishing piers. Staff will assist participants with removing fish and releasing them back into the water. Learn to identify common Wisconsin fish. Fishing equipment is provided. [More information here](#).
- ✓ **Friday Evening Classical Guitars: July 9 and recurring every other Friday • 5 to 7 p.m.**
Cost: FREE
Where: Lisa Link Peace Park, Downtown Madison
What: Madison's Central BID presents this "Summer in YOUR City" FREE outdoor concert series. Come join us at Lisa Link Peace Park for a concert every other Friday from 7-9 p.m. from June - August. [More information here](#).

- ✓ **Mad Lit Event Series: July 16 and recurring every other Friday • 8 to 11 p.m.**
Cost: FREE
Where: 100 block of State Street
What: Join us every other Friday, starting July 2 through October 8, on the 100 block of State Street for Mad Lit, a new free concert series featuring live music and highlighting local artists, and businesses of color. The series will run from 8 p.m. until 11 p.m., and will include pop-up shops, visual exhibits, and community-led workshops. [More information here.](#)

- ✓ **Watch Party for Live NASA Event Featuring Wisconsin Students: Tuesday, July 13 • 9:30 to 11 a.m.**
Cost: FREE
Where: Virtual and in-person at the Discovery Building in Madison
What: Join us for an out-of-this-world event! Hear directly from astronauts on the International Space Station through a live video downlink. The event includes an introduction from Lieutenant Governor Mandela Barnes and questions from Wisconsin youth on topics such as how the international crew communicates, the astronauts' inspirations, farming in space and more. [More information here.](#)

- ✓ **Dane County Fair: July 15-18**
Cost: Free for age 5 and under; daily rate of \$3 for children ages 6-11 and \$8 for 12 and over
Where: Alliant Energy Center of Dane County
What: Join us at the Alliant Energy Center, July 15-18, 2021, to see how "the future is BRIGHT" at the Dane County Fair. With many new attractions and features, along with classic favorites, the Dane County Fair will be the highlight of your summer. [More information here.](#)

OUR UPCOMING BOARD CALENDAR

- Wed., July 14, 5:30 p.m. City Education Committee
Virtual

- Week of July 19 Board Member Briefings
Virtual

- Mon., July 26, 9 a.m. Board Officers
Virtual

- Mon., July 26, 6 p.m. REGULAR Meeting
Virtual

ITEMS ATTACHED FOR INFORMATION

1. Summer Semester summary
2. Hard Copy Mail:
 - a. WASB flyer re: Civil Rights Training
 - b. WASB *Policy Perspectives*—July 2021
 - c. WASB *Policy Perspectives*—June 2021



Board of Education Update July 7, 2021

Summer semester began June 24. We are serving approximately 4,700 4K through 12th grade students across 21 school locations (and virtually!) for six weeks, which is about 18% of students.

During this past school year, we worked to ensure students could access extended academic opportunities along with continued social-emotional supports, while understanding some families would want these offered in a virtual environment. As such, robust summer semester programming is being offered in person for students in grades 4K-12, and virtually for students in grades 3-12.

Throughout their first week, students and staff worked to build relationships along with routines. Students in K-8th grade engaged in math and literacy curriculum, brain breaks and movement activities, along with community building. In-person students also worked on fine arts activities, and received free breakfast and lunch.

For in-person learners, after their morning instruction time and lunch, students return home, engage in MSCR programming, or attend other after-school activities outside of MMSD. MSCR hired 45 new staff members during training week and the first week of summer semester to serve 1,537 students in afternoon programming at all 16 summer semester sites!



In addition, MMSD also offers extended school year (ESY) services for students with an Individualized Education Program (IEP). This year, due to pandemic related learning gaps for students with an IEP, we were also required to set up Additional Services for some students.

Between ESY and Additional Services, MMSD is providing special education services to nearly 1,000 4K-12th grade students with an IEP (about 250 high school students; more than 350 middle school students; and approximately 400 students from preschool and elementary school). This is 25% of students with an IEP in the district. Services range from support in summer semester classes, to direct instruction in academic content areas and social and emotional skills, to related services such as speech and language, occupational and physical therapy. In addition, students preparing for transition services have summer support to continue at paid jobs and volunteer positions.

As can be common with the start of any new school year or program, transportation route delays occurred on the first day of summer semester. One reason for this is our staff works diligently to ensure students are on the correct bus home, which can cause buses to depart late from school. Other first day glitches were worked out with MSCR, summer school staff, and transportation staff.



Traditionally, the summer semester has been available only to students based on grades and assessments. This summer, extended instructional support was made available to K-8 students based on different criteria such as attendance rate, current Intervention, issues with accessing virtual learning, or school recommendation. For 4K students, programming was available for those who did not attend during the school year or received a recommendation from their MMSD teacher.



Finally, our Food Service team served more than 18,000 meals the week of June 21 alone! Staff served over 126% more meals compared to this time last year! This includes the students enrolled in summer semester, along with 20 community sites which are open to the public.

Summer semester locations:**East**

- Elvehjem
- Lowell
- Schenk
- Gompers
- Hawthorne
- Mendota
- Black Hawk
- Whitehorse
- Eastside In person (East High)
- Eastside Virtual
- Innovative Alternative/Metro

West

- Chavez
- Leopold
- Lincoln
- Olson
- Shorewood
- Orchard Ridge
- Toki
- Wright
- Westside In person (Jefferson MS)
- Westside Virtual
- Capital High (In person/virtual)

Number of staff:

- Certified Staff
 - Internal : 443
 - External: 17
- Principals: 1 per site
- PSTs (program support teachers): coordinating ESY and AS for students with an IEP at each site
- Classified Staff: 190





NEW! CIVIL RIGHTS TRAINING

**Online training for school district staff on
the civil rights of students and employees.**



Understand and implement the numerous state and federal laws and regulations that protect the civil rights of students and employees. Online training developed specifically for Wisconsin public school districts by the Wisconsin Association of School Boards and the law firm of Boardman & Clark.

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- ➔ Identifying Employees with Disabilities and Providing Accommodations
- ➔ Age-Based Discrimination
- ➔ Religious-Based Discrimination and Accommodation
- ➔ First Amendment Rights
- ➔ Sex, Sexual Orientation and Gender Identity Discrimination and Harassment
- ➔ Race-Based Employment Discrimination and Harassment
- ➔ National Origin and Ancestry Discrimination

Student-Focused Modules

- ➔ Special Education Overview
- ➔ Section 504 and ADA Overview
- ➔ Race-Based and National Origin Discrimination
- ➔ Religious Freedom
- ➔ Title IX Overview
(Note: Separate, in-depth Title IX training available)
- ➔ Free Speech Rights
- ➔ Rights of Homeless Students

Modules include on-demand webinars and presentation materials.

Training available as an annual district subscription:

- \$450 Package: Training for up to five employees
- \$550 Package: Training for up to 10 employees
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Visit WASB.org for more information and to subscribe.



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NEW! CIVIL RIGHTS TRAINING

Online training for Wisconsin school district staff
on the civil rights of students and employees.



POLICY PERSPECTIVES

Vol. 43, No. 11
June 2021

COMMUNITY EXPRESSIONS OF INTEREST IN THE CONTENT OF SCHOOL CURRICULUM CAN INTERSECT WITH MULTIPLE AREAS OF BOARD POLICY

In recent years, there have been periodic surges of interest among parents and other community members regarding the academic standards that underpin a district's curriculum development process and also in the details of the curriculum itself—including the specific instructional materials that are used by teachers and students. The concerns that stakeholders express might be focused on a school's overall instructional philosophy, on instructional methodologies used in particular areas of the curriculum, on questions of curricular rigor and adaptability, or on differing perceptions as to whether particular ideologies, belief systems, and cultural perspectives are or are not (or should or should not be) reflected in a district's or teacher's curricular choices. In some situations, parents express interest in the school curriculum not because they view the curriculum favorably or unfavorably, but simply to improve their own ability to support their child's learning and reinforce the instruction that occurs in the classroom.

Direct communication that occurs between teachers and parents is likely to resolve a substantial number of parent questions related to their own child's school curriculum. However, especially when a parent or other community member has a concern about the curriculum that spans across multiple subject areas or multiple grade levels, or a concern that challenges a district-level decision, members of the administrative team and even the school board may become involved. In such situations, school leaders should be aware that expressions of interest in a school district's curriculum can intersect with several different areas of local policy. School officials can often use those existing policies and

any related procedures to help provide a framework for responding to questions and concerns about a school's curriculum. And, at the very least, school officials do not want to overlook those policies and inadvertently respond to a parent or other community member in a manner that may be inconsistent with the local decisions or legal rights and obligations reflected in those policies. This issue of *Policy Perspectives* identifies several examples of those potentially-relevant policy topics.

• Providing Notice of Academic Standards

State law requires school boards to adopt academic standards in various curricular areas. Section 120.12(13) of the state statutes further requires school boards to annually "include as an item on the agenda of the first school board meeting of the school year" a notice that clearly identifies the pupil academic standards adopted by the school board in mathematics, science, reading and writing, geography, and history that will be in effect for the school year. In addition, prior to the beginning of the school term, boards are required to notify the parents and guardians of pupils enrolled in the school district of those academic standards. The annual notice can be provided via information/links posted on the school district website.

In adopting, annually confirming, and notifying parents of the district's current academic standards, districts that rely heavily on the state academic standards published by DPI may need to take care to specify the particular version of the state standards that the school district is currently implementing. For example, DPI very recently revised the state mathematics standards, and both the 2010 edition and the 2021 edition of those standards are now posted on the DPI website. Some districts may not have time to fully review and incorporate the 2021 edition of the standards into their curriculum for the 2021-22 school year.

- **Parent Rights to Review Instructional Materials under Federal Law**

School districts that receive federal funds for any program administered by the U.S. Department of Education are required by the Protection of Pupil Rights Amendment (PPRA) to adopt written policies addressing parent access to instructional materials and student privacy. Among other items, the policies must address the right of a student's parent, upon request, to inspect (but not necessarily receive copies of) any instructional material used as part of the educational curriculum for the student. Such policies must be supported by procedures for granting a parent's request for reasonable access to instructional material within a reasonable period of time after the request is received. For purposes of the PPRA, the term "instructional material" means instructional content that is provided to a student, regardless of format, including printed or representational materials, audio-visual materials and materials in electronic or digital formats (such as materials accessed through the Internet). In connection with certain experimental programs and research, it also includes any teachers' manuals and other supplementary materials. "Instructional materials" under the PPRA do not include academic tests or academic assessments. *(Note: Separate state and federal laws require school districts to provide parents with certain notices about federal, state, and local academic testing. In addition, a request for access to records related to academic assessments or other materials may need to be separately analyzed under the Wisconsin Public Records Law.)*

- **"Protected Information" Surveys under the PPRA**

Another aspect of the federal PPRA that has more of an indirect connection to the curriculum is that the PPRA requires school districts to follow certain procedures prior to the school-based administration of "protected information" surveys. The mandatory pre-survey procedures relate to (1) providing advance notice of surveys of students that address PPRA protected-information (see the list in the next paragraph), (2) providing parents with an opportunity to inspect the survey instrument upon request, and (3) either obtaining consent for participation or offering an opportunity to opt-out of

participation in the survey (depending on specific source/purpose of the survey).

More generally, the PPRA requires local school district policies to address the arrangements to protect student privacy that are provided by the school district in the event a school administers or distributes a survey to a student that would reveal information containing one or more of the following items: (1) political affiliations or beliefs of the student or the student's parent; (2) mental and psychological problems of the student or the student's family; (3) sex behavior or attitudes; (4) illegal, anti-social, self-incriminating or demeaning behavior; (5) critical appraisals of other individuals with whom students have close family relationships; (6) legally recognized privileged or analogous relationships such as those of lawyers, physicians and ministers; (7) religious practices, affiliations or beliefs of the student or student's parent; or (8) income, other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such a program.

- **Complaints Regarding Instructional Materials**

Nearly all school districts have adopted formal policies and procedures under which parents and/or other stakeholders can submit a complaint about specific instructional materials. For example, a parent might challenge certain materials used in the science curriculum or a specific book that is made available to students in the school library. In some situations, a parent may be requesting only an accommodation for their own child, while in other situations a person might be asking the district to reconsider *any* use of the material in one or more schools.

Depending on the exact nature of the challenge, schools may also need to harmonize procedures related to complaints about instructional materials with policies and procedures that address (1) requests for individualized "program and curriculum" modifications (under section 118.15(1)(d)), (2) requests for religious accommodations, (3) complaints alleging pupil discrimination based on legally-protected status, or (4) parent opt-out rights granted by law (e.g., in connection with a district's human growth and development curriculum) or under a local policy.

(Note: In connection with any instructional program in human growth and development, section 118.019 of the state statutes requires the district to annually provide parents and guardians with an outline of the human growth and development curriculum used in the student's grade level, information regarding how the parent or guardian may inspect the complete curriculum and instructional materials, and an explanation of the opt-out process.)

• **Public Records Requests**

School districts may receive questions about their curriculum that are framed or presented as public records requests, and all districts have policies and procedures that implement the district's obligations under the Wisconsin Public Records Law. Some examples of issues that can arise in connection with responding to a public records request related to the school curriculum include the following:

- Is the request a request for records or a request for the district to create new responses to a series of questions?
- Is the request reasonably specific?
- Would responding to the request cause the district to incur record location costs that are properly chargeable to the requestor?
- Are any of the materials that would be potentially responsive to the request excluded from the statutory definition of a "record" as found in section 19.32(2)? For example, a district may have to deny a request (or portion of a request) that asks the district to provide copies of "materials to which access is limited by copyright."

*[Subscribers to WASB's **Policy Resource Guide** can access samples and additional information related to these policy topics. For example:*

- *The PPRA: PRG topics 333 and 333.1*
- *Instructional materials selection and reconsideration: PRG topics 361.1 and 361.2*
- *Requests for program and curriculum modifications: PRG topic 342.6*
- *The public records law: PRG topic 823]*

REMINDER REGARDING ANNUAL NOTICES

As also noted in the May 2021 issue of **Policy Perspectives**, the WASB has updated our list of annual student and parent notices required under state or federal law. Districts can obtain a copy by visiting the applicable "Hot Policy Topics" page on the WASB website (<https://wasb.org/policy/hot-policy-topics/>), or by contacting WASB Policy Services Assistant Teresa Kimball (tkimball@wasb.org).

The document specifically highlights the substantive revisions and clarifications. School districts should give particular attention to the following items:

- The Title IX notice requirements, which first took effect in August of 2020.
- The notice that relates to "child find activities" in connection with special education.
- The notice related to military recruiters' requests for student contact information.
- Clarifying notes added to several notices (e.g., for student testing, district/school performance reports, etc.) for which DPI may need to provide additional guidance due to the pandemic.

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Sue Today, President John Ashley, Executive Director

WASB members are encouraged to contact the WASB's legal and policy services staff with any questions.

122 West Washington Avenue, Suite 400, Madison, WI 53703
Phone: 608.257.2622 or 877.705.4422 (toll free)

Teresa Kimball
Policy Services Assistant
tkimball@wasb.org

Dan Mallin
Legal and Policy Services Counsel
dmallin@wasb.org

Scott Mikes
Legal and Policy Services Counsel
smikes@wasb.org

Policy Perspectives is designed to provide general information as a service to all WASB members. It should not be relied upon as legal advice. If legal advice is required, the services of competent legal counsel should be obtained.



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In This Month's Issue of Policy Perspectives

- **COMMUNITY EXPRESSIONS OF INTEREST IN THE CONTENT OF SCHOOL CURRICULUM CAN INTERSECT WITH MULTIPLE AREAS OF BOARD POLICY**
- **REMINDER REGARDING ANNUAL NOTICES**



POLICY PERSPECTIVES

Vol. 44, No. 1
July 2021

U.S. SUPREME COURT DECISION REGARDING OFF-CAMPUS STUDENT SPEECH PROMPTS QUESTIONS ABOUT LOCAL POLICY IMPACTS

On June 23, 2021, the U.S. Supreme Court decided a significant First Amendment case involving off-campus, online speech by a high school student who was a cheerleader. The student had transmitted two brief social media messages and a related image using a personal account. The posts were critical of and expressed frustration related to school activities (e.g., the student had recently been informed that she was not selected for the varsity cheerleading team), and one of the posts contained vulgar language and gestures. The student transmitted the messages to her private circle of Snapchat friends, but another student caused the posts to come to the attention of the school. School officials responded to the posts by suspending the student from the junior varsity cheerleading squad for one year.

In an 8-1 ruling (*Mahanoy Area School District v. B.L.*), the Supreme Court concluded that (1) the student's statements were entitled to First Amendment protection; and (2) while a public school's special interests in regulating student speech remain significant in *some* off-campus circumstances, the special interests offered by the school *in this particular case* were not sufficient to overcome the student's interest in free expression. Accordingly, the school's disciplinary sanction violated the First Amendment.

Among the factors that the Court identified as relevant to its analysis were the following:

- The student's posts occurred outside of school hours and were sent from a non-school location.
- The student transmitted her speech through a personal cellphone to an audience consisting of designated Snapchat friends. Neither the risk of

retransmission of the messages to the school nor the actual retransmission made the messages equivalent to on-campus speech.

- The messages, despite being crude, were rooted in criticism of school decisions and rules. They were neither obscene nor threatening "fighting words."
- The student did not identify the school in her posts or directly target any member of the school community with vulgar or abusive language.

The Court assessed the asserted interests behind the school's disciplinary response as follows:

- Any "anti-vulgarity" interest that might apply on campus was weakened considerably by the fact that the expression occurred outside the school on the student's own time, when the school was not standing *in loco parentis* (i.e., in place of a parent). Further, the school presented no evidence of any general effort to prevent students from using vulgarity outside the classroom.
- The record undercut the school's assertion that it acted to prevent disruption. The facts in the case showed that the situation was briefly discussed in a class and that the messages "upset" some of the other cheerleaders. One of the coaches agreed that the primary "disruption" was simply that students were inclined to ask questions about the incident.
- The notion that the school had responded, at least in part, out of a generalized concern that team morale would be harmed by the negativity of the messages was also an insufficient interest to justify the suspension. The record did not include concrete evidence of a decline in team morale that could be characterized as substantially interfering with or disrupting the activity.

Under the decision, future cases will still need to be analyzed based on all of the relevant facts and circumstances. Further, prior precedent relating to on-campus expression is still potentially relevant to the analysis of speech that occurs off campus. For example, prior precedent stating that schools have an interest in regulating student speech that "materially

disrupts classwork or involves substantial disorder or invasion of the rights of others” is not rendered entirely moot in all off-campus or out-of-school settings. However, the Court did conclude that the special leeway the First Amendment grants to schools to regulate student expression is generally *diminished* (but does not disappear completely) in connection with off-campus speech. The Court identified three reasons for that conclusion:

- Schools and school officials rarely stand *in loco parentis* when a student speaks off campus.
- Courts must be more skeptical of a school’s interference in off-campus speech, as otherwise schools would be empowered to regulate student speech to the same degree on a 24-hour basis.
- Schools have an interest in *protecting* (rather than necessarily punishing) a student’s unpopular expression, especially when the expression takes place off campus.

The Court’s decision is likely to leave school officials with numerous questions about the precise scope of the ruling and its potential impact on school district athletic codes and the future regulation of students’ off-campus speech and conduct. Some of those initial questions are addressed below.

- **The Court’s decision states that a “school’s regulatory interests remain significant in some off-campus circumstances. What are those circumstances?** The Court expressly declined to speculate about future cases and did not attempt to state *exactly* whether or how ordinary First Amendment standards must give way in different off-campus scenarios. At this time, school officials are likely to continue to consider the possibility of imposing school sanctions to address school-connected instances of severe bullying or harassment, as well as threats aimed at other students, school employees, or the school itself—even though some or all of the relevant statements might have occurred “off campus” (e.g., via social media). Schools are also likely to continue to assert interests in regulating speech that occurs in connection with virtual instruction or through school-provided technology. Focusing on evidence of substantial disruption and/or the need to protect the rights of members of the school community will likely continue to be an important touchstone, as will evidence that shows (under state law standards for school suspension and expulsion) that “a pupil while not at school or while not under the supervision of a school authority engaged in conduct which endangered the property, health or safety of *others* at school or under the supervision of a school authority.”
- **Since the specific facts were so critical to the Court’s decision, what exactly did the student’s posts say?** The first image showed the student and a friend with their middle fingers raised; it bore the caption: “F*** school f*** softball f*** cheer f*** everything.” The other post stated, “Love how me and [another student] get told we need a year of jv before we make varsity but tha[t] doesn’t matter to anyone else?”
- **Does this case affect a school’s authority to impose consequences for other off-campus conduct, such as drinking alcohol, being present at parties where alcohol is present, or engaging in unlawful activity, under an extracurricular code of conduct to which the student consented?** No. This Supreme Court case involved off-campus expression that the Court concluded enjoys First Amendment protection. Not all conduct constitutes protected speech, and not all other conduct is similarly protected by other laws. As a somewhat related issue, prior court cases that have upheld some student drug testing programs in connection with extracurricular activities were decided under the Fourth Amendment (i.e., treating a drug test as a “search”). This new First Amendment case that does not directly affect such Fourth Amendment jurisprudence.
- **Would the outcome of the case have been different if the student and parent had agreed ahead of time to an extracurricular code of conduct that included a rule prohibiting the inappropriate use of social media, including “posts relating to school that include vulgar language, regardless of when**

they are sent”? Although that would be a distinguishing fact that was not present in the current case, there is not enough information in the decision to know whether, by itself, it would have changed the outcome. A court might still require a school applying such a rule to off-campus expression to show, for example, a substantial disruption. However, even assuming that change in the facts would be material, a school would need to carefully consider whether it really wished to attempt to enforce such a rule and whether it would be practical to do so.

- **Does this case potentially affect how a school might apply certain general rules within an extracurricular code of conduct—such as a rule prohibiting “conduct unbecoming an athlete”?**

Yes. Knowing the specific outcome of this case and the Court’s conclusion that a school’s interest in regulating off-campus expression is “diminished” relative to expression that occurs at school or as a direct part of a school activity, school officials must take care not to apply any such general or “catch all” conduct rules in an overbroad manner that interferes with a student’s protected expression. A district might even consider adding a further definition or additional standards to guide the application of such general rules.

- **Would the outcome have changed if the school had not fully suspended the student from the team, but instead the coach decided to give the student a diminished role in one or more events based on a conclusion that the posts detracted from the coach’s efforts to foster an atmosphere of positivity and mutual support among the team members?** Similar to the response to one of the earlier questions, there is not enough information in the Court’s decision to know whether that

hypothetical change in the facts, by itself, would have changed the outcome. (A concurring opinion by Justice Alito raised the scenario without attempting to resolve it.) Coaches do have some discretion to make “playing time” and similar decisions based on the coach’s judgment about how a student’s attitude and conduct either contribute to or detract from team goals and team cohesion and effectiveness. However, after this recent decision, it is also probably safe to say that such coaching decisions will often stand on comparatively stronger legal footing to the extent they relate to conduct that occurs within the direct context of the school activity versus expression that occurs away from school and on the student’s own time.

- **What about the idea that the opportunity to participate in optional extracurricular activities is different from the “right” to attend public school? Don’t schools have greater leeway establish and enforce rules and expectations for such optional activities?** That distinction is certainly relevant at times. For example, schools must provide much more extensive “due process” protections prior to expelling a student from school (and denying the right to an education) as compared to removing a student from an optional extracurricular activity. The distinction also explains, in part, why schools can consider a random student drug testing program in connection with extracurricular activities but not as a condition of simply enrolling in and attending school. However, the distinction can also be overemphasized. As this recent case shows, even in connection with optional activities, school officials and employees are still government actors who are subject to constitutional and other legal constraints.

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Sue Today, President John Ashley, Executive Director

WASB members are encouraged to contact the WASB’s legal and policy services staff with any questions.

122 West Washington Avenue, Suite 400, Madison, WI 53703

Phone: 608.257.2622 or 877.705.4422 (toll free)

Teresa Kimball
Policy Services Assistant
tkimball@wasb.org

Dan Mallin
Legal and Policy Services Counsel
dmallin@wasb.org

Scott Mikesch
Legal and Policy Services Counsel
smikesch@wasb.org

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