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Ohio Schools Tackle National School Walkouts

On March 14, students across the country participated in national school walkouts in protest of gun violence in U.S. schools. Another student-led walkout is planned for April 20, the anniversary of the Columbine High School shooting in Colorado.

Students’ rights to their constitutional liberties are well established. Less clear is how schools should go about accommodating those rights or disciplining students for not adhering to school policies when exercising their constitutional rights affects the learning environment.

Supreme Court Case History: *Tinker* Decision

In 1965, a group of siblings and a family friend in Des Moines, Iowa, decided to wear black armbands to school in protest of the Vietnam War. When the principals of their schools became aware of the plan, they developed a policy prohibiting such protests – a policy that the students chose to ignore. As a result, Mary Beth Tinker, her brother, and a high school friend were suspended from school. This is the backdrop of one of the most famous student free speech cases in American history: *Tinker v. Des Moines Independent Comm. Sch. Dist.*, 393 U.S. 509 (1969). Indeed, most school administrators can quote a prominent observation of the Supreme Court in this decision as it relates to speech: “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

What the *Tinker* Decision Means to Us Today

In light of the current national movement of planned student protests around the country, the *Tinker* case provides important considerations on

the authority of school officials to censor student expression. While the High Court held that expression in certain cases may be suppressed, it cautioned that school officials must be able to show that their action “was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompanies an unpopular viewpoint.”

As student protests on a national level gain steam and momentum, school officials must plan a response that is viewpoint neutral and measured in light of potential school rule infractions. Even when a student’s viewpoint is not unpopular, districts should consider imposing appropriate discipline if only to neutralize future viewpoint

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discrimination claims from students who wish to engage in speech or leave campus for a less popular reason. When student speech is coupled with other student expression such as walking out of class in protest of gun violence in schools, school officials maintain their obligation to adhere to student attendance laws, as any time away from school is time away from instruction and may result in truancy or disciplinary consequences. However, districts must remain aware that they can no longer suspend students for attendance violations. Disciplinary consequences are best reserved for the act of cutting class or causing substantial disruption to the educational environment.

Funding for School Safety in Ohio

Recent school shootings have brought about renewed focus on the issue of school safety. With increasing budget constraints and changing student populations, schools continue to grapple with the question of how to keep students and staff safe on campus. The Ohio legislature has made a number of attempts to answer this question as well. Below is a look at current laws and pending legislation related to funding for school safety.

School Safety Levies

School districts may levy a tax for “the purpose of providing for school safety and security” (R.C. 5705.21). These funds may be used to hire a school resource officer and for safety and security training and equipment. The process for a school safety levy is the same as for a current expense levy:

- A resolution of necessity must be adopted by the school board by two-thirds vote.
- The resolution is then submitted to the county auditor to determine the dollar amount and to certify the resolution.
- The resolution must be adopted by two-thirds vote to proceed to place the levy on the ballot.
- All of above must be provided to the board of elections at least 90 days before the election.

Not many districts in Ohio have taken advantage of school safety levies since they became permitted by law in 2013. Millcreek–West Unity Schools in the northwest corner of the state has levied the tax. In 2014, voters there approved a 0.9-mill levy to pay for two school resource officers who split one position. “It was very strongly supported,” superintendent Larry Long said of that levy. “We wanted to have a school resource officer instead of arming staff to secure our building.”

Educational Service Centers

Although an ESC may not levy a tax, it may create a county school financing district (CSFD) that may levy a tax as set forth in R.C. 3311.50 and R.C. 5705.215. Under existing law, a CSFD may levy a tax to provide special education and related services and for permanent improvements. Revenue generated must benefit every school district in the CSFD. (CSFD members may be members *or nonmembers* of the ESC.) Although school safety is not included in this type of levy, some safety-related expenses may be included in the definition of *permanent improvements*: “any property, asset, or improvement with an estimated life or usefulness of five years or more, including land and interests therein, and reconstructions, enlargements, and extensions thereof having an estimated life or usefulness of five years or more.”

A levy as such may not be used for purposes such as hiring or contracting school resource officers. However, an eleventh-hour provision that was added to Senate Bill 226 before it was signed may solve this problem.

New Law

The governor signed SB 226 on March 30. The House added an important amendment, which includes an emergency provision. Therefore this new law is effective immediately. The bill was initially proposed to make the school sales-tax holiday permanent. This three-day sales-tax holiday will begin on the first Friday of every August and continue through Sunday. The amendment, which relates to school safety funding, allows ESCs to create a CSFD for the purpose of levying a school safety tax. This new law amends R.C. 3311.50 and authorizes funds to

be used for “current expenses for school safety and security and mental health services, including training and employment of or contracting for the services of safety personnel, mental health personnel, social workers, and counselors.”

Pending Legislation

The Ohio Legislature is currently considering other bills that include provisions for school safety funding. SB 258 would offer noncompetitive security grants to schools. This bill requires the State Board of Education to establish criteria and procedures for awarding these grants to schools and includes an appropriation for this purpose.

Another bill, HB 318, pertains to school resource officers. This bill was introduced to define the necessary qualifications and responsibilities of school resource officers. It enacts a new section of the Revised Code, R.C. 333.951, to cover SRO responsibilities. Since the recent school shooting in Parkland, Florida, House representatives have discussed providing schools with additional funding for SROs. Therefore, after this bill passed in the House Education and Career Readiness Committee, it was referred to the House Finance Committee for funding.

Levy Campaign for Your District

An Ennis Britton attorney can help your ESC set up a county school financing district and levy for school safety funds.

Special Education Spotlight: When is a minimal change in an IEP appropriate?

One of the main takeaways from the U.S. Supreme Court’s recent *Endrew F.* decision is that individualized education plans (IEPs) should not largely repeat the same goals year after year. Instead, IEPs should contain an appropriately ambitious plan for the individual student and allow the student to make progress on goals from one grade to the next. Does this mean that minimal changes in an IEP are never appropriate?

A recent court case from New York addresses this question. R.G. had IEPs in grades 1 and 2 and did well in school on those programs. By grade 3, he began performing below grade level and age-appropriate benchmarks. These struggles continued in fourth grade. His IEP was changed to place him in small group settings, where his educators determined that he learned best. When R.G.’s mother requested that he receive study notes, the teacher provided them from another student.

The IEP for grade 5 provided R.G. with integrated co-teaching services, psychological counseling, and occupational therapy. R.G.’s parents then arranged for private evaluations, which recommended that R.G. remain in integrated co-teaching classes and continue to receive occupational therapy. It also recommended testing accommodations, a note-taker, and directions to read and re-read and check for understanding. At the end of his fifth-grade year, R.G. received passing grades in all academic subjects and had achieved 13 of his 18 IEP goals. He was making progress on the remaining five goals. He had friends, was participating in class, and had no behavior issues.

The IEP for sixth grade provided R.G. with much the same services as the previous year: integrated co-teaching services, psychological counseling, and occupational therapy. Additionally, the IEP recommended direct and indirect consultant teacher services and increased the number of occupational therapy sessions. At this time, the parents gave the district the private evaluations they had received the prior summer. The district recommended that a new speech-language evaluation be performed because it was almost a year old. Then the parents notified the district that they had placed R.G. in a private school and intended to receive tuition reimbursement. A new speech-language evaluation was conducted, and based on the results, the district recommended speech and language therapy.

R.G. continued performing in the average range in private school in grade 6. Based on evaluations, the IEP for the upcoming year dropped occupational therapy and direct and indirect consultant teacher services and continued recommending integrated co-teaching services, psychological counseling, and speech-language therapy, in addition to an academic support lab. R.G.'s parents again enrolled him in private school and sought tuition reimbursement.

In December of R.G.'s sixth-grade year, his parents filed a due process complaint alleging a denial of FAPE. An impartial hearing officer found in favor of the district and dismissed the complaint. By the parents' own admission, R.G.'s fifth-grade year was better than his fourth-grade year. The hearing officer found that the parents' private evaluations supported the district's IEP and that R.G. had entered private school with age-appropriate skills. Additionally, no evidence suggested that R.G.'s functioning had changed but rather supported the placement in his co-teaching classes. Therefore, the hearing officer concluded that the district's IEP was sound and provided R.G. with a FAPE.

On appeal, a state review officer found in favor of the district and dismissed the appeal. The review officer found that for R.G.'s sixth-grade year, a general education placement with integrated co-teaching services was appropriate, but the district considered and even included the services recommend in the private evaluation that the parents had obtained. Because R.G.'s level of functioning and needs had not changed significantly from one year to the next, the review officer affirmed the hearing officer's decision.

The parents then filed a complaint in district court. The court cited the three-prong *Burlington-Carter* test, following, which is used to determine whether parents are entitled to reimbursement of private school tuition:

1. Whether the school district's proposed plan will provide the child with a free appropriate public education
2. Whether the parents' private placement is appropriate to the child's needs
3. A consideration of the equities

The school district bears the burden of prongs 1 and 3. The court found that the school district "made material changes to the IEP that were designed to address R.G.'s difficulties" in adding the direct and indirect consultant teacher services and therefore the IEP was appropriate. The court, noting that the parents "make much of the fact that" the IEP team did not offer speech and language therapy and included it only after the parents suggested it and provided the private evaluations, responded that this was not only immaterial but is "the type of collaboration envisioned by the IDEA." Therefore, the court affirmed the decision of the hearing and review officers.

Citing to *P.C. v. Rye City Sch. Dist.*, 232 F. Supp. 3d 394, 414 (S.D.N.Y. 2017), the court noted, "An IEP is not inappropriate, however, simply because it does not change significantly on an annual basis." The evidence was sufficient to justify "an IEP that replicates the prior year with modest changes." With that, the court found that the district did not deny FAPE and granted the district summary judgment.

What This Decision Means to Your District

Although a student's IEP should not remain static from year to year, it need not be completely unrecognizable from year to year either. Services that are effective one year may continue to be effective the following year, particularly if the student is making progress and receiving an education appropriate to his or her grade level. IEPs for students who are not progressing or, worse, regressing should be carefully considered, along with the input of all team members.

– *J.G. ex rel. R.G. v. Brewster Cent. Sch. Dist.*, 71 IDELR 169 (S.D.N.Y. 2018).

Ohio Attorney General Again Addresses Interest in Public Contracts

On March 16, the Ohio Attorney General released Opinion No. 2018-006, which again addresses board member interests in public contracts. In this instance, a member of a board of education leased a building through a limited liability company to the school district for which the part-owner served as a member of a board of education. This action was determined to violate R.C. 3313.33, which provides that no member of the board shall have, directly or indirectly, any pecuniary interest in any contract of the board. When such a condition arises, the board member must resign their position with the board of education or divest themselves of the contract.

In such situations, the lease can be determined void, voidable, or unenforceable at the reasonable discretion of the board of education. The OAG stated that a board of education may reasonably conclude that the lease continues to be valid and enforceable after the part-owner of the limited liability company takes office as a member of the board of education if several conditions are met:

1. At the time that the lease was executed, the lease did not constitute a violation of 3313.33 for any member serving on the board of education at execution.
2. After the part-owner takes office as a member of the board of education, the board of education takes no action to alter the terms of the lease that was executed before the part-owner took office.
3. The board member divests himself or herself of the prohibited interest in the lease within a reasonable period of time after taking office.

For condition 3, the OAG opined that the person must act “immediately” to divest himself from the contract as part-owner if he wishes to remain a board of education member. Moreover, going forward, the board cannot enter into a new lease with the limited liability company after the current lease expires as long as the board member has an impermissible pecuniary interest in the lease.

The OAG also found that this circumstance could fall within the criminal provision in R.C. 2921.42, which makes it a criminal act for a public official to have an unlawful interest in a public contract. The exceptions include the following:

- Contracts for necessary supplies or services
- Where supplies or services that are unobtainable elsewhere or are being furnished as part of a continuing course of business established prior to the official’s association with the public entity
- The treatment accorded the public entity is preferential to or the same as to other customers
- The entire transaction was conducted at arm’s length, with knowledge by the public agency, and where the official takes no part in deliberations or discussions about the contract

In this case, none of the exceptions applied.

The full opinion is available [here](#).

Legislation to Create Substitute Pupil Services Personnel License

The Ohio House of Representatives is expected to vote on a bill that would create a license for individuals to serve as substitute pupil services personnel. HB 491 passed in the House Education and Career Readiness Committee on March 21 by a vote of 16-0. The bill enacts a new section of the Revised Code (3319.2210) that would require the state board of education to issue a substitute license to individuals who meet certain criteria and wish to serve as substitutes in the following positions:

- Speech language pathologists
- Audiologists
- Registered nurses
- Physical therapists
- Physical therapist assistants
- Occupational therapists
- Occupational therapist assistants
- Social workers

The current version of HB 491 would require the superintendent to request and recommend an individual for the new license. Any candidate who wishes to obtain the license must submit both a copy of a valid occupational license as well as all materials necessary to complete a criminal background check. The license may include a term of 1–5 years as determined by the state board. The state board is prohibited from requiring any additional qualifications beyond those listed in the statute. A school district may hire a substitute license holder only in a substitute capacity.

The Ohio House will meet again during the second week in April, when it is expected to vote on this bill.

Legislation in the Works

Career Information, Career Tech Educator Licenses

House Bill 98 was signed by the governor on March 30. It becomes effective in 90 days. The bill prohibits boards of education from imposing restrictions on the presentation of career or recruitment information to high school students by representatives of skilled trades or career tech education if those restrictions are not imposed on other representatives that are currently allowed by law to present to students. Additionally, school boards must provide at least two opportunities per year for this purpose.

A provision that was formerly in **Senate Bill 216** regarding career tech educator licenses was added to this bill before it was passed in the Senate. This provision replaces the current career tech educator license with two licenses, a two-year initial license and a five-year advanced license. A bachelor's degree is not required for this license, but a high school diploma is required. Through June 30, 2019, educators who hold a current career tech teaching license may continue to renew their license throughout their career or apply for the new license. Beginning July 1, 2019, all new applicants for the career tech educator license must apply for one of the new licenses.

Property Taxes

House Bill 343 passed in the House by a vote of 59-35. It is now in the Senate awaiting appointment to a committee. This bill requires that local governments such as school boards approve a resolution before filing a complaint or counter-complaint to adjust property values. See the [February 2018](#) issue of *School Law Review* for more information.

Bullying, Harassment, and Intimidation

The purpose of **House Bill 360** is to enact the Ohio Anti-Bullying and Hazing Act regarding school discipline and bullying and hazing policies. The House Education and Career Readiness Committee accepted and approved a substitute bill, which is currently awaiting the House vote. The substitute bill requires a 10-day suspension for a first offense, up to 30-day suspension for the second offense, and expulsion up to 182 days for the third offense in the same school year for harassment, intimidation, or bullying. School districts are permitted to require community service and to provide tutoring and academic support for suspended or expelled students; however, districts must allow these students to take all required state assessments. Districts are required to offer counseling services to the victim and to allow the victim to make up missed schoolwork. Districts may provide counseling services to the

offender, upon parental consent. School administrators may petition their governing body to approve an alternative form of discipline instead of suspension or expulsion.

ESC Boards

House Bill 438 passed in the House and is currently in the Senate Education Committee. It allows ESC boards to appoint additional members and to annex territory to an adjacent ESC under certain conditions.

School Safety

Recently introduced, **House Bill 526** authorizes schools to enter into an agreement with a volunteer law enforcement officer to patrol school premises to prevent or respond to a mass casualty event. It provides the parties with qualified immunity and the officer with a tax credit for volunteer service.

Parent Notification of School Absences

Senate Bill 82 was amended in the Senate Education Committee to require schools to call parents within 90 minutes if a student is absent without legitimate excuse. Legislators discussed that a call within 60 minutes, as the bill initially required, would be very difficult for schools. The next step for the bill is a Senate floor vote.

Save the Date: Section 504 Seminars in October

Based on the overwhelming feedback we received following the 2017 Special Education Seminars, Ennis Britton has developed a Section 504 Seminar for October 2018! Our Special Education Team will travel throughout Ohio to present this professional development opportunity in five different locations. Each seminar will consist of two general sessions and two breakout sessions with our Special Education Team. The general sessions will cover the basics of Section 504 and compliance officer training. Additionally, participants will choose from breakout sessions topics including accommodations, trauma and mental health, service animals, and extracurriculars.

Our Special Education Team has developed materials and practical tips that are designed to help your special education team members confidently and knowledgeably tackle difficult compliance issues. This full-day seminar will be held at five locations across Ohio:

- October 15: **Cincinnati**
- October 16: **Columbus**
- October 17: **Mahoning Valley**
- October 18: **Cleveland**
- October 19: **Northwest Ohio/Toledo**

The cost of the seminar is \$150 per attendee. The cost includes materials to be added to the custom Ennis Britton binders from the October 2017 seminars. Participants who do not have the Ennis Britton binder with the Ohio Operating Standards may purchase one for \$50. Lunch and complimentary beverage service will be provided at all locations. This seminar is open to all special education directors and staff in Ohio, but space is limited. An announcement will be sent when registration for the seminars opens.

Announcing: OASBO Spring Conference Reception

OASBO presents ...



Totally 80s Party!

Complimentary drinks

Park Street Cantina
491 N. Park St.
Columbus, OH

April 19, 2018
Party begins at 7:30 p.m.



live music

featuring
**John Stone & the
Trailer Park All-Stars**

Sponsored by:



**Firm News: Ennis Britton Shareholder
Megan Bair Zidian
Nominated for Athena Award!**

Ennis Britton is proud to announce that shareholder Megan Bair Zidian has been nominated for the 2018 Athena Award. This award is sponsored by the Regional Chamber of Youngstown and Warren and Youngstown's regional newspaper, *The Vindicator*. The Athena Award honors women who strive toward the highest levels of professional accomplishment. Nominees for this prestigious award must excel in their chosen field, devote time and energy to their community in a meaningful way, and open doors so that others may follow in their path.

To qualify for the Athena Award, the selected women must have a proven record of contribution to their company, demonstrate ongoing growth and advancement in their career, and have a minimum of five years of professional business experience. Megan certainly exhibits all of these qualifications and more, and Ennis Britton is proud to have her leadership on our team.

The 2018 Athena Award Dinner will be held on May 17 in Boardman, Ohio, and will include a VIP reception for the sponsors, nominees, and nominators followed by the public reception, dinner, keynote speaker, recognition of all nominees, and the announcement of this year's recipient.

Good luck, Megan! We are proud of your nomination for this prominent award!



Megan Bair Zidian

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.

- **April 9:** Deadline for voter registration for May election – 30 days before election (RC 3503.01)
- **April 30:** Deadline to submit certification for August income tax levy to Ohio Department of Taxation (RC 5748.02)
- **May 4:** Deadline to submit August emergency or current operating expenses tax levy to county auditor for August election (RC 5705.194, 5705.195, 5705.213)

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

April 10: Brown County ESC & Southern Ohio ESC

– Hollie Reedy and Erin Wessendorf-Wortman

April 13: Southwest Ohio Personnel Administrators

– Gary Stedronsky

April 13: Ohio School Boards Association: Diversity and Inclusion in the Law Workshop

– Pamela Leist

April 19: Ohio Association of School Business Officials – Spring Conference

– John Britton, Giselle Spencer, Erin Wessendorf-Wortman

April 27: Ohio School Boards Association Board Leadership Institute

– John Britton

May 8: Ohio Association of EMIS Professionals

– Hollie Reedy

May 30: Southwest Ohio Personnel Administrators

– Bronston McCord

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:

- Three Hot Topics in Special Education
- School Employee Nonrenewal
- New Truancy and Discipline Laws
- Supreme Court Special Education Decisions
- Employee Licensure
- Transgender and Gender-Nonconforming Students
- Contract Nonrenewal
- Ohio Sunshine Laws
- School Employee Leave and Benefits
- Managing Workplace Injuries and Leaves of Absence
- Special Education: Challenging Students, Challenging Parents
- Fostering Effective Working Relationships with Boosters
- Low-Stress Solutions to High-Tech Troubles
- Requirements for Medicaid Claims
- Effective IEP Teams
- Discrimination: What Administrators Need to Know
- 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
- Crisis, Media, and Public Relations
- Gearing Up for Negotiations

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Stay up-to-date about important topics in school law!
Check out Ennis Britton's [Education Law Blog](#).

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

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