



# Ennis Roberts Fischer SCHOOL LAW REVIEW



1714 West Galbraith Rd.  
Cincinnati, Ohio  
45239

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## Back to School Reminder: Student Residency Requirements

**PHONE**  
(513) 421-2540  
(888) 295-8409

**FAX**  
(513) 562-4986

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As students pack their book-bags and return to school, it's important to keep in mind the law governing their entrance through your doors. In order to accommodate the registration process, schools much comply with the legal requirements of Ohio Revised Code 3313.64.

Ohio law requires that districts allow school age children to attend their district of residence free of charge. In general, residence for school purposes is determined using the residence of the child's parent. Parent can mean either natural or adoptive parents, unless the parents are separated, divorced, or their marriage has been dissolved or annulled. Due to the complex nature of the family structure, there are several general guidelines to use when determining whether a child's parent resides in the district.

### Determining residency when parents are separated and living in different school districts:

- When parents are divorced, the term parent means either the parent who is the res-

idential parent or the parent awarded custody in the action for divorce.

- In the case of shared parenting, unless a court specifically orders otherwise, both parents are considered parents for residential purposes; therefore, the child can attend either school district tuition free.

- If a child's parents were never married, there is conflicting law, but it is generally best to consider the natural mother the parent for residency purposes.

### Determining residency when a child lives with persons other than the child's parents:

- Under the Grandparent Caretaker law, grandparents may also acquire the legal status of parent for residency purposes when the child's parents cannot be located or have lost parental rights and the grandparent provides a power of attorney signed by a parent, or a caretaker authorization affidavit (in such cases where

parents cannot be located).

- When a child is in the legal custody of a governmental agency, the term parent means the parent who has residual parental rights or who has been divested of residual parental rights.

### Determining residency with property issues:

- If a child resides on property that straddles two school districts along a boundary line, residency is determined based on the location of the house and the family's primary living activities.

- The Superintendent of Public Instruction serves as the decision maker in any case of dispute regarding residency and is given the task of analyzing the following: (1) where the parent sleeps the majority of the time, (2) where mail is received, (3) where meals are eaten, (4) the address of voter registration, (5) the address for bills or credit card statements, (6) the ad-

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## Back to School Reminder: Student Residency Requirements, Cont.

dress of lease agreements, and (7) information in affidavits from the landlord, neighbors, or parent.

### **Mandatory exceptions to residency requirements, which allows a student to attend school in a district other than where the student's parent resides:**

- Student is between age 18-22, lives in the district apart from his parents, supports himself by his own labor, and has not successfully completed high school or the IEP developed for him.
- Student is under 18, married, and resides in the district.
- Student has been placed with a resident of the district for adoption and his parents reside outside Ohio.
- Student has a medical condition which may require emergency medical treatment and one of his parents is employed at a location within the school district.
- Student is residing in the district with a person other than his parent while his parent is serving in the armed forces outside of Ohio (limited to a 12-month period) or is child of parent on active duty who is living with a resident of the district who is the child's
- Student's parent is having a "new" house built in the district (limited to 90 days).
- Student's parent is purchasing a house in the district (limited to 90 days).
- Student is living in the district with a parent and is under the care of a shelter for victims of domestic violence.
- A power of attorney has been properly executed by a parent, guardian or other legal custodian under the provisions of the Grandparent Caretaker Law, the child resides within the district, and hardship is established (discussed above).
- Child's parent is a member of National Guard or reserve unit of armed forces and has been called to active duty or the child's parent is a member of the armed forces and has been ordered to a temporary duty assignment outside the district.
- Resident of the district provides a sworn statement that legal proceedings have been initiated to obtain custody of the child (limited to 60 days).
- The district has adopted an inter-district open enrollment policy.

caretaker under military power of attorney.

### **How this affects your district:**

Residency decisions can be difficult because every situation is slightly different. To help resolve ambiguity, the law requires any parent awarded custody in an action for divorce, annulment, or dissolution to notify the child's school of the custody arrangements by providing the school with a certified copy of the custody order at the time of enrollment or upon issuance of an order after enrollment.

When concerns about residency occur, a school district can use an SRO (or any other employee) to investigate residency or confirm residence. When completing an investigation into residency, school districts should be able to show that they have conducted a reasonable investigation to justify their decision. However, be careful with how this interacts with homelessness rules — you don't want to appear to be intimidating the homeless from exercising their rights.

In addition to the mandatory exceptions to residency requirements listed above, the law permits certain optional exceptions to residency requirements. For more information about a specific residency requirement or exception, please contact an ERF attorney.

## Deadline for Teachers to Terminate Employment Contracts Passed on July 10th

School districts across Ohio have officially kicked off a new school year. Yet, just when you think you have put the chaos of staffing buildings and assigning students behind you, inevitably a teacher who would be very hard to replace at this juncture approaches the district and pro-

vides notice that he or she plans to resign. The question becomes whether the district must release the teacher from his or her contract. Before you agree to such a proposal, keep the following in mind.

Ohio law places strict limits on

when a teacher may terminate a contract of employment absent consent from the board of education. Under ORC §3319.15, a teacher must provide a district with written notice that he or she wishes to terminate an employment contract each summer

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## Deadline for Teachers to Terminate Employment Contracts Passed on July 10th, Cont.

by July 10th. The law prohibits teachers from terminating a contract beyond that date, or at any point during the school year. The law also states a teacher must provide at least five days' notice to the board before voluntarily terminating any agreement.

Interestingly enough, a board of education cannot seek an injunction in court to force a teacher to return to work if he or she attempts to resign beyond the narrow statutory window, or

simply refuses to show up for work after the July 10th deadline. Such an injunction would violate the state and federal Constitutions' prohibitions against involuntary servitude (U.S. Constitution, Amendment XIII, and Ohio Const. Art. I).

### How this affects your district:

Despite these limitations, a school district is not without some form of recourse. A school district can challenge violations of ORC §3319.15 through the Department of Education. The

State Board of Education adopted the Licensure Code of Professional Conduct for Ohio Educators in 2008. Under the Code of Conduct, the State Board of Education may terminate or suspend a teacher's license for abandonment of a contractual agreement without consent from the employing Board of Education. A teacher's failure to comply with the law could thereafter have a significant impact on the individual's future teaching career.

## Reminders for Levy Campaign Activities

When preparing for upcoming levies, it is important to keep in mind which campaign activities are permissible and impermissible for Boards of Education.

The following activities are **not** permissible:

- Boards may not use public funds to support or oppose the passage of any school levy or bond issue.
- Boards may not compensate any school district employee for any activities intended to influence the outcome of an election for a school levy or a bond matter.

The following activities **are** permissible:

- Boards may prepare and distribute materials that further public awareness of the district's educational programs and operations, and costs associated with such materials may be paid from school district funds.
- Distributed materials can contain information related to the school district's financial picture, revenues, and ex-

penditures.

- Boards may assign one or more employees the duty of preparing school publications as part or all of the employee's job responsibilities.
- Boards can also permit employees to attend public meetings during the employees' regular working hours for the purpose of presenting information about school finances and activities and board operations.

Although a Board cannot expend public funds or use public employees to support or oppose the passage of a school levy or bond issue, the law allows public employees to expend public funds, time, and resources for presenting information about school finances and other board actions, even if the purpose is to discuss or such information in connection with a school levy or bond issue. Additionally, school employees working on their own time, and without financial support of the board, may take part in pro levy campaigns.

Essentially any board policy or practice permitting or prohibiting the use of facilities and resources for political purposes must be content neutral. Therefore, the Board cannot regulate or prohibit the message provided by these political activities. When examining the nature and message of the information to be distributed, ensure that a reasonable and rational person would not perceive the material or information as patently advocating a position for or against the levy issue.

### Frequently Asked Questions (FAQs):

- Q. "Can we use a phone system to remind people the weekend before elections to go out and vote?"
- A. Yes, as long as the intent and purpose is to remind people to vote in the upcoming election. However, it would **not** be permissible to remind them to vote specifically for the levy, against the levy, or even to address the levy in the message.

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## Reminder for Levy Campaign Activities, Cont.

- Q. “Can we put an informational piece about the levy in all children’s backpacks the week before the levy?”
- A. Yes, it is permissible to include information of a generic nature which clearly spells out the financial situation of the District and provides informational material to parents of students related to the levy, but information cannot support and/or oppose the levy if paid for by District funds. Districts should use extreme caution using this strategy because in the event the information would advocate for passage of the levy, then the Board would be required to permit opposition groups the same level of access to students’ backpacks.
- Q. “Can we use the Open Records Act to provide the email addresses of staff and parents to levy committees?”
- A. Maybe. Staff emails are normally considered public records, but parent emails are only allowable if the district designates the emails of parents as “directory information,” thereby allowing disclosure to the public. This release should be handled as any other public record release would be handled—based on a written request under the Public Records Act.
- Q. “Can we have a place in each building where people can put donations for the levy campaign?”
- A. Probably, but this is not recommended because anti-levy groups could also ask for campaign contributions. This also opens the district up to an allegation that this was administered using district funds.
- Q. “Can we use students either before or after school to work polls as long as it is totally voluntary?”
- A. This is permissible, but recruitment of these students cannot take place during school in any way. The solicitation and/or recruitment of these students must take place wholly apart from school by the levy campaign committee.
- Q. “Can we have voter registration tables at school functions - - but not say anything about the levy?”
- A. This is permissible, but districts should use caution. There should not be any information about the levy near the tables. The organizers and persons working the tables should not have buttons indicating passage of the levy. The workers of the tables must be instructed not to discuss and/or mention the levy in any manner with persons registering to vote.
- Q. “Can we have school signs urging people to vote on election day - - but not say vote for the levy?”
- A. It is permissible for the District to utilize the marquees in front of each school building in order to remind people to vote at the election. However, additional signs anywhere on school property is not recommended.

## Use Caution in Allowing Parent to Provide Support Services at School

When a district and parent disagree about whether a service is needed to ensure a student with a disability receives a Free Appropriate Public Education (FAPE), the district should use caution in allowing the parent to provide the service at school.

In a case before an impartial hearing officer (IHO), a parent prevailed in a dispute over whether a student needed a one-on-one aid to receive FAPE. In that case, a student with signifi-

cant medical, academic, and functional needs failed to make adequate progress during her kindergarten and 1<sup>st</sup> grade school years. This followed a history of difficulties during early childhood despite numerous supports and services. Documentation showed that the student’s behavioral needs impacted her ability to gain academic skills. Moreover, the student had significant absences, many of which were due to her medical needs.

Notwithstanding these continued difficulties, the IEP team removed the provision of a dedicated aide when developing the student’s kindergarten IEP and then continued virtually the same IEP services in 1<sup>st</sup> grade. The district also failed to provide any documentation for why the aide was no longer needed. Although the district’s individualized education plan (IEP) indicated that the student needed one-on-one or small group instruction, the IEP failed to list



## Use Caution in Allowing Parent to Provide Support Services at School

these services. Additionally, the district did not provide a functional behavior assessment (FBA) or behavior intervention plan (BIP) to address the student's increasing behavioral needs. Instead, the district argued that the student's absences were the cause of the lack of progress.

When the district allowed the parent to provide an aide for the student at school, the IHO interpreted this as the school's acceptance that the student did in fact need an aide. Additionally, the IHO concluded that even if the student's absences contributed to the student's lack of progress, the IEP also showed that the student's behavioral needs impacted the student's ability to gain academic skills. Because the district's IEP did not adequately address the student's

needs and failed to provide documentation to support its educational decisions, the parent prevailed in the due process hearing. The IHO ordered the district to provide a one-on-one aide for the student for the remainder of the 2013-2014 school year.

*District of Columbia Public Schools*, 11 ECLPR 70 (2013).

### How this affects your district:

This case can provide important lessons for IEP teams. If a district does not believe that a student needs a full-time one-on-one aide, it is important for the district to document how the IEP is meeting the student's needs. If the student does not make educational progress, the district should adjust the IEP to reflect the needs of the student, including, if necessary, conducting an

FBA and implementing a BIP to address behavioral needs. Even if a student's absences are impacting the student's ability to gain skills, a district can't ignore how the student's disability contributes to the student's lack of progress.

If a district chooses to allow a parent to provide a service to the student at school, the district should carefully document why the district does not believe that the service is needed for the student to receive FAPE. Even then, if the student makes progress during the time the additional service is provided, there is the risk that the additional service will be attributed as the source of the gain. Because there are numerous factors contributing to a student's progress or lack thereof, documentation is key.

## Reminder on Providing Accommodations for Pregnancy-Related Conditions

On July 14, 2014, the Equal Employment Opportunity Commission released updated guidance regarding pregnant employees. The guidance serves as a reminder that pregnancy conditions may be protected under the Pregnancy Discrimination Act (PDA) and the Americans with Disabilities Act (ADA). Therefore, employers may be required to provide reasonable accommodations for pregnancy-related conditions.

Pregnancy-related conditions include current, past, and potential pregnancy conditions. Under the PDA, "Women affected by pregnancy, childbirth, or related medical conditions" must be treated "in the same manner as other applicants or employees who are similar in their ability or inability to work." This includes

light duty and leave policies. The EEOC specifically states that an employer who provides light duty positions to employees injured on the job cannot deny a light duty position to a pregnant woman of similar ability or inability to work.

In addition, employers cannot remove job responsibilities from a woman solely because she is pregnant or likely to become pregnant if the employee is able to perform the job task. Therefore, even if an employer has concerns about a pregnant woman's health or safety, the employer can be still liable in a discrimination claim if the employer removes job responsibilities solely because of the employer's fear of her health or safety where the employee is otherwise capable of

performing the duty.

Temporary impairments due to pregnancy may also qualify as a disability under ADA. Temporary impairments that meet the requirements of a disability under ADA require the employer to provide reasonable accommodations. Some examples of possible reasonable accommodations include the following:

- Modifying or eliminating the requirement to occasionally lift heavy items
- Allowing frequent restroom breaks
- Modifying a work schedule for severe morning sickness
- Providing a stool as an accommodation for an employee unable to stand

## Reminder on Providing Accommodations for Pregnancy-Related Conditions, Cont.

**How this affects your district:** Supreme Court agreed to hear a pending, Senate Bill 942, the Pregnant Workers Fairness Act, which addresses this issue. For additional questions regarding accommodations for pregnancy-related conditions, please contact an ERF attorney.

This is a reminder that a school district may be obligated to provide accommodations to employees due to pregnancy-related conditions when the employee requests such accommodations.

case, *Young v. United Parcel Service*, regarding an employer's obligation to treat pregnant women the same as others "similar in their ability or inability to work." The Supreme Court decision will trump any contradictory guidance from the EEOC, so this decision will be important to follow. Additionally, the U.S. Congress has a bill

Despite the EEOC's guidance, this remains a controversial issue. On July 1, 2014, the U.S.

Additional guidance is available at [http://www.eeoc.gov/laws/guidance/pregnancy\\_guidance.cfm](http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm).

## Upcoming Deadlines

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

- Sept. 15—Deadline for teachers to submit documentation of training for higher salary bracket (RC 3317.14)
- Sept. 30 — Complete K-3rd grade reading assessments to determine students below grade level (RC 3313.608)
- 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. 15 — Provide summary of immunization records of students to Director of Health (RC 3313.67)
- Oct. 15—Certification of each licensed employee on annual salary to State Board of Education (RC 3317.061)
- Oct. 15—File salary schedule and job classifications and salaries to Superintendent of Public Instruction (RC 3317.12)
- Oct. 15—Submit qualifying ridership (student transportation) data to ODE (RC 3317.0212)
- Oct. 27 — Submit February income tax levy certification to Ohio Dept. of Taxation (RC 5748.02)(100 days before election)
- Oct. 31—Report student attendance data to State Board of Education to calculate ADM (RC 3317.03)
- Oct. 31 — Submit February emergency or current operating expense levy to County Auditor (RC 5705.194) (95 days before election)
- Nov. 1—Complete kindergarten diagnostic assessments (other than reading guarantee assessments) (RC 3301.0715)

## **Education Law Speeches/Seminars**

**September 18 – Playing Nicely with Boosters and Community Groups**  
**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:**

**Sept. 4 – Legal Updates, NWOESC**  
**Presented by: Jeremy Neff & Ryan LaFlamme**

**Sept. 11 – Disabilities & Leave and Legal Updates, OASPA Fall Conference**  
**Presented by: C. Bronston McCord III**

**Sept. 16 – Legal Updates, SOESC**  
**Presented by: Pamela Leist**

**Oct. 3 – Ashland University ATLAS Program, School Finance Law**  
**Presented by: William Deters II**

**Oct. 6—OASPA Administrative Assistants**  
**Presented by: William Deters II & 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 II**

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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?**

**William M. Deters II**  
wmdeters@erflegal.com  
Cell: 513.200.1176

**C. Bronston McCord III**  
cbmccord@erflegal.com  
Cell: 513.235.4453

**J. Michael Fischer**  
jmfischer@erflegal.com  
Cell: 513.910.6845

**Gary T. Stedronsky**  
gstedronsky@erflegal.com  
Cell: 513.866.1542

**Jeremy J. Neff**  
jneff@erflegal.com  
Cell: 513.460.7579

**Ryan M. LaFlamme**  
rlaflamme@erflegal.com  
Cell: 513.310.5766

**Pamela A. Leist**  
pleist@erflegal.com  
Cell: 513.226.0566

**Erin Wessendorf-Wortman**  
ewwortman@erflegal.com  
Cell: 513.375.4795

**ERF Practice Teams**

**Construction/Real Estate**

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

**Team Members:**  
Bronston McCord  
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:**  
Bill Deters  
Bronston McCord  
Gary Stedronsky  
Jeremy Neff