



# School Law Review

## November 2019

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## Does a School Construction Advisor Make Sense for Your Next Project?

As the November election day fast approaches, many clients are soon going to be faced with the daunting task of engaging in both large and small scale construction of new and renovated school buildings. We are often asked the question about whether the District should utilize a school construction advisor or owner's representative. This article will hopefully assist you in arriving at the answer to that question

### What is a School Construction Advisor?

A school construction advisor (sometimes also called an owner's agent or owner's representative) is a consultant, hired by the school district to provide their professional expertise and experience to those school district personnel assigned the responsibilities of a major construction project. A school

construction advisor does not replace the architect or construction manager, rather they complement their services by helping your administrative team effectively assume their roles and responsibilities during the life of the project.

### The following are four core reasons to consider using a School Construction Advisor:

#### 1. To help your school district make the best possible decisions:

All school construction projects have three key players: The architect, the construction manager, and the school district. Each has a critically important role; with the school district primarily involved in decision-making. The school district must be able to make the right decisions and do so in a timely manner. A school construction advisor has the expertise and resources to help your administrative team make informed decisions that will lead to the results your district wants.

#### 2. To manage risk:

With any large and complex school construction project there are numerous risks, including the possibility of financial loss if a project goes over budget or if the project completion date is not met. In addition, there is the potential for lost opportunities to maximize the operational performance of the district's facilities or the prospect of

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missed educational opportunities for students if the building has been designed in a way that does not best meet their needs. A school construction advisor can mitigate the many risks associated with construction projects. They can make sure that the district's vision and priorities are incorporated into an exceptional school building design, while also ensuring the project remains on schedule and within its established budget parameters.

3. To add experience to your district's administrative team:

School districts don't engage construction projects on a regular basis. A school construction advisor can fill the gap in staff experience around managing construction projects and utilizing their knowledge and expertise to advocate for your district's interests.

4. To save money:

A school construction advisor can assist a school district in avoiding increased costs by ensuring timely decision-making, high quality project scope management during design, change order management during construction, and appropriate value engineering. Of all the many ways that a school construction advisor can save your district money, consider the following:

- Your architect will be providing complex set of drawings and specifications. Those documents are the instructions that explain how to construct or renovate your school building. A well-qualified school construction advisor can help ensure that those documents are prepared to the highest quality standards which will save your district money.
- Changes during the design and construction process are inevitable, as are change orders which can be costly. A school construction advisor can help minimize the number of costly change orders on your project and effectively manage those that do occur.

### **Ennis Britton Group Construction Advisor Services.**

The Ennis Britton Consulting Group has recently expanded to provide services that specifically support school leaders during the design and construction of new buildings or major renovation projects. EBCG staff have a blend of architectural, constructional, and educational experience that makes our team unique and more qualified than any other consultants providing these services in Ohio. All our professionals have over 30 years of experience in their area of expertise. Many of our team members are former school leaders, who have both architectural and construction expertise. They have been responsible for many successfully completed, large-scale construction projects and they know the challenges your administrative team will be facing!

For more information about the Ennis Britton Consulting Group and their School Construction Advisor services please go to our website at [www.ennisbritton.com](http://www.ennisbritton.com) or contact Steve Shergalis at (330) 441-0562.

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## **Court of Appeals Disagrees that a Student's Right to Privacy Ends Upon Death**

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A dispute over the disclosure of student records has led to the Court of Appeals for Ohio's Second Circuit to analyze whether a student's right to privacy in education records extinguishes upon death.

Both federal and state laws protect the confidentiality of student education records and personally identifiable information. The Family Educational Rights and Privacy Act ("FERPA") protects against the disclosure of education records without the prior written consent of the parent or guardian of the student. Education records are defined by the Act as "those records, files, documents, and other materials which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such

agency or institution." The right to consent to the disclosure of student records transfers to a student upon reaching the age of 18, unless the student remains a dependent of their parents.

R.C. 3319.321 also provides protection for student information. This statute is broader in its scope, forbidding the disclosure of any personally identifiable student information other than directory information.

The request at issue surrounded a former student who committed a mass shooting in August of 2019, killing 9 people and injuring 27. The shooter was killed by law enforcement officials at the scene. The Associated Press, among other media outlets, made requests to the school for records of the shooter, particularly discipline records. The school released only directory information, citing to the privacy protections of FERPA and R.C. 3319.321.

The media filed a lawsuit asking the Court to force the school to release the requested records. The media alleged that while a student's right to privacy protections under the applicable laws transfers to the student into adulthood, there should be an exception that the right to privacy in this regard ceases upon death.

The Court found the analysis inapplicable due to the school's obligations under the laws in addition to the individual's privacy rights conferred by the laws. The two are simply not comparable. The Court, noting that neither FERPA nor R.C. 3319.321 contains an exception for the death of a student, declined to create one from the bench.

### **State ex rel. Cable News Network, Inc. v. Bellbrook-Sugarcreek Local Schools, 2019-Ohio-4187**

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#### **A Quick Note About Parental Leave**

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Under Title VII of the Civil Rights Act of 1964, employers may not discriminate against employees on the basis of several protected classes, including sex. Thus, courts and administrative agencies have interpreted Title VII to prohibit an employer from engaging in discrimination related to pregnancy, childbirth or maternity/paternal leave. Employers must treat a woman who is disabled due to pregnancy, childbirth, or related medical conditions in a similar manner to other disabled employees. However, any additional benefits provided to male or female parents, whether discretionary or mandated by statutes such as the Family and Medical Leave Act, must be made available in a non-discriminatory fashion.

The Equal Employment Opportunity Commission ("EEOC") has stressed the importance of employers clearly explaining the types of leave available to all employees. Employers should distinguish between leave related to the physical limitations due to pregnancy or childbirth and leave related to bonding with or providing care for a child. An employer may limit leave related to the physical conditions of pregnancy or childbirth to the women affected by these conditions. However, if an employer extends leave to new mothers beyond the recuperation period of childbirth in order to care or bond with the baby, an equivalent amount of leave must be available to fathers for the same purpose.

This guidance was put into practice in 2017 when a class of male employees filed a lawsuit against JP Morgan Chase ("Chase"). A group of male employees alleged that Chase's parental leave provisions were discriminatory in violation of Title VII. Chase allowed a parent to take 16 weeks of paid parental leave if they were the primary caregiver to the child. Chase automatically granted this additional leave to women. When male employees applied for this leave, however, they were required to prove that their partner had returned to work or was incapable of caring for the child. If the male employees could not make this showing, Chase provided a mere 2 weeks of paid leave. In May of 2019, Chase ultimately agreed to settle the dispute for \$5 million and agreed to maintain a gender-neutral leave policy moving forward.

## **What this means for your District:**

If your district offers maternity leave strictly to women who are disabled due to pregnancy, childbirth or related conditions, you do not need to offer the same kind of leave to men. However, if your district offers additional leave to allow the mother to bond or care for the child, then the father is entitled to the same leave as the mother would be. Lastly, regardless of the district's parental leave policy, it is important that all districts ensure that they do not discriminate when determining who is eligible for parental leave.

***EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues***, Number 915.003, (June 25, 2015).

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## **Legislative Update**

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### **Senate Bill 26**

Senate Bill 26 was proposed in February of 2019 and has just recently passed through both the House and the Senate. If signed into law, the bill would authorize Ohio teachers to deduct up to \$250 of unreimbursed expenses incurred each year for professional development and classroom supplies. Persons eligible for the deduction include any K-12 teacher, instructor, counselor, principal, or aide who works in a primary or secondary school for at least 900 hours per school year. If an individual does qualify, then the deduction would apply, if not already reimbursed, to the following expenses: books, supplies, computers and other equipment, supplementary materials, athletic supplies used in a health or physical education class, and professional development courses.

### **Senate Bill 89**

Senate Bill 89 just passed the Senate on October 23, 2019. If signed into law, the bill would require that a joint vocational school district be compensated at the same rate and under the same terms as a school district when a legislative authority enters into a compensation agreement with the school district for a loss of tax revenue. The bill will ultimately result in an increase in revenue for affected joint vocational school districts. The amount of the increase will be dependent on the specific compensation agreement.

The bill also does each of the following with regard to temporary teaching permits for STEM schools: 1) extend the availability of temporary teaching permits for up to 40 hours a week to an individual teaching a credential program at a dropout recovery community school, 2) require an individual applying for a temporary license to have significant career-technical experience, and 3) require these temporary permits to be renewable.

### **Senate Bill 16**

Senate Bill 16 was introduced back in February of 2019. If passed, the bill would require the State Board of Education to adopt a model curriculum for high school students on how to properly interact with peace officers during encounters. The bill would require school districts to use the State Board's curriculum in at least one of the courses required for high school graduation.

### **Senate Bill 218**

Senate Bill 218 was introduced on October 15, 2019. If passed, the bill would prohibit school districts from beginning the school day earlier than 8:30 am.

### **Senate Bill 219**

Senate Bill 219 was introduced earlier this month on October 15, 2019. If passed, the bill would require the creation of the career pathways apprentice program for high school students. The purpose of the program is to establish partnerships between schools, businesses, communities, government entities, and non-profit

organizations in order to create career pathways for apprenticeships in several professions. These professions include manufacturing, IT, financial services, business operations, healthcare, and education.

### **Senate Bill 216**

Senate Bill 216 was introduced on October 19, 2019. If passed, the bill would allow a board of education to grant a partial real property tax exemption to each homestead in the district that also receives a tax reduction under Section 323.152(A) of the Revised Code. In order to receive a tax exemption under 323.152(A), you must fall into one of the following categories: i) a person who is permanently or totally disabled, ii) a person who is 65 years of age or older or iii) a person who is the surviving spouse of a deceased person who was permanently and totally disabled or was 65 years of age or older when he applied for the reduction in taxes available in this section. If the board decides to grant a partial real property tax exemption under this section, they must also grant a partial manufactured home in the district that receives the tax reduction under 4503.065 of the revised code. In order to receive a tax exemption under this section, you must be: i) a person who is permanently or totally disabled, ii) a person who is 65 years of age or older or iii) a person who is the surviving spouse of a deceased person who was permanently and totally disabled or was 65 years of age or older when he applied for the reduction in taxes available in this section.

The bill also allows a board of education to designate a fixed-rate levy as an eligible levy. If the levy is then approved by the voters, the partial exemption allowed under this section shall apply with respect to that levy beginning in the same tax year in which the levy first takes effect.

### **Senate Bill 226**

Senate Bill 226 was introduced on October 21, 2019. If passed, the following language would be deleted. "In all city, local, and exempted village school districts, the board may provide transportation for resident school pupils in grades nine through twelve to and from the high school to which they are assigned by the board of education of the district of residence or to and from the nonpublic or community high school which they attend for which the state board of education prescribes minimum standards."

### **Senate Bill 225**

Senate Bill 225 was introduced on October 16, 2019. If passed, the bill would require that a sign containing a toll-free telephone number to report child abuse or neglect be posted in each school building under the Board of Education's control. The sign should be posted in such a way so that it is clearly visible and located in an area that is readily accessible to students.

### **House Bill 305**

House Bill 305 was introduced in June of 2019. If passed, the bill would provide a new financing system for school districts beginning in FY 2020. The bill would require the funding under this system to be paid directly to school districts, community schools, and STEM schools for the students they are educating. The funds would no longer be given to the resident district and then paid to the STEM or community schools in which the students are enrolled.

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## **Ennis Britton is Proud to be a Platinum Sponsor of the OSBA Capital Conference!**

Ennis Britton is proud to be a Platinum Sponsor of the 2019 Ohio School Boards Association Capital Conference. This means you will see our team of attorneys and firm logo in a lot of places! The firm is the exclusive sponsor of the OSBA Conference App, which will be activated this month. The conference app is a very helpful tool to schedule your activities, download handouts, learn more about track sessions, and find your way around the conference.

A new feature this year allows you to log in and track your certificates of attendance. You can download the free app through the Apple App Store or Google Play Store. You also may access the app online at <http://conference.ohioschoolboards.org/app>.

In addition, the firm is sponsoring the Conference Spotlight Session **Lifting Leaders – How to Grow Leadership**. The spotlight session takes place Sunday, November 10 from 1:30 p.m. to 3:30 p.m. in Room A210-212.

The Ennis Britton Consulting Group will have a booth at the trade show. Stop by **Booth 813** and to see the services they can provide to your district and management team.

Join our attorneys presenting at Capital Conference this year for exciting, informative (and entertaining!) track sessions. Here is when and where you can find us:

**Sunday, Nov. 10<sup>th</sup>**

**1:00 p.m. – Room A123-125**  
**“Evaluation, Nonrenewal and Termination”**  
Presented by John Britton

**Monday, Nov. 11<sup>th</sup>**

**9:00am – Room A210-212**  
**“Into the Woods: Advanced Public Records Law”**  
Presented by Hollie Reedy

**10:30 a.m. – Room A220-222**  
**“Disproportionality Discipline Dilemmas”**  
Presented by Jeremy Neff, Darrell Yater and Mona Burts-Beatty

**2:30pm – Room A213-215**  
**“Regulating Employee Social Media Use”**  
Presented by John Britton

**3:00pm – Room A210-212**  
**“We’re Under Attack – This is Not a Drill!”**  
Presented by Robert J. McBride

Last but not least, don't forget to join us for Ennis Britton's Capital Conference reception. All attendees are welcome to attend. Please R.S.V.P. to Barbara A. Billow at [bbillow@ennisbritton.com](mailto:bbillow@ennisbritton.com).

**Monday, November 11, 2019**  
4:00 p.m. to 6:00 p.m.  
Hyatt Regency Columbus  
Franklin Rooms A, B & C

We are thrilled to be a part of this annual event and hope to see you there!

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## Upcoming Deadlines

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

- **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 5** – General election day (RC 3501.01)
  - **December 31** – Deadline for treasurer to canvas the board to establish a date of the organizational meeting (RC 3313.14)
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## Upcoming Presentations

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### **2019–2020 ADMINISTRATOR’S ACADEMY SEMINAR SERIES**

**December 12, 2019: Public Records Law Review**

**April 16, 2020: Student Discipline Primer**

**July 9, 2020: 2019–2020 Education Law Year in Review**

Ennis Britton’s Administrator’s Academy Seminar Series is offered via a live video webinar professionally produced by the Ohio State Bar Association and is free of charge to clients.

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. You may register on our [website](#) or contact Kayla via [email](#) or phone at 513-674-3451.

#### **November 7: BASA’s Central Office/Assistant Superintendent Professional Learning Series**

##### ***Critical Relationships and Human Resources***

Presented by John Britton

##### **November 7: High Schools That Work**

##### ***Special Education Legal Update for Building Administrators***

Presented by Pam Leist

##### **November 11: OIAAA State Conference**

##### ***Understanding the Lines- Ensuring Appropriate Behavior in the Coach-Student Athlete Relationship***

Presented by John Britton

#### **November 15: Miami University Speech Language Pathology Graduate Program**

##### ***Special Education Challenges in Schools***

Presented by Pam Leist

#### **November 15: East Central Ohio Educational Service Center**

##### ***Legal Update***

Presented by Robert McBride and Jeremy Neff

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

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### **Webinar Archives**

Did you miss a past webinar, or would you like to view a webinar again? If so, we are happy to provide that resource to you. To obtain a link to an archived presentation, contact 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  
Robert J. McBride  
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

### School Finance

Taxes • School Levies •  
Bonds • Board of Revision

#### Team Members:

John Britton  
Bill Deters  
Ryan LaFlamme  
Robert J. McBride  
Bronston McCord  
Jeremy Neff  
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