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School Law Review



U.S. DOE Releases Dear Colleague Letter Addressing Transgender Student Issues

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U.S. DOE releases Dear Colleague letter addressing transgender student issues 1

Overtime pay threshold increased to include millions more workers 2

Ohio Senate approves bill to suspend property tax increases 3

Ohio's Sunshine Laws apply to email communications 3

Bill modifies autism scholarship program 4

HB 113 legislation update 4

Court of appeals affirms dismissal of bullying case 5

Upcoming deadlines 6

Upcoming presentations 6

Client survey 2016 7

In an effort to create a nondiscriminatory environment for all students, the US Departments of Education and Justice issued a [Dear Colleague letter](#) regarding schools' obligations to Title IX of the Education Amendments of 1972 (Title IX). Title IX prohibits sex discrimination in educational programs and activities at schools that receive federal financial assistance. Sex discrimination includes discrimination based on gender identity or transgender status.

The letter, dated May 13, 2016, was noted as "significant guidance" and stated that as a condition of receiving federal funds, a school would agree to the terms of the letter, such as the following:

- Not exclude, separate, deny benefits to, or otherwise treat differently any student on the basis of sex
- Not treat a transgender student differently from other students of the same gender identity
- Not require a medical diagnosis or treatment from the student
- Provide transgender students equal access to educational programs and activities
- Provide a safe and nondiscriminatory environment for all students
- Allow transgender students access to restrooms and locker rooms consistent with their gender identity
- Not require transgender students to use individual restrooms and locker rooms but may make individual facilities available to all students who seek additional privacy
- May have sex-segregated athletic teams when based upon competitive skill or for contact sports
- Not discipline students or exclude them from participating in activities for appearing or behaving in a manner consistent with their gender identity
- Not disclose students' personally identifiable information

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To accompany this guidance, the agencies also issued [sample policies](#) for supporting transgender students. These policies may be incorporated into existing nondiscrimination policies or used as stand-alone policies of the board of education.

What this means to your school district

School districts should continue to adhere to all state and federal laws and guidelines. Collaboration with staff and families enables schools to serve the needs of all students, including their need for privacy and for a safe and secure environment to support their education. Ennis Britton attorneys are available to provide counsel about this federal guidance and the current state of the law in this area.

Overtime Pay Threshold Increased to Include Millions More Workers

Effective December 1, 2016, “white collar” salaried employees not otherwise exempted from the overtime rules in the Fair Labor Standards Act (FLSA) will be eligible for overtime pay if their annual salary is less than \$47,476. President Obama asked the Department of Labor to revise the exemption threshold of the FLSA from the current level of \$23,660, which has not changed for more than a decade. The new amount more than doubles the current salary threshold.

Broad exemptions from FLSA overtime rules exist for executive, administrative, professional, outside sales, and computer employees. These exemptions are based on specific job duties as well as salary thresholds. In other words, an employee might have the duties of an administrator but not be exempt from overtime rules because her salary does not exceed the income threshold.

When this new rule takes effect, employers will have several options for employees who will no longer be exempt from the FLSA overtime rules:

- Pay time-and-a-half for overtime (granting compensatory time may be an option created through collective bargaining)
- Increase salaries above the threshold via regular pay or bonus pay with certain restrictions
- Limit workers’ hours to 40 per week
- Decrease base hourly pay to offset any increased overtime costs
- Combine any of the above options

What this means to your school district

Common positions of concern in school districts include technology directors, food service supervisors, maintenance supervisors, and transportation supervisors. Even though these positions might previously have qualified for the administrative exemption, with the increased salary threshold many will no longer be exempt after the revised rules go into effect. The FLSA provides a special exemption from the professional employee salary threshold for teachers. Even if a teacher does not meet the new \$47,476 threshold – and many will not – the rules still exempt them from overtime. A similar special rule applies to “academic administrative employees” as long as they are paid at least base teacher pay.

School districts may potentially have professional employees who do not neatly fit into the “teacher” and “academic administrative employee” categories. Ennis Britton attorneys are able to assist districts in identifying such employees and exploring how the new rules affect them.

School districts must track eligible employees' hours and pay overtime as appropriate. Districts should maintain proper payroll records and require that employees submit time records. The burden is on employers to ensure FLSA compliance. Laws limiting salary reductions for school employees must be considered when planning for the new rules. Ennis Britton attorneys are available to help with any questions regarding these changes, such as which employees are affected by this change, how to maintain payroll records, and how job descriptions and the duties test apply.

Ohio Senate Approves Bill to Suspend Property Tax Increases

The Ohio Senate has approved a bill that would suspend property tax increases for commercial and industrial developments until a certificate of occupancy is granted. Any increase in the taxable value of properties that are being newly developed or redeveloped would not be subject to property taxes until the development is completed. Senate Bill (SB) 235 passed 22-11 on May 4.

Advocates of SB 235 say that it will encourage improvement of undeveloped property as developers would not face tax increases until a project is near completion. This measure would increase land development and job growth, and eventually increase property taxes when the development is completed.

However, the bill has faced debate and opposition, with many local governments expressing their concern while the bill was in the Senate Ways and Means Committee. The concern is that the bill would cause an unknown fiscal loss to local governments, although it would have no impact at the state level.

The Ways and Means Committee notes that it responded to the concerns by adding several amendments to the bill. One of those amendments is a ten-year reset, so that the taxable value of the property resets to the actual value at the eleventh year (and every ten years after that) for the tax suspension while the property is still in development.

As school districts are funded in large part by property taxes, SB 235 has implications to school districts. Many developments are years in the making, as noted by the ten-year reset amendment. This means that school districts would potentially lose out on many years of funding during the development of these commercial and industrial properties.

SB 235 has now been introduced in the Ohio House of Representatives for consideration. You are urged to contact your Ohio representative to provide input for the House committee that will be assigned to SB 235. Ennis Britton attorneys are available for counsel regarding how this bill may affect your school district.

Ohio's Sunshine Laws Apply to Email Communications

A recent decision by the Ohio Supreme Court redefines the meaning of an "open meeting" in the Ohio Open Meetings Act, which "prohibits any private prearranged discussion of public business by a majority of the members of a public body regardless of whether the discussion occurs face to face, telephonically,

by video conference, or electronically by e-mail, text, tweet, or other form of communication.” This decision further clarifies how Sunshine Law restrictions apply to email communications.

Independently from his four colleagues, Olentangy school board member Adam White had investigated and found improper expenditures incurred by two athletic directors, which resulted in one director resigning and both directors repaying the district. White’s four colleagues then approved a policy requiring board members to obtain the permission of the superintendent or treasurer before communicating with other district staff. After the policy was approved, an editorial in the *Columbus Dispatch* criticized the board for “putting a leash on board members.” Finally, the Olentangy school board submitted an official reply to the editorial; however, again only four of the five board members had discussed the reply – via email exchange. White then sued, and his case made its way to the Ohio Supreme Court. The court voted 5-2 in *White v. King* that an exchange of emails between a majority of board members violated the Open Meetings Act, as the emails were determined to be a “private prearranged discussion of public business.”

What this decision means for your district

School board members should be aware that email correspondence may be considered a board meeting if a majority of the board members are included in the communications, thus requiring compliance with the Open Meetings laws, which may prove impossible once the email exchange has begun. This decision has implications to not only directly sent emails but also forwarded emails. School districts will want to ensure that they are not discussing business and making decisions without all of the board members in the communications loop and in compliance with the Open Meetings Act.

White v. King, (2016), -- Ohio St.3d --, Slip Opinion No. 2016-Ohio-2770

Bill Modifies Autism Scholarship Program

The autism scholarship bill extends the parameters of who can apply for an autism scholarship and revises Ohio’s law regarding the testing and graduation requirements for students attending chartered nonpublic schools. House Bill (HB) 299 passed both the House and Senate unanimously and was signed by Gov. Kasich on May 31.

Under HB 299, the definition of a “parent” was changed to include a temporary, legal, or permanent custodian of a qualified child, giving them the right to apply for the autism scholarship. This means that when a court has granted custody of a child to someone other than the parents, this custodian may apply for an autism scholarship.

Another revision to the Ohio Revised Code in the bill permits chartered nonpublic schools to use an alternative assessment for scholarship students who are required to take end-of-year tests.

House Bill 113 Legislation Update

The Ohio legislature has recessed for the summer. They may return in September, but the next scheduled session dates are in November after the general election.

HB 113 passed the House and Senate in late May and became a “Christmas tree” bill for amendments that were in bills that were not moving quickly. The bill has no emergency provision, so it will become effective 90 days after Gov. Kasich signs it.

What’s inside HB 113

CPR and AED operation: Beginning with the 2017–2018 school year, CPR and AED (automated external defibrillator) training will be added to the first-aid component in grades 9–12, to be conducted by a certified trainer. These will be required for graduation.

Schools must train staff (every person employed by the school) to use AEDs. This may be incorporated into in-service training no later than July 1, 2018, and every five years thereafter. The training must be conducted by a qualified professional.

Charter schools: Charter school teachers may not terminate their teaching contracts after July 10 or during the school year without consent of the governing authority, or the governing authority may report to ODE for investigation and possible licensure suspension of not more than one year. The teacher may resign at any other time by giving five days’ written notice.

College Credit Plus: The bill allows ODE to make payments out of the auxiliary services reimbursement fund (no new money) for College Credit Plus for chartered nonpublic school students.

Bright New Leaders Program: Schools may spend economically disadvantaged funds on a principal or assistant principal who has completed the Bright New Leaders Program.

GED: GEDs are now called “certificates of high school equivalence.” This has been changed throughout the Revised Code. ODE must approve at least two tests that will qualify for the certificate of high school equivalence. The new certificates will be signed by the superintendent of public instruction and the State Board president. ODE is to adopt rules to implement this provision. People ages 16–18 may apply to take tests if they do not have a high school diploma, are officially withdrawn from school, and submit written parental (or guardian) or court official approval. They still are considered high school dropouts.

Joint Education Oversight Committee (JEOC): Organized as a result of the budget bill last year, this new amendment clarifies the purpose of the committee – which is to research, study, and analyze emerging education policy – and makes small changes to the language creating the JEOC, including making recommendations to the General Assembly and chairs of standing committees of the House or Senate principally responsible for education policy. The bill adds a provision that the committee may ask any political subdivision for “data, statistics, or other information determined to be useful to the committee.” The committee is supposed to meet once per month unless agreed it is not necessary.

Ennis Britton attorneys can provide you with more specificity on provisions of interest to you.

Court of Appeals Affirms Dismissal of Bullying Case

The First Circuit Court of Appeals affirmed the district court’s dismissal of a school bullying case brought against a Massachusetts school district. A 12-year-old student in middle school was physically and verbally assaulted on at least two occasions. Fearing retaliation, he did not report the bullying and missed a significant amount of school (112 days in one year) due to anxiety. His mother filed suit against

the school district under the theory of an affirmative duty to protect, relying on a theory once suggested by the US Supreme Court, that when the state creates a danger to an individual, an affirmative duty to protect might arise. The district court dismissed the case, and the court of appeals affirmed.

The court found that an alleged failure of the school to be effective in stopping bullying by other students is not action by the state to create or increase the danger. The conduct alleged did not, the court held, reach the threshold of a state-created danger. Additionally the court held that the conduct alleged did not fall within the scope of Title IX, which is concerned with actions taken “on the basis of sex,” and not undifferentiated bullying. Since the complaint did not allege any sex- or gender-based animus by any of the students, and none can be inferred from the circumstances outlined in the complaint, the Title IX claim is not actionable.

What this decision means for your school district

Even though this case was dismissed, parents may sue under multiple federal and state statutes when bullying situations become severe. School administration must investigate claims of bullying and address them promptly to avoid these types of claims.

Morgan v. Town of Lexington, -- F.3d --, (C.A. 1, 2016) 2016 WL 2962187

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.

- **June 1** – Deadline to act on and deliver written notice of nonrenewal to administrators, (except superintendent and treasurer) teachers and nonteaching employees.
- **June 30** – School fiscal year ends.
- **July 1** – Deadline for board to adopt appropriation/temporary appropriation measure. Deadline for salary notices for teachers and nonteachers.
- **July 10** – Deadline for teachers to notify district of termination of contract without board consent.

Upcoming Presentations

Administrator's Academy Seminar Series 2015–2106

***July 14 – 2015–2016 Education Law Year in Review**

Webinar or Archive ONLY!

*Participants must be registered to attend the 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 Hannah Reichle at 614-705-1333, or send an email to hreichle@ennisbritton.com.

Other Upcoming Presentations

June 24 – Erin Wessendorf-Wortman, OSBA, Tackling Technology in High School Athletics

Sports Law workshop, OSBA, 8050 High St. #100, Columbus, OH 43235

June 24 – Bronston McCord, SOESC Summer Retreat

Snow Hill Country Club, 11093 State Route 73, New Vienna, OH 45159

June 28 – Bill Deters, OSROA Annual Conference

Crowne Plaza Columbus, 600 Metro Pl. N, Dublin, OH 43017

Client Survey 2016

Ennis Britton would like to receive your feedback about the services we provide to you. On June 2, Ennis Britton will send an email to all of our clients that contains a link to the 2016 Client Survey. The survey should take no more than fifteen minutes to complete. The information we gather from the survey will be invaluable in enabling us to enhance the services we provide to our clients. We thank you in advance for your support and participation!



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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 hreichle@ennisbritton.com or 513-421-2540. Archived topics include:

- Managing Workplace Injuries and 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 and Bonds
- OTEs and 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

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