



School Law Review



OCTOBER 2018

- FBI warns of student privacy risk ... 1
- Crowdfunding and school board policy 2
- Special Education Spotlight: Related services for extracurricular activities 4
- Legislation in the works 5
- Section 504 Legal Compliance Seminar 7
- Firm News: Capital Conference Reception 8
- Upcoming deadlines 8
- Upcoming presentations..... 8

FBI Warns of Student Privacy Risk

On September 13, the Federal Bureau of Investigation (FBI) issued a [public service alert](#) to raise awareness of cybersecurity concerns for K–12 students. While education technologies have helped to engage community involvement and improve the educational environment, security risks lurk beneath the surface. Large amounts of student data are collected and stored online, and this data is at risk of compromise or exploitation if not stored securely enough to escape hackers.

Education technologies include software programs and online apps used in classrooms, mobile apps to enhance the learning experience, administrative platforms that assist educators and administrators with class and school management, and others. At-risk data collected by ed-tech can include students’ personally identifiable information, behavioral and disciplinary information, academic records, biometric data, geolocation, and more. The FBI warned that malicious use of this data can lead to social engineering – using deception to manipulate people into disclosing confidential or personal information – identity theft, bullying, tracking, and other means of targeting children.

School Security Hacks in 2017

The FBI’s alert included reports of two serious security breaches in 2017. In the first, multiple school districts’ servers across the country were hacked, giving the hackers access to student contact information, education plans, medical records, and counselor reports. This information was then used to contact, extort, and threaten students with physical violence and release of their information. Parents received text messages, and students’ private information was publicized and posted on social media, giving child predators access to new targets.

Additionally, two large ed-tech companies were breached in 2017, resulting in public access to the data of millions of students. One of the companies had stored their data on public-facing servers, and breached data from the other company was posted for sale on the dark web.

FBI Recommendations

The FBI recommends that parents be aware of student privacy requirements, discuss ed-tech with their local school districts, conduct research for support and additional resources, research security breaches to inform of vulnerabilities, consider monitoring credit or identity theft, and conduct regular internet searches on their children.

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Issues for Schools

Always at the bottom line, additional security costs additional money. Schools that face budget decisions and scarce resources for internet security may prioritize value-added expenditures over those with no visible benefit, such as cyber security.

School District Legal Requirements

School districts should know and consider legal requirements when adopting ed-tech resources and considering the importance of cyber security.

The Family Education Rights and Privacy Act (20 U.S.C. § 1232(g); 34 CFR Part 99) as well as state law (R.C. § 3319.321) and board policy place stringent restrictions on how “student records” must be maintained and protected. Board records retention schedules require districts to maintain certain types of records for years, if not permanently. Staff should be trained to understand what constitutes an education record as well as state and federal laws and board policy that limit release and maintenance of student records.

The Children’s Online Privacy Protection Act (15 U.S.C. § 6501–6506; 16 CFR Part 312) imposes requirements on operators of websites, internet services, and apps directed to children under age 13 and on operators that have actual knowledge that they are collecting personal information online from a child under age 13. The purpose is to give parents control over their children’s information that is collected online by seeking parental consent. Schools that contract with third-party websites or apps solely for the benefit of students can consent to data collection and the use or disclosure of students’ personal information by acting as an agent on the parents’ behalf. Such consent is restricted to educational purposes only. Additionally, at the school’s request, the operator must provide a description of the types of personal information collected, the opportunity to review the child’s personal information and/or have the information deleted, and the opportunity to prevent further use or online collection of a student’s personal information.

Tasked with enforcing COPPA, the Federal Trade Commission recommends that schools or districts – not teachers – decide whether a provider’s information practices are appropriate. Districts should have a centralized process to assess these practices. The FTC cautions that schools should know how student information is collected, used, and disclosed. Districts should also ensure that these operators appropriately protect the security, confidentiality, and integrity of student information and should understand the operator’s data retention and deletion policies.

The Protection of Pupil Rights Amendment (20 U.S.C. § 1232h; 34 CFR Part 98) requires that districts adopt policies and provide direct notification to parents at least annually regarding the specific or approximate dates of activities involving the collection, disclosure, or use of students’ personal information for the purpose of marketing or selling that information (or otherwise providing the information to others for that purpose), as well as the parents’ right to opt out of these measures.

Crowdfunding and School Board Policy

“Crowdfunding” is the practice of funding a project by raising relatively small amounts of money from a large number of people, usually via the internet. In schools, crowdfunding helps teachers and schools to obtain funding and supplies.

Online Crowdfunding and How It Works

Crowdfunding websites vary in how they raise funds. Some well-known crowdfunding websites include GoFundMe, Adopt-A-Classroom, Kickstarter, Incited, and Donors Choose. Some of these websites will raise money and transfer it directly to the teacher or the school district. Other websites will raise money toward the desired products, which will be shipped to the school when the items are funded. This way, the teacher or school

never receives any cash at all. Websites further differ in the amount of support and advice they will give teachers or school districts in securing these donations.

Ohio Auditor of State

In July 2018, the Ohio state auditor released a report titled *Crowdfunding Classrooms*, which was the outcome of a widespread survey of Ohio's schools. One-fifth of Ohio districts responded to the survey. Among the districts that reported, the auditor found the following statistics related to crowdfunding policies and use of funds:

- 55.4 percent prohibit crowdfunding
- 59.0 percent have no crowdfunding policy
- 26.2 percent don't know if teachers are using crowdfunding
- 56.2 percent of those who permit crowdfunding don't know the amount raised in the last 12 months

Auditor's Recommended Best Practices

The auditor suggests in its report that schools work with legal counsel and adopt a policy that incorporates as many of the following safeguards as possible:

- Require that all campaigns be reviewed and approved by administration
- Direct administrator to ensure proposal does not violate any federal/state law
- Designate permissible crowdfunding websites
- Require donations to be used for the stated purpose
- Prohibit donations without board approval
- Establish all donations as property of the school
- Enter donations promptly into district inventory
- Deposit into district bank accounts

Furthermore, the auditor recommended that every policy include the following financial controls:

- Require that all crowdfunding campaigns be listed under the school's name
- Specify that donations are the property of the school district and paid directly to the district and not to the teacher
- Require documentation of donations in financial ledgers for monetary donations or inventory for items

General Policy Guidelines

Districts should have a policy that dictates who may raise funds and which crowdfunding platforms may be used. A policy to ban crowdfunding minimizes risk to school districts, but it would also force districts to forego many of the potential benefits. Such a ban on crowdfunding may also be difficult for school districts to enforce. A ban on crowdfunding would require policing all of the crowdfunding platforms to ensure that the policy is being followed.

A policy that allows crowdfunding creates risk, but this risk can be minimized with the right safeguards in place so that schools can reap the benefits of crowdfunding. This policy should ensure that the school is not violating any state or federal laws, the money is properly accounted for, and the donations and materials are appropriate for the district.

A district's policy should include a prohibition against any funds going directly to teachers. All funds raised should be in the name of the board of education and should be treated like any other funds of the board – accounted for and deposited in accordance with policy and state law. Donated funds should be used only for the purpose for which they were donated. Additionally, no student or teacher should receive a benefit from crowdfunding that is proportional to the level of participation by the teacher or student in raising the funds.

A centralized approval process for crowdfunding campaigns is recommended. Requiring an administrative review and approval of all proposed crowdfunding campaigns will provide safeguards against accidental violations of student privacy laws and will ensure the content and goals of the crowdfunding proposal are appropriate. For

example, crowdfunding campaign materials that include a photo of a classroom with the students could violate privacy laws. Descriptions or narratives that reveal personally identifiable information also violate confidentiality. Additionally, administrators will want to ensure that the crowdfunding proposal does not imply that the district is falling short of its state and federal obligations, which may prompt inquiry by a regulating body.

Considerations

Some existing sources of law are implicated by crowdfunding performed by public school districts in Ohio. The Ohio Revised Code mandates that all money be deposited with the treasurer within a specified time (R.C. 9.38). Specifically for public schools, R.C. 3313.51 establishes that the treasurer of the board of education is the treasurer of **all** school funds. This is important because the treasurer could be held liable through a finding for recovery for any unaccounted funds. For this reason, the treasurer's office should be part of the crowdfunding process.

The Ohio attorney general has issued an opinion (OAG Opinion 85-085) that donations must be used for the purposes stated in a crowdfunding campaign. Ohio ethics law (R.C. 2921.43) includes some important considerations. Employees are not permitted to accept additional compensation for performing their duties. (OEC 2008-01). Teachers should not divert any amount of the funds raised for personal gain, as an administrative fee or for any other reason. Remember that any funds and items donated are school district property.

If you would like assistance with policy or if you have questions about crowdfunding, please do not hesitate to contact an attorney at Ennis Britton.

Special Education Spotlight: Related Services for Extracurricular Activities

An Oklahoma school district recently entered into a voluntary resolution agreement to resolve a complaint that it violated Section 504 and Title II of the Americans with Disabilities Act by not allowing a student with a disability to attend a school-sponsored field trip.

The principal of the school district allegedly informed the parent that the student's participation in the field trip could not be addressed in the student's individualized education plan (IEP) because the field trip was considered an extracurricular activity. The principal also allegedly stated that the district refused to assign a staff member to attend the trip with the student and further that the student may not be accompanied by any other adult family member except the parent. The parent was unable to attend the field trip, and therefore the student with the disability was also unable to attend.

Section 504 and Title II prohibit discrimination based on disability by public entities and recipients of federal funding. Section 504 prohibits a public school district from denying a person with a disability the opportunity to participate in or benefit from any aid, benefit, or service on the basis of disability. The Office for Civil Rights (OCR) has concluded that Section 504 requirements extend to extracurricular activities and field trips. Generally, districts must provide a student with a disability the related aids, services, and accommodations necessary for a student to participate in extracurricular activities and field trips to the maximum extent appropriate in light of the student's needs. OCR has further concluded that a district may deny a student participation in a field trip only if his participation provides an unreasonable health risk to himself or others and only after the team has explored whether any reasonable accommodations may be provided to ensure the student's safety during participation in the activity.

Before this complaint could be decided by OCR, the parties reached a resolution agreement. In addition to providing compensatory education for the student, the district agreed to make policy adjustments to address nonacademic and extracurricular services to allow for "students with disabilities to participate with students without

disabilities in nonacademic and extracurricular services and activities to the maximum extent appropriate to the needs of the student with a disability.” Ongoing reporting requirements were also imposed as part of the agreement.

What This Means for Your School District

District policies must ensure that students with disabilities have the opportunity to participate in nonacademic and extracurricular activities to the maximum extent appropriate for the needs of the student with a disability. IEP and Section 504 teams should consider whether a student with a disability requires any accommodations or supports during extracurricular activities or school-sponsored field trips and provide an opportunity for parent input as part of the process. Parent participation in any extracurricular activity or field trip should be voluntary; parents should not be required to attend an event to provide required supervision or medical support. Districts should also take steps to ensure that staff are aware of a student’s needs before the activity or trip takes place. District teams should consult with legal counsel before denying a student with a disability the opportunity to participate in any aid, benefit, or service, including those outside of the regular classroom or school day.

– *Jenks (OK) Pub. Schs.*, 72 IDELR 135 (Office for Civil Rights, Midwestern Division, Kansas City (OK)).

Legislation in the Works: A Look Ahead at the Lame Duck

Just after the Civil War, a New York state judge once wrote a saying that seems as true today in Ohio as it was then in New York: “No man’s life, liberty or property are safe while the Legislature is in session.” With the lame duck session looming upon us, we look at a few bills that have been indicated as priority bills for the 132nd General Assembly before it concludes on December 31.

Graduation Requirements

In January of this year, the State Board of Education recommended that the legislature continue the graduation requirements that were imposed for the class of 2018. An amendment was proposed in SB 216 for this purpose, but this amendment was not accepted. On May 3, HB 630 was introduced in the legislature to extend the graduation requirements for the class of 2018 for two more years. These requirements added two pathways – an academic option and a career tech option – for graduating seniors, in addition to the three pathways available for the class of 2019 and following.

On September 18, the State Board of Education met and discussed changes the board could make to the requirements without legislative action. While the state board hopes that its actions will serve as a catalyst for the legislature to take action, Senate Education Committee Chair Peggy Lehner said that legislators would be “dead set” against reducing requirements.

As the stalemate continues, the current graduation requirements for the class of 2019 allow for three graduation pathways – state tests, college-readiness tests, and industry work credential – which are explained in detail in [this](#) Ennis Britton blog post. HB 630 is currently in the House Education and Career Readiness Committee.

Pupil Services Personnel Licensure

Sen. Peggy Lehner has noted that House Bill 491 is a priority bill during the lame duck session. The bill would enact a new section of the Revised Code to allow for licensure of the following workers as substitutes in their profession:

- Speech-language pathologists
- Audiologists
- Registered nurses (must hold a bachelor’s degree)
- Physical therapists
- Physical therapist assistants

- Occupational therapists
- Occupational therapist assistants
- Social workers

Candidates for these positions must hold a valid occupational license and submit to a background check. The license requires the recommendation and request of the superintendent and would be valid for one to five years per the State Board of Education. The bill passed in the House on June 7 and has been introduced in the Senate but not yet assigned to a committee.

Bullying, Harassment, and Intimidation Policy

HB 360 would enact the Ohio Anti-Bullying and Hazing Act, which requires the state board to provide districts with evidence-based best practices of policies to prohibit harassment, intimidation, and bullying. Best practices and a model policy must be reviewed at least once every four years.

The language of the bill adds to the definition of *hazing*, “any act to continue or reinstate membership in or affiliation with any student or other organization,” with the following criminal classifications:

- Recklessly permitting or participating in hazing = second-degree misdemeanor
- Knowingly permitting or participating in hazing when it causes serious physical harm = fourth-degree felony

The district’s policy must apply to grades K–12 and must be posted on the district’s website, if the district has a website. A board of education may develop a community service plan that anti-bullying policy offenders must complete. The plan must include specific goals and timelines for the student to perform community service during suspension or expulsion and include hazing as well as acts toward an administrator, employee, faculty member, teacher, consultant, or volunteer.

For each prohibited incident, the district must maintain a record verifying that the parent or guardian of any student involved in a prohibited incident was notified of the incident. The policy must include a disciplinary procedure for any student guilty of retaliation against someone who reports an incident of bullying, harassment, or intimidation. The board must review the policy every three years and update it as needed.

A new section of the Revised Code, R.C. 3319.669, requires discipline for offenses within the same school year as follows:

1. Up to 10 days’ in-school suspension for the first offense, or out-of-school suspension or expulsion if more appropriate
2. Up to 30 days’ ISS for second offense, or out-of-school suspension or expulsion if more appropriate
3. Up to 182 days’ suspension or expulsion for third offense

Furthermore, suspended or expelled students must be permitted to complete all missed schoolwork and the district may offer tutoring and academic support for this purpose. As a condition of returning to school, students must complete all missed schoolwork but may return if they have made sufficient progress. Districts must permit the student to take all required state assessments in the regular school setting. Suspended or expelled students are prohibited from participating in extracurricular activities. Victims of bullying and harassment must be permitted to complete all missed schoolwork, and districts may offer tutoring and academic support for this purpose as well.

Districts may impose additional disciplinary measures, such as community service, and may provide counseling or intervention services to the offender, upon parental consent, or help the offender find community resources. Districts may also offer counseling services to the victim.

Upon notice of a potential incident of harassment, intimidation, or bullying, the principal or other administrator shall conduct an investigation. An administrator may petition the board of education for an alternative form of discipline in lieu of suspension or expulsion if certain conditions are fulfilled. The superintendent must give the parent notice

of intent to suspend or expel an offending student and provide an opportunity for the parent to challenge the decision or explain the student's actions. The parent or student may appeal to the school board, which may affirm the order or reinstate the student. Note that the suspension and expulsion policy in R.C. 3319.669 would not apply to K–3 students or to students with developmental disabilities.

HB 360 passed in the Ohio House on April 11 and is currently in the Senate Education Committee.

Ennis Britton Presents ... Section 504 Legal Compliance Seminar

*A unique professional development opportunity
for special education professionals and other school personnel*

Join Ennis Britton's team of Special Education attorneys for this full-day seminar to learn about legal topics specific to Section 504 of the Rehabilitation Act of 1973. The seminar will begin at 9:00 a.m. and conclude at 4:00 p.m.

Dates and Locations

- October 15: **Cincinnati** – SOLD OUT! Waiting list available – Butler County ESC
- October 16: **Columbus** – Cornerstone Meeting & Event Center (Note location change)
- October 17: **Northwest Ohio/Toledo** – Northwest Ohio ESC
- October 18: **Cleveland** – Cuyahoga County ESC
- October 19: **Mahoning Valley** – Joyce Brooks Center, Mahoning County CTC

Agenda

Two general sessions

- Basics of Section 504
- Compliance Officer Training

Two breakout sessions

- Accommodations OR Trauma & Mental Health
- Service Animals OR Extracurricular Activities

One Q&A session

Cost: \$150 – Materials, lunch, and beverage service are included in the cost. Clients will be billed on their monthly invoice. Nonclients will be invoiced separately.

Participants will receive materials that may be added to the Ennis Britton special education binder which was distributed during the October 2017 special education legal compliance seminar. Participants may purchase additional Ennis Britton special education binders for \$50. The binders will include materials from both seminars.

This seminar is open to all special education directors and school staff in Ohio. Participants must be registered to attend. Please note that space is limited; therefore, districts with more than five participants may need to have additional registrants placed on a waiting list.

To Register: Call Nancy at 513.674.3451 or email nbrooks@ennisbritton.com. Please provide your name, title, email address, school district, the seminar location you plan to attend, and whether you need a binder.

Firm News: Capital Conference Reception

You are cordially invited to attend Ennis Britton's reception at the OSBA Capital Conference to celebrate another successful year!

Monday, November 12, 2018
4:00 p.m. to 6:00 p.m.
Hyatt Regency Columbus
Franklin Rooms A–C

Please R.S.V.P. to Barbara A. Billow
bbillow@ennisbritton.com

All Capital Conference attendees are welcome to attend.

Upcoming Deadlines

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

- **October 1** – Deadline for board to adopt annual appropriation measure (RC 5705.38)
 - **October 9** – Deadline for voter registration for November election (RC 3503.01, 3503.19)
 - **October 15** – Deadline for certification of licensed employees to State Board of Education (RC 3317.061)
 - **October 31** – End of first ADM reporting period (RC 3317.03)
 - **November 1** – Deadline for classroom teachers to develop online classroom lessons (“blizzard bags”) in order to make up hours for which it is necessary to close schools (RC 3313.482)
 - **November 6** – General election day (RC 3501.01)
-

Upcoming Presentations

SAVE THE DATE!

2018–2019 ADMINISTRATOR’S ACADEMY SEMINAR SERIES

December 6, 2018: Employment Law Update

Stay up-to-date on important issues and changes with FMLA, FLSA, ADA, employee leave, and other employment-related topics.

April 18, 2019: Student Privacy

Keep current on FERPA, CIPA, COPPA, and other federal and state laws that impact student – and staff – privacy issues in your district.

July 11, 2019: 2018–2019 Education Law Year in Review

Find out the new education-related laws that passed in the budget bill and other legislation, as well as important court decisions and other changes that affect Ohio schools.

You spoke, and we listened! Based on client input regarding the preferred format for Ennis Britton's Administrator's Academy Seminar Series, these presentations will now be offered via a live video webinar professionally produced by the Ohio State Bar Association. As always, an archive will be available also.

Participants must be registered to attend each event. All three webinars will be archived for those who wish to access the event at a later time. If you cannot attend the live webinar, you may register to receive the archive link when it becomes available. You may register on our [website](#) or contact Nancy via [email](#) or phone at 513-674-3451.

OTHER UPCOMING PRESENTATIONS

October 2: BASA Fall Conference

– Bronston McCord

October 3: Ohio Association of School Business Officials

– Bronston McCord

October 12: Southwest Ohio Personnel Administrators

– Pamela Leist

October 23: Butler County ESC – Counselors

– Pamela Leist

November 11–13: OSBA Capital Conference

11/11, 2:30 p.m. – John Britton

11/12, 10:30 a.m. – Ryan LaFlamme, Giselle Spencer, & Keith Countryman

11/12, 10:30 a.m. – Pamela Leist, Nancy Mulvey & Ed Theroux

11/12, 10:30 a.m. – Bill Deters & Jenni Logan

11/12, 1:00 p.m. – John Britton

11/13, 10:30 a.m. – Jeremy Neff, Erin Wessendorf-Wortman & Sara Gehring

Follow Us on Twitter: [@EnnisBritton](#)

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 Nancy via [email](#) or phone at 513-674-3451. Archived topics include the following:

Labor and Employment

- School Employee Nonrenewal
- Employee Licensure
- School Employee Leave and Benefits
- Managing Workplace Injuries and Leaves of Absence
- Requirements for Medicaid Claims
- Discrimination: What Administrators Need to Know

Student Education and Discipline

- New Truancy and Discipline Laws – HB 410
- Transgender and Gender-Nonconforming Students
- Student Discipline

School Finance

- School Levy Campaign Compliance

School Board Policy

- What You Should Know about Guns in Schools
- Crisis, Media, and Public Relations
- Low-Stress Solutions to High-Tech Troubles
- Ohio Sunshine Laws

Special Education

- Three Hot Topics in Special Education
- Supreme Court Special Education Decisions
- Special Education Scramble (2018)
- Special Education Legal Update (2017)
- Special Education Legal Update (2016)
- Effective IEP Teams

Legal Updates

- 2017–2018 Education Law Year in Review
- 2016–2017 Education Law Year in Review
- 2015–2016 Education Law Year in Review

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:

Megan Bair
John Britton
Bill Deters
Michael Fischer
Pam Leist
Jeremy Neff
Hollie Reedy
Giselle Spencer
Erin Wessendorf-Wortman

School Finance

Taxes • School Levies •
Bonds • Board of Revision

Team Members:

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Ryan LaFlamme
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