



SEPTEMBER 2017

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Employee Licensure Changes on the Horizon

Licensure Issues

Ohio’s laws and regulations on school licensure are undergoing changes. As Ennis Britton reported in the [December 2016](#) issue of the *School Law Review* newsletter, the Ohio Department of Education (ODE) and the Ohio state auditor have placed a renewed focus on enforcement of licensure laws and regulations over the past year and a half. These changes are an attempt by both the state legislature and the state board of education to provide some relief to schools that struggle to hire and maintain licensed staff in a difficult job market. A summary of the changes is as follows.

Short-Term Substitute Teachers

In July, the state board of education voted to revise OAC 3301-23-44 with regard to short-term substitute teachers.

The amended rule extends the time a short-term substitute teacher may teach consecutively in a given classroom from 5 to 60 days. The change will now permit an individual who has an active short-term teaching license to remain in one classroom for a much longer period of time than was permitted under the old rule. However, under the new regulation, a school district may use individuals who hold short-term substitute licenses only for a maximum of 60 days. On day 61, a school district must assign to that classroom a long-term substitute who is certified in the grade level(s) and subject areas. It is our understanding that districts may not extend the 60-day requirement by rotating short-term substitutes in and out of a particular classroom.

A JCARR hearing on this regulation is scheduled for September 18. If the changes are accepted, JCARR will set an effective date for the change. We anticipate that the rule will become effective in mid-November.

Alternative Resident Educators

ODE has proposed changes to alternative resident educator licenses for both K-12 and career-technical workforce development programs. The changes ODE has proposed will remove coursework requirements and incorporate requirements for all alternative resident educator licenses except for career-tech programs. In order to accomplish these changes, the state board has proposed to rescind three rules, specifically OAC 3310-24-19 through 22, and replace them with one rule found in OAC 3310-24-19. The new rule for career-tech programs, 3301-24-22, incorporates amendments that were enacted in March 2017 through the passage of Senate Bill 3.

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Unlicensed Substitute Educational Assistants

Ohio's biennial budget bill, House Bill 49, was passed into law early this summer. Most provisions of HB 49 become effective September 29. One of this bill's provisions permits school districts to hire and pay substitute educational assistants who do not currently hold educational aide permits or paraprofessional licenses. These workers may serve as a substitute for an educational assistant who is absent due to illness or an approved leave of absence, or they may fill a temporary emergency position. An individual may serve as an unlicensed substitute educational assistant for up to 60 days provided that the following three conditions have been met:

1. The individual has already filed an application with the state board for an educational aide permit or paraprofessional license;
2. The superintendent believes that the individual is qualified to obtain the permit or license; and
3. The individual has undergone a criminal records check.

Under the revised law, an unlicensed substitute educational aide must immediately stop working if the application is denied or if the application has not been approved after 60 days. If the application is approved and the individual files a valid permit or license with the superintendent, the individual then begins working as a licensed educational assistant, even while continuing as a substitute in the district.

We expect more employee licensure changes over the coming months and years and will continue to keep you posted. In the meantime, it is highly recommended that you contact an attorney at Ennis Britton to discuss any questions you have about staffing and licensure.

Technology Accessibility and OCR Compliance

Overview of OCR Authority

The U.S. Department of Education's Office for Civil Rights enforces several federal laws that prohibit discrimination. One that is applicable to schools is Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination based on a disability by any program or activity that operates via federal funding:

No otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...

— Section 504 of the Rehabilitation Act of 1973.

A second law that applies to schools is Title II of the Americans with Disabilities Act of 1990 (ADA), which prohibits discrimination based on a disability by public entities, regardless of whether they receive federal financial assistance.

Technology Accessibility

Section 504 requires schools that receive federal funding to ensure that the technology they use is fully accessible to individuals with disabilities or otherwise to provide equal access to the educational benefits and opportunities afforded by the technology. In 2013, OCR resolved a compliance review with South Carolina Technical College System. The purpose of the review was to assess whether the school's communications, and particularly its websites, were as accessible to individuals with visual disabilities as to those without disabilities. OCR and the SC Tech System reached a resolution, which produced three main outcomes. SC Tech System was directed to do the following: (1) ensure that websites of all member colleges be accessible to students with disabilities; (2) develop a

resource guide that provides information about web accessibility requirements; and (3) conduct an annual review of its websites to monitor and correct any accessibility issues.

Definition of Accessible

“Accessible means a person with a disability is afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as a person without a disability in an equally effective and equally integrated manner, with substantially equivalent ease of use” (OCR Compliance Review No. 11-11-6002). In other words, a person with a disability should be able to obtain the information as fully, equally, and independently as a person without a disability. Although ease of use may differ slightly from that of nondisabled individuals, accessibility ensures that a person with a disability has equal opportunity to the educational benefits and opportunities afforded by the technology and equal treatment in the use of the technology.

Website Accessibility and Policy

The ability for people with disabilities to access websites and other online content is often hindered by visual or hearing impairments or by manual impairments that require the use of assistive technology. Districts may need to conduct training on website accessibility and develop a web accessibility policy to ensure that the district will:

- Identify and adopt technical standards of accessibility
- Designate at least one person as a web accessibility coordinator who is tasked with implementing the web accessibility policy
- Provide online content that is accessible to people with disabilities, including content provided by third parties
- Provide annual training for staff who are responsible to create or distribute information online
- Audit the website and online content on a regular basis
- Inform students, employees, and visitors that they may contact the web accessibility coordinator with any accessibility concerns or file a complaint through the district’s grievance procedure
- Post the policy on the website

What This Means for Your District

As websites increase in importance, both as communication tools for school districts and instructional tools for teachers, complaints about accessibility will likewise expect to increase. We are already seeing significant activity in this area from OCR in recent months. Given how dynamic most websites are, full compliance at all times is an unrealistic goal. However, a proactive and ongoing program that includes training, planning, and reviews can help to reduce the risk of formal complaints and litigation.

Student Disciplined for Off-Campus Speech, Amid Bomb Threats

An Ohio appellate court ruled that a school district did not violate a student’s due process rights or his free speech rights when he was emergency-removed and later expelled for, among other things, his involvement in a Kik hate group centered on school bombings (Kik is a social networking and messaging app).

In October 2015, Madison Comprehensive High School and the Madison Local School District received a series of bomb threats and shooting threats. During this time frame, high school teachers found a binder in a school stairwell with “Klebold Surprise,” “Dylan Klebold,” and “Eric Harris” written on the cover, and the names of some students, including N.Z., on the inside (Dylan Klebold and Eric Harris were the two shooters in the 1999 Columbine High School shooting in Colorado). During interviews with N.Z. and other students, administrators felt that the students were not forthcoming and experienced difficulty in obtaining straight and direct answers. When a suspicious text message notification appeared on a phone that had been confiscated from one of the students, administrators found out about a password-protected Kik group called the Klebold Kuck Krew, a hate group with posts that included hate speech toward African Americans, sexually aggressive language, discussions of school

shootings, photos of stabbing weapons, videos of students with firearms, and comments about killing African Americans. Another student's cell phone had a wallpaper photo of Adam Lanza, the man who committed the Sandy Hook shooting.

Following the day-long investigation, the students in the Kik group were removed from school immediately on an emergency basis. After the emergency removal, N.Z. was suspended for 10 days and later expelled for two months. The board of education affirmed the expulsion, and N.Z.'s mother filed an administrative appeal in the court of common pleas, arguing that the expulsion violated N.Z.'s due process rights and First Amendment right to free speech.

The trial court reviewed the entire case record and gave serious consideration to the timing of discovering the binder and the Kik group and their relation to the time of the numerous bomb threats and shooting threats. The trial court found that although the school had not fully complied with statutory notification requirements for the hearings, N.Z. fully participated in the proceedings and was represented by counsel; therefore, he was not deprived of his due process rights. His First Amendment free speech right also was not violated, as his involvement outside of school in the Klebold Kuck Krew group was apparently related to the binder found in the school during the time of the bomb and shooting threats against the school.

The school district had experienced some delays in holding N.Z.'s hearings. The delay for the emergency removal hearing was due to another bomb threat and a holiday, which caused school to be closed an additional day. The trial and appellate courts agreed that the school was still within the statutory time frame of three school days since the removal. The next delay was in the expulsion hearing, which the courts found should have been held three to four days prior to the actual date it was held. This again was not an issue in the courts' eyes, as N.Z. was still serving out his suspension time and would not have been in school regardless of the later hearing date. With these facts, the courts held that N.Z.'s due process rights were not violated.

When considering N.Z.'s free speech rights, the appellate court cited several decisions regarding a school's regulation of *on-campus* speech but noted that regulation of *off-campus* speech warrants further scrutiny. N.Z.'s mother argued that the off-campus speech in the Kik group was not closely tied to school; the group was password protected and not open to the school community. The court connected the Kik group to the school, however, by noting that student participants in the "KKK" group (the Klebold Kuck Krew) wrote in and on the binder left at school and communicated to one another via cell phone text messages in which they texted one another during school, warning not to let school administrators know about the Kik group. The binder was found at school, and the discovery of the binder led to the discovery of the Kik group, both of which supported school shootings and violent acts. The court quoted the *Connecticut Public Interest Law Journal*, which was recently cited in the Ohio Supreme Court decision *State v. Polk*, Slip Opinion No. 2017-Ohio-2735:

Columbine, Virginia Tech University, and now Sandy Hook underscore a fundamental policy change that has taken place in our schools. We now pursue a new fundamental value in our schools: security.

— DeMitchell, *Locked Down & Armed: Security Responses to Violence in Our Schools*, 13 Conn.Pub.Int.L.J. 275, 281 (2014).

While the decision cited by the court involved a Fourth Amendment challenge to a search at school, the court in this case found the balancing of privacy interests against school safety to be compelling. The court did not expand upon its application of the Fourth Amendment case to a First Amendment case and thereby signaled deference to school decisions that are made in the name of student safety.

What This Decision Means to Your District

Schools have an obligation to keep their students safe. In this case, the appellate court determined that well-founded student safety concerns can tip the balance in favor of supporting school discipline of off-campus speech.

However, from past precedents and the facts of this case, it is clear that having some nexus to school was essential for the off-campus speech to be subject to discipline. Any school hoping to discipline off-campus speech should clearly document how the speech connects to campus and any indications that it relates to a safety concern.

Legislation in the Works

House Bills

- HB 58 – Requires instruction in cursive handwriting. This bill passed the House Committee on Higher Education and Workforce Development on June 21, 2017; however, the bill has not yet been scheduled for a House floor vote.
- HB 124 – Allows a school district to submit a tax levy renewal to voters who had no opportunity to vote on the levy in the November 2015 election because the levy was on only one county's ballot among several counties in the district. After the bill passed in both chambers, Gov. Kasich signed it on June 28, and it became effective immediately per the emergency provision. This bill provided a legislative remedy to the problem that Delaware Joint Vocational School District faced after last November's election, when the vast majority of district residents voted to approve a tax levy renewal but the issue failed to appear on other voters' ballots. Ennis Britton reported the story in the [May 2017](#) issue of the *School Law Review* newsletter.
- HB 176 – Eliminates evaluation requirements for administrators and teachers, but not counselors, and leaves these evaluation procedures up to school districts. The bill is currently in the House Education and Career Readiness Committee. However, Sen. Peggy Lehner has drafted proposed legislation with the state board of education—recommended OTES changes. Her bill has not yet been introduced in the Senate, but any legislation in this regard will require serious consideration in light of the two conflicting bills.
- HB 298 – Reduces the number of sick days for public employees from 15 days per year to 10 days. This bill was introduced in June but is not yet assigned to committee.
- HB 318 – Formally defines the scope of a school resource officer's duties to include arrests and detentions, searches and seizures with probable cause, and other police powers. The bill also sets forth duties and expectations specific to the school setting such as fostering relationships with students and staff, assisting with district emergency management plan development, encouraging drug-free schools, and assisting with student behavior management including for children with special needs. This bill was introduced in August but is not yet assigned to committee.
- HB 322 – Expands on existing safety drill requirements and requires each ESC to employ an emergency response planner to assist school districts within the county where the ESC is located. This bill includes an emergency provision, so it would be effective immediately upon the governor's signature instead of 91 days later. This bill was introduced in August but is not yet assigned to committee.

Senate Bills

- SB 175 – Requires that money returned to the state as a result of a finding of recovery from a community school audit be returned to the district from which it was deducted. While this bill is apparently in response to ongoing recoveries from the Electronic Classroom of Tomorrow (ECOT), it would also apply to future recoveries from other community schools. This bill was introduced in August but is not yet assigned to committee.

Firm News: Special Education Seminars

Ennis Britton is excited to announce a unique professional development opportunity in October 2017! Our Special Education Team will host a seminar in four different locations across the state. Each seminar will consist of two general sessions where our Special Education Team will discuss practical tips to provide a functioning knowledge of the Ohio Operating Standards for the Education of Children with Disabilities. Additionally, two smaller breakout sessions will allow special education professionals to choose among hot topics based on their particular interest and need. Breakout session topics include student discipline, career-tech program compliance, due process complaints, and progress monitoring after *Endrew F.*

For this seminar, our Special Education Team has developed materials and practical tips that are designed to help your special education team members confidently and knowledgeably tackle difficult compliance issues.

This full-day seminar will be held at four locations across Ohio:

October 19: **Mahoning Valley** @ Trumbull County ESC

October 20: **Cleveland** @ Cuyahoga County ESC

October 25: **Columbus** @ Indiana Wesleyan University

October 26: **Cincinnati** @ Princeton City School District Administration Center

The cost of the seminar is \$95 per attendee. Each participant will receive a custom Ennis Britton binder with the Operating Standards divided into sections, with each section containing a list of practical tips and insight for the special education professional. These materials will transform the Operating Standards into a functional and indispensable tool for every IEP team meeting. Lunch and complimentary beverage service will be provided at all locations. This seminar is open to all special education directors and staff in Ohio, but space is limited. Participants must be registered to attend. To register, email Hannah or call 614-705-1333.

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.

- **October 1:** (Sunday) Deadline for board to adopt annual appropriation measure (RC 5705.38(B))
- **October 10:** Deadline for voter registration for November election (RC 3503.01, 3503.19(A))
- **October 15:** Deadline for certification of licensed employees to State Board of Education (RC 3317.061)
- **October 26:** Deadline for filing pre-general election campaign finance report for certain candidates, detailing contributions and expenditures from 4:01 p.m. on the last day reflected in the previous report through 4:00 p.m. on October 18, the 20th day before the election (RC 3517.10(A)(1))
- **October 31:** End of first ADM reporting period (RC 3317.03(A))
- **November 1:** Deadline for classroom teachers to develop online classroom lessons (blizzard bags) to make up hours for which it is necessary to close schools (RC 3313.482(A)(3)(a))
- **November 7:** General Election Day (RC 3501.01)

Upcoming Presentations

SAVE THE DATE! 2017–2018 ADMINISTRATOR’S ACADEMY SEMINAR SERIES

September 28, 2017: Low-Stress Solutions to High-Tech Troubles
Live seminar in the Mahoning Valley

January 25, 2018: Take Hold on Public Relations
Live video webinar

April 5, 2018: Special Education Legal Update
Live seminar in Cincinnati

July 12, 2018: Education Law Year in Review
Live video webinar

The September and April Administrator’s Academy presentations will be provided at live seminar locations as well as in a live audio webinar option. The January and July presentations will be offered via a live video webinar professionally produced by the Ohio State Bar Association. As always, an archive will be available for all presentations.

Participants must be registered to attend each event. All four webinars will be archived for those who wish to access the event at a later time. You may register on our [website](#) or contact Hannah via [email](#) or phone at 614-705-1333.

OTHER UPCOMING PRESENTATIONS

September 1: BASA Regional Meeting, Stark County
– John Britton and Hollie Reedy

September 6: BASA Regional Meeting, Montgomery County ESC
– Bronston McCord

September 7: BASA Regional Meeting, Logan Hocking High School
– Hollie Reedy

September 8: BASA Regional Meeting, Wood County ESC
– Jeremy Neff

September 8: Butler County ESC, Curriculum Directors
– Erin Wessendorf-Wortman

September 13: Elyria–Lorain Association of School Psychologists
– Giselle Spencer

September 12: Butler County ESC, Principals and Assistant Principals
– Jeremy Neff

September 14: OASPA Fall Conference
– Bill Deters and Bronston McCord

September 19: Brown County ESC & Southern Ohio ESC at Wilmington
– Pamela Leist and Erin Wessendorf-Wortman

September 22: Ohio School Boards Association

– Bill Deters and Giselle Spencer

September 26: Butler County ESC, Counselors

– Ryan LaFlamme

September 28: Mahoning Valley School Law Seminar

– John Britton, Jeremy Neff, Hollie Reedy, Giselle Spencer, Megan Bair Zidian

October 2: OASPA Boot Camp

– John Britton and Bronston McCord

October 13: Brown County ESC at Georgetown

– Ryan LaFlamme and Jeremy Neff

November 13 and 14: OSBA Capital Conference

– John Britton: Fair Share/Right to Work: What's Next?

– Gary Stedronsky and Erin Wessendorf-Wortman: Board Meetings: The Good, Bad and Ugly

– Pamela Leist and Hollie Reedy: OCSBA School Law Workshop—Investigations: Critical Skills Debriefing

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Want to stay up-to-date about important topics in school law?

Check out Ennis Britton's [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, contact Hannah via [email](#) or phone at 614-705-1333. Archived topics include the following:

- New Truancy and Discipline Laws
- Supreme Court Special Education Decisions
- Employee Licensure
- Transgender and Gender-Nonconforming Students
- Contract Nonrenewal
- Ohio Sunshine Laws
- Managing Workplace Injuries and Leaves of Absence
- Special Education: Challenging Students, Challenging Parents
- Fostering Effective Working Relationships with Boosters
- Requirements for Medicaid Claims
- Effective IEP Teams
- Cyberlaw
- FMLA, ADA, and Other Types of Leave
- Levies and Bonds
- OTES & OPES Trends and 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 comprise attorneys who already have experience in and currently practice in these specialized areas.

Construction/Real Estate

Construction Contracts • Easements •
Land Purchases & Sales • Liens •
Mediations • Litigation

Team Members:

Ryan LaFlamme
Bronston McCord
Gary Stedronsky

Workers' Compensation

Administrative Hearings •
Court Appeals • Collaboration with TPAs •
General Advice

Team Members:

Ryan LaFlamme
Pam Leist
Giselle Spencer
Erin Wessendorf-Wortman

Special Education

Due Process Claims • IEPs • Change of
Placement • FAPE • IDEA • Section 504 •
any other topic related to Special Education

Team Members:

John Britton
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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