



# Ennis Roberts Fischer SCHOOL LAW REVIEW



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November 2012

## Pension Reform Legislation Makes Significant Changes to SERS and STRS

On September 26, the Ohio General Assembly enacted sweeping public pension reform legislation. The legislation consisted of a package of five bills, including Senate bills 341 and 342, affecting the School Employees Retirement System (SERS) and the State Teachers Retirement System (STRS). Both bills are effective on January 7, 2013. The most significant changes to each system are highlighted below.

### SERS (SB 341)

- + Changes retirement eligibility requirements.
  - + Members who have less than 25 years as of August 1, 2017 will be eligible to retire at age 57, with 30 years.
- + Changes retirement benefit formulas.
  - + Benefits will be unreduced for members who had less than 25 years of service credit on August 1, 2017 but are at age 67, with 30 years when they retire.

- + Benefits will be reduced for members who had less than 25 years on August 1, 2017 and are not at age 67 when they retire.

- + Changes eligibility requirements for disability benefits.
  - + A member's disabling condition must have occurred before contributing service terminated.
  - + Members now required to attend vocational rehabilitation, if recommended, to continue receiving disability benefits.

- + Establishes new penalties for SERS employers.
  - + \$100 per day for failure to transmit contributions withheld from employees.
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  - + \$100 per day (not to exceed \$1,500 total) for failure to timely transmit payroll information.
  - + \$50 per record (not to exceed \$300 total) for each month of failure to transmit a detailed statement on an employee's prior service and personal information.

### STRS (SB 342)

- + Increases the amount of member contributions beginning July 1, 2013 through July 1, 2016.

be increased by yearly increments from 10% to 14%.

- + Changes the final average salary (FAS) years from three to five.
  - + For benefits beginning on or after August 1, 2015, members' five highest years of compensation will be used to determine the FAS.

- + Changes retirement eligibility requirements.

- + For unreduced benefits (early retirement):
  - + Now-August 1, 2015: Any age and 30 years; or age 65 and 5 years.
  - + August 1, 2015-August 1, 2017: Any age and 31 years; or age 65 and 5 years.
  - + August 1, 2017-August 1, 2019: Any age and 32 years; or age 65 and 5 years.
  - + August 1, 2019-August 1, 2021: Any age and 33 years; or age 65 and 5 years.

- + August 1, 2021-August 1, 2023: Any age and 34 years; or age 65 and 5 years.
- + August 1, 2023-

+ Contribution rate will

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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

## Pension Reform Legislation Makes Significant Changes to SERS and STRS, Cont.

<p>August 1, 2026: Any age and 35 years; or age 65 and 5 years.</p> <p>+ On or after August 1, 2026: Age 60 and 35 years; or age 65 and 5 years.</p> <p>+ For <u>reduced</u> benefits:</p> <p>+ Now-August 1, 2015: Age 55 and 25 years; or age 60 and 5 years.</p> <p>+ August 1, 2015-August 1, 2017: Any age 30 years; or age 55 and 26 years; or age 60 and 5 years.</p> <p>+ August 1, 2017-August 1, 2019: Any age and 30 years; or age 55 and 27 years; or</p>	<p>age 60 and 5 years.</p> <p>+ August 1, 2019-August 1, 2021: Any age and 30 years; or age 55 and 28 years; or age 60 and 5 years.</p> <p>+ August 1, 2021-August 1, 2023: Any age and 30 years; or age 55 and 29 years; or age 60 and 5 years.</p> <p>+ On or after August 1, 2023: 30 years; or age 60 and 5 years.</p>	<p>+ Reduces the cost-of-living adjustment (COLA) to an annual 2%.</p> <p>+ No COLAs will be granted from July 1, 2013 through June 30, 2014 to persons retiring prior to July 1, 2013.</p> <p>+ No COLAs will be granted until July 1, 2015 to persons retiring on or after July 1, 2013.</p>
	<p>+ Reduces the rate used to calculate benefits to 2.2% of final average salary.</p>	

## Boosters and PTAs Now Required to Register With Ohio Attorney General

OAC 109:1-1-02

The Ohio Attorney General's (OAG) Office is now requiring booster organizations to register as a "charitable trust", if those organizations have a certain amount of money that they control. In addition to booster organizations, this new requirement also applies to parent-teacher associations. The new regulation requires any booster or parent-teacher association to register with the OAG's office if it either has (1) gross receipts of more than \$25,000 for any tax year; or (2) more than \$25,000 at the end of any tax year.

If one of these organizations is required to register, it must do so within six months of creating the organization or within six months of meeting one of the two circumstances noted above. Organizations required to register must do so through the Attorney General's website at :

[www.ohioattorneygeneral.gov/charitableregistration](http://www.ohioattorneygeneral.gov/charitableregistration).

At the time of registration, the organizations must provide the articles of incorporation, bylaws, the constitution, and a copy of the internal revenue service determinational letter of exempt status. Additionally, if there have been

any subsequent amendments to the articles, bylaws, or constitution, those must be provided as well.

Any organization that is registered is subject to numerous reporting requirements. First and foremost, each organization must file an annual report, including particular tax information. Additionally, if the organization's tax-exempt status is revoked by the IRS or if the organization dissolves, the OAG's office must be notified. In the case of dissolution, the organization must submit to the OAG's office a report on the final distributions of funds.

## No Excuse For Failing To Update IEP

**Anchorage Sch. Dist. V. M.P. by M.P., 59 IDELR 91 (9th Cir. 2012).**

An Alaska district was not excused from failing to develop a student's IEP by the fact that the parents had four due process complaints pending.

The student in this case was a student with autism. In 2006 the district, with the parents' input, developed an IEP. When that IEP expired, the district and the parents made an effort to revise the IEP, but failed to do so. The

student moved forward into third grade and about halfway through that school year the school district prepared a revised IEP for the student. The parents were invited to the meeting, but did not attend. They did, however, provide written comments and suggestions for incorporation in the IEP and identified portions of the IEP that should remain "stay put" during the pendency of the judicial and administrative hearings regarding other complaints filed by these parents. After receiving the parents' response, the school district decided to postpone

any further efforts to develop an updated IEP until after the final decision had been made regarding those administrative hearings.

In 2008, the parents enrolled the student in a different elementary school, within the same district, where the student repeated the third grade. At that time, the school was still relying on the 2006 IEP. The parents filed a complaint stating that the student was receiving no educational benefits in

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## No Excuse For Failing To Update IEP, Cont.

the 2008 school year under his 2006 IEP. The district tried to argue that the parents were just as at fault as they were for the unfinished IEP. However, the Court stated that all school districts have an affirmative duty to review and to revise, at least annually, an eligible child's IEP. There is nothing in the statutes or regulations that makes the district's duty contingent on parental cooperation.

The Court noted that the school district had two options after they received the revisions from the parents. Their first option would be to continue working with the parents in order to develop a mutually acceptable IEP. The second option would be to unilaterally revise the IEP and then file an

administrative complaint to obtain approval of the proposed IEP. Neither option allows for the district to completely suspend its efforts to produce an updated IEP. The stay-put order did not prevent the district from updating the IEP, rather, it only prevented the district from changing the student's educational placement.

### How This Affects Your District:

At times parents can be difficult to work with, especially in the special education setting. Parents want the best for their children and sometimes become overzealous in their advocacy. However, this type of difficult working relationship should not and cannot deter districts from continuing to move

forward with ensuring that their obligations are met.

Districts have a responsibility to update a student's IEP each calendar year. While parents are supposed to be invited to involve themselves in that process, if the parents create a complete roadblock, the district's only option is to unilaterally revise the IEP and file an administrative complaint to obtain approval of the proposed IEP. At no time should a district give up on revising an IEP. If a district does not meet its duty to revise the IEP, it will not be the parents who are disciplined, but the district.

## Arbitrator Decision Regarding Termination of Contract Overturned

### ***Chardon Local School District Board of Education v. Chardon Education Association, Case No. 12A000345***

Recently, the Court of Common Pleas in Geauga County overturned an arbitrator's decision regarding the termination of a teacher.

The teacher was driving her personal vehicle after school and caused a head-on collision with another car. When the investigating officer arrived the teacher and her husband lied about who was driving the car at the time of the accident. Her reason for lying was that she had been drinking prior to the accident. After the accident the teacher returned to work and worked the rest of the school year and during summer school.

Towards the beginning of the following school year the teacher was found guilty of vehicular assault, at which point the District placed her on administrative leave with full pay and benefits. After she was sentenced, she was suspended without pay and subsequently the District terminated her teaching contract. Further, the teacher entered a consent agreement with the Ohio licensing agency that resulted in a suspension of her teaching license for

a two year time period.

The Ohio Education Association filed a grievance against the District, because they contended that the District's suspension of the teacher and ultimate termination of her contract was improper and without just cause. The Arbitrator sided with the teacher and based that decision largely on language in the District's Collective Bargaining Agreement, which states:

"Except for egregious acts and/or behavior, the Board shall not abrogate a teacher's contractual rights provided by the agreement between the Board and Association; nor shall a teacher be summarily suspended and terminated by the Board of Education without reason and a just cause substantive and procedural due process hearing."

The arbitrator read this to mean that the only way that a teacher could be suspended or his or her contract terminated was if the teacher engaged in egregious acts and/or behavior. The

Court held that this was the incorrect interpretation and, in fact, was adding words to the Agreement. This language meant that the Board had to follow its regular due process procedures, including having just cause, in order to terminate a teacher. However, if a teacher engaged in egregious acts then the Board has the right to revoke due process and terminate the teacher immediately. However, if the Board did revoke the due process procedure and terminate immediately and the teacher challenged, the Board could be held liable if a court did not find the teacher's behavior to be egregious.

The Court did not discuss whether there was just cause to terminate the teacher. It only made clear that the arbitrator had stepped beyond his bounds when he stated that the District could only terminate the teacher's contract in the case of egregious behavior. Therefore, the decision of the arbitrator was overturned and the teacher was not entitled to back-pay.

### How This Affects Your District:

If your district has similar language to the language quoted above, then this decision shows that the language does not create a higher stand-

## Arbitrator Decision Regarding Termination of Contract Overturned, Cont.

ard than “just cause” for termination. If a teacher engages in egregious conduct, the language above allows a district to remove the teacher without affording that teacher with the aspects of due process, such as a hearing. However, if districts plan to use this type of language and standard, the district should be aware of the meaning of

“egregious” behavior. If a teacher is not truly engaging in “egregious” behavior that requires immediate removal, then the district may find itself in trouble if the teacher files a grievance and ultimately a court finds the behavior to not be egregious. In most cases districts will be better off if they allow any person who is being terminated or

suspended to undergo the due process procedures, even if the district believes the behavior may be egregious.

## Court Upholds Discipline Of Students For Online Speech

***S.J.W. v. Lee's Summit R-7 Sch. Dist., No. 12-1727 (W.D. Mo. Oct. 17, 2012).***

A school district who was originally barred from maintaining the suspension of two students during the pendency of the First Amendment case is now allowed to move forward with the suspension.

Two students in a Missouri school district started a blog. According to the students, the purpose of the blog was to discuss, satirize, and “vent” about events at their high school. While the site could not be found through a Google search, because the students used a Dutch domain, these sites could be accessed using school computers if a person knew the web address.

The posts on the website were offensive, racist, and sexist in nature. In particular, there were degrading comments about particular female students who were identified by name. After the blog was opened it only took a few days for the topics discussed on the blog to make their way into school and cause a substantial disruption of school activities. At least a few teachers testified that the disruption was the most they had seen in their entire careers as educators. Further, the school's records showed that at least seven computers on district campuses were used to access the website.

The district was notified that these two particular students were responsible for the website and following a hearing, an appeal, and a second hearing, the district suspended both students from the school for a full school

year. The district did allow the students to enroll in an alternative school for the duration of their suspension. The students filed suit against the district, arguing that their free speech rights had been violated and asking for a preliminary injunction against the school district so that the district could not implement the discipline until the First Amendment case was decided. Originally, the lower court granted the injunction, but this Court reversed and stated that a preliminary injunction in this case was not supported by the facts of the case.

This Court noted that the main issue to look at when deciding whether a preliminary injunction should be granted is whether the case will likely be successful on the merits. The Court looked at the *Tinker* standard regarding substantial disruptions and at other cases that indicated that the *Tinker* standard applies to off-campus student speech when it is reasonably foreseeable that the speech will reach the school community and cause a substantial disruption to the educational setting.

The secondary issue is whether there will be irreparable harm if the preliminary injunction is not granted. The students tried to argue that the suspension would occur during their senior year and would cause them to not be able to participate in honors courses and band courses. However, the Court stated that this is not the type of irreparable harm that can overcome the high likelihood that the student's First Amendment case would fail.

### How This Affects Your District:

While this decision is not binding on any court in Ohio, it does show that courts are not always going to decide in favor of students when it comes to online speech and the First Amendment. Where a district can show that there will likely be or there has been a substantial disruption, the district is within its rights to discipline students for that speech.

Further, this case also shows that courts may be sympathetic to districts who are legitimately trying to discipline inappropriate student behavior and the harm it would do for districts to have to allow those students to continue without discipline until the entire case has been decided. The Court noted that the case will likely not be decided until after these students graduate, which means that if the preliminary injunction had been granted the students would have never been disciplined for their bad behavior.

## **Education Law Speeches/Seminars**

### **Administrator's Academy Dates at Great Oaks Instructional Resource Center**

You can enroll in an Administrator's Academy session using the form on our website or by emailing Pam Leist at pleist@erflegal.com.

**December 6th, 2012—*Navigating Workers' Compensation and Unemployment Law Issues***

**March 7th, 2013—*Advanced Topics in School Finance Law***

**June 13th—*Special Education Legal Update***

**July 11th—*Education Law Legal Updates 2012-2013***

### **Other Upcoming Presentations**

Bill Deters

OSBA Capital Conference School Law Workshop on November 13, 2012  
*30 Tips in 60 Minutes*

Bronston McCord

OSBA Capital Conference School Law Workshop on November 14, 2012  
*Deception and Piracy—Student Cybertroubles*

Jeremy Neff

National Business Institute Seminar on November 15, 2012  
*Special Education Legal Update*

Pamela Leist

Brown County ESC on December 17, 2012  
*Legal Hot Topics*

Bill Deters and Bronston McCord  
NW Ohio ESC on December 18, 2012  
*Collective Bargaining Seminar*

### **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 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
- 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:**  
 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