



Ennis Britton Co., L.P.A.  
Attorneys at Law

Cincinnati • Cleveland • Columbus

ENNIS BRITTON

# School Law Review



## January 2016

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## President Obama Signs Every Student Succeeds Act

On December 10, 2015, President Obama signed into law the Every Student Succeeds Act (ESSA). The bipartisan bill reauthorizes the Elementary and Secondary Education Act (ESEA) that was first signed into law by President Lyndon Johnson in 1965. ESSA will replace No Child Left Behind (NCLB), which was passed as a previous reauthorization of ESEA enacted in 2002.

ESSA represents a large shift from the standards established in NCLB. State agencies and school districts will have more authority to set their own plans for teacher evaluations, standards, school turnarounds, and accountability. ESSA also focuses on putting students on track to be ready for college and careers. ESSA places limits on the power of the federal government with regard to setting standards and measuring teacher performance. Under ESSA, all students must be held to high academic standards, students must be prepared for success in college and career, students must be provided access to high-quality preschools, steps must be taken to help students and their schools to improve, the burden of testing must be reduced while still maintaining annual information for parents and schools, and local innovation must be promoted.

Like NCLB, ESSA will continue to maintain a system of annual statewide assessments for students. However, ESSA gives the power back to state and local districts to plan and make their own decisions regarding the design of their tests, the frequency and number of tests, and what their academic standards ought to be. Students must still be tested annually in reading and math in grades 3-8 and once in high school. ESSA will also continue to prioritize competitive programs to evaluate and reward effective educators in high-need schools based on student learning.

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One of the NCLB priorities was student performance targets and school ratings. However, many believed the standards were unrealistic and were set by the federal government based on tests alone. Under ESSA, academic standards will be based on multiple measures instead of just test scores. Teacher engagement and success in advanced coursework are some factors that may be included in future school accountability systems.

Previously there was a one-size-fits-all federal identification and intervention plan for struggling schools. ESSA requires states to develop identification and intervention with support for the following: 1) bottom five percent of schools; 2) schools where subgroups are falling behind; and 3) high schools with high dropout rates. Funding for these lowest-performing schools is set aside to guarantee intervention and support.

While ESSA retains some key tenets of NCLB, it does offer change. ESSA includes preschool in its language and stresses the importance of competitive programs for innovation and evidence-building, replicating high-quality charter schools, and encouraging wrap-around support systems for vulnerable communities.

Several organizations have stepped forward to help state and local districts respond to ESSA's changes. The National Education Association (NEA) is working with the American Federation of Teachers (AFT) to craft accountability systems. Their goal is to move beyond teacher evaluations that rely heavily on test scores. The Leadership Conference for Civil and Human Rights (LCCHR) is assisting local and state leaders to maintain ESSA's historic focus on equity for traditionally overlooked groups of students.

Under ESSA, the Federal School Improvement Grant has been eliminated. While previously states had to set aside federal money for mandated interventions, such as school choice and tutoring, now states can decide how best to spend federal funding. However, Title I funds must be targeted to students most in need rather than the general student population.

Ennis Britton will provide more updates as we familiarize ourselves with this new law. If you have any questions please do not hesitate to contact an Ennis Britton attorney.

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## **Ohio Supreme Court Decides Important Tax Exemption Case**

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On December 30th, 2015, the Ohio Supreme Court unanimously declared that real property owned by a public school district board of education is tax exempt regardless of whether it is currently used for school purposes. Ennis Britton Shareholder Gary Stedronsky represented the Talawanda City School District Board of Education at all levels of appeal, including before the Supreme Court.

The case involved a provision in Ohio law that generally exempts real property owned by a public school district from property taxes, which is codified in Ohio Revised Code section 3313.44. In this case, the Talawanda City School District Board of Education (the "Board") purchased 154 acres of land to build a new high school. A portion of this land was not needed for the high school and was leased by the Board to a farmer.

In January of 2010, the Board filed an application to exempt all 154 acres from real property taxes. The Tax Commissioner approved the exemption application for all but the portion of the land that was leased to the farmer. The Tax Commissioner concluded that the pecuniary benefit realized by the

farmer disqualified the land from tax exemption because the property was not being used for school purposes.

The Board appealed the Tax Commissioner's decision to the Ohio Board of Tax Appeals ("BTA"), which affirmed the Tax Commissioner's decision. The Board further appealed to the Ohio Supreme Court.

The Supreme Court was tasked with deciding whether the BTA decision was supported by the language in Ohio Revised Code section 3313.44. The applicable version of section 3313.44 simply states: "Real or personal property owned by or leased to any board of education for a lease term of at least fifty years shall be exempt from taxation." The Board argued that this statute requires that a board of education merely own real property in order for it to qualify for tax exemption. In other words, there is no requirement in the statute that the property must be used for school purposes in order for the tax exemption to apply.

The Ohio Supreme Court agreed with the Board's argument and concluded that the property that was leased to the farmer was exempt from taxation regardless of the specific use of the property. The Supreme Court acknowledged that past interpretations by the Tax Commissioner may have correctly interpreted an implied use restriction in the prior version of the statute. However, the Court recognized that the General Assembly chose not to include such a restriction when the statute was amended in 2010 even though it had authority to do so. Therefore, the Court held that the statute does not include an implied use restriction and the Board's property is entitled to tax exemption even though it was leased to a farmer.

The Court also dismissed the Tax Commissioner's argument that the Board's request for tax exemption must be denied on grounds that the Board overstepped its legislative authority by leasing the land to a farmer for a commercial purpose. The Court held that a Board of Education's property is entitled to tax exemption as long as it meets the conditions of the exemption statute in Ohio Revised Code section 3313.44, which merely requires ownership.

**How this affects your district:**

The Supreme Court decision clarifies that a board of education is entitled to a property tax exemption for all real property owned by the board of education regardless of how the property is currently being used. This decision is very favorable to school districts and will be used in the future to support applications for tax exemptions. You are encouraged to contact our office to explore the possibility of obtaining tax exemption for property that your board of education owns that is not currently exempt because it is not being used for school purposes.

*Talawanda City School District Board of Edu. v. Testa, Tax Commissioner* (Ohio 2015), Slip Opinion No. 2015-Ohio-5450.

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## Cincinnati Passes Ban on LGBT Conversion Therapy

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Cincinnati's city council voted 7-2 on December 9, 2015 to outlaw "conversion therapy." Specifically, health professionals are prohibited from therapy that is designed to change the sexual orientation or gender identity of minors. Violators face a \$200 fine for every day they practice conversion therapy. California, New Jersey, Oregon, Illinois and Washington D.C. already outlaw the practice. Cincinnati is the first major U.S. city to ban LGBT conversion therapy.

Opponents of the ban claim that it violates free speech and freedom of religion. However, as conversion therapy is considered medical therapy, it is not typically subject to free speech and religious protections. The American Psychological Association and other health organizations have determined that conversion therapy does not work, is not useful, can cause harm to minors and may increase the risk of suicide. Councilman Chris Seelbach referred to transgender teenager Leelah Alcorn as the impetus for this ban. Alcorn killed herself in December, 2014 after being subjected to conversion therapy.

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## Legislative Updates

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### **House Bill 48**

On December 9, 2015, HB 48 was referred to the Senate Government Oversight and Reform Committee for review. If the bill passes, it would lessen the criminal charge for certain firearm-related offenses, modify the prohibition against carrying a concealed handgun in certain vulnerable areas, and allow sheriffs to use concealed handgun license fee revenue to purchase ammunitions and firearms.

Current law prohibits individuals without a concealed carry license from knowingly carrying or having concealed on their body a handgun, deadly weapon, or dangerous ordnance. Any violation of this prohibition is a misdemeanor of the first degree. HB 48 seeks to lessen the violation to a minor misdemeanor if the individual was knowingly on the premises of any place where handguns are prohibited regardless of license, including institutions of higher education, and was not otherwise authorized to carry a concealed handgun on the premises, but can produce a valid concealed handgun license within ten days after the arrest. The license must have been valid at the time of the arrest.

HB 48 also seeks to modify the list of places where possession of a handgun is prohibited regardless of whether the carrier has a valid concealed handgun license. Under HB 48, day-care centers and homes would not be automatically off limits to carriers of concealed handguns. HB 48 adds an exception allowing individuals with valid concealed handgun licenses to “carry a concealed handgun on the premises of an institution of higher education pursuant to a written policy, rule, or other authorization that is adopted by the institution’s board of trustees or other governing body and that authorizes specific individuals or classes of individuals to carry a concealed handgun on the premises.”

Current law under section 2293.122 of the Ohio Revised Code prohibits a person from conveying, attempting to convey, or possessing a deadly weapon or dangerous ordnance in a school safety zone. Under Ohio Revised Code section 2923.122(D)(3), this prohibition does not apply if the person: (1) does not enter onto schools premises or into a building and is not at a school activity, (2) is carrying a valid concealed handgun license, (3) is in the school safety zone in accordance with federal law governing the possession of firearms in school zones, and (4) is not knowingly in a prohibited place other than a school safety zone.

Under Ohio Revised Code section 2923.122(D)(4), an exception is also granted for an individual who is carrying a valid concealed handgun license, is the driver or passenger in a motor vehicle that is immediately in the process of picking up or dropping off a child, and is not in violation of section 2923.16 of the Ohio Revised Code. HB 48 would remove the requirement that the individual be immediately in the process of picking up or dropping off a child and not in violation of section 2923.16 of the Ohio Revised Code if the person is carrying a valid concealed handgun license, the person leaves

the handgun in the motor vehicle, the handgun does not leave the motor vehicle, and the person locks the motor vehicle upon exit.

### **House Bill 56**

HB 56 concerns the criminal histories of applicants for public employment. It was passed by the House on December 9, 2015 and is currently pending in the Senate State and Local Government Committee. This bill prohibits public employers from including on an employment application any questions concerning the criminal background of its applicants. However, the bill specifies that this provision does not prohibit a public employer from including on any employment application form a statement that notifies the applicant of state or federal laws that disqualify an individual with particular criminal convictions from employment.

HB 56 also includes a provision for civil services employees. In Ohio, civil service is divided into unclassified and classified service. A classified employee who is appointed to an unclassified position maintains the right to resume the position and status in the classified service, but the employee forfeits the right to resume the classified position due to specific misconduct or for conviction of a felony. HB 56 would prohibit a felony conviction from being used against an officer or employee in this regard *unless* the conviction occurs while the officer or employee is employed in the civil service. Use of a felony conviction as a basis for reducing pay or position as well as suspension or removal of an officer or employee would only be allowed if the felony conviction occurred while the officer or employee was employed in the civil service.

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## **Ohio Arts Council Offering Grants for Transportation for Arts-Related Field Trips**

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The Big Yellow School Bus is a program that offers grants to help schools and educational groups with transportation costs for field trips relating to the professional arts and cultural activities. Public, private, charter, or parochial schools as well as associations of home-schooled students may apply for grants of up to \$500 to cover transportation costs including securing buses or vans, licensed drivers and fuel and parking costs.

There is no limit on the number of applications; a single school district may apply for a grant more than once each fiscal year. However, when funds are limited priority is given to new applicants. Rural and urban students from underserved areas of Ohio also receive priority status.

The program is meant to support the transportation costs for educational field trips to art galleries, museums, festivals, exhibitions, and music, dance, or theatre performances. The grant does not make transportation arrangements; each school district must submit a document verifying the actual transportation cost when applying for the grant. Event admission fees and food and drink expenses are not covered by the grant either.

Applicants must submit their grant application through the Ohio Arts Council's (OAC) ARTIE system (Arts Resources Through Innovation and Engagement). The OAC reviews each application for the following criteria: a clear description of the trip's purpose including destination details; the trip provides an arts learning experience that is tied to educational standards; and staff, teachers, and/or administrators are supportive of the activity.

Each application must be submitted at least eight weeks prior to the field trip. The grant award announcement will be made four to five weeks before the trip and the grant agreement is signed in

ARTIE at least two weeks before the trip. Thirty days following the field trip, a final report is due to the OAC and payment will be issued three to six weeks after the final report is submitted.

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## State Board Amends Evaluation Frameworks

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On November 17th, the State Board of Education adopted new modifications to the Ohio Teacher Evaluation System (OTES) and Ohio Principal Evaluation System (OPES) frameworks. On Monday, December 7th, ODE released additional information about the new frameworks and how they will impact schools as early as this school year.

### **OTES Changes**

In the revised framework for teachers, the State Board acknowledges the safe harbor provision that limits use of value-added data in evaluations previously adopted in HB 64. The safe harbor applies to evaluations completed during the 2015-16 and 2016-17 school years, and requires a board of education to enter into a memorandum of understanding with teachers in order to use value-added data for the student growth measure portion of evaluations. Many districts already have addressed this issue through MOUs. However, districts were forced to modify language that permitted them to use shared attribution for every teacher's SGM in response to revised guidance issued by the Department of Education at the end of September 2015. The revised guidance departed from prior directives issued by ODE.

The State Board also clarified that under the alternative framework, the selected alternative measure(s) could be comprised of neither teacher performance nor student growth. This interpretation of the HB 64 changes to the alternative framework also was issued very late in the school year: a number of districts will have to consider adjustments to MOUs and policies if applicable. Districts that intended to use a teacher performance score for the alternative measure should contact legal counsel to discuss possible options moving forward.

Finally, the revised framework modified requirements for the development of growth and improvement plans. The modifications require teachers to develop a growth or improvement plan that will, in the future, be based on the teacher's final summative rating score from the previous year (instead of the student growth measure score).

Teachers who receive a final summative rating of "developing," "skilled" or "accomplished" will develop a professional growth plan at the start of the school year. The new framework further gives teachers a varying amount of discretion to select their evaluators based on the summative rating. Teachers who receive a final summative rating of "ineffective" must develop a professional improvement plan with their evaluators that must be approved by administration. However, the State Board emphasized a board of education has discretion to place a teacher on an improvement plan at any time based on any noted deficiencies in any individual component of the evaluation system, subject to any collective bargaining agreement limitations. Since teachers have already developed growth and/or improvement plans for this year, this modification will apply starting next school year, 2016-17.

### **OPES Changes**

The State Board of Education also adopted revisions to the Ohio Principal Evaluation System framework in November. The revised framework acknowledges the safe harbor provision for 2015-16 and 2016-17 as it applies to principals, and clarifies that districts must have a memorandum of understanding with principals or board policy in place that permits use of value-added data in

evaluations during the safe harbor period. The revised framework clarifies that principals may not use the alternative framework. Instead, a principal's final summative rating must be comprised only of a performance rating (50%) and student growth measure score (50%). Finally, the framework indicates that an evaluator must complete at least two, thirty-minute observations, plus periodic walkthroughs for each evaluation.

As we promised from the beginning with OTES and OPES in 2011, it is highly likely that legislatures and the state department will continue to make changes to educator evaluations in the coming months and years. It is vital that district evaluation committees continue to review evaluation policies on a regular basis and stay informed about changes to the law, regulations and interpretations of ODE concerning this topic.

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## Firm News

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Ennis Britton is proud to announce that Pam Leist has been selected by the Leadership Academy Advisory Council to be a part of the Ohio State Bar Association's 2016 Leadership Academy Class. Ms. Leist will join a select group of attorneys to learn, network, interact, collaborate, and build relationships with leaders in the legal profession as well as get an insider's look at the important role OSBA plays within the Ohio legal system.

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## Upcoming Deadlines

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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.

- **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)
- **February 15** – Last day for voter registration for March election (RC 3503.01, 3503.19)

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## Upcoming Presentations

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### **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  
Presented by: Giselle S. Spencer & Megan Bair Zidian

#### **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/](http://www.ennisbritton.com/client-resources/erf-administrators-academy/), contact Sarah Hawkins at 513.421.2540, or send an email to [shawkins@ennisbritton.com](mailto:shawkins@ennisbritton.com).

### **BASA Regional Meetings**

#### **January 7 – Cuyahoga County ESC**

Presented by: John Britton

#### **January 8 – Bowling Green State University Levis Commons**

Presented by: Jeremy Neff & Gary Stedronsky

#### **January 19 – Logan Hocking High School**

Presented by: Lisa Burleson & Hollie Reedy

#### **January 20 – BASA, Columbus**

Presented by: Lisa Burleson & Hollie Reedy

#### **January 25 – Hamilton County ESC**

Presented by: Pam Leist & Erin Wessendorf-Wortman

### **Other Upcoming Presentations:**

#### **January 20 – OASPA Boot Camp: Negotiations**

Presented by: John Britton, Bill Deters & C. Bronston McCord

#### **January 22 – BOR Boot Camp for Treasurers & Superintendents (Cleveland)**

Presented by: Gary Stedronsky & Giselle S. Spencer

#### **January 28 – Ashland Next Generation: Teacher and Staff Misconduct**

Presented by: Jeremy Neff



**February 2 – SEOC and Brown ESC: Special Education**

Presented by: Lisa Burleson & Jeremy Neff

**February 19 – NBI Special Education Seminar (Columbus)**

Presented by: Lisa Burleson & Erin Wessendorf-Wortman

**February 25 – Ashland Next Generation: Public Relations**

Presented by: Erin Wessendorf-Wortman

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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 Sarah Hawkins at [shawkins@ennisbritton.com](mailto: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

#### Team Members

John Britton  
Lisa Burleson  
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

#### Team Members

John Britton  
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