



## December 2019

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## District's Termination of Superintendent Upheld

The Court of Appeals in Logan County, Ohio recently upheld a decision of the Indian Lake School District Board of Education terminating its superintendent after he was arrested for gross sexual imposition of a minor.

The superintendent was placed on paid administrative leave the day following his arrest. The Board adopted a resolution nine days later that initiated the termination process based on the nature of the charges, including that the arrest required a report to the Ohio Department of Education and suspension from all duties during the pendency of criminal action. The resolution also noted that the arrest generated extensive media coverage that resulted in staff, parents, students, and community members becoming aware of the charges. The Board determined that the superintendent was thus unable to effectively perform his duties.

The superintendent elected to have a hearing on his termination before a state appointed referee. After a five-day hearing, the referee issued a report and recommendation concluding the Board failed to provide reliable, probative, and substantial evidence that just cause supported the superintendent's

termination. The referee focused on the fact that the Board failed to demonstrate that the superintendent engaged in any conduct warranting termination. Instead, the Board alleged that it was the fact of his arrest that rendered him unable to perform his duties. The referee believed this could not support a termination order and recommended that the superintendent remain on unpaid leave pending the criminal proceedings.

The Board rejected the referee's recommendation, and in accordance with R.C. 3319.16 terminated the superintendent. The superintendent appealed to the court of common pleas. As it turned out, the superintendent was convicted and sentenced during the pendency of his appeal. He subsequently filed a motion to strike the Board's reference to his conviction in his appeal. The court denied that motion and upheld the Board's decision to reject the referee's recommendation and terminate the superintendent.

The court specifically found that the nature of the allegations, in light of his position and loss of community trust, prevented him from effectively performing his duties. The court also held that it could not ignore the fact that the superintendent was convicted while his appeal was pending. The court also found that the Board did not need to indefinitely postpone the termination action until after the criminal proceedings were resolved, meanwhile suffering the damage caused by the turmoil created by the uncertainty and doubt as to the strength of the school system's integrity.

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Despite his conviction, incarceration, and inability to work as a superintendent or teacher under law, the superintendent appealed to the court of appeals. The court of appeals noted that courts cannot substitute their judgment for the judgment of the Board if substantial and credible evidence is presented to support the charges. The court of appeals held that the lower court did not abuse its discretion in upholding the Board's decision. The superintendent was required to be suspended from all duties requiring the care, custody, or control of children pursuant to R.C. 3319.40 and 3319.31. The court noted that he was unable to perform his job duties based on that fact alone. As a result, the lower court's conclusion that the superintendent was terminated for good and just cause was not an abuse of discretion and the termination was permitted to stand.

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

A District may not need to wait for criminal proceedings to be completed before it decides to terminate an employee as a result of the employee's arrest. This appears to especially be true when R.C. 3319.40 and 3319.31 require that the employee be suspended from all duties requiring the care, custody, or control of children pending the criminal proceedings. The courts found that such a suspension effectively renders an employee unable to perform his or her job duties.

The case also serves to demonstrate that boards of education have the ability to reject a state referee's recommendation against termination in certain circumstances. A board of education's decision to do so will not be overturned by the courts unless there is a lack of substantial and credible evidence supporting the termination.

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## **Grading System for Compliance on Sunshine Laws**

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Recently, Auditor of State Keith Farber announced that government entities will now be graded on their compliance with Ohio's Sunshine Laws through a Star Rating System. (StaRS). Farber says that this system will provide a good indicator of government transparency, while at the same time, give government entities best practices in order to improve compliance and transparency within their own organization.

### **How does it work?**

The StaRS system will give a government entity a score ranging from zero stars - least effective to four stars - most effective. This score will be based on the number of recommended best practices the entity has implemented. The Auditor's best practices are as follows:

1. The public office employs a method to track public record requests, such as record requested, date received, and date provided.
2. To assist the public in making a request for records, the public office has standard request forms that are available to requestors to use if they wish, as well as for the staff to use when a request is made via phone.
3. The public office provides an acknowledgment to the requestor when a public records request is received, consistent with how the request was made.
4. To assist the public in making a request for records, the public office has publicized (website, public records poster, etc..) the name or office title of the records custodian and his/her contact information. Further, the public office's staff has been trained on how to route public records requests to the record custodian, who also has been trained on fulfilling the public records requests, including guidelines for negotiating ambiguous or large requests.
5. The public office has an online presence that provides the office's agendas, policies and schedules.
6. The public office has an online presence that provides access to official documents such as the annual budget, salaries, and contact information.
7. All elected officials or their designees, as well as community school administrators, have taken the required public-records training within the applicable time frame.





It is important to know that the auditor will begin testing for StaRS on January 1, 2020. However, the results will not become available until audits are completed later in 2020. If a public office receives a rating with two or more stars, implementing 1-2 best practices, then the office will be allowed to print a certificate in order to highlight their accomplishments.

This new system is reminiscent of the ill-fated sunshine law audit program implemented by Faber's predecessor, Dave Yost. It is important to note that a number of the best practices are not required by law. Therefore, it is misleading to "grade" districts on compliance that is not required by law or regulation.

For instance, "best practices" 1-6 are not required by Ohio's public records law; therefore, regardless of this rating system or the "grade" given by the Auditor, your public office can be in full compliance with Ohio's Open Records Act without complying with the first six practices. It is an attempt to bootstrap into the law additional requirements upon school districts.

If your district chooses to implement any of the best practices, such as acknowledging a request, do not promise a date by which the records will be provided unless you are certain you can provide them by that date; a failure to do so may trigger an award of attorney's fees to a public records requestor who files a mandamus action against the district.

A summary of the StaRS system is outlined in the table below.

<b>StaRS Levels:</b>	
	<b>Open and Transparent Government</b> - Meets all Sunshine Law requirements.
	<b>Achievement in Open and Transparent Government</b> - Implemented 1-2 best practices.
	<b>Outstanding Achievement in Open and Transparent Government</b> - Implemented 3-4 best practices.
	<b>Highest Achievement in Open and Transparent Government</b> - Implemented 5 or more best practices.
<b>Non-Compliant</b>	Non-Compliant - Sunshine Law requirements are not fully achieved.

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## School Funding Update

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A complaint challenging the constitutionality of Ohio's school funding system was filed in the Perry County Court of Common Pleas in 1991. The plaintiffs alleged that vast disparities and shortfalls in per pupil funding, among other concerns, meant the State of Ohio was failing in its Constitutional obligation to ensure that there is a "thorough and efficient system" of public schools throughout the state. In his 1994 decision in the DeRolph case, Judge Lewis agreed.

Over the course of the next decade there were several more court rulings, including several rulings by the Ohio Supreme Court finding the system to be unconstitutional. While some changes in funding occurred during that time, including the creation of the Ohio School Facilities Commission (now Ohio Facilities Construction Commission) and the funding of billions of dollars of new and renovated school facilities, the underlying per pupil funding system remains largely unchanged.

Over the course of the past year, Representative Bob Cupp and John Patterson convened workgroups of stakeholders throughout the state and developed a new school funding plan. This plan was introduced as House

Bill 305 in the Ohio House on June 26, 2019. The bill was referred to the Finance Committee and hearings have taken place over the past two months with testimony from legislators and educators from across the state.

Recently, stakeholders and legislators have raised concerns about whether HB 305 does enough to address and fund the needs of impoverished students. Witnesses testified before the Finance Committee citing several studies showing that the cost of educating an impoverished child is about 30% higher than non-disadvantaged students. This indicated that additional funding ranging from \$85 million to \$350 million may be required on top of the current estimate of \$1.5 billion per year of increased funding under HB 305.

Following that testimony, House Speaker Larry Householder stated that “we need to do something about those economically disadvantaged students. Maybe we need to find a new way, that I don’t know what it is yet, of funding our schools.” Speaker Householder raised the possibility of imposing a uniform tax “effort” across the state, meaning a comparable property tax rate in all districts, and pooling the funding at a state level for redistribution based on need. He offered this as a way to address inequities arising from widely varying per pupil property tax valuation across the state. Speaker Householder also raised the possibility of putting a new funding plan before Ohio’s voters next year.

Because HB 305 already has bipartisan and majority sponsorship in the House, many see this as the most viable proposal to alter school funding since DeRolph was filed. Now is the time for interested parties to provide input and raise concerns with their legislators. Any Ennis Britton attorney can discuss HB 305 and its implications with interested parties. Hollie Reedy, an attorney in our Columbus office, is a registered lobbyist and can provide support for representatives of client districts and entities that may wish to provide testimony on HB 305. Legislators should hear your district’s story; bringing the real numbers and local challenges in your district helps them understand how the complicated formula and system is (or is not) working for you.

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## Special Ed Spotlight: Food Allergies

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With celebrations and class parties looming in the near future, the holidays can intensify concerns and disputes over food allergy issues at school. If it seems like there are more food allergies these days, there are. Today, about 8% of all children have food allergies, an increase of 50% in ten years. This translates into 1 in 13 children, or about 2 per classroom. The most common food allergies are peanut and tree nuts, shellfish, milk, eggs, fish, wheat and soy. Some allergies are very severe, such as students who could have a life-threatening reaction to airborne particles of peanuts.

Students with food allergies may be eligible for special education supports and protections. For instance, a student may be IDEA- eligible under the category of “other health impaired” if the allergies adversely affect learning or the student needs special education/related services due to the allergies. More commonly, students with food allergies may be eligible for a 504 plan if they have a physical impairment that substantially limits one or more major life activities. This could include, in the case of allergies, impairments to breathing, immune system function, respiratory function, or learning. Under state and federal law, districts may not discriminate against a student with a disability or deny them participation in school programs or activities. School IEP and 504 teams should discuss how allergies will be handled for students according to their particular allergy and its severity. Individualized plans for the safety of each student with an allergy should be developed to avoid exposure and reactions. School districts must also ensure that selected accommodations are implemented with fidelity during all aspects of the school district’s activities and operations.

It is probably not surprising to you that the issue of accommodation of children with food allergies in schools has been the subject of special education hearings and litigation. Districts sometimes have to contend with diverse perspectives and demands, which they must reconcile on a daily basis. Here is a short summary of some 504 cases that may sound familiar to you.

In one case, a high school denied a student participation in a culinary arts program due to concerns about the student’s severe allergies to peanuts, dairy, egg, kiwi and crab. The student did not have a 504 plan at the time but did have an emergency health plan to address exposure and response to a reaction. The student’s allergist had filed



a letter stating the student could participate as long as he did not eat any of the foods prepared with ingredients to which he was allergic, and that he wore gloves when handling peanuts. The District attempted to contact the allergist one time while the doctor was on vacation. They did not contact him after that, and made the decision to exclude the student. The student filed a complaint with the Office for Civil Rights, alleging disability discrimination. OCR found that the district had treated the student as a student with a disability even though it had not qualified him as one when the district excluded him from the program. OCR went on to find that the district had violated Section 504 procedurally, as it did not make a decision about the student's exclusion with persons knowledgeable about the issues. ***Bethlehem (NY) Central Sch. Dist. Office for Civil Rights, Eastern Division, NY, 52 IDELR 169, 109 LRP 30964.***

Another case dealt with a student on an IEP whose allergy to peanuts and tree nuts was a life-threatening, airborne allergy. Initially, the District agreed that the student should be educated at a smaller private school that put into place significant protocols and regulations to ensure the student's safety. The District proposed in a new IEP to change his placement to a public school on the basis that the student could be safely accommodated. This student also had autism with communication deficits, such that he would be unable to communicate his physical distress if he were having an allergic reaction. The parents rejected the proposed IEP and filed for due process. In a detailed decision concerning the peanut-free accommodations provided by the private school and the proposed peanut-restricted accommodations of the public school, the hearing officer found that the proposed IEP met the requirements of the law, which require only a reasonably safe environment, and plans in the IEP to ensure the student's safety were adequate to prevent exposure and deal with a reaction if it did occur. ***In Re: Student with a Disability Kentucky State Educational Agency 1213-16, 114 LRP 19510).***

Finally, there was a Michigan case of a mother who refused to comply with the peanut free school building to accommodate another child who had a life-threatening, airborne peanut allergy. She wrote to the school, stating "I will not be cooperating not participating in the School's 504 plan to another student. My child and I are not subject to, nor bound by, the provisions of the Rehabilitation Act....to meet my child's needs, I will provide my child with the proper nutrition in her school lunch that I, in my sole discretion, deem appropriate." She filed a lawsuit seeking to enjoin the district from implementing the school-wide ban on nut products and requested money damages. She also alleged that her rights to equal protection and due process under the state and federal constitution were violated, and her child experienced unlawful search and seizure because her lunches were checked and when peanut items were found, replaced with appropriate alternatives. The court of appeals rejected all her claims, finding that she lacked standing to challenge the 504 plan, that the school district's peanut-free school policy was rationally related to a legitimate government interest, defeating the equal protection and due process claims. As to the unlawful search and seizure, the court stated that the school only looked for and removed banned items based on the parent's notice to the school that they would not comply with the reasonable restrictions. ***Liebau v. Romeo Community Schools, 61 IDELR 231 (Mich. Ct. of App. 2013).***

It is important for your staff to be knowledgeable about food allergies and the related challenges they bring. The Centers for Disease Control publishes resources at <https://www.cdc.gov/healthyschools/foodallergies/index.htm>, including Food Allergy Guidelines FAQ and Voluntary Guidelines for Managing Allergies. Both of these resources and many others, including information for school nurses and more, may be found on the CDC page.

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

Food allergy management is a more and more common issue for districts. Staff training on preventing exposure, recognizing signs of a reaction, responding with medication or the use of an Epi-pen, including environmental management in terms of cleaning surfaces and other items used in instruction, transportation staff and substitute teacher/aide training are all aspects of food allergy management that require ongoing attention. School staff, including IEP and 504 teams, should discuss food allergies and take appropriate steps to ensure students with allergies are properly accommodated. Parent, staff and community education is likewise an ongoing effort in the management of food allergies in schools, involving education on watching ingredients in school snacks, lunches and the cafeteria, providing ingredient lists, and more. If you have an IDEA or 504 plan issue involving a food allergy, the EB special education team can assist in ensuring your team's compliance with procedural and substantive requirements.

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## Effective Teams Don't Just Happen!

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As January quickly approaches, many school boards will be welcoming new members. They may be a well-known community member or a new addition to the team. School boards are considered one of the most important teams in any school district. The members' abilities to work effectively as a team could have a profound impact on district operations. However, effective teams don't just happen. Regardless of the member's dedication or skill level, it is not enough to simply welcome new members and assume that the new team will be able to work effectively together. Team performance is more than just the sum of each member's individual abilities.

Ennis Britton Consulting Group's experience shows that regardless of how competent individual team members are, if the team is not structured and led in the right way it does not function properly. Individual members could cause conflict and discord in the team if everyone is not on the same page. Consequently, the result is a team with less effectiveness than if each individual member was working solo. Nearly everyone has a story to tell about their experience with ineffective teams!

We find that most teams function as well as they are managed. Your team will be at its best when all members of the team are in agreement with how the team will function together as a unit. That means you must take the time to learn about best practices for effectively managing teams. When we look at high performing teams there are four dimensions that stand out:

- **Goals:** What is your team trying to accomplish? What are its objectives and priorities?
- **Roles:** What are the roles for each individual? How does your team analyze and clarify roles?
- **Processes:** How does your team accomplish its work? How are you functioning? What are your work processes and procedures?
- **Relationships:** How do team members interact? What are your work relationships like?

These four dimensions need to be fully operable in order to have a successful team. Steady improvement requires focusing on one dimension at a time. We suggest starting with goals. Goals are the base to the other three dimensions. It is difficult to define each individual's goals if there are no clear goals in mind. The process be defined after roles have been set. Relationships between team members should be addressed last. Relationship problems very often turn out to be a symptom of poor team performance rather than the cause.

One of the most common mistakes we see is a team that is trying to be led only from the process aspect. If you only communicate the process to your team, it will lose its meaning. If team members cannot see why the process is important and how it fits into their role, the team's goals may not be accomplished. The process can become just another pointless initiative for them to follow.

We hope you utilize the four dimensions of teams to provide a framework to identify the strengths, limitations, problems and issues within all levels of team organization. We can develop a plan to help your team become more effective. To learn more, please go to our website at [www.ebconsultinggroup.com](http://www.ebconsultinggroup.com) or call Steve Shergalis at (330) 441-0562.

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## Firm News: Ennis Britton Super Lawyers for 2020!

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We are very pleased to announce that the highly reputed organization Super Lawyers has selected Ennis Britton's Gary Stedronsky as a Super Lawyer and Erin Wessendorf-Wortman as a Super Lawyers Rising Star for 2020!

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*Gary Stedronsky*  
**Super Lawyer**



*Erin Wessendorf-Wortman*  
**Rising Star**

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**Gary Stedronsky** is a shareholder who has been with Ennis Britton since 2003. He started as a law clerk while attending law school. As a member of Ennis Britton's Construction & Real Estate Team and School Finance Team, he provides counsel to school districts throughout Ohio on matters related to property issues, public finance matters, tax incentives, and more. He is a published author and frequent presenter on many education-related topics. Gary received the prestigious Super Lawyers Rising Star award five years in a row and has received the Super Lawyers award two years in a row!

**Erin Wessendorf-Wortman** is a shareholder with the firm. As a member of the firm's Special Education Team and Workers' Compensation Practice Team, Erin represents school districts across Ohio on a variety of matters including labor and employment issues, civil rights, special education, public records, and more. She is a published author and frequent presenter on many education-related topics. This is Erin's fourth year in a row to receive the Super Lawyers Rising Star award!

Super Lawyers is a national rating service that publishes a list of attorneys from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement.

To qualify as a Rising Star, an attorney must score in the top 93rd percentile during a multiphase selection process that includes peer nominations and evaluations combined with independent research. A Super Lawyers rating is considered a very prestigious designation in the legal field. Only those in the top 5 percent of the total lawyers in the state are selected to Super Lawyers, and only 2.5 percent of newer lawyers are selected to Rising Stars. We commend Gary for his selection to Super Lawyers and Erin for her selection to Rising Stars!

Visit the Super Lawyers [website](#) to learn more.

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## Upcoming Deadlines

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

- **December 31** – Deadline for treasurer to canvass the board to establish a date of the organizational meeting (RC 3313.14)
- **January 15** – Deadline for boards of education to meet and organize (RC 3313.14); Deadline for boards of education to adopt tax budgets for the coming school fiscal year (RC 5705.28)
- **January 20** – Deadline for boards of education to submit fiscal tax-year budget to county auditor (RC 5705.30)
- **January 28** – Deadline to submit certification for May income tax levy to Ohio Department of Taxation (RC 5748.02)
- **January 31** – Deadline for ESC governing boards to meet and organize (RC 3313.14); Deadline (4:00 p.m.) for annual campaign finance reports to be filed by certain candidates, political action committees, caucus committees, and political parties, detailing contributions and expenditures from the last day reflected in the previous report through December 31, 2017 (RC 3517.10)

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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: 2019–20120 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.

#### **December 3: Southern Ohio ESC & Brown County ESC *Legal Update***

Presented by C. Bronston McCord & Hollie Reedy

#### **December 13: Warren County ESC *Legal Update for Superintendents***

Presented by Gary Stedronsky

#### **December 13: Northwest Ohio ESC *Compliance Officer Training***

Presented by C. Bronston McCord



**January 11: Ashland Leadership Academy Seminars  
*Legal Update***

Presented by John Britton

**January 22: Annual OALSS Conference  
*Putting the Human in Human Resources: Critical Relationships for Educational Leaders***

Presented by John Britton

**January 24: Ohio Association of School Personnel Administrators  
*Winter Boot Camp: Collective Bargaining & Negotiations***

Presented by Pam Leist and Gary Stedronsky

**January 24: Ohio Association of School Personnel Administrators  
*Classified HR Staff Legal Update***

Presented by Pam Leist

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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  
Hollie Reedy  
Giselle Spencer  
Gary Stedronsky

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