



FEBRUARY 2018

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Right-to-Work: A Question of *When, Not If*

Arguments for the U.S. Supreme Court case *Janus v. AFSCME* will be heard February 26, 2018; however, some Ohio legislators are anxious to make their next move. Two Ohio Representatives aim to put right-to-work in the Ohio constitution.

On December 21, 2017, Reps. John Becker and Craig Riedel proposed six joint resolutions regarding right-to-work and other labor laws. If passed in each legislative chamber by a three-fifths vote, Ohio voters will cast the deciding vote. The resolutions would appear on the November 2020 ballot as amendments to the Ohio constitution.

Critics say that the proposals will accomplish only three things:

- Take away rights at work
- Drive wages down
- Strip workers of their political voice

Currently, Ohio law allows collective bargaining agreements to require a fair share fee. This fee may not exceed the dues that union members pay and may be used only for contract negotiations.

The six proposed House Joint Resolutions are as follows:

- Public sector right-to-work (HJR 7) – prohibits any laws, rules, or agreements from requiring public sector employees to join a union or pay union dues, and prohibits employee organizations from representing nonmember employees in employment-related matters
- Private sector right-to-work (HJR 8) – prohibits any laws, rules, or agreements from requiring private sector employees to join a union or pay union dues, and makes fair share fees opt-in rather than required
- Prevailing wage (HJR 9) – repeals Ohio’s prevailing wage law
- Project labor agreements (HJR 10) – prohibits state and local governments from requiring project bidders or contractors to enter into project labor agreements
- Union recertification (HJR 11) – requires annual recertification where workers vote to renew public collective bargaining units
- Dues withholding (HJR 12) – prohibits state and local government employers from withholding union dues or fees from employee wages, and prohibits unions from spending dues on political activities without employee consent

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In 2011, Ohio voters rejected SB 5, an earlier right-to-work bill, by almost a two-thirds vote. A group that formed in 2011 to oppose SB 5, We Are Ohio, has called the six recent resolutions “the Dirty Half Dozen.”

So far, 28 states have passed right-to-work laws.

What This Means to Your District

Should Ohio’s public workers become “right-to-work,” public school district employees will no longer be required to pay a fair share fee, which opponents argue is a stance against collective bargaining. The General Assembly is likely to engage in serious debate over these resolutions. Whatever the outcome, the Supreme Court will hand down the decision in *Janus v. AFSCME* in June, at the latest, before the Court adjourns for the summer. Perhaps that decision will be enough to keep both sides happy and curtail legislative action for the foreseeable future.

What Is a Joint Resolution?

A resolution is a formal expression of the General Assembly’s opinions and wishes. If passed, resolutions do not go to the governor for signature. Joint resolutions are used for constitutional purposes – whether pertaining to the U.S. Constitution or the Ohio constitution. Joint resolutions require the approval of both houses and are then filed with the Secretary of State.

House Bill 343: Amendments to Pending Property Valuation Bill

Our [November 2017](#) issue of *School Law Review* includes an article on HB 343, which seeks to curtail property valuation complaints by anyone except the owner of the property. This bill imposes a new requirement that local governments such as school boards must formally approve a resolution that provides advance written notice to property owners before filing a complaint or counter-complaint with the board of revision to adjust property values. This has the effect of unnecessarily politicizing the process of selecting which properties to challenge, as property owners will be able to attend the board meeting where the resolution will be considered and to question – or to lobby – the board of education about its potential complaint.

This bill has since been amended in the House Ways and Means Committee. The amended bill contains two main differences from the original bill but still serves to limit school district rights while maintaining all of the rights currently held by property owners.

First, in the amended bill, the resolution must include the basis for the complaint *relative to each parcel identified in the resolution* in addition to identifying the parcels and the owner names. As in the original bill, each resolution must identify only one parcel or a group of parcels with the same owner.

Second, the original bill required the board or legislative authority to vote on each resolution individually. The amended bill allows that one or more of these resolutions may be adopted by a single vote, provided that no other type of resolution addressing a different matter is adopted in the same vote.

Ennis Britton attorneys worked with the Ohio Association of School Business Officials (OASBO), which recently provided testimony in opposition to this bill. In the most recent testimony, provided on January 16, Barbara Shaner noted that the recent amendment that scaled back the number of resolutions required by a board of education is an improvement but still is not enough. She supplied the Ways and Means Committee with a list of “best practices”

(below), which would achieve the goal of the legislation – to eliminate perceived abuses in the current system – without having a chilling effect on school districts throughout the state.

Boards of education (and other local government taxing entities) that intend to file claims and counterclaims to request valuation increases (to defend the auditor’s values) must pass a resolution setting the parameters for the district’s participation in the BOR process. The superintendent and/or treasurer/CFO must then follow the board’s policy when administering the challenges and counter challenges the district files with the BOR.

Contracts with any agent (attorney) working on behalf of a school district or other taxing entity must include only a fee-for-service payment arrangement. There would be no contingency payments based on the results of valuation challenges. **Note: It is our understanding that it is customary for attorneys representing property owners to operate on a contingency basis (performance/results). We have no objection to this practice by the property owner.

Contracts with any agent must stipulate that no claims or counterclaims may be submitted to the BOR without prior approval by the school district administration (treasurer/CFO or superintendent, as determined by the district). The administration could be required to provide the list of properties that have been determined to warrant a challenge or counter challenge to the members of the board of education.

Ennis Britton will continue to keep clients apprised of the status of this bill. The impact of the current bill will increase the likelihood that commercial property will escape fair taxation, which increases the tax burden of everyone else. Ennis Britton encourages districts to express their opposition to this bill. As the bill has been reported by the House Ways and Means Committee, it may be voted on the House floor soon. If it passes, it moves on to the Senate, where districts will have another opportunity to provide opposing testimony.

Special Education Spotlight: IDEA, Child Find, and Evaluations

During Ennis Britton’s October 2017 Special Education Symposium, participants around the state were given the opportunity to submit questions to the panel of presenters. Because of time constraints and the large response, our Special Education Team was not able to address all of these questions during the presentations. In the coming months we will address some of the remaining questions through blog posts and in the “Special Education Spotlight” in the *School Law Review* newsletter.

One participant asked how to respond to a parent who asks for her child to be evaluated under the Individuals with Disabilities Education Act (IDEA) when the district does not suspect a disability but the parent has a private evaluation that concludes the student has a disability.

*This scenario brings at least two parts of IDEA into play.
The first is child find, and the second is considering the private evaluation.*

This scenario brings at least two parts of IDEA into play. The first is the issue of child find. A district has an obligation to “find,” or identify, all children within its territory that are potentially eligible under IDEA or Section 504. This is an affirmative obligation, meaning that each district must take active steps to identify such children – it is not enough to wait for parents to ask for an evaluation. That said, a parent certainly has a right to ask for an evaluation. In such a case, the district should respond in writing to the request using a Prior Written Notice form (PR01), either agreeing to proceed with an evaluation or refusing to do so.

A district should be cautious about refusing to evaluate a child when, as is the case in this scenario, an outside evaluator has identified the child as having a disability. Even when a school has not observed anything to suggest that a child has a disability, it is possible that he or she does. For example, a child might have ADHD but not exhibit characteristics at school due to effective medication. Such a child may still be eligible under Section 504 because the law requires districts to factor out mitigating measures such as medication in making eligibility determinations.

Second, assuming the district in this scenario proposes to evaluate the child, the parent consents, and the evaluation is completed, the IEP team may need to consider the private evaluation shared by the parent as part of the evaluation process. This is required whenever a parent acquires an independent educational evaluation (IEE) that meets a district’s reasonable criteria (credentials of the evaluator, validity of the evaluations, etc.). The good news is that in this scenario, absent an order from a court or hearing officer, the district is not required to pay for the IEE because the parent did not disagree with a district evaluation at the time the IEE was acquired.

Even when an IEE meets a district’s reasonable criteria, the law does not require absolute deference by the IEP team to the opinions of an outside expert. In fact, the law gives the IEP team the ultimate discretion as to how much weight to give to the IEE. The specific regulatory language requires the IEP team to “consider” the IEE. This means that the team reviews the information, holds it up against other data the team has about the child, and engages in meaningful discussion of the information. It does not mean that the team adopts all findings or directions of an outside evaluator because he or she is an “expert” or holds some sort of advanced degree. Remember, while outside opinions can be helpful, in most circumstances the outside evaluator will have spent at most a few hours with the child in a clinical setting. The IEP team will typically have weeks, if not months or years, of experiences with the child in an educational setting. School personnel should neither be intimidated nor diminish their own expertise when presented with an IEE.

In the end, if a parent has sought an outside evaluation before asking the school to conduct an evaluation, and the school does not suspect a disability, this may be a sign of further disputes to follow. An early conversation with a member of Ennis Britton’s Special Education Team may be beneficial as you respond to scenarios such as this.

ESSA’s Parent and Family Engagement Policy Requirements

When the Every Student Succeeds Act (ESSA) was adopted in December 2015, an entire section that was previously titled “Parental Involvement” was changed to “Parent and Family Engagement.” This section requires that school districts develop policies, conduct outreach, and implement programs, activities, and procedures to engage not only parents but also family members in the educational process.

District Policy

To comply with ESSA’s requirement, school districts must develop a written parent and family engagement policy. For districts that receive Title I funds, this policy is to be developed jointly with, agreed on with, and distributed to parents and family members of students in the district. The policy must describe how the district will –

- Involve parents and family members in developing the district’s plan and support and improvement plans
- Provide support for schools to carry out effective parent and family involvement activities to improve student academic achievement and school performance
- Coordinate and integrate parent and family engagement strategies with others under relevant federal, state, and local laws and programs
- Evaluate the content and effectiveness of the policy annually, with the involvement of parents and family members, so as to identify –
 - Barriers to participation
 - Needs of parents and family members to assist with their children’s’ learning
 - Strategies to support successful school–family interactions
- Use the findings of the annual evaluation to design strategies for more effective parental involvement and revise the policies if necessary
- Involve parents in school activities, which may include a parent advisory board

ESSA provides a framework for funding as well, including a requirement that parents and family members who receive services under the district’s policy “shall be involved in the decisions regarding how funds ... are allotted for parental involvement activities.” ESSA includes additional requirements for the allocation and use of funds. Use of funds must be consistent with the district’s policy and for at least one of the following activities:

- To support schools and nonprofit organizations in providing professional development for school personnel regarding parent and family engagement strategies
- To support programs that reach parents and family members at home, in the community, and at school
- To disseminate information on best practices of parent and family engagement
- To collaborate with community-based or other organizations or employers who have a record of success in improving and increasing parent and family engagement
- To engage in other activities and strategies that are appropriate and consistent with the district’s parent and family engagement policy

School Policy

In addition to a district policy, each school must have its own written parent and family engagement policy. As with the district policy, if the school receives Title I funds, the policy must be developed jointly with and distributed to parents and family members of students. This policy must describe the school’s plan to carry out the following requirements:

- Policy involvement – This includes holding an annual meeting to inform parents of this policy and their participation and rights in the policy; offering a flexible number of meetings, such as in the morning or evening, with optional transportation and child care; involving parents in the planning, review, and improvement of the policy; providing parents with timely information about programs, information on the school curriculum – including a description and explanation, forms of assessment used, and achievement levels of state academic standards – and opportunities for regular parent meetings if requested to facilitate participation; and finally, submitting parent comments on the plan if the plan is found unsatisfactory to the parents.
- Shared responsibilities for high student academic achievement – This school–parent compact will outline how parents, staff, and students share the responsibility for improved academic achievement and the means by which the school and parents will develop a partnership to achieve state standards. This compact must describe the school’s responsibility to provide the curriculum and instruction to meet the state’s standards and the ways each parent is responsible to support their children’s learning, and emphasize the importance of parent–teacher communication in such ways as parent–teacher conferences,

reports to parents, access to staff and to volunteer opportunities, and two-way meaningful communication between family members and school staff in a language that family members can understand.

- Building capacity for involvement – Requirements are to assist parents in understanding academic standards and progress monitoring, provide materials and training to parents in such forms as literacy and technology training to increase parental involvement, educate teachers and other school employees on the value of parental involvement and how to reach out to parents as partners, and integrate programs and activities with others that reach parents regarding their participation. Other optional capacity-building measures include involving parents in the development of training for educators, providing literacy training, and paying for necessary expenses such as transportation and child care so as to enable parents to participate in school-related meetings and training, among other things.
- Accessibility – To the extent practicable, schools must provide inform parents and family members in a format and language that they can understand

Legislative Update

House Bill 98

HB 98 deals with the presentation of career or recruitment information to high school students. The current statute requires a board of education to uniformly apply restrictions to groups who wish to present career and recruitment information to students. As amended with HB 98, school districts would not be able to prohibit the presentation of career or recruitment information and would be required to provide at least two opportunities per year for this purpose. Districts may develop an application process and standards of conduct to grant entities access to school property for this purpose. This bill passed in the House in November and had its first hearing in the Senate Education Committee on January 17.

House Bill 312

HB 312 requires school districts to adopt a board policy on the use of district credit cards, along with control measures to prevent fraudulent activity, within three months of the effective date of the bill for any cards the district currently has. If the district does not have a credit card account, it must first adopt a written policy before obtaining a credit card. Additionally, the bill eliminates debit cards as a means by which a district official may withdraw petty cash for district purchases. The bill passed in the House on December 5 and had its first hearing in the Senate Government Oversight and Reform Committee in January.

Firm News:

Ennis Britton Attorneys Volunteer in Mock Trials

Adam Smith is a man convicted of murder. Twenty years ago, when he was just a high school student, he was convicted of murdering his girlfriend and has since been imprisoned. Today he is in court again, seeking a new trial. He claims he had inadequate representation which ultimately led to his conviction – a violation of his Sixth Amendment rights.

The case of Adam Smith is a fictional case used in the 35th Annual Ohio Mock Trial Competition. It is based on the popular 2014 podcast “Serial,” in which real-life Baltimore resident Adnan Syed was convicted of murdering his ex-girlfriend. He appealed, and a journalist who covered the case helped to bring more information to light.

In the mock trial competition, high school student teams present both the defense and prosecution sides of the case. Students perform both the attorney and witness roles. Local attorneys volunteer as judges, competition coordinators, and coaches for the mock trial teams.

*I am endlessly impressed with the work ethic, poise, and professionalism of the team members.
Each of them stepped up to the challenge and succeeded this year!*

Again this year, Ennis Britton attorneys volunteered for this statewide competition on January 26. Jeremy Neff served as a judge and Ryan LaFlamme and Pamela Leist as legal coaches. Organized by the Ohio Center for Law-Related Education (OCLRE), the annual mock trials help students to develop an understanding of our democratic system and learn how the U.S. Constitution applies in their lives. OCLRE assists schools with establishing mock trial teams and provides statewide resources to engage students in this important civic activity.

The competitions are held at the district, regional, and state levels. The state champion moves on to compete in the National High School Mock Trial Competition, which will be held in May in Reno, Nevada. Approximately 30,000 students participate in local high school mock trials throughout the United States, Guam, South Korea, and the Northern Mariana Islands.

Ryan and Pam coach two teams from a local high school. This year, both of their teams won at the district level competition! They will compete with other area districts advancing to the Regional Competition, which will be held on February 16. This is the third year that at least one of their teams has qualified for the Regional Competition. Several team members received accolades for best attorney and for best witness. We are very proud of the students and all of their hard work!

“I am endlessly impressed with the work ethic, poise, and professionalism of the team members. Each of them stepped up to the challenge and succeeded this year! To have both teams advance this year was a great finish for our graduating seniors,” said Ryan.



Ryan LaFlamme



Pamela Leist



Jeremy Neff

Firm News: February Webinars

Ennis Britton is pleased to offer clients access to two webinars in February. Join Ennis Britton attorneys for a one-hour webinar during lunchtime, from noon to 1:00 p.m., on the following topics:

February 2 – Three Hot Topics in Special Education

Pam Leist, Giselle Spencer, and Erin Wessendorf-Wortman

New special education forms
Testing accommodations and exemptions
Andrew F. questions and answers

February 13 – School Employee Nonrenewal: Breaking Up Is Hard to Do

Pam Leist and Gary Stedronsky

Administrative contracts
Teaching contracts
Classified staff contracts
Coaching contracts
OTES update

You must be registered to attend either webinar. An archive will be available for those who cannot attend the live webinar. To register, call Hannah at our Columbus Office ([614.705.1333](tel:614.705.1333)) or send her an email at hreichle@ennisbritton.com. Please specify whether you plan to attend the live event and/or would like to receive a link to the archived presentation.

We hope you can join us!

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.

- **February 2:** Deadline to submit May emergency, current operating expenses or conversion levy to county auditor for May election (RC 5705.194, 5705.195, 5705.213, 5705.219)
- **February 7:** Deadline for county auditor to certify school district bond levy terms for May election (RC 133.18); Deadline for school district to file resolution of necessity, resolution to proceed and auditor's certification for bond levy with board of elections for May election (RC 133.18); Deadline to certify resolution for school district income tax levy, conversion levy or renewal conversion levy for May election to board of elections (RC 5748.02, 5705.219); Deadline to submit continuing replacement, permanent improvement or operating levy for May election to board of elections (RC 5705.192, 5705.21, 5705.25); Deadline to submit emergency levy for May election to board of elections (RC 5705.195); Deadline to submit phased-in levy or current operating expenses levy for May election to board of elections (RC 5705.251)
- **February 28:** Deadline for secondary schools to provide information about College Credit Plus to all students enrolled in grades 6–11 (RC 3365.04)

- **March 1:** Deadline to take action and deliver written notice of nonrenewal of superintendent's contract and of treasurer's contract (RC 3319.01, 3313.22)
- **March 31:** End of second ADM reporting period (RC 3317.03)

Upcoming Presentations

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

September 28, 2017: Low-Stress Solutions to High-Tech Troubles – Archive available

January 25, 2018: Take Hold on Public Relations – Archive available

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

Ashland Leadership Academy Seminars: ALAS 2018
February 2 & 3, March 2 & 3

– John Britton, Giselle Spencer, Megan Bair Zidian

February 6: Brown County ESC & Southern Ohio ESC Special Education Update
– Jeremy Neff and Bill Deters

February 8: Trumbull County All Schools Leadership Academy
– John Britton

February 9: Southwest Ohio Personnel Administrators
– Erin Wessendorf-Wortman

February 9: Buckeye Association of School Administrators
– Collective Bargaining 2018 and Beyond

February 20: OSC/GCSSA Cyber Liability
– John Britton

March 2: Ohio School Boards Association Special Education Law Workshop

– Jeremy Neff

March 9: Buckeye Association of School Administrators at Summit County ESC

– Collective Bargaining 2018 and Beyond

March 16: Ohio School Boards Association: Cyberlaw

– Ryan LaFlamme and Hollie Reedy

March 21: Trumbull County ESC Resident Educators

– Giselle Spencer

March 23: Ashland Treasurers Leadership Academy Seminars (ATLAS)

– Giselle Spencer

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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
Giselle Spencer
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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Ryan LaFlamme
Bronston McCord
Jeremy Neff
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Giselle Spencer
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