



# Ennis Roberts Fischer SCHOOL LAW REVIEW



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October 2014

## Cell Phone Search Unreasonable in Scope

A Virginia court refused to dismiss a Fourth Amendment claim against an administrator who searched a student's cell phone during a search for possession of drugs. In this case, two parents informed the administrators of a high school that a longhaired student was smoking marijuana on a school bus that morning. The administrators brought W.S.G., a high school student with "something approaching long hair," to the office. The administrators initiated a search of W.S.G.'s person and belongings, including his cell phone.

For a search of a student to be constitutional, it must be (1) justified at its inception (i.e., based on a reasonable suspicion) and (2) reasonable in scope (i.e., limited to that which the reasonable suspicion relates). Here, the Court found that the search was justified at its inception based on the parents' reports of a long-haired student smoking marijuana on the

bus that morning. Additionally, the search of W.S.G.'s pockets, shoes, backpack, Vaseline jar, and sandwich wrapper were reasonable in scope because each of these items could have contained marijuana or drug paraphernalia. On the other hand, the search of W.S.G.'s phone by one of the administrators was not reasonable in scope because the phone could not have possibly contained drugs. The Court acknowledged that there may be times when a search of a cell phone would be reasonable in scope, for example when the facts suggest there may be text messages or telephone calls related to a drug sale. Because such facts were not present, the search of the cell phone was not reasonable in scope.

Ultimately, the Court dismissed the Fourth Amendment claims against the administrators and school district due to the search of W.S.G.'s pockets, shoes, backpack, Vaseline jar, and

sandwich wrapper, but denied the district's motion to dismiss the Fourth Amendment claim against the administrator who searched W.S.G.'s cell phone.

### How this Affects your District:

This case is a reminder that a student search must not only be justified at its inception but also reasonable in scope. The Court in this case analyzed the administrator's actions to determine whether the search of each item was reasonable in scope. Since the search was intended to reveal whether the student possessed drugs, as opposed to whether the student was selling drugs, searching the student's cell phone was not reasonable in scope.

*Gallimore v. Henrico County School Bd.*, No. 3:14-cv-00009-JAG (Eastern Dist. Virginia Aug. 5, 2014).

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Ennis, Roberts & Fischer's School Law Review has been developed for use by clients of the firm. However, the review is not intended to represent legal advice or opinion. If you have questions about the application of an issue raised to your situation, please contact an attorney at Ennis, Roberts, & Fischer for consultation

## OHSAA Adopts Constitutional & Bylaw Revisions

In May 2014, the Ohio High School Athletic Association ("OHSAA") adopted 15 proposed Constitution and Bylaw revisions. The revisions went into effect August 1, unless otherwise noted.

The Competitive Balance Plan, which modifies how schools are placed in tourna-

ments for team sports, was the highlight of the plan. Various forms of this bylaw were rejected in 2011, 2012, and 2013. The current version of the bylaw was passed with 411 votes to 323 votes, and will go into effect beginning the 2016-2017 school year.

The Competitive Balance Plan addresses the inequity found in OHSAA competitions stemming from the relocation of students for athletic purposes. The new plan applies to the sports of football, soccer, volleyball, basketball,

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## OHSAA Adopts Constitutional & Bylaw Revisions

baseball, and softball and is designed to make OHSAA competitions more equitable for all participants by adjusting the school's initial enrollment count. The adjustment will be calculated based on factors applied to each individual student who appears on the various sports rosters. The factors vary for public and non-public schools. Two factors will be considered for a public school student: (1) whether the student's parents reside in the school district and (2) whether the student has been continuously enrolled in the district since seventh grade. The factors to consider for a non-public school student are whether a student attended a designated "feeder" school in seventh or eighth grade and whether the student has been continuously enrolled in the same system of education since seventh grade. Based on these factors,

each student will be assigned a level. Specifically, each student will be categorized by their responses and assigned a level between 0 and 2. The count of each student on the team's roster meeting the criteria for level 0 or level 1 will be multiplied by 0 or 1, respectively. The count of each student meeting the level 2 criteria will be multiplied by 2 for the sport of football, 5 for the sports of volleyball, basketball, baseball and softball and 6 for the sport of soccer. The counts generated for each roster, with multipliers, will be added together on a sport-by-sport basis to create the additional roster count. This new total will be added to the initial enrollment count to create the adjusted enrollment count for that sport and will be used to determine the school's tournament division. (See table below.)

The plan will boost the adjusted enrollment count for teams comprised of students having fewer connections to the school district, either through parents' residence or continuous enrollment in that school district. For example, consider two public school basketball teams with equal initial enrollment counts. School X attracts talented basketball players outside of the school district to play for their team. School Y does not attract outside talent and fields the team from students in their school district. The OHSAA has decided that equity favors placing School X in a more competitive tournament division than School Y. The underlying idea is that students relocate to a different school district to capitalize on a sports team's prowess, and these schools should not compete with schools of similar size that do not have as competitive a program.

Competitive Balance Plan- Factors for Determining a Student's Level					
	Level 0 Factor	Level 1 Factor		Level 2 Sport Specific Factor	
<u>Public School District</u>	parents of the student reside within that school's district (single high schools) or designated/assigned attendance zone (multiple high schools)	<b>Single High School:</b> student's parents reside outside the school district but the student has been continuously enrolled in the school district since 7th grade	<b>Multiple High Schools:</b> student's parents reside within the school district but do not reside within the school's designated/assigned attendance zone, <u>OR</u> the student's parents reside outside the school's designated/assigned attendance zone or the school district, but the student has been continuously enrolled in the school district since 7th grade	<b>Single High School:</b> student's parents reside outside the school district and the student has not been continuously enrolled in the school district since 7th grade	<b>Multiple High Schools:</b> student's parents reside outside of the school's designated/assigned attendance zone and the school district and the student has not been continuously enrolled in the school district since 7th grade
<u>Non-Public School District</u>	student attended a designated/assigned "feeder school" during 7th and 8th grade	student attended the same system of education continuously since 7th grade but did not attend its designated/assigned "feeder school" continuously since 7th grade		student did not attend the same system of education continuously since 7th grade	

**Other OHSAA Changes:**

- Creates an exception that would cover any subsequent changes to the Ohio Revised Code which might affect a student's ability to participate in interscholastic athletics when he/she is not enrolled in and attending a member school.
- Clarifies the procedures that the Commissioner's Office may utilize in considering whether a student

educated in another country may continue to participate in interscholastic athletics in Ohio and provides concrete examples of a student whose program in another country would not be sufficient for graduation from an Ohio high school.

- Adds the word "immediately" before "preceding grading period" to provide consistency to the scholarship bylaw, indicating that

grades from the grading period which precedes the participation are the ones which shall be considered.

- Indicates that summer school or other educational options cannot be used to restore eligibility for either high school or 7th-8th grade students who fail to meet the required standards.

## OHSAA Adopts Constitutional & Bylaw Revisions

- Clarifies that a student whose parents move outside of Ohio remains eligible for the remainder of the 11th grade year and the senior year provided continuous enrollment is maintained in that high school.
- Clarifies that a student must be enrolled in a parochial school of the same system by the beginning of grade four in order to have eligibility in Ohio in a high school in that parochial system.
- Clarifies that the penalty for transfer students who do not meet an exception shall be that the student is ineligible for all contests until after the first 50 percent of the maximum allowable regular season contests in those sports in which the student participated during the 12 months immediately preceding the transfer have been completed (including scrimmages, previews, jamborees and foundation games).
- Clarifies that a student who transfers during that sports season shall be ineligible for the remainder of that sports season, and the 50 percent penalty may carry over to the following season. (Example: A football player transfers after week six. The player will be ineligible for the remaining four games of that season and will not regain eligibility at that school until game two of the next football season to satisfy the 50 percent penalty.)
- Adds a provision that would permit the Commissioner's Office to extend conditional eligibility for up to 90 days when one parent cannot make a move and the former residence is more than 100 miles from the current residence in Ohio and clarifies that regardless of whether the move is from outside of Ohio into Ohio or between two districts in Ohio, the student's only choices are the public high school in the new district of residence or any non-public high school.
- Permits the Commissioner's Office to approve transfer eligibility after considering extenuating circumstances that may compel a student who is 18 and no longer eligible for a legal change of custody to transfer schools and move into a new residence with a parent.
- Adds language to clarify that once a student enrolls in another high school, the student's eligibility is the new high school of enrollment.
- Clarifies that an invitation to attend a high school contest or athletic related event is to watch the contest only. It shall not include running out onto the contest venue with the team, standing on the sidelines, or participating in locker room visits, pre-contest meals with the high school team or any other interaction with the team prior to or after the contest.
- Indicates that after a student completes the sixth grade and before the student enters the ninth grade, the student may be eligible for a period not to exceed four semesters taken in order of attendance, regardless of whether the student participates.

## House Bill 597: Common Core

House Bill 597, a bill which would repeal the common core, was introduced on July 28, 2014. This came shortly after there were amendments to current common core provisions passed through the Mid-Biennium budget bill. H.B. 597 remains pending in the Rules and Reference Committee of the House, but the Committee recently adopted a substitute version of H.B. 597.

### The original version of H.B. 597:

- Required the State Board of Education to adopt new academic content standards by June 30, 2016 for the 2017-2018 school year.
- Required the State Board to adopt interim academic standards for the 2015-2016 & 2016-2017 school year based on pre-2011 Massachusetts standards.
- Prohibited withholding state funds for failure to adopt or use the state's academic content standards or the state achievement assessments.
- Prohibits withholding state funds for failure to adopt or use the state's academic content standards (removing the provision prohibiting withholding of funds due to failure to use state assessments).
- Prohibits the State Board from adopting a model curriculum for interim or new academic content standards.

### **How this Affects your District:**

In its short life, H.B. 597 has already prompted several committee hearings. Due to the controversial nature of this bill, additional changes will likely occur. Once the bill is referred out of committee, it must pass both the House and Senate and be signed by the Governor before becoming law. ERF will continue to monitor the progress of this bill and provide information regarding changes in the bill's status.

## House Bill 494 Amends Workers' Compensation Laws

Along with other education related bills that passed into law this summer, HB 493 was signed into law and became effective on September 17, 2014. HB 493 focuses solely on the workers' compensation system and impacts all employers, including school districts. HB 493 provided mostly fiscal changes. Some of the highlights are as follows:

- Requires, rather than permits as under former law, the Administrator of Workers' Compensation (the "Administrator") to calculate workers' compensation premiums for most employers on a prospective, rather than retrospective, basis beginning policy year 2015. Public employers, other than state agencies, will transition to prospective payment of premiums by the policy year commencing on January 1, 2017.
- Allows the Administrator to adopt rules to permit periodic premium payments and to set an administrative fee for these periodic payments.
- Revises the requirements for qualified public sector payroll reports. For each policy year commencing on or after January 1, 2016, the Bureau of Worker's Compensation (the "BWC") must furnish to the fiscal officer of each taxing district public employer (which includes school districts), by November 1, forms showing the estimated premium due from the public employer for the forthcoming policy year. On or before February 15 immediately following the conclusion of a policy year, the fiscal officer must report the amount of money expended by the public employer during the policy year for the services of employees covered by Ohio's Workers' Compensation Law. BWC must then reconcile the report with the premiums and assessments charged to the public employer to account for the difference between estimated gross payroll and the actual gross payroll. The public employer must immediately pay any balance due to BWC, and any balance found due to the public employer must be credited to the public employer's account.
- Increases, beginning in policy year 2015, the additional amount of premium or assessment due from an employer who fails to timely submit a payroll report from 1% of the amount due to 10% of the amount due and eliminates the cap for the penalty amount.
- Requires, beginning in policy year 2015, the Administrator to adopt a rule to allow the Administrator to assess a penalty on an employer who fails to pay a premium or assessment when due at the interest rate established by the State Tax Commissioner for most delinquent taxes and eliminates the existing tiered penalty system.
- Eliminates the requirement to obtain Ohio coverage for an out-of-state employee who temporarily works in Ohio if the employee's home state law lacks a provision similar to the Ohio law that exempts out-of-state employees temporarily working in Ohio from the duty to obtain Ohio coverage.
- Allows the Administrator to pay for the first fill of prescriptions occurring during an earlier timeframe than under continuing law (normally after either the Staff Hearing Officers determination of the issue or the final judicial determination, if applicable). The Bill also allows for the first fill of prescriptions to be charged to the Surplus Fund Account if the claim is ultimately denied and the employer is a state fund employer who pays assessments into that account.
- Eliminates the requirement that most self-insuring public employers annually obtain an actuarial report certifying the sufficiency of reserved funds to cover the costs that the employer may potentially incur under Ohio's Workers' Compensation Law and the reliability of computations and statements made with regard to those funds.
- Permits a state fund, taxing district employer (i.e., a school district) to participate in the "One Claim Program." Under that Program, the employer may mitigate the impact of a significant claim that comes into the employer's experience for the first time and that is a contributing factor in the employer being excluded from a group-rated plan under the BWC's group rating program. Under former law, only private sector state fund employers could participate in the One Claim Program.

For any questions regarding these workers' compensation changes, please contact an ERF attorney.



## Upcoming Deadlines

As your school district prepares for the next couple of months, please keep in mind the following upcoming deadlines. For questions about these requirements, please contact an ERF attorney.

- Oct. 1 — Provide emergency medical authorization forms to parents of students (RC 3313.712)
- Oct. 1 — Board adoption of annual appropriation measures (RC 5705.38)
- Oct. 6 — Certification of licensed employees to State Board of Education (RC 3317.061)
- Oct. 15 — Provide summary of immunization records of students to Director of Health (RC 3313.67)
- Oct. 27 — Submission of February income tax levy certification to Ohio Dept. of Taxation (RC 5748.02)(100 days before election)
- Oct. 31 — Submission of February emergency or current operating expense levy to County Auditor (RC 5705.194) (95 days before election)
- Nov. 1—Deadline for teacher to complete online classroom lessons (blizzard bags) for make up hours due to school closures (RC 3313.482)
- Nov. 1—Deadline to screen first time kindergarteners, or first graders, for hearing, vision, speech and communications, and health or medical problems and for any developmental disorders (RC 3313.673)
- Nov. 4—General Election Day (RC 3501.01)
- Nov. 5—Filing resolution of necessity, resolution to proceed, and auditor’s certification for February bond levy with board of elections (RC 133.18)
- Nov. 5—Submission of February continuing replacement, permanent improvement, or operating levy to board of elections (RC 5705.192, 5705.21)
- Nov. 5—Certification of resolution for February income tax levy to board of elections (RC 5748.02)
- Nov. 5—Submission of February emergency levy to board of elections (RC 5705.195)
- Nov. 5—Submission of February phased-in levy or current operating expenses levy to board of elections (RC 5705.251) (90 days prior to election)

## Education Law Speeches/Seminars

### **SAVE THE DATE! 2014-2015 Administrator's Academy Seminar Series**

*Seminars will take place at the Great Oaks Instructional Resource Center or via live webinar from 9:00 a.m. to 11:30 a.m. unless otherwise noted. Additional registration information will be provided in the near future!*

January 22 – Managing Workplace Injuries and Leaves of Absence  
 April 23 – Special Education Legal Update  
 July 16 – 2014-2015 School Law Year in Review

#### Other Upcoming Presentations:

Oct. 3 – Ashland University ATLAS Program, School Finance Law  
 Presented by: William Deters & Bronston McCord

Oct. 6—OASPA Administrative Assistants  
 Presented by: William Deters & Erin Wessendorf-Wortman

Oct. 17 – Levy Lessons Learned, OSBA/OASBO School Law for Treasurer's Workshop  
 Presented by: Gary Stedronsky

Nov. 10—Six keys to a better night's sleep, OSBA Capital Conference  
 Presented by: Gary Stedronsky

Nov. 11—OTES & OPES: Implementation Issues Arise, OSBA School Law Workshop/Capital Conference  
 Presented by: William Deters

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## Webinar Archives

Did you miss a past webinar or would you like to view a webinar again? If so, we are happy to provide that resource to you. To obtain a link to an archived presentation, send your request to Pam Leist at [pleist@erflegal.com](mailto:pleist@erflegal.com) or 513-421-2540. Archived topics include:

- Education Law Legal Update - Including SB 316
- Effective IEP Teams
- Cyberlaw
- FMLA, ADA and Other Types of Leave
- Tax Incentives
- Prior Written Notice
- Advanced Topics in School Finance
- Student Residency, Custody and Homeless Students
- Ohio Budget Bill/House Bill 153
- Student Discipline
- Media and Public Relations
- Gearing Up for Negotiations

## Need to Reach Us?

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## ERF Practice Teams

### Construction/Real Estate

*Construction Contracts, Easements, Land Purchases  
and Sales, Liens, Mediations, and Litigation*

**Team Members:**  
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 Ryan LaFlamme  
 Gary Stedronsky

### Workers' Compensation

*Administrative Hearings, Court Appeals, Collaboration  
with TPA's, General Advice*

**Team Members:**  
 Ryan LaFlamme  
 Pam Leist  
 Erin Wessendorf-Wortman

### Special Education

*Due Process Claims, IEP's, Change of Placement,  
FAPE, IDEA, Section 504, and any other topic related  
to Special Education*

**Team Members:**  
 Bill Deters  
 Pam Leist  
 Jeremy Neff  
 Erin Wessendorf-Wortman  
 Michael Fischer

### School Finance

*Taxes, School Levies, Bonds, Board of Revision*

**Team Members:**  
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 Gary Stedronsky  
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