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School Law Review



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Ohio Supreme Court to Decide Whether Board Member Emails Constitute a “Virtual Meeting” under Ohio Law

In April, 2013 a school board member filed a lawsuit against his fellow board members alleging violations of Ohio’s Open Meetings Act. On November 17, 2015, the Ohio Supreme Court heard the case, and a decision is expected sometime in 2016.

The case involved the actions of four board members, who emailed one another about sending a letter to a newspaper editor in response to an editorial that criticized board policy. The policy required board members to communicate with school employees via the superintendent or school treasurer rather than directly. The fifth board member, who filed the suit, alleged that the criticized policy was created in response to an investigation he conducted.

The lawsuit further alleged that the board member emails collectively constituted a board meeting, which under Ohio law must be conducted in public. Ohio Open Meetings Act is designed to protect the public from board of education meetings held secretly, as well as inform the public of board discussions. Several organizations have argued in support of this lawsuit indicating that if the emails are permitted to stand it would set “a dangerous precedent which allows all public agencies in the state to avoid the Sunshine Law simply by deliberating electronically rather than in person.”

The attorney representing the four other board members maintains that these emails were merely an exchange of opinion similar to what politicians do in letters to the editor.

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Further, the attorney states this practice of public officials discussing matters in private is permissible as long as there is no deliberation or decision-making concerning public business. The attorney argues that while they did exchange email messages, they were not all at the same time and no official board policy was advanced.

Given the practical use of email, this case will be important to watch for all political subdivisions. The Ennis Britton attorneys will keep apprised of this case, and inform you of the Supreme Court's decision and resulting impacts of the same.

Ohio Board of Building Standards Must Adopt Rules Regarding use of Barricade Devices in Schools

With the passing of House Bill 64, the Ohio legislature directed the Ohio Board of Building Standards to adopt rules that permit private and public schools to use devices "that prevent[s] both ingress and egress through a door in a school building . . ." Under the new legislation, the Ohio Board of Building Standards must draft rules to ensure safe and proper utilization of barricade devices. The Board has until April of 2016 to revise the current rules governing the use of barricade devices to include use of the devices in emergency situations and is prohibited from banning use of such devices.

The new requirements are codified under Ohio Revised Code § 3781.106. The law specifically states that devices must be temporary and used only in the event of an emergency situation or during active shooter drills. Barricade devices may only be permissible if the device requires minimal steps to be removed once they have been deployed. The devices cannot be permanently mounted to a door. However, there are no explicit requirements governing whether the devices must be visible from the exterior of the door.

Boards of education must notify local law enforcement agencies and fire departments in the area before the devices can be used in school buildings. School staff members must receive in-service training on the use of the barricade device; and training records must be maintained by the board of education.

Although the Ohio Board of Building Standards is required by law to adopt these rules, the Board has indicated its opposition to the implementation of the devices. The Board has stated that the current rules are poor, the devices may be too complicated to install under stressful situations, and the devices may potentially lead to unintended consequences such as blocking authorities from an attack inside a classroom. There has also been a lack of testing conducted on the devices with the Board calling them "unlisted, unlabeled and untested."

We will keep you posted on the status of the new rules. In the meantime, we suggest that you contact legal counsel if you intend to install barricade devices in any of your buildings.

O.R.C. § 3737.84, 3781.106.

State Board Adopts Guidance Counselor Standards

House Bill 64 directed the State Board of Education to develop standards for the evaluation of school guidance counselors. In November, the Ohio Standards for School Counselors were approved by the State Board. The standards-based framework for counselor evaluations must still be developed by the State Board of Education by May 31, 2016. By September 30, 2016, each school district board of education must adopt a school counselor evaluation policy in accordance with the framework and state law. The policy must reflect the implementation of the framework beginning with the 2016-2017 school year, and procedures for using the evaluation results beginning with the 2017-2018 school year. This will be an important subject for collective bargaining with teacher unions for the ensuing contract year.

Section 3319.61 of the Ohio Revised Code sets forth the requirements for the standards. The standards as approved by the State Board of Education outline the roles and responsibilities of school counselors. There are a total of six (6) standards upon which guidance counselors are to be evaluated. Those standards are: comprehensive school counseling program plan; direct services for academic, career and social/emotional development; indirect services including partnerships and referrals; evaluation and data; leadership and advocacy; and professional responsibility, knowledge and growth.

Each standard as adopted contains the overarching goal and theme that provides a framework for effective practices, a narrative summary, and elements that define the various skills and characteristics that demonstrate effectiveness within the standard. Each element has an indicator which is an observable or measurable statement that provides evidence of the standard and the elements in action.

For more information on guidance counselor standards, visit:

<http://education.ohio.gov/getattachment/Topics/Career-Tech/Career-Connections/School-Counselors/School-Counselor-Standards-and-Evaluation/SchoolCounselorStandards.pdf.aspx>

Illinois School District Must Comply with OCR Order to Offer Transgender Student Equal Access to Girls' Facilities

The U.S. Department of Education Office of Civil Rights found that an Illinois school district discriminated against a transgender student by failing to offer her the same facility access as other female students.

Each of the district's five high schools have policies in place allowing transgender students to both use the restroom of their identified gender, and to play on a sports team of their identified gender. However, an issue arose with regard to a transgender student's use of the locker rooms. Citing privacy, the district restricted the students' use of the locker room of her gender identity.

The case began when the ACLU filed a complaint on the transgender student's behalf in 2013. The student is a transgender female student who participates on a girls' sports team, is referred to as "she" by school staff, is referred to by a female name, and is currently undergoing hormone therapy. She was denied unrestricted access to the girls' locker room because of her transgender status.

The U.S. Department of Education Office for Civil Rights spent almost two years investigating the alleged violation under Title IX. It seemed that negotiations of the complaint would soon be ending when the school district decided to hang privacy curtains in the locker rooms. However, the district required only the transgender student to use the curtains. No other students were required to do so. Although the student indicated that she would probably use the curtain in the girls' locker room, the ACLU argued that she should have the right to make that decision voluntarily and not be forced by school requirements.

OCR found that the school district's action was a violation of the student's rights under Title IX, which prohibits sex discrimination in education programs and activities that receive federal funding, because the district only compelled the transgender student to use the curtain. Federal officials deemed the solution insufficient. The district has 30 days to settle the matter or face an enforcement action which could involve administrative proceedings or a lawsuit by the U.S. Department of Justice. The district could also lose its Title IX funding.

How this affects your district:

School districts need to be aware of the changing legal landscape concerning protections afforded to transgender students from the U.S. Department of Education Office for Civil Rights versus those that various courts around the country are affording or refusing to afford to transgender students. The State of Ohio does not have statutory protections for transgender students currently; however, federal law, and the interpretation of the same, will control over school district actions concerning transgender students. If your school district has questions concerning how to address situations involving transgender students, please contact us.

Ohio Attorney General Declares Deputy Sheriff May Serve on Board of Education

The Ohio Attorney General's office recently issued an opinion that concluded a deputy sheriff who is employed in classified service may simultaneously serve as a member of a city or local school district board of education with a few limitations. The opinion was released on October 27th, 2015. The question of law turned on an interpretation of Ohio Revised Code §124.57(A), which states that an officer or employee in the classified service of the state or a public municipality is prohibited from (1) receiving any contribution for a political party or candidate for public office; (2) being an officer in any political party; or (3) taking part in politics other than to vote.

In analyzing the issue, the drafter of the opinion relied on a seven-question test to determine whether the two public positions were compatible. The test includes the following:

1. Is either of the positions considered classified employment within the terms of R.C. §124.57?
2. Do the empowering statutes of either position limit employment in another public position or the holding of another public office?
3. Is one position subordinate to, or in any way a check upon the other?

4. Is it physically possible for one person to discharge the duties of both positions?
5. Is there an impermissible conflict of interest between the two positions?
6. Are there local charter provisions, resolutions, or ordinances which are controlling?
7. Is there a federal, state, or local departmental regulation applicable?

The first question about whether a deputy sheriff serves as classified staff was answered in the affirmative, unless the deputy is assigned special duties which alter his or her status as a classified employee. In analyzing the second question, since a board of education member is elected in a nonpartisan election, and no other laws expressly prohibit a sheriff from serving as a board member or vice versa, the Attorney General opined that a deputy sheriff may lawfully run for the position subject to a few limitations discussed more fully below. And, in review of the third question, the opinion concluded that the deputy's position in particular was not really subordinate to the board of education even when that deputy served as the district's DARE officer, since the county sheriff and not the board generally determined specific duties and assignments. The opinion quickly dispensed with any concerns about whether an individual could physically perform the duties of both jobs under the fourth question, again affirming there was no issue as long as the deputy was able to serve on the board through use of leave or some other means when he/she was simultaneously assigned to active duty as a deputy.

However, when analyzing the fifth question in the test, the opinion concluded there was the potential for a number of conflicts of interest to arise when the individual carried out his or her duties as deputy and board member. First, there is a potential conflict of interest in preparation of and submission of budgets to the county commissioner, since the county sheriff and the board of education may compete for limited funds. This conflict could be avoided as long as the member did not appear before the county commissioner for budget matters on behalf of either organization. Second, the attorney general also recognized a potential conflict in the event both the sheriff and the board of education sought levies. However, the opinion recognized that the chance for conflict was low, and further could be avoided as long as the individual did not participate in any board member discussions, deliberations, and votes concerning the levy. Third, the opinion notes there is a potential conflict when the deputy is required to investigate an employee or member of the board of education, which can be avoided by reassigning the investigation to another deputy or another law enforcement agent. Fourth, there could be a conflict when contracts are negotiated between the board and the sheriff's office. Again as long as the deputy refrains from any board deliberations about the contract, and as long as the deputy is not assigned to serve the board through the contract, the conflict is avoidable. Finally, the deputy may avoid any conflict with regard to allocation of trust fund grants such as through the D.A.R.E. program as long as the deputy is not a part of the internal control policy that determines how money is allocated.

The answers to the sixth and final questions in the test mentioned above were in the negative, since there were no applicable state or local regulations that applied in this case. Therefore, as long as the deputy avoided the potential conflicts mentioned above, the attorney general concluded that the positions of deputy sheriff and board of education member were compatible. In closing, however, the author of the opinion recognized that it may be impossible to consider all possible conflicts that could arise. Should the board member find that he or she must frequently refrain from deliberations, it is possible the member will eventually have a duty to resign from one position.

To read the opinion in full, visit: <http://www.ohioattorneygeneral.gov/getattachment/6dfe6e60-d65d-4f1a-9773-8285f511e787/2015-032.aspx>

Ohio Attorney General Opinion No. 2015-032.

Firm News

Gary is Selected as Superlawyer Rising Star for the Third Year in a Row!

We are very pleased to announce that Gary Stedronsky was once again nominated as a SuperLawyers Rising Star for 2016 for the third year in a row! SuperLawyers is a national rating service that publishes a list of attorneys from over seventy practice areas who have attained a high degree of peer recognition and professional achievement.

To qualify as a Rising Star, an attorney must score in the top ninety-third percentile during a multiphase selection process that includes peer review and independent evaluations. A SuperLawyers rating is considered a very prestigious designation in the legal field, and we commend Gary for his continued achievement!

To learn more about SuperLawyers, go to: <http://www.superlawyers.com/index.html>.



Gary Stedronsky

State Bar Publishes Article on Cyberlaw in Schools

The Ohio State Bar Association recently published an online article titled “Tackling Cyberlaw and Student Discipline in Schools” which was written by Bronston McCord III and Pam Leist. The article addresses topics such as regulating student conduct and disciplining students for off-campus behavior. The article was also printed in the News-Herald in Cleveland.

To read the article, go to:

<https://www.ohiobar.org/ForPublic/Resources/LawYouCanUse/Pages/Tackling-Cyberlaw-and-Student-Discipline-in-Schools.aspx>.

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 Ennis Britton attorney.

- **December 8** – Last day to submit resolution to community school and resident district transportation flags in order for transportation record to be funded
- **December 15** – Tuition Certification for Private Treatment Facility available (RC 3313.64)
- **December 31** – School Board member terms expire in applicable years (RC 3319.09); Last day for treasurer to canvass board to establish date of January board meeting (RC 3313.14)
- **January 1** – New terms of elected board members begins
- **January 15** – Deadline for school boards of education to meet and organize (RC 3313.14); Last day for Board to establish service fund by resolution (RC 3313.15); Last day for school boards to adopt tax budgets for the coming school fiscal year (RC 5705.28)
- **January 20** – Last day for boards of education to submit fiscal tax-year budget to county auditor (RC 5705.30)
- **January 25** – Written report of first evaluation must be received by teacher if board wishes to not reemploy teacher on limited or extended contract (RC 3319.111)
- **January 31** – Special Education Catastrophic Costs due (RC 3317.022); Deadline for ESC governing boards to meet and organize (RC 3313.14)

Upcoming Presentations

2015-2016 Administrator's Academy Seminar Series

January 7, 2016 – Ohio Sunshine Laws

Joyce E. Brooks Conference Center, Mahoning County Career and Technical Center, Youngstown, Ohio

April 7, 2016 – Special Education Legal Update

Great Oaks Instructional Resource Center, Cincinnati, Ohio

July 14, 2016 – 2015-2016 Education Law Year in Review

Webinar or Archive ONLY!

Participants must be registered to attend each event. Each seminar will be accompanied by a live online webinar. The webinar will be archived for those who wish to access the event at a later time. You can register on our website at www.ennisbritton.com/client-resources/erf-administrators-academy/, contact Sarah Hawkins at 513.421.2540, or send an email to shawkins@ennisbritton.com.

Other Upcoming Presentations:

December 3 – Ashland Next Generation Staff Evaluations

Presented by: Pam Leist

December 8 –Special Education, NBI

Presented by: Giselle S. Spencer

January 20, 2016 – OASPA Winter Camp: Collective Bargaining and Negotiations

Presented by: Bronston McCord & Bill Deters

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Want to stay up-to-date about important topics in school law? Check out Ennis Britton's Education Law Blog at www.ennisbritton.com/education-law-blog.

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 Sarah Hawkins at shawkins@ennisbritton.com or 513-421-2540. Archived topics include:

- Managing Workplace Injuries & Leaves of Absence
- Special Education: Challenging Students, Challenging Parents
- Fostering Effective Working Relationships with Boosters
- Effective IEP Teams
- Cyberlaw
- FMLA, ADA and Other Types of Leave
- Levies & Bonds
- OTES & OPES Trends & Hot Topics
- Tax Incentives
- Prior Written Notice
- Advanced Topics in School Finance
- Student Residency, Custody and Homeless Students
- Student Discipline
- Media and Public Relations
- Gearing Up for Negotiations

Ennis Britton Practice Teams

At Ennis Britton, we have assembled a team of attorneys whose collective expertise enables us to handle the wide variety of issues that currently challenge school districts and local municipalities. From sensitive labor negotiations to complex real estate transactions, our attorneys can provide sound legal guidance that will keep your organization in a secure position.

When you have questions in general areas of education law, our team of attorneys help you make competent decisions quickly and efficiently. These areas include:

Labor & Employment Law

Student Education & Discipline

Board Policy & Representation

There are times when you have a question in a more specialized area of education or public law. In order to help you obtain legal support quickly in one of these areas of law, we have created topic specific practice teams. These teams are comprised of attorneys who already have experience in and currently practice in these specialized areas.

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
Giselle Spencer
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

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Bill Deters
Michael Fischer
Pam Leist
Jeremy Neff
Hollie Reedy
Giselle Spencer
Erin Wessendorf-Wortman
Megan Bair Zidian

School Finance

Taxes, School Levies, Bonds, Board of Revision

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