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Sixth Circuit Determines Parents Do Not Qualify as "Prevailing Party" Under IDEA

In this case, parents brought a claim against the school district alleging that the district had denied their daughter a free and appropriate public education (FAPE) by failing to conduct an evaluation to determine if she qualified as a child with a disability under the Individuals with Disabilities Education Act ("IDEA"). After extensive litigation, the parents voluntarily dismissed the case but subsequently filed for attorney's fees as the "prevailing party." The District Court denied the motion and determined that the parents did not qualify as a "prevailing party" in the administrative proceedings pursuant to IDEA. Parents appealed the District Court's decision to the Sixth Circuit Court of Appeals.

On appeal, the Sixth Circuit upheld the decision of the lower court and denied parents' request for attorneys' fees. In doing so, the court noted that IDEA provides, "[i]n any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs...to a prevailing party who is the parent of a child with a disability." Therefore, in order to recover attorneys' fees, the parents must prove that they are the parent of a child with a disability.

The term "child with a disability" refers to a child who has a qualifying disability under IDEA and needs special education or related services by reason of that qualifying disability. The term "prevailing party" is one who succeeds on any significant issue in litigation which achieves some of the benefit the parties sought in bringing the lawsuit.

The parents claimed their daughter was a child with a disability because they proved she was diagnosed with depression. The court agreed their daughter was a child with a disability; however, it further determined the parents failed to establish whether their child needed special education or related services. Because the parents failed to meet the second part of the definition, they failed to establish that their daughter qualified as a "child with a disability" as defined by IDEA.

The parents further argued they were a prevailing party because the hearing officer initially determined that the school denied their daughter a free and appropriate education when refusing to evaluate her as a child with a

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suspected disability. Though the Sixth Circuit agreed that the parents did have success on this issue, the court ultimately determined they were not a prevailing party due to undetermined issues in the administrative proceedings – i.e., whether their child needed special education or related services.

Because the parents could not show their daughter needed special education or related services and, therefore, failed to meet the definition of a “child with a disability” under IDEA, the parents were unable to establish they were a “prevailing party.” As such, the parents were not entitled to attorneys’ fees.

OHSAA Ruling Continues on Competitive Balance

The Ohio Supreme Court issued a decision on July 16 denying the Ohio High School Athletic Association’s (“OHSAA”) application for a writ of prohibition to prevent Judge Robert Ruehlmann of the Hamilton County Court of Common Pleas from taking further action in a case brought by a school and athletic conference challenging the application of the competitive balance rule. Judge Ruehlmann issued a temporary restraining order preventing OHSAA from applying the competitive balance rule’s adjusted enrollment formula as applied only to those particular schools. (Ohio High School Athletic Association v. Ruehlmann, Slip. Op. 2019-Ohio-2845)

The court denied the writ of prohibition not on the merits of the case, but rather on the issue of whether the common pleas court had subject matter jurisdiction to consider the issue. In essence, the court found that the Hamilton County Court of Common Pleas did have jurisdiction over the subject matter of the lawsuit.

The result of the Ohio Supreme Court’s action means that the case will return to the Hamilton County Courts for further proceedings. The issue will be whether the temporary restraining order preventing OHSAA from implementing the competitive balance rule, including its adjusted enrollment factor, to the group of schools who are party to the lawsuit (the Greater Catholic League Coed and Roger Bacon High School) will be made permanent. Other motions may be filed. Any decision on the matter by the common pleas court is subject to appeal in the Court of Appeals for Hamilton County.

The Supreme Court’s denial of the writ of prohibition means only that the common pleas court has authority (jurisdiction) to consider the matter brought before it. As the court noted, “Whether he (the Judge) ruled correctly in exercising the court’s jurisdiction is a matter that under our precedent must be left in the first instance to the court of appeals on direct review.”

When asked about next steps, OHSAA legal counsel Steve Craig said, “We will resume play from the point of interruption.” Ennis Britton’s Hollie Reedy was honored to write the Ohio Supreme Court amicus (friend-of-the-court) brief on behalf of the interests of state associations OSBA, BASA, OASBO, OASSA, and OIAAA in support of OHSAA’s petition for the writ of prohibition.

What this means for your District:

Stay tuned. The competitive balance rules of OHSAA affect all OHSAA member districts for the sports to which the rules apply. If this decision stands, any district or school could potentially challenge OHSAA to prevent them from enforcing a rule that a district believes is unfair based upon its unique circumstances. OHSAA continues to pursue its legal options and it is likely we will see further developments concerning this specific issue.

Violent School Crime on the Rise

There is no question that school safety is of heightened concern, particularly in today’s age when it has become increasingly difficult to ensure the safety of students and staff. The frequency of active shooter situations in public schools is on the rise and protecting the wellbeing of students and staff is a school district’s first priority. To that

end, there has been an increase in the number of school resource officers (SROs) obtained by public school districts to maintain the security of their buildings and to protect individuals on district property.

Today, nearly half of all public schools in the United States employ a police officer in the capacity of SRO either part-time or full time. In addition to the “new age” approach to addressing school safety, many schools have adopted alternative forms to discipline that include positive interventions and supports along with restorative practices to avoid removing students from the school setting because of “out-of-school” issued discipline.

The U.S. Department of Education recently issued data on the changes that have occurred within our country’s public school systems concerning safety issues. The report from July 25, 2019 highlighted the following three takeaways.

- Schools are employing armed police officers.
 - 44.8% of public schools employ a resource officer at least one day a week.
 - In 2017-2018 there were 54,500 serious violent incidents recorded at school.
- Serious violent crimes are rising in our nation’s schools; including hate crimes and sexual assault.
 - Fights, threats, possession of a sharp object, and theft were the most common incidents occurring in 71% of schools. (Data from 2017-2018 were statistically similar to 2015-2016)
 - Significant increase in the number of serious violent incidents: 21% of schools reported a serious violent incident including but not limited to rape, attacks using weapons, or robbery. This is a 15.5% increase from the 2015-2016 school year.
- Nearly all schools claim to be using social emotional learning as a move toward softer methods of school discipline.
 - 90% of schools report using this method compared to 60% in 2015-2016.
 - It remains unclear whether all schools are integrating these concepts with fidelity. It is not only a difficult concept to define and teach but also to measure.

In the past 10 years, at least 177 of America’s K-12 schools have experienced a “shooting tragedy;” however, despite this troubling number there is no clear definition of what constitutes a “school shooting” nor is there a universal database that stores this vital information. Because information of this nature plays a major part in preserving the safety of schools, CNN built its own database to store this information for public use. Its database covers school tragedies from 2009 through 2018, which indicates that school shootings are increasing and that there is no “type” of community being targeted or spared.

The data indicates there have been nearly 180 school shootings with 114 fatalities and 242 injured. In some years, there were more deaths than injuries due to school shootings. CNN used the data to analyze where, when, and who these shootings targeted. They found that while they disproportionately affect urban schools and people of color, these mass shootings are more likely to occur at a white suburban school. CNN also found that the frequency of these tragedies shows no sign of slowing. There is no data explaining why there has been an increase, but law enforcement experts believe that coping skills among our nation’s youth have diminished and have led to lashing out in violent and extreme ways. A former FBI agent stated in CNN’s report, “we continually see poor coping skills and poor conflict resolution skills...as more of them (shootings) occur, it becomes sort of acceptable as ‘that’s a way I can settle my grievances.’” Although these mass shootings cause great concern, experts maintain the focus remains on reducing the day-to-day violence.

What this means for your district:

School districts have an obligation and duty to take certain measures in order to ensure the safety of students, staff, and all visitors that enter upon district-owned property. This includes the adoption of policies concerning anti-bullying/discrimination laws, regulation of conduct of third party/visitors on district-owned property, including the regulation of staff and student conduct along with implementation of safety and emergency protocols. Schools should continue to explore alternatives to “out-of-school” discipline and adopt and/or maintain a positive approach to addressing negative student behaviors. This may include a program to teach students self-awareness, compassion for others, and proper coping skills to deal with the many challenges presented to today’s youth.

Special Education Spotlight: Escalating Behaviors May Require Revision of IEP Before Annual Review

In a case out of Central Ohio, the State Department of Education (ODE) determined that a school district denied a free and appropriate public education (FAPE) to a student with ADHD and anxiety when it waited until the annual review to convene and discuss serious behavior concerns.

The student exhibited disruptive classroom behavior that began soon after the implementation of the April 2018 IEP. These behaviors included: refusing to follow directions from the teacher, frequent use of profanity, repeated movement around the classroom, and inappropriate sexual misconduct. This behavior prevented both the student and his classmates from receiving proper instruction. The teachers provided the student with positive reinforcement and reward incentives but to no avail.

The district did not conduct a Functional Behavior Assessment (“FBA”) but instead maintained a behavior log for the student. It was not until the annual review that the district proposed conducting an FBA and developing a Behavior Intervention Plan (“BIP”) for the student.

The Department explained that IDEA requires schools to review a child’s IEP periodically, but not less than annually. To provide FAPE, a district is obligated to revise a student’s current IEP to address any lack of expected progress toward the annual goals, the results of a re-evaluation, the child’s anticipated needs, or other matters as appropriate. Here, the districts’ failure to address the student’s worsening behavioral problems in a timely manner resulted in a violation of IDEA.

The school district argued that it attempted to address the student’s behavioral problems by considering additional interventions and discussing other placement options during the subsequent annual IEP meeting. However, because the student’s behavior also interfered with the learning environment of others, ODE determined that the district should have responded timely and proactively. Ultimately, even though the district did not violate the discipline provisions of the law, the district was found to have violated IDEA by denying the student FAPE.

This is an important reminder that an IEP is a living document that must be appropriately reviewed and updated to meet students’ changing needs.

Columbus City Sch. Dist., 119 LRP 24352 (SEA OH 05/28/19)

Statewide Changes for Notaries

Statewide changes are coming for Ohio notaries. Effective September 20, 2019, the new legislation makes the Ohio Secretary of State the central administration for notary publics and standardizes the requirement to become a notary. Part of the changes to come includes a process to become an e-Notary. If you have employees who are required to be a notary, it is advised that they apply or renew their commission before September 20 to avoid higher fees and a longer and more strict process. The table below was produced by the Cincinnati Bar Association (CBA) for a guideline to the Ohio notary changes. If you wish to become a notary public, you can follow the steps for the CBA, or you may go to your local county courthouse.

IF YOU ARE A(N):	CHANGES?	NEXT STEPS:	ADDITIONAL INFORMATION
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ATTORNEY			
Licensed Attorney, but not a Notary	Requirements will change after 9/20/19 and attorneys will have to take a training class to obtain a notary commission.	You may want to obtain your notary commission now. Contact the CBA notary department at (513) 381-8213 or download an application: https://www.cincybar.org/Notary/About-Notary-Services	<ul style="list-style-type: none"> - Currently, no education requirement. Attorney applications will be accepted through 8/15/2019. - The new legislation requires lawyers admitted after the effective date of the bill to undergo training, but no testing, to receive a permanent notary commission. - If you live in Kentucky, you can only be an Ohio Notary if your primary place of practice is in Ohio. Use your Ohio business address instead of your residence.
July Bar Exam Applicant	Requirements will change after 9/20/19.	You will be subject to the new requirements after you have passed the bar exam.	
NON-ATTORNEY			
Current Notary	Requirements will change after 9/20/19.	If your commission expires in 2019, you may want to renew now before the law changes. Contact the CBA notary department or download an application: https://www.cincybar.org/Notary/About-Notary-Services	If your commission renews in 2020 or later, do nothing. Your renewal will be subject to the requirements outlined in the new legislation.
Not Currently a Notary	The legislation includes new requirements for a background check, education, and testing.	You may want to apply for a notary commission now. Contact the CBA notary department or download an application: https://www.cincybar.org/Notary/About-Notary-Services	Test dates: July 10, 2019 August 7, 2019 Examinations are held at the CBA. Notary Public Manual is also available at: https://www.cincybar.org/Notary/About-Notary-Services

Budget Bill Update

Every two years, Ohio legislators and the governor are tasked with passing a biennial budget for the state. Ohio's budget bill always has a direct effect on public education, from both a financial and an operational perspective.

After lawmakers failed to meet the June 30 deadline, they were able to extend the deadline to July 17. Governor Mike DeWine signed the final version of HB 166 into law on the morning of July 18. However, the governor vetoed 25 provisions, most of which were health care related but some educational. As a final step, the House and Senate may vote to override any of the governor's vetoes.

Below are some of the education-related provisions found in the budget bill. They will become effective October 17, 2019.

Funding Changes

- **Budget – General Information**
 - Overrides of additional provisions may occur until the end of 2019.
 - 25 vetoes by new Governor, some educational.
 - Fun Fact – budget bill was 2,602 pages. Chapter 33 takes up nearly 300 pages of that!
- **Student Wellness and Success Funds**
 - Per pupil funding to schools is based on the number enrolled in preceding fiscal year.
 - FTE funding to JVS, STEM and community schools (not e-schools) based on per pupil funding of student's residence district. At least 25K in FY 2020 and 30K in FY 2021.
 - May be used for:
 - Mental health services, services for homeless youth, child welfare-involved youth, community liaisons, physical health services, mentoring programs, services for child nutrition, fitness and wellness (SENATE), student services provided before or after regularly scheduled school day or when school is not in session, family engagement, PD for cultural competence and trauma-informed care, City Connects programming
 - Requires reporting to ODE on initiatives on which money was spent by end of each fiscal year.
 - Each district, JVSD, STEM, community (other than e-school) will get \$25,000 in FY 2020 and \$30,000 in FY 2021
 - Schools must develop a plan to use the money in coordination with one or more community organizations.
- **Per Pupil Funding Guarantee, Additional Funds**
 - Increases state foundation aid for some districts beginning FY 2022.
 - Guarantees districts will get as much per pupil funding as the statewide per pupil amount paid for chartered nonpublic schools in auxiliary services and for administrative cost reimbursement.
 - The statewide per pupil amount is about \$1,305 in FY 2019
- **Operating Funding**
 - Suspends 3317 funding payments in FY 2020 and 2021 except for:
 - Foundation aid to school districts
 - Certain foundation aid adjustments
 - Special education transportation reimbursements
 - Auxiliary services
 - Nonpublic school administrative cost reimbursement
 - Preschool special education
 - Payment to nuclear power plant districts
 - Payment for school-age special education students at county DD's and institutions
 - For city, local and exempted village school districts, FY 2019 state share is to be used for calculation of FY 2020 and 2021 payments for which the state share is a factor.
 - For open enrollment, College Credit Plus, and other payments for which formula amount is used, FY 2019 formula amount (\$6,020) is the amount for FY 2020 and 2021.
 - JVSDs will also receive same amount of foundation aid as in 2019.
 - Special education catastrophic cost threshold =

- Students in categories 2-5, \$27,375
- Students in category 6, \$32,850
- For FY 2020 and 2021
- **Traditional School District Funding**
 - Suspends foundation aid funding formula for FY 2020 and 2021.
 - Instead, every district, including JVSD's, will receive the same amount of foundation funding as received in FY 2019.
 - Final budget states that these payments will be based on the final reconciliation amount for 2019- not the aggregate annualized payments of the second June 2019 payment.
 - Provides for additional money for an enrollment growth supplement, which is calculated by determining percentage increase in enrollment x 100 times the # of enrolled students in 2019 x \$20, in 2020 x \$20, and in 2021 x \$30.
 - Number of enrolled students determined by FY 2019.
- **JVSD Funding Adjustment**
 - If district operated a JVSD program in FY 2019, then joined a JVSD beginning FY 2020, adjust FY 2020 and 2021 CTE funding paid to district to account for decrease in students serviced by district and increase at JVSD.
 - Amount equals:
 - Amount paid to district for FY 2019 – CTE funds deducted from district for community and STEM students for FY 2019 (based on final reconciliation amount and not 2nd June payment)
 - ODE may not increase aggregate amount of foundation aid paid to districts and JVSD's when making adjustment.
- **ESC Funding**
 - High performing ESC- \$26 per pupil
 - Other ESC's- \$24 per pupil
 - If necessary, ODE to prorate payment amounts to meet state earmark for the payment of ESC's.
 - \$40 million each fiscal year to fund ESC's.
 - Moratorium on additional school districts joining ESC's in FY 2020 and 2021.
- **STEM Funding**
 - Per pupil deductions from districts and transfers as FY 2019 dollar amounts.
 - Targeted assistance and economically disadvantaged funds will be the same as deducted and paid for FY 2019.
 - ODE will pay 3rd grade reading guarantee bonuses and recalculate each FY using a formula amount of \$6.020
 - Payment to STEM schools operated as group will go to the governing board and be distributed to each school in the group.
 - Schools operated as part of a STEM group will each get own IRN number.
- **Utility Tangible Personal Property Valuation**
 - No more deductions in state aid for districts that had more than 10% increase in value compared to its total taxable value in 2nd preceding tax year, which results in lower foundation aid when recalculated.
 - ODE will credit districts that had such deductions in tax years 2017 and 2018.
- **Interesting Miscellaneous Funding**
 - Appropriations granted for traditional districts, ESCs and JVSDs to support activities that encourage and assist seniors with completing FAFSA apps.
 - Appropriation for School Climate Grants for city, local, exempted village and community schools to implement PBIS, research-based social and emotional learning initiatives for k-3 buildings
 - Appropriation to support Adaptive Sports Programs in school districts

- Appropriation for administration and support of teacher certification and licensure activities; portion may also be used for implementation of teacher and principal evaluations

Community Schools

- **Community Schools**

- Deduction: 2019 dollar amounts used to calculate per pupil deductions from school districts and transfers to community schools for FY 2020 and 2021.
 - Final conference committee specified that for community schools that agree to transport their own students, the deduction will be the same as in 2019. (not a fixed number in prior versions)
- Community school sponsor evaluations for effective/exemplary schools with that rating for 3 years= 1x/ 3 years.
 - Sponsors may review ratings on academic performance component, may request adjustment.
 - Lots more on dropout prevention and recovery school report cards and school closings but...
- Conversion schools that later get a sponsor that is not a school district (or ESC) will be viewed as “startup community schools.”
 - Effect of this is that conversion students factored into sponsoring district’s accountability calculation while a startup school students are not included in those calculations.
- Community school mergers- 2 or more may merge by resolution of governing authority of each school and surviving community school must enter into new contract with sponsor. May not transfer existing contract.
- Many new e-school laws
- Some new closure changes and dropout recovery closure changes.

- **Last Word on Community Schools**

- ODE will be doing a study to evaluate costs of operating community schools on a per pupil basis or other as replacement for fixed per pupil formula amount.
- Findings due by 12/31/2020
- ODE will also recommend funding for e-schools (this is due 12/31/19)
- Will include stakeholders

- **Educational Choice Scholarship Program Changes**

- If scholarship applications reach more than 90%, ODE is required to make 5% more available the following school year, new maximum used each year until ODE must increase again.
 - If applications exceed scholarships priority will be given as in current law.
- Added to eligible students are those who were enrolled in a public/nonpublic/homeschooled in prior year and completed any grade 8-11 that year, AND school to which student would be assigned 9-12 has D or F on cohort graduation rate.
- Students who got scholarships as entering HS students may continue to receive the scholarship as long as they meet other eligibility requirements.
- Amount of scholarship computed as the lesser of base tuition amount of the student’s nonpublic - tuition discounts OR scholarship amount set out by law.
- Expands eligibility for income-based EdChoice scholarship to K-12 students beginning 2020-21.
 - Pre-budget law required phase in of one grade a year
 - Currently students k-5 are eligible FY 2019
- For 2020-2021, ODE will accept, process and award scholarships during a priority application period beginning Feb. 1 for 75 days. ODE shall award by June 30.
 - ODE shall continue to award continuously until funds are depleted (no 2nd application period anymore).
 - Scholarships awarded after start of school year are prorated.

Teacher Salary & Licensure Changes

- **Teacher Salary**
 - Raised minimum salary to \$30,000 from \$20,000 for bachelors' step 0.
 - Raises steps by same percentage as under current law based on the new minimum amount.
 - Alternative resident educator license K-12 change:
 - Allows preservice training approved by higher ed and conditions for that approval.
- **Teacher Licensure**
 - Computer science teachers
 - Person with 7-12 educator license + PD program approved by superintendent/principal may teach computer science.
 - Supt must approve College Board courses
 - May teach computer science only in the district that approved
 - This lasts until July 1, 2021, then only in accord w/ current law.
 - Licensed/certified teachers in core subject areas
 - Senate would have removed requirement that teachers and paraprofessionals in community, STEM and traditional school districts be properly licensed/certified in core subject areas.
 - Governor VETOED, so law will remain
- **Alternative Resident Educator License Changes**
 - Applicants may now meet training requirements not only by summer institute but also by preservice training program which Chancellor of Higher Ed may approve.
 - Preservice training program must meet same requirements as summer institute
 - Also allows participants in preservice training program to have
 - Undergrad 2.5 cumulative avg, or grad school cumulative avg. of 3.0

Student Changes

- **Smoking Under 21**
 - Smoking now prohibited for anyone under age 21. Governor vetoed a phrase in/grandfathering period.
 - Applies to cigarettes, other tobacco products and alternative nicotine products.
 - Check your policies and student handbooks.
- **LEP to EL: New Acronym Alert**
 - All references to "Limited English proficient" have been changed to "English Learner" throughout the Revised Code.
- **Student Attendance**
 - Changes the notification to parents of student absence without excuse for purposes of truancy to exclude those students with a medical excuse for absence (38 hours/month, 65 or more/school year).
- **OHSAA Transfer Rules- Senate**
 - Transfer Rules- Senate
 - Requires OHSAA and schools to have same transfer rules for nonpublic and public school students and prohibits adoption of any other regulation or bylaw contrary to the section.
 - International Students
 - Permits any international student with an F-1 visa who is attending an elementary or secondary school in Ohio to participate in interscholastic athletics.
 - No longer required to attend a school with a dormitory as specified under current version of the law.
- **JVSD Post-Secondary Credit**

- State Superintendent and Chancellor for Higher Ed will consult to determine whether a statewide plan for awarding post-secondary credit to JVSD students enrolled in approved courses, like CCP program.
- Statewide plan will:
 - Include all criteria, policies, procedures timelines necessary for awarding credit for completion of approved courses.
 - Recommend a date and method to implement if appropriate
 - Stakeholder group will be convened.
 - June 30, 2020 is the date for completed plan.
- **Computer Coding Instruction = 1 unit Foreign Language**
 - If districts require foreign language for HS graduation beyond minimum curriculum requirements, must accept one-unit for computer coding instruction toward meeting that requirement.
 - Additional coding courses must be more difficult.
- **Show Choir = Physical Education**
 - 2 full seasons of show choir may be used to fulfill physical education requirements.
- **Graduation Requirements**
 - For students entering July 1, 2019 (Class of 2023), new requirements. Students must:
 - Complete the minimum number of hours mandated by the state and their district; and
 - Still take 5 end of course exams, but only attaining a competency score on Algebra I and ELA II end of course exams are required for diploma; and
 - Earn at least two state diploma seals.
 - At least one must be seal of biliteracy, OhioMeansJobs workforce readiness seal, or one of the seals for which the state board establishes requirements.
 - Graduation Requirements
 - Districts must offer remedial support to those who do not attain competency score on 1 or both end of course exams.
 - ODE, in consultation with the Governor's executive workforce board and Higher Ed Chancellor will determine competency score.
 - End of course exams:
 - ODE shall seek waiver from USDOE to make Algebra I the end of course primary HS math assessment.
 - Student cannot be compelled to retake Algebra I and ELA II end of course exams if they got a proficient or competency score prior to HS on the exam.
 - Students may retake Algebra I and ELA II, but if they fail again, students may use alternative demonstration of competency.
 - Ways to demonstrate:
 - Taking CCP courses
 - Provide evidence student has enlisted in the military
 - Completing at least one 'foundational option'- i.e.,
 - Proficient scores on 3 or more state technical assessments in a single career pathway,
 - Earning industry credential, complete pre- or apprenticeship program or evidence of acceptance into apprenticeship program after HS, and either:
 - Completing one additional foundational option or supporting option.
 - Supporting options include:
 - 250 hours of work-based learning experience
 - Obtain OhioMeansJobs work readiness seal
 - Attaining score on WorkKeys assessment.

- IEPs for students who require special education will need to detail how the student will participate in assessments on the new graduation requirements.
- **New State Diploma Seals to Meet Graduation Requirements**
 - Biliteracy Seal
 - OhioMeansJobs-readiness seal
 - College-ready Seal
 - Industry-recognized Credential Seal
 - Military Enlistment Seal
 - Citizenship Seal
 - Science Seal
 - Honors Diploma Seal
 - Technology Seal
 - Community Service Seal
 - Fine/performing Arts Seal
 - Student Engagement Seal
- **Graduation Requirements**
 - Schools must develop guidelines for at least one state seal from 10-12.
 - (community service, fine and performing arts, student engagement)
 - Schools must keep records on students who meet the requirements for a state seal.
 - ODE will develop mechanism for assigning state diploma seal.
 - Students may not be charged fees for state seal.
- **Graduation Plans**
 - New section requires adoption of a policy regarding students at risk of not graduating.
 - Requires criteria and procedures for identifying at risk students, including:
 - Lack of progress on graduation plan,
 - Other factors such as excessive absence or misconduct.
 - Procedures for identifying at risk students, if they are not making progress in meeting terms of a graduation plan.
 - Must include plan to notify parent each year student at risk, written notice must include:
 - Statement that student may not graduate,
 - Describe requirements or IEP,
 - Policy must provide for student assistance, which may include:
 - Mentoring or tutoring
 - Demonstration of competence through adjusted curriculum
 - Career tech, mental health services, physical health care services, family engagement or support services.
 - Must develop a “graduation plan” for all students 9-12.
 - Plan developed with student and district and update each school year student enrolled in high school until student qualifies for HS diploma.
 - Parent/guardian/custodian to be invited to help develop/update plan.
 - Lack of progress on plan to be used as criteria for identifying at risk students and procedure for same.
 - The graduation plan supplements the career advising policy under 3313.6020.
 - IEP’s may be used in lieu of graduation plan if they contain similar academic goals.
 - Stakeholder group to student and issue report by 10/1/2020 on recommendations for student who completed 12th grade but did not qualify for a high school diploma.
 - Recommendations must include what additional supports might be necessary and amount of state funding needed, reducing stigma of not graduating on time, and may include any OAC or RC changes needed.

- EMIS reporting on students earning diploma seals, students demonstrating competence by completing CCP classes, enlisting in the military, completing foundational and support options, and which options completed.

Facilities, Transportation, Operations

- **School Facilities**
 - Disposal of unused school buildings- offer to community schools
 - Changes definition of “unused school facility” to those that have not been used for ONE year (instead of previous two years)
- **Transportation**
 - If a district is providing transportation it is not legally obligated to provide under 3327.01, it will be prohibited from reducing that transportation after the first day of the school year.
- **Bus Driver Physicals**
 - Authorizes the following individuals to conduct annual physical examinations for bus drivers:
 - Physician’s assistant
 - Certified Nurse Practitioner
 - Clinical Nurse Specialist
 - Certified Nurse-midwife
 - Medical examiner who is listed on the national registry of certified medical examiners established by the federal motor carrier safety administration
 - Additional changes implemented previously this year in HB 338 (chiropractors)
- **School Breakfast Programs**
 - If district meets conditions established in section, must offer school breakfast before or during school day (before or during is a Senate addition).
 - 70% or more eligible for free and reduced school lunch in 1st year after effective date.
 - In 2nd year, 60% or more eligible for f/r lunch.
 - In 3rd year. 50% or more eligible for f/r lunch.
 - District superintendent or bldg. principal shall consult w/ building staff and determine method – must meet federal guidelines and standards.
 - District may make a charge for each meal per federal requirements to cover all/part of costs of operating the program.
 - ODE will publish a list of eligible schools and offer technical assistance. ODE will produce a report by 12/31 each year with disaggregated data for schools and buildings for those participating in breakfast program. Includes community and STEM schools.
 - Senate added provision that permits schools to elect not to establish a breakfast program for financial reasons, or if it already has a successful program or partnership in place.
 - ODE must provide report to GA no later than December 31st each year on implementation and effectiveness of program.
- **Bright New Leaders Program**
 - Administrators of program will now be OSU’s Fisher College of Business & College of Education and Human Ecology
 - May issue a professional administrator license pre-K-12 (not alternative principal license as in prior law) to those who successfully complete program.
 - ODE will adopt rules, using rules currently in place as guidance.
- **EMIS Reporting**
 - Beginning 2019-2020, districts must report to ODE:
 - Behavioral prevention programs, services and supports that assist students in developing knowledge and skills for healthy behaviors and decision-making.
 - Includes topics such as substance abuse, suicide, bullying, other harmful behaviors.
 - Must report for each building K-12:

- Curriculum and instruction, programs and supports outside classroom or school day;
- PD for teachers, admins, other staff;
- Partnerships with community organizations to provide prevention services and resources;
- Efforts to engage school community and parents;
- Efforts to communicate with other schools or professionals in prevention education.
- ODE may use as a factor in distributing funding for prevention focused programs, services and supports.
- Additional provision added to final version of the bill that requires ODE to accept an amendment to data reported by a district if there are extenuating circumstances and the district provides evidence of such no later than August 10, 2019.
- **ESCs and Competitive Bidding**
 - ESCs may purchase services, supplies, materials or equipment on behalf of districts or political subdivisions that have entered into a service agreement with the ESC.
 - Exempts district from compliance with competitive bidding under this section.
 - May not use if district has received bids unless same terms, specs, conditions may be made at a lower price under this division.
 - School districts with .843, .844, or .845 contracts are exempt from competitive bidding under federal law for personnel services if ESC is:
 - High performing;
 - In compliance with posting requirements for services menu on website; and
 - In substantial compliance with audit rules and guidance of AoS.
- **ESC's May Apply for Grants on Behalf of Districts**
 - An ESC may apply for state and federal grants on behalf of school district client or community school
 - An ESC is a school district for purposes of eligibility in applying for the grants.
- **Tax Levied for General Permanent Improvements**
 - For OSFC construction projects, may use tax for permanent improvements not only to maintain but to upgrade classroom facilities.
 - Proceeds of tax may not be used for upgrades unless the district board submits to the OSFC a proposal regarding the use of those proceeds, and the commission approves it.
 - New ballot language will recognize upgrades subject to commission approval.

Report Cards

- **Report Cards**
 - By 7/31 each year, ODE must do both:
 - Submit preliminary report card data on academic performance and each performance measure for school districts, buildings, and community schools; and
 - Preliminary data on community schools that are at risk of permanent closure.
 - Value-added progress scale
 - Changes the way letter grades are determined for the value-added progress dimension through the 'gain index':
 - 1 or greater score (was 2 or greater) is an A
 - Less than 1 but greater than -1 (was at least 1 but less than 2) is a B.
 - Less than or = to -1, but greater than -2 is a C
 - Less than or = to -2, but more than -3 is a D
 - Less than or = to -3... is an F
 - Districts may not get an "A" on value-added progress dimension unless district/building subgroups get a C or higher (was in prior law a "B")

Miscellaneous Budget Bill Provisions

- **Miscellaneous Provisions**

- ODE would be authorized to use the services of volunteers “to accomplish any of the purposes of ODE.”
- Joint legislative task force authorized for nonpublic and community school transportation to determine methods of greater efficiency and less cost.
- ODE and JEOC to study ELL student funding amounts and required services- report by 12/31/2020
- ODE and JEOC to conduct a study that reviews criteria in the state funding formula for determining economically disadvantaged students, and also reviews how other states define and use the factor in funding. Report due 12/31/2020
- District responsible for tuition for student in residential centers must pay tuition to the educational provider; district may not include in ADM.
- ODE to report at end of December in 2020/21 on ways in which it partnered with ESC to deliver services for which state funding was provided to the ESC.
- Report card student committee to look at report card components, performance measures, letter grade, will include 3 superintendents appointed by BASA representing rural, urban and suburban schools. Report due 12/15/19
- ODE will be required to use a portion of funding to develop and deliver professional development in partnership with ESCs.
- ESCs will also receive a portion of funds to support training on value added progress dimension and data re: student achievement.
- ESCs: \$1 million development grants earmarked in each FY for ESC’s to train educators on models of prevention for risky or harmful behavior.
- ESCs: \$3 million to support grants for graduate work for credentialing of high school teachers to teach CCP courses.
- Preschool education study: ODE to report on review of early childhood initiatives in Ohio, including preschool, Head Start, other early learning and also how other states support early learning.
 - ODE to determine stakeholders
 - Study due 12/31/2020
 - Recommendations will be basis for legislation for FY 2022.
- **Territory Transfer Changes**
 - Electors residing in school district within township split between 1 or more districts may petition for transfer to an adjacent school district.
 - Placed on next ballot (general, primary, special election 90 days after certification) if 10% of electors voting in last general election in the area proposed to be transferred sign petition.
 - If majority approves, district notifies ODE of the vote and township trustees negotiate a formal agreement with BOE in district to which territory will be transferred- BOE not required to enter into formal agreement.
 - Transfer complete when map filed with county auditor and legal title of school property in the territory must be vested in new district.
 - State Board must approve agreement and notify in writing to board affected by transfer.
 - Districts and township trustees must equitable divide funds and indebtedness.
- **Academic Distress Commissions Temporarily on Hold**
 - House proposed dissolving existing ADCs and repealing current law providing for them
 - Senate removed from HB 166
 - Temporary deal was struck in the final bill that temporarily prohibits Superintendent of Public Instruction from establishing new ADCs during 2019-2020 school year
 - SPI further directed to resume ADCs beginning October 1, 2020 that meet conditions of R.C. 3302.10
 - Section does not affect any academic commission established prior to effective date of bill

Firm News: Ennis Britton Attorneys Support Law and Leadership Institute

On July 17, 2019, Ennis Britton attorneys Gary Stedronsky, Ryan LaFlamme, and Jeremy Neff met with area high school students to discuss college, law school, and the legal profession. Ennis Britton sponsored the Lunch and Learn event through the Law and Leadership Institute (LLI). LLI offers programming in cities throughout Ohio and is dedicated to encouraging under-represented students to pursue higher education. With the support of Ohio's education and legal communities, LLI offers summer enrichment, mentoring, and real-world experiences. Ennis Britton is proud to partner with LLI to promote diversity in the legal profession. Please contact Ennis Britton shareholder Jeremy Neff if you would like to learn more about opportunities for students to participate in LLI.



Save the Date: Special Education Legal Compliance Roadshow

Based on the overwhelming positive feedback we received following the 2018 Special Education Seminars, Ennis Britton has developed a Special Education Legal Compliance seminar for October 2019! 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 issues. Our Special Education Team will travel throughout Ohio to present this professional development opportunity in five different locations.

- October 7: **Mahoning Valley**
- October 8: **Cleveland**
- October 21: **Columbus**
- October 22: **Northwest Ohio/Toledo**
- October 23: **Cincinnati**

Details, including when and how to register for this opportunity will be sent to clients soon. Stay tuned!

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.

- **August 1:** Deadline to file statistical report with ODE (RC 3319.33)
- **August 5:** Deadline to submit November emergency, current operating expenses, or conversion levy to county auditor for November general election (RC 5705.194, 5705.195, 5705.213, 5705.219)
- **August 6:** Special Election (RC 3501.01; .32)

Upcoming Presentations

August 1: High AIMS
Avoiding Professional Pitfalls for Educators
Presented by Erin Wessendorf-Wortman

August 1-2: Trumbull County Administrator's Retreat
Legal Update
Presented by Megan Bair
Special Education Year in Review and Legal Update
Presented by Pam Leist

August 2: High Schools That Work
Clermont Brown Regional Network Team
Presented by Erin Wessendorf-Wortman

August 2: Northwest Ohio ESC
Administrators' Conference
Presented by C. Bronston McCord and Ryan LaFlamme

August 7-8: Ashtabula County Summer School Administrator's Conference
Legal Update and Special Education
Presented by John Britton and Pamela Leist

September 6: OASPA
Boot Camp
Presented by Erin Wessendorf-Wortman and Megan Bair

September 19: OASPA Fall Conference
Legal Updates for HR Professionals
Presented by Ryan LaFlamme and Giselle Spencer

Follow Us on Twitter: [@EnnisBritton](https://twitter.com/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 Kayla 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
- Student Privacy

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:

Megan Bair
John Britton
Bill Deters
Ryan LaFlamme
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Jeremy Neff
Hollie Reedy
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