



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

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ENNIS BRITTON

# School Law Review



## What's Coming Up in the Budget Bill?

### MARCH 2017

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When Gov. Kasich introduced his proposal for the biennium budget, he warned that Ohio is “on the verge of a recession.” His office produced data showing the two key revenue sources – income tax and sales and use tax – below projected amounts.

K–12 education comprises the third largest sector of the total proposed operating budget (after Medicaid and general government), the second largest sector of the general revenue fund (after Medicaid), and the largest sector of state-only funding. The budget bill, HB 49, uses an enrollment-based formula combined with a district’s state share index and other payments to determine school funding.

### Funding Provisions

The biggest funding change in the budget proposal provides for significant adjustments to “guarantees,” which for many years have provided a way to ensure that districts did not lose state basic aid funding due to enrollment declines. Under enrollment-based funding, districts would receive the same amount of base funding in FY2017–2018 as they received this year unless student enrollment has decreased more than 5 percent; if so, schools with a 6 percent decrease in enrollment would expect to receive a 1 percent decrease in funding. A 10 percent decrease in student enrollment would yield a 5 percent decrease in funding (5 percent is the cap on maximum decrease). On the other end of the spectrum from districts losing enrollment, those with significantly growing enrollment would see lower increased funding in the governor’s budget. The gain cap, currently at 7.5 percent, is proposed at 5 percent.

Transportation funding in FY17 was the greater of 50 percent or the district’s state share index; it is proposed to be reduced to the greater of 37.5 percent or the state share index for FY18, and further reduced in FY19 to the greater of 25 percent or the state share index.

### Other Provisions

*STEAM schools:* The budget proposal authorizes the creation of STEAM (science, technology, engineering, arts, and mathematics) schools, equivalents, and programs of excellence. The bill would also permit STEM and STEAM schools and equivalents to offer all-day kindergarten.

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**Business advisors:** The requirement that each school district and ESC appoint a business advisory council would be repealed. Instead, each school district superintendent would be required to appoint to the board of education three nonvoting members who represent local businesses. The bill does not include a similar requirement for ESCs. These advisory members would serve to advise the board on employment skills and relevant curriculum, the economy and the job market, and working relationships with local businesses.

**Career-tech educator licenses:** The proposed bill would replace the current professional career-technical teaching license with two new educator licenses, Career-Technical Educator Levels I and II. New applicants for a grade 7–12 teacher of career tech and workforce development would need these new licenses effective July 1, 2018.

**Teacher preparation programs:** New rules are proposed for teacher preparation programs to include instruction in opioid and other substance abuse prevention.

## Externships

One of several recommendations made last year by the Executive Workforce Board, teachers would be required to obtain work experience in a local business or chamber of commerce as a condition to renew their licenses. The time would count toward their continuing education units.

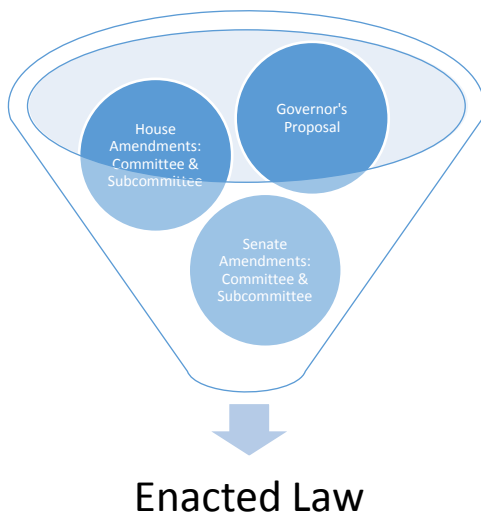
The explanation given for this change is that it will better connect schools with local business communities to allow teachers to gain a sense of the skills required for local jobs. District professional development committees would be responsible to assist teachers in identifying externships.

This proposal has been met with criticism across the state from school and industry leaders, who question how the externship will support instruction for many public educators. For instance, it is unclear how a kindergarten teacher would benefit by gaining knowledge of in-demand job skills.

It is important to understand that the current version of the budget bill is likely to change before the final bill is passed. Ennis Britton will keep districts updated on the budget bill as the proposal moves through Ohio's 132nd General Assembly.

## How to Make Your Voice Heard in the Budget Bill Process

Every two years a new General Assembly convenes in Ohio. The General Assembly will consider hundreds of bill and even pass many of them, but none are more important to state government than the appropriations bills that make up the budget bill. The state budget cycle aligns with the state fiscal year of July 1 through June 30, so the legislative process for passing a budget typically runs from sometime in January through June 30 every odd-numbered year. In addition to allocating funding for Ohio's K–12 schools, the budget bill also typically contains numerous substantive changes in the law (e.g., teacher evaluation changes, licensure requirements). The following is a high-level overview of the budget process, with a goal of informing school officials *how*, *when*, and *to whom* to provide input during this process. This input is critical to ensure that legislators have the practical information they need to determine how their proposals would affect school districts. This information is invaluable to the decision-making processes taking place at the state level during the budget process.



### Governor

The governor begins by submitting the planned executive budget for the main operating appropriations bill to the

General Assembly within four weeks after the new General Assembly is organized (or by March 15 if a new governor is in office). Each expense must come from a specific funding source, and each funding source may fund only certain expenses. Perhaps the most important requirement is that the budget be balanced: expenses may not exceed revenues. The governor may order spending reductions or even declare a fiscal emergency if revenues fail to meet projections. The governor typically uses the executive budget as a way to signal policy priorities and to propose new ideas. The governor's budget is presented to the House without changes, so this is not an effective time to lobby the governor for changes.

## **House**

The newly drafted budget bill (the current bill is HB 49) lands in Ohio's House of Representatives, where it is referred to the Finance Committee and subcommittees. These committees hold hearings on the bill, when input may be provided to state representatives through written and live testimony. It is quite common for extensive changes to be made based on recommendations of the committees and subcommittees. Because of this, the House committee and subcommittee hearing phase is an especially important time for school officials and professional organizations to provide input. When extensive changes are made in committees, a substitute bill is drafted. After the bill has been considered and amended in the committee, it goes back to the House for a House floor vote.

## **Senate**

Normally, after the House passes the bill, it is introduced in the Senate. However, because of time constraints on the budget bill, the Senate Finance Committee will usually begin its hearings on the bill while it is still in the House. The Senate Finance Committee and subcommittees hold hearings and receive input just as the House committees do. In some budget cycles, the subcommittees do not hold their own hearings. Rather, all hearings are held by the full Finance Committee. After the substitute bill is amended in the committee, it goes to the Senate for a floor vote. As with the House committee and subcommittee phases, this is an important time for school officials and professional organizations to provide input.

## **Conference Committee**

The House must then concur in, or agree to, the Senate amendments. But this sometimes doesn't happen. In this event, a conference committee is formed of members of both the House and the Senate. The conference committee must reach agreement on a committee report (also referred to as a compromise bill) to be voted on by the full House and Senate by the June 30 deadline. Each chamber must approve an identical budget bill. No amendments may be made by the separate chambers when they vote on the committee report, and time is very limited between the conclusion of the conference committee and the votes on the final bill. Thus, any last-minute lobbying must occur before the conclusion of the conference committee. This is sometimes when fast-moving changes are inserted or deleted from the bill.

## **Back to the Governor**

When the legislature finally agrees to the terms of the bill, it quickly moves back to the governor to be signed. The governor may sign the bill or veto certain provisions, called a line-item veto. The reasons for the veto would be provided, and the General Assembly may, by three-fifths vote, override the veto. The veto power does not allow the governor to add to the budget bill – only to subtract. This allows for some final limited input from school officials and professional organizations.

## **How, and to Whom, to Provide Input**

During committee hearings, the Finance Committees of both the House and the Senate receive input from state agencies, lobbyists, special interest groups, and other legislators and stakeholders. Testimony may be provided for these hearings in either written or live verbal form. Although written input will be heard, live and in person is often much more effective. Additionally, any legislator may provide input in the form of amendments. The state education associations are active during this process, so stay tuned. Ennis Britton attorneys also carefully monitor developments. We post frequently on our Ennis Britton Twitter page to give clients up-to-the-minute updates.

During this important time, we can assist your district or group in preparing and delivering testimony at the Statehouse.

Follow these links to stay up-to-date on the [House Finance Committee](#) schedule and the [Senate Finance Committee](#) [schedule](#). Follow Ennis Britton and our attorneys on Twitter to get the most current information. Our firm will review key budget bill changes that impact schools during the July Administrator's Academy as well. [Register](#) today to attend!

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## Supreme Court Issues Opinion in the Case of Wonder the Goldendoodle

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In the November 2016 issue of *School Law Review* we reported about *Fry v. Napoleon Community Schools*, a case in which a student with cerebral palsy was denied the right to bring her service dog, a goldendoodle named Wonder, to school with her. Before filing a due process complaint under the Individuals with Disabilities Education Act (IDEA), the parents filed a lawsuit in federal district court in Michigan, claiming a violation of the Americans with Disabilities Act (ADA) and the Rehabilitation Act of 1973. The district court dismissed the case, ruling instead that the family was required to seek administrative remedies under IDEA before filing a claim in federal court. The Frys then appealed, and the Sixth Circuit Court of Appeals affirmed the district court's opinion. The case was argued before the U.S. Supreme Court on October 31. The Court considered specifically whether a plaintiff must first seek administrative remedies under IDEA even when other federal laws may apply.

On February 22, the Supreme Court unanimously reversed the lower courts' decision, holding that the Frys were not required to follow IDEA's administrative procedures first. The Court reasoned that the only relief available under IDEA is a free appropriate public education (FAPE). Therefore, only plaintiffs who contend that their children were denied FAPE must first seek administrative remedies under IDEA. The Supreme Court concluded that a federal court must look at the essence of a plaintiff's complaint and the history of the entire dispute rather than the actual words used in the complaint. To do this, the Court's opinion proposed two hypothetical questions:

1. Could the plaintiff have brought essentially the same claim if the alleged conduct had occurred at a public facility that was *not* a school – say, a public theater or library?
2. Could an *adult* at the school – say, an employee or visitor – have pressed essentially the same grievance?

If so, a complaint that does not specifically claim a denial of FAPE is likely not seeking FAPE as a remedy. That said, the Court also noted that a plaintiff who has begun administrative proceedings under IDEA may very well be expressing a denial of FAPE, even if the complaint doesn't say so. Because the Court was unclear on this latter issue, it sent the case back to the lower court for further hearing.

### What This Decision Means to Your District

Administrative proceedings under IDEA were designed to provide parents and schools with a quicker and less expensive method for resolving disputes. With the Court's partial rollback of the requirement to first use IDEA dispute resolution, districts may experience an increase in litigation in federal courts under federal antidiscrimination laws, as plaintiffs see that they do not necessarily have to proceed under IDEA before filing a complaint in court. In light of this, it is more important than ever to proactively avoid formal litigation and to not ignore early warning signs of potential disputes. In addition to assisting with due process complaints and litigation, members of Ennis Britton's Special Education Team are also able to provide early case review and legal guidance to explore resolution options earlier in the process and potentially avoid costly litigation.

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## Transgender Litigation Updates

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Our September 2016 *School Law Review* newsletter included updates on two current court cases that are expected to have significant impact on schools across the nation regarding transgender students. More recent events have brought about changes in these cases once again.

### **U.S. Department of Education Guidance**

In May 2016, the U.S. Departments of Education and Justice under the Obama administration issued guidance regarding the use of bathrooms, locker rooms, and other facilities for transgender students. Several states, including Ohio, then filed a lawsuit against the Education and Justice Departments, alleging that the administration violated federal law under Title VII and Title IX. In August 2016, a federal judge issued a preliminary injunction order barring the May guidance letter from enforcement.

On February 10, 2017, the Trump administration withdrew a motion that the Obama administration had filed. This motion was a stay request, asking that the court stop the injunction and continue with enforcement of the guidance. Now that the stay request has been withdrawn, no U.S. state is required to follow the guidance letter.

On February 22, the Departments of Education and Justice under the Trump administration withdrew and rescinded the May 2016 guidance, indicating that “there must be due regard for the primary role of the States and local school districts in establishing educational policy.” This action appears to indicate that the Trump administration will not take any administrative actions against schools in relation to transgender use of restrooms (e.g., OCR investigations). However, this change does not alter the fact that courts are ultimately considering the scope of existing federal law (i.e., whether “sex” as defined by Title IX includes gender identity). Even with the withdrawn motion and guidance, districts should be aware that Title IX permits parents/students to bring a private right of action against a school district for allegations of sex discrimination. Courts may conclude that transgender protections exist under the law regardless of any particular administration’s position.

### **Gloucester County School Board v. G.G.**

The November 2016 issue of *School Law Review* included an update on current cases in the U.S. Supreme Court. One such case was brought by transgender student G.G., who was denied his request that a Virginia school allow him to use the restroom of his choice. On February 23, the day after President Trump withdrew President Obama’s May 2016 transgender guidance, the Court requested that the parties to this case explain how they think the case should proceed given that the guidance letter is no longer in effect. The Court asked for these letters by March 1 and has set a date for oral arguments in this case on March 28.

It will be interesting to see how the withdrawal of the guidance letter affects the Supreme Court case. If your district has questions on how the withdrawal of guidance affects your district or your handling of transgender student matters, please contact your Ennis Britton attorney.

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## EEOC Wins Pregnancy Discrimination Lawsuit

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A Florida company has agreed to pay \$55,000 and change its policy and training to settle a discrimination lawsuit after terminating a woman for being pregnant. The Equal Employment Opportunity Commission (EEOC) filed the lawsuit under allegations that Rooms to Go, a furniture chain, had violated federal law by firing the woman.

Rooms to Go hired the woman on June 1, 2015, and assigned her to work as a shop apprentice at a training facility in North Carolina. As part of her job, she would be using various chemicals to repair furniture. Two days later, the woman informed her trainer that she was pregnant. Later that day, she was asked to meet with the

regional manager to confirm that she was pregnant. The regional manager showed her some chemicals she would be working with that were labeled as a risk to a woman or her unborn child. After they discussed the product warning labels, he informed her that she could no longer work there because she was pregnant.

Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act, prohibits employers from terminating workers because of pregnancy. The EEOC continues to increase actions against employers for discriminating against both pregnant and nursing women.

As part of the settlement, Rooms to Go has agreed to change its policy to prohibit discrimination against pregnant women; to conduct annual training for employees, supervisors, and managers regarding pregnancy discrimination; to post a notice to employees about the lawsuit and employee rights; and to continue to report to the EEOC.

### **What This Decision Means to Your District**

Pregnant women should certainly know if they will be exposed to potentially dangerous chemicals or to any other risk. It is up to them to decide the level of risk they are willing or unwilling to accept. If a woman decides not to accept that risk, reasonable accommodations must be made, just as would be required for a temporary disability. In addition to potentially arising in the context of employees who may use or be exposed to toxic chemicals, concerns about the safety of pregnant women in schools often involve teachers and paraprofessionals in high-needs special education units. In light of EEOC's increasing actions for pregnant and nursing women, school districts would be wise to speak with legal counsel before changing a pregnant or nursing woman's job.

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## **Denial of Digital Media Course Does Not Equal Denial of FAPE**

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An Ohio student with an IEP wanted to take a digital media arts course as part of his extended school year (ESY) transition services from secondary education to postsecondary life. After the district denied the request, the parents filed a formal complaint. The Ohio Department of Education (ODE) held that a district must provide only the services that are necessary, not every type of ESY service that will help a student.

The student was receiving ESY services in communication, math, and applied behavioral services. The parents wanted him to also have speech and digital media arts services. The student had taken digital media arts during the regular school year but had not passed a technology certification that was optional for the class. However, his parents argued that the class was relevant to his postsecondary transition goal of having a career in technology. He ended up receiving an A in the class, despite not receiving the certification.

In determining whether ESY services are necessary to a student's FAPE, an IEP team must consider whether the services are needed –

1. to prevent significant regression of skills or knowledge retained, and
2. to avoid something more than adequately recoupable regression.

Even though the course was relevant to the student's transition goal of pursuing a career in technology, ODE held that the course was not required by his IEP nor was it necessary to provide him FAPE.

### **How This Affects Your District**

As a general rule, specific general education classes are not required for a child to receive FAPE. Of course, appropriate access to general education is necessary, but it would be highly unusual for an IEP team to identify a specific elective class as essential to FAPE. Likewise, receiving a particular vocational credential or certification is unlikely to be a necessary component of FAPE. Appropriately written IEPs should include transition goals and services but should generally not require that a child get a particular grade or attain a particular credential as a

part of FAPE. Finally, due to the nature of transition goals and services, it seems unlikely that the need for ESY can generally be established. As always, consider each case on its own merits, and consult with legal counsel if any questions arise.

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## Legislative Update

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Ohio's new General Assembly is busy drafting new legislation, some of which was pending in the previous legislative session but didn't pass, and some of which is entirely new. Below is an overview of some of the new bills that are relevant to school districts.

### **HB 53: Union Dues**

The previous General Assembly wrangled with a bill to outlaw fair share fees. It was introduced toward the end of the session and therefore did not have much time for consideration. The new bill before the current General Assembly is HB 53, which was introduced in February. The bill proposes to prohibit public employers and employee organizations from negotiating requirements for public employees to join or pay dues to an employee organization (i.e., "fair share fees"). The bill is sponsored by Rep. John Becker of Union Township. It is currently in the House Finance Committee. To provide input on this bill, Rep. Becker may be contacted at 614-466-8134 or [Rep65@ohiohouse.gov](mailto:Rep65@ohiohouse.gov).

### **HB 58: Cursive Handwriting**

This bill would require instruction in cursive handwriting as part of the student curriculum. The bill is in the House Higher Education and Workforce Development Committee.

### **HB 86: Minimum Wage**

Recently introduced in the House, this bill proposes increasing the state's minimum wage to \$10 per hour beginning January 1, 2019.

### **SB 34: Academic Year**

Currently in the Senate Education Committee, this bill would require public and chartered nonpublic schools to open for instruction after Labor Day of each year.

### **SB 38: Minimum Wage**

The Senate also has a bill to raise the minimum wage, although the Senate's version comes with a few more provisions, including raising the salary threshold for the overtime exemption and to define an "employee." This bill more closely resembles a statewide version of the Fair Labor Standards Act overtime regulations that were proposed to begin last December but have since been delayed by a federal court's injunction.

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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, contact an Ennis Britton attorney.

- **March 1:** Deadline for secondary schools to provide information about College Credit Plus to all students enrolled in grades 6–11 (RC 3365.04(A))
- **March 6:** Public comment on the ESSA state plan draft overview closes
- **March 31:** End of second ADM reporting period (RC 3317.03(A))
- **April 3:** Deadline for voter registration for May election (RC 3503.01, 3501.19(A))

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## Firm News

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Ennis Britton is pleased to announce that we are hosting a reception at the 2017 OASBO Annual Workshop! Please see the details below. A [site map](#) is available online with directions to the Hyatt Regency and a hotel map showing the Nationwide Rooms. We hope you can join us!



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Scholars in Education Law

**You are cordially invited to attend  
Ennis Britton's reception at the 2017  
OASBO Annual Workshop and Trade Show!**

**Wednesday, April 26, 2017  
4:30 p.m. to 6:30 p.m.  
Hyatt Regency Columbus  
Nationwide Rooms I and II**

**Please R.S.V.P. to Barbara A. Billow  
[bbillow@ennisbritton.com](mailto:bbillow@ennisbritton.com)**

**All conference attendees  
are welcome to attend.**

*Ennis Britton is a talented team of dedicated attorneys, all of whom  
have focused their practice of law on meeting the legal needs of  
Ohio's public schools. With our vast experience, depth of talent, and  
creativity, we are transforming the way legal services are delivered to  
schools in Ohio.*

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## Upcoming Presentations

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### 2016–2017 ADMINISTRATOR'S ACADEMY SEMINAR SERIES

#### Tackling Issues in Student Discipline – Archive Available

September 29, 2016

#### School Employee Leave and Benefits Update – Archive Available

January 26, 2017

#### Special Education Legal Update

April 20, 2017

Live seminars in Cincinnati and Cleveland

#### 2016–2017 Education Law Year in Review

July 13, 2017

Live video webinar



Ennis Britton has listened to the valuable feedback from our clients! This year, we will offer the Administrator's Academy seminars in a different format from previous years. The September and April presentations will be provided at live seminar locations in both Cincinnati and Cleveland as well as in a live audio webinar option. The other two presentations will be offered via a live video webinar professionally produced by the Ohio State Bar Association. As always, we will offer an archive 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 can register on our [website](#) or contact Hannah via [email](#) or phone at 614-705-1333.

### **OTHER UPCOMING PRESENTATIONS**

#### **March 3: Ohio School Boards Association Special Education Law Workshop**

– Jeremy Neff and Melissa Marsh, “Transition Planning: What’s the Next Step?”

#### **March 3 & 4: Ashland Leadership Academy Seminar**

– John Britton, Giselle Spencer, and Megan Bair Zidian

#### **March 16: Buckeye Association of School Administrators – School Facilities and Safety Conference**

– Hollie Reedy and Erin Wessendorf-Wortman

#### **March 17: Ohio School Boards Association Cyberlaw Seminar**

– John Britton, “Vetting Educational Apps and Online Content”

#### **March 17: Hamilton County Principals Association**

– Bill Deters

#### **March 29: Trumbull County ESC Resident Educators**

– Giselle Spencer

#### **March 31: Ashland Treasurers Leadership Academy Seminars**

– Giselle Spencer

#### **April 22: Board Leadership Institute**

– John Britton, “Employee Discipline Issues”

#### **April 25–28: Ohio Association of School Business Officials Annual Workshop**

April 26 – Bill Deters, Bronston McCord, and Ronda Johnson,

“Treasurer–Attorney Team Up: Navigating Negotiations”

April 27 – John Britton, “Is Attendance Optional? Addressing Employee Absenteeism”

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

**Check out Ennis Britton’s [Education Law Blog](#).**

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

- 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 & 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

#### Team Members:

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