



## Supreme Court’s Special Education Decision

### APRIL 2017

Supreme Court’s special education decision: *Endrew F. v. Douglas County School District*..... 1

New state law expands use and possession of weapons on school grounds..... 2

New laws governing district property ..... 3

Foster children transportation agreements required ..... 4

Limits on credit hours for College Credit Plus students ..... 5

Firm news ..... 6

Upcoming deadlines ..... 6

Upcoming presentations..... 7

### ***Endrew F. v. Douglas County School District***

On March 22 the U.S. Supreme Court published an opinion that will have a significant impact on special education in the United States. In the case *Endrew F. v. Douglas County School District*, the Supreme Court considered the question of what level of educational benefit public schools must provide to students with disabilities in order to satisfy the requirement of a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA).

The Supreme Court last considered this topic in the 1982 case *Board of Education v. Rowley*, in which the Court determined that an individualized education program (IEP) must be “reasonably calculated to enable the child to receive educational benefits.” Since that time, federal courts across the country have issued differing opinions on the level of benefits that students must receive, with the majority of circuits requiring “merely more than *de minimis*” or “some benefit” (including the Tenth Circuit, where *Endrew v. Douglas* originated). Only three circuits (one of which is the Sixth Circuit, which includes Ohio) have held that a higher standard is required – that of a “meaningful benefit.”

The Court’s March 22 opinion expands upon the standard held in *Rowley*:

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*To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.*

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The ruling is similar to the advice from the U.S. Department of Education, which suggested in a court brief that school districts offer a program “aimed at significant educational progress in light of the child’s circumstances.” While the Supreme Court adopted “appropriate” instead of “significant” as the standard, its unanimous decision confirms that a standard requiring nothing more than a minimal educational benefit is too low.

The Court's holding does not overrule the *Rowley* decision. Instead, in clearly rejecting other, higher standards and declining the low standard adopted by the circuit court, the High Court underscored *Rowley's* emphasis on individualized benefits based on each child's potential progress. Endrew's family sought a standard of "substantially equal to the opportunities afforded children without disabilities," such as attaining self-sufficiency and contributing to society in equal ways. However, the Court rejected that idea as "entirely unworkable," noting that it would be "plainly at odds" with *Rowley*. The 1982 *Rowley* case also considered but rejected similar language, such as "reaching the maximum potential" of each student. Higher standards such as these would significantly increase costs for the more than six million students with disabilities served in school districts across the nation.

Although "progress appropriate in light of the child's circumstances" is worded differently from the Sixth Circuit's standard of a "meaningful benefit," in practice it should operate very similarly. As our circuit has already held the highest standard throughout the country, school districts in Ohio that have long been subject to this higher standard will likely not see a significant change in IEPs and services. The Supreme Court's decision may have a greater effect on special education programs in circuits whose standard has previously been lower, such as the Tenth Circuit's standard of merely more than the minimum.

Even with the Supreme Court's decision, this is not the end of the *Endrew* case. Now the case goes back to the Tenth Circuit Court of Appeals to issue a ruling consistent with the Supreme Court's decision requiring the higher standard, instead of the lower standard that the circuit had used.

### **What This Means for Your District**

While the case does not significantly alter the Sixth Circuit standard, districts should expect parents and advocates to reference the case in the future to support requests for changes in IEP services. Nonetheless, school districts should review IEPs to ensure that each is reasonably calculated to enable the student to make appropriate progress in light of the student's circumstances. IEPs should change from year to year as the child changes, learns, and grows. An IEP that has the same goals year after year is a signal that either the child is not making appropriate progress or the IEP needs to be more specific for that particular goal. IEPs should be specifically tailored to the child's needs and geared for progress that is appropriate to the child. Goals should be measurable annually, reflecting appropriate achievements for the child given his or her unique situation.

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## **New State Law Expands Use and Possession of Weapons on School Grounds**

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Senate Bill 199, which was passed during the lame duck session and signed by the governor in December, significantly expands the rights of certain individuals to possess weapons on public school grounds.

State law generally prohibits an individual from conveying or possessing a deadly weapon or dangerous ordnance in a school safety zone (R.C. 2923.122). R.C. 2901.01 defines a school safety zone to include a school, school building, school premises, school activity, and school bus. Violators may be charged with misdemeanor or felony criminal offenses.

There are a few exceptions to this prohibition, including one that grants a school district board of education the authority to issue written permission for an individual to possess a weapon on school grounds. Additional, narrowly tailored exceptions apply for police officers, security personnel, school employees, and students under certain circumstances. The new law further expands these exceptions in three key areas.

First, the bill specifically authorizes an individual to possess a concealed handgun in a school safety zone as long as the individual either remains in a motor vehicle with the gun or leaves the gun behind in the locked vehicle. For this exception to apply, the individual must have an active concealed-carry permit or must be an active-duty member of the armed forces who is carrying a valid military identification card and documentation of successful completion of firearms training (the training must meet or exceed requirements for concealed permit holder training).

Next, the new law expands the right of law enforcement officers to carry a deadly weapon or dangerous ordnance in a school safety zone at any time regardless of whether the officer is on active duty. The prior version of the law limited such rights to law enforcement officers who were on active duty only.

Finally, the new law now permits the possession and use of an object indistinguishable from a firearm during a school safety training.

The law became effective March 21, 2017. School districts should review board policies that regulate use and possession of weapons on school grounds and should contact legal counsel with questions about how the law will impact district operations.

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## **New Laws Governing District Property**

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### **General Assembly Once Again Changes Rules on Disposal of Real Property**

In 2015 Ohio's General Assembly enacted R.C. 3313.413. This statute added another step to the process for disposing of real property worth \$10,000 or more. The statute required school districts to first offer the property to "high-performing" community schools, as designated by the Ohio Department of Education. These schools may be located anywhere in the state of Ohio. Then, assuming no such high-performing school took up the offer, the district was required to offer the property to any start-up community school as well as any college-preparatory boarding school located within the district's territory.

The designated list of high-performing community schools initially published by ODE contained 22 schools, so any district with an interest in selling a piece of real estate it owned was required to issue 22 offer letters, one to each these schools. Just as with the offer to community schools within a district's territory, the offer to the high-performing schools could be for no more than the appraised value (the appraisal not being more than a year old) and the offer had to remain open for 60 days.

These relatively new requirements have now been modified by House Bill 438, which was signed in January and becomes effective on April 6. Under the new law, districts are back to the previous system of only having to offer properties to community schools and college-preparatory boarding schools *within their territory* – including high-performing community schools.

Along with the change in territory is a change in prioritization for districts that receive an offer from more than one high-performing or other community school. If a district receives notice from more than one high-performing community school, it must hold an auction at which only those interested high-performing community schools may bid. If no such high-performing community school expresses interest, the district may move on to the non-high-performing community schools and college-prep boarding schools. If two or more of these schools express interest, the district must hold an auction at which only the interested schools would participate.

If no community school or boarding school expresses interest, the district must hold a public auction for the property with at least 30 days' prior notice in a newspaper of general circulation in the district. If no bids are accepted through the auction, the district may then sell the property at private sale on its own terms.

ODE will continue to maintain and publish the list of high-performing community schools.

### **Competitive Bidding Threshold Increased**

The threshold for competitive bidding with construction projects was increased in Senate Bill 3, which became effective March 16. Under the new law, construction or demolition projects in excess of \$50,000 (the previous threshold was \$25,000) must be advertised for bids. All other provisions of R.C. 3313.46 remain the same.

### **Note about Personal Property**

District-owned personal property valued at more than \$10,000 is required to be sold at public auction after 30 days' notice. This statute has *not* changed (R.C. 3313.41). If a district adopts a resolution that school district property worth less than \$2,500 (fair market value) is obsolete or unneeded, it may donate that property to eligible nonprofit entities. The board must adopt a procedure and must publish its intent in a newspaper. Districts should consult legal counsel for the specific requirements.

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## **Foster Children Transportation Agreements Required**

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The Every Student Succeeds Act (ESSA) requires increased collaboration between school districts and custodial agencies concerning the educational needs of children in foster care. By December 10, 2016, school districts were required to enter into an agreement with the local child custody agency concerning how transportation of children in foster care will be managed. These transportation procedures must address how the district and agency will collaborate to work out the transportation issues within the required time frames, how additional costs will be paid, how disputes will be resolved, and other issues. Districts should be notified within one day of a change in foster care placement by the custodial agency, whether the child is enrolling in a new school or remaining in the original school. Districts also are required to designate a point of contact by December 10, 2016, and enter it into OEDS. This person's role is to facilitate coordination with the custodial agency and to assist with management of the processes of enrollment, transfer of records, and transportation.

Your district may have been presented with a model agreement with the local custodial agency. However, no specific form of agreement is required, and the district and custodial agency may customize any areas specific to them based on local issues. Some states have a state-level procedure for dispute resolution; Ohio does not. Therefore, it is important to include a dispute resolution procedure in the agreement.

Because foster children are a highly mobile population, the law seeks to ensure that the need for transportation to the school of origin (where the child attended school before being placed in foster care) or the school district where the foster home is located is handled without delay – requiring that transportation be worked out between the agency and the district within five school days. The district must collaborate with the custodial agency on the best-interest determination of whether the child should remain in the school of origin or attend a different school. The child must remain in the school of origin while this best-interest determination is made.

Because transportation to and from the school of origin may result in additional costs, the district and child custodial agency must collaborate to determine how those costs will be paid and what transportation plan is best for the student. Districts are permitted to consider no-cost options or those with minimal additional costs, including existing bus stops, public transportation, foster parent transportation, magnet school bus stops, or alternative transportation.

Custodial agencies have Title IV-E reimbursement available for some of those costs, which may be used to help pay for transportation. ODE has produced sample transportation procedures for districts to review and customize, as well as a model best-interest determination form. Title I funds may be available to districts to assist with additional transportation costs.

Also note that children awaiting foster care placement were removed from the definition of homeless children and youth in the McKinney-Vento Homeless Assistance Act. ESSA has similar requirements for foster children, however, such as a best-interest determination and the ability to remain in the school of origin, even if that is not where the foster child is placed, for the time the student remains in foster care.

ODE has [online resources](#) available on this topic on their website. The U.S. Department of Education also has resources and guidance available.

If your district has not yet entered into an agreement, contact your child custodial agency to discuss this requirement of ESSA. Your district may wish to contact legal counsel concerning the substance of that agreement.

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## **Limits on Credit Hours for College Credit Plus Students**

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College Credit Plus students may take college classes during any semester offered – fall, spring, and beginning with summer 2016, also in the summer. However, the program does not provide for an unlimited number of credit hours tuition-free to the student. The College Credit Plus program will cover only 30 college credits per year and a total of 120 credits for four years. For tuition and credit purposes, the year is considered to begin not in the fall semester but in the summer semester.

College Credit Plus students who take more than 30 college credits per year are responsible to self-pay for the full cost of classes over 30 credit hours, including the full cost of the course that put the student over the 30-hour limit. Additionally, these classes will be charged at the college’s regular tuition rate.

To assist in keeping students informed of their credit hours, the college must notify the school district of the number of credits the student is registered for at least 14 days before the college term begins. Districts should be aware that students may be taking classes at more than one college and therefore may receive multiple notices for a single student.

School districts are responsible for tracking and notifying students of the following:

- Keeping track of each student’s college credit hours, each year and every year
- Keeping students informed of their number of college credits
- Notifying students of any courses that will put them over the 30-credit maximum per year or the 120-credit maximum for four years
- Notifying students that they will be self-pay if they exceed these limits

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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!



**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.*

**[www.ennisbritton.com](http://www.ennisbritton.com)**



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## Upcoming Deadlines

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As your school district prepares for the next couple of months, please keep in mind the following upcoming deadlines. For questions about these requirements, please contact an Ennis Britton attorney.

- **April 3:** Deadline for voter registration for May election (RC 3503.01, 3501.19(A))
- **May 10:** Deadline to submit certification for August income tax levy to Ohio Department of Taxation (RC 5748.02(A))
- **May 2:** Special election day, primary election day (RC 3501.01)
- **May 5:** Deadline to submit August emergency or current operating expenses levy to county auditor for August election (RC 5705.194, 5705.195, 5705.213)
- **May 10:** Deadline for county auditor to certify school district bond levy terms for August election (RC 133.18(C)); Deadline for the following to board of elections for August election:

- Submit resolution of necessity, resolution to proceed, and auditor’s certification for bond levy (RC 113.18(D))
- Submit continuing replacement, permanent improvement, or operating levy (RC 5705.192, 5705.21, 5705.25)
- Certify resolution for school district income tax levy (RC 5748.02(C))
- Submit emergency levy (RC 5705.195)
- Submit phased-in levy or current operating expenses levy (RC 5705.251(A))
- **May 15:** Deadline for certain board members and administrators to file financial disclosure forms with the Ohio Ethics Commission (RC 102.02)
- **June 1:** Deadline for notice of nonrenewal of contracts for administrators other than superintendents and treasurers – teachers, classified staff, other administrators – (RC 3319.02); Deadline for written notice of intent not to re-employ teachers and nonteaching employees (RC 3319.11(D), 4141.29(I)(1)(f))
- **June 30:** End of 2016–2017 school year (RC 3313.62); End of third ADM reporting period (RC 3317.03(A))

## Upcoming Presentations

### 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

### **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”

### **May 8–9: Ohio Association of EMIS Professionals Annual Conference**

May 8 – Hollie Reedy, “Custody, Attendance, and the Law”

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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:

John Britton  
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